‘DOING THE RIGHT THING’: BALANCING INTELLECTUAL PROPERTY LAW, CUSTOMARY LAW AND INDIGENOUS COLLECTIONS [1]

ABSTRACT

As part of their core activities, libraries and cultural institutions frequently reproduce artworks from their collections for online exhibitions, catalogues and other scholarly publications. This paper focuses upon the difficulties faced by libraries and other collecting institutions that seek to reproduce and publish Australian Indigenous artworks from their collections in a manner that is both legal yet culturally acceptable to Indigenous communities. Initially, the paper places Australian Indigenous artworks into the framework of customary law. It then examines the potential and the shortcomings of current Australian intellectual property law for meeting Indigenous standards and expectations. Finally the paper outlines a case study from the Ian Potter Museum of Art at the University of Melbourne that addresses some of the practical issues faced by collecting institutions that wish to promote Indigenous works.

BODY OF PAPER

As part of their core activities, libraries and cultural institutions frequently reproduce artworks from their collections for online exhibitions, catalogues and other scholarly publications. This paper focuses upon the difficulties faced by libraries and other collecting institutions that seek to reproduce and publish Australian Indigenous artworks from their collections in a manner that is both legal yet culturally acceptable to Indigenous communities.

If publications and online exhibitions are to be deemed respectful and ethical, collecting institutions must now conduct projects in Indigenous culture in accordance with two codes. Not surprisingly, they must comply with western intellectual property law. But adherence to the law is not enough since the Australian intellectual property regime is not able to provide the kinds of protection required by Indigenous artists. If Indigenous cultural expressions are to be treated on Indigenous terms, then they must be treated according to customary law. Only then will Indigenous cultures be treated with respect. In practice, it has proved difficult for researchers and collecting institutions to ‘to do the right thing.’

[1] I would like to acknowledge the contribution of Ms Joanna Bosse, Assistant Curator of the Ian Potter Museum of Art at the University of Melbourne for sharing the research that forms the basis for the case study referred to in this article and for her generosity in commenting on drafts of this paper.

Historically the conduct of research into Indigenous cultures and traditional knowledge has played a part in the appropriation and misappropriation of Indigenous heritage. In the Australian context, Aboriginal and Torres Straits Islander peoples have been studied and researched extensively by anthropologists, ethnographers, archaeologists, historians, scientists, botanists, and more. Even well intentioned researchers have participated in the systematic dispossession and alienation of Indigenous cultural heritage. Cultural artefacts and skeletal remains were removed, ceremonies, stories and artworks were recorded, photographed, analysed and published. Many of these objects and photographs found their way into classification and storage in archives and museums far from the communities that produced them, within august and formal institutions that were traditionally alien and unwelcoming to Indigenous peoples (Nakata &Langton, 2005; Anderson, 2004; Turnbull, 1999, Hudson, 2006, Aboriginal and Torres Strait Islander Library and Information Resources Network Protocols, 2006)).

Initially, the paper places Australian Indigenous artworks into the framework of customary law. It then moves to explore the possibilities and shortcomings of the current intellectual property law framework for meeting Indigenous standards and expectations. Finally, the paper examines a case study that addresses some of the practical issues that researchers encounter in the quest to treat artworks in accordance with the standards expected by Indigenous customary law.

At the outset, it should be stated that this paper is not concerned with the workings of the commercial mass-market for artworks or 'tourist arts' (Graburn, 1976). Neither is it concerned with the development and protection of the flourishing Indigenous contemporary fine art market. It is limited to the investigation of issues that are likely to confront a librarian in managing works of cultural importance.

