

Working with Aboriginal Language Custodians

Guidelines for ethical and respectful collaborations



Contents

Part 1 - Introduction to the Working with Aboriginal Language ; Custodians: Guidelines for ethical and respectful collaborations	4
Purpose	5
Summary of key issues in these Guidelines	5
Part 2 - Principles for engaging with Aboriginal Languages	7
Part 3 – Q&A for engaging with Aboriginal Languages	9
What is Aboriginal Cultural and Intellectual Property and why do I need to know about it?	9
I have skills that I think would be beneficial to support an Aboriginal organisation with their Language projects. What would a good collaboration look like?	10
I have been engaged to do work for/with an Aboriginal Language group or organisation. I will create films, sound recordings, notes and other material. Who should own the copyright in the work that I create?	10
I have been asked to do work for an Aboriginal Language group. I will record an Elder speaking in Language. What do I need to do to make sure the Elder and their ACIP are protected?	11
I found some Aboriginal Language materials in the archival collections at the library. I want to use this material in my work. What permissions do I need?	12
I am an educator and I want to see Aboriginal Languages taught at my school/TAFE university/organisation. What do I need to do to make sure the project is ethical and respectful?	12
I want to do a research project on an Aboriginal Language. How do I go about this?	12
Part 4 - Best Practice Aboriginal Language Projects	15
What does a ‘best practice’ Aboriginal Language collaboration look like? Tips for non-Aboriginal Support Workers.	15
1. Decisions are made by Aboriginal Language Custodians	15
2. Determine copyright ownership	15
3. Following protocols when working	16
4. Using and sharing Language materials	16

Contents

Aboriginal Languages and education: what does a 'best practice' partnership look like?	17
1. Language Programs must be developed with Aboriginal Language Custodians	17
2. Co-designing a Language program	17
3. Rights to teach Aboriginal Languages	18
4. Storage and future access	19
Part 5- Resources	20
Information Guide: What is Aboriginal Cultural and Intellectual Property?	20
The Relationship Between ACIP and Intellectual Property Laws	21
Using Protocols to Protect ACIP: ethical considerations for all people and organisations	23
Information Guide: What is Intellectual Property?	23
What is Copyright?	23
A. What is Copyright?	24
B. What do I need to do to get Copyright protection?	24
C. What does Copyright protect?	24
D. Is there anything Copyright does not protect?	25
E. Who is the owner of copyright?	26
F. What rights do Copyright owners get to their works?	27
G. How long does copyright last?	28
H. Can I use someone else's copyright material?	28
I. Can I draw inspiration from someone else's work?	28
J. Fair Use	29
K. How do I respect someone else's moral rights?	29
Glossary of Terms	30
Further Resources	32

Part 1 - Introduction to the *Working with Aboriginal Language Custodians: Guidelines for ethical and respectful collaborations*

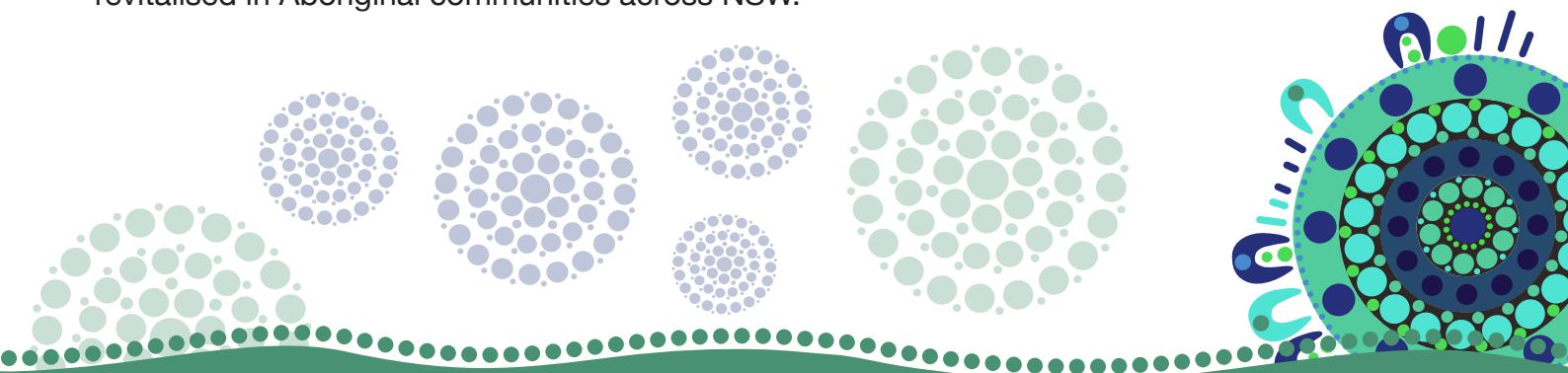
The Aboriginal Languages Trust (the Trust) aims to support the aspirations of Aboriginal Language Custodians across NSW. The Trust acknowledges Aboriginal peoples, Ancestors and Old People who have held Language Knowledge since time immemorial. The Trust acknowledges the sustained efforts to protect, 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. Languages are one part of a holistic Culture; when Aboriginal Language Custodians share Language, they are also sharing other elements of Culture – such as Knowledge and stories of Country, scientific or cultural knowledge, songs, ceremony and other cultural practice. This requires all people to understand how to follow ethical protocols that support the rights of Aboriginal peoples to all elements of their cultural heritage, also known as Aboriginal Cultural and Intellectual Property (ACIP).

In the past, non-Aboriginal people who have worked with Aboriginal Language Custodians have not properly followed protocols or have, by way of Australian copyright laws, become the copyright owners of Language materials. This has prevented Aboriginal Language Custodians from being able to access, use or control books, notes, recordings and other materials that contain important language, Knowledge and Culture.

Non-Aboriginal people and organisations have ethical obligations to collaborate with and seek permission from the Aboriginal Language Custodians and not misappropriate language, Knowledge or Culture. Non-Aboriginal researchers, linguists or consultants who work with Aboriginal people to develop Language materials need to be aware of these issues, follow protocols and assign or manage the copyright they create and own so that Aboriginal people, both now and in the future, have the ability to access and control Language materials in accordance with community protocols. In this way, Language can be preserved, safeguarded and revitalised in Aboriginal communities across NSW.



Purpose

Working with Aboriginal Language Custodians: Guidelines for ethical and respectful collaborations (the **Guidelines**) are borne out of the Trust's objective to advocate for the rights of Aboriginal peoples to their heritage, Knowledge and cultural expressions. In the absence of robust protections for Aboriginal Cultural and Intellectual Property (**ACIP**) rights under Australian laws, these Guidelines assist individuals, organisations and government agencies to consider their obligations and enact ethical ways of working with Aboriginal Language Custodians.

