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Visual Cultures: Protocols for Producing Indigenous Australian Visual Arts



cultures



VISUAL



Protocols for Producing Indigenous Australian
Visual Arts and Craft

An initiative of the Aboriginal and Torres Strait
Islander Arts Board of the Australia Council

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IMPORTANT NOTICE - The information included in this guide is current as at Sydney, May 2002. This guide provides general advice only. It is not intended to be legal advice. If you have a particular legal issue, we recommend that you seek independent legal advice from a suitably qualified legal practitioner.

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introduction

Visual Cultures guides the reader through many of these protocols.

Visual Cultures is one in a series of five Indigenous protocol guides published by the Australia Council's Aboriginal and Torres Strait Islander Arts Board. The guides reflect the complexity of Indigenous Australian culture, and provide information and advice on respecting Indigenous cultural heritage. Although each of the guides address cultural protocols specific to an Indigenous artform, they are shaped by the same underlying principles – the backbone of the protocols. The five guides in the series are:

- Writing Cultures
- Performing Cultures (Drama/Dance)
- Visual Cultures
- Song Cultures
- New Media Cultures

The Indigenous protocol guides will have relevance for everyone working in or with the Indigenous arts sector, including:

- Indigenous and non-Indigenous artists
- People working within related fields of Indigenous artform practice
- Federal and state government departments
- Industry agencies and peak organisations
- Galleries, museums and arts centres
- Educational and training institutions
- Indigenous media and targeted mainstream media

Indigenous Australians, the Aboriginal and Torres Strait Islander people, are the original owners and inhabitants of Australia.¹

In Indigenous cultures the artist is a custodian of culture, with obligations as well as privileges.

Indigenous people's right to own and control their cultural heritage is known as 'Indigenous cultural and intellectual property rights'. The term is used in *Our Culture: Our Future*² to refer to those rights as they are developing within international law. Since 1998, when *Our Culture: Our Future* was first published, the term 'Indigenous heritage rights' has gained more favour in the international arena. In the *Visual Cultures* guide we use 'Indigenous heritage' to refer to these rights.

Indigenous heritage comprises all objects, sites and knowledge transmitted from generation to generation. Indigenous people's heritage is a living heritage. An Indigenous person's connection with the land, water, animals, plants and other people is an expression of cultural heritage. Writing, performing, song, the visual arts and more recently, new media, are ways of transmitting Indigenous cultural heritage.

As primary guardians and interpreters of their cultures, Indigenous people have well-established protocols for interacting with their cultural material. New situations also require cultural protocols.

We hope Indigenous people, and those working with Indigenous people, will be inspired to use the principles as a framework for developing and tailoring protocols appropriate to their specific arts projects, language groups, regions, clans and communities.

We also hope the guides will spark debate and that additional protocols will be developed across artforms. Your comments and ideas can be forwarded to atsia@ozco.gov.au or
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Using the *Visual Cultures* guide

Visual Cultures is written as a first point of reference in planning a work with Indigenous visual arts³ practitioners, or using Indigenous cultural material. When you need specific advice on the cultural issues of a particular group, we recommend that you either speak to people in authority, or engage an Indigenous cultural consultant with relevant knowledge and experience.

It is important to read all sections of *Visual Cultures*.

The **Introduction** defines protocols as used in this guide, and looks at the special nature of Indigenous visual arts.

The next section, **Indigenous Heritage**, is an important overview of the issues that inform the development of Indigenous protocols. It looks at the complexity of Indigenous Australia. It also charts international initiatives for the protection of Indigenous cultural and intellectual property rights.

The key section, **Principles and Protocols**, presents nine principles we have developed to support the protection of Indigenous cultural heritage. There is valuable information on protocols specific to the use of cultural heritage material in visual arts practice. A number of case studies and commentaries from Indigenous visual arts practitioners identify pitfalls and offer advice.

The **Copyright** section contains general information and advice on the main law in Australia governing the use and reproduction of arts and cultural expression.

Follow Up provides a checklist of key points to consider when developing protocols for a visual arts project. We suggest you use the key points outlined here together with the *Principles and Protocols* and *Copyright* sections before developing a checklist for your own project or practice.

We have also included a list of **Contacts** to be used as starting points for accessing relevant people and information.

What are protocols?

Appropriate procedures, or protocols, provide a basis for the way dealings occur within a particular situation, community, culture or industry. Agreeing to comply with the accepted protocols of other cultural groups promotes interaction based on good faith and mutual respect, thus encouraging ethical conduct.⁴

Indigenous protocols arise from value systems and cultural principles developed within and across communities over time.

Protocols are appropriate ways of using Indigenous cultural material, and interacting with Indigenous artists and Indigenous communities.

Responsible use of Indigenous cultural knowledge and expression will ensure that Indigenous cultures are maintained and protected so they can be passed on to future generations.

It is important to note the diversity and complexity of Indigenous culture and that ways of dealing with issues and cultural material may differ from community to community. There are many Indigenous cultures in Australia and there are many different protocols across the diversity of urban, rural and remote communities.

While it is not possible to prescribe universal rules for transacting with Indigenous people and their communities, there are some fundamental principles within which to conduct respectful work.

The protocols outlined in *Visual Cultures* are shaped by nine principles. The protocols are, by definition, ways of actioning these principles.

For example, a cultural protocol to action the underlying principle of respect is to acknowledge the Indigenous custodians of country at the site of each exhibition, installation, event launch and on inscriptions that accompany public art on permanent or temporary display.

Visual Cultures also aims to formally identify issues arising from the interaction between Indigenous cultural concerns and the law protecting the rights of artists. The Australian legal system incorporates some but not all of these concerns.

While protocols differ from legal obligations, *Visual Cultures* outlines the current copyright law framework. The process of following the protocols supports the recognition of Indigenous heritage rights. It encourages culturally appropriate working practices, and promotes communication between all Australians with an interest in Indigenous visual arts and craft.

What are the Indigenous visual arts?

For Indigenous cultures, the visual arts and craft are central to identity, place and belonging, and is an expression of a unique and continuing tradition. The visual arts and craft have an important place in the continuing survival of Indigenous cultures.

In an Australian context, Indigenous visual arts and craft refers to art created primarily by Aboriginal and Torres Strait Islander people, or based on the cultural expression of Indigenous Australian people. Indigenous visual arts and craft covers a range of genres including:

- painting
- printmaking (including etching and other intaglio processes, screenprint, linocut)
- craft (including fibre and textile arts, ceramics, glass, wood, bead and shell work)
- photography
- sculpture
- multimedia and new media

Indigenous art is not just art produced by artists living in remote parts of Australia; neither is remote Aboriginal art solely 'traditional' in that it is anthropological or ethnographic art. There are many forms of Indigenous art which are also contemporary. There are also many Indigenous artists living in urban areas.

There have been a number of reports concerning fakes and frauds. Some instances have involved non-Indigenous artists passing off their works as 'Indigenous art' or 'stylised Indigenous art'. It is important to clarify that the artist is an Indigenous Australian if there is any cause for doubt.

Doreen Mellor deals with the issues of challenging identity:

How should a challenge to an artist's Aboriginal or Torres Strait Islander identity be dealt with? The circumstances of Indigenous life, which mean that many artists live in communities far away from their heritage origin, or may not even know their place of cultural origin, means that artists may be challenged about their identity. The ATSIC definition of Aboriginality requires:

- the person identify as an Aboriginal
- the person is of Aboriginal descent
- the community of origin or the community in which he/she resides accepts the person as Aboriginal

Organisations dealing with a challenge to an artist's Aboriginality will be required to ask the artist in question to provide evidence that they meet these three criteria.⁵

Special nature of Indigenous visual arts

Indigenous visual arts and craft is a primary means of transmitting Indigenous culture and communicating identity, place and belonging.

Indigenous knowledge, history and other cultural information has been, and continues to be orally transmitted through many generations.

Indigenous visual artists record knowledge, landscape and ideas. Their messages are often political and social as well as cultural, for a variety of reasons. These include:

- facilitating the ongoing transmission of information
- recording community knowledge
- recording oral histories / life stories
- political commentary
- establishing and demonstrating community ownership of stories
- engaging with cultural reclamation and maintenance
- entertainment

- offering a form of personal and community healing (e.g. stories of the Stolen Generations)
- educating the broader community about Indigenous issues
- educating Indigenous communities on local and national Indigenous issues

There is great diversity in the geographic representation, medium and subject matter of Indigenous visual arts and craft, and development of creative expression and diversity should be encouraged.



Indigenous heritage

Indigenous visual arts and craft is an important means of expressing Indigenous heritage – past, present and future.

Indigenous heritage, enshrined in Indigenous cultural and intellectual rights, is discussed at length in *Our Culture: Our Future*.⁶

The visual arts and craft sector can adopt a 'best practice' approach by encouraging respect for the cultures of Indigenous Australians. It can do this by acknowledging their innate value, their difference from other cultures, and by respecting Indigenous ownership and control of Indigenous heritage.

All Indigenous artists are responsible for safeguarding cultural knowledge. They need to ensure that Indigenous cultures, both in the past and today, are protected and maintained in their works. In this way these cultures can be passed on to future generations.

There is not one, but many Aboriginal or Torres Strait Islander cultures. These cultures have developed over thousands of years and have been passed down from generation to generation. Despite the enormous impact of the invasion in 1788, Indigenous cultures have continued to develop.

An Indigenous person's connection to Indigenous heritage is expressed in contemporary life through his or her relationship with land, waterways,

animals and plants, and his or her relationships with other people.

Aboriginal and Torres Strait Islander people have a well developed and complex web of relationships based on family ties, clan belonging, language group affiliations and community, organisation and government structures. A range of authority structures exists across urban, regional and remote communities. It is important to acknowledge the complexity of Indigenous Australia when negotiating the use of Indigenous heritage for a visual arts or craft project.

Indigenous Australians are concerned that there is no respect for their Indigenous cultural knowledge, stories and other cultural expression in the wider Australian cultural landscape. Concerns include the current legal framework that does not promote or protect the rights of Indigenous people – particularly to own and control representation and dissemination of their stories, knowledge and other cultural expression.⁷

The process of following the protocols not only supports Indigenous heritage rights, but also promotes diversity and new initiatives in Indigenous visual art and craft, and culturally appropriate outcomes.