Traditional Cultural Expressions in Australian Indigenous culture

Indigenous traditional knowledge is transmitted from generation to generation. It tends to be orally transmitted, and until comparatively recently, traditional knowledge was not often documented (Nakata et. al, 2005). In this cultural context, artworks of all kinds are of critical importance to defining identity. The form and style of an artwork identifies the clan and even the family ties of an artist (Ian Potter Museum of Art, 2006). Artists record 'knowledge, landscape and ideas' with messages that are political, social and cultural. Artworks can record stories, histories, traditional knowledge, and fulfil an educational and entertaining purpose (Janke, 2002). A recent report to the Senate Standing Committee on Environment, Communications, Information Technology and the Arts expressed this in the following terms:

> 'The practice of art making within communities is part of the continuum of ceremonial practice, reinforcing people's connection with traditional lands, ancestral beliefs and ritual. It also provides opportunities for the transmission and reinforcement of cultural knowledge to younger members of the community' (Senate Standing Committee ECITA, 2007, p. 24).

Effectively, artists are responsible for 'safeguarding' cultural knowledge (Janke, 2002).

Australian Indigenous commentators are anxious to point out that Indigenous cultural expression is dynamic, responding to changing environments, surviving and developing against great odds (Janke, 2002). At the same time, it is regulated by customary law that is 'the body of rules, values and traditions that are accepted by the members of an indigenous community as establishing standards or procedures to be upheld in the community.' These customary laws control dissemination and ownership, and they are 'central to identity and cultural maintenance.' (Janke & Quiggin 2005). Hence senior members of Indigenous communities rely upon customary law to authorise particular artists to reproduce culturally significant stories and dreamings. The control over Indigenous cultural and intellectual property (ICIP) exerted by customary law effectively confers a degree of communal ownership over traditional cultural expressions since the individual artist has been empowered to create these works by their clan.

The problem for Australian Indigenous peoples is that customary law is not recognised by western law so that it cannot be enforced outside their own clans. Indigenous Australians have realised that this translates to a failure to control cultural heritage. Hence, Indigenous artist, Julie Dowling commented:

> 'I do know of many who have lost cultural integrity and spiritual power when their works have been stolen or used without their permission. It is devastating because it means that we are still not free…our culture is not 'really' ours and we do not have autonomy over our future' (Mellor, 2001, p. 50).

The operation of customary law is clearly seen in the copyright infringement case, *Milpurrurru v Indofurn, Pty Ltd*, 1995 IPR 209. Evidence given in this case (often known as the Carpets case) led von Doussa J to the view that Aboriginal creation stories and dreamings were of deep significance to the group to which they belonged. Aboriginal law dictated that these stories were secret as well as sacred and could only be revealed to a limited group based upon gender, age and initiation. He found that artworks were 'an important means of recording those stories, and for teaching future generations' hence they were seen as a means of preserving cultural identity. Given the close relationship between art and customary law, he found that it was not surprising to discover that 'painting techniques, and the use of totemic and other images and symbols are in many instances, and almost invariably in the case of important creation stories, strictly controlled by Aboriginal law and custom.' Under these circumstances, accuracy was paramount, inaccuracy could 'cause deep offence to those familiar with the dreaming.' (*Milpurrurru v Indofurn*, 1995).

The right to create artworks from sacred stories, using clan totems and recognised designs, remains with the traditional owners or custodians who retain the 'authority to determine whether the story and images may be used in an artwork, by whom the artwork may be created, to whom it may be published, and the terms, if any, on which the artwork may be reproduced.' (*Milpurrurru v Indofurn*, 1995). According to

Aboriginal customary law, the custodians are responsible for any misappropriation and unauthorised use of an artwork and must act to preserve the integrity of the dreaming and to punish the person responsible for the breach. In this way, the images, and the stories that they portray are collectively owned and managed by the clan.

LEGAL FRAMEWORKS

Libraries that choose to publish works in their collections must ensure that their practices and publications meet legal standards with regard to intellectual property law. In Australia, Indigenous artists have recognised that intellectual property law has the potential to protect their interests and they are not reluctant to take action (Anderson, 2004; Brown, 2003; Golvan, n.d.). When asked in an interview whether her works had ever been used without her permission, Indigenous artist, Julie Dowling replied:

> 'If it ever happened to me then I would call in the training I had in arts and copyright law that I studied at university to make the initial moves towards final litigation. I want to use the mainstream law to seek justice. Without the protection of these laws (and some need to be amended for community cultural ownership) then our cultures will slowly turn into meaningless junk. I want a cultural future' (Mellor, 2001, p. 50).

