

Community Guidelines

Protecting your Cultural and Intellectual Property



TERRI JANKE AND COMPANY
LAWYERS & CONSULTANTS

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Part 1 - Introduction to the *Community Guidelines: Protecting your Cultural and Intellectual Property*

The Aboriginal Languages Trust (the **Trust**) aims to support the aspirations of Aboriginal Language Custodians across NSW. The Trust acknowledges Aboriginal peoples, Ancestors and Old People who have held Language Knowledge since time immemorial. The Trust acknowledges the sustained efforts to protect, strengthen, care for and pass on Languages, Knowledges and Cultures.

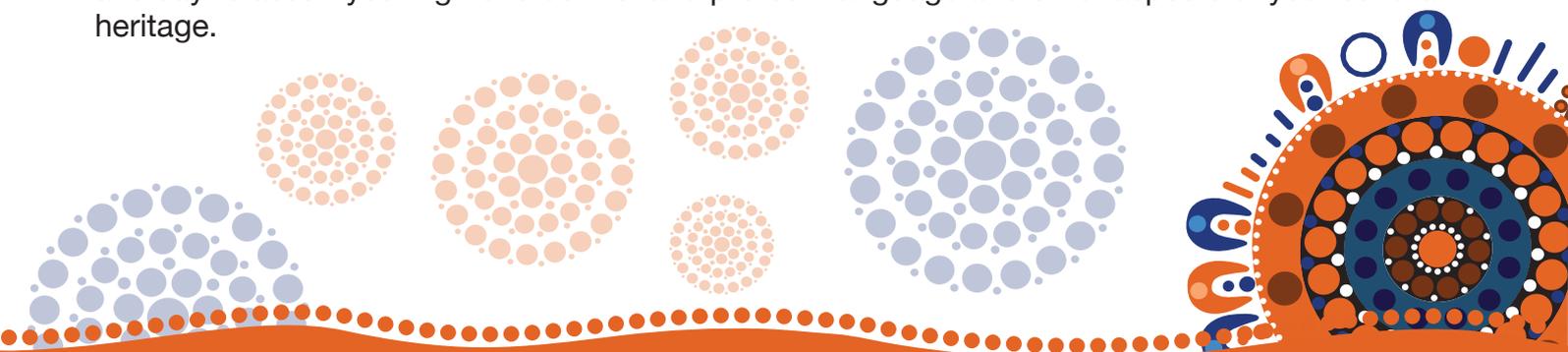
Aboriginal peoples have the right to be self-determining in relation to their Languages, Knowledges and Cultures. The Trust's role is to aid in the growth and nurturing of NSW Aboriginal Languages by responding to the aspirations of Communities and participating in their self-determining work to reclaim and reawaken their Languages. The Trust also has the responsibility to advocate for the rights of Aboriginal peoples to their Languages, Knowledges and Cultures when the Trust engages with other Government agencies and organisations.

The Trust's vision is for all NSW Aboriginal Languages to be strong and healthy. Language belongs to Country and as Custodians, Communities determine their Language needs and priorities. In doing so, the management and control of Languages (including the copyright in written and recorded Language materials) must remain with Communities who will share in the economic benefits that come from the use and teaching of Aboriginal Languages. Where non-Aboriginal people wish to use Language, they must talk to and seek permission from Language Custodians and not misappropriate Language, Knowledge or Culture. In this way, the integrity and truth of Aboriginal Languages can be maintained by Custodians while Languages are reawakened in Communities across NSW.

Purpose

Culture is a critical part of identity and essential to the wellbeing of Aboriginal peoples. The Trust recognises that strong and healthy Aboriginal Languages lead to stronger cultural identity, Kinship and connectedness to Country as well as economic prosperity and improved wellbeing for Aboriginal peoples.

The Trust's Community Guidelines: Protecting your Cultural and Intellectual Property (**Community Guidelines**) are borne out of the of Trust's objective to develop resources that support Aboriginal Language activities while safeguarding Aboriginal peoples' rights to hold and protect your Ancestral Knowledges and cultural expressions. As there is limited protection for Aboriginal Cultural and Intellectual Property (**ACIP**) rights under Australian laws, this Community Guideline is created to help you to understand your rights under Australian law, and what you need to do and say to assert your rights to control and protect Language and other aspects of your cultural heritage.



This Community Guideline is designed to assist Aboriginal Custodians of Languages, Knowledges, and Cultures, including organisations and workers, with:

- Understanding how western laws such as copyright impact on the ability to control and protect Languages;
- How to use and safely share Languages with others (i.e., cultural stories spoken orally, and written or recorded materials)
- Using contracts, policies or protocols to set rules for how all people must respect and uphold Aboriginal Cultural and Intellectual Property (ACIP) rights.

Summary of key issues in these Guidelines

Australia has a rich diversity of First Nations Cultures and Languages, with more than 250 Languages and 800 dialects, each Language being specific to its Place and People. These Languages are foundational to First Nations identity and an important part of maintaining and building resilient communities.

Languages are the cultural heritage of Aboriginal peoples. This living heritage belongs to each Aboriginal Language group as a collective. In addition to Languages, cultural heritage includes things like Knowledge, performance, art styles, tools, stories and songs, objects and tools, and ancestors. This heritage is known as **Aboriginal Cultural and Intellectual Property** or **ACIP**.

In projects to create written or recorded forms of Aboriginal Languages, Australian copyright laws will apply automatically. There are limitations to copyright; it doesn't offer complete protection for all kinds of ACIP in the way that Aboriginal Language Custodians would like. However, copyright ownership is a useful tool to be able to control or prevent others from using, copying or adapting written or recorded forms of Language (e.g. books, films, sound recordings, research notes and reports, and photographs).

In Australia, there are no laws specifically designed to protect ACIP. Often, non-Aboriginal people can get away with using Aboriginal Languages, Knowledges, art styles, or stories without permission or an obligation to pay Aboriginal people. These practices are slowly changing as people become more aware of the issues. However, it is important to have strong processes in place to encourage non-Aboriginal people to change their usual ways of working and understand that Aboriginal Language Custodians must be in control and making decisions about projects that affect their Languages and other ACIP. Non-Aboriginal people need to follow cultural protocols and be respectful.

This is why it is important to tell non-Aboriginal people what you expect if they work with your Language community. At a minimum, there needs to be Aboriginal people making the key decisions about the Language project, with benefits created for the Aboriginal Language group. You may also wish to own the copyright in any materials created, and stop non-Aboriginal collaborators from being able to use the information or Language material in the future without coming back to ask for permission.

This Community Guideline is separated into the following four parts:

1. **Part 1 - Introduction to the Guidelines**
2. **Part 2 - Copyright and ACIP Question & Answer**
3. **Part 3 - Protecting your ACIP rights: what to look out for in Language projects**
4. **Part 4 - Resources**

The Community Guideline has been created to give you a practical understanding of intellectual property and how it can impact on your ability to protect cultural heritage such as Languages, stories, Knowledge and art. The Community Guideline will also support you by explaining some of the ways you can use contracts to proactively protect your cultural heritage. It also includes a project checklist to help cover off on all the copyright and ethical issues that need to be managed in an Aboriginal Language project.

Part 2 - Copyright and ACIP Q&A

Q: What is copyright and why do I need to know about it?

