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

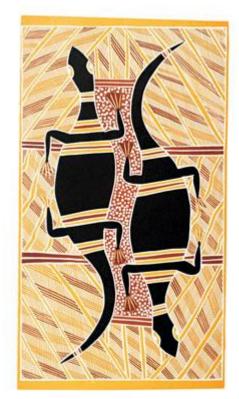
Four stories: Art, Records, Brands & Healing



31 March, 2015



20 years since Milpurrurru v Indofurn



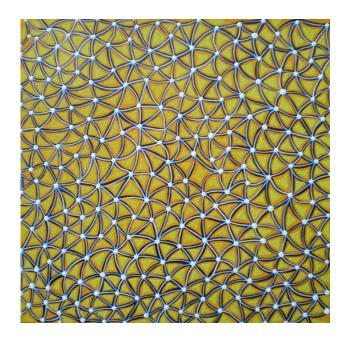
Banduk Marika, *Djanda at the Sacred Waterhole*, 1984



Infringing carpet



Art: Bibi Barba and the Hotel Eclipse



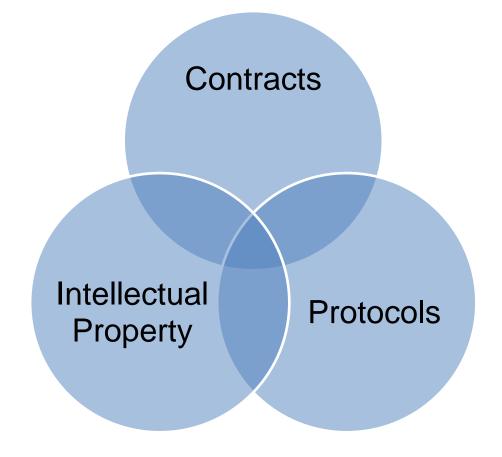
Desert Flowers

© 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



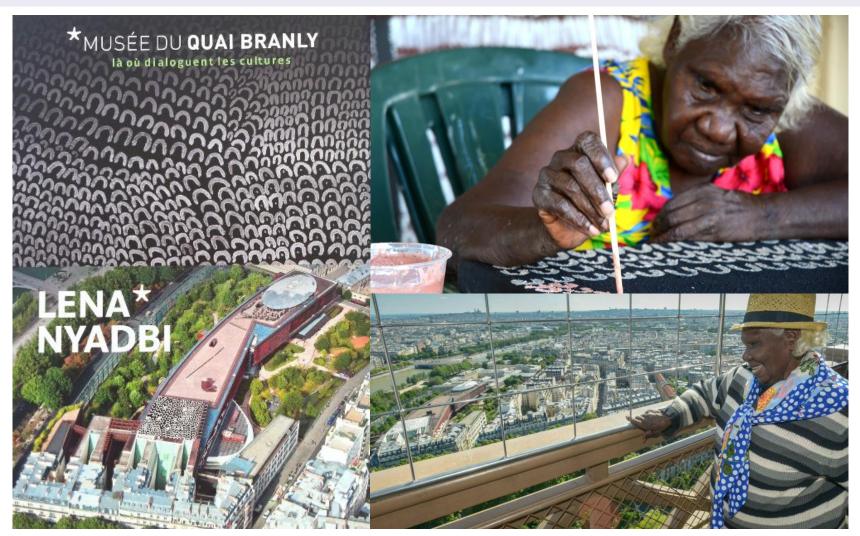
From L to R: Lena Nyadbi, Ningura Napurrula, Gulumbu Yunupingu, Judy Watson & John Mawurndjul

Photos: Alistair Miller

©permission Lydia Miller, ATSIAB, Australia Council

WIPO Seminar





©permission Lydia Miller, ATSIAB, Australia Council



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

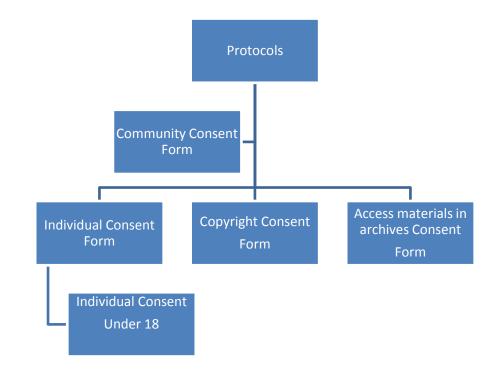


Records: Deepening Histories of Place



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/

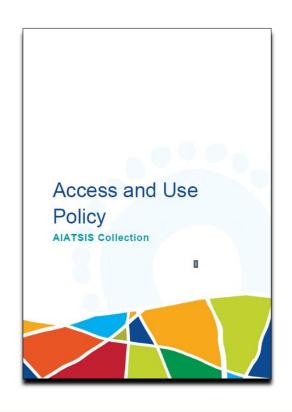




Access and Use to Records subject to community consultation and consent

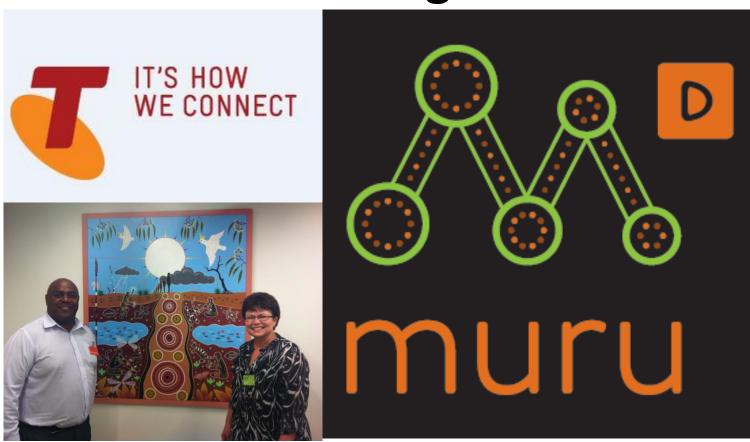


Source: http://aiatsis.gov.au/sites/default/files/docs/collections-and-library/access-and-use-policy-aiatsis-collection.pdf





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











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=3ISdl11J8 c



2. Identify rightsholders/Disseminate

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

Identify relevant people for copyright Disclosure of proposed and communal rights identified If deceased, relevant family members or other interested parties identified Disputes resolution process 3. Examination of Application Via Committee Consent denied Facilitate community consent Community consent (if required) Any other third party consent Record in file/database Consent Given 4. Terms and Conditions of Use under Written Agreement Duration Integrity (no alteration) Purpose Accounting Approve quality of reproduction Benefit sharing Special terms Attribution Jurisdiction 5. Monitoring To oversee negotiation and Set terms of written agreement signing of agreement Set rates Oversee integrity of Act as monitor reproduction (approvals Control use of trade mark over samples and proofs) Develop a written protocol and Manage disputes between list of ICIP rights Agreement on terms No Agreement Approval No Approval Use of trade mark Monitor use Notice applied to reproduction

1. Application to reproduce ICIP

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

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