These Guidelines are designed to assist all people and organisations who engage with Aboriginal peoples and their Languages to understand:

- How Australian laws such as copyright impact on the ability of Aboriginal Language Custodians to control and protect their Languages;
- What rights Aboriginal people need to care for and pass on their Languages and other ACIP, and how existing Australian laws do not offer protection for ACIP; and
- How to use contracts, policies or protocols to set rules for how all people must respect and uphold Aboriginal Cultural and Intellectual Property (**ACIP**) rights.

The Guidelines suggest key Language principles that should be respected when dealing with Aboriginal cultural heritage. Use these principles to guide ethical and respectful collaborations with Aboriginal Language Custodians. While Part 4 deals with the practical application of these principles in the Languages space, the principles can be used for wider engagement with Aboriginal people, and use of any ACIP.

Summary of key issues in these Guidelines

Languages are the cultural heritage of Aboriginal peoples. This living heritage belongs to Country, while communities, clans and families have a responsibility to care for and look after it. It is transmitted between generations and includes cultural knowledge, sites, land, seas, objects and ancestral remains, literary, performing and artistic works. Collectively, this heritage is known as **Aboriginal Cultural and Intellectual Property or ACIP**.

Rights to ACIP are not fully recognised under Australian law. Some Australian laws such as copyright can be used to protect some parts of cultural heritage; however they often do not protect ACIP in the same ways that Aboriginal Language Custodians need in order to be able to properly care for and pass on Culture.

Where Aboriginal Language priorities involve the creation or use of written or recorded materials, Australian copyright laws will apply. Copyright law will only offer limited protection, 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).

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 impart their Knowledge orally to researchers, who write down or record this knowledge. 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.

There are limitations to copyright – for example, copyright doesn't protect information or knowledge, or oral songs or stories. This is why it is important for all people to follow ethical protocols and engage with Aboriginal Language Custodians before using Languages or other forms of ACIP. Some considerations include:

- Build relationships with Aboriginal Language Custodians so that all projects or activities involving Aboriginal Language and Culture can be developed in collaboration.
- Get free, prior informed consent for use of Languages or ACIP. This includes talking to Aboriginal Language Custodians about all the ways you want to use their ACIP so that they can make an informed choice.
- Empower Aboriginal Language Custodians to interpret and present their own Languages and Cultures. This will result in depictions of ACIP that are accurate, authentic, and maintain the cultural integrity of the ACIP (e.g. correct spelling and pronunciation of Languages).
- Aboriginal Language Custodians must be attributed for their ACIP.
- Consider how to create economic opportunities for Aboriginal people (e.g. paid research or teaching roles) and what other benefits you will share for use of ACIP.
- Support Aboriginal people to practise, revitalise and advance their Cultures by considering future access, long-term storage and safekeeping in projects that record ACIP.

Contracts can also be used to manage ACIP rights. Protocols are supported by the use of agreements or clearance forms. Agreements can make Protocols binding on the parties to the agreement; and clearance forms can be used to record free, prior, informed consent from Aboriginal Language Custodians.

These Guidelines share information about copyright laws and ACIP, explain key issues to think about when it comes to protecting ACIP (including by using contracts and copyright laws), as explains practical tips for IP and ACIP considerations when undertaking Languages work.

Part 2 - Principles for engaging with Aboriginal Languages

*Aboriginal people are the Custodians of our Languages.
Language is our birthright and our identity.*

The United Nations Declaration on the Rights of Aboriginal Peoples

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

Aboriginal 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 Aboriginal Steering Group or other governance structure. Adaptation of Languages in new forms requires re-consideration by Aboriginal Language communities. Aboriginal people have the right of reply in relation to collections of Language and Culture held by collecting institutions.

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 or other institutions.
8. **Attribution:** It is respectful to acknowledge Aboriginal people as Custodians of Aboriginal Languages cultural Knowledge by giving them attribution. 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 Language 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. Non-Aboriginal people who wish to use Aboriginal Languages need to consider how the proposed use will affect the people entitled to inherit the Language.

Part 3 – Q&A for engaging with Aboriginal Languages

Q: What is Aboriginal Cultural and Intellectual Property and why do I need to know about it?

A: Aboriginal Cultural and Intellectual Property or ACIP refers to the rights that Aboriginal people have in relation to all aspects of their cultural heritage, Traditional Knowledge and traditional cultural expressions. This includes things like:

- Traditional Knowledge (for example, Knowledge of plants, animals, medicines, ecosystems, waterways, seasons, astronomy),
- traditional cultural expression (e.g. stories, designs and symbols, literature, 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),
- Languages,
- 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.

There are no Australian laws that protect ACIP in a holistic way. Some protection can be found in copyright laws, which allow copyright owners to control how Language materials such as books, films, sound recordings research notes, reports, and photographs can be used by others. Language projects will often involve the recording and use of many different forms of ACIP. However, copyright laws do not recognise the collective rights of Aboriginal people to their ACIP.

Aboriginal people want rights to all forms of ACIP, whether these are written down and recorded, or are in intangible forms, such as knowledge, performances or oral songs and stories. Aboriginal people need to be able to control, protect, and pass down ACIP to future generations. This means they need to be empowered to:

- Require prior informed consent for any uses of ACIP, and to either authorise or refuse use by others;
- Be recognised as the primary guardians and interpreters of their ACIP
- Benefit commercially from authorised uses of ACIP;
- Prevent derogatory use and to maintain secrecy; and
- Be attributed as the owners and Custodians of ACIP.

Non-Aboriginal people and organisations have ethical obligations to collaborate with and seek permission from the Aboriginal Language Custodians and not misappropriate Language, Knowledge or Culture. Non-Aboriginal researchers, linguists or consultants who work with Aboriginal people to develop Language materials need to follow protocols set by Aboriginal Language Custodians. In addition, you should assign or manage the copyright you create and own so that Aboriginal people, both now and in the future, have the ability to access and control Language materials in accordance with community protocols. In this way, Language can be preserved, safeguarded and revitalised in Aboriginal communities across NSW.

Q: I have skills that I think would be beneficial to support an Aboriginal organisation with their Language projects. What would a good collaboration look like?