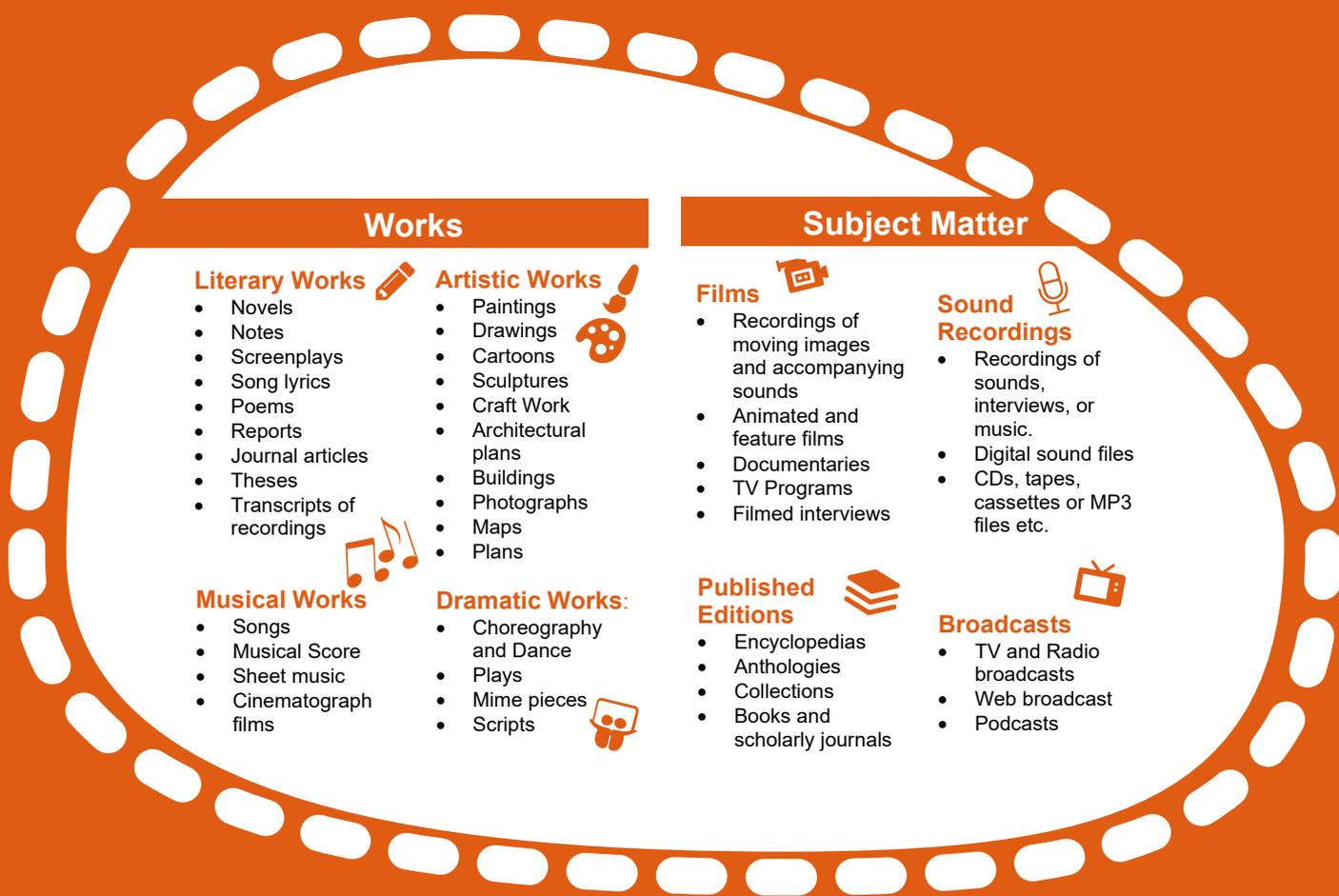
A: In Language work, the most important area of law to know about is copyright. This is because copyright will automatically apply to Language materials such as films, sound recordings, books, photographs, teaching and learning resources, posters, websites, games or apps, and reports or research notes.

Copyright is a *bundle of rights* given to authors and creators under the *Copyright Act 1968 (Cth)*. These rights allow creators to make money from their and stop others from using their creations without permission.

Copyright applies as soon as the creation is written down or recorded, and the law automatically decides who is the owner of the copyright in the material created. Sometimes, this won't be the Aboriginal Language Custodians – for example where Language Custodians or Knowledge holders share their Knowledge orally. Contracts can be used to transfer copyright ownership to the individual Knowledge holder or to a suitable Aboriginal organisation who can hold the copyright for the benefit of the collective.

Q: What does Copyright protect?

A: Copyright protects *material* things – things that are written down or recorded. See the below table for some examples of copyright material:



Q: What do I need to do to get Copyright protection?

A: In Australia, copyright protection is free and automatic. This means you don't need to do anything to receive copyright protection. There is no registration required.

There are certain requirements that your creation must meet in order to be protected by copyright:

Material Form: The creation must be written down or recorded; and

Originality: You must exercise a degree of 'skill, labour and judgement' to create something original. This is not a very high bar – it does not mean you have to create something entirely unique or valuable, it just means you cannot copy from someone else's work.

Q: Is there anything Copyright does not protect?

A: Copyright does not protect **ideas, oral expression** (such as stories), **facts or information**.

Ideas and oral expressions must be **put in writing** (or some other material form) to receive copyright protection. It may be in electronic form or hardcopy. However, it is the material thing (or writing) that will be protected, not your idea.

For example:

A Language instructor shares a traditional story with students. This story is about the instructor's homelands and contains Knowledge of Country such as food sources.

What will be protected by copyright?

If the story is told orally, it won't be protected by copyright.

However, if the story is written down, the words on the page will be protected by copyright. This would prevent students, or teachers, copying or using the exact words of the story.

What won't be protected?

The information in the story about food sources will not be protected by copyright. As long as the exact words of the story are not copied, then students could go away and retell the story in their own words, or use the information in the story.

Facts and information are also not copyright protected as these things can't be described as 'original' or material in form.

Many aspects of cultural heritage and expression do not fit these copyright requirements. See the table below for some examples.

Traditional cultural expression (passed down orally):

traditionally passed down through generations are generally not expressed in **material form**. Therefore, they usually don't receive copyright protection.

Significant cultural themes, symbols, and styles

A **traditional style, symbol or motif** is often a reoccurring theme which has been in existence for thousands of years and passed down through generations. It might be depicted in older forms of cultural expression such as rock art or material held in museums. Therefore, they are generally not copyright protected due to copyright's requirement for an **identifiable and individual creator, and original works**.

Language and language words

A **Language or Language word** is not protected by copyright. This means you cannot stop others from speaking or using your Language.

However, a Language resource or other creation which includes Language may be copyright protected, so long as the requirements of **material form** and **originality** are met.

Q: Who is the owner of copyright?

Generally, the creator or author of the material will be the copyright owner of that material. However, copyright ownership can rest with more than one person. Where you have collaborated with others to create material, you can also share in the ownership of the copyright. This is called **joint copyright**.

There are however exceptions to this rule:

Employees:

When creating material as an employee, your employer will generally own the copyright of that material.

Contractors:

If the creator is a contractor or volunteer, they will usually own the copyright to the materials they create.

Commissioned material or works created under contract:

If the creator has been commissioned to create the material (e.g. films or photographs) usually, the commissioner will be the copyright owner. This will depend on the agreement made between the commissioner and creator.

Government Work:

The Government will hold copyright ownership over any material made by or under the direction or control of the government.

However, ownership of copyright material will always depend on the agreements and contracts made between the creator of the material, and any other person. Despite the general rules, copyright can still be transferred to another person or organisation using the terms of a written agreement.

In Language projects, it will be very important to use agreements to secure the rights you need to copyright material. See the [Agreement Library](#) for more information.

Q: What rights to do I get to my works?

A: Copyright owners have two kinds of rights to their creations: **Economic Rights**, and **Moral Rights**.

Your **Economic Rights** give you the exclusive right to use your material and restrict the use of others. The kinds of economic rights you have to your material include the right to:

- Reproduce or make copies of your material;
- Adapt or edit your creation;
- Publish, broadcast, or make it available online;
- Sell or share your creation; and
- Perform your creation.

Using your material without your permission is a breach of your copyright.

Q: Can I sell or give away my copyright?

A: Copyright owners can sell the rights they have to their work, or give them away for free. This can be done when the copyright owner enters into an agreement that **assigns** copyright ownership to someone else. For assignment to be effective, it must occur in **writing**, and be **signed** by as the copyright owner.

An assignment of copyright can happen after the creation is made, or before it has even been created. This is where contracts can be very important, as it can give the creator of material and other parties certainty around who is the owner of the copyright material, and what rights each person gets to the material.

Q: Do I have the right to be named as the author of the copyright I create?

A: Where you are the author or creator of a copyright work, you have personal rights which cannot be bought or sold like copyright. These are known as **Moral Rights**, and they refer to your rights to:

The right of attribution: The right to be identified as the author and creator of your work.

The right not to have authorship falsely attributed: The right to exclude others from being falsely named as the author of your work.

The right of integrity: The right to bring legal action to stop people who make changes or alterations to your work in a way that is inappropriate or damaging to your reputation.

Q: How do I respect someone else's moral rights?

A: When using other people's work in your creation, it is important to make sure the creator's moral rights are respected and that you have used their work appropriately. For example, if you are using someone else's work, give them credit in your work for their contribution. You should be careful not to change their work without their permission or use it in a way that could be disrespectful.

People can have moral rights to material, even where they aren't the copyright owners of that material. As we explained earlier, people contracted or commissioned to create things or perform may not have copyright ownership, but they will have moral rights. Their rights will need to be respected by anyone who uses that material.

Q: What are performers' rights?

A: If you are a performer, you have 'Performers Rights'. Performers can be actors, dancers, interviewees, musicians, or other live performers. This includes Elders or other Aboriginal people who share cultural stories, songs, or performances.

Performers have the right to say whether people can record their performance. However, this right is very limited. If they permit the recording of their performance, they will not automatically be a copyright owner – the general rules will apply and usually the person 'making' the recording will be the copyright owner.

If you want to make sure the performer is the copyright owner, you will need to use a contract.

When recording an Elder sharing Language Knowledge, use the [Language and Culture Specialist Release](#) to manage copyright and performer's rights.

Q: How long does copyright protection last?

