

Guide for Museums and Galleries Hosting Exhibitions that include Indigenous Cultural and Intellectual Property (ICIP)



**Museums
& Galleries
of NSW**

This information sheet is designed to give best practice guidance to museums and galleries when they exhibit **Aboriginal and Torres Strait Islander art as part of a touring exhibition**. This information sheet may also be useful when preparing for any exhibition or display that includes Aboriginal and Torres Strait Islander creatives and culture. Exhibiting Aboriginal and Torres Strait Islander art often means sharing traditional knowledge and culture with the audience and participants of the exhibition. **This sheet gives an overview of the rights that artists have in their art, including their Indigenous Cultural and Intellectual Property (ICIP).** Please ensure that any questions that may arise from this information sheet are initially asked of the tour organiser, as they may already have agreements in place with the artists, community or representatives that can be passed on to you. **First, let's understand copyright.**

Right: *OCCURRENT AFFAIR* Education Symposium, FLENK Collective workshop, National Art School, NSW, 2023. Photo by Jacquie Manning.



What is copyright and how does it affect touring exhibitions?

Copyright is the right that a creator or artist gets when they make an artwork. The Copyright Act 1968 (Cth) says that paintings, drawing, sculptures, photographs and craft works (for example, weaving or jewellery) and even sound recordings and films are protected. Usually, the creator or creators of an artwork is the copyright owner.

Copyright owners have rights that only they can use. These include the right to reproduce (or copy) the work (e.g. in an exhibition catalogue) and the right to communicate the work to the public (e.g. by putting an image of the artwork online). These automatic rights mean that when you are hosting a touring exhibition, you should ensure that you have permission to use images of the touring work for any promotional use, including online. Artists who have copyright also have moral rights.

What about moral rights?

When hosting a touring exhibition, it is also important to remember the moral rights that artists have in their work. There are three types of moral rights under the Copyright Act, which include the rights of:

- **attribution:** the right to be named as the author of their work (for example, on the exhibitions labels or in the catalogue).
- **against false attribution:** the right to stop someone else being credited as the author of their work (for example, if another artist's name is placed on the label of your artwork on social media).
- **integrity:** the right to stop 'derogatory treatment' of an artist's work (for example, cropping an image or changing the colours to fit a brochure or catalogue).

Moral rights can help an individual artist to make sure their connection to the work is respected,

but they aren't cultural rights. This is where Indigenous Cultural and Intellectual Property (or **ICIP**) comes in.

What is ICIP?

ICIP is the rights Aboriginal and Torres Strait Islander people have in their cultural expression and traditional knowledge. Culture and knowledge can be included in Aboriginal and Torres Strait Islander artwork in many forms including for example, stories, language, symbols, music, dance, painting techniques or styles.

Although Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples recognises the rights of Indigenous peoples to their cultures and knowledges, Australian law doesn't yet protect these rights. The Government has recently committed to creating new laws which will protect ICIP. This commitment is part of the new National Cultural Policy: Revive, 2023 (see p. 30).

Before any touring exhibition of Aboriginal and/or Torres Strait Islander artwork, it is important to understand what ICIP will be included in the exhibition, and how your gallery will work to make sure that it is recognised, protected and respected. The below checklist gives examples of questions you should ask to help the exhibition go ahead in a culturally appropriate and respectful manner, but it isn't an exhaustive list.

Questions for an exhibiting museum or gallery to consider when hosting an exhibition with works containing ICIP

1. *What relationships do you already have with Elders and/or custodians from local First Nations communities?*

This may be through your local Land Council, a cultural organisation or Aboriginal corporation.

2. *Have you received permission to display the artworks in the exhibition with ICIP material from the copyright owner/s and the custodian/s of ICIP of the works in the exhibition, which may be different from your local First Nations communities?*

The tour organiser may have agreements in place that include your institution or may be able to connect you with relevant custodians

of ICIP contained in the exhibition to begin this conversation.

3. *Have you consulted with those copyright owners and/or custodians to learn about the nature of the ICIP material, its meaning and importance to community?*

Check with the artists or custodians to understand where ICIP knowledge, stories, symbols or other materials exist in each work. This information may have already been collected by the tour organiser.

