

MUSIC AND 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. For more information on ICIP generally, see Artists in the Black information sheet on [ICIP](#).

ICIP in relation to music encompasses the following rights:

- Right to protect traditional knowledge and sacred cultural material
 - Such as the right to stop a non-Indigenous male band playing a sacred women's ceremonial song
- Right to ensure that traditional laws and customary obligations are respected, particularly when money is made from ICIP
 - Such as when a traditional ceremony is performed for tourists, the dances and the music should be ones that are permitted to be performed in public this way.
- 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
 - Such as if someone records traditional music and uses it in their film without permission, 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
 - For example, when a community group is invited to perform a traditional song at an event (such as the opening ceremony at the Commonwealth Games) the program and promotional materials should identify not only the performers and musicians but the tribal or language group whose traditional music is used
- Right to prevent insulting, offensive and misleading uses of ICIP in all media
 - Such as the use of traditional music to advertise Chinese food or a theatrical performance considered to be racist
 - Such as attributing the music of one Indigenous group to the wrong language group and describing it incorrectly

- 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
 - Such as Aboriginal and Torres Strait Island communities can place conditions on an anthropologist who wants to record their ceremonies and music and write a book about it.

2. Does Australian law protect ICIP in music?

Australian intellectual property laws only provide *limited* protection to ICIP. Insofar as music is concerned, there are Australian laws which protect composers, lyricists, musicians, choreographers and performers. There are no laws in Australia which recognize communal rights in traditional Indigenous music and dance.

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 songs, lyrics, and music videos. For more information see Artists in the Black's information sheet on [Copyright in music and lyrics](#).
- Moral rights of those who write or perform music to be named in relation to their music and performances and to have their music and performances treated respectfully. 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](#).

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

- The rights of a particular community or language group to their traditional music and ceremonies
- The underlying idea or information that is put into a musical or dance work eg the story told in a dance or the rules about the use of certain music (eg only for women)
- A style or type of performance or music eg clapping sticks or didgeridoo playing
- Traditional music or dance that has been performed for many generations
- Performances such as dance and music which have not been recorded or written down

Need more help?

Contact Artists in the Black 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 (<http://www.artistsintheblack.com.au>) for more articles and information sheets.

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