

# Key Policy Issues on Intellectual Property and Traditional Cultural Expressions

Terri Janke

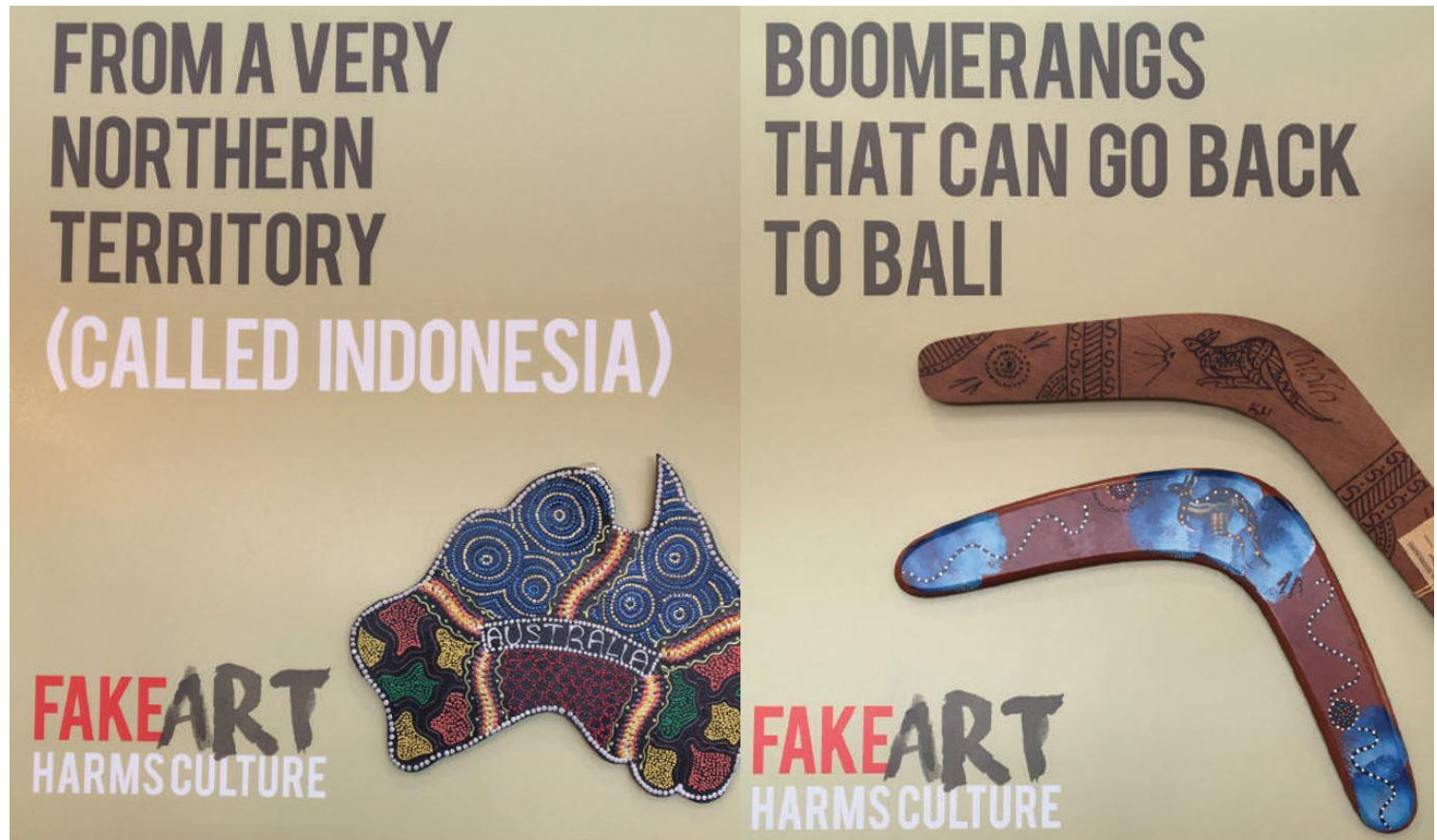


**TERRI JANKE AND COMPANY**  
LAWYERS & CONSULTANTS



# Chanel Boomerang

Last month, the media reported that Chanel, the well-known fashion house, had created their own branded boomerang from wood and black resin. The item was selling for around \$2,000 Australian dollars. (which is about 1340 Euros.) The boomerang is traditionally a hunting tool for Aboriginal Australians but it was also used for sport and entertainment. The boomerang which returns to the thrower is marvel in aerodynamic design and function. It is also a work of artistic craftsmanship made traditionally from Australian wood or tree roots. Styles and shapes differ depending on the clan of origin. Indigenous people in Australia were offended and called it appropriation. It took their cultural icon out of context, and without any connection.



Fake Art Harms Culture – Indigenous Art Code, Arts Law, Copyright Agency|Viscopy.  
Permission: Gabrielle Sullivan, [indigenousartcode.org](http://indigenousartcode.org)



# Maruku Arts - Punu

Many Aboriginal artists produce handcrafted boomerangs. Maruku Arts and Craft from Central Australia is an example. The Anangu group of artists, which include Fred Ward, have built on the tradition of hand carved craft or *punu*. The hand carved kali boomerang, made from mulga wood, sells for \$300.

