

DOING IT OUR WAY: Contemporary Indigenous cultural expression in New South Wales

Introduction

Doing It Our Way aims to provide general information to assist Indigenous visual artists to know their rights. This is important when making applications to the NSW Ministry for the Arts for fellowships, public art projects, residencies, exhibitions and other proposals involving Indigenous visual arts. It further aims to encourage those who commission Indigenous visual arts projects - such as local government bodies and arts organisations - to respect the diversity of Indigenous visual arts practice.

This paper should be read in conjunction with the Ministry's *Indigenous Arts Policy* and its *Indigenous Arts Protocol - A Guide*. These can be downloaded from the Ministry's website www.arts.nsw.gov.au.

Create – Don't Imitate!

Contemporary Indigenous visual arts practice includes painting, printmaking, photography, sculpture and new media and plays a major role in the revitalisation of cultural practices and the continued strengthening of Indigenous identity.

The Ministry seeks to promote excellence and innovation in Indigenous visual arts in New South Wales. Indigenous artists are encouraged to develop their own distinctive artistic expressions which may draw on their Indigenous cultural heritage. Indigenous artists should not need to adopt the more recognised forms of Indigenous arts practice, such as the desert or bark painting styles, in order to have their work identified as Indigenous.

Indigenous artists can explore their own physical and spiritual belongings to develop their own cultural expression.

Charles Trindall, community cultural development worker, Gamilaroi.

Finding Inspiration

Indigenous artistic traditions are diverse and often unique. From rural to urban environments, painting to photography, art reflects the spectrum of Indigenous experience and expression.

Artists find inspiration by:

- talking to elders;
- researching regional cultural artistic traditions;
- experimenting with new styles and media;
- networking and making cultural exchanges with other Indigenous artists.

My life and culture is just as valid and important as any other. I celebrate and promote my culture through my work as an artist and curator. The statement 'you have lost your culture' disturbs me as, in fact, it is an impossibility to lose your culture. What is being insinuated is that you are not living up to naive stereotypical ideas of Aboriginality. Urban Aboriginal culture is just as legitimate as any other culture and deserves the same respect and acknowledgment.

Jonathan Jones, artist and curator,
Wiradjuri/Gamilaroi

H J Wedge

H J Wedge is a Wiradjuri artist born at Erambie Mission, Cowra. He enrolled at the Eora Centre in Sydney in 1989 and soon developed an individual style in his paintings.

I try to paint what I dream; what I hear on television; things you hear people talking about on the train, or when you sit down with other blacks, have a drink and that, especially when they're from other tribes and they sit there and talk about what happened in their life. How their Dreamtime got destroyed as well, but not all of it because most of them really kept it; a lot of people on other missions was too scared to even speak it, and even pass it down.

Brenda L Croft

Brenda is a photographer and curator. In 1998, she was awarded the NSW Indigenous Arts Fellowship. A founding member of Boomalli Aboriginal Artists Cooperative, Brenda is inspired by her travels, life experiences and her family. Her heritage on her father's side is from the Gurindji from Limbunya in the Northern Territory.

Creating artwork should also be about encouraging cultural awareness and pride amongst our own communities and broader non-Indigenous communities.

Indigenous artists like H J Wedge and Brenda L Croft draw their inspiration from:

- their lives and experiences;
- historical and social events;
- cultural beliefs and practices;
- political commentary;
- the environment.

Enhancing Regional Traditions

The desire is to raise the country's understanding of the diversity of Aboriginal cultures, identities and abilities.

Dr Anita Heiss, writer, Wiradjuri.

The maintenance and enhancement of regional cultural traditions is important as artists seek to develop their own artistic expression. Indigenous artists have found the following places useful in researching information on their regions:

- keeping places and cultural centres;
- Australian Institute of Aboriginal and Torres Strait Islander Studies;
- museums and galleries;
- libraries and archives;
- National Parks and Wildlife Services.

When researching traditional cultural practices, artists should be aware that some information may be communally owned and geographically specific. The use of some information may also be culturally sensitive, for example, certain images may only be viewed by women.