Current protection of heritage

Australia's current legal framework provides limited recognition and protection of these rights. *Our Culture: Our Future* recommended significant changes to legislation, policy and procedures. As yet there has been no formal response to these recommendations from the Australian government. Much of the rights recognition has been done at an industry and practitioner level, through the development of protocols and use of contracts to support the cultural rights of Indigenous people.

Across the world, Indigenous people continue to call for rights at a national and international level. Indigenous people are developing statements and declarations which assert their ownership and associated rights to Indigenous cultural heritage. These statements and declarations are a means of giving the world notice of the rights of Indigenous people. They also set standards and develop an Indigenous discourse that will, over time, ensure that Indigenous people's cultural heritage is respected and protected.

Our Culture: Our Future

Indigenous cultural and intellectual property rights refer to Indigenous people's rights to their cultural heritage. Heritage comprises all objects, sites and knowledge – the written nature or use which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory.

Indigenous people's heritage is a living heritage and includes objects, knowledge, artistic, literary, musical and performance works which may be created now or in the future, and based on that heritage.

Indigenous cultural and intellectual property rights include the right to:

- own and control Indigenous cultural and intellectual property
- ensure that any means of protecting Indigenous cultural and intellectual property is based on the principle of self-determination
- be recognised as the primary guardians and interpreters of their cultures
- authorise or refuse to authorise the commercial use of Indigenous cultural and intellectual property, according to Indigenous customary law
- maintain the secrecy of Indigenous knowledge and other cultural practices
- full and proper attribution
- control the recording of cultural customs and expressions, the particular language which may be intrinsic to cultural identity, knowledge, skill, and teaching of the culture.

For a full list of rights see *Our Culture: Our Future*.⁸

The Draft Declaration on the Rights of Indigenous Peoples states, in Article 29:

*Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property. They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.*⁹

The Maaatua Declaration on Indigenous Cultural and Intellectual Property Rights, in Article 8, urges Indigenous people to 'develop a code of ethics which external users must observe when recording (visual, audio, written) their traditional and customary knowledge'.¹⁰

Draft Principles and Guidelines for the Protection of the Heritage of Indigenous People (1993)¹¹ were adopted by ATSIC's Indigenous Reference Group in 1997. Article 39 states:

Artists, writers and performers should refrain from incorporating elements derived from Indigenous heritage into their works without the informed consent of the Indigenous owners.

The World Intellectual Property Organisation's International Forum, *Intellectual Property and Traditional Knowledge: Our Identity, Our Future*, held in Muscat in January 2002, adopted a Declaration recognising that 'traditional knowledge plays a vital role in building bridges between civilisations and cultures, in creating wealth and in promoting the human dignity and cultural identity of traditional communities'.¹²

Internationally, the World Intellectual Property Organisation has established an intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore to discuss intellectual property issues that arise in the context of:

- access to genetic resources and benefit-sharing
- protection of traditional knowledge, innovations and creativity
- protection of expressions of folklore.¹³

Regionally, a model law for protecting traditional knowledge in the Pacific was drafted and completed in July 2002. The *Pacific Regional Framework for the Protection of Traditional Knowledge and Expression of Culture* establishes 'traditional cultural rights' for traditional owners of traditional knowledge and expression of culture.¹⁴ The prior and informed consent of the traditional owners is required to:

- reproduce or publish the traditional knowledge or expressions of culture
- perform or display the traditional knowledge or expressions of culture in public
- make available online or electronically transmit to the public (whether over a path or a combination of paths, or both) traditional knowledge or expression of culture
- use the traditional knowledge or expression of culture in any other form.



principles and protocols

The following principles are a framework for respecting Indigenous heritage:

- Respect
- Indigenous control
- Communication, consultation and consent
- Interpretation, integrity and authenticity
- Secrecy and confidentiality
- Attribution
- Proper returns
- Continuing cultures

In the following pages, under each of these principles, we have suggested protocols for using Indigenous cultural material, and interacting with Indigenous artists and Indigenous communities.

Respect

The rights of Indigenous people to own and control their heritage, including Indigenous images, designs, stories and other cultural expressions should be respected.

Customs and protocols for respect vary widely across the many and diverse communities of Indigenous Australian people. Respecting Indigenous rights to cultural heritage includes the following protocols.

Acknowledgment of country

Indigenous Australians, the Aboriginal and Torres Strait Islander people, are the original inhabitants of Australia.¹⁵

When organising an exhibition, installation or event, it is respectful to seek the consent of the Indigenous owners of the land.

If consent is given, it is respectful to acknowledge country and custodians at the site of each exhibition opening, installation or event, and on inscriptions that accompany public art on permanent or temporary display.

Seek advice from the Indigenous community on the preferred manner of acknowledgment.

It is common practice among the Indigenous community to seek approval for projects in any particular country within Australia. For example, when Fiona Foley was developing the artwork that is down in Customs House, she cleared it with Metropolitan Land Council to ensure that it would portray nothing [that would be] offensive to the local community. Bronwyn Bancroft did the same thing when she was in the process of installing Dreaming at the Royal Botanical Gardens.¹⁶

Representation

Derogatory or outdated perspectives and terminology should be avoided.

Accepting diversity

There is great diversity of experience and cultural context within Indigenous communities. Indigenous visual arts reflect this diversity in the medium, subject matter and cultural setting the Indigenous artist might choose.

Indigenous visual artists come from a diversity of backgrounds. Some learn their craft from their cultural teachers, others are self-taught, and a growing number have completed university and college courses.

Living Cultures

Indigenous cultures are living and evolving entities, not simply historical phenomena.

Indigenous control

Indigenous people have the right to self-determination in their cultural affairs and the expression of their cultural material. There are many ways in which this right can be respected in the creation, production and exhibition of art.

One significant way is to discuss how Indigenous control over a project will be exercised. This raises the issue of who can represent clans and who can give clearances of traditionally and collectively owned material.

To consult effectively and gain consent for use of Indigenous cultural material in a particular project, the Indigenous people with authority for specific stories, geographic locations, styles and imagery need to be identified.

Speaking to the right people is very important. Indigenous communities, whether regional, urban or remote, have an infrastructure of organisations and individuals who can advise on a range of issues – including guidance about locating Indigenous people with authority to speak for specific Indigenous cultural material.

For initial contacts we recommend the following directories:

- *ATSIC's 2000/01 Visual Arts and Crafts Resources Directory*. Available from ATSIC's Media & Marketing Office on (02) 6121 4000 or toll free 1800 079 098
- *National Directory of Aboriginal and Torres Strait Islander Organisations*. Published for ATSIC and available from Crown Content on (03) 9329 9800 or www.crowncontent.com
- *The Black Book Directory 2000 – Indigenous Arts & Media Directory*. Published by Blackfella Films and available from Publication Sales, AIATSIS on (02) 6261 4200 or www.aiatsis.gov.au

Indigenous arts and craft centres in the area where the artist is located, or the image or heritage material originates, may also be a good starting point to initiate inquiries for consultation and consent.¹⁷ Doreen Mellor notes,

Within Australia there is an extensive network of Indigenous arts and craft centres. These are Indigenous run associations directed by an Indigenous committee. Working with these centres directly ensures authenticity and provides a direct link back to the artist. It is also an assurance that the community and the artist are supported by the sale of artworks.¹⁸

For a list of Indigenous arts and craft centres see *Valuing Art, Respecting Culture: Protocols for Working with the Australian Indigenous Visual Arts and Crafts Sector*.¹⁹

Many Indigenous arts and craft centres in remote areas are on Aboriginal land. If your project involves a visit to Aboriginal lands or outer Torres Strait Islands, permission must be obtained from the local Land Council or Trust, or the Community Council concerned. For a list of relevant authorities consult the *National Directory of Aboriginal and Torres Strait Islander Organisations*.

Some other useful starting points for initial inquiries include:

- Desert – the Association of Cultural Australian Indigenous Art Centres
- Association of Northern, Kimberley and Arnhem Aboriginal Artists
- Aboriginal Land Councils
- Aboriginal and Torres Strait Islander Commission
- Torres Strait Regional Authority
- Island Coordinating Council
- Australian Institute of Aboriginal and Torres Strait Islander Studies
- relevant individuals or family members
- elders and custodians of relevant Indigenous clans and groups
- Indigenous language centres
- Indigenous curatorial staff at local keeping places, state and national galleries, museums and libraries
- State and territory government arts departments in NSW, WA, QLD, SA, TAS and NT which have staff dedicated to Indigenous arts programs

Indigenous people have formed organisations and companies to represent their interests in the visual arts sector. See the *Contacts* for further information.

Some examples of arts projects promoting Indigenous control and involvement include:

- a community arts project initiated and managed by an Indigenous arts organisation
- the commission of new work from Indigenous artists
- an exhibition developed and managed by an Indigenous curator
- a large-scale visual arts conference steered by an Indigenous reference group

- an Indigenous elders committee appointed to oversee and interpret an art collection at a gallery, museum or cultural centre

Communication, consultation and consent

Communication and consultation are important in Indigenous visual arts and craft projects. Consent is necessary for the reproduction of Indigenous visual arts and craft, and if traditional communal designs are included, consent may be required from traditional owners.

Communication is most effective if each group:

- is aware of the way in which their own culture affects how they see an issue
- endeavours to understand and build awareness of the other culture
- patiently unravels misunderstandings which arise out of cultural differences
- finds the right people within a community to consult ²⁰

Consent must be informed. This means that people must be given time and information to consider the requests made of them. As Mellor notes:

Consultation with a community or group of people is not simply a formality ... Consultation is required as a precursor to consent for it to proceed. It is not appropriate to have decided, before consulting the Indigenous group or person involved, that the activity is to proceed, or that its structure or format is established. The idea may be a good one from an external point of view. Consultation establishes the internal, cultural perspective and it is important to accept that it is this perspective which should determine the appropriate course of action.

With regard to the process of obtaining consent:

- *allow time (perhaps more than one meeting) for communication of a proposal*
- *allow time for a decision to be made*
- *remember that decisions will be made on other bases than the ones brought from outside the community – different types of knowledge operating in Indigenous communities may conflict with the requirements of a project*
- *be prepared to take 'no' for an answer (but don't take it personally)*
- *respect the views of all factions within a community, and ensure that consent comes from the appropriate quarter, for a particular activity or project* ²¹

Consultation and communication processes will differ for each community.