Intellectual property law in the form of trademark law, trade practices law and design law have all been used to protect Indigenous traditional cultural expressions in Australia. Although these have been important developments, they relate more to commercial practice and economic exploitation of works. Libraries are unlikely to find themselves in breach of these laws if they seek to use Indigenous artworks in exhibitions and scholarly publications. Hence these branches of intellectual property law will not be discussed in this paper, although further information can be readily located in several recent reports (Senate Standing Committee on ECITA, 2007; Janke & Quiggin, 2005). The law related to confidential information may be of significance but copyright is likely to be of most relevance to the activities of a library using traditional cultural expressions.

Copyright

Whenever a library reproduces, publishes or communicates an artistic work to the public, they are doing an act that is recognised in s 31 of *Copyright Act* as an exclusive right of the copyright owner. These exclusive rights endure for 70 years after the death of the artist. Unless the term of copyright has expired or a statutory exception to copyright applies, a library must obtain a licence from the copyright owner to do any of these acts in relation to a work.

Actions for copyright infringement by Indigenous artists have been taken to protect the economic interests of the artists concerned (Australian Copyright Council, 1999). But copyright cases have also been brought by Indigenous artists as an attempt to control the

use of imagery that is of cultural significance to the clan. These cases represent attempts to enforce customary law using western law.

Milpurrurru v Indofurn has already been referred to in this paper. In this case, three Indigenous artists and a further five deceased artists (represented by the Public Trustee) alleged that their artworks were reproduced on carpets made in Vietnam and imported into Australia without licence. All of the works were well known works that had been exhibited in major national galleries and collections, and all were from artists whom von Doussa J described as 'recognised nationally and internationally as exceptional'. The issue of substantiality was important in this case. Von Doussa J found that seven of the carpets represented exact copies of Aboriginal artworks and were clear cases of infringement. However a further three carpets were not exact copies, but in the view of von Doussa J, they still reproduced substantial and distinctive features of the works and also constituted infringement (*Milpurrurru v Indofurn*, 1995).

In this decision, von Doussa emphasised the importance of evidence presented by the Applicants about the sacred and cultural significance of these works –evidence that has already been alluded to within this paper. He also accepted evidence about the operation of Aboriginal customary law in relation to custodianship of sacred totemic symbols. He found this was a flagrant infringement warranting additional damages and he awarded these damages on the grounds of the suffering and distress caused by 'culturally based harm' and an assessment of the 'cultural aspects of the harm.' (*Milpurrurru v Indofurn,*, 1995). It is noteworthy that a sum of $70,000 was included as additional damages in part for 'the harm suffered by the first three applicants in their cultural environment.' (*Milpurrurru v Indofurn*, 1995). In this case, copyright law had been successfully invoked to protect economic and cultural heritage rights of Indigenous artists.

Limitations of copyright protection

Despite the fact that Indigenous artists have used copyright law to protect their works against unauthorised use, it still provides only limited protection for traditional cultural expressions. These limitations particularly apply to older works. For example, the duration of copyright is a serious issue. Cultural significance does not expire with the copyright term. An artwork that is sacred will still be sacred 70 years after the death of the author. Respect for Indigenous heritage rights may include re-thinking the concept of the public domain (Anderson, 2004; Hudson, 2006).

The *Copyright Act* permits the reproduction of three-dimensional artworks (such as sculptures) that are on permanent public display. Works of artistic craftsmanship can also be freely reproduced. S 26 allows these works to be painted, drawn and photographed. They can also be published and televised without infringing copyright. Many items of significance fall into this category such as Morning star poles, totem and ceremonial poles, headdresses and coolamons (Janke, 2002).