A: The length of copyright protection is different for different kinds of copyright materials. For example:

Current rule	Duration of copyright
In "works" e.g. books, plays, photographs	70 years after the calendar year in which the author died Note: If there is joint ownership, 70 years after the death of the last owner will apply.
In "subject matter" e.g. film and sound recordings	Copyright duration will depend on the type of material: Sound recordings and cinematographic films are protected for 70 years from when they were made public; or if they've never been made public 70 years from when they were created. Television and sound broadcasts are protected for 50 years from when they were broadcast. ¹

After this period had passed, the material is then part of the 'public domain' – which means it is freely available to be used, even in commercial contexts. This includes cultural heritage.

¹ Copyright Act 1968 (Cth) s 95.

You can find more information about the length of your copyright protection on the Department of Infrastructure, Transport, Regional Government and Communications at:
<https://www.communications.gov.au/copyright/duration-copyright>.

Q: Can I use someone else's copyright material?

A: Copyright is infringed when somebody other than the copyright owner uses the copyright work in a way that is not permitted under the Copyright Act or without permission (licence) from the copyright owner. This includes any of the rights given to copyright owners, such as the rights to make copies, publish the work or communicate it to the public (for example, over the internet).

Copyright law permits some uses of copyright material without the need for permission from the copyright owner. However, these are limited to particular purposes and do not include commercial uses.

It is not necessary to reproduce the whole of a work to infringe copyright. Even using a small part of a work can infringe copyright if it is considered a "substantial part". For this reason, it is important to get permission from the copyright owner before reproducing any material that is not owned by or licensed to the organisation.

Anyone who wants to use someone else's material in any of these ways generally needs permission, known as a license or an assignment.

Q: How do I get permission from the copyright owner?

A: A licence is essentially a permission slip from the copyright owner. These rights are usually granted for an agreed payment. If a licence has been given, the owner of copyright is called the licensor and the person who gets the rights to the copyright material is called the licensee.

Limitations or conditions can be added onto an assignment or licence by an organisation to restrict the use of copyright material. The organisation may affect an assignment or licence by signing an agreement.

Limitations that may be enforced include:

- Geography (e.g. Australia only)
- Time frame (e.g. 6 months only)
- By sublicense (e.g. allow the licence to allow others to use the material)
- Rights in which they are applied (e.g. to restrict other publication to online only)
- Payment requirements (e.g. flat fee, periodic fee or royalty-based fee).

Non-Exclusive Licence

A non-exclusive licence grants the licensee an ability to use the copyright material in a specific way. The copyright holder may grant multiple people a licence to use the material in the same way.

Example

Jenny has painted a picture of her Country incorporating significant sites of the local area. A local AFL team from the area are celebrating their clubs 100th anniversary and wish to incorporate a design of the area from the First Peoples. They see Jenny's painting and ask her if they can use it on their jersey for a one-off occasion. Jenny grants the teams a simple licence to use it on their game day jersey for a fee. Jenny has granted the club a non-exclusive licence.

Exclusive Licence

An exclusive license means that only the licensee can use the copyright material in the way prescribed.

Example

Harold Thomas has granted an exclusive licence to WAM Clothing to display the Aboriginal flag design on clothing. This means that only they can sell clothing with the flag on it as long as the licence is in place.

Use the Copyright Owner – Permission to use Resource (link required) when you wish to use existing Language materials for a new project without infringing the rights of the copyright owner.

Q: How do I make sure other people know I am the copyright owner?

A: A copyright notice is a disclaimer that explains that you are the copyright owner to any people who read or access your material.

You will still be the copyright owner even if you do not use a copyright notice. However, it is important to have a notice as it warns people that they must not copy or use the material unless you have given your permission.

Example:

© Aboriginal Language Organisation, 2021
Except as permitted by the Copyright Act 1968 (Cth), you may not reproduce or communicate any of the content of this book, without the permission of [Name of Organisation].

Q: What is Aboriginal Cultural and Intellectual Property?

A: Aboriginal Cultural and Intellectual Property (**ACIP**) refers to the rights that Aboriginal people have in relation to all aspects of their cultural heritage (tangible and intangible), including:

- Languages;
- traditional Knowledge (scientific, agricultural, technical and ecological Knowledge, ritual Knowledge),
- traditional cultural expression (stories, designs and symbols, literature and Language),
- performances (ceremonies, dance and song),
- cultural objects (including, but not limited to arts, crafts, ceramics, jewellery, weapons, tools, visual arts, photographs, textiles, contemporary art practices),
- human remains and tissues,
- the secret and sacred material and information (including sacred/historically significant sites and burial grounds), and
- documentation of Aboriginal peoples' heritage in all forms of media such as films, photographs, artistic works, books, reports and records taken by others, sound recordings and digital databases.

The following diagram illustrates a general breakdown of ACIP:

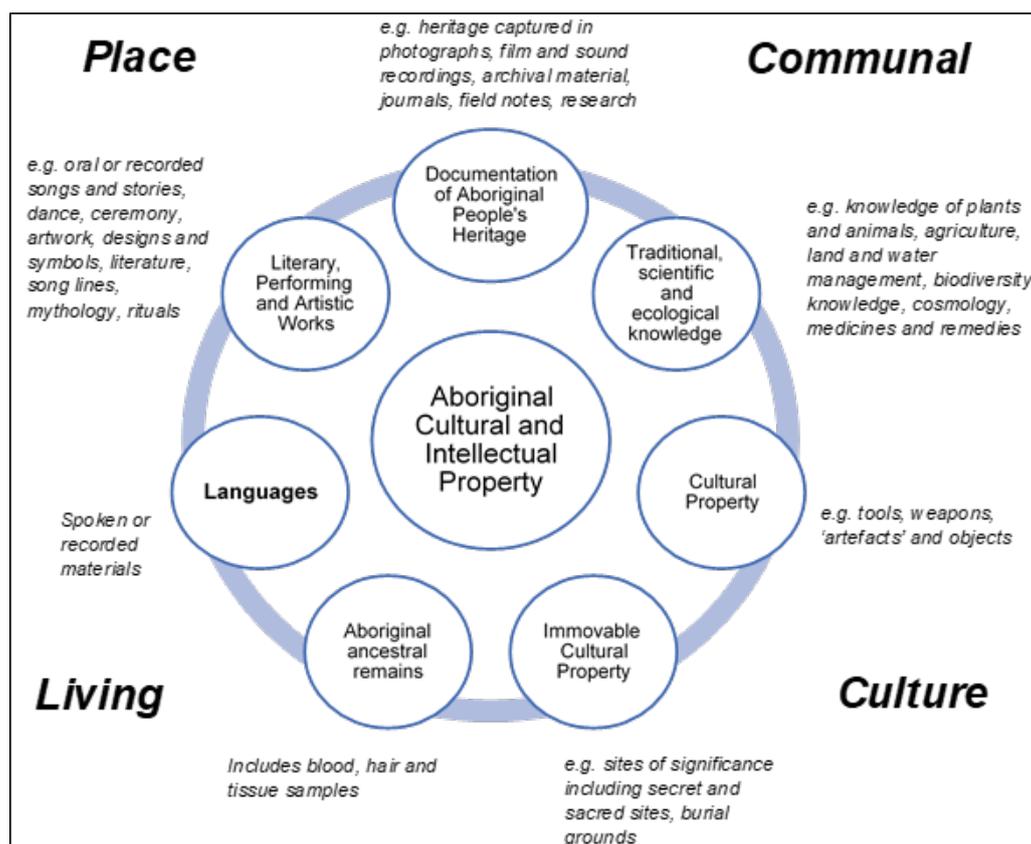


Figure 1: ACIP breakdown. © Terri Janke and Company, 2021

Although the above diagram separates ACIP into categories, ACIP is connected to the land and seas of the Aboriginal communities and groups to which the ACIP belongs. It is constantly evolving, and has been contributed to by many generations of Aboriginal peoples, and future generations will continue to nurture and develop their ACIP.

Some Knowledge is bestowed upon community or family members due to factors including but not limited to age, gender or family ties, and these people have specific obligations based on cultural protocols of the group. In this way, ACIP is communally owned, living and evolving.

The rights that Aboriginal people have in relation to ACIP are set out in the United Nations Declaration on the Rights of Indigenous People (UNDRIP). This document says that:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional Knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and Cultures, including human and genetic resources, seeds, medicines, Knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional Knowledge, and traditional cultural expressions.

Q: What is the difference between ACIP and copyright?

A: Aboriginal and Torres Strait Islander Knowledge systems are holistic and are focused on the passing down of cultural Knowledge and heritage to the next generations, often orally. Australian IP laws have a completely different focus and underlying principle – they are about giving creators economic rights over their creations, for a limited time, in order to encourage more creation. This system is different to, and often incompatible with, the holistic nature of communally owned Aboriginal and Torres Strait Islander Culture and heritage.

The table below illustrates some of the differences between Australian IP laws and Aboriginal Knowledge systems.

