

INTELLECTUAL PROPERTY AND COPYRIGHT BASICS

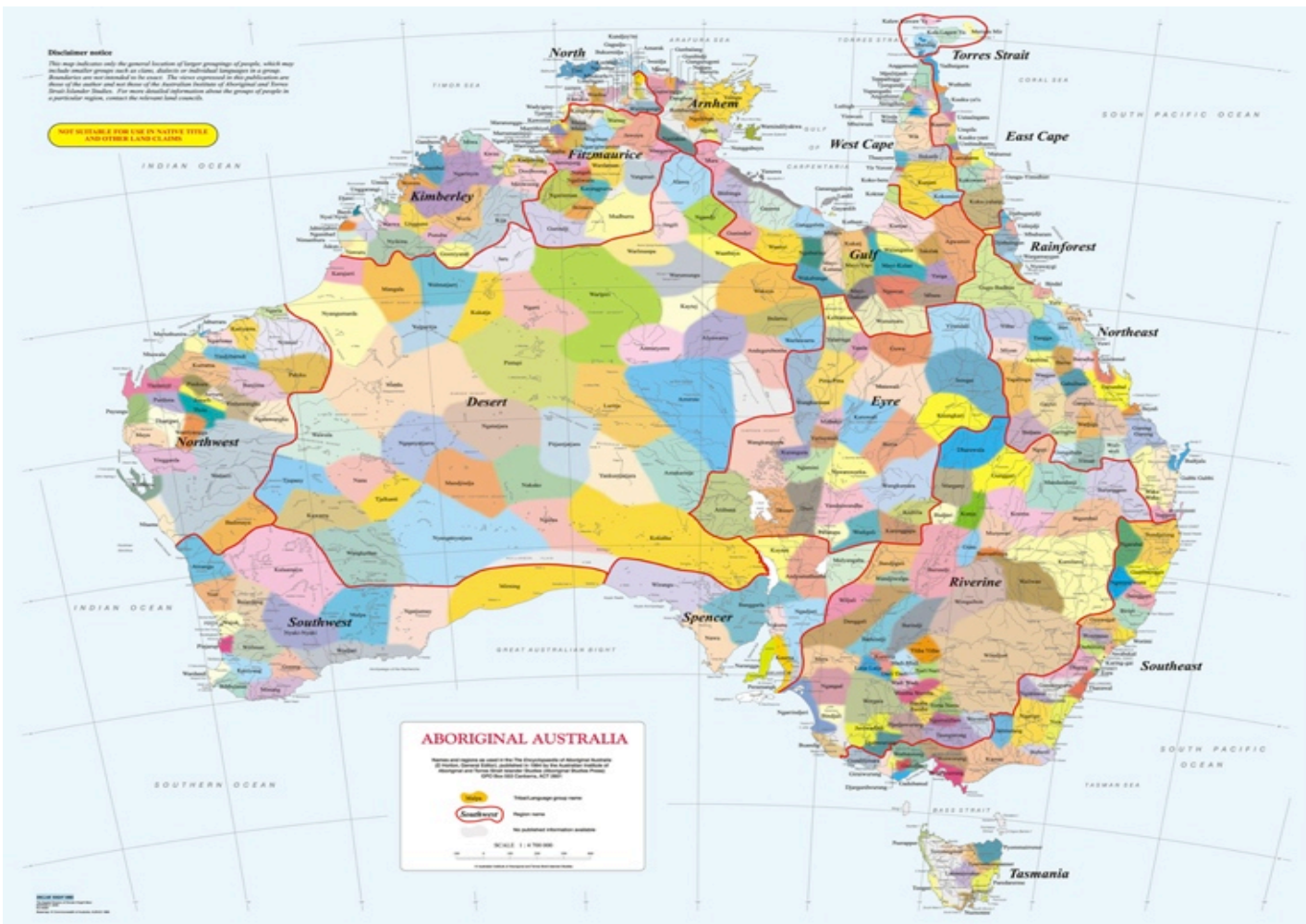


Jane Anderson, New York University

Disclaimer notice

This map indicates only the general location of larger groupings of people, which may include smaller groups such as clans, dialects or individual languages in a group. Boundaries are not intended to be exact. The views expressed in this publication are those of the author and not those of the Australian Institute of Aboriginal and Torres Strait Islander Studies. For more detailed information about the groups of people in a particular region, contact the relevant local council.

