



Using Intellectual Property Tools to protect Traditional Cultural Expressions & Traditional Knowledge

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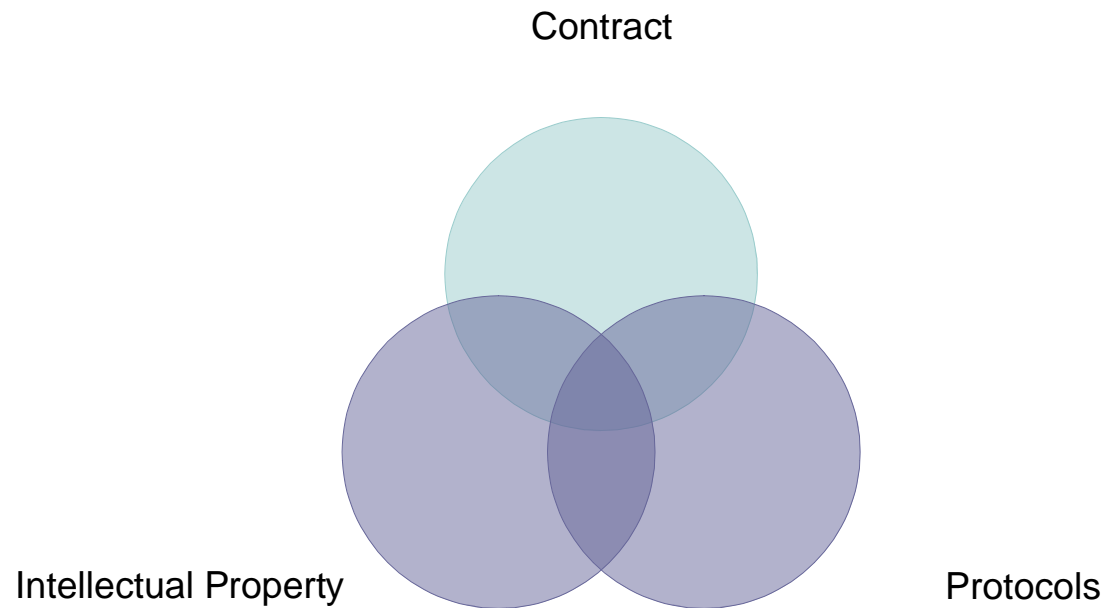


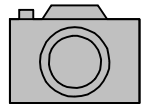
Introduction

- To protect against intellectual property infringement and Traditional Knowledge/Traditional Cultural Expression appropriation, a mix of IP tools such as copyright and trade marks, as well as contracts and protocols is recommended