Traditional and communally owned images

There may be requirements to consult with the traditional custodians and community members, as well as the artist, for material that is communally owned ritual knowledge. This includes depiction of creation beings or images. There may also be one or more groups that have custodianship of an image, or other items of heritage. Consultation with, and consent from each identified group should be sought. Be prepared to reconsider your project if consensus cannot be reached.

The artist or the local Aboriginal arts and craft centre can assist in identifying any third party from whom you require consent.

Aboriginal artist Julie Dowling advises to 'seek eldership permission for any tribal or traditional designs, or creation stories'.²²

Interpreters and translators

Indigenous artists in remote communities may require interpreters. Ask the artist if they require an interpreter. If so, ask them to identify a suitable person to translate. The local Aboriginal arts and craft centre or a local community organisation might be able to assist if the artist cannot identify an interpreter. Interpreters should be paid for their services.

Sensitivity of content

Sensitive content such as secret and sacred material, or gender-based works may require special communication procedures that should first be ascertained. Consultation may take time depending on the sensitivity of the material.

Geographic diversity

Indigenous groups vary from community to community. They differ in cultural practices and language. It is important to note geographic differences and the different ways people refer to each other. It is also necessary to get consent from the relevant geographic group. For example, a clan group from Tasmania cannot speak for cultural and artistic material relating to the Northern Territory.

Gender

Be aware of the gender division of responsibility and knowledge in many Indigenous communities.

Photography of Indigenous people

Many Indigenous people have expressed their concern about use of their images in photographs without permission. It is a courtesy to ask an artist's permission to photograph them at functions, and to use their image, especially for wide promotions and on the Internet.

Collaborating with Indigenous artists

There are many situations where an Indigenous artist is approached to collaborate with another artist, a group of artists or a community group – for instance, in large-scale works such as murals and other community landscape projects. It is important that communication and consultation with Indigenous artists and their communities takes place in the initial development phase of the project. Consent should be obtained before going ahead.

It is also important to discuss copyright ownership at the outset where more than one artist or a community is involved.

case study

Community mural

In 1987, Banduk Marika, an artist from Yirrkala, worked on a collaboration project with David Humphries and Rodney Monk of the Public Art Squad. The project involved the transfer of Banduk's work into terrazzo for the floor of the Harbourside Festival Marketplace.

Banduk Marika had previously worked on an artwork for a Public Art Squad community mural at the Sydney Central railway station. According to Banduk, Humphries and Monk are skilled community muralists. She said, 'They chose one of my artworks for reproduction in terrazzo. We discussed the transfer of the work in detail, and we had a contract which outlined the terms.'²³ Humphries said, 'We let Banduk have pretty good control over how her work was interpreted and presented. We had a lot of fun working together'.²⁴

Interpretation, integrity and authenticity

Indigenous artists and their communities should have control over how their cultural heritage is presented. The presentation of a work includes its interpretation, integrity and authenticity.

Interpretation

Interpretation refers to how cultural material is interpreted and represented. This includes the perspective given, the language used, and the medium in which cultural heritage material is reproduced. In the past, Indigenous cultural material has been subjected to interpretation by non-Indigenous people.

Today, as Indigenous people seek to re-assert and reclaim control over their cultural heritage material, Indigenous interpretation of the material is a way of enhancing the cultural significance of the work. The artist should be given the opportunity to interpret and present his or her own works.

Consider interpretation and context when using Indigenous cultural material:

- Does the work reflect the cultural value of the subject matter?
- Does it expose confidential, personal or sensitive material?
- Does it reinforce negative stereotypes?

Integrity

Integrity refers to the treatment of the original work and copies made of that work. Under the *Copyright Act 1968 (Cth)*, the moral right of integrity provides a right of protection for individual artists against 'derogatory' treatment of their works. For example, the alteration of the work by adapting, cutting, editing or enhancing may materially alter the

original intention of the work and infringe on the artist's moral rights. It is also important to note that with Indigenous cultural material, maintaining the integrity of the work is important for the source communities as well.

When reproducing and dealing with Indigenous works, discuss the context of reproduction and any proposed material alterations.

Authenticity

Authenticity refers to cultural provenance of an artwork. This is often a complex inquiry. For the purposes of this guide, authenticity may involve reference to whether the artwork was produced by an Indigenous person; and whether it was produced with proper regard to Indigenous customary law. For example, some Arnhem Land clan designs can only be painted by an artist who has the right to depict imagery under customary laws. Other images can only be depicted by men.

Authenticity is a major concern in the Indigenous arts sector. The rise in demand of Indigenous art has led to many rip off practices including:

- the production of artworks by non-Indigenous artists that depict Indigenous styles
- the painting of didgeridoos by non-Indigenous people, sold as authentic Indigenous products
- the importing of fake boomerangs and didgeridoos sold as authentic Indigenous products
- the use of inappropriate images by graphic designers, for example, copying sacred symbols from rock art books for commercial logos

Indigenous people are concerned that such practices undermine the cultural authenticity of Indigenous visual arts and crafts, and also take potential income streams away from Indigenous artists and their communities.

There are also concerns regarding appropriation of imagery. As Doreen Mellor states:

*Public representation of copied designs or images as original images has long, hard and serious implications under most Western law. There are additional issues at stake in Indigenous cultures, involving ceremony, custodianship and the sites relating to specific designs. The use of such designs or their appropriation without permission is not acceptable. If the inclusion of Indigenous designs in a project or publication is desired, the use must be negotiated with the artist or the community involved. Usage may be subject to royalties and copyright fees.*²⁵

The authenticity of a work should be checked and verified by an appropriate authority.

It may not always be obvious whether the proposed use of an artwork raises issues of interpretation, integrity and authenticity. The following situations are some common areas where misunderstandings arise.

Using Indigenous cultural material

Styles and imagery

Certain styles of ceremonial painting originate from particular regions. For instance, *rarkk* (cross-hatching) is recognised as art from Arnhem Land. Arnhem Land artists find it offensive to see their styles copied by other Indigenous artists, or non-Indigenous artists. It is also offensive to copy images of creation beings such as Wandjinas and Mimis without proper claim under Indigenous laws.

Indigenous artists are encouraged to develop their own distinctive artistic expressions and drawing on their particular cultural heritage.

The Australia Council's Aboriginal and Torres Strait Islander Arts Board statement on visual arts and craft encourages Indigenous artists to examine their own styles of art, rather than copying the styles or images from other regional groups. The Indigenous Arts Reference Group of the NSW Ministry for the Arts has developed a guide, *Do It Our Way: Contemporary Indigenous Cultural Expression in New South Wales*, to encourage respect for the diversity of Indigenous visual arts practice.

Stories

The Indigenous artist may include a 'story' about his or her work. Appropriate use of stories must be observed. When the text descriptions of the artistic work are written on the basis of oral narration by the artist, the artist should be consulted and given drafts to approve before publication. Further, the artist has the right to be attributed as the copyright owner of the text. If traditional knowledge or a traditional story is included, the storyteller or clan should be referred to.

Sensitive subject matter

Is the subject matter of the work suitable for the proposed use and/or reproduction? Beware – it is not acceptable to widely circulate sacred or secret material or works that have any gender restrictions. Consider the appropriate context for reproduction of the image.

Biographical information

Indigenous artists should also be given the opportunity to clear use of their biographical information.

Marketing with integrity

In the marketing of Indigenous arts, respecting authenticity and integrity of works is a priority. It is important for the artist to be fully informed about the use of his or her works, including reproductions and use of biographical material and text.

Commercial galleries

Certain commercial galleries and dealers have developed expertise in Indigenous visual arts and craft, and will often support the career path of an artist by promoting exposure of the artist's works in appropriate circles. Such arrangements can become mutually beneficial if both parties understand the nature of the relationship between them.

As Doreen Mellor notes:

It is up to the artist to decide whether they wish the gallery to be the sole representative of their work or whether they wish to establish a relationship with a number of galleries.²⁶

There are a great number of dealers and galleries in Australia. Many are members of the following industry associations:

- Australian Commercial Galleries Association
- Australian Indigenous Art Trade Association
- Association of Western Australian Art Galleries.

There is scope for protocols to be developed in this context and already the Australian Indigenous Art Trade Association has developed protocols for their membership.

Retail outlets

There are a growing number of Indigenous retailers. Contacts can be found in ATSIC's *Visual Arts and Crafts Resources Directory*.

Retailers are encouraged to consult with Indigenous artists concerning the nine protocols raised in this guide.

Museums and public galleries

These institutions hold collections of Indigenous art and may provide opportunities for artists' work to be purchased for their collections.

Many museums have developed policies for the acquisition and display of their Indigenous art collections. Some, like the National Museum of Australia, follow protocols when deciding what products are sold through the Museum shop.

Indigenous cultural centres

Indigenous cultural centres promote the work of Indigenous artists through exhibition, display and sale.

Cultural centres can also take on board protocols for the exhibition and sale of artwork.

E-commerce

Opportunities for the electronic sale of artworks through email and Internet marketing are increasing.

It is important for website producers to adopt practices that will not expose the artist's work to exploitation. The artist should be aware of how their work will be displayed on the website, and there should be proper attribution and copyright notices.

Exhibition of Indigenous art

Preparation

As part of preparing for an Indigenous art exhibition, Doreen Mellor recommends that the underlying rationale and cultural implications of the exhibition be considered. She emphasises the need to take into account the cultural investment by artists and their generosity in sharing their art with audiences, especially in a commercial situation.

When curating exhibitions of work by Indigenous artists it is important to involve an Indigenous curator, consultant or reference

group. Most large public galleries and museums employ Indigenous curators. When this is not possible, extensive consultation usually takes place to augment the expertise of non-Indigenous curators.²⁷

Displaying art

It is important to display Indigenous artwork appropriately. To gain a working knowledge of what is appropriate, it is a good idea to consult with the artist, the local community or an Indigenous curator.

In relation to the display of artwork by a deceased artist, see *Representation of deceased people* in the next section, *Secrecy and confidentiality*. The artist's family or community must be consulted so that the appropriate protocols are observed.²⁸

Acknowledging the artist

If the Indigenous artist is present at an exhibition of their works, it is an essential courtesy to acknowledge them publicly, and to offer them hospitality and support. This is particularly so if they have travelled to be present and are in an unfamiliar environment. Allow the Indigenous artist and/or the relevant community to interpret and present their own stories, texts and biographies.

