Revitalising First Nations Languages: Keeping Culture Strong in the Digital World
Terri Janke and Company

- Established in April 2000
- 100% Indigenous owned
- Expertise in:
  - intellectual property, commercial matters, governance, procurement, mediation and negotiation.
- International authority on Indigenous Cultural and Intellectual Property (ICIP).
- Over 18+ years, the firm has worked on more than 4000 unique legal and consulting matters.
1. The Importance of Language for Indigenous peoples
2. Issues for Indigenous people when revitalising Languages
3. The role of libraries and information services in revitalising languages
4. True Tracks® Principles for ICIP
Importance of Languages

“Strong cultural identity enables one to feel proud of themselves, and speaking and maintaining one’s language raises self esteem and enables one to feel good about themselves. Traditional language is important for maintaining strong cultural connections. Where traditional languages have been taken away from communities, a sense of loss, grief and inadequacy develops. To keep communities and generations strong, traditional language being passed down from one generation to another is vital.”

Brooke Joy, Boandik descendant
Importance of Languages

“I believe that if we were to revive our sleeping language, we could not only gain recognition in the Aboriginal and wider community but we could also regain our sense of identity, we could start to become a strong community and family again”

Jenna Richards, Barngala descendant
What is ICIP?

Indigenous cultural and intellectual property rights are Indigenous peoples’ rights to their cultural heritage.

Our Culture: Our Future
Language is ICIP

Place
- Literary, Performing and Artistic works

Communal
- Documentation of Indigenous People’s Heritage
- Traditional scientific and ecological knowledge

Indigenous Heritage, Indigenous cultural and intellectual property

Languages

Cultural property

Living culture

Indigenous ancestral remains

Immovable Cultural Property

Culture
UN Declaration on the Rights of Indigenous People

Article 31(1):

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
The NSW Aboriginal Languages Act

- Deals with the protection and recognition of Aboriginal languages
- Establishes an Aboriginal languages Trust
- Must develop strategic plans for the growth and nurturing of Indigenous languages

Section 5:

“The objective of the Trust is to provide a focused, coordinated and sustained effort in relation to Aboriginal language activities at local, regional and State levels”
## What can be Protected as IP?

<table>
<thead>
<tr>
<th>Language materials</th>
<th>Copyright work/material</th>
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</thead>
<tbody>
<tr>
<td>Oral words</td>
<td>No copyright protection</td>
</tr>
<tr>
<td>Words in songs handed down through the generations, not attributed to a songwriter</td>
<td>No copyright protection</td>
</tr>
<tr>
<td>Composed song/music in Aboriginal language</td>
<td>Musical work</td>
</tr>
<tr>
<td>Language Dictionary</td>
<td>Literary work - compilation</td>
</tr>
<tr>
<td>Printed dictionary</td>
<td>Published edition has copyright</td>
</tr>
<tr>
<td>Language website</td>
<td>Compilation of literary work, artistic works</td>
</tr>
<tr>
<td>Language software</td>
<td>Literary work</td>
</tr>
<tr>
<td>Language video resources</td>
<td>Film</td>
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<tr>
<td>Oral tapes/recordings taken of Aboriginal speaker</td>
<td>Sound recording</td>
</tr>
<tr>
<td>Mobile phone app</td>
<td>Literary works; artistic works - compilation</td>
</tr>
</tbody>
</table>
IP issues that arise in language maintenance work

• Who should own the copyright in materials created?
  – Indigenous language speakers? Linguists? Language Centre?
• Copyright often owned by linguists, who write down oral language information into a material form.
• How can Indigenous communities control the use of the languages?
‘Rediscovering Indigenous Languages’

- Aimed at preserving and revitalizing Indigenous languages
- Involves sourcing, digitizing and providing access to language resources in the State Library’s collections
- Run in accordance with the State Library’s cultural protocols
Mukurtu Hub

- The management and sharing of cultural material and heritage through digital infrastructure
- Enables material to be shared and processed back to Indigenous communities—allowing responses and the use of separate protocols
- Strengthening keeping places of knowledge
National Indigenous Languages Collection Strategy

- Identifying materials
- Increasing communication
- Coordinating digitisation
- Increasing accessibility
- Creating a ‘one-stop’ portal
Puliima 2019

- Largest community focused Aboriginal language conference
- Showcases pioneering language projects
- Comprised of presentations, workshops and demonstrations
CALL Collection

- Digital database
- Aimed at protecting language material, increasing access and maintaining records and materials
- Implemented protocols and consent processes
AUSTLANG

- Part of the world’s largest collection of Australian Indigenous cultural and historical material
- Provides information regarding Indigenous languages
- Implements access conditions
TRUE TRACKS® Protocols