NOT SUITABLE FOR USE IN NATIVE TITLE AND OTHER LAND CLAIMS



Map of
Aboriginal
Australian
Languages



**Australian
Institute of
Aboriginal and
Torres Strait
Islander Studies**

Canberra



- 139 -

nimanamboring eriginians
 atiny paper ut. - 320 [gandi]

yalgardyan lewamargan.
 e. atiny - to little erit

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 atiny 320 klt - t

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-maniz ggal buru belos
 -gama-33 kom. -erity dlatat

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 33 - dlatat man

g-on inirilugan v. kards
 dlatat 320 [gandi] (gthar) fitchi

wingj igergardins dinir
 320-33

fj -



WHERE IS COPYRIGHT?

- Photographs
- Sound-recordings
- Films
- Manuscripts
- Wordlists
- Dictionaries

Largely non-NAGPRA material that is already or is currently being digitized.

Intellectual Property law is an umbrella term used to link several different and discrete areas of law together.

These include:

- COPYRIGHT
- PATENTS
- DESIGNS
- TRADEMARKS
- CONFIDENTIAL INFORMATION
- GEOGRAPHIC INDICATORS

What is
Intellectual
Property?

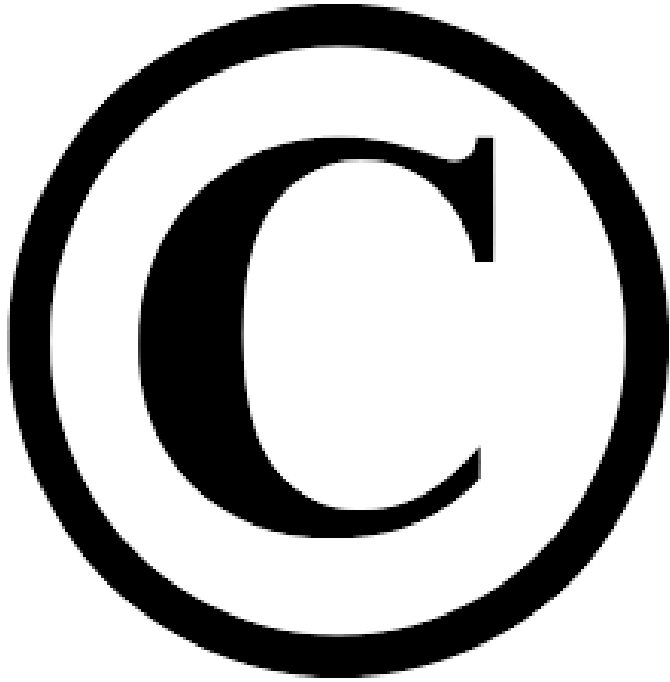
Legally

There are specific
legal definitions

Culturally

Communities are
starting to define
their own versions
of intellectual
property. These
don't necessarily
map onto the
legal definitions.

BREAKING COPYRIGHT DOWN



Thinking through copyright generally, and how it impacts your work at a:

Policy Level (tribal IP policy)

Project Level (Memorandums of Understanding)

Day to Day Level (TK Labels)

COPYRIGHT protects a vast range of cultural works.

- Literary works like books, manuscripts etc
- Compositions like songs and music
- Photographs, films and visual material culture
- Compilations like databases

Three key requirements for copyright protection:

1. The work must be fixed in material form
2. The work must have been produced/created by an (individual) author or authors
3. The work must be original and not a copy

The period of protection (generally) is life of the author plus 75 years.

COPYRIGHT

SOUND RECORDINGS



Passamaquoddy Tribe of Pleasant Point with
Jesse Fewkes Calais Maine, May 1890

All sound recordings In the US made before 1976 are protected under copyright until 2067. Then they will be in the public domain.

Why?

Copyright Act of 1909

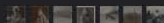
Copyright Act 1976

In Canada – 1965 earlier in public domain.

What is the public domain?



k to search



Museum of Photographic ...

[+ Follow](#)

Untitled (Native American woman)

Artist: Richard Throssel
Artist Bio: American, 1882 - 1933
Creation Date: c. 1910
Process: gelatin silver print
Credit Line: Gift of Graham and Susan Nash
Accession Number: 2003.003.040

7,922
views21
faves0
comments

Taken on April 2, 2010

[No known copyright restrictions](#)

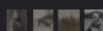
Canon EOS 5D
Mark II
EF24-70mm
f/2.8L USM

PUBLIC DOMAIN

Is when
copyright has
expired.