	Australian IP laws	Aboriginal Cultural and Intellectual Property
Community Ownership	IP looks for an individual author or creator (or 'joint owners' when the material is created by more than one person).	ACIP is collectively owned (by groups, families) and contributed to by many people as it is maintained, developed, and passed down through generations.
Material Form	Western IP laws only protect material things (i.e. text or artwork), which means only the words on the page or the images in the artwork are protected.	ACIP can be tangible or intangible – often ACIP is orally shared, or shared in a performance. ACIP includes Knowledge or information e.g. Knowledge of the uses of plants. Languages are not protected
Rights to IP/ACIP	Western IP laws are designed to give creators economic rights. Moral rights are also recognised.	Cultural rights and customary laws apply to the use of ACIP
Management of IP/ACIP	Western IP laws allow you to give your IP away.	Aboriginal Custodians have an interconnected relationship with their cultural heritage and ACIP, and responsibility to manage it in accordance with customary law.
Duration of protection	Western IP laws protect you for only a limited period of time e.g. 70 years after the death of the creator.	ACIP Rights are perpetual. Aboriginal communities have an ongoing connection to ACIP, which will often have been in existence for thousands of years (such as old songs, stories, rock art, or cultural practices).

As western IP laws offer limited protection to Aboriginal communities for the use of their ACIP, Aboriginal communities must be empowered to negotiate for and protect their ACIP when developing Language resources and sharing cultural heritage.

This can be done by having protocols in place which require Aboriginal control and decision making in all projects relating to ACIP.

Q: What can I do to protect my ACIP?

A: Use written protocols and contracts to tell people their obligations when it comes to working with you, your organisation or your Language group.

Protocols are a set of **ethical guidelines**. They provide a framework of rules requiring certain procedures to be followed in certain situations.

It is possible to make protocols legally enforceable through a contract. The non-Aboriginal people who do Language work with you can agree follow the rules of the Protocol as a term of the contract.

Protocols can be used as a policy document in **workplaces, organisations** or developed during the planning stages of a **project**.

We recommend the following principles to be used at the basis for Aboriginal Language Projects.
Principles for Aboriginal Language Projects

Principles for Aboriginal Language Projects

The United Nations Declaration on the Rights of Indigenous Peoples

Indigenous peoples have the right to self-determination. (Article 3)

*Indigenous peoples have the right to **maintain, control, protect and develop** their cultural heritage, traditional knowledge and traditional cultural expression (Article 31(1))*

1. **Respect & Diversity:** Aboriginal peoples have the right to own, control, use, preserve and strengthen their Languages. Aboriginal Languages are diverse and may be in different stages of use or revitalisation. Different Aboriginal peoples have their own protocols for Languages which must be recognised and respected.
2. **Self-Determination:** Languages belong to the collective, who have the right to make decisions about how Languages are used. Cultural Knowledge shared as part of the Language teaching process belongs to Aboriginal people, and should be shared only with free, prior and informed consent and benefit sharing.
3. **Aboriginal Language priorities:** In accordance with their right to self-determination, Aboriginal Language Custodians set their priorities for Language work. Governments, collecting institutions, linguists, and others who are enablers and supporters of this cultural revival must be responsive to the priorities determined by Aboriginal people.

4. **Copyright Ownership:** Aboriginal Language Custodians can control the use and copying of films, sound recordings and resources when they are the copyright owners of the material. Contracts can be used to make sure that copyright belongs to either Aboriginal individuals or organisations who hold the copyright for the benefit of the collective. Any graphics or artwork used in resources should be licensed by Aboriginal people.
5. **Free, Prior and Informed Consent:** Individuals or organisations must seek permission for commercial use of Languages, and enter into a licence agreement with the relevant Aboriginal Language Custodians. This involves ongoing negotiation and informing Aboriginal Language Custodians about the implications of consent. Keep records of contracts and clearances given by Aboriginal Language Custodians.
6. **Aboriginal Perspectives and Participation:** Projects about Aboriginal Languages should include an advisory group or other governance mechanism through which Aboriginal people can make decisions. Adaptation of Languages in new forms requires re-consideration by Language communities. Aboriginal people have the right to comment on collections of Language and Culture held by collecting institutions. In doing this, Aboriginal people can correct wrong or incomplete information, explain Aboriginal ways of knowing, and call out past wrongdoing. This information has historically not been presented in library, museum and archive collections which instead feature the perspectives of non-Aboriginal people.
7. **Integrity and Authenticity:** Maintaining the integrity of Language and other cultural heritage information or Knowledge is important to Aboriginal people. Aboriginal people should be the interpreters of Language and teach at schools, unless non-Aboriginal people have been given permission to do so by the Aboriginal Language Custodians.
8. **Attribution:** It is respectful to acknowledge Aboriginal people as Custodians of Aboriginal Languages cultural Knowledge by naming the group as the Custodians of the Language. Also, we recognise that there are key Aboriginal Language workers, Knowledge holders and Elders that gave life to Language. These people should be acknowledged and respected.
9. **Benefit Sharing:** Strong Language creates economically vibrant communities. Aboriginal people can benefit from the use and revitalisation of their Languages through paid opportunities such as teaching, and other non-monetary benefits such as access to resources for personal use. Collecting institutions such as museums, libraries and archives should support the return of Languages materials to Aboriginal Language Custodians.
10. **Preservation and Maintenance:** It is vital that future generations of Aboriginal people can inherit their Languages. Consider how Language materials will be stored so that they remain accessible in the future.

Part 3 - Protecting your ACIP rights: what to look out for in Language projects

1. What is the Language project about and how can you make sure you protect ACIP rights?

At the start of every new Language project, it is important to do some planning. By putting a plan together, it can become clearer what work will be involved and how long the project will take to complete. This can give you an idea of what resources you need to find for the project and identify people who can help you.

Consider:

Using Protocols: Is there a protocol for the project? If not, use the [Principles for Aboriginal Language Projects](#).

Community Consent: Do you need consent from key people within your Aboriginal Language group to carry out the project? Is this project in line with community priorities?

What will be created: What will be the outcomes? Will it be written or recorded materials? Copyright laws will apply. Use contracts to confirm ownership and secure all the rights you need to be able to use the Language materials as you would like (e.g. sell, use in schools).

Who will be involved: Will you create the material yourself or will you seek contributions from others? Are there any Aboriginal and non-Aboriginal experts who will assist (e.g. Elders who hold important ACIP, linguists or other researchers)? What about schools or other educational organisations who could be partners? Will you engage contractors or employees to do work on this project? Will you be funded by a government body to complete this project? All of these factors impact on the copyright and ACIP considerations.

Budget: What money do you need to complete this Language project? Do you need to pay people to help you (e.g. paying an Elder for their time when they share Language Knowledge)?

Future management: How will you make sure the Language materials are safeguarded for the future? Do you need to think about long term storage with a library or archive such as [AIATSIS](#)?

Use these Community Guidelines and the [Agreement Library](#) and project checklist in [Part 4 – Resources](#) to confirm that you have checked off on all the key issues with all the people involved.

2. Who is creating new Language resources?

Depending on what you create, the capacity you create it in, and who you create it with, different copyright issues around ownership and control can arise. So, before you create something or use someone else's creation, here are some things you should think about:

Working with others: Who will own the copyright?

Many people can be involved in Aboriginal Language work. This can include Aboriginal Language speakers and experts, linguists or Aboriginal Language centres or organisations such as land councils or corporations. It can also include non-Aboriginal partners or contributors e.g. researchers, linguists, or workers from museums, libraries or archives.

Multiple parties can create questions regarding who should own the copyright in the materials created. There can be:

1. **Joint copyright owners** (being multiple creators of a single work) and/or
2. **Contributors** (being people who create their own works – e.g. the illustrations in a book – that are included in your final product). However, these people can own copyright to their own creations, and you will need to licence the rights from them to use their creations.
3. **Funding bodies:** (being funding from Australian, State or local government grants in order to create your resource)

Joint copyright Owners: Will we share ownership of the creation?

When multiple people contribute to a creation, there can be joint copyright owners.

The purpose of having joint copyright owners is to share ownership of the work created.

Joint copyright means that all copyright owners must approve of decisions made about the use of that work. Therefore, use of the work or permission for others to use the work requires the approval of all copyright owners.

The diagram below illustrates just some of the contributions that can result in multiple copyright owners or rightsholders to one creation.