Copyright only protects the material expression of a work, and does not protect the knowledge or ideas that might be represented in the work. This is especially problematic for Indigenous communities in their dealings with researchers because it raises so many issues related to ownership and control of traditional knowledge. For example, if a book is produced with photographs of Indigenous sites, ceremonies and artworks, the community who contributed this traditional knowledge will not own the copyright in this work. Historically, many photographs, films and research records have found their way into libraries and archives so the Indigenous communities do not own the physical items either. And, the location of these records in remote and august institutions meant that at least until recently, communities were effectively denied access to these items, often not knowing that such collections even existed (Anderson, 2004; Nakata & Langton, 2005). Copyright also does not protect styles of painting. Hence traditional raark etching and x-ray styles that are characteristic of particular Indigenous communities have been misappropriated and exploited by non-indigenous artists. Again, it is another area where ICIP rights are not protected by copyright law.

However, perhaps the most serious limitation of copyright law in protecting Indigenous heritage rights is the failure to acknowledge and protect the collective rights and ownership of Aboriginal cultural heritage. Copyright law confers individual rights on the author, and can recognise joint ownership rights for co-authors. But, as has already been discussed in this paper, the right to authorise artworks from creation stories and dreamings rests with custodians within the clan who control the rights to using the totems and designs used in artworks. The communal rights of the clan became very significant in *Bulun Bulun v R. & T Textiles Pty Ltd* (1998) 41 IPR 513. In this case, von Doussa J determined that the collective rights of an Indigenous community could not be recognised under the *Copyright Act*. However there have been proposals to introduce some form of collective rights through Indigenous Communal Moral Rights.

Exceptions to copyright are important for libraries and their clients, but potentially create tensions with Indigenous heritage rights. The Libraries and Archives provisions of the *Copyright Act* permit a library to engage in some acts in copyright. S 49 of the *Copyright Act* permits libraries and archives to copy manuscripts and published works for users who make a declaration to the library that the material is required for research and study. S 51A also permits copying and communication of unpublished materials (including artistic works) for the purposes of research. S 51A(3) also allows some copying for the purposes of administering the collection and includes some (inadequate) provisions for preservation copying.

As Anderson points out, the Libraries provisions are considered to be in the public interest, but there are 'circumstances where the public interest and Indigenous interests collide.' (Anderson, 2004). Indigenous communities often resent the nature of collections that are housed in libraries and archives since they do not control who has

access to these works and what is made available to the public (Aboriginal and Torres Strait Islander Library and Information Resources Network Protocols, 2006, Anderson, 2004). Libraries are mandated to provide access to materials so tension arises when this accessibility is against the wishes of the indigenous communities that are represented in the collections. In the context of this paper, it is worth noting that the libraries and archives provisions would not allow a library to publish a copyright work or to put it online for open access.

Cultural institutions of this nature are usually very anxious to ameliorate the concerns of Indigenous groups and make every effort to meet ethical standards. This can result in a variety of strategies where libraries may restrict some materials from female staff members and also from other Aboriginal groups who are not entitled to view them (Brown, 2003). Such strategies may conflict with the objectives of a researcher or research project.

The situation regarding fair dealing is analogous to that of the Libraries and archives provisions. According to the *Copyright Act*, it may be considered 'fair' to copy a work for study and research. But the criteria for determining fairness is market-driven and does not account for cultural considerations that may prompt Indigenous peoples to declare that such copying is not fair at all.

In essence, this encapsulates the fundamental weakness of using the *Copyright Act* to protect Indigenous heritage rights. There is a fundamental conflict. Copyright, and indeed western intellectual property law in general, is largely designed to protect economic interests of creators. While economic exploitation is of value to Indigenous artists, there is also another dimension of cultural values that are of equal importance to the artist and their communities. As Mick Dodson states:

> 'It is clear that our laws and customs do no fit easily into the pre-existing categories of the Western system. The legal system does not even know precisely what it is in our societies that is in need of protection. It is a long way from being able to provide such protection. The existing legal system cannot properly embrace what it cannot define and that is what lies at the heart of the problem' (Anderson, 2004, p. 9).

