



**FNIGC | CGIPN**

First Nations Information Governance Centre  
Le Centre de gouvernance de l'information des Premières Nations

## REQUEST FOR PROPOSALS

TO PREPARE AN ACADEMIC COMMENTARY ON THE CORE THEMES OF FIRST NATIONS LAWS THAT MAY IMPACT THEIR INTELLECTUAL PROPERTY RIGHTS;  
FACILITATE ONE-ON-ONE INTERVIEWS AND A NATIONAL WORKSHOP WITH FIRST NATIONS LEADERS, EXPERTS, AND CANADIAN GOVERNMENT REPRESENTATIVES;  
AND PREPARE A SUMMARY REPORT OF THE WISDOM GIVEN ON HOW CANADIAN LAW CAN MAKE SPACE TO RESPECT FIRST NATIONS SOVEREIGNTY AND INTELLECTUAL PROPERTY RIGHTS

Proposal due date: **November 4** at 11:59 p.m. EST

---

### Background

#### About FNIGC

The First Nations Information Governance Centre (FNIGC) is a technical, apolitical, non-profit organization federally incorporated under the *Canada Incorporation Act* since 2010. It operates with a special mandate from the Assembly of First Nations (Resolution #48, December 2009) and is governed by a national board of directors appointed from each of the ten First Nations regions.

FNIGC's mission is to assert data sovereignty and support the development of information governance and management at the community level through regional and national partnerships, in collaboration with First Nations. FNIGC adheres to free, prior and informed consent, respects nation-to-nation relationships, and recognizes the distinct customs of nations. We are not a rights-holding organization and do not speak for First Nations. Our Vision is for every First Nation to achieve data sovereignty in alignment with its distinct world view. Data sovereignty is defined as the control and management of data under the laws of the nation in which it is located. For First Nations data, this means under the First Nations principles of OCAP® – ownership, control, permission to access, and possession of the data by First Nations.

FNIGC defines First Nations data as data and information in any form that is about First Nations (i.e., language, health status, housing, etc.), from First Nations (Traditional Knowledge, genetic samples, cultural objects, etc.) or about First Nations lands and waters (including on reserve and Traditional territories).

FNIGC is responsible for a wide range of work, from national surveys to research, to training and capacity building. In 2016, Assembly of First Nations' Chiefs-in-Assembly recognized "Indigenous data sovereignty as a cornerstone of Nation rebuilding" (Resolution #57). In response, *Budget 2018* set funding aside for FNIGC and its partners to design a "national data governance strategy."

A strategy document was delivered to Indigenous Services Canada (ISC) in 2020, triggering a commitment by the federal government in *Budget 2021*, to "continue work towards the development and implementation of a First Nations Data Governance Strategy". With this new funding FNIGC is implementing a [First Nations Data Governance Strategy](#) (FNDGS or "the Strategy") in partnership with our regional partners, which includes establishing Data Champion Teams (DCTs) in each region and at the national level with the goal of building a network of First Nations-led information governance and statistical service centers in every region.

Over the last 24 years, FNIGC has established internationally recognized expertise in conducting unique national and regional survey programs that support First Nations government efforts to build culturally relevant portraits of their communities.

## Intellectual Property Rights

The intellectual property regime is complex, and it is predicated on values and legal systems foreign to First Nations. Criticisms of the intellectual property regime identify ethical flaws, impediments to First Nations data sovereignty, enrichment of others at First Nations' expense, and challenges to the lawful exercise of First Nations rights. It treats First Nations intellectual endeavors as the common heritage of humankind free for the taking while locking up non-Indigenous ventures behind monopolies promoting individual economic return. FNIGC has recently completed a paper comparing First Nations and Eurocentric views on intellectual property. We concluded there exists a conflict of laws between First Nations and Canadian jurisdictions.

The domination of the common and civil law in Canada is "a fiction that continues to erase Indigenous legal systems as a source of law in Canada" (Borrows, 2010, p.14). Supreme Court of Canada Justice McLachlin, as she then was, has stated, "...running through [Canada's] history, from its earliest beginnings to the present time is a golden thread – the recognition by the common law of the ancestral laws and customs of the [A]boriginal peoples who occupied the land prior to European settlement." (Van der Peet, para.263, see also Supreme Court of Canada decisions *R. v. Marshall*; *R. v. Bernard*).

Professor John Borrows, Canada Research Chair in Indigenous Law, argues in *Canada's Indigenous Constitution*, 2010:

that Canada cannot presently, historically, legally, or morally claim to be built upon European-derived law alone [...] Acknowledging the traditional and contemporary place

of Indigenous law in this country – alongside the common law and civil law – is a necessary step [...] It is crucial to creating a healthier and more accurate conception of Canada's broader constitutional order. (Borrows, 2010, p.15-16).

The current denial of First Nations laws and the unsatisfactory opportunities for dialogue with Canada about amending its intellectual property laws "perpetuates the myth of inferiority" (Borrows, 2010, p.17).

Under the federal *United Nations Declaration on the Rights of Indigenous Peoples Act*, Canada has committed to implementing the Declaration and amending existing or adopting new federal legislation to ensure consistency with it. This includes a commitment to developing a national action plan collaboratively with Indigenous peoples to implement the Declaration. This clearly includes addressing Declaration Article 31, the right of First Nations to "...maintain, control, protect and develop their intellectual property...".