A: The best projects are those developed in collaboration with Aboriginal Language Custodians. Aboriginal Language Custodians need to be involved in decision-making from the outset. This might include decisions on issues including, but not limited to the following:

- which Language(s) might be involved;
- what does the Language community want to get out of the project;
- who will work on the project;
- the project timeline;
- what the project outcomes will be;
- what rights each project partner will have to use Language material created as part of the project; and
- where will the materials be stored.

You must also be prepared to use contracts to manage the individual and collective rights of Aboriginal people, groups and organisations involved in the collaboration. Contracts must deal with copyright ownership and licencing as well as ACIP protocols. See the [Agreement Library](#) for a range of template contracts.

Finally, see [What does a 'best practice' Aboriginal Language collaboration look like?](#) for a detailed explanation of all the key issues to be considered when working with Aboriginal Language Custodians.

Q: I have been engaged to do work for/with an Aboriginal Language group or organisation. I will create films, sound recordings, notes and other material. Who should own the copyright in the work that I create?

A: As far as is possible, Aboriginal people or organisations must own the copyright in works that express or detail ACIP, for example Language materials created as part of a project or activity.

This is to:

- Recognise the Aboriginal ownership/Custodianship of the ACIP being passed on;
- Give Aboriginal Language Custodians the ability to control and protect material containing ACIP under Australian copyright law; and
- Ensure that in the future, the ACIP contained in the copyright materials may be accessed and used by Aboriginal individuals, their family or community for cultural maintenance and other purposes.

Copyright applies as soon as the creation is written down or recorded, and the law makes automatic judgments about who the owner of the copyright is. Sometimes, this won't be the Aboriginal Language Custodians – for example where Language Custodians or Knowledge holders impart their Knowledge orally to researchers, who write down or record this knowledge. 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.

Non-Aboriginal people, such as linguists, researchers or teachers, may collaborate with Aboriginal people to create Language recordings. You should have your involvement acknowledged through attribution, but need to be ready to give up ownership of copyright to support the ACIP rights of Aboriginal Language Custodians. Instead, you can secure the rights you need to your work by entering into a suitable copyright licence with Aboriginal collaborators.

If you are the author or creator of written notes or material, you may be the copyright owner. Check the [Information Guide – What is Intellectual Property?](#) for more information.

You could either:

- assign copyright in materials collected or acquired while performing the services to an individual Aboriginal Language and Culture Expert who is conducting the project with the Support Worker; or
- assign copyright in materials collected, acquired or developed while performing the services to a suitable Aboriginal organisation who will hold copyright in the materials for the benefit of the Language group.

Other options include you jointly holding copyright in the materials created; or owning the copyright in some materials but not others. You must directly discuss copyright ownership when negotiating whether to do the work.

To assign your copyright to an Aboriginal individual or organisation, it must be in writing and signed by you. There are a few ways you could do this.

If you are hired to provide a service: You might be paid to create Language materials. You can deal with copyright ownership in the agreement for services that you will enter into. The [Template Services Agreement – Linguist](#) assigns copyright to the Aboriginal organisation that is engaging you to do the work.

Copyright deed of assignment: A simple, one-page deed can be used to assign copyright in Language materials you create. Be clear about the parties and what material you are referring to.

Q: I have been asked to do work for an Aboriginal Language group. I will record an Elder speaking in Language. What do I need to do to make sure the Elder and their ACIP are protected?

A: If you are working with an Aboriginal Language group or organisation to develop new Language materials, you may be involved in the recording of an Elder or other person with Language Knowledge (referred to as a **Language and Culture Specialist**).

You will need to obtain the consent of the individual Language and Culture Specialist you work with. 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.

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.

It is also important for the Aboriginal Language organisation to consider whether the individual Language and Culture Specialist should own the copyright in the recordings made of them. The individual may hold the copyright; or the Aboriginal Language organisation may own the copyright for the benefit of all members of the Language group. Further, the Language and Culture Specialist must give a performer's release under copyright law.

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

Q: I found some Aboriginal Language materials in the archival collections at the library. I want to use this material in my work. What permissions do I need?

A: Many collecting institutions have materials that contain Language and other ACIP. These resources may have been created recently, or may be archival. Before using these materials, you need to consider both copyright and ACIP issues.

The Copyright Act allows copyright owners to take legal action against anybody who infringes their copyright work. Copyright material that belongs to another person should not be copied, reproduced, adapted, communicated to the public (including on the internet without the prior written consent of the copyright owner. Even if something is freely available (e.g. over the internet, this does not necessarily mean that the material can be copied or reproduced. The [Copyright Owner – Permission to use Resource](#) can be used to get permission to reproduce existing copyright material.

Existing Language materials also capture ACIP. Best practice standards for use of ACIP require the free, prior informed consent from the Aboriginal owners and Custodians of the Language, even if they are not the copyright owners of the material. If you wish to use existing copyright material to create new Language resources, you must:

- a) Identify the rights holders (copyright and ICIP); and
- b) Obtain permission to use the material.

Q: I am an educator and I want to see Aboriginal Languages taught at my school/TAFE/ university/organisation. What do I need to do to make sure the project is ethical and respectful?

A: [See Aboriginal Languages and education: what does a 'best practice' partnership look like?](#)

Q: I want to do a research project on an Aboriginal Language. How do I go about this?

A: The first thing you need to do is reconsider your approach and perspective. Any research that involves or is about Aboriginal people or their Languages must meet the priorities that are determined by Aboriginal people.

Linguists or other researchers should not approach an Aboriginal Language group or organisation with a research proposal that is already developed. Instead, time should be taken to:

- Develop a relationship with Aboriginal Language Custodians in ways that are suitable (e.g. time on Country);
- Ask Aboriginal Language Custodians what their priorities are for Language work in their community, and what outcomes they would like to see from a research project;
- Develop a research proposal in collaboration with Aboriginal Language Custodians. The research proposal must meet Aboriginal research priorities and adhere to ethical research protocols such as the [AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research](#).
- NOTE: The research proposal **must** include plans for how you will obtain free, prior and informed consent to use Language and other Knowledge for the research project and for any future uses. It must also be clear about who will own copyright in materials created as part of conducting the research.

Providing information as part of co-developing the proposal

Consent processes must begin during the planning stages of a research project involving ACIP or Aboriginal Language Custodians. As part of co-developing the research proposal, the researcher must inform Aboriginal people about the risks and implications of giving consent to use ACIP. The researcher must also be able to articulate all proposed current and future uses for the Language or other ACIP shared as part of the research.



