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FICCI INTERNATIONAL CONFERENCE ON TRADITIONAL KNOWLEDGE

Using existing IP systems for the protection and
commercialisation of TK and TCEs



Scope

- Granting of Rights
 - Case Studies : desArt and the Label of Authenticity
- Defensive Protection
 - Case Study : Milpurrurru v Indofurn (Pty) Ltd
- Other Legislative Elements

LABEL OF AUTHENTICITY





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There are distinctly Indigenous images and designs that are associated with central themes in Indigenous Australian cultures.



GRANTING OF RIGHTS CASE STUDY – LABEL OF AUTHENTICITY

LABEL OF AUTHENTICITY



Intended key benefits of the mark:

- A fairer return on sales for Indigenous artists,
- Better consumer recognition of authentic indigenous work
- Visitors will be better educated about different Indigenous art and stories, and
- Wholesalers and retailers will have greater incentive to buy authentic products.



GRANTING OF RIGHTS CASE STUDY – LABEL OF AUTHENTICITY

LABEL OF AUTHENTICITY



- Launched late 1991 by National Indigenous Arts Advisory Advocacy Association
- Proved complex to administer, not well understood by indigenous communities, not supported by an education program
- Not widely adopted.



GRANTING OF RIGHTS CASE STUDY

desArt

Association of Central Australian Aboriginal Art and Craft Centres

Desart represents Art Centres which support these objectives:

- Authenticity of artworks
- 100% returns to Aboriginal people and their organisations
- Promotion of professional art practice and ethical dealings with artists





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National Archives of Australia, Series: 16135, Image number A6135:K29/3/90/133





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**Valerie Napaljarri Martin –
Chairperson Desart 2001-2004**

“The art is about who you belong to, about what country you belong to, it’s about the only way you can know and others will know too. Our art has got to be protected because it belongs to individual people and their families. It is their belonging, it belongs to their group so it must be treated the right way”



CASE STUDIES – LESSONS LEARNT



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DEFENSIVE PROTECTION CASE STUDY

Milpururru v Indofurn (Pty) Ltd



Margaret Preston 1949, Purchased by National Gallery of Australia in 1975, Image Number NGA75.230.NGA IRN 37473



DEFENSIVE PROTECTION CASE STUDY

Milpururru v Indofurn (Pty) Ltd

The interface between customary and formal IP laws influenced three aspects of the Judge's decision:

1. Originality
2. Authorship, and
3. the Assessment of Damages.

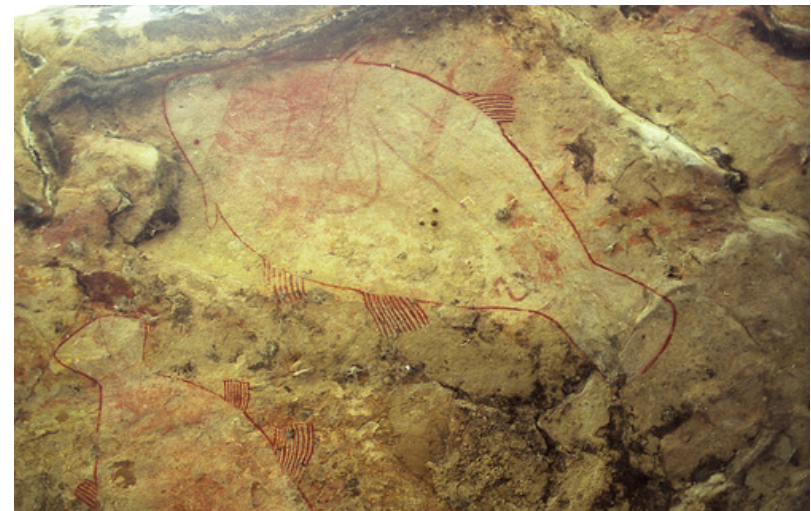


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OTHER LEGAL PROTECTIONS

Elements of the Legal System

- patents,
- designs,
- trade marks,
- plant breeders' rights,
- copyright,
- confidential information and
- unfair competition laws
- contract law,
- unfair enrichment,
- fraud and unconscionable conduct

With common law traditions such matters may be dealt with through case law.





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Thank you

Ian Goss
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IP Australia has achieved certification for its quality and environmental management systems.