Protect culture with intellectual property, contracts and protocols



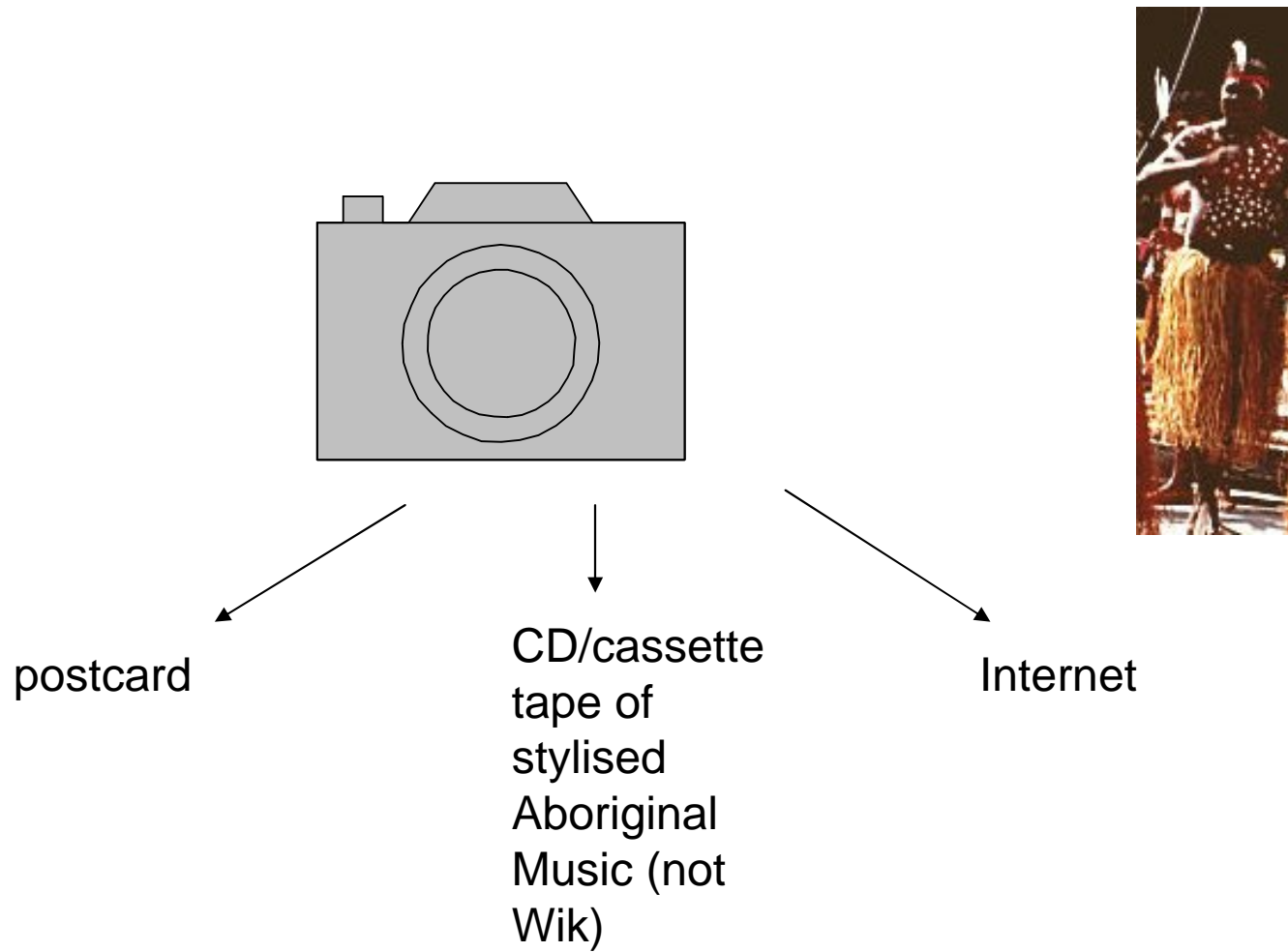


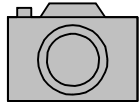
Photography, copyright and TK/TCE

- Scenario: Taking photographs of performers at the Festival.
- The photographer as maker of the photograph owns copyright.
- Copyright owners can exploit their copyright by:
 - Reproducing, or letting other people reproduce the image
 - Publishing the image
 - Communicating it to the public
 - Changing the content or context



