**Indigenous Cultural and Intellectual Property Rights**

ICIPR is a reference to Indigenous Peoples’ rights to their heritage and culture. Indigenous People’s heritage is a living heritage and is passed down from generation to generation. Usually particular objects, sites and knowledge pertain to a particular Indigenous group or territory.

Heritage includes all aspects of cultural practices, traditional knowledge, resources and knowledge systems developed by Indigenous people as part of their Indigenous identity. ICIP rights also cover:

* [literary](https://smartcopying.edu.au/glossary/literary-works/), performing and [artistic works](https://smartcopying.edu.au/glossary/artistic-works/)
* languages
* types of knowledge, including spiritual knowledge
* tangible and intangible cultural property
* Indigenous ancestral remains and genetic material
* cultural environmental resources
* sites of Indigenous significance and
* documentation of Indigenous heritage.

**What is ICIPR?**

Essentially, ICIPR are a bundle of rights of Indigenous Peoples which protect the right to:

* own and control ICIPR
* commercialise ICIPR in accordance with traditional laws and customary obligations
* benefit commercially from the authorised use of ICIPR
* enjoy full and proper attribution and
* protect significant and sacred materials.

**How is ICIPR protected in Australia?**

There is no specific legislation in Australia that recognises ICIPR. ICIPR may be protected by copyright, trade marks, confidential information, passing off and trade practices law. However, this piecemeal protection is fragmented and limited.

For example, copyright can only provide limited protection of ICIPR because:

* the [material form](https://smartcopying.edu.au/glossary/material-form/) requirement is not always met where the stories and songs have been passed orally from generation to generation (see [Who owns Indigenous languages? Indigenous Language Materials and Copyright](http://www.terrijanke.com.au/post/2019/02/27/who-owns-indigenous-languages-indigenous-language-materials-and-copyright))
* the period of copyright protection is finite and is unable to protect traditional art which has been passed through generations and
* copyright is generally granted to the [author](https://smartcopying.edu.au/glossary/author/) and does not recognise communal or customary ownership of cultural heritage of Indigenous tribes and clans.

Increasingly Indigenous communities are using non legislative means such as contract and protocols to protect their ICIPR.

**Dealing with ICIPR**

The best non-legislative means of dealing with ICIPR is to develop an organisational cultural protocol. A protocol may include guidelines on procedure, a code of behaviour or a set of rules on how to recognise and deal with ICIPR. For more information see [Why Cultural Institutions need an ICIP Protocol](http://www.terrijanke.com.au/post/2019/04/17/why-cultural-institutions-need-an-icip-protocol).

The development and use of protocols is becoming common practice in government and the corporate sector. Following are some principles, as set out in [Protocols for using First Nations Cultural and Intellectual Property in the Arts](https://www.australiacouncil.gov.au/programs-and-resources/Protocols-for-using-First-Nations-Cultural-and-Intellectual-Property-in-the-Arts/), to consider when implementing arts protocols.

**Principles**

* Respect
* Indigenous control
* Communication, consultation and consent
* Interpretation, integrity and authenticity
* Secrecy and confidentiality
* Attribution and copyright
* Proper returns and royalties
* Continuing cultures
* Recognition and protection

**ICIPR Checklist**

The following questions are intended as a guide to assist [educational institutions](https://smartcopying.edu.au/glossary/educational-institutions/) in negotiations and consultations with Aboriginal communities.

* Does your nominated Aboriginal community representative have the authority to speak for or on behalf of the proposed project?
* Have you received written consent from the traditional owners/custodians of ICIPR for the project?
* Does the community understand the aims, objectives and methodology of the project?
* Does the community understand how the outcomes of the project will be used?
* Have you made arrangements with the community to provide feedback on the project at all stages?
* Have you acted in good faith and respected the privacy of Aboriginal Peoples and communities?
* Have you ensured that the community understands the copyright issues of the project?
* Does your proposal safeguard Aboriginal sensibilities?

See [Indigenous Knowledge: Issues for protection and management](https://www.ipaustralia.gov.au/about-us/news-and-community/news/indigenous-knowledge-issues-protection-and-management) and [Protocols for using First Nations Cultural and Intellectual Property in the Arts](https://www.australiacouncil.gov.au/programs-and-resources/Protocols-for-using-First-Nations-Cultural-and-Intellectual-Property-in-the-Arts/).

For additional resources see [Terri Janke and Company website](http://www.terrijanke.com.au/).