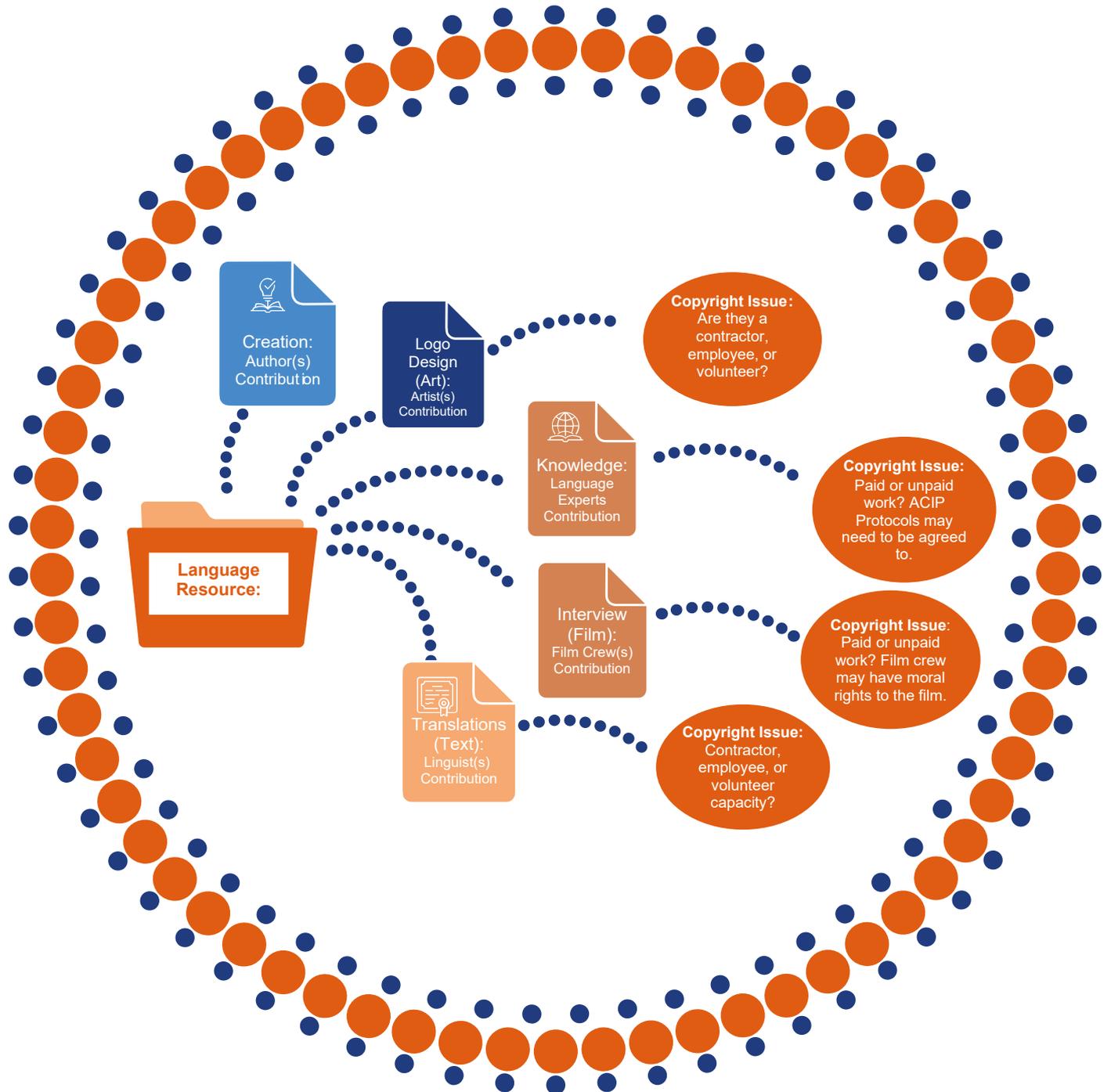


Fig: Contributors to a Language Resource, Terri Janke and Company 2021

Working with Contractors: Have you *contracted* (or paid) someone to assist you to make material? Do they have rights to the material?

Unlike employees, a person you have paid to create work for you (contractor) will **automatically own copyright** over the things they create. This means if you engage a linguist or researcher to assist you with developing Language materials, they will generally own their creation, not you. Sometimes, their work can form a large or important part of your own creation, which can pose a big risk in terms of your ownership over the resource.

If you engage a contractor to do work for you, use a Services Agreement to explain, in writing, your relationship with the contractor. This agreement will describe what work they will do for you and what they will be paid, but it can also provide clauses deciding who will own the copyright work, and how it can be used.

The following template agreements in the [Agreement Library](#) can be used to confirm copyright ownership as follows:

- the [Template Services Agreement – Linguist](#) assigns copyright to the Aboriginal organisation or business that is engaging the linguist to do the work;
- The [Template Services Agreement – Aboriginal Contractor](#) gives different options – the copyright in the materials could be owned by the Aboriginal person creating the work, or the Aboriginal organisation or business that is engaging the Aboriginal person to do the work.

What about artists or other contributors to a Language resource?

Sometimes, a person who creates work for your Language materials will not want to give up ownership of their creation. For example, an artist might want to remain the owner of the painting or illustration they did for your book. In this case, you need to use a licence agreement to secure the rights to the work. You can do this informally; however, a written agreement is best.

A License Agreement is an agreement giving you the **right to use** the material, but the copyright ownership remains with the owner. If you enter into a licence agreement with a contributor, make sure it gives you all the rights you need to use the Language material (e.g. a book) how you want. Think about whether you want to be able to sell the book, put it online, or let other people use and adapt the book (including the contributor's illustration).

Check your funding agreements

You should also be considering how **funding agreements** can change any ownership rights you have. In Funding Agreements, alongside the details of the funding arrangement, you can also include ACIP provisions which will determine who will own the copyright in the final product.

Many government funding agreements give the government perpetual (forever) rights to use, adapt and sub-licence any project material created using the funds. In a Language context, this may include recordings, film and reports which contain ACIP and/or important business IP of the organisation. Some funding agreements even assign ownership in the material to the funding body!

You must **always** check funding agreements to see what they say about copyright ownership and licencing. At the Aboriginal Languages Trust, we work with grant recipients for all our funding programs to ensure that all ACIP remains with the traditional owners or Custodians.

3. Are you using someone else's creation when creating resources?

Are you trying to access legacy material?

The term legacy material is used to refer to the historical collections, created a long time ago, and often held in collecting institutions such as libraries, archives and museums. Legacy material is a valuable source of cultural heritage, Knowledge and historical records. Legacy material was generally created by, about or with the contribution of particular Aboriginal communities, and have great cultural significance. These materials can include cultural artefacts, or other records such reports, books, journals, sound recordings, films and photographs, which yield cultural information and Knowledge. These materials are often created and owned by the non-Aboriginal film-maker's academics, photographers, government workers, or mission administrators, or their successors.

Archives must be made available to Aboriginal people to re-discover lost connections and to heal and revitalise Language. However, Aboriginal people are not always aware that these materials exist due to the way the material was collected and is stored today. Due to the colonial past of museums and galleries, it is often the case that material was collected without proper record keeping, or respect for the Aboriginal people. As a result, details as to the provenance or source of the material is usually not recorded. This creates difficulties in identifying and seeking permission from the copyright owner of the material. It is also problematic in regards to identifying the appropriate cultural protocols that need to be followed.

As Aboriginal people have no legally enforceable right to control access to or use of the ACIP, including legacy material, controlling the use of the materials can be difficult. In addition, although such material is the rightful cultural inheritance of Aboriginal descendants, copyright laws require Aboriginal people to get permission from the owners of the material – which will often be the families of the non-Aboriginal people who wrote down or recorded the material at the time it was created.

How do I get access?

More frequently, these institutions are establishing **protocols** which are designed to give the Aboriginal community better access to and use of legacy material. They are designed to promote Aboriginal engagement with cultural material held by the collection institution. The aim is for protocols to provide a framework which encourages access to these materials, while being respectful to the needs and desires of Aboriginal people to maintain the privacy and sacredness of that material.

If you want access to the legacy material held by an archival institute, you should start by contacting them and asking for the Aboriginal or Indigenous services unit or researcher. If they do not have one, you can ask to speak to another relevant staff member about the purposes of your request.

Getting permission to use existing copyright material

Firstly, you should identify the copyright owner. When it comes to legacy material, sometimes the original author of the material may have passed away. If this is the case, the ownership of the legacy material will usually pass to their family, and you will instead need their permission to use the legacy material. The collecting institution may be able to assist with this. If you can identify the copyright owner, you can then get permission to use the material.

Even if something is freely available (e.g. over the internet), this does not necessarily mean that the material can be copied or reproduced without permission. Remember, whether the material is newly created or is part of an older collection, it may still be protected by copyright.

With very old materials such as legacy material, it may be difficult to identify or contact the copyright owner. The collections may not give any information about who the copyright owner is, or the person cannot be found. If this is the case, you will need to assess the risks: do the benefits of accessing the material outweigh the risks of a possible copyright infringement? If you are unable to get in contact with the copyright owner, but you still want to use the material, you should provide a clear and adequate acknowledgement of their work. The copyright owner may come forward in the future and request payment for the use of their work, or for you to stop using it.

The [Copyright Owner – Permission to use Resource](#) can be used to get permission to reproduce existing copyright material.

Getting permission to use ACIP that is in existing copyright material

Remember that the documentation of Aboriginal peoples' heritage in old collections also forms part of ACIP. This means that if you are accessing any existing copyright material that contains Languages or other ACIP, you must get permission from the relevant Aboriginal Language Custodians to use the material.