TIP: The project brief

When working together to co-develop the research proposal, the researcher must be able to articulate information and details about:

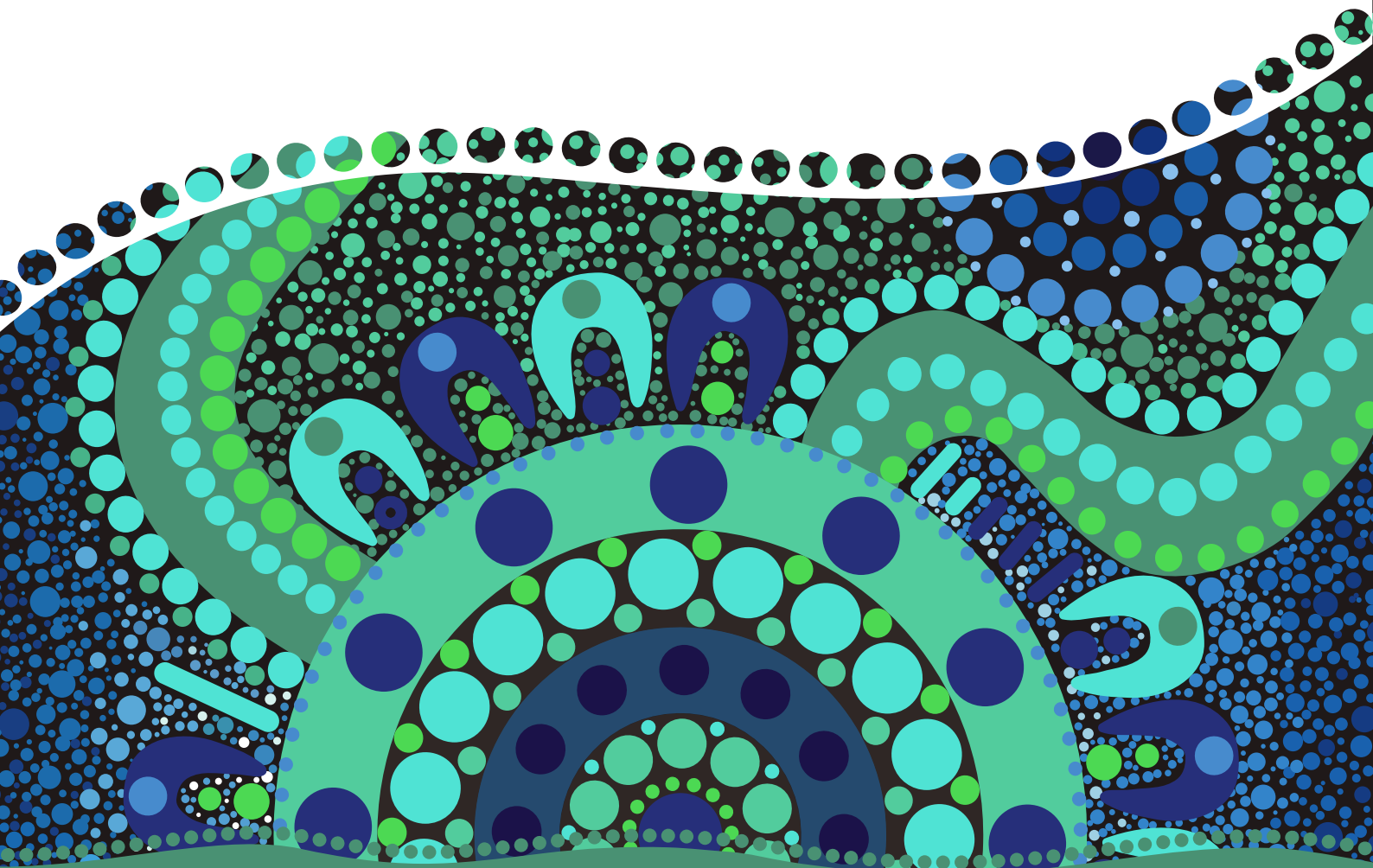
- Who is working on the project and any project partners;
- The ‘why’ in terms of what mutual benefits or outcomes the project will achieve for Aboriginal Language Custodians and the researcher, where relevant;
- In relation to all forms of ACIP, including Languages:
 - o whether the ACIP will be written down, filmed or recorded and if so, who will own the copyright in that material;
 - o The use of any resulting material, including the scale of the project, the context of use, the intended audience, the medium of the project and the intended outcome, where relevant;
 - o Include details of all proposed uses where known, for example in education or public programs, online; and
 - o Due diligence research information concerning the particular ACIP to be used.
- The project budget;
- Any costs the relevant Aboriginal people and communities are expected to incur;
- How the relevant Aboriginal people and communities will be attributed for their contributions;
- What benefits (monetary and non-monetary) will the Aboriginal people and communities receive from their time, contributions and the use of ACIP, if any.

Allow enough time

Allow sufficient time for the Aboriginal people or communities to make decisions about the project. Consultation time allowances should be built into project budgets so that Aboriginal stakeholders do not feel forced or pressured into making a decision without proper consideration of the material and the facts.

Research Agreement

If you are collaborating with an Aboriginal organisation for a research project, you must make sure that the contract you enter into deals with copyright ownership as well as ACIP protocols. A standard template (e.g. from a University) will generally not assign copyright to the Aboriginal research partner. You will need help to amend these clauses. Any research agreement will also need to deal with future copyright (i.e. using the research results to create journal articles) and commercialisation (i.e. applying the research results to make money). This **must** be done in a way that builds in free, prior and informed consent and benefit sharing for Aboriginal Language Custodians.



Part 4 - Best Practice Aboriginal Language Projects

*What does a 'best practice' Aboriginal Language collaboration look like?
Tips for non-Aboriginal Support Workers.*

1. Decisions are made by Aboriginal Language Custodians

Contractors, such as linguists, archivists or researchers (**Support Workers**) may do collaborative work with Aboriginal Language Custodians. At other times, Support Workers may be engaged by Aboriginal organisations to assist with Language work.

Support Workers need to be aware of copyright issues and ownership, as well as adhere to international standards of free, prior and informed consent, when working with Aboriginal groups on Language projects.

The best collaborations are those where Aboriginal Language Custodians are in control and making decisions about their ACIP. Aboriginal Language Custodians need to be involved in decision-making from the outset. This might include decisions on which Language(s) might be involved, what does the Language community want to get out of the project, who will work on the project, the timeline, what the project outcomes will be, where will the materials be stored. This requires detailed planning and budgeting.