Protocols

In Australia, considerable effort has been made by organisations and industry groups to develop protocols for dealing with traditional knowledge and traditional knowledge owners (Anderson, 2004). Since western law cannot adequately protect Indigenous heritage, protocols give guidance about appropriate interactions with Indigenous culture from the perspective of customary law. Indigenous curator, Doreen Mellor, assessed the value of protocols as encouraging ethical conduct (Janke, 2002). Further, she wrote:

> 'Protocols provide a means of complying with the customs and cultural value systems of a particular situation, group or culture, in order to acknowledge and respect the situation or people

involved, and to ensure that negotiations and transaction are able to be undertaken in a spirit of cooperation and goodwill' (Mellor, 2001, p. 41).

Indigenous groups point out that Indigenous cultures have always had protocols for dealing with materials and that these were reflected in customary law (WIPO, 1998-1999).

Protocols embody important statements of principle and they are also intended to guide practice in particular industries and activities. They have been devised for the library and information industry (Nakata & Langton, 2005, ATSILIRN, 2006), museums (Pantalony, 2007) television and film making (Bostok, 1997), lawyers (Karlsson, 2004), and local government. Importantly for the purposes of this paper, the Aboriginal and Torres Strait Islander Arts Board of the Australia Council has produced a series of protocols related to the arts, authored by lawyer, Terri Janke (Janke, 2002; Janke, 1998). The protocols are designed to 'provide information and advice on respecting indigenous cultural heritage.' (Janke, 2002, p. 1)

None of the protocols claim to be prescriptive, since protocols and customs vary so much between clans (Janke, 2002; Mellor, 2001, ATSILIRN, 2006). Janke reinforces this view by stating that protocols are only a 'first point of reference in planning a work with Indigenous visual arts' practitioners….When you need specific advice on the cultural issues of a particular group, we recommend that you either speak to people in authority, or engage and idigenous consultant with relevant knowledge and experience.' (Janke, 2002, p. 1) This is a key message from these protocols – communication with local groups is critical to the observance of the customary law surrounding an artwork.

Commonly, protocols are based upon over-arching principles that are accompanied by guidelines for practice. The *Visual Cultures* protocol by Terri Janke is based upon eight principles - *Respect, Indigenous control*. *Communication, consultation and consent, Interpretation, integrity and authenticity*, *Secrecy and confidentiality*, *Attribution, Proper Returns*, *Continuing Cultures, Recognition and Protection.*

Art Centres and Knowledge Centres

The protocols all unequivocally assert that extensive consultation with communities, individual artists and families is critical to avoiding inadvertent cultural misappropriation and offence. They stress that it is necessary to find the right person with authority to deal in cultural works of the community. This is easier said than done. Artists and communities are often remote, their populations and family structures are often fragmented and many works are unidentified (especially photographs).

As a strategy for locating artists and their communities, the community art centres offer a logical starting point in places where they have been established (Mellor, 2001). Arts Centres have been established in at least 110 communities to promote and market the

work of local artists **(**Senate Standing Committee on ECITA, 2007). These arts centres are non-profit organisations owned and staffed by Indigenous people in their own communities and they are concerned with commercial sales as well as protection of intellectual property and ethical practice (ANKAAA, n.d.). Some centres have their own marks to ensure authenticity of works (Mellor, 2001). Even when there is an established arts centre, the task is not necessarily easy:

> However many Art Centres are very remote, many have 4WD access only, at most communities you cannot stay overnight. Art Centres are closed on weekends except by prior arrangement. Permits to enter remote communities are invariably required. Processing permits can take up to 3 weeks. The individual Art Centre will give contact details for permit applications. Art Centres may be closed for community activities or unforseen circumstances **(**Desart, n.d.).