It means that
anyone
anywhere can
now use the
photograph,
recording,
manuscript
however they
want.

I could make
this the cover of
my new book if I
wanted to.



MOPA

Museum of Photographic ...

+ Follow

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Canon EO:

Mark II

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views

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1. **Culturally Specific** – Protects some important cultural heritage but not all
2. **Individualistic** – Does not recognize community, family or tribal ownership
3. **Property** – it makes cultural knowledge into a form of property
4. **Commercialization** – Seeks to foster and support commercial use
5. **Duration** – Has a set time period for protection
6. **Public Domain** – Once in the PD can be used by anyone at anytime

Other key problems:

- Works made by researchers working in tribal communities are owned and controlled by those researchers.
- Cannot recognize different forms of knowledge stewardship and custodianship.
- Has difficulty in appreciating the inter-connectedness of knowledge/land/culture.
- Privileges some kinds of knowledge over others.
- Cannot be corrected retrospectively.
- Problems of wrong authorship continue into the digital environment.

Problems with COPYRIGHT

ARCHIVES, LIBRARIES AND MUSEUMS

- Can utilize the exemptions within copyright law to:
 - Make archival copies of works for preservation
 - To provide access for educational reasons
- Without getting permission from the copyright owner
- Without paying any licensing fee

**FAIR-USE IS THE MOST IMPORTANT EXEMPTION
FOR TRIBAL INSTITUTIONS, SOVEREIGN IMMUNITY IS ALSO
IMPORTANT**

DIGITIZATION OF MATERIAL

When digitizing documents or other objects to be made available to wider audiences, it is necessary to first determine whether the item is protected by copyright or whether it is in the public domain. These are key questions you need to ask:

- 1. What is the material being digitized?**
- 2. Is the item published or unpublished?**
- 3. What year was it published, or if unpublished, what year was it created?**
- 4. If published before 1989, does it have a notice of copyright (© or the word Copyright or Copr.)?**
- 5. If published between 1923 and 1963, was the copyright renewed before 1964 when renewal became automatic?**
- 6. Is the author dead, and if so, in what year did he or she die?**
- 7. Are pre-1972 unpublished sound recordings included? (If yes see below)**

Digitization and Copyright



Published; 1922 or earlier; author dead or alive

In the public domain. No permission is necessary.

Published without © notice before 1989

Probably in public domain. Works published without © before 1978 are definitely in the public domain. No permission necessary

Published with a © notice between 1923-1963 and renewed, or published between 1964 and 1977

Will be protected by copyright until 95 years after date of publication. Get permission from current copyright owner.

Published with a © notice between 1923-1963 and NOT renewed

In the public domain. No permission necessary.

Published; 1978 - present; author dead or alive

Will be protected by copyright until at least 70 years after the death of the author. Get permission.

If Published

These are some of the questions to consider....

**Peabody Archive
Photograph by
Paulina Johnson**



Unpublished; created in 1977 or earlier; author died more than 70 years ago
In the public domain. No permission necessary.

Unpublished; created in 1977 or earlier; author died within the last 70 years
Will be protected by copyright until 70 years after the death of the author. Get permission from current copyright owner.

Unpublished; created in 1977 or earlier; author alive
Will be protected by copyright until 70 years after the death of the author. Get permission from current copyright owner.

Unpublished; created in 1978 or later; author dead or alive
Will be protected by copyright until 70 years after the death of the author. Get permission from current copyright owner.

Unpublished

Peabody Archive
Photograph by
Paulina Johnson

THE BIGGEST ISSUES ARE: ACCESS, CONTROL AND OWNERSHIP

- **Providing access, making collections available**
- **Incorporating tribal perspectives into collection management**
- **Returning cultural materials (material and digital)**
- **Collaborating in the repatriation process**
- **Divesting control to tribal authorities**
- **Addressing tribal concerns about public domain material**
- **Recognizing the legitimacy of cultural protocols**

Recognizing past injustices in how Indigenous and Native communities and their cultural heritage has been collected and treated.

**Problems for
Tribes and for
Institutions**

OTHER ISSUES

- Knowing how copyright affects your institution
- Informing community members about copyright
- Developing a shared understanding of tribal IP (something that may go beyond the traditional boundaries of IP law)
- Developing infrastructure to help make decisions
- Getting access to useