

Case Studies on Commercial & Non-commercial Uses of TK and TCE

Four stories: Art, Records, Brands & Healing



TERRI JANKE AND COMPANY
LAWYERS & CONSULTANTS

20 years since *Milpurrurru v Indofurn*

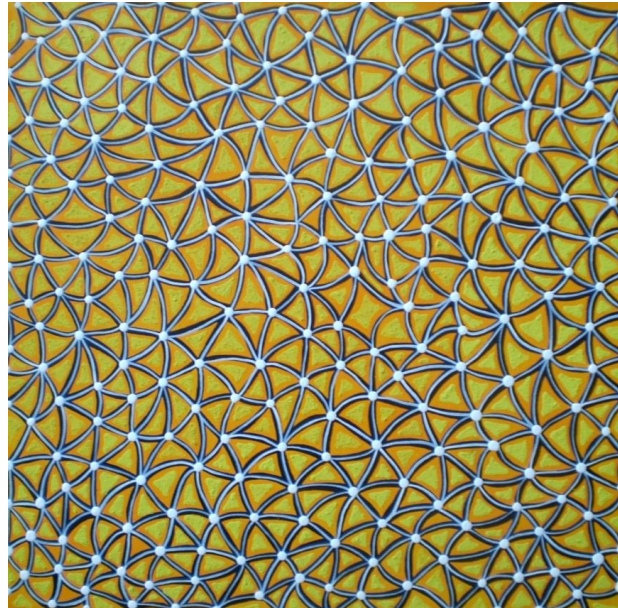


Banduk Marika, *Djanda at the Sacred Waterhole*, 1984



Infringing carpet

Art: Bibi Barba and the Hotel Eclipse

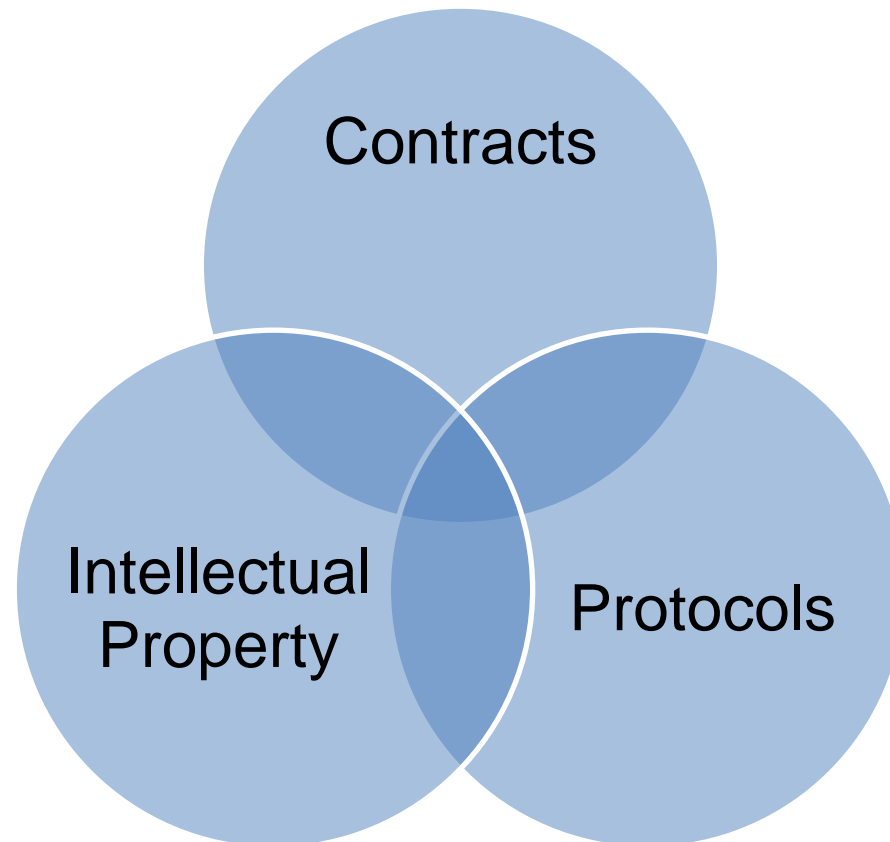


Desert Flowers

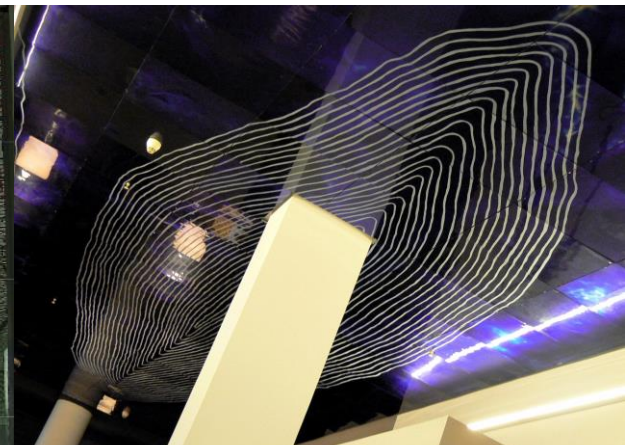
© Bibi Barba

<http://www.theage.com.au/victoria/polish-hotel-tramples-aboriginal-artists-work-20130216-2ek3r.html>

Legal and Ethical Framework



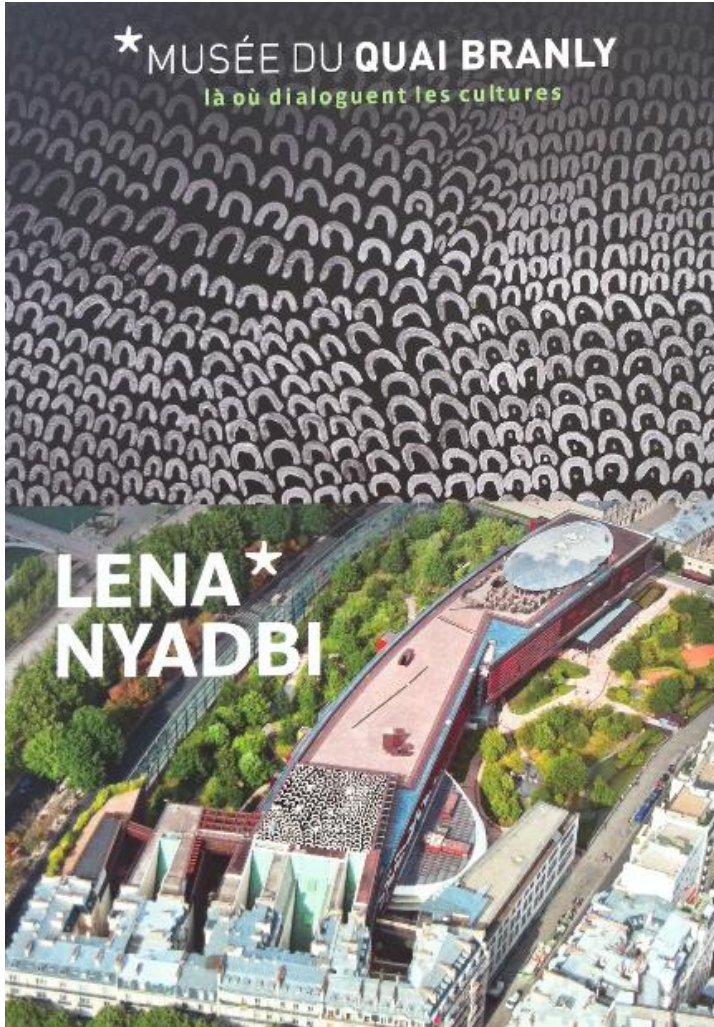
Musee du quai Branly



**From L to R: Lena Nyadbi,
Ningura Napurrula, Gulumbu
Yunupingu, Judy Watson &
John Mawurndjul**

Photos: Alistair Miller

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Records: 'Captives of the Archives'

Issues of Legal Ownership

The final point I wish to make concerns ownership in the legal sense. The information collected about us is simply not owned by us. With regards to public collections of documents these are Crown property in right of either the Commonwealth or the respective states with ownership vested in various public institutions like libraries and museums. With regards to private collections and research these are protected by laws regarding ownership of both real and intellectual property. Information we give to researchers becomes their intellectual property protected under the *Copyright Act*. I have been in the position of having to ask permission to use records regarding my own family history.

Extract from:

Henrietta Fourmile (Marrie),

'Who own the past? Aboriginals as captives of the Archives'

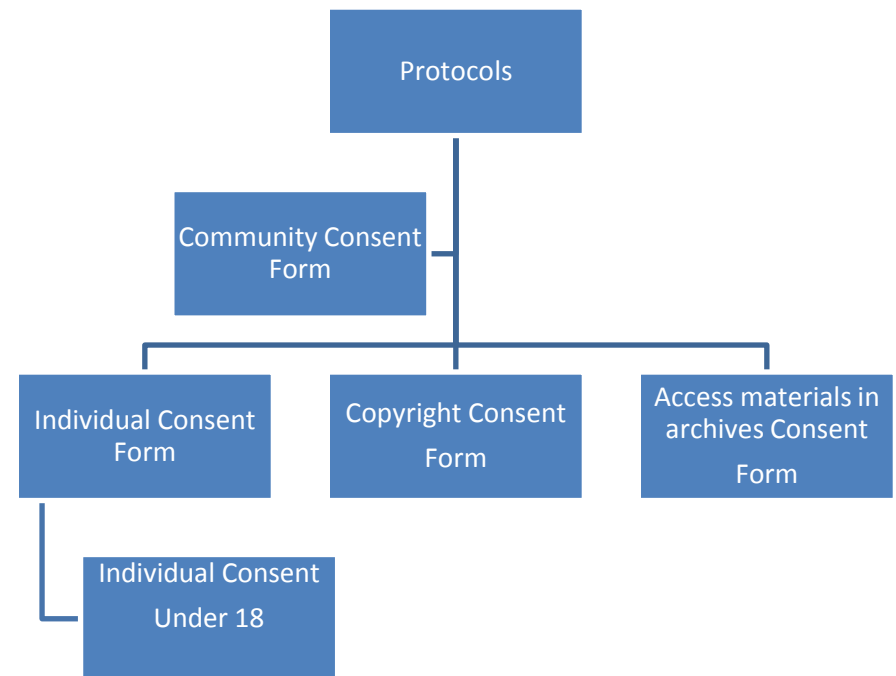
1989, *Aboriginal History* 13: 1–8

Records: Deepening Histories of Place



Recognises right of Knowledge holders and TK communities to control the recording of cultural customs and expressions, and the particular language which may be intrinsic to cultural identity, knowledge, skill and teaching of culture.

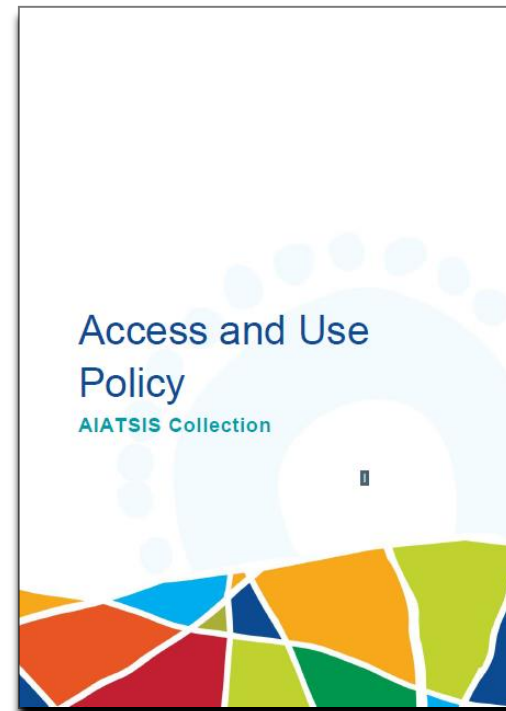
Deepening Histories of Place Project, Coordinated by National Film & Sound Archive & Australian National University.
<http://www.deepeninghistories.anu.edu.au/ethical-protocols/>



Access and Use to Records subject to community consultation and consent



Source: <http://aiatsis.gov.au/sites/default/files/docs/collections-and-library/access-and-use-policy-aiatsis-collection.pdf>



Brands: Use of Indigenous words



Shane Phillips, Indigenous elder and Lauren Ganley, Telstra at launch: Artwork: Pathway to Knowledge, James Simon

Examples of Trade marks



**LABEL OF
AUTHENTICITY**



WANDJINA®

'within the custody of the
Worrora, Wunumbal and
Ngarinyin Aboriginal
people'

Healing: TK, Plants and Patents

Kakadu Plum or
Gubbinge (*Terminalia
ferdinandiana*)

Traditional knowledge
for nutrition and
healing



Source: Australian Native Foods Limited website:
www.anfil.org.au

Mudjala or Marjarla plant patent Jarlmadangah Burru and Griffith University



Source: IP Australia Dream Shield Traditional Knowledge Case Study :
https://www.youtube.com/watch?v=3lSdl11J8_c

My vision: National Indigenous Cultural Authority

Application discloses use

NICA identifies rights holders

Examination of Application

Written Agreement

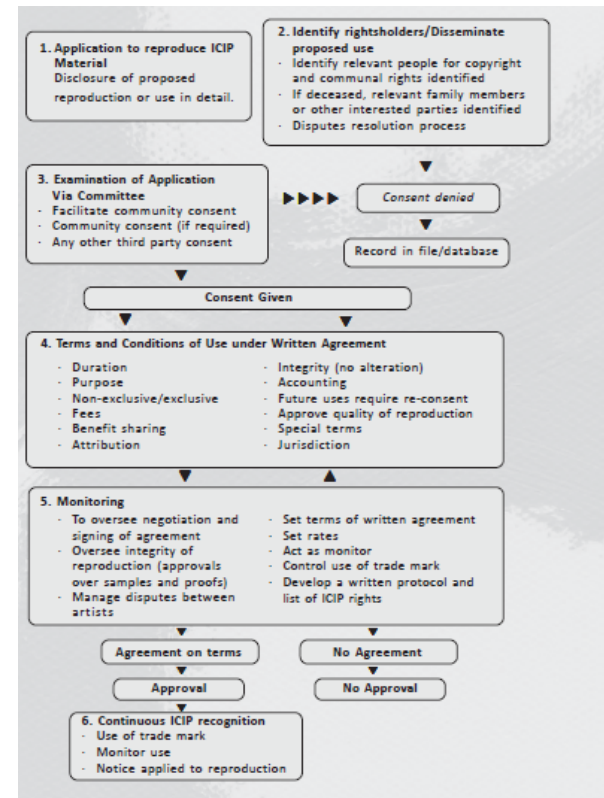
Protocols

Trade mark

A rights tracking database

Monitor compliance

Disputes and enforcement



Source: Terri Janke, **Beyond Guarding Ground**

http://terrijanke.com.au/wp-content/uploads/2014/11/Beyond_guarding_ground_17Jun09.pdf