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Le Centre de gouvernance de l'information des Premières Nations

# Understanding the Fundamentals of Ownership, Control, Access and Possession, OCAP®



The First Nations Information Governance Centre

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# Overview of Presentation

- Where did the term OCAP® come from?
- What does OCAP® really mean?
- Why is OCAP® Trademarked?
- What will the OCAP® Certification process be?



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# Where did the Term OCAP® come from?



- OCAP® guides a community in making decisions regarding why, how and by whom information is collected, used or shared.
- It reflects a First Nations commitments to use and share information in a way that brings benefits to the community, while minimizing harm.
- It expresses First Nations jurisdiction over information about First Nations.



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## OCAP® is... (cont.)

- All First Nations own OCAP® . The interpretation of OCAP® is unique to each First Nation community or region.
- First Nations have learned, through many instances of misuse of our information, that we cannot expect government, researchers or corporations to understand or be aware of our interests and concerns.



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# Understanding OCAP®

- OCAP® has become the standard for conducting research with First Nations and has grown beyond research to include the governance of all First Nations information.
- OCAP® has been successfully applied in communities across Canada as communities are increasingly asserting jurisdiction over their own data.
- One of the positive by-products of this has been the trademarking of OCAP® through The FNIGC.



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# Understanding OCAP®

- In the 1990s, First Nations were increasingly dissatisfied with Canadian privacy and access to information laws that did not meet their needs and aspirations. First Nations believed they had been “researched to death” with little or nothing to do with the information that was collected from them and taken out of their communities.
- The First Nations principles of OCAP® (Ownership, Control, Access and Possession) were initially coined as “OCA” in 1998 as a framework for asserting self-governance over information related to research at a RHS National Steering Committee meeting.



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# What does OCAP® mean?

A description is useful to provide some understanding of the context of the term OCAP®.

OCAP® goes beyond the strict definition of each word in the acronym as it represents principles and values that are intertwined and reflective of First Nations' world-view of jurisdiction and collective rights.

*~Bonnie Healy, AFNIGC once explained: **“We cannot pick and choose which elements of OCAP® that will be followed. They are one. We cannot ignore “ownership” or “possession” any more than the Four Directions can omit the East or the North.”***



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# Ownership

**Ownership:** The notion of **ownership** refers to the relationship of a First Nations community to its cultural knowledge/ data/ information. The principle states that a community or group owns information collectively in the same way that an individual owns their personal information.

**Ownership** is distinct from stewardship. The stewardship or custodianship of data or information by an institution that is accountable to the group is a mechanism through which ownership may be maintained.



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# Control

**Control:** The aspirations and inherent rights of First Nations to maintain and regain control of all aspects of their lives and institutions extend to information and data.

The principle of '**control**' asserts that First Nations people, their communities and representative bodies must control how information about them is collected, used and disclosed.

The element of **control** extends to all aspects of information management, from collection of data to the use, disclosure and ultimate destruction of data.



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# Access

**Access:** First Nations must have access to information and data about themselves and their communities, regardless of where it is held.

The principle of **Access** also refers to the right of First Nations communities and organizations to manage and make decisions regarding who can access their collective information.



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# Possession

**Possession:** While 'ownership' identifies the relationship between a people and their data, possession reflects the state of stewardship of data.

First Nation **possession** puts data within First Nation jurisdiction and therefore, within First Nation control.

**Possession** is the mechanism to assert and protect ownership and control. First Nations generally exercise little or no control over data that is in the possession of others, particularly other governments.



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# First Nations Inherent Right and Jurisdiction over Information and Research

- Information is a resource and has value.
- Information can be used to advise policy and decision-making; it enhances understanding of a particular area of study, and can be used to leverage funding, e.g. health and social programs & services
- Yet that same information can also harm a community and can lead to discrimination and stigmatization and harm relationships and lead to mistrust.
- First Nations themselves are the only ones that have the knowledge and authority to balance the potential benefits and harms associated with the collection and use of their information.



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# What is First Nations Data?

Includes any information or data set collected, created or held by an individual or organization, now or in the future, that is capable of identifying First Nation communities, First Nation membership, Indian status, or residence in a First Nation community.



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# First Nations information as a Resource with Value

- When First Nations information is viewed as a resource, to both First Nations and non-First Nations, it is easier to see that the governance of that resource is part of a First Nation's inherent right.
- Inherent right implies having the required authorities to enact laws, governing structures, institutions, processes; and the institutional capacities to support that authority.



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## How can First Nations exercise jurisdiction in relation to Information Governance?