Not all communities have arts centres. Knowledge centres might provide another point of local contact for researchers. Indigenous knowledge centres have been established in the Northern Territory and Queensland in conjunction with the State Library services. 31 centres are either in operation or planned in Queensland (Nakata & Langton, 2005) and there are currently 8 in the Territory as well as 22 community libraries. The objective of the NT knowledge centres is to preserve indigenous cultural heritage and to provide access to that knowledge to the local community. There is an emphasis on digital preservation of photographs, videos, recordings of songs and stories and tapes as well as documents (Nakata & Langton, 2005)

Land Councils are also a good place to start in communities where there is little infrastructure in the arts. Government departments concerned with arts and culture in each state also have indigenous representatives who may be able to assist with enquiries (Mellor, 2005). Agencies such as the Aboriginal and Torres Strait Islander Arts Board of the Australia Council and the Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS) may also be able to help.

Case Study: Creations Tracks and Trade Winds: Groote Eylandt bark paintings for the University of Melbourne Art Collection

> As a museum, our task is to share and understand artworks. We begin this process by opening up lines of communication with communities to ensure that our information on the artworks is accurate and our use of them is appropriate. Curator Joanna Bosse has learned a great deal from artists' relatives, elders and community members. As a result of their generous cooperation in her research we can pass on new and more accurate information about artists, titles, dates and meanings. We can establish cultural protocols for care, display and interpretation of the artworks. Just as we can ensure that the works are there for community members themselves to engage with when they wish (Ian Potter Museum of Art, 2006).

This exhibition was held at the Ian Potter Museum of Art at the University of Melbourne from 23 September 2006 to 21 January 2007. The years of research conducted by the Ian Potter Museum of Art prior to this exhibition provides an example

of good practice in many areas of handling cultural heritage and it also illustrates some of the uncertainties and difficulties associated with research in this area. As the Director Chris McAuliffe stated, custodianship of these paintings involved responsibilities for the Museum, extensive research and the cultivation of relationships with the Anindilyakwa Land Council which enabled establishment of 'cultural protocols for care, display and interpretation of the artworks.' (Ian Potter Museum of Art, 2006). The museum did not merely seek to observe bare legal minimums.

This collection consists of 36 bark paintings in the medium of 'ochres and orchid extract on eucalyptus bark.' (Ian Potter Museum of Art, 2006). They depict historical scenes of interaction with the Macassan traders and missionaries; creation stories of ceremonial significance; animal totems and maps (Ian Potter Museum of Art, 2006). The Chairman of the Land Council observed that the 'totems and ceremony depicted in the paintings continue today as an integral part of our culture.' (Ian Potter Museum of Art, 2006). Hence the paintings can be seen as transmitting cultural knowledge to succeeding generations.

The bark paintings are historically significant and form part of the Leonhard Adam Collection of International Indigenous Culture which 'has been a focus for teaching and research.' (Ian Potter Museum of Art, 2006). These barks date from the 1940's and were donated to the University of Melbourne between 1946-1950. They were collected by 'colourful pearl fisherman and Arnhem Land beachcomber Fred Gray, who served for two decades as superintendent of Umbakumba settlement on Groote's eastmost promontory.' (Rothwell, 2006) The barks were not collected in a formal or systematic manner hence record-keeping and fieldwork was poor. Collection by Gray predated the Australian American Scientific Expedition into Arnhem Land led by Charles Mountford in 1948 which was the first major indigenous collecting expedition.

Before the exhibition in 2006, the works had been rarely exhibited although prior to 1973 they were used by the History Department within the University as teaching aids. In 2001, Professor Marcia Langton informed the University that the collection included culturally sensitive materials that should not be displayed. However, the sensitive works were not identified at that point. As a result, the University did not exhibit these barks again until the uncertainty of the status of the artworks was resolved. The task of finding the owners and information about the works was daunting. Half of the works were by unknown artists and acquisition records were scant. The paucity of information about the artists and the works was not assisted by the fact that all of the known artists were deceased. Groote Eylandt is remote. At that time there was no arts centre on the island that may have been able to coordinate such enquiries. To complicate matters, all of the identified works were still in copyright.