Using works from collections

Works of art are often borrowed from public or private collections for inclusion in an exhibition. If borrowing artists' works to include in an exhibition, it is courteous to inform the artist of the inclusion of their work, and to forward copies of reviews, catalogues, or other publications which feature their work.

Doreen Mellor advises:

When work is on loan to an exhibition, the artist's permission is necessary before images can be used in catalogues or for promotional purposes, such as invitations or the accompanying reviews in newspapers or magazines. Large galleries will sometimes arrange licence rights to reproduce images, which may be assigned for use in catalogues – but it is currently accepted practice to also request permission from the artist involved. If the catalogue designer wishes to use images in other than their complete form – that is, if cropping of the images, or other changes are desired – it is mandatory for the artist to be involved in negotiations, and that permission be obtained.²⁹

Exhibition Fees

The *Code of Practice for the Australian Visual Arts and Craft Sector* recommends payment of a fee to the artist for works they submit to exhibitions.

The Code states:

Exhibition fees should be regarded as payment solely for a work's inclusion in an exhibition. They should be a separate and distinct payment from artist's fees (the time spent creating a work), travel, per diems and payments to cover material costs.³⁰

Documenting the exhibition

It is courteous to consult with the artist, or Indigenous reference group, and/or with an Indigenous curator concerning the wall text and labelling. Doreen Mellor notes there are conventions for label and caption texts within the museum and gallery sector. Information on these can be found in gallery or museum guides.

Doreen Mellor also recommends including essays by Indigenous curators in catalogues.

For more information about the display of Indigenous works of art see *Valuing Art: Respecting Culture*.³¹

Secrecy and confidentiality

Some Indigenous cultural material is not suitable for wide dissemination on the grounds of secrecy and confidentiality. It is the responsibility of those putting together arts projects to discuss any restrictions on use with the relevant Indigenous groups.

Under Indigenous beliefs, some Indigenous cultural material may not be widely known, particularly if it relates to initiation practices. To respect Indigenous religious practices, discuss any restrictions with the relevant Indigenous groups.

Personal information or knowledge may be confidential in that the people it concerns do not want it to be written, depicted or discussed. It is common courtesy to consider the privacy of individual people before publishing material. The same courtesy should be given to Indigenous people.

Representation of deceased people

In many Indigenous communities, the reproduction of names and photographs of deceased Indigenous people is not permitted. Doreen Mellor notes some communities will request that an artwork by a deceased artist is not displayed for some time after the death of the artist. They may also require the artist's name is not used or that an image of the artist not to be displayed. The artist's family or community needs to be consulted so that the appropriate protocols are observed.³²

Secret and sacred material

The reproduction of secret and sacred images may be a transgression of Indigenous law.

'Secret and sacred' refers to information or material that, under customary laws, is:

- made available only to the initiated
- used for a particular purpose
- used at a particular time
- information/material that can only be seen and heard by particular clan members (such as men or women or people with certain knowledge)

Personal privacy

Are you planning to depict an identifiable individual or community? If so, ask the individual, community or relatives of the individual for permission. Observe close consultation and consent throughout the process.

Confidential information must not be disclosed without permission from all Indigenous people affected by the disclosure. Disclosure about a person who has passed away will be very sensitive.

Attribution

Indigenous people should be attributed for the use of their cultural heritage material in artworks. In many instances in the past, and even today, Indigenous people have been used as informants for research, evaluations and theses. Today, Indigenous people are seeking greater acknowledgment than being recognised as mere informants. They seek the right to be acknowledged as owners of this knowledge and information. They also seek to have a greater share in benefits generated from the use of their cultural stories.

Under the moral rights provisions of the Copyright Act, the right of attribution is recognised for individual creators. However, it is recommended that individual storytellers or custodians also be attributed for their role in the development of a visual work.

It also is important to attribute the cultural source of an image or story. For example, an image originating from a particular clan group should be attributed in each and every publication illustrating the artwork.

Proper returns

Indigenous people should share in the benefits and receive proper returns for the use of their cultural heritage material.

When using communally owned cultural material, it is important to consider ways in which the clan or group can benefit from the use of their material. For example, you could host an opening of an exhibition for the local community or conduct workshops for emerging artists.

case study

Sharing benefits

An Indigenous artist consults the traditional elder/storyteller prior to depicting the story in his linocut works.

The artist pays a percentage of the proceeds from his artwork sales to the storyteller – in recognition of the cultural knowledge and contribution he or she has given to the work.

Royalties

Royalties are one form of return on Indigenous artwork. Once an artwork has been created and sold, it can be difficult for individuals to monitor use. Collecting societies have been established to monitor use, and collect and pay fees or royalties owing to copyright owners. The collecting societies relevant to Indigenous artists are Viscopy, CAL and Screenrights. You will find descriptions of each of these societies at the end of the *Copyright* section.

Registration

Royalties are available to copyright owners who are registered with the collecting societies. Unless the copyright owner is registered with Viscopy, for instance, he or she cannot be paid royalties on use of their artworks in advertising, newspapers, publications, television, the Internet and CD-ROMs – so it is important to join and register each new artwork.

Royalties and Indigenous art

There are a number of reasons why Indigenous artists and cultural heritage custodians are vulnerable to exclusion from the royalty system.

Some of the reasons are:

- The Copyright Act does not adequately protect Indigenous heritage because it does not meet the legal requirements of originality, material form and identifiable author.
- Appropriation of Indigenous art and cultural heritage has occurred without consent or attribution, therefore owners are not recognised as copyright holders.

Engaging artists

Artists, including visual artists, performers and dancers, love their work and take professional pride in doing it well. However, although art may be a leisurely activity for the general public, it is a professional activity for artists, and a fee should be offered for their services.³³

When commissioning Indigenous artists, or reproducing their works, fees should be paid to artists at an appropriate industry rate.

Indigenous artists as public speakers

Many Indigenous artists are experienced public speakers. However, like other artists, their income is limited and the courtesies involved in payment, transport, childcare and other services that will facilitate the process should be carefully considered before the artist is approached.

Interviewing Indigenous artists

Doreen Mellor states that it is most important to understand that any information gained from interviewing Indigenous artists is the cultural and intellectual property of the person interviewed.³⁴

Indigenous artists should be aware that while information gained from an interview is the property of the artist, copyright in the resulting article, book, thesis, television or radio program produced as an outcome of this and other interviews remains with the author (or publisher or producer).

The artist can negotiate with the writer, publisher or film maker for proper credit and a share in any money made, for example, from the exploitation of the book or film. The terms of the arrangement can be incorporated in a written agreement.

Internet publishing

Indigenous artists are entitled to a fee for the reproduction of their works on the Internet. The right to communicate the work to the public on the Internet is a separate right to the reproduction right, and consent should be obtained prior to placing work in a format where it is easily copied.

Before placing Indigenous art online, website producers should discuss how the work will be reproduced, and ensure that appropriate attribution is given.

Indigenous people are often concerned about the publication of Indigenous cultural heritage on the Internet. Prior discussion of the issues will assist in identifying and addressing any concerns. For more information on Internet publishing issues see *New Media Cultures: Protocols for Producing Indigenous Australian New Media*³⁵ in this series.

Continuing cultures

Consultation is an ongoing process. Cultures are dynamic and evolving, and the protocols within each group and community will also change. It is important to consider how you will maintain relationships for future consultations. This might include consultation, at a later date, for further uses of the work that were not envisaged in the initial consultation.

Recognition and protection

The Indigenous visual artist owns copyright in his or her artwork. This means that he or she can control the reproduction and dissemination of the artwork. Such rights apply to all artists and are granted under the Copyright Act.³⁶

It is important to understand these laws and how cultural material might be protected under them. See the *Copyright* section for some general information on copyright.

There are currently no special copyright laws dealing with Indigenous cultural material. The Copyright Act has been criticised for not recognising the communal ownership of heritage material and the continuing right of heritage custodians to control use of this material.

Sally McCausland recommends that Indigenous custodians give express and clear notice of their interest to third parties.³⁷ She suggests a draft form of notice as follows:

NOTICE OF CUSTODIAL INTEREST OF THE [NAME] COMMUNITY

The images in this artwork embody ritual knowledge of the [name] community. It was created with the consent of the custodians of the community. Dealing with any part of the images for any purpose that has not been authorised by the custodians is a serious breach of the customary laws of the [name] community, and may breach the Copyright Act. For enquiries regarding the permitted reproduction of these images, contact [name] community.

Resources

A number of protocol documents have been produced in recent years to meet the needs of particular communities, organisations, industries and situations. The following are selected as useful guides for people working in the visual arts sector.

- Lester Bostock, *The Greater Perspective: Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities*, Special Broadcasting Services, 2nd edn, 1997.
- *Indigenous Arts Protocol: A Guide*, Indigenous Arts Reference Group, NSW Ministry for the Arts, 1998.³⁸
- Terri Janke, *Doing It Our Way: Contemporary Indigenous Cultural Expression in New South Wales*, developed for the Indigenous Arts Reference Group of the New South Wales Ministry for the Arts, Sydney, 2002.
- Terri Janke, *Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights*, Michael Frankel & Company, Solicitors, for the Australian Institute of Aboriginal and Torres Strait Islander Studies and the Aboriginal and Torres Strait Islander Commission, Sydney, 1998.
- *Taking the Time – Museums and Galleries, Cultural Protocols and Communities, A Resource Guide*, produced by Museums Australia Inc. (Qld), 1998.
- *Previous Possessions, New Obligations*, a policy document produced by Museums Australia in 1994 provides a way for museums to approach Indigenous cultures. A plain English version with case studies has been published.
- *Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services*, compiled by Alex Byrne, Alana Garwood, Heather Moorcroft and Alan Barries for the Aboriginal and Torres Strait Islander Library and Information Resources Network.



copyright

Many people think that copyright is a complicated issue, but understanding it and increasing your knowledge about it [is] as easy as putting paint to canvas.³⁹

It is important for Indigenous artists to develop an understanding of copyright so they can negotiate rights to their artworks under licence. This means that an artist can give someone else the rights to reproduce his or her work under agreed terms. This requires coming to an agreement with the other party on the fee, term, purpose and nature of the rights granted.

It is also necessary for artists to think about who will control their copyright after their death. Family members can benefit from royalties for 50 years after the death of the artist and can also guard copyright in the artist's works.

This section provides some general copyright information for Indigenous artists. For specific legal advice we recommend consulting a lawyer.