**maruku.com.au**





Permission: Gabrielle Sullivan, indigenouartcode.org



# Victorian Aboriginal Heritage Act 2016

Part 5A allows Aboriginal groups to register intangible cultural heritage.

Permission required for commercial use.

Anything widely known to the public not included.

Allows Aboriginal people to make Aboriginal intangible heritage agreements with users.

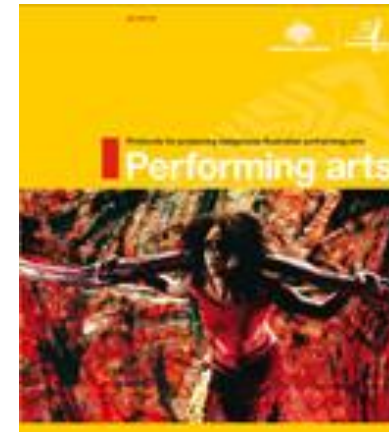
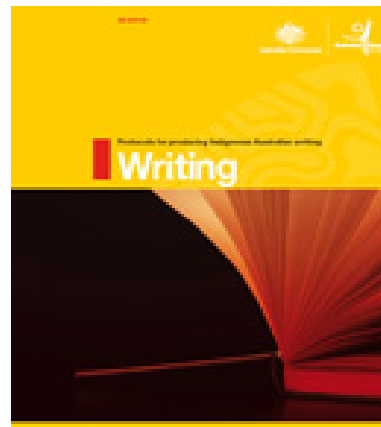
Fines up to \$1.5 million.



# Possum skin cloaks

The practice of making possum skin cloaks was common in Victoria but on colonisation ceased. In the past 20 years, the practice has been reclaimed. Now, there are many more groups reclaiming the practice and the clan etching.

# Indigenous Cultural Protocols



Indigenous Art Protocols  
Australia Council of the Arts  
Permission: Lydia Miller, Director,  
Aboriginal and Torres Strait Islander  
Arts Board





# FOLLOW THE TRUE TRACKS

**1** RESPECT

**5** CULTURAL INTEGRITY

**2** SELF DETERMINATION

**6** SECRECY & PRIVACY

**4** INTERPRETATION

**7** ATTRIBUTION

**3** CONSENT & CONSULTATION

**8** BENEFIT SHARING

**9** MAINTAINING INDIGENOUS CULTURE

**10** RECOGNITION & PROTECTION



# My vision: National Indigenous Cultural Authority

NICA identifies rights holders

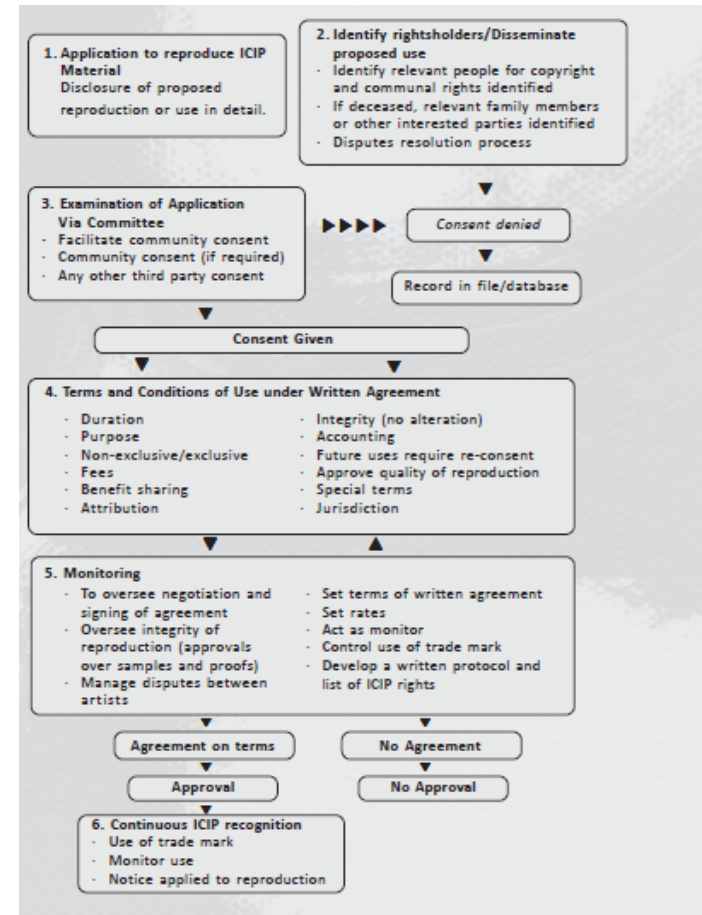
Protocols for Prior informed Consent

Promotes Agreement making

Trade mark

A rights tracking database

Disputes and enforcement



Source: Terri Janke, **Beyond Guarding Ground**  
Available at [terrijanke.com.au](http://terrijanke.com.au)



# National Indigenous Cultural Authority

The role of a National Indigenous Cultural Authority, was considered to be necessary to provide the missing infrastructure. The National Indigenous Cultural Authority, or a Competent Authority, could help out those potential users and adapters of traditional cultural expression to contact Indigenous groups and communities and consult with them. This is often a significant barrier for people who want to do the right thing. The NICA could also set the standards and processes for prior informed consent. The NICA could make protocols nationally acceptable so that people understand the process.