4. *Have you consulted appropriately to ensure proper attribution of artists and communities, and spelling of names, places and words in First Languages?*

It is important to check with the tour organiser, artists, custodians, language-speakers or linguists to make sure this is done correctly.

5. *Are there any restrictions that the custodians of ICIP have asked to be placed on certain works?*

This may include restrictions around who can see the work (e.g. if it is only meant to be viewed by people of a certain sex, age, cultural group or other status), whether the work is allowed to be photographed, or other restrictions as required by the ICIP in question.

6. *Are there any restrictions around the handling of artworks for the installation and de-installation of works in the exhibition?*

This may include restrictions around who is an appropriate person to handle the objects, in addition to ordinary protocols around the safe handling of artworks.

7. *Will there be a Welcome to Country or Acknowledgement of Country at the start of the exhibition and for any events held during the exhibition?*

Consider who will perform this Welcome or Acknowledgement. How will you appropriately acknowledge both the Traditional Owners of the land on which the exhibition is held, and the communities of the artists whose work is in the exhibition?

8. *Have you asked permission for your museum or gallery to use images of works? For example, in promotional material for the exhibition in print or online, including on social media?*

The best thing to do is to have this in a written agreement confirming how images will be taken or used of the works. This written agreement may fall under the existing agreements with the tour organiser.

9. *What steps have you taken to stop visitors to the exhibition or people viewing online from misusing ICIP material in the artworks?*

This includes protecting the physical safety of artworks by keeping people away from artworks, restrictions on photography and limiting the use of certain material online or on social media.

10. *If there has been a breach of protocol about the use or display of ICIP material, what processes do you have in place for artists, copyright owners or custodians to resolve the issue with you?*

Do you have a system in place for people to make complaints and guidelines around how complaints will be resolved?

11. *Have your staff and/or volunteers received any copyright or ICIP training?*

This might include workshops for gallery staff and volunteers from a relevant training provider or service. If you would like more information on possible training, please contact M&G NSW or Arts Law.



OCCURRENT AFFAIR Education Symposium, FLENK Collective Acknowledgement of Country exercise, National Art School, NSW, 2023. Photo by Jacquie Manning.

Resources

- ☐ Australian Museums and Galleries Association – First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries: <https://www.amaga.org.au/shop/first-peoples-roadmap-enhancing-indigenous-engagement-museums-and-galleries-hardcopy-version>
- ☐ M&G NSW – Information Sheet on Preparing an Acknowledgement of Country Statement: <https://mgnsw.org.au/sector/resources/online-resources/aboriginal/prepare-acknowledgment-country-statement/>
- ☐ Arts Law – Information Sheet – Indigenous Cultural and Intellectual Property: <https://www.artslaw.com.au/information-sheet/indigenous-cultural-intellectual-property-icip-aitb/>
- ☐ National Cultural Policy – Revive (see p. 30 for the commitment to enshrine ICIP in Australia legislation): <https://www.arts.gov.au/publications/national-cultural-policy-revive-place-every-story-story-every-place>
- ☐ Australia Council – Protocols for Using First Nations Cultural and Intellectual Property in the Arts: <https://australiacouncil.gov.au/investment-and-development/protocols-and-resources/protocols-for-using-first-nations-cultural-and-intellectual-property-in-the-arts/>
- ☐ National Standards Taskforce – National Standards for Australian Museums and Galleries: <https://mgnsw.org.au/sector/resources/online-resources/organisation-management/national-standards-for-australian-museums-and-galleries-2-0/>

Need help?

If you need any help with anything that arises from this checklist, Arts Law provides low-cost legal advice to arts organisations, including exhibiting museums and galleries. We advise on ICIP, copyright, moral rights and contracts on a 'best practice' basis to help organisations work in artists' best interests. You can submit a legal query on our website (<https://www.artslaw.com.au/services/legal-query-form/>), email artslaw@artslaw.com.au or call 02 9356 2566.

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OCCURRENT AFFAIR Education Symposium, 'Scrub Club' workshop with Megan Cope, National Art School, NSW, 2023. Photo by Samu Carvajal.

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