While local histories, oral stories and traditional knowledge about visual culture might be available in archives and libraries, it is important to also consult with elders in your regional community.

A number of research institutions have adopted some useful guidelines for Indigenous research. For further information refer to the section on Some Useful Resources.

Protecting your work with copyright

What is copyright?

Copyright laws make it illegal for someone to copy a substantial part or the whole of another person's work. Some artists think that it is not a breach of copyright to copy 10 percent of an artwork. This is wrong. If there is substantial similarity between the works, there is a high likelihood that copyright in the original work has been infringed.

If a person copies a substantial part of another person's work and claims it as his or her own, there may be an infringement of the original artist's moral right of integrity and attribution.

Appropriation is the act of drawing on an existing style of art to make another work. Often it is popular styles, or a more successful artist's works, that are copied. While appropriation is not necessarily a breach of copyright, it is a concern for many Indigenous artists whose symbols or styles have a particular cultural meaning.

Copyright laws are the main laws in Australia that govern the use, production and dissemination of artistic works. Rights are provided to artists under the *Copyright Act 1968* (Commonwealth).

Do I need to register copyright to protect my works?

Copyright protects an artwork as soon as it is created in a material form. Copyright protects the work you have created but not the underlying idea.

It is not necessary to register for protection of copyright and it is not necessary to place a © on your works for protection. However, to protect their works, many artists have developed ways of identifying their works, such as signing the front. Many artists, such as H J Wedge, are also known for their unique styles.

Who owns copyright?

The artist as the creator of the work is the copyright owner of the work. Some exceptions to this general rule are:

- If you are employed as an artist, the copyright in the work may belong to your employer (also see below).
- If you are commissioned to do the work and agree in writing that the copyright will belong to the commissioning person or organisation, then copyright will be identified according to the contract. It is possible for a licence instead of copyright to be given to the commissioning person or organisation (see the paragraph below on licence agreements).
- If you produce the work under the direction and control of the government, the government may assert copyright.

How long does copyright last?

Copyright protects works from their production until 50 years after the death of the artist. After this period, the work is in the 'public domain', which means that it can be copied and used without the need to seek permission. This is a concern for many Indigenous artists whose work might include clan-owned material or culturally sensitive material.

What about communally owned designs?

Within Indigenous cultural expression, some designs are of a special nature and are owned by a community. Permission may be needed to depict, use or incorporate this type of imagery in artistic works. Although copyright law does not presently recognise the rights of clan groups to stop others from copying traditional motifs and designs, it is important that these rights be respected and recognised.

Do I have copyright in the story about my work?

Indigenous artists are often asked to provide 'stories' about their works. If these stories are original, once written they are protected under copyright law as literary works. Indigenous artists should not feel pressured to include stories about their artwork. If you do include a text description of the work, you should control use of the text and claim copyright.

How can I manage my copyright?

Because copyright belongs to you even after you sell your work, it is important to keep good records about your artwork. It is a good idea to take high quality photographs of your artwork and to record important information about it.

Here is an example of an artist's labelling:

H J Wedge
Stop and think, 1993
 5 panels; synthetic polymer paint on canvas
 76 x 456 cm overall*
 Art Gallery of New South Wales
 © H J Wedge of Boomalli Aboriginal Artists Co-operative

*Note: Height before width is the usual curatorial practice.

If your work includes clan owned designs, you could include the following information on your labelling:

This work and documentation is the copyright of the artist and may not be reproduced in any form without the permission of the artist and the clan concerned.

What rights do copyright owners have?

Copyright gives copyright owners the right to earn money from the use and copying of their artworks. The copyright owner of a work has the exclusive right to deal with the copyright. Such dealings might include:

- reproducing the work - for example, by photographing, filming or scanning;
- publishing the work for the first time - for example, publishing in a book;
- presenting the work to the public - for example, putting the artwork on the Internet or including it on a television broadcast.

Can copyright be assigned?

Copyright can be assigned, but this means that you no longer have control over who can use and copy your work. The person to whom you assign copyright becomes the copyright owner. It is important for Indigenous artists to retain the copyright in their works so that they can maintain control over reproductions. Licensing your work is the preferred option.

