

INDIGENOUS CULTURAL & INTELLECTUAL PROPERTY (ICIP)

ICIP is a short way of saying Australian “Indigenous Cultural and Intellectual Property”. Sometimes the words “Cultural Heritage” are used to mean the same thing.

1. What is ICIP?

ICIP refers to all the rights that Indigenous people have, and want to have, to protect their traditional arts and culture.

The idea of ICIP is based on the principle of self-determination. ICIP is said to include the following rights:

- Right to protect traditional knowledge and sacred cultural material
- Right to ensure that traditional laws and customary obligations are respected, particularly when money is made from ICIP
 - Eg when a T-shirt is manufactured with a print of a traditional motif on it, the design should be one that is allowed to be used for this purpose.
- Right to be paid for use of ICIP, particularly if it has been used in a way which is inconsistent with traditional laws or without the community's permission
 - Eg if someone copies traditional artwork onto fabric and sells it, then the community is compensated for the illegal use of that work.
- Right to full and proper attribution or naming of the community connected with the ICIP
- Right to prevent insulting, offensive and misleading uses of ICIP in all media
 - Eg an artwork containing traditional knowledge is printed on underwear.
 - Eg a large painting containing traditional knowledge is cut up by a gallery to make 10 small paintings.
- Right to control the recording of cultural customs and expressions, and language which may be essential to cultural identity, knowledge, skill and teaching about Indigenous culture
 - Eg Aboriginal and Torres Strait Island communities can place conditions on an anthropologist who wants to write a book about their languages.

2. What does ICIP cover?

ICIP can cover many different forms of traditional culture and expression. Some of these are:

- writing eg a book, poetry
- music eg a song
- performances eg dance, ceremonies
- artistic work eg painting
- languages

Arts Law Centre of Australia

The Gunnery 43-51 Cowper Wharf Road Woolloomooloo NSW 2011

t. 02 9356 2566/1800 221 457 f. 02 9358 6475 e. artslaw@artslaw.com.au

ABN 71 002 706 256 . ACN 002 706 256

- tangible cultural property eg sacred sites, burial grounds
- intangible cultural property eg stories passed on orally
- documentation of Indigenous peoples' heritage in all forms of media eg reports, films, sound recordings

3. Does Australian law protect ICIP?

Laws all over the world known as "intellectual property laws" protect some of the things that people produce as a result of their intellectual effort. The things protected include artworks and designs.

Australian intellectual property laws *only* protect some forms of ICIP. Australian laws only protect individuals and do not recognize any communal rights. In Australia, the law protects:

- Musical, dramatic, literary and artistic works created by individuals who are living or recently passed away (within 70 years) which are protected by the *Copyright Act 1968 (Cth)* such as paintings, craftworks, sound recordings, films and books. For more information see Arts Law's information sheet on Copyright.
- Moral rights of individual artists. For more information see Arts Law's information sheet on Moral Rights
- Individual performer's rights. For more information see Arts Law's information sheet on Performers' Rights.
- Designs that come under the *Designs Act 2003 (Cth)*. For more information see Arts Law's information sheet on Designs.
- Medicines, treatments and other products protected under the *Patents Act 1990 (Cth)*. For more information see Arts Law's information sheet on Patents.

Australian law does **not** protect other aspects of ICIP, including:

- The underlying idea or information that is put into a work eg the story told in a painting
- A style or method of art eg cross hatching or dot painting techniques
- Traditional languages
- Performances such as dance and music which have not been recorded or written down
- Traditional medicines

Need more help?

Contact Arts Law if you have questions about any of the topics discussed above

Telephone: (02) 9356 2566 or toll-free outside Sydney 1800 221 457

Also visit the Arts Law website (www.artslaw.com.au) and the Artists in the Black website for more articles and information sheets

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (**Arts Law**) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

While Arts Law tries to ensure that the content of this information sheet is accurate, adequate or complete, it does not represent or warrant its accuracy, adequacy or completeness. Arts Law is not responsible for any loss suffered as a result of or in relation to the use of this information sheet. To the extent permitted by law, Arts Law excludes any liability, including any liability for negligence, for any loss, including indirect or consequential damages arising from or in relation to the use of this information sheet.

© Arts Law Centre of Australia 2010

You may photocopy this information sheet for a non-profit purpose, provided you copy all of it, and you do not alter it in any way. Check you have the most recent version by contacting us on (02) 9356 2566 or toll-free outside Sydney on 1800 221 457.

Artists in the Black is a specialised Indigenous program run by the Arts Law Centre of Australia.

Artists in the Black receives financial support from the Australian Government, Department of the Prime Minister and Cabinet, Office for the Arts through its National Arts and Crafts Industry Support (NACIS) program.



Australian Government

National Arts and Crafts Industry Support