Case study of Wik Apalech Dancers





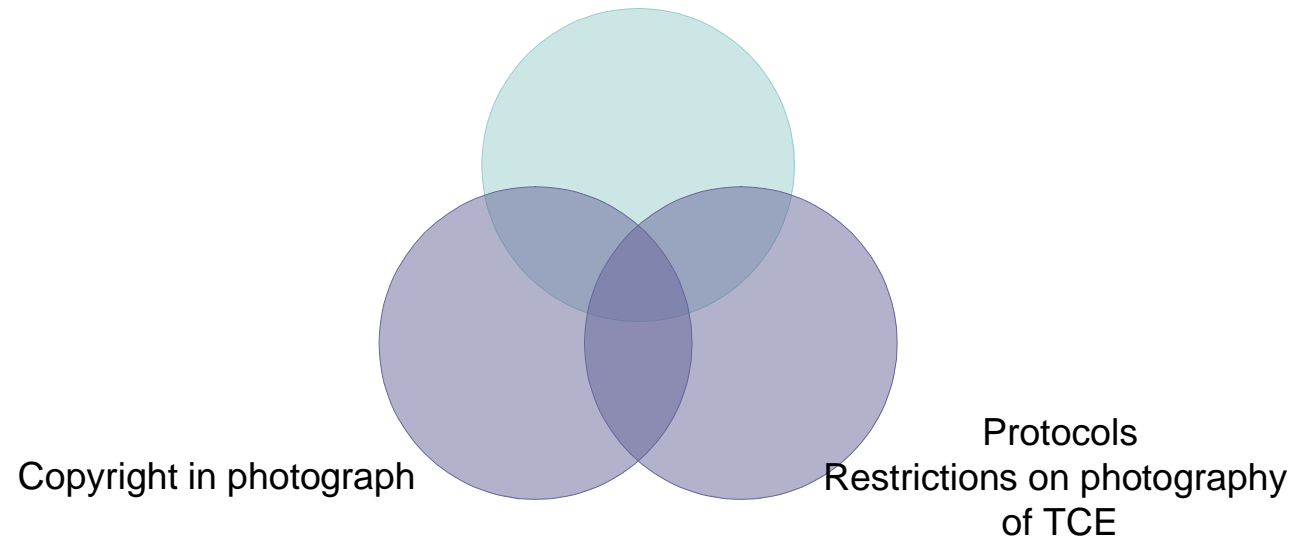
Photography policy enforced by contract

- Festival organisers made it a condition of entry that there is no commercial photography.
- Authorised or accredited photographers are allowed at the Festival.
- If commercially sold, a share is given to an Aboriginal health organisation.



Photography example:

Conditional entry to performance
changes copyright rules





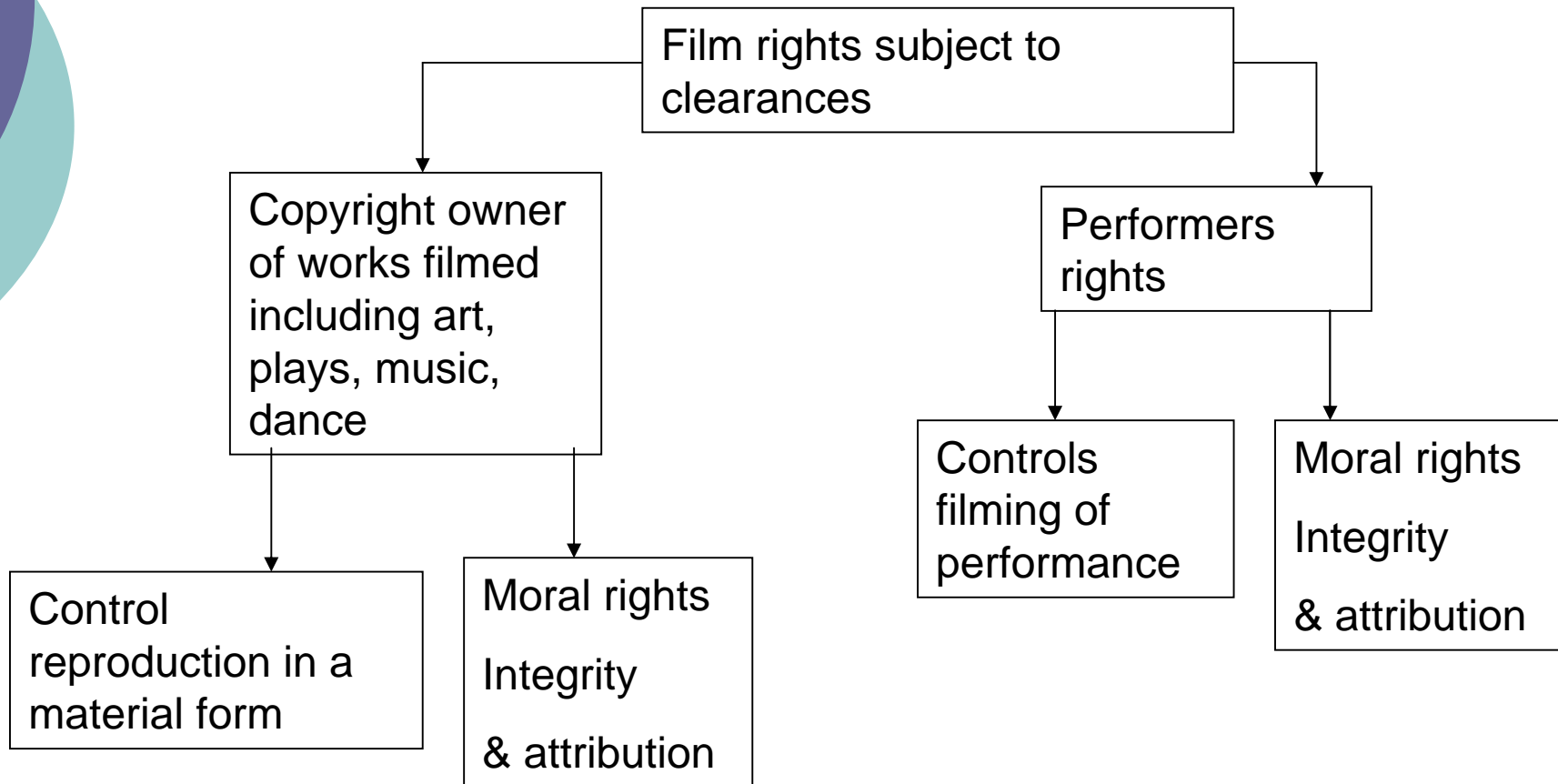
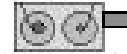
Filming, copyright & performers rights