This is in addition to copyright permission. The copyright owner may not be the same person or people as the Aboriginal Language Custodians.

You may already know and be working with the Aboriginal Language Custodians who can give you permission to use this material; or you may be required to seek them out and have discussions about how you would like to use the material.

Use the [ICIP Clearance to Use Resource](#) to record permission from Aboriginal Language Custodians when it comes to their ACIP that is held in existing copyright material.

4. Engaging with Language and Culture Specialists

There are generally specific people within an Aboriginal Language group who hold important Language and cultural Knowledge. Consider whether your Language project will involve making recordings of these people.

If the Language project makes a recording of an Elder or other person with Language Knowledge (referred to as a **Language and Culture Specialist**), you will need to get their consent. This consent will relate to the specific ACIP that the Language and Culture Specialist shares with you as part of the creation of new Language resources.

Use the [Language and Culture Specialist Release](#) to manage copyright and ACIP issues when making new recordings.

Some things you should consider in this agreement are:

- **Payment:** Will the Language and Culture Specialist receive payment for their contribution? Is this an appropriate rate?
- **Ownership:** Who will own copyright in the materials produced?
- **Attribution:** How will the Language and Culture Specialist be recognised for their Knowledge and contribution to the project? Make sure the spelling is correct and they are happy with their acknowledgement.
- **Rights to check and comment:** The Language and Culture Specialist has rights to review any changes you make to the Language and Knowledge they share (e.g. if you trim the recordings, or if you write down the words they say and put it into a story). Make sure you show the Language and Culture Specialist the draft of the new Language material before you finalise it, so they can give feedback and correct any errors.

It is also important for the Language and Culture Specialist to confirm that they:

- Have the cultural authority (including permission from Aboriginal Language Custodians or traditional owners where required by cultural law) to share the ACIP and to grant the permission to use the ACIP to create new materials;
- Understand that there is nothing in the Language Knowledge or other ACIP which is culturally inappropriate to share or which is likely to offend any Aboriginal person or community.
- Will disclose if there is anything which may affect or restrict how the Language Knowledge or other ACIP should be used and distributed.

Copyright ownership in recordings made of the Language and Culture Specialist

You should consider: will you or your organisation be the copyright owner in the recordings of the Language and Culture Specialist? Is that culturally appropriate, or should the Language and Culture Specialist (or their family) be the copyright owner of this material?

Have this discussion with the Language and Culture Specialist upfront, be sure to explain that if they own copyright, you would like a licence to be able to use, adapt and share the recordings as part of your Language project. It may be best for an Aboriginal Language organisation may own the copyright for the benefit of all members of the Language group.

The Language and Culture Specialist must give a performer's release under copyright law.

5. How can you share material safely?

Publishing or Sharing Language Resources Online

Sharing material on the internet is a quick and effective way to distribute material to a large amount of people in a short amount of time. However, in doing so you can sometimes make it more available for people to take it or use it without your permission.

The copyright material you share or promote on the internet (whether through social media or a website) is protected by copyright laws. You do not give up your copyright by sharing your material on the internet.

Some things you can do to prevent people from taking or using your material include:

- Displaying copyright notices © and your name on your material;
- Using technology designed to prevent copyright theft;
- Sharing text material in PDF form;
- Adding a visible watermark to your material;
- Using only low-resolution images of any art or photographs featuring in your material (less than 72dpi); and
- Displaying your contact information on or near your material so people can ask your permission to use your material.

Where your material contains traditional Knowledge or other forms of ACIP, you can also display cultural notices when sharing your material. A cultural notice alerts viewers that your material contains cultural Knowledge that must not be copied or reproduced without the prior written approval of the copyright owner. See [Page 28](#) for more information and an example of a cultural notice.

What to do if your copyright has been infringed

Due to the size of the internet audience, sharing the material online can make your creation vulnerable to being stolen or copied.

If your creation has been copied or used by someone else on the internet, there are a few things you can do. A good starting point is to contact the website or person directly and **request for the operator or person to stop using your creation**. You can also explain the cultural significance of your material, and how their theft and use is harmful to you and the community.

In the alternative, you can **send a takedown notice**. This is a written document used to alert the person or website that they have used your copyright without your permission. It is also used to legally demand the person to stop using your creation or remove it from their website. You can find more information about takedown notice on the Arts Law Centre of Australia website, available at: <https://www.artslaw.com.au/information-sheet/takedown-notice-copyright/>.

If you have exhausted all your options or are unsure how to proceed, you can also seek legal advice regarding the theft.

Licencing Language Resources

After sharing your resource, you might receive requests from third parties to licence and use your resource. These requests can come from individuals who are creating their own resource, government departments, or businesses.

For example, you might receive a request from the NSW Department of Education or another agency to include your Language resource in the school program.

There are a few things you should consider before licencing your material.

Considering whether the Licence Agreement is right for you and your contributors:

During these negotiations, it is important to consider the impact this may have on your IP rights, your ACIP, and the rights of your contributors. Licence agreements can provide for a number of different arrangements and negotiating the right arrangement for you and your contributors should be the focus of any agreement you negotiate.

Some things you should consider when licencing your resource include:

1. Who is asking to licence your resource?
2. Why are they asking to licence your resource?
3. What will they use resource for?
4. What can they do with the resource – can they change the material?
5. When and for how long will they use resource?
6. Where will they use resource?
7. How does this licence impact on you and your contributors? Do you have all the permissions you need from other copyright holders to give the licence?

There are a few things you can include in a licence that will help you to limit the ways other people use your material, even when it is being licenced. These include:

Duration of the licence:	You can negotiate what the length of the licence will be and under what circumstances the licence can expire or be terminated. You can licence your resource for any period of time you wish (From 1 day, to 5+ years). After this period ends, a new licence agreement would need to be negotiated.
Kinds of uses:	You can negotiate for restrictions on the ways your creation can be used. You should be specific regarding how the resource can be used. Consider whether you should restrict the requestor from being able to interpret or alter your resource without your consent. Your consent should also be required for any additional uses which were not considered when you first agreed to the licence. Licencing your work in this way can protect you against unintended uses of your work in the future.
Purpose of use:	You can also negotiate for restrictions on the purposes your creation can be used for. Your agreement should be specific regarding the purpose the requestor is to use the creation. For example, you might be asked to licence your resource to be included in some teaching material. The requestor may later want to use that resource for a purpose unrelated to teaching. If your agreement is specific regarding the purpose the resource can be used, the requestor will need to ask for your consent to use it for another purpose.

6. Are you producing resources for sale?

Selling your resource and making it available to the public causes many people to interact with your resource. It may involve contracting with other people to help you publish the resource or make it available on online platforms.

When contracting with other parties, and making your resource available to the public, IP and ACIP issues can arise. This can impact on not only your ownership and control of your resource, but also the rights of your contributors.

Protecting IP and ACIP when sharing resources

You can sell your resource in many ways. However, depending on how you sell it, issues around ownership of copyright and control over your resource can arise.

For example, you may be asked to sign written agreements, such as a publishing agreement, or accept the terms and conditions for use of an external platform (such as Facebook, Instagram or YouTube). These agreements can change the rights you have to your resource.

It is always important to read the terms and conditions or written agreement carefully before signing it. You should be looking out for clauses which:

1. Give ownership of your resource or future material to the publisher or distributor;
2. Allow for wide uses of your resource;
3. Allow for the publisher to use your resource for a long period of time; or
4. Allow for the publisher to use material which is only licenced (not owned) by you.

Review these agreements carefully to ensure that it limits the publishers use of your resource to only what is *needed* to publish and distribute your resource.

Getting new copyright and ACIP permissions

If you have used somebody else's copyright or ACIP in your resource, you might also need their consent to publish or sell your resource (and to permit someone else, such as a publisher, rights to use your resource).

Before entering into any agreements around the sale or publication of your resource, you should review the consents you have obtained from the contributors (e.g. an illustrator or a Language and Culture Specialist). You may need to get new consent to use the contributor's copyright or ACIP in a way that you didn't originally consider or get permission for.

Use a Cultural Notice to warn of ACIP rights

You should also consider ways of protecting the Aboriginal Language group who are the Custodians of the Language and ACIP contained in your resource.

One option is to use a **Cultural Notice**. A cultural notice should tell a reader that copyright material contains ACIP that may include, for example, images of Indigenous people, bush food or traditional practices. It should also tell readers that the ACIP must not be copied or used unless there has been prior permission and written approval given by the relevant Aboriginal Custodians of that ACIP.

Consider including something like the cultural notice provided below:

Cultural Notice Example:

This Publication contains Aboriginal Cultural and Intellectual Property (ACIP) (being traditional Knowledge, traditional cultural expression, Language and cultural heritage), of the [name] Aboriginal Language Custodians involved in the creation of the Publication.

All rights are reserved. All ACIP material contained in this Publication must be treated with respect and remain within the control of the Aboriginal Language Custodians involved in the creation of the Publication.

Do not use, copy, alter, adapt or retell the ACIP in this Publication. If you want to use the ACIP in any way, you need the permission and prior written approval of *[insert details of Aboriginal organisation or group]*. Failure to do so is a serious breach of the cultural protocols of the [name] Aboriginal Language Custodians involved in the creation of the Publication and may breach the *Copyright Act 1968 (Cth)*.

7. Planning for the Future and Storing Resources

At the planning stages of resource creation, you should also be considering how the resources will be stored so that they remain secure and accessible in the future. You can store your material in small, local and private collections or larger national, public collections such as Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS).

When planning for the long-term management and storage of your resources, you should consider:

- How original physical resources will be stored, and whether the space is secure and fit for safekeeping;
- How digital copies of resources will be stored, whether back-up copies will be provided, and whether there is any security or cultural concerns;
- Whether the online storage platforms are domestic or international, and any security concerns.
- How the material will be made accessible, and who it will be accessible to; and
- How the material will be managed and maintained.

When engaging with others to contribute to your resource, you should also discuss and make agreements with them regarding what will happen to their rights when they pass away.

8. Commercial Use of Language Words: setting processes to protect ACIP

As mentioned throughout this Guideline, Language and Knowledge must be in material and original form for it to be protected by Australian copyright laws. This means there is no legally enforceable right for Aboriginal people to control who speaks or uses Languages.

Although it is not required under Australian laws, there is a growing practice of consulting about the appropriate use of Language from relevant Aboriginal people. It is often the case that Aboriginal Language Custodians are contacted to provide advice or give permission for the use of Language words in commercial or non-commercial ways. Non-Aboriginal individuals or organisations including government agencies may wish to use Language words for naming buildings, streets, programs or even businesses. At other times, Aboriginal Language groups will be asked to select a word based on some themes. This takes time and requires engagement with Aboriginal people who have cultural authority to give permission for use of the Language.

Who should give consent?

Those wishing to use Language words for any purpose should seek permission from the relevant Aboriginal representative body or corporation.

Not every Aboriginal Language group has an existing representative body; at times it may be appropriate to make contact with key families. However, if there is a representative body for the Aboriginal Language group, it is better for this organisation to manage requests for use of Language. This makes it easier to require non-Aboriginal people to follow protocols and expect to pay an appropriate fee. It will also mean that there is one body with a record of all of the approaches made in relation to commercial uses of the Language.

It is important that individuals are not giving out permissions to use Language words commercially. If you are approached to give consent to use Language words, you might refer them to the relevant representative body, where possible.

Benefit sharing

Aboriginal people should also be engaged to collaborate and co-design these projects. Where collaboration arrangements are not possible, Aboriginal people should be appropriately paid for sharing their expertise and cultural protocols should be followed regarding the use of the cultural Knowledge.

It is also appropriate for an Aboriginal representative body or corporation to charge a fee for the time and expertise required in giving consent or providing a word. This fee reflects the time and expertise involved in considering, selecting and approving a word for use in accordance with cultural protocols. The organisation is providing a service; translations to make sure the word is spelled and pronounced appropriately.

Process for giving approval to use Language word

Before giving approval for use of a Language word, the Aboriginal organisation should make enquiries and request that information be provided in writing regarding:

- the proposed use and context of use of the Language word/s;
- All other relevant information about the project.

This is important an important first step in ensuring that Aboriginal people in authority are giving free, prior and informed consent for the use of the Language word. This will help the organisation to identify potential issues which might need to be explained to the appropriate Aboriginal people in authority as part of getting their consent. It will also give context as to how and why the Language word is being used, and whether it is appropriate.

If the organisation decides to give permission for use of the word, it can write a letter or use a formal clearance form. In doing so, the organisation can negotiate for:

- restrictions on the permitted uses of the Language word;
- the acknowledgement of the Aboriginal Language group as the Custodians of the Language word;
- what cultural protocols must be followed regarding the use of that Language word
- benefit sharing arrangements with the community and fees for the services of providing the word and the cultural consent.

9. Protecting Languages when Working in Education

Language Programs designed and taught within schools, universities or at TAFE (**educational organisations**) require the expertise of Aboriginal Language Custodians in order to develop successful Language programs.

Educational organisations are often the central hub of Language development and learning, especially in regional communities. Out of this relationship, many valuable resources are developed by Aboriginal Knowledge holders. These resources are products of ACIP and are vital to Language revitalisation within communities. Aboriginal Language Custodians must be recognised by schools as the Custodians of their Languages and other ACIP.

As an Aboriginal Language worker working within an educational organisation, you should be given meaningful opportunities to collaborate on Language projects, and ownership over the Language resources you create.

This part of the Community Guidelines will outline some common IP and ACIP issues experienced by Aboriginal Knowledge holders working in educational organisations, and how to protect ACIP when sharing Knowledge and creating resources.

How do you maintain control of your ACIP on Advisory Boards?

Asserting, and negotiating for the establishment of written agreements and protocols is one way to protect your ACIP from being exploited or used in a way you did not intend.

If you are being asked to share Knowledge **on an advisory board**, you can encourage and demand the use of protocols within the advisory board's **Terms of Reference**. In this way, your employer will be informed and on notice of the need to respect ACIP rights and the consultation and consent processes required to use advice containing cultural heritage.

By negotiating for the establishment of protocols, you can demand the respect of your ACIP rights, and ensure your ongoing control and maintenance of your ACIP.

Are you sharing your personal or community Knowledge as part of your job?

Cultural Knowledge shared as part of Language teaching or resource development belong to Aboriginal people and should be shared only with free prior and informed consent, and for the purpose of benefit sharing.

Often, Aboriginal employees will be asked to create materials or provide advice on the school's Aboriginal Language projects or materials.

There are two important things to be aware of when sharing ACIP at work:

1. The Knowledge or other ACIP you share orally is not protected by copyright laws; and
2. The educational organisation will generally be the copyright owner of any materials or Language programs developed by its employees.

Before sharing this Knowledge, you should negotiate a few things with the school, TAFE or university:

1. That the school establish the appropriate ACIP protocols for engaging with Aboriginal Knowledge holders;
2. That the copyright in the Language resource be owned by you, or an appropriate local Aboriginal representative body;
3. That the benefits of the Language resource be shared with you and your community.

You can also negotiate for these things after a Language resource has been created, however, you will be relying on the school's good faith to agree to these arrangements. We recommend encouraging the school to follow the process outlined in [Aboriginal Languages and education: what does a 'best practice' partnership look like?](#)

Are you creating Language Resources and Developing Curriculum as an Employee?

If you create copyright materials as part of your job, it is **your employer who will own the copyright to that material.**

Therefore, unless other arrangements are agreed to, school employees will not own copyright to the resources they create.

Employers do however owe employees certain moral rights to their creation, including:

1. The right to be named as the creator of your work
2. The right to exclude others from being falsely named as the creator of your work
3. The right to object to treatment of your work that is insulting or damaging to your reputation.

Are you creating resources and material as a Contractor?

Unlike employment relationships, copyright in contracted works belongs to the creator (or contractor). The contractor will usually licence their creation to the person who contracted them. In some cases, they may assign their ownership to them. These arrangements are usually made in the Services Agreement used with the contractor.

However, this is not the case for commissioned **film or sound recordings** where payment is received by the contractor for the work. Here, the commissioner will own the copyright to the film or sound recording.

TIP: Check your Contracts!

Identify the Issue: Ownership

It is important to check your contracts thoroughly before signing them to see whether you will own the copyright to your creation.

Legal Protection: Contracts

If you have already signed your contract and created a resource, you should review what terms you agreed to within your contract. If you have agreed to someone else owning the copyright, you may be able to negotiate a new agreement.

You can approach the copyright and request that ownership be assigned to you through a written agreement. You can also seek legal advice regarding your options.

10. Succession, Wills and Estate and your ACIP

Just as it is important to ensure ownership of your creation at the beginning, it is important to think about who will own and control the creation after your death. A will can protect your property, including your IP and ACIP. Drafting your will can also be an opportunity to ensure the cultural significance of ACIP contained in your work is understood and respected by those who will inherit your property. Explaining this in your will is a good idea.

You should also seek legal advice when drafting your will.

11. Business, Governance and ACIP – What do you need to know?

This part of the Community Guide has been included to guide Aboriginal Language workers who are working in business structures. We will identify some important IP and ACIP considerations to be aware of when running an organisation of business.

There are many different types of business structures. This will determine how the business operates and whether it will own its own assets. For more information on Business Structures, you can visit the Australian Government website at:

<https://business.gov.au/planning/business-structures-and-types>.

Certain IP and ACIP risks can arise depending which business structure you have, and who the IP belongs to. You should be aware of these risks, and how to protect your IP and ACIP when running a business.

