Case Studies on Commercial & Non-commercial Uses of TK and TCE

Four stories: Art, Records, Brands & Healing
20 years since *Milpurrurruru v Indofurn*

Banduk Marika, *Djanda at the Sacred Waterhole*, 1984

Infringing carpet
Art: Bibi Barba and the Hotel Eclipse

Desert Flowers
© Bibi Barba

Legal and Ethical Framework

Contracts

Intellectual Property

Protocols
Musee du quai Branly

From L to R: Lena Nyadbi, Ningura Napurrula, Gulumbu Yunupingu, Judy Watson & John Mawurndjul

Photos: Alistair Miller

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Records: ‘Captives of the Archives’

Issues of Legal Ownership

The final point I wish to make concerns ownership in the legal sense. The information collected about us is simply not owned by us. With regards to public collections of documents these are Crown property in right of either the Commonwealth or the respective states with ownership vested in various public institutions like libraries and museums. With regards to private collections and research these are protected by laws regarding ownership of both real and intellectual property. Information we give to researchers becomes their intellectual property protected under the Copyright Act. I have been in the position of having to ask permission to use records regarding my own family history.

Extract from:
Henrietta Fourmile (Marrie),
‘Who own the past? Aboriginals as captives of the Archives’
1989, Aboriginal History 13: 1–8
Recognises right of Knowledge holders and TK communities to control the recording of cultural customs and expressions, and the particular language which may be intrinsic to cultural identity, knowledge, skill and teaching of culture.
Access and Use to Records subject to community consultation and consent

Brands: Use of Indigenous words

Shane Phillips, Indigenous elder and Lauren Ganley, Telstra at launch: Artwork: Pathway to Knowledge, James Simon
Examples of Trade marks

WANDJINA®
‘within the custody of the Worrora, Wunumbal and Ngarinyin Aboriginal people’
Healing: TK, Plants and Patents

Kakadu Plum or Gubbinge (Terminalia ferdinandiana)

Traditional knowledge for nutrition and healing

Source: Australian Native Foods Limited website: www.anfil.org.au
Mudjala or Marjarla plant patent
Jarlmadangah Burru and Griffith University

Source: IP Australia Dream Shield Traditional Knowledge Case Study : https://www.youtube.com/watch?v=3lSdl11J8_c
My vision: National Indigenous Cultural Authority

Application discloses use
NICA identifies rights holders
Examination of Application
Written Agreement
Protocols
Trade mark
A rights tracking database
Monitor compliance
Disputes and enforcement

Source: Terri Janke, *Beyond Guarding Ground*