What is copyright?

Copyright laws are the main laws in Australia that govern the use, production and dissemination of original artistic works. Copyright protects literary, artistic, dramatic and musical works, sound

recordings and films. The Indigenous artist has rights to his or her artistic works as the creator, under the *Copyright Act 1968 (Cth)*. However, there are no special laws for the protection of Indigenous heritage under the Copyright Act.

Copyright protects 'artistic works' including:

- painting, sculpture, drawing, engraving or photographs
- a building or model of a building
- a work of artistic craftsmanship⁴⁰

Who owns copyright?

As the person who creates the work in a material form, the artist is generally recognised as the copyright owner.

There are some significant exceptions to this general rule of ownership:

1. Where the work is produced under a contract of employment, copyright will belong to the employer.⁴¹
2. Where a work is produced under the direction or control of the Crown, copyright may belong to the Crown.⁴²
3. Where copyright has been assigned under a written agreement, the agreement may specify who owns copyright.

What rights do copyright owners have?

Copyright owners have the exclusive right to authorise use and copying of their artistic works, and to earn money from the use, reproduction and publication of their work. The copyright owner of an artistic work has the exclusive right to do all or any of the following:

- (i) reproduce the work in a material form
- (ii) publish the work
- (iii) communicate the work to the public.⁴³

Some examples of copyright applications of artistic works include:

- reproduction on the cover of a book
- reproduction on a T-shirt
- broadcast on television (both free to air and pay) and the Internet

Do artists need to register their art for copyright protection?

There is no requirement for an artistic work to be registered in order to receive protection. Artworks are protected as soon as they are created, so long as the work meets the requirements of the Copyright Act. The requirements for protection are:

- A work must be original in that it is not copied and has originated from the artist. The artist must have expended some skill and labour in making the work.
- A work must be in a permanent and 'tangible form'.⁴⁴
- A work must be created by a qualified person, which in the copyright interpretation means an Australian citizen.

Does copyright protect ceremonial styles of art and creation figures?

Some Indigenous art comprises certain ceremonial styles like rarrk/cross hatching, and depicts particular creation figures like the Wandjina from Kimberley Aboriginal clans.

Unless copying from a particular copyright protected artwork, it is not an infringement of copyright to paint in these styles or to paint creation figures. However, it should be emphasised that it is against traditional Aboriginal law to paint ceremonial styles and creation beings without the permission from the relevant people in the communities where these styles and figures originate.

In the past, Indigenous people's art images and clan motifs have been copied in artworks, dress fabric, souvenirs and on T-shirts, without the proper permission being sought. This type of copying is one area where the copyright laws do not recognise Indigenous rights to control cultural material.

Internationally, the *Principles and Guidelines for the Protection of Indigenous People's Heritage* drafted by the United Nations recommends that:

*Artists, writers and performers should refrain from incorporating elements derived from Indigenous heritage into their works without the informed consent of the Indigenous owners.*⁴⁵

What happens when artists sell their paintings?

When an artist sells a painting they are selling the physical painting. The copyright remains with the copyright owner (unless of course there is a written agreement otherwise). If someone wants to reproduce the artwork on T-shirts, then permission to reproduce the work must be obtained from the copyright owner who can control access to make the reproduction possible.

For instance, galleries or museums who own works may ask for a fee to allow a person to photograph a work, or to make use of its transparencies.

How long does copyright last?

Copyright protects artistic works during the lifetime of the artist and for 50 years after the death of the artist.⁴⁶

Photographs are protected under copyright for 50 years after the year in which the photograph was first published. 'Published' means reproductions of the work that have been released to the public in either a book, magazine or on the Internet.

After this time has expired, the artistic work is said to be in the public domain.

Once in the public domain, the law no longer prevents anyone from accessing or exploiting the material.

Indigenous people's right to culture exists in perpetuity. To respect Indigenous cultural heritage, it may be necessary to get permission to use Indigenous stories, designs and themes even though legally, they are in the public domain.

Collaborative works

Under the Copyright Act a 'work of joint ownership' refers to a work resulting from the collaboration of two or more artists, where each contribution is equal to the contribution(s) of the other artist(s).⁴⁷

The artist must contribute to the work by way of effort, skill and labour. It is not enough to inspire or make suggestions. In this interpretation the custodians of cultural images are generally not recognised as the legal copyright owners of an Indigenous artwork that depicts clan cultural images.

Each artist of a work of joint authorship owns copyright in the resulting work.⁴⁸ This means that each artist must obtain the consent of the others before exercising any of their rights under copyright. For example, if an artist wants to license the rights to reproduce a collaborative painting, he or she must get the consent of all the artists who participated in the collaboration.

Communal ownership vs. joint ownership

In *Bulun Bulun v R & T Textiles*,⁴⁹ the court decided that traditional Indigenous works containing 'traditional ritual knowledge', handed down through generations and governed by Aboriginal laws, are not works of joint ownership.

Although under Aboriginal laws the entire community may have an interest in the particular artwork, and the designs and knowledge within the work, copyright does not recognise the group as the owners.

The individual artist is recognised as the copyright owner and may have a special obligation to the clan to deal with the copyright in ways that are consistent with Indigenous law. Depending on the circumstances, this obligation may be enforceable in the courts.

Commissioned photographs

The general rule is that the photographer is the first owner of copyright. However, there are some exceptions including photographs taken in the course of employment, and commissioned photographs.

For photographs taken before 30 July 1998, the commissioning client is the first owner of copyright in the photograph, unless the photographer and client agree otherwise. For photographs taken after 30 July 1998, the photographer is the first owner of

copyright unless the photograph is commissioned for private or domestic purposes, such as a portrait of a family. In the case of private and domestic commissioned work, the copyright is owned by the person who commissions the photograph unless the parties agree otherwise.

What are moral rights?

The moral rights provisions of the Copyright Act provide some new ways to challenge derogatory treatment of Indigenous artworks.

Moral rights were introduced into the Copyright Act in December 2000.

These new laws provide the following rights to artists:

- **The right to be attributed as the artist**

Artists can require their names be clearly and prominently reproduced alongside all reproductions of their works.⁵⁰

- **The right not to have work falsely attributed to another artist**

Artists can take action against parties who falsely attribute others as the creators of their works.

- **The right of integrity**

Artists can take action against parties who edit, alter or treat their works in a derogatory way,⁵¹ causing harm to the artist's reputation. There is no Australian case law that defines 'derogatory treatment', although this might include a work that is cropped and materially altered, or reproduced in poor quality.

Whether or not the work has been treated in a derogatory way is subject to reasonable defence.

Prior to making any significant alterations to, or adaptations of an artwork, it is important to get the consent of the artist in writing.

Publishing and reproduction of Indigenous art

As the copyright owner of an artwork the artist has a legal right under copyright law to control reproduction of his or her artwork. This includes digital copies.

Prior permission for reproduction is necessary and the artist is entitled to be paid a fee for the reproduction of his or her artwork. Chris Bonney states:

*Often people will approach an artist to gain permission to reproduce an artwork in a publication, or on a poster, and say that they don't have money in the budget to pay you, but the marketing opportunity for you will be enormous. When faced with this, always remember that you should be recognised for your work and that your art is an integral part of the product and as such, is integral to the marketing of it.*⁵²

Artists do have the right to ask for a fee for the reproduction of their work. If the proposed work is to have wide dissemination, then it is even more appropriate that the artist be paid a fee. Artists can, however, waive their fees and many do for charitable and fund-raising purposes.

Doreen Mellor recommends Viscopy as the first point of contact for permission to reproduce Indigenous artworks in catalogues or other publications. Viscopy currently represents over 1 000 Indigenous artists.

For Indigenous artists who are not registered members of Viscopy, permission to use their works will need to be obtained directly from the artists, arts centre, or agency (such as the Aboriginal Artists Agency) controlling the reproduction right.

When reproducing artwork, remember that under the moral rights provisions of the Copyright Act artists have the rights of integrity and attribution, and the right against false attribution.

The moral right of integrity means that the artist can take action against 'derogatory treatment' of their artwork. It is a good idea for artists to carefully check design proofs of their work prior to reproduction or publication.

The moral right of attribution means that the artist has the right to have his or her name reproduced alongside each reproduction of his or her work. Industry practice also includes the media, year, dimension, source of the licence and image, as in the following example.

Banduk Marika
Djanda and the Sacred Waterhole, 1988
6 colour linocuts, ink on paper
53 cm x 29.5 cm
Collection of the National Gallery of Australia
Licence courtesy of the Artist

The artist also has the right against false attribution of his or her artworks. Some people think that if an artistic work is altered ten percent, they can claim authorship of the resulting work. This is not correct. The artist who created the original work is entitled to be attributed as author of the whole or part of the work that is reproduced.

case study

In 1995, an Indigenous artist complained that a manufacturer with whom she had entered into a T-shirt manufacturing licence had significantly altered her artistic work. The image was changed but her name and biographical details were still attached to the product for marketing purposes.

Under her licence agreement the artist had no recourse. She had signed the licence without understanding that she was assigning her copyright. She was no longer the copyright owner, having relinquished her rights, and had no copyright remedy.⁵³

However, the new moral rights law that has since been introduced would have enabled the artist to claim an action against false attribution because the altered works were reproduced as her original works. She may also be able to claim infringement of her right of integrity.

What is the resale royalty – droit de suite?

The *droit de suite* (or resale royalty)⁵⁴ was first introduced in 1920 in France. The *droit de suite*, granted to artists, is simply the right to be paid a percentage of the resale price of original works of art. The underlying basis was often claimed to be an effort to redress the artist and their family's poverty by providing a percentage of the increased resale price.

Historically, art collectors were able to make profit when they bought artworks from emerging artists at a low price, reselling them after the artists became

better known. The price of previous works increased as a result of the artist's acclaim. However, the artist did not benefit materially from the increased fame but continued to live in poverty.⁵⁵

The resale royalty is not the law in Australia. In 1948, the *Berne Convention for the Protection of Literary and Artistic Works* (the international copyright convention) included an optional provision for the *droit de suite*. This meant that countries who are signatory to the Berne Convention (including Australia) can choose whether or not to enact laws implementing the *droit de suite*. It is estimated that approximately 70 countries have introduced some form of resale royalty in their laws.⁵⁶ In June 2001, the European Parliament passed a directive to make resale royalty laws consistent across countries in the European Union. This has rekindled the debate as to whether Australia should adopt the resale royalty.