Scenario: a person films a traditional dance performance at the Festival.

- Copyright laws recognise the maker of the film as the copyright owner in the film. The copyright owner can exploit copyright by communicating the performance to the public including broadcast.
- However, to film a copyright work requires permission of the copyright owner prior to publication/broadcast.
- Performers have rights to control filming of their performances.
- Performer's moral rights of attribution, against false attribution and the right of integrity.



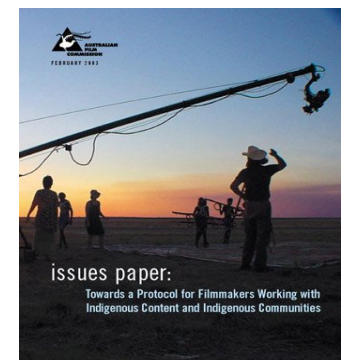
Film rights





Filming at events/festivals

- Filming at events/festivals can be granted by the organisers to select media by controlling access to events.
- Exclusive right to film or broadcast may be a means of raising revenue.
- Conditions in film rights contracts can set conditions that allow approvals from traditional custodians and limit the use of footage.





Live performances and copyright in sound recordings

- When a sound recording of a live performance is made, the performers and the maker of the recording will joint copyright owners.
- This is different if there is a contract, or if the performer was paid to perform for the recording.
- Performances of folklore are included in the WIPO Performances and Phonograms Treaty, 1996 (WPPT).



Media accreditation and guidelines

- Media apply to record the event and provide proposals to the Organisers is another way of managing risk.
- Media guidelines and protocols should be drafted and made available to the media.
- Case study: Dreaming Festival uses their website to publicise guidelines and take media applications, due in by a set date before the Festival.



Garma Festival Organisers control copyright by access to land

- People must apply to attend the Garma Festival.
- A permit is required to enter Aboriginal land.
- If their attendance is approved they must agree to abide by the protocols and sign a general authority to make a record.