- First Nations can exercise jurisdiction through enacting privacy laws in their community and access to information laws, (e.g. laws that govern how community information can be used and under what circumstances).
- Policies and procedures could also be developed that provide direction on the protection of personal privacy and community privacy (and security).





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## Where do you begin?

- First Nations can start by investigating where First Nations information/data is held or collected and consider how they can exert governance over that data.
- Federal and provincial governments, universities, and other organizations hold First Nations data.
- Governance can be exerted through repatriation of the data back to the First Nation. Where repatriation is not possible or practical, data governance agreements or data sharing agreements can be reached that effectively maintain First Nation control over data.

.../cont.



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## Where do you begin? (cont.)

- Returning that information to First Nations is similar to repatriation, protection of cultural medicinal knowledge, regaining sacred material from museums, or getting back land.
- OCAP® is about legitimacy and accountability for First Nations' authorities and institutions.



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# Why is OCAP® Trademarked?

## “Protecting” OCAP®”



***OCAP® is a trade-mark of the First Nations Information Governance Centre, used under license/or used with permission.***



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## Why is OCAP® Trademarked?

- The FNIGC Board of Directors determined that we needed to protect the term and definition of OCAP® from **misuse** and/or **misinterpretation** of the principles by others.
- The principles are “**First Nations Principles**” – not Aboriginal Principles.
- OCAP® has been trademarked by the FNIGC on behalf of all First Nations to protect the integrity of these valued and necessary principles.



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# Growth leads to misuse and abuse of the term OCAP® (1)

- Since the term OCAP® was coined the acceptance, promotion and understanding of OCAP® has grown throughout First Nation communities, government, and academia.
- For some, describing a project as “OCAP® compliant” seemed like an easy way to enter First Nation communities, and/or to collect information, and conduct “business as usual” without a good understanding of OCAP®.
- OCAP® was seen as a vague principle, similar to “consultation” that could be met by sending an information brochure to a First Nation organization or leadership, and then proceeding.
- OCAP® was incorrectly seen as applying outside a First Nation context, to Inuit and Métis, for example.



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## Growth leads to misuse and abuse of the term OCAP® (2)

- Researchers and other users of First Nations information often believe that if a researcher is a member of a First Nation, or if they hire a consultant or professional that is a member of a First Nation, or that is knowledgeable about OCAP, that they can bypass basic requirements such as First Nations consent.
- Some researchers think that if they “believe in” or “agree with” the principles of OCAP®, that their project is somehow OCAP® compliant, without actually working with the relevant First Nation community.
- Some believe that if they follow all applicable privacy legislation (such as health information privacy legislation) that OCAP® will be “caught” and protected in that.
- There are many myths and misunderstandings as to what constitutes OCAP® yet that does not stop many people from claiming that their work or project is OCAP® compliant.



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## OCAP® protects First Nations information, but what protects OCAP®?

- The FNIGC board of directors saw and recognized the abuse and misuse of the term OCAP® and sought to prevent it through:
  - outreach and education, and
  - intellectual property protection for the term and the logo.
- Intellectual property laws are not the best mechanism to protect First Nation concepts and principles, however, trademark registration allows FNIGC, on behalf of all First Nations, to monitor that the term OCAP® and the OCAP® logo are not used to describe something that is not OCAP®.



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## Trademarking the Logo

**The OCAP® Logo was registered on August 18, 2014.**





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# The Trademark

**The term "OCAP®" was registered as a Trademark on August 21, 2015**

 **Office de la propriété intellectuelle du Canada** **Canadian Intellectual Property Office**  
Un organisme d'Industrie Canada An Agency of Industry Canada

*Marques de commerce*  
*Certificat d'enregistrement*

La présente atteste que la marque de commerce identifiée dans l'extrait ci-joint, tiré du registre des marques de commerce, a été enregistrée et que ledit extrait est une copie conforme de l'inscription de son enregistrement. Conformément aux dispositions de la *Loi sur les marques de commerce*, cette marque de commerce est renouvelable tous les quinze ans à compter de la date d'enregistrement.

*Trade-marks*  
*Certificate of Registration*

This is to certify that the trade-mark, identified in the attached extract from the register of trade-marks, has been registered and that the said extract is a true copy of the record of its registration. In accordance with the provisions of the *Trade-marks Act*, this trade-mark is subject to renewal every 15 years from the registration date.



**OCAP**

Numéro d'enregistrement  
Registration Number **TMA912,112**  
Numéro de dossier  
File Number **1656834**

  
Registraire des marques de commerce, par intérim  
Acting, Registrar of Trade-marks

Date d'enregistrement  
Registration Date **21 août/Aug 2015**







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# See Additional Information First Nations Information Governance Centre

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