This is not an uncommon dilemma for cultural institutions. The University had become the keeper of a rich collection of artworks that could not be made accessible for

researchers or the public since there was no reliable information about the cultural significance of the works. Since most Aboriginal people die intestate, locating an estate can be overwhelmingly difficult. The problems are of a practical nature as well as posing ethical and legal problems. Yet the Museum needed to 'ensure that our information on the artworks is accurate and our use of them is appropriate.' (Ian Potter Museum of Art, 2006).

The exhibition of 2006 was possible since many of these issues were resolved through the establishment of a relationship of trust between the Museum and the community in the Groote archipelago. Professor Marcia Langton introduced Museum staff to Joe Neparrrja Gumbala of the Yolngu people from Galiwin'ku in Arnhem Land who was a visiting scholar at the University of Melbourne (Nakata & Langton, 2005). Joe Gumbala was in turn, able to facilitate contact with Jabani Lalara, a senior member of the Angurugu Community Council. Communication with the local community was difficult but essential to the success of the project. The curator visited Groote Eylandt twice in the course of her research and representatives of the community also came to Melbourne. There was an initial meeting in Darwin to establish the project. Jabani came to Melbourne three times.

Identification of the artists was difficult since their works often predated living memory. Archival records were consulted by the curator and this information was conveyed to the community. Documentary and census materials in the collections of AIATSIS and the Northern Territory Archives added to the stock of knowledge about the artists and their works. However much of the information came from direct communication with elders and family members.

As a result of detailed consultation and cooperation of elders, all of the works have been attributed.. Distinctive styles and subject matter 'have been conveyed with some certainty; types of fish, birds and turtles have been identified, as have the clan associations for the patterns of dashes and lines that give these paintings their animated quality' (Ian Potter Museum of Art, 2006).

The Museum sought advice from the elders about appropriate use of all works including any of ceremonial significance. Four of the works were identified as of ceremonial significance and these were deemed to be unsuitable for public display. These barks were not included in either the exhibition or the catalogue and are currently in closed storage. In this way, the indigenous community is actively involved in setting boundaries for the collection.

When it came to exhibiting the materials, the Museum sought a 'cultural clearance' from the community that was signed by the Chairman of the Anindilyakwa Land Council. The term 'cultural clearance' is used by Emily Hudson in her legal primer

where she notes the importance of securing permissions from community members and stakeholders. These permissions may not be legally mandated but still serve to acknowledge the community's ownership of the cultural materials (Hudson, 2006). This respects the collective ownership of the artworks as it is understood in Aboriginal customary law.

The community has benefited from engagement with the project in other ways. For various reasons, Groote Eylandt had not developed or maintained an active contemporary art interest as had occurred in many communities. However community leaders were aware of the importance of visual arts in maintaining cultural identity. The Chairman of the Anindilyakwa Land Council noted that the Land Council is 'encouraging the people of the Groote archipelago to continue with traditional ceremony and to rekindle the unique style of art and craft that was readily identified as belonging to the clans of the Groote archipelago.' For the clans of the region, the collection has special historical significance 'while at the same time giving guidance to those current artists who are reviving the style.' (Ian Potter Museum of Art, 2006).

The salient conclusion from this study is that copyright law is not sufficient to protect objects of Indigenous cultural heritage. Observance of copyright law cannot ensure that materials are not used in manner that is culturally offensive to members of a clan. This can only occur if Aboriginal customary law is observed as well so that the community ownership of cultural heritage is acknowledged and respected.

There is no doubt that most libraries and cultural institutions do indeed feel duty-bound to 'do the right thing' But this is no easy task. Complying with the technical requirements of intellectual property law is a challenge on its own, but managing the Indigenous heritage rights adds a layer of philosophical and practical difficulty. There are avenues of support for researchers – protocols for guidance and organisations for contact and support. Hence the task is perhaps not insuperable. Given the immensity and depth of the political and cultural issues at stake for Indigenous Australians, it is incumbent upon libraries to at least try, to make every effort to demonstrate respect for these traditional cultural expressions.

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