General authority to make a record

- Anyone making the recording must follow directions.
- Copyright belongs to YYF on behalf of the Traditional Aboriginal Owners.
- Use is only for personal use – no publication without prior permission.



Live Performance recording policy

- Access conditions can allow Festival organisers to limit recordings at events. Promote the policy on the website, and make available at the Festival will alert people of conditions.
- It is important to have signage, and set terms of entry to events that there be no recording of filming without prior consent.
- Consider ways to communicate the policy to the public:
 - Ticketing
 - border control
 - brochures, newsletters, websites
 - Signs at the performance space
 - recorded voice over before performance.



Moral Rights

- The right of attribution
 - The right against false attribution
 - The right of integrity
- Procedures for crediting artists and performers should be put in place to allow the connection and attribute creators



Attribution for Traditional Custodians

- Moral rights laws require that attribution be given to performers, creators of works, the makers of films.
- Attribution should also be given to traditional custodians of traditional knowledge and traditional cultural expression:
 - 'The images in this artwork embody traditional ritual knowledge of the (name) community. It was created with the consent of the custodians of the community. Dealing with nay part of the images for any purpose that has not been authorized by the custodians is a serious breach of the customary law of the (name) community, and may also breach the Copyright Act 1968 (Cth).



Public Performance Rights

- Copyright owners have the right to publicly perform their songs in public including festivals.
- Music collecting societies have capacity to collect for traditional music performances.



Protocols

- Protocols communicate the appropriate ways of respecting culture in behavior and in recording of TK/TCE.
- They rely on the good will of participants to respect TCE/TK but if combined with contracts they can be legally binding.



Trade Marks and Branding

- Registered trade marks and branding allow Festival organisers to stop unauthorised use of trade mark.
- Trade marks can also give festivals opportunities to gain sponsorship.
- A trade mark can be used to protect the cultural integrity of the product or service.



Gab Titui Cultural Centre Trade Mark

- The Gab Titui Cultural Centre located on Thursday Island in the Torres Strait opened in April 2004 as a keeping place for Torres Strait cultural material.

Trade Mark : 994221

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Merchandising policy promoting Authentic Arts and Craft

- Using policy and trade marks can brand and promote the sale of authentic arts and crafts.
- Consumer protection and fair trading law protect artists from misleading and deceptive conduct.
- Case study: In 2007, the City of Melbourne released a Code for retailers and galleries selling Aboriginal art in the City of Melbourne was to promote the sale of authentic Aboriginal art, on fair terms.



Traditional knowledge protection

- IP laws do not protect traditional knowledge.
 - Ensure that TK is suitable for public performance and dissemination at the Festival.
 - Notices in guidebooks/signage can advise the audience that TK should not be used, adapted or commercialized without the prior informed consent of the relevant traditional custodians.
- Traditional knowledge notice
This performance includes traditional knowledge. It included with the consent of traditional custodians for the purposes of performance at the Festival of Pacific Arts and should not be used commercially in any way including in tourism, food technology including bush tucker applications, medicines, pharmaceutical products, health and beauty products, storytelling or as trade marks, patents and designs, without observing the Indigenous cultural protocols of prior informed consent, attribution to traditional Indigenous communities, cultural integrity, and the sharing of benefits.



Mapping a strategy for protection of FOPA intellectual property and TK/TCE

Contract

1. Develop policies and laws
2. Use of available IP tools and other measures
3. Developing capacity to implement, manage and enforce

Intellectual Property

Protocols



For a comprehensive strategy -consider the rights and responsibilities

<p>FOPA Council (SPC) Policy and guidelines for IP and TK/TCE management Trade mark Branding</p>	<p>Host Country Grant of film rights with conditions of use Media rights to local media Implement film, photography and recording policy</p>
<p>Participating country Engage performers Advise performers of policy and guidelines and agreements TK/TCE notices for country</p>	<p>Performers copyright performers rights moral rights TK/TCE knowledge</p>