2. Determine copyright ownership

Where possible, the Aboriginal people or organisations must own the copyright in works that express or detail ACIP, for example Language materials created as part of a project or activity. This is to:

- Recognise the Aboriginal ownership/Custodianship of the ACIP being passed on;
- Give Aboriginal Language Custodians the ability to control and protect material containing ACIP under Australian copyright law; and
- Ensure that in the future, the ACIP contained in the copyright materials may be accessed and used by Aboriginal individuals, their family or community for cultural maintenance and other purposes.

Support Workers who are engaged to assist with or undertake a project will most likely create copyright material. Support Workers should sign a [Services Agreement](#) that deals with copyright in materials acquired and/or created by the Support Worker for the project. The Support Worker could either:

- assign copyright in materials collected or acquired while performing the services to an individual Aboriginal Language and Culture Expert who is conducting the project with the Support Worker; or
- assign copyright in materials collected, acquired or developed while performing the services to a suitable Aboriginal organisation who will hold copyright in the materials for the benefit of the Language group.

Other options include the Support Worker jointly holding copyright in the materials created; or owning the copyright in some materials but not others. The Support Worker should be upfront about copyright ownership and discuss this as part of negotiating whether to agree to do the work.

Licensing

Where Support Workers agree to assign their copyright to Aboriginal individuals and or organisations, the Support Worker can still secure rights to use the work they create.

This does not mean that the Support Worker should have a licence which permits them to use the work however they choose. Instead, the licence should be limited, and list specific uses that have been agreed to by the Aboriginal Language Custodians. The Support Worker must return to the copyright owner each time a new or different use is proposed by the Support Worker. This supports the practice of free, prior, informed consent and ensures Aboriginal Language Custodians have ongoing control over copyright materials that incorporate ACIP.

3. Following protocols when working

At a minimum, Support Workers should abide by the [Principles for engaging with Aboriginal Language](#) contained in these Guidelines.

4. Using and sharing Language materials

It is important for Support Workers to understand that consent obtained from Aboriginal Language Custodians for the use of any ACIP material in a specific project or activity does not extend to any additional or future uses of the material. If Support Workers wish to use the Language materials they create for their own purposes e.g. to promote their work, they must negotiate this with the Aboriginal Language Custodians they work with. This permission is not automatic.

Where the Support Worker wishes to use the ACIP material for an additional or new uses which are outside of the scope originally consented to, re-consult with the identified Aboriginal Language Custodians or Knowledge holders to ensure that free, prior and informed consent is given for each new use.

Sharing online

When ACIP is published online, it becomes more difficult to control and there is the chance that the ACIP could be de-contextualised, re-used, inappropriately circulated or otherwise misused. It is important that Aboriginal people give their consent for the Language material to be made available on the internet.

Support Workers who wish to share Aboriginal Language materials online must get specific consent from Aboriginal Language Custodians to do so.

Aboriginal Languages and education: what does a 'best practice' partnership look like?

1. Language Programs must be developed with Aboriginal Language Custodians

Collaboration and initial consent

Where educational organisations (for example, schools, TAFEs and universities) wish to develop an Aboriginal Language program it is essential to seek out Aboriginal Language Custodians and begin to build relationships, taking into consideration the points below.

Cultural responsiveness

Before pursuing the development of a Language Program with Aboriginal Language Custodians, educators must undertake preliminary work to ensure that management and staff have the correct training and skills to work with Aboriginal peoples, Knowledge and governance systems. This includes an understanding of cultural protocols. Part of this process involves individual staff members interrogating their own perspectives and biases.

Educators should consider whether they:

- can identify tangible and intangible forms of ACIP;
- understand the meaning of 'free, prior, informed consent';
- recognise the legal and ethical obligations required of them – under Australian laws, international standards and other guidelines, such as this Guideline; and
- can respectfully build relationships with Aboriginal Language Custodians.

2. Co-designing a Language program

The basis for all teaching and sharing of Aboriginal Languages is free, prior, informed consent. This means that Aboriginal Language Custodians give their approval for use of ACIP once they have enough information to make an informed decision. This means they must be fully informed about all the relevant details relating to the proposed use of ACIP.

The best way for an educational organisation to ensure they have the informed and ongoing consent from Aboriginal Language Custodians is to co-develop the Language Program together. This requires a significant commitment from the educational organisation and the Aboriginal Language Custodians to develop relationships, build trust, and agree on a suitable way for the school and the Aboriginal Language Custodians to collaborate.

The process might look something like:

Initial discussions: Educational organisations should approach the Aboriginal Language Custodians of the Country the organisation is on, and navigate initial engagement with the Language Custodians. Traditional Owners, Elders and the wider community to begin a dialogue about teaching an Aboriginal Language. Do not rush these initial meetings and take the time to ensure you have engaged with all relevant Aboriginal people.

Agreement to work together: Once the Aboriginal Language Custodians agree to co-develop a Language Program with the educational organisation, it is important to record the Aboriginal Language Custodians' initial consent in a document which:

- states the consent of the Aboriginal Language Custodians to co-develop a program to teach the relevant Aboriginal Language at the educational organisation; and
- sets out how the parties will work together to develop a Language program and the protocols that will be followed by both parties.

The agreement should acknowledge the inherent right and ownership of Aboriginal Language Custodians to their Language and other ACIP. The organisation will commit to co-develop the Language Program in a way that upholds ACIP rights and empowers Aboriginal Language Custodians to maintain, control, protect and develop their ACIP.

Establish Governance Mechanisms: The educational organisation and the Aboriginal Language Custodians should consider how to implement good governance of the program and clear communication around ACIP rights. One way can be to set up a program steering committee or other advisory group to oversee the implementation of the project. It is also a way for Aboriginal Language Custodians to be self-determining by having continued oversight and control of the use of their ACIP in the Language program. Through representation on the steering committee, Aboriginal Language Custodians will have the opportunity to make decisions about how Language may be taught and who may teach it, and approve all co-designed Language curriculum.

Through this steering committee or other governance mechanisms, the Aboriginal Language Custodians will also have the opportunity to advise on cultural protocols for teaching Language and develop resources for teaching and learning.

Co-design of curriculum and develop resources: The steering committee, on behalf of the Aboriginal Language Custodians, what will be taught and how it will be taught, including what materials may be created and shared. The educational organisation must use agreements to record who will own copyright in any materials or resources will be created and how they can be used as part of the Language program.

3. Rights to teach Aboriginal Languages

Aboriginal Language Custodians have the right to make decisions about who may teach as part of the Language Program.

To support self-determination of Aboriginal Language Custodians in relation to their ACIP, the teaching team should, as far as possible, be made up of Aboriginal Language instructors. These people are familiar with the relevant cultural protocols and may co-teach together with other teachers from the organisation, as well as with other contributors such as Elders and Aboriginal Language Custodians, linguists, academics, artists, writers and researchers.

Where teachers are given approval by Aboriginal Language Custodians to co-teach the Language, they must respect cultural protocols and understand the obligations on them in relation to ACIP.

Teachers at the educational organisation (whether Aboriginal or non-Aboriginal) must follow the protocols for teaching the Aboriginal Language, as set by the Aboriginal Language Custodians.

Teachers may not use the ACIP Knowledge for their own purposes without the prior written permission of Aboriginal Language Custodians. This means they cannot:

- teach the Language or ACIP Knowledge in other places without consent; or
- adapt the ACIP knowledge, make resources, or write books and/or films using the ACIP.

4. Storage and future access

Materials created as part of the Language program must be cared for into the future. The governance committee should make decisions about the long-term use of the materials. These could be held in an archive or stored at the organisation. If the organisation is permitted to keep copies, it should have a plan in place, agreed to by the Aboriginal Language Custodians, to ensure proper storage of the materials and preservation into the future.

If the educational organisation has ongoing access to the Language materials, it must only use them in accordance with the permission given by Aboriginal Language Custodians and as part of the Language program. Free, prior and informed consent is required for different or future uses.

Part 5- Resources

Information Guide: What is Aboriginal Cultural and Intellectual Property?

Aboriginal Cultural and Intellectual Property or ACIP refers to the rights that Aboriginal people have in relation to all aspects of their cultural heritage, Traditional Knowledge and traditional cultural expressions. This includes things like:

- Traditional Knowledge (for example, Knowledge of plants, animals, medicines, eco systems, waterways, seasons, astronomy),
- traditional cultural expression (e.g. stories, designs and symbols, literature, 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),
- Languages,
- 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 indicates the broad and holistic nature of ACIP:

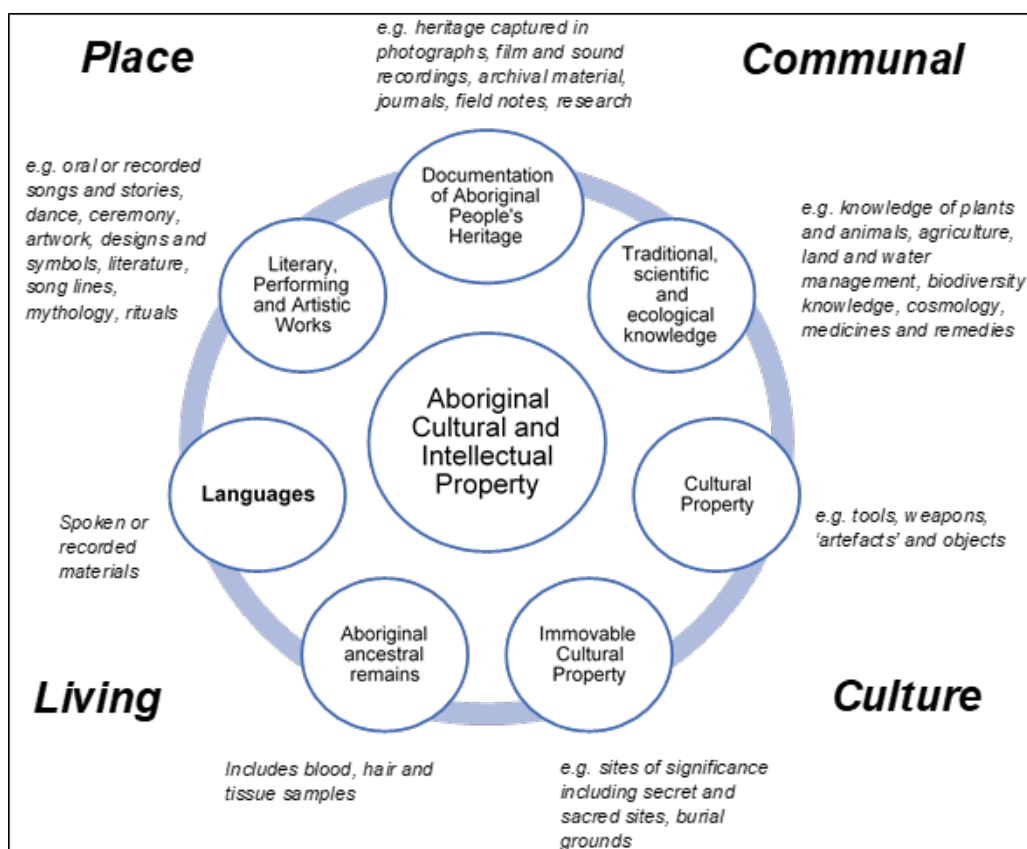


Figure 1: Categories of ACIP © Terri Janke and Company, 2021

ACIP encompasses both the tangible (sites, objects) and intangible (knowledge, oral stories, performances). ACIP is linked to place and people, and is communally owned by the group it belongs to.

Attached to ACIP are obligations to care for ACIP so that it can be passed on to future generations. Whilst generally, all Aboriginal people have a role to care for ACIP, certain persons of authority within each community may have specific rights to know and share knowledge, and to give or deny permission to use and share certain ACIP.

Aboriginal Cultures are not fixed or static – they are constantly evolving. This means that the nature of ACIP may also evolve. Aboriginal people have the right to define what ACIP is. This means that modern and emerging Knowledges that have been developed by Aboriginal people based on history and Culture can also be classified as ACIP.

The United Nations Declaration of the Rights of Indigenous Peoples

The rights of Aboriginal people are enshrined within international law instruments. The *United Nations Declaration on the Rights of Indigenous Peoples (Declaration)* sets out the rights that First Nations peoples of the world require for their survival, dignity and wellbeing.

Article 31 of the Declaration states 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.**”*

In these Guidelines, the term Aboriginal Cultural and Intellectual Property or ACIP encompasses cultural heritage, Traditional Knowledge, traditional cultural expression.

The Declaration was adopted by Australia in 2008 but it does not impose an obligation on signatories to create domestic law that gives effect to its articles. However, the Declaration is highly relevant and important when it comes to policymaking in Australia. It sets a standard of practice that should, and has, been considered and applied in Australia.

The Relationship Between ACIP and Intellectual Property Laws

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 incompatible with, the holistic nature of communally owned Aboriginal and Torres Strait Islander Culture and heritage.

There are no standalone laws in Australia that recognise and protect ACIP. Australian laws have been used to protect some parts of cultural heritage; however, they don't protect cultural heritage in the ways that Aboriginal people would like their Culture to be protected. For example: Australian copyright laws have been used to protect ACIP where it meets the requirements for copyright protection. However, copyright law does not provide an adequate ACIP protection because it does not allow for communal ownership of copyright, it only protects what is written down or recorded (and not underlying Knowledge or art styles such as dot painting) and only lasts for a limited time.

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

Community Ownership	Western IP laws do not protect communal ownership. This creates problems for Aboriginal Knowledge systems, which are inherently collectively owned, developed and passed down through generations.
Material Form	Western IP laws only protect material things (i.e. text or artwork), whereas ACIP can be oral cultural expression of Knowledge or performance based.
Rights to IP/ACIP	Western IP laws only protect Economic Rights and some moral rights. However 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. However, 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 whereas 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).

For these laws to protect ACIP effectively, they must appreciate the continual connection that Aboriginal people have with their cultural heritage, and the roles and responsibilities they have to look after Knowledge and pass it on.

As western IP laws offer limited protection to Aboriginal communities for the use of their ACIP, **Aboriginal communities must be empowered and informed of the rights they do have**, and the other ways they can protect their ACIP. In doing so, Aboriginal people are to negotiate for and protect their ACIP when developing Language resources and sharing cultural heritage.

These Guidelines cannot specifically address all of the IP and ACIP issues that may arise when working with Aboriginal people, their Languages and other ACIP. However, it can be used as a tool and a starting point to guide informed decision making when dealing with ACIP.

Using Protocols to Protect ACIP: ethical considerations for all people and organisations

Protocols are a set of **ethical guidelines**. They provide a framework of rules requiring certain procedures to be followed in certain situations. They have been widely used across a number of different industries and sectors in Australia to protect ACIP. Protocols can be made binding through the use of contracts where the parties agree to follow the rules of the Protocol as a term of the contract.

Protocols establish frameworks for the protection and recognition of ACIP where the law does not. Protocols can be used as a policy document in **workplaces, organisations** or developed for a specific project.

Protocols are supported by the use of agreements or clearance forms. Agreements can make Protocols binding on the parties to the agreement; and clearance forms can be used to record free, prior, informed consent from Aboriginal Language Custodians. Agreements can also be used to record IP arrangements and confirm the ownership and permitted uses of copyright material by the parties to the agreement.

These Guidelines contain a suggested protocol for professionals who work with Aboriginal Language communities, including obtaining prior informed consent, empowering Aboriginal Language Custodians to present, interpret, advise on and teach their Languages and Cultures, community ownership of Knowledge and materials, and developing agreements which address copyright ownership and proper protocols to be followed.

Information Guide: What is Intellectual Property?

Intellectual property (IP) is the phrase used to describe a set of different laws that give legal rights to people who make creations or 'products of the mind'. There is more than one kind of IP, and each IP is regulated by its own law.

Each of the laws provides the creators with a **bundle of rights** to use, protect and benefit from their creation and inventions. They also have rights to stop others from using their creations. The idea behind intellectual property laws is to help creators make money from their creations – if other people can't copy or use their creations, then they can permit others to use their works for a fee.

What is Copyright?

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

Understanding copyright laws is an important element of shifting ways of working so that Aboriginal Language Custodians can control and share (including with future generations) the written and recorded outcomes of Language work.

A. What is Copyright?

Copyright is a *bundle of rights* given to authors and creators under the Copyright Act 1968 (Cth). These rights allow creators to **control** and **benefit** from their creations and stop others from using their creations.

B. What do I need to do to get Copyright protection?

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.

To be copyright protected the law requires (Copyright Requirements):

- **Material Form:** The creation must be expressed in some material form; 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.

C. What does Copyright protect?

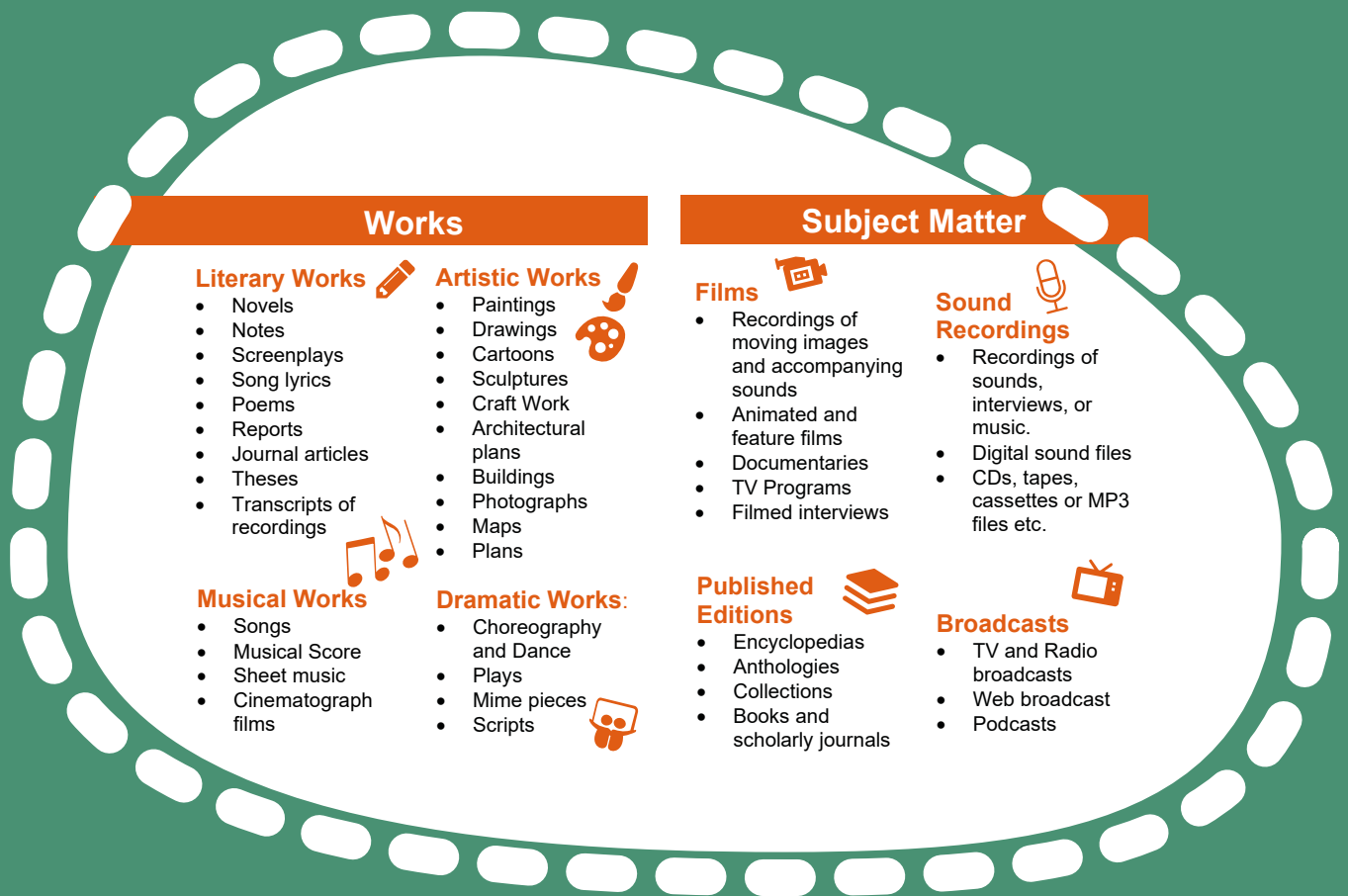
Copyright protects *material* things – things that are written down or recorded. The kinds of things that are copyright protected are separated into two classes of creations: '**Works**' and '**Subject Matter Other Than Works**'.