The greatest economic increases in the Australian Indigenous art market have been in the resale sector. For example, Kumantjayi Tjupurrula's work, *Water Dreaming at Kalipinya*, was first sold by the artist for \$150 and is reported to have resold at auction in 1997 for \$206 000, and then again in 2001 for \$486 500. The artist (and his family) received no share of these resale prices.

The resale royalty would have entitled the artist to receive a certain percentage. Indigenous artists seek the right to resale royalties for economic benefit, and also to acknowledge the intrinsic cultural and personal relationship artists have with their works.

The *Report of the Contemporary Visual Arts and Craft Inquiry*,⁵⁷ delivered in September 2002, recommended the introduction of a resale royalty arrangement in Australia to further protect the rights of visual artists.⁵⁸ The Report recommended the establishment of a working group, comprising

representatives from government and the visual arts and craft sector, to analyse the options.

Some galleries have voluntarily implemented a resale royalty. Both the Australian Indigenous Art Trade Association and Viscopy have developed an Art Trade Collectors Pledge that places the owner of an artwork under a moral obligation to remit to the artist a minimum of 1% of the sale price every time an artwork is resold.

Licensing use of artworks

Copyright is personal property and can be licensed under agreement for a fee. A licence is the grant of a right to use or deal with copyright in a work. You can put limits on the licence, including limitations of time, territory and purpose. For example, you could licence the rights to reproduce your artwork on T-shirts for a period of two years. The copyright in the artwork remains with the copyright owner.

It should not be assumed that traditional Indigenous art is in the public domain. It is necessary to consult with relevant Indigenous people for permission and if agreed, there should be scope for negotiating appropriate royalties for use.

Some other points are:

- Written contracts are preferred to oral agreements.
- Indigenous artists should be given the opportunity to consider contracts and obtain proper legal advice.
- The contract should be explained to Indigenous artists and if necessary, a translator be used to explain the major issues of the contract.
- If the work is to be altered or adapted for mass production, artists should be given opportunity to approve or reject the alteration or adaptation their work.

Assigning copyright vs. licensing

Copyright can also be assigned. This means that you can give the copyright in your work to someone else. As the new copyright owner, they could authorise others to reproduce your artwork. Where possible, Indigenous artists should retain the copyright in their works to maintain control over reproductions.

Copyright is usually assigned under written agreement. Once assigned, the artist relinquishes copyright in his or her artwork.

It is important for Indigenous artists to check agreements and make sure they are not assigning their rights away instead of alternatively licensing use of their work. It is also a good idea to seek legal advice on copyright licensing issues.

Managing copyright to protect your interests

As copyright exists when a work is created, it is not a legal requirement to include a copyright notice alongside your work. However, certain precautionary practices can show copyright belongs to you should there ever be a contest or case relating to infringement of your work.

Because copyright belongs to you even after you sell your work, it is important to keep good records and clearly label reproductions of your works.

It is a good idea to take quality photographs of your artworks and catalogue information, including:

- media and size
- date created
- purchaser of the work
- rights given under copyright

Some art centres use stock numbers which they mark on the back of artworks.

A copyright notice provides information about acceptable uses and the name of the copyright owner should consent for use in other material be required. Here is an example:

© Terri Janke, 2002. This work is copyright.
Apart from the uses permitted under the *Copyright Act 1968*, no reproduction of this work is authorised without the consent of the Artist.

The following is an example of labelling an artwork that includes **clan owned designs**:

© Banduk Marika, 1998. This work and the accompanying story is the copyright of the artist and may not be reproduced in any form without the permission of the artist and the clan concerned.

For more information on recommended copyright wording for publications, see the *Style Manual for Authors, Editors and Printers*.⁵⁹

When authorising others to reproduce your works make sure that you use written agreements and keep records of the rights you have granted. Ask for copies of the reproductions.

When is copyright infringed?

It is an infringement of copyright to directly copy an artistic work.

A person will infringe copyright in an artistic work if he or she reproduces the work in material form, publishes or communicates the work to the public without permission from the copyright owner.⁶⁰

It is also an infringement to copy a substantial part of an artwork. A substantial part of a work does not necessarily refer to a large part of the work. The court will look for striking similarities between the original artwork and the infringing copy, and assess the quality of what was taken.

It is also an infringement of copyright to import an infringing article into Australia for sale or hire. Some exceptions to infringement are detailed below.

Sculptures on permanent public display

The copyright in a sculpture or work of artistic craftsmanship placed permanently in a public place, or premises open to the public, is not infringed if it is reproduced in:

- a painting, drawing, engraving or photograph of the sculpture or work
- a film or television broadcast.⁶¹

Although there is no legal requirement to gain permission from, or pay an artist for such reproduction, some artists have understandably complained about the use of their artworks in advertising and postcards, without their prior permission and without any payment of royalties.

Incidental filming

The copyright in an artistic work is not infringed by the inclusion of the work in a film or television broadcast if its inclusion is incidental to the principal matters represented in the film or broadcast.⁶² What is 'incidental' is a question of degree.⁶³

Fair dealings provisions

The argument of 'fair dealings' can be a defence to allegations of copyright infringement. Copyright in the work is not infringed, if it is used for:

- research or private study purposes⁶⁴
- criticism or review, whether of that work or of another work, and a sufficient acknowledgment of the work is made⁶⁵
- the purpose of, or associated with the reporting of news in a newspaper or magazine and a sufficient acknowledgment of the work is made;

or for the purpose of, or associated with, the reporting of news by means of broadcasting or in a cinematograph film⁶⁶

- judicial proceedings or a report of judicial proceedings, or for the purpose of the giving of professional advice by a legal practitioner⁶⁷

Crown use of artworks

The Crown may use a copyright work without permission of the copyright owner where the use made is 'for the services of the Crown'. The artist is still entitled to payment for use and the government must contact him or her as soon as possible to negotiate this.

Library copying

Libraries and archives can make copies of copyright works under certain circumstances in accordance with statutory procedures.⁶⁸

Educational copying

Education institutions such as schools and universities can make multiple copies of print material and can copy television and radio programs for education purposes. They must however pay statutory licence fees to the relevant collecting societies. Artists should be aware of these schemes as there may be royalties payable in certain circumstances. Contact Viscopy, CAL and Screenrights were applicable.

Myer Report

The *Report of the Contemporary Visual Arts and Craft Inquiry*,⁶⁹ under the chair of Mr Rupert Myer and undertaken for the Department of Communications, Information Technology and the Arts, was handed down in September 2002. The report recommended sweeping legislative changes to copyright and

intellectual property, including the introduction of a resale royalty right as Australian law.

Most significantly, the report recommended that the Australian Government take action on Indigenous copyright and Indigenous intellectual property issues detailed in the report,⁷⁰ including:

- Extension of moral rights to Indigenous groups
- Misappropriation of cultural imagery and iconography
- Importation of works purported to be of Indigenous origin
- Exportation of Indigenous art under the cultural heritage provisions⁷¹

Further copyright information

For information on copyright laws see the following websites:

- Australian Copyright Council
www.copyright.org.au
- Arts Law Centre of Australia
www.artslaw.com.au
- Viscopy
www.viscopy.com.au
- Desart Inc.
www.desart.com.au/law_pages/

Copyright collecting societies

Most copyright owners lack the time and necessary bargaining power to manage and exploit their copyright works. Several collecting societies have been established in Australia to administer copyright. These collecting societies administer rights of its members for a share, or fee of the royalties. Some of them such as CAL and Screenrights have a legislative basis for collecting royalties. Others are voluntary organisations which artists are required to join.

Viscopy

Viscopy is the copyright collecting society for visual artists in Australia and New Zealand. Established in 1995, Viscopy is the main point of contact for those wishing to clear copyright for the reproduction of artistic works.

Viscopy has about 2 000 Australian artist members, half of which are Indigenous artists and their estates.

Viscopy negotiates copyright-related transactions between the artist and the user for reproductions of artistic work in advertising, publications, newspapers and electronic media such as television, cinema, Internet and CD-ROM. Viscopy handles associated contracts, negotiations, legal requirements and the distribution of royalties.

There is no membership fee to join Viscopy. However, an administrative charge applies to clearances. Payments are then made to artists half yearly.

For more information on Viscopy visit their website www.viscopy.com.au

CAL – Copyright Agency Limited

The Copyright Agency Limited (CAL) is an Australian statutory collecting agency whose role is to provide a bridge between creators and users of copyright material.

CAL collects and distributes fees on behalf of authors, journalists, visual artists, photographers and publishers, operating as a non-exclusive agent to license the copying of works to the general community.

CAL administers licences for the copying of print material by educational institutions, government agencies, corporations, associations, places of worship and other organisations.

Authors must register to receive payment directly from CAL. If not registered, payment may go the publisher who is then responsible for passing on the author's share under terms of the publishing contract.

For more information on CAL visit their website www.copyright.com.au

Screenrights

Screenrights is a copyright collecting society for screenwriters, producers, distributors, music copyright owners, copyright owners in artistic works and sound recordings, and other rights holders in film and television.

Screenrights manages rights on behalf of copyright owners in film and television, licensing the use of their work in circumstances where it is difficult or impossible to do so on an individual basis.

Screenrights also administers the educational copying license. This allows educational institutions to copy from radio and television, provided they pay a fee to copyright owners. Screenrights monitors copying, collects money and distributes this income to the copyright owners.

In addition, Screenrights collects royalties being held by other societies administering rights in their territories. All money collected is distributed to the copyright owners after deduction of administrative overheads.

For more information on Screenrights visit their website www.screen.org

Screenrights has also established a website for educators at www.enhancetv.com.au Enhancetv lets teachers know about upcoming programs relevant to their curriculum and provides teaching resources for using television and radio in educational contexts.



follow up

Applying the protocols

Protocols are about people's value systems and their cultural beliefs.⁷³

The protocols in this guide are flexible. You can use them to develop protocols for your visual arts project, program or practice, and language group, region, clan or community.

It is important to read all the preceding sections of *Visual Cultures* before applying the protocols.

Follow Up provides a checklist of key points to consider when developing protocols for an arts project or program, or in your own arts practice. It offers different and more specific information than the preceding sections.

We suggest you use the key points outlined here in the context of the *Principles and Protocols* and *Copyright* sections.