1. RESPECT
2. SELF DETERMINATION
3. CONSENT & CONSULTATION
4. INTERPRETATION
5. CULTURAL INTEGRITY
6. SECRECY & PRIVACY
7. ATTRIBUTION
8. BENEFIT SHARING
9. MAINTAINING INDIGENOUS CULTURE
10. RECOGNITION & PROTECTION

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PRINCIPLE 1
Respect

- Start from the principle in Article 31 of the Declaration on the Rights of Indigenous People:

*Indigenous peoples have a right to maintain, control, protect and develop their ICIP.*
PRINCIPLE 2
Self Determination

- Empower Indigenous people to design, create and collaborate
- Empower Indigenous people in decision-making processes
- Engage Indigenous arts experts or consultants and organisations from the start
- Support Indigenous control in projects
PRINCIPLE 3
Consultation and Consent

- Seek **free prior informed consent** for all uses of ICIP in a project
- Free prior informed consent should be sought before the project commences, and continuing through all stages of the project and after
- Consultation and consent should be sought with all relevant Indigenous parties
AIATSIS Code of Ethics

10.3.2 Access to Collections:

‘Copies of material will only be provided for the publication purposed if the requestor has consulted with the relevant Indigenous community or individual(s) and has received written permission to proceed, even in such cases where the copyright owner has approved publication.’
PRINCIPLE 4
Interpretation

- Indigenous people should be recognised as the primary guardians and interpreters of their cultures.

- Consider:
  - *Is your terminology current or outdated?*
  - *Does the publication affect culture of the Indigenous group?*
  - *Does it expose confidential, personal and/or sensitive material?*
  - *Is the project local, regional or national? What Indigenous perspectives should be taken into account?*
PRINCIPLE 5
Cultural Integrity

- Maintaining the integrity of cultural heritage information or knowledge keeps culture strong.

- When using ICIP ensure that the use or the context is not harmful or inappropriate.

- Seek advice on correct cultural context and ask about cultural restrictions which might apply to the use of ICIP.
PRINCIPLE 6
Secrecy and Privacy

- Indigenous people have the right to keep secret their sacred and ritual knowledge in accordance with their customary laws.

- Privacy and confidentiality concerning aspects of Indigenous people’s personal and cultural affairs should be respected.

- Consider:
  - Does the project expose secret/sacred, confidential or sensitive material? Should it be published?
  - Speak to elders or Indigenous peoples in authority to identify any sensitivities, sacred or religious issues.
  - Be aware that including information without permission may offend.
  - Gender based works may need special procedures.
  - Consultation with community about the use of images and representations of deceased persons.
PRINCIPLE 7

Attribution

- Indigenous people should be attributed as the owners of ICIP. This is in addition to copyright attribution

- Attribute Indigenous contributors, writers, creators, source communities and custodians in a prominent place in all publications

- Ask for correct wording (or pronunciation) for how person or community would like to attributed

- Consider whether traditional custodian’s notice is necessary
PRINCIPLE 8
Benefit sharing

- Indigenous people have the right to share in the benefits from the use of their culture, especially for commercial use

- The economic benefits from the use of their ICIP should also flow back to the source communities

- Consider:
  - How can Indigenous people be included?
  - Employment?
  - Access to research outcomes?
  - Copies of materials?
  - Payment?
PRINCIPLE 9
Maintaining Indigenous cultures

- Consider how a proposed use might impact on the future use by others who are entitled to inherit the cultural heritage.

- Indigenous cultures are dynamic and evolving and protocols within each group and community change. Consultations is an ongoing process.

- Give thought to ways of maintaining relationships for future consultation. How can you maintain the link?

- Consult for any future uses.
PRINCIPLE 10
Recognition of ongoing rights

- Use existing laws and develop policies to protect ICIP
- Some suggestions:
  - Use IP laws
  - Use traditional custodian notices
  - Include ICIP clauses in contracts - Written releases can clear rights for proposed uses
  - Avenues for Indigenous people to make complaints and seek resolution of issues
Indigital Storytelling app

- An augmented reality app by Indigenous company, Indigital.

- Bringing Indigenous stories from Kakadu World heritage site region to life – through art and stories

- Respects specific cultural protocols.

- Augmented reality in the app are place-specific, at the request of Senior Traditional Owners, enables them to tell their stories, perform their songs.

- Royalties are paid to the story tellers.
Digital Custodians
Indigenous use of ICIP protocols

Cultural knowledge and cultural burning practices
Institutional use of ICIP protocols
2018 - Indigenous Knowledge: Issues for protection and management

Issues of protecting and managing Indigenous knowledge:

1. Misappropriation of Indigenous arts and crafts
2. Misuse of Indigenous languages, words and clan names
3. Recording and digitisation of Indigenous Knowledge
4. Misappropriation and misuse of Traditional Knowledge
5. Use of Indigenous genetic resources and associated Traditional Knowledge
6. Misuse and derogatory treatment if secret or sacred knowledge
Thank you

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