'Works' includes things such as artistic, literary, dramatic and musical works. Most materials reduced to writing or some other material form will be copyright protected as a work.

Literary works are usually the most relevant form of copyright Language workers (being any type of written work). Some common examples include training manuals; teaching materials; published and un-published books or articles; poems or song lyrics. However, copyright protection also covers things like the text generated from recordings, such as interviews. For instance, the protected text might be the transcribed words or handwritten or verbatim notes of an interview.

The film and sound recording itself will also be copyright protected as a 'subject matter other than works'. This includes things such as training videos, interviews, films, sound recordings, or dance and dramatic performances.

See the below table for some examples of copyright material:



D. Is there anything Copyright does not protect?

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 fail to meet these copyright requirements. For example:

Cultural expression (passed down orally):	Knowledge, stories, dance, and designs which are 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. This includes styles of painting like dot painting, or figures such as the Wandjina that has appeared in rock art.
Language and Language words	<p>A Language or Language word is not protected by copyright.</p> <p>This means Aboriginal Language Custodians cannot stop others from using, interpreting, or speaking Language.</p> <p>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 complied with.</p>

E. 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, usually, the commissioner will be the copyright owner. This will depend on the agreement made between the parties.
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 or licenced to another person written contracts.

F. What rights to do Copyright owners get to their works?

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.

However, you can give these rights away, usually for a financial benefit. You can do this by **assigning** your copyright ownership to someone else. For assignment to be effective, it must occur in **writing**, and be **signed** by you as the copyright owner. This can occur either after the creation is made, or beforehand (usually to give the other party some certainty that they will be the owner). This is where contracts can be very important, as it can give the creator of material and other parties certainty around ownership and rights to a creation.

Your **Moral Rights** are your personal rights to your creations, and they cannot be given away. See the table below to discover what kinds of moral rights you have to your creations:

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 parties who edit, interpret, or treat your creation or performance in a way that is inappropriate or damaging to your reputation.

If you are a performer, you also have '**Performers Rights**' (in addition to moral and economic rights). Performers can be actors, dancers, interviewees, musicians, or other live performers. They have certain rights to their performances when giving live performances.

Where you aren't paid for a live performance (after 1 January 2005), you might also share in the copyright ownership of the sound recording. However, where the live performance is commissioned, the commissioner will own the sound recording.

Your Performers Rights include your rights to:

- Make copies of the sound recording;
- Cause it to be heard in public;
- Communicate it to the public; and
- Enter into commercial agreements regarding the use of the sound recording.

These rights can be changed or given away by signing contracts or making verbal agreements that provide for other arrangements.

See the Arts Law Centre Website for more information on performers rights, available at: <https://www.artslaw.com.au/information-sheet/performers-rights/>.

G. How long does copyright last?

Copyright lasts beyond your lifetime, and up to 70 years after your death. The exact length of the expiration date depends on what has been created. After this period had passed, the material is then part of the ‘public domain’.

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.infrastructure.gov.au/media-centre/publications/duration-copyright>.

H. Can I use someone else’s copyright material?

You should ask permission before using someone else’s copyright material.

However, there are some circumstances where it is ok to use another person’s creation without their permission. This includes where:

1. The **expiration date** has passed;
2. You have only drawn **inspiration** from another person’s creation; or
3. Where it is for ‘**fair use**’.

Generally, if you are using older material, the copyright expiration date may have passed. If it has, you can use the material without the permission of the author.



TIP: Do your research!

Before using someone else’s creation, you should try to identify the author and when the material was created (or, if the material was published, the date of publishing).

I. Can I draw inspiration from someone else’s work?

As copyright does not protect ideas, drawing inspiration from someone else’s work is acceptable. However, you must have created something original. You cannot copy someone else’s work.

To be original, you must use your own **skill, labour, and effort** to create **something new**. This will separate you from the thing you drew inspiration from.

You have infringed copyright owners’ rights when you use the copyright work in a way that is not permitted without permission from the copyright owner. This includes any of the exclusive economic rights, such as the rights to make copies, publish the work or communicate it to the public.



TIP: Make it your own!

It is a **myth** that you don’t need permission where you copy **less than 10%** of the material. **This is not true**. Even copying a small part of the copyright material is an infringement if it is considered a “**substantial part**”.

When drawing inspiration from someone else’s creation, you should always make it your own and be careful not to copy even a small part of the original work.

J. Fair Use

There are exceptions to the general rules of copyright.

Usually, you can't use someone else's copyright without permission. However, if you are using the material for any of the following reasons, permission usually won't be necessary:

1. Research or study
2. Criticism or review
3. Parody or satire
4. Reporting the news
5. Judicial proceedings or professional advice
6. Enabling a person with a disability to access material.

These are limited categories and most of the time, you will be required to get the copyright owner's permission to use their works.

K. How do I respect someone else's moral rights?

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. People who are commissioned to create or perform things will have moral rights to that material. Their rights will need to be respected by anyone who uses that material.

When creating resources, you can respect moral rights by establishing protocols to guide appropriate conduct when dealing with moral rights and requesting consent before altering a creator's work.

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_ikdiscussion_paper_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/>



Terri Janke and Company
Lawyers & Consultants

Aboriginal Languages Trust

www.alt.nsw.gov.au | info@alt.nsw.gov.au

Cover art, design and layout by Aboriginal Art by Lani
www.lanibart.com.au

