

HOW TO PROTECT AND PROMOTE YOUR CULTURE AND COPYRIGHT



Outline

- Traditional cultural expressions and copyright;
- The Carpets case: *Milpurrurru and Ors v Indofurn*;
- Indigenous fashion collaborations;
- Qantas Emily Kame Kngwarreye Dreamliner case study.

Traditional cultural expressions in Australia

1. TCEs include:

- language, stories, art, designs, symbols, songs, music, dance, films, know how, ancestral remains, sacred sites;
- Copyright can protect some TCEs;
- Copyright protects the original artistic, literary, musical, dramatic works, with identifiable authors, over certain timeframe and expressed in material form;
- Copyright does not protect styles, symbols or oral stories and songs, communal owned works

Milpurrurru and Ors v Indofurn

- Three prominent artists, George Milpurrurru (deceased), Kumantjayi Tjapangati (deceased) and Dr M AO (deceased), together with the Public Trustee of the Northern Territory on behalf of deceased artists brought an action against Indofurn, a Perth-based import company;
- Permission had not been sought and the artists were outraged that these significant works were reproduced onto carpets;
- The company imported the carpets from Vietnam;
- Landmark case in Australia towards greater protection of Indigenous art and copyright

Key Findings

- Copyright in the works was a key question as Indofurn disputed that copyright subsisted in the works given the pre-existing traditional designs and images;
- Justice Von Doussa stated that “each artwork is one of intricate detail and complexity reflecting great skill and originality”;
- Artworks did also follow traditional Indigenous form and were based on dreaming themes;

Key findings

- The Court considered whether the carpets had infringed copyright of these artworks;
- Whether a substantial part of the artwork had been copied without permission of the artists;
- Indofurn were found to have had a direct copy of the original art works;
- The Court found that the carpets had similarities to the original artwork which was a substantial part;
- The Judge found that the carpets were copyright infringements of the artworks;
- The determination of substantial copying in the works that were altered was an important part of the case

Key findings

- The Court found copyright existed in the works and carpets had infringed works;
- 246 carpets were made between 1991-1994, offer of \$AU14 per carpet;
- Carpets were sold for \$AU500-\$AU4000;
- The Court ordered delivery up of unsold carpets and damages of \$AU188,000;
- Carpets were burned by Dr M AO and Yolgnu community, one hangs in the Supreme Court in Darwin as a reminder;
- Damages for culturally based harm, pre Moral Rights in Australia

Indigenous fashion collaborations

- Indigenous fashion- ethical collaborations with art centres, artists and designers;
- Use of copyright in ethical licensing of artworks and textiles;
- Australian Fashion week- Indigenous designers mentored and showcased;
- Gorman x Mangkaja art centre;
- Kip and Co x Babbarra Womens centre;
- Otis Carey x Billabong;



MANGKA
x gorma

Photographed by Charles Fréger
Location: Fitzroy Crossing, WA



Qantas Emily Kame Kngwarreye Dreamliner

- In 2016-17, Qantas worked with Copyright Agency to licence the artwork, Yam Dreaming from the Emily Kngwarreye Estate;
- The Kngwarreye family were consulted on the cultural significance of the artwork;
- Balarinji designed the work to fit onto the Dreamliner plane;
- Licence agreement included royalties, term of licence, colours to match paint on plane, how the artwork was to be displayed, merchandise;
- Royalties paid to the Kngwarreye estate;
- Dreamliner plane flown from Seattle to Alice Springs to meet the Kngwarreye family

Key points

- Copyright can protect some tangible, contemporary TCEs;
- Copyright would vest in an author or authors;
- Copyright of artworks, songs, stories, films and literary works can be licensed;
- Copyright can last for the lifetime of the creator plus 70 years;
- Copyright management organisations can help their artist, writer, musician and filmmaker members to negotiate licensing deals;
- Refer to your national copyright office and WIPO for more information

Thank you



Erub Ladies with their giant squid 2019