The following principles are a framework for respecting Indigenous heritage:

- Respect
- Indigenous control
- Communication, consultation and consent
- Interpretation, integrity and authenticity
- Secrecy and confidentiality
- Attribution

- Proper returns
- Continuing cultures
- Recognition and protection

Respect

People working in the visual arts and craft sector are encouraged to respect that:

- Indigenous Australians, the Aboriginal and Torres Strait Islander people, are the original inhabitants of Australia.
- Acknowledgment should be given to the Indigenous groups where projects are located.
- The rights of Indigenous people to own and control their culture should be respected.
- The cultural significance of Indigenous visual arts and craft should be respected.
- Diversity of Indigenous cultures should be acknowledged and encouraged.
- Indigenous worldviews, lifestyles and customary laws should be respected in contemporary artistic and cultural life.
- Derogatory or outdated perspectives and terminology should be avoided.
- There is great diversity in the geographic representation, medium and subject matter of Indigenous art. Diversity of creative expression is encouraged.
- Indigenous cultures are living cultures.

Indigenous Control

Indigenous people have the right to determine how their cultural property will be used.

- Indigenous people have the right to own and control their heritage, including Indigenous body painting, images, motifs, stories and other forms of cultural expression.
- Involve Indigenous people, including Indigenous artists, curators and communities, in all stages of a project.
- Identify and speak to the relevant Indigenous people with authority for geographic locations and areas of practice by consulting widely with Indigenous artists and organisations.

Communication, consultation and consent

Some key areas to take into account when communicating, consulting and seeking consent are:

- Indigenous people should be consulted on the use and representation of their Indigenous heritage.
- Prior to use, Indigenous people should be informed about the implications of consent.
- Consent is necessary for the reproduction of Indigenous visual arts and craft, and if traditional communal designs are included, consent may be required from traditional owners.
- Communally owned material, including ritual knowledge and creation stories, may require special and wider consultation within one community or across a number of communities.
- Indigenous artists in remote communities may require interpreters.

- Sensitive content such as secret and sacred material or gender-based works may require special communication procedures that should be ascertained at the beginning of the project.
- Indigenous groups vary from community to community, and it is therefore necessary to get consent from the relevant Indigenous group.
- Be aware of gender divisions of responsibility.
- With collaborative projects, discuss the long-term control and use of the works including copyright ownership of the works produced.

Interpretation, integrity and authenticity

Interpretation

Consider interpretation and context:

- Does the work reflect the cultural value of the subject matter?
- Does it expose confidential, personal or sensitive material?
- Does it reinforce negative stereotypes?

Integrity

- Respect the overall integrity of an Indigenous artwork.
- When reproducing Indigenous artworks, discuss and gain the consent of the artist for any material alterations.

Authenticity and cultural integrity

Authenticity is a major concern to Indigenous artists. The rise in demand of Indigenous art has led to many rip off practices that undermine the cultural integrity of the art. Such practices also take potential income streams away from Indigenous artists and their communities.

Some points to consider are:

- use of styles and imagery
- use of stories
- subject matter of works, for example, secret/sacred work or public work
- use of biographical material

Marketing opportunities with integrity

There are various opportunities for marketing Indigenous artworks including:

- commercial galleries
- retail outlets
- museums/public galleries
- Indigenous cultural centres
- email and Web marketing

In the marketing of Indigenous art, respecting authenticity and integrity of works is a priority. It is important for the artist to be fully informed and agree to the use of his or her works, including the reproduction and use of biographical material and text.

Exhibition of art

- Consider the cultural implications of an exhibition. Involve Indigenous people in the development and management of exhibitions.
- When displaying Indigenous art, promote both the Indigenous cultural values of the work and the Indigenous artist and community from which he or she originates.
- Allow the Indigenous artist and/or the relevant community to interpret and present their own stories. If they are present at the opening, acknowledge them publicly and offer them hospitality.

- Advise Indigenous artists on the use of their works that are held in private collections.
- The *Code of Practice for the Australian Visual Arts and Craft Sector* recommends payment of a fee to the artist for works they submit to exhibitions.
- Discuss the labelling and promotion of the artwork with the artist and/or the community, including written material about the exhibition in any catalogues.

Secrecy and confidentiality

Some Indigenous cultural material is not suitable for wide dissemination on the grounds of secrecy and confidentiality.

- Many Indigenous communities have restrictions on whether the name and photograph of a deceased Indigenous person can be made public.
- Secret and sacred objects are important to Indigenous religious practices. It may be a transgression of Indigenous law to reproduce these images.
- Indigenous people have the right to maintain confidentiality about aspects of their personal and cultural affairs.

It is the responsibility of those putting together arts projects to discuss any restrictions on use with the relevant Indigenous groups.

Attribution

- Indigenous people should be given proper credit and appropriate acknowledgment for their role in the development of artworks, and use of their cultural material.
- If an image originates from a particular clan group, it is important to attribute the group as the cultural source.
- Ask for correct wording of how the person or community wishes to be attributed with ownership of the artwork or cultural material.

Proper returns

- Will Indigenous people receive proper returns, including copyright and royalties, for their contribution and use of their cultural material?
- When commissioning or reproducing Indigenous artworks, fees should be paid to artists at an appropriate industry rate.
- Has copyright ownership of the material form of cultural expression been discussed up-front?
- Indigenous people have the right to share in the benefits from any commercialisation of their cultural material.

Engaging artists

Indigenous artists are professionals. Discuss issues such as payment, transport, childcare and other services when arranging speaking engagements and interviews.

Continuing Cultures

- Indigenous cultures are dynamic and evolving, and the protocols within each group and community will also change.

- Consultation is an ongoing process.
- Have you given thought to ways of maintaining relationships for future consultation?
- Have future uses of the artwork not envisaged at the initial consultation been considered?
- Have cultural protocols been considered and included in any future plans for the artwork, including licence agreements?
- Indigenous people have a responsibility to ensure that the practice and transmission of Indigenous cultural expression is continued for the benefit of future generations.

Recognition and protection

- The Indigenous artist owns copyright in his or her artwork giving him or her control of reproduction and dissemination of the work.
- Written agreements and contracts are the best way of ensuring that rights are cleared for proposed and intended uses. The Arts Law Centre of Australia has draft agreements available for members. It is a good idea to seek independent legal advice on written releases and contracts.
- Australian laws and policies should be developed and implemented to respect and protect rights of Indigenous people and communities to their cultural heritage.
- The Copyright Act has been criticised for not recognising the communal ownership of heritage material and the continuing right of heritage custodians to control the use of images. Indigenous people have called for special legislation to recognise the communal nature of cultural heritage.

Copyright

- The copyright owner of an artwork has the exclusive right to:
 - (i) reproduce the work in a material form
 - (ii) publish the work
 - (iii) communicate the work to the public
- Artists do not need to register for copyright protection.
- Styles of art are generally not protected. It is the *expression* that is protected.
- Artists retain their copyright, even after they sell the physical painting. The buyer owns the painting but does not have the right to authorise reproduction.
- In collaborative works, copyright is shared by the collaborating artists.
- The Indigenous artist who incorporates traditional ritual knowledge in his or her artwork has a special obligation to the clan when exercising copyright in the artwork.
- There are special copyright provisions for commissioned photographs.
- Copyright lasts for 50 years after the death of the artist.
- The artist has moral rights to his or her artwork. This includes the right of integrity and attribution.
- The resale royalty (*droit de suite*) is the right of the artist to share a percentage of the resale price of original work of art. This right is not a law in Australia.
- When reproducing artworks it is necessary to get copyright clearance from the artist.
- Artists are encouraged to use written agreements when licensing artworks for commercial purposes.

- A person will infringe copyright in an artwork if he or she reproduces the work in material form, publishes or communicates the work to the public without permission of the copyright owner. Statutory exceptions include purposes of criticism or review, and incidental filming.
- Under the educational statutory licensing schemes, artists may be entitled to royalties for use of their artworks in books and films. CAL and Screenrights collect and distribute royalties to artist members.



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² Terri Janke, *Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights*, Michael Frankel and Company, written and published under commission by the Australian Institute of Aboriginal and Torres Strait Islander Studies and the Aboriginal and Torres Strait Islander Commission, Sydney, 1999.

³ Please note that throughout this document, where the term 'visual arts' is used alone, it implies the inclusion of the craft arts and other visual media.

⁴ Doreen Mellor, email to Terri Janke & Company, 2 June 2002.

⁵ Mellor, *Valuing Art, Respecting Culture*, page 12.

⁶ Terri Janke, *Our Culture: Our Future*.

⁷ *ibid.*

⁸ *ibid.*

⁹ *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 46th session, Draft Declaration on the Rights of Indigenous Peoples, United Nations Documents, E/CN.4/1995/2 and E/CN.4/Sub 2/1994/56.

¹⁰ The Mataatua Declaration was developed at the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples, 12–18 June 1993, at Whakatane, Aotearoa, New Zealand. A full text of the Declaration is cited in Terri Janke, *Our Culture: Our Future*, pages 306–310.

¹¹ Mrs Erica Irene Daes, *Final Report on the Protection of the Heritage of Indigenous Peoples*, United Nations Document E/CN.4/Sub.2/1995/26. The full text, as adopted and elaborated on by ATSIIC's Indigenous Reference Group, is cited in Terri Janke, *Our Culture: Our Future*, pages 273–277. See also **Erica Irene Daes, Study of the Protection of the Cultural and Intellectual Property of Indigenous Peoples**, United Nations Economic and Social Council, Geneva, 1993.

¹² <http://www.wipo.int/globalissues>

¹³ <http://www.wipo.int/globalissues>

¹⁴ Section 6, *Model Law for the Protection of Traditional Knowledge and Expressions of Culture*, South Pacific Community, Noumea, 2002.

¹⁵ Doreen Mellor, *Valuing Art, Respecting Culture*, page 13.

¹⁶ Metropolitan Land Council, *The Art Community and the Sydney Metropolitan Land Council*, www.artnews.com.au/madden.htm

¹⁷ Doreen Mellor, *Valuing Art, Respecting Culture*, page 44.

¹⁸ *ibid.*, page 45.

¹⁹ Doreen Mellor (ed.) and Terri Janke, *Valuing Art, Respecting Culture: Protocols for Working with the Australian Indigenous Visual Arts and Craft Sector*, National Association for the Visual Arts, Sydney, 2001.