Amending Canadian law to recognize First Nations data sovereignty is essential to the reconstitution of effective and efficient First Nations governments. Weaving First Nations customs, traditions, and protocols into the fabric of Canadian intellectual property laws will address an important element of First Nations data sovereignty. In this case, governing access to, and the use and sale of First Nations intellectual property by First Nations governments. Intellectual property is a complex field and resolving the current conflict in legal systems requires the skills of highly knowledgeable practitioners of both First Nation and Canadian laws. It is an area of work currently underfunded, but with the potential for significant innovation to protect the cultural survival of First Nations.

## Project Overview and Objectives

This project will explore First Nations laws on intellectual property. This will include examining, among other things, concepts of ownership, property, duty to others and the natural world, and sharing and reciprocity. What values are promoted in First Nations laws and how do those values influence decisions about the use and sharing of knowledge and information, works of art and cultural items, and genetic resources are additional areas of exploration. The objective is to better understand how First Nations' intellectual property regimes operate and explore how First Nations' laws and Canadian laws in this area can work together to support implementation of First Nations rights in their intellectual property.

The proposed project focuses on the following objectives:

1. Identify themes in First Nations' laws that touch on First Nations' intellectual property
2. Share this information in conversation between First Nations Elders, lawyers, wisdom keepers, academics, and subject matter experts and Canadian government officials and non-Indigenous academics
3. Through co-inquiry in an ethical space explore innovative ways and means for Canadian law, policy, and processes to create space for the exercise of First Nations laws respecting their intellectual property

4. Strengthen the exercise of First Nations data sovereignty in the context of intellectual property rights to build the necessary economic and governance capacity to exercise their jurisdiction.

The project supports a culturally driven engagement process with First Nations lawyers, Elders, knowledge holders, and subject matter experts. The proposed project will consider the findings and recommendations of previous research conducted on the topic and elaborate upon this existing research. Upon completion of the desktop research and one-on-one interviews, FNIGC will host an innovative national workshop to bring together leading First Nations academics, lawyers, and knowledge keepers along with Canadian officials and non-Indigenous academics to explore the overlapping edges of First Nations and Canadian intellectual property law. This will be an opportunity to better understand First Nations laws and worldviews, placing First Nations and Canadian intellectual property laws on equal footing, and explore ways and means to adjust the status quo.

FNIGC is seeking support to implement this project. This includes:

1. Prepare a review of academic commentary, including scholarly writings and recorded lectures, on First Nations laws that touch on issues of intellectual property rights,
2. Conduct one-on-one interviews with First Nations Elders, lawyers, academics, knowledge holders, and subject matter experts, using an interview guide developed with support from FNIGC to engage individuals and organizations with an understanding of First Nations laws to gather perspectives and experiences in intellectual property,
3. Provide facilitation and note taking support for a national workshop on First Nations laws on intellectual property to engage First Nations Elders, lawyers, academics, knowledge holders, and subject matter experts and Canadian government officials to share and promote cross-cultural understanding,
4. Prepare a Final Report that summarizes the dialogue from the National Gathering, one-on-one interviews, and the review of academic commentary.

This work will require a strong understanding of Canadian intellectual property law and First Nations rights, including the Declaration, Treaties, section 35 of the Constitution, self-government agreements, as well as current jurisprudence respecting the interpretation of First Nations rights. Competency in the First Nations principles of OCAP®, including having completed [The Fundamentals of OCAP®](#) online course is required. FNIGC will work closely with the selected contractor throughout the project to share our analysis and approve the direction of the work.

## Target Audiences

The focus of the work is directed specifically to issues of First Nations data sovereignty (or First Nations' rights over their data), in line with their various worldviews and in keeping with the

First Nations principles of OCAP® (Ownership, Control, Access, and Possession). Note that this project is First Nations specific, and not pan-Indigenous (i.e., does not include Inuit and Métis issues).

The workshop will engage First Nations and non-Indigenous people. The final report will be shared with First Nations and the federal government.

## Scope of Work and Deliverables

The ultimate outcome of this project is a final “What We Heard” report, summarizing the results of the project. FNIGC will work with the contractor to further scope the project.

### **Deliverable 1 (by March 1, 2023):**

- 1.1 Prepare draft review of academic commentary
- 1.2 Complete one-on-one interviews with First Nations lawyers, Elders, Knowledge Holders, and subject matter experts
- 1.3 Support planning for National Workshop

### **Deliverable 2 (by March 31, 2023):**

- 2.1 Complete review of academic commentary
- 2.2 Facilitation and note taking at National Workshop
- 2.3 First draft of What We Heard report.

### **Deliverable 3 (by May 30, 2023):**

- 3.1 Second draft of What We Heard report

### **Deliverable 4 (by September 1, 2023):**

- 4.1 Final What We Heard report

## Project Timeline

This project must be substantially completed no later than **March 31, 2023**, with the final report completed by **September 1, 2023**.

## Budget

The budget for this project is to be determined.

## Selection Criteria

Proposals will be evaluated based on the following criteria:

1. The depth and breadth of qualifications and expertise of the bidder; all submissions should clearly demonstrate experience and expertise in intellectual property and First Nations rights.
2. Experience working with First Nations and First Nations organizations
4. Feedback and testimonials from past clients on similar projects.
5. Proposed budget and timelines.

An interview may be conducted at FNIGC's discretion. FNIGC reserves the right to accept a proposal of its choice or amend or terminate the Request for Proposal process or sever parts of the Request for Proposal.

The Contractor will be expected to complete the work within budget and scheduling constraints regardless of challenges under the contractor's control that may arise.

## Proposal Submission

The proposals must be emailed to Peigi Wilson, Research Manager, Research and Information, at [pwilson@fnigc.ca](mailto:pwilson@fnigc.ca) no later than **November 4** at 11:59 p.m. EST.