What is a licence agreement?

Copyright is personal property and can be licensed under agreement for a fee. Artists often choose to license the use of their work instead of assigning copyright. You can put limits on the licence, including limitations of purposes, time and territory. For example, you might license the rights of a T-shirt maker to reproduce your artwork on T-shirts for a period of two years, in Australia only. The copyright in the artwork remains with you, and after the licence period, all rights return to you. When authorising others to reproduce your works, make sure that you use written agreements, seek legal advice and keep records of the rights you have granted.

You are entitled to control the quality of reproduction of your work, for example, its scale, colour or whether only a detail of the work is reproduced. You are also entitled to view the manner or context in which your work is being used prior to its publication or printing etc.

What are moral rights?

Under the *Copyright Act* and the *Copyright Amendment (Moral Rights) Act 2000*, an artist has moral rights to his or her works. These are:

1. ***The right to be attributed as the artist.***
Artists can require their names be clearly and prominently reproduced alongside all reproductions of their works.
2. ***The right not to have work falsely attributed to another artist.***
Artists can take action against parties who falsely attribute others as the creators of their works.
3. ***The right of integrity.***
Artists can take action against parties who edit, alter or treat their works in a derogatory way. Derogatory treatment means use of a work in such a way that it causes harm to the artist's reputation.

Some Useful Resources

Guidelines for Ethical Research in Indigenous Studies, Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS).

Indigenous Arts Protocol: A guide, Indigenous Arts Reference Group, NSW Ministry for the Arts available on the Ministry's website www.arts.nsw.gov.au.

Our Culture: Our Future: Report on Australian Indigenous cultural and intellectual property rights, Terri Janke of Michael Frankel & Company, commissioned by ATSIC and AIATSIS.

Valuing Art, Respecting Culture, Doreen Mellor & Terri Janke, National Association for the Visual Arts.

Indigenous Cultural and Intellectual Property Protocols Booklets, Aboriginal and Torres Strait Islander Board, Australia Council.

Where to get further advice

Further information is available from a number of arts and cultural organisations. Contact details for these organisations are provided in the NSW Ministry for the Arts booklet *Guidelines: Cultural grants and fellowships, scholarship and awards*, and links are provided on the Ministry's website www.arts.nsw.gov.au.

Aboriginal and Torres Strait Islander Commission (ATSIC)

Tel: 02 6121 4000; www.atsic.gov.au

Arts Law Centre of Australia

Tel: (02) 9356 2566; www.artslaw.com.au

Australia Council, Aboriginal and Torres Strait Islander Arts Board

Tel: 02 9215 9000; www.ozco.gov.au

Australian Copyright Council

Tel: 02 9394 7600; www.copyright.com.au

Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)

Tel: 02 6246 1111; www.aiatsis.gov.au

Boomalli Aboriginal Artists Co-operative

Tel: 02 9560 2541; www.culture.com.au/boomalli

Copyright Agency Limited (CAL)

Tel: 02 9394 7600; www.copyright.com.au

Department of Communications, Information Technology and the Arts (DCITA)

Tel: 02 6271 1000; www.dcita.gov.au

EORA Centre for Aboriginal Studies

Tel: (02) 9217 4878; www.eora.net

Museums and Galleries Foundation of NSW

Tel: (02) 9358 1760; www.mgfnsw.org.au

National Association for the Visual Arts (NAVA)

Tel: (02) 9368 1900; www.visualarts.net.au/Web/nava/

NSW Aboriginal Land Council

Tel: (02) 9689 4444; www.alc.org.au

NSW National Parks and Wildlife Service

Tel: (02) 95856444; www.npws.nsw.gov.au/culture/

Viscopy - Visual Arts Collecting Society

Tel: (02) 9280 2844; www.viscopy.com.au

Important Notice

This paper is not intended to be legal advice. It provides general advice only. If you have a particular legal issue, we recommend that you seek independent legal advice from a suitably qualified legal practitioner.

This paper was prepared by Terri Janke and Company and the Indigenous Arts Reference Group of the New South Wales Ministry for the Arts.