²⁰ Doreen Mellor, *Valuing Art, Respecting Culture*, page 13.

²¹ *ibid.*, page 44.

²² *ibid.*, page 53.

²³ Banduk Marika, telephone consultation, 16 May 2002.

²⁴ David Humphries, Public Art Squad, telephone consultation, 29 May 2002.

²⁵ Doreen Mellor, *Valuing Art, Respecting Culture*, page 47.

²⁶ Doreen Mellor, *Valuing Art, Respecting Culture*, page 36.

²⁷ Doreen Mellor, *Valuing Art, Respecting Culture*, page 58.

²⁸ *ibid.*, page 16.

²⁹ *ibid.*, page 47.

³⁰ *The Code of Practice for the Australian Visual Arts and Craft Sector*, The Visual Arts Industry Guidelines research project, NAVA, Sydney, 2001.

³¹ Doreen Mellor, *Valuing Art, Respecting Culture*.

³² Doreen Mellor, *Valuing Art, Respecting Culture*, page 16.

³³ *ibid.*, page 50.

³⁴ *ibid.*, page 51.

³⁵ Terri Janke, *New Media Cultures: Protocols for Producing Indigenous Australian New Media*, Australia Council for the Arts, Sydney, 2002.

³⁶ *Copyright Act 1968 (Cth)*.

³⁷ Sally McCausland, *Protecting Communal Interests in Indigenous Artworks after the Bulun Bulun Case*, *Indigenous Law Bulletin*, July 1999, pages 4–5.

³⁸ NSW Ministry for the Arts, *Guidelines 2001–2002*, Sydney, 2000, pages 103–104.

³⁹ Chris Bonney, 'The Facts about Copyright', *The Koori Mail*, 15 May 2002, page 50.

⁴⁰ Work of artistic craftsmanship is a legal term included in Section 10, *Copyright Act 1968 (Cth)*.

⁴¹ Section 35(6) of the *Copyright Act 1968 (Cth)* states that where the work is 'made by the author in pursuance of the terms of his or her employment by another person under contract of service or apprenticeship, that the other person is the owner of any copyright subsisting in the work'.

⁴² Section 176(1), *Copyright Act 1968 (Cth)*.

⁴³ Section 31(1)(b), *Copyright Act 1968 (Cth)*.

⁴⁴ Sections 31(1)(a)(i) and (b)(i), *Copyright Act 1968 (Cth)*.

⁴⁵ Mrs Erica Irene Daes, *Final Report on the Protection of the Heritage of Indigenous Peoples*, United Nations Document E/CN.4/Sub.2/1995/26. The full text, as adopted and elaborated on by ATSIIC's Indigenous Reference Group, is cited in Terri Janke, *Our Culture: Our Future*, pages 273–277. See also **Erica Irene Daes, Study of the Protection of the Cultural and Intellectual Property of Indigenous Peoples**, United Nations Economic and Social Council, Geneva, 1993.

⁴⁶ Section 33, *Copyright Act 1968 (Cth)*.

⁴⁷ Section 10, *Copyright Act 1968 (Cth)*.

⁴⁸ Section 35, *Copyright Act 1968 (Cth)*.

⁴⁹ *Bulun Bulun & M* v R & T Textiles Pty Ltd* (1998), 41 Intellectual Property Reports 513. The M* refers to a deceased person and that is how the cultural protocol advises speaking of him.

⁵⁰ Section 194AA, *Copyright Act 1968 (Cth)*.

⁵¹ Sections 195AI, 195 AK and 195 AL, *Copyright Act 1968 (Cth)*.

⁵² Chris Bonney, 'The Facts about Copyright', *The Koori Mail*, 15 May 2002, page 50.

⁵³ The case also raised trade practices issues as to whether the conduct of labelling the works was misleading and deceptive. These claims focus on protecting consumer rights.

⁵⁴ The English equivalent title 'resale royalty' will be used instead of the 'droit de suite'.

⁵⁵ JD Stanford, *Economic Analysis of the Droit de Suite – The Artist's Resale Royalty*, School of Economics, University of Queensland, St Lucia, page 1.

⁵⁶ Discussions with the World Intellectual Property Organisation, 30 November 2001.

⁵⁷ Rupert Myer, *Report of the Contemporary Visual Arts and Craft Inquiry*, Commonwealth of Australia, 2002

⁵⁸ *ibid.*, Recommendation 5.

⁵⁹ *Style Manual for Authors, Editors and Printers*, 6th edn, Commonwealth of Australia, Canberra, 2002, page 413.

⁶⁰ Section 36, *Copyright Act 1968 (Cth)*.

⁶¹ Section 65, *Copyright Act 1968 (Cth)*.

⁶² Section 67, *Copyright Act 1968 (Cth)*.

⁶³ See Screenrights (the Audio Visual Copyright Society Ltd) for royalties payable to artists for film rights.

⁶⁴ Section 40, *Copyright Act 1968 (Cth)*.

⁶⁵ Section 41, *Copyright Act 1968 (Cth)*.

⁶⁶ Section 42, *Copyright Act 1968 (Cth)*.

⁶⁷ Section 43, *Copyright Act 1968 (Cth)*.

⁶⁸ Section 49, *Copyright Act 1968 (Cth)*.

⁶⁹ Rupert Myer, *Report of the Contemporary Visual Arts and Craft Inquiry*, Commonwealth of Australia, 2002

⁷⁰ *ibid.*, Recommendation 4.

⁷¹ Doreen Mellor, telephone consultation, 31 May 2002.



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The Code of Practice for the Australian Visual Arts and Craft Sector, The Visual Arts Industry Guidelines Research Project, National Association for the Visual Arts, Sydney, 2001.



contacts

Artist Associations

Association of Northern, Kimberley & Arnhem Aboriginal Artists – ANKAAA

GPO Box 2152
Darwin NT 0801
Tel: (08) 8981 6134
Fax: (08) 8981 6048
Email: info@ankaaa.org.au
Web: www.ankaaa.org.au

Association of Central Australian Aboriginal Art and Craft Centres – DESART

PO Box 9129
Alice Springs NT 0871
Tel: (08) 8953 4736
Fax: (08) 8953 4517
Email: administrator@desart.com.au
Web: www.desart.com.au

National Association for the Visual Arts – NAVA

PO Box 60
Potts Point NSW 1335
Tel: (02) 9368 1900
Toll Free: 1800 221 457
Fax: (02) 9358 6909
Email: nava@visualarts.net.au
Web: www.visualarts.net.au/nava

Arts policy and funding

Aboriginal and Torres Strait Islander Arts, Australia Council

PO Box 788
Strawberry Hills NSW 2012
Tel: (02) 9215 9065
Fax: (02) 9215 9061
Toll Free: 1800 226 912
Email: atsia@ozco.gov.au
Web: www.ozco.gov.au

Arts NT

GPO Box 1774
Darwin NT 0801
Tel: (08) 8924 4400
Fax: (08) 8924 4409
Email: arts.office@nt.gov.au
Web: www.nt.gov.au/cdsa/dam

Arts Queensland

GPO Box 1436
Brisbane QLD 4001
Tel: (07) 3224 4896
Toll Free (Qld): 1800 175 531
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Toll Free (Qld): 1800 175 532
Email: reception@arts.qld.gov.au
Web: www.arts.qld.gov.au

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PO Box 5300
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Arts Tasmania

GPO Box 646
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Web: www.arts.tas.gov.au

Arts Victoria

Private Bag No 1
South Melbourne VIC 3205
Tel: (03) 9954 5000
Toll Free (vic): 1800 134 894
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Web: www.arts.vic.gov.au

Arts WA

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Toll Free (wa): 1800 199 090
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Email: info@artswa.mca.gov.au
Web: http://hosted.at.imago.com.au/artswa/

Department of Communications, Information Technology and the Arts

GPO Box 2154
Canberra ACT 2601
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PO Box A226
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Tel: (02) 9228 5533
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Copyright and legal

Arts Law Centre of Australia

The Gunnery
43–51 Cowper Wharf Road
Woolloomooloo NSW 2011
Tel: (02) 9356 2566
Toll Free: 1800 221 457
Fax: (02) 9358 6475
Email: artslaw@artslaw.com.au
Web: www.artslaw.com.au

Australian Copyright Council

PO Box 1986
Strawberry Hills NSW 2012
Redfern NSW 2016
Tel: (02) 9318 1788
Fax: (02) 9698 3536
Email: cpright@copyright.org.au
Web: www.copyright.org.au

Indigenous Cultural and Intellectual Property Website

Web: www.icip.lawnet.com.au

Copyright collecting societies

Australian Mechanical Copyright Owners Society – AMCOS

Locked Bag 3665
St Leonards NSW 2065
Tel: (02) 9935 7900
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Email: amcos@amcos.com.au
Web: www.amcos.com.au

Copyright Agency Limited – CAL

Level 19, 157 Liverpool Street
Sydney NSW 2000
Tel: (02) 9394 7600
Fax: (02) 9394 7601
Email: info@copyright.com.au
Web: www.copyright.com.au

Screenrights

PO Box 1248
Neutral Bay NSW 2089
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Fax: (02) 9904 0498
Email: info@screen.org
Web: www.screen.org

Viscopy

Level 1, 72-80 Cooper Street
Surry Hills NSW 2010
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Fax: (02) 9280 2855
Email: viscopy@viscopy.com
Web: www.viscopy.com.au

Indigenous art trade and export

Austrade

GPO Box 2449
Darwin NT 0801
Tel: (08) 8981 8686
Fax: (08) 8981 4349
Web: www.austrade.gov.au

Australian Indigenous Art Trade Association

C/- Japingka Gallery
47 High Street
Fremantle WA 6160
Tel: (08) 9335 8265
Fax: (08) 9335 8275
Email: president@arttrade.asn.au
Web: www.arttrade.asn.au

Indigenous organisations

Aboriginal and Torres Strait Islander Commission – ATSIC

PO Box 17
Woden ACT 2606
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Toll Free: 1800 079 098
Fax: (02) 6281 0722
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Australian Institute for Aboriginal and Torres Strait Islander Studies – AIATSIS

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Goolarri Media Enterprises

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Web: www.goolarri.com.au

Island Coordinating Council

Thursday Island Qld 4875
Tel: (07) 4069 1446
Fax: (07) 4069 1868

Torres Strait Islander Media Association

PO Box 385
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