We have listed the kinds of IP risks you might encounter below, depending on the business structure you are dealing with.



Business Structure:

Incorporated Entity:

This is a registered legal entity. The entity is separate from its individual members.

Unincorporated Entity:

This kind of entity could be a group of people, such as community group who decide to act together. This entity is not separate from its members.

Unincorporated Entity under the control of an Incorporated Entity:

IP Risk:

The entity may own copyright material where you have:
Transferred ownership of IP material to the entity; or
Agreed in a written contract that the entity is to be the copyright owner of the IP material.

There are benefits to transferring valuable property to a separate legal entity such as this. However, in the event that your entity is wound up or goes bankrupt, your IP material can be given away.

Unlike incorporated entities, unincorporated entities cannot own IP, or any other kind of property. However, the group of people running the entity (or one or some of them) can jointly own the copyright material.

When people move on from these entities, questions arise regarding the ownership of IP material. Sometimes the copyright owners might leave this IP behind but forget to transfer ownership of the IP to someone else. Sometimes they might want to keep their ownership of their IP. When ownership lies both within and out of the organisation, this can create problems regarding the use of the copyright, especially where it is used on future projects without the permission of all copyright owners.

As mentioned above, unincorporated entities cannot own IP, or any other kind of property. Although its individual members might own the copyright, where a controlling incorporated entity is involved, this entity can also be the owner of the IP.

This depends on whether this entity is entering into contracts or has been transferred the ownership of the IP. You should be watchful as to whether the company, or members of the unincorporated entity own the copyright.

Governance Structures – IP Management Plan & IP Portfolios:

To avoid confusion and potential copyright infringements, a business should have an IP Portfolio. This is a record of all the IP owned or licenced by the business. The portfolio can also contain your any other written agreements you have made.

This can help you with managing your IP during a change of hands and also in maintaining an accurate understanding of copyright ownership and who's permission is required to use the IP. An IP portfolio can also include records of not only copyright owners, but the contributors' and Language Custodians' rights to the IP material.

IP Portfolios are also an important record during the winding up process of a business. This will ensure IP material, its owners, and contributors are appropriately identified and that the material can be passed on to the appropriate person(s) or organisation.

Why are IP Management Plan & IP Portfolios Important?

IP management plans and protocols are essential to implement and preserve Language resources for future generations. These documents can also help you fulfil your commitments and responsibilities to the communities and Aboriginal Knowledge holders who have contributed to the material. This will also assure the Aboriginal community that you will manage and store their ACIP in culturally appropriate ways.

Management systems can also help prevent disagreements and issues arising years after a Language resource was created. As the business grows, changes are made to structure or legal status, or comes to a close the IP management plan will help you ensure continuity in ownership and access to of IP.

Glossary of Terms

Aboriginal Cultural and Intellectual Property – Aboriginal Cultural and Intellectual Property refers to the rights that Aboriginal people have, and want to have, to protect their traditional arts and Culture. ACIP includes intangible and tangible aspects of cultural heritage from cultural property and cultural sites to Languages, human remains and documentation of Aboriginal peoples. ACIP is transmitted from generation to generation. It is constantly evolving and its creation is on-going.

Aboriginal Language and Culture Specialist – An Aboriginal person who is a Custodian of Language and other ACIP.

Custodian – A person charged with maintaining and passing on particular elements of cultural significance (e.g. Knowledge, stories, songs, dances, Language, ritual and imagery).

Customary law - Also referred to as 'lore', customary laws are based on traditions and customs of a particular group in a specific region.

Elder – An Aboriginal person who has gained recognition within their community as a Custodian of Knowledge and lore, and who has permission to disclose Knowledge and belief to others.

Free, Prior informed Consent – FPIC is specific right for Aboriginal peoples enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and embedded within the universal right to self-determination which sets a high standard for the involvement of Aboriginal peoples in decision making processes for large projects that affect them and their territories. FPIC means Aboriginal people must be informed about projects in a timely manner and given time to approve or reject projects. FPIC enables them to negotiate the conditions under which the project will be designed, implemented, monitored and evaluated.

Intellectual Property (IP) – creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. IP is an umbrella term used for laws related to patents, copyright, trade marks, industrial designs and plant breeders rights.

Language group – Language is linked to particular geographical areas. The term 'Language group' is often used in preference to the term 'tribe', and many Aboriginal people identify themselves through their Language group.

Law – Social control based on consensus and individual rights being subordinate to the welfare of the community.

Negotiation – The process of discussing the details of the shared commitments, with the goal of reaching an agreement.

Secret sacred – confidential information that, under customary laws, is made available only to the initiated; or information that can only be seen by men or women or particular people in the community.

Self-determination – When Aboriginal people determine their affairs themselves, including decision making, interacting with non-Aboriginal parties and creating the solution to a problem.

Traditional Custodians / owners – ‘Traditional owners’ is an English term that refers to Aboriginal decision-making. It refers to a group of Aboriginal people who belong to a certain area of land (‘Country’) and have the cultural obligation to maintain it. The term ‘Custodians’ considers that in Aboriginal Culture the land owns its people (and not vice versa), while ‘owners’ gives credit to the fact that it is Aboriginal land (both terms are in use).

Traditional Knowledge – (TK) is defined by the World Intellectual Property Organisation as the Knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

Further Resources

Relevant standard-setting documents

Protocols aim to set best practice by reference to the following standard-setting documents:

- a) United Nations’ *Declaration on the Rights of Indigenous Peoples*, 2007,
- b) the World Intellectual Property Organisation’s Draft Provisions for the Protection of Traditional Cultural Expressions/Folklore (TCEs) and for the protection of Traditional Knowledge (TK) against misappropriation and misuse,
- c) Australian Institute of Aboriginal and Torres Strait Islander Studies’ *Guidelines for Ethical Research in Indigenous Studies 2000* (revised 2011),
- d) National Health and Medical Research Council, *Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders*, 2018,
- e) Convention on Biological Diversity: Article 8(j) and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (2010),
- f) Museums Australia, *Continuous Cultures, Ongoing Responsibilities: Principles and guidelines for Australian museums working with Aboriginal and Torres Strait Islander cultural heritage*, 2005,
- g) Aboriginal and Torres Strait Islander Library, Information and Resource Network’s *Protocols for Libraries, Archives and Information Services*, 2010.

Protocols and reports

- Aboriginal and Torres Strait Islander Library, Information and Resource Network Inc, *Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services 1995* (revised 2010), <http://atsilirn.aiatsis.gov.au/protocols.php>
- Australia Council, [Protocols for Using First Nations Cultural and Intellectual Property in the Arts](#)
- Australian Human Rights Commission, *Community Guide to the UN Declaration on the Rights of Indigenous Peoples*, https://declaration.humanrights.gov.au/sites/default/files/document/publication/declaration_community_guide.pdf
- Australian Institute of Aboriginal and Torres Strait Islanders Studies, [Guidelines for Ethical Research in Australian Indigenous Studies](#), 2000 (revised 2011)

- Australian Institute of Aboriginal and Torres Strait Islanders Studies, *Ethical Publishing Guidelines*, 2015
- Department of Communications and the Arts *First Languages, Law & Governance Guide*, 2019.
- International Year of Indigenous Languages 2019 (IYIL) <en.iyil2019.org/>
- Screen Australia, *Pathways and Protocols: A filmmaker's guide to working with Indigenous people, Culture and concepts*, 2009

Protection of ICIP rights

- Ninti One 2012, *What is Free Prior Informed Consent?*, http://www.nintione.com.au/resource/BP7_Free-Prior-Informed-Consent.pdf.
- Terri Janke and Maiko Sentina, *Indigenous Knowledge: Issues for Protection and Management*, IP Australia, Commonwealth of Australia 2018, https://www.ipaustralia.gov.au/sites/g/files/net856/f/ipaust_ikdiscussionpaper_28march2018.pdf
- Terri Janke, *Our Culture, Our Future*, Michael Frankel and Company, Sydney, 1999 - <http://www.terrijanke.com.au/our-Culture-our-future>
- United Nations Human Rights Office of the High Commissioner 2013, *Free, Prior and Informed Consent of Indigenous Peoples*, <http://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>.
- World Intellectual Property Organisation, Draft Provisions for the Protection of Traditional Cultural Expressions/Folklore (TCEs) and for the protection of Traditional Knowledge (TK) against misappropriation and misuse - http://www.wipo.int/tk/en/consultations/draft_provisions/draft_provisions.html http://www.wipo.int/tk/en/igc/draft_provisions.html
- World Intellectual Property Organisation, Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore – <http://www.wipo.int/tk/en/>

Further Resources

- Australian Institute of Aboriginal and Torres Strait Islander Studies: www.aiatsis.gov.au
- AIATSIS Map of Indigenous Australia <https://aiatsis.gov.au/explore/articles/aiatsis-map-indigenous-australia>
- Batchelor institute, CALL Collection - <http://callcollection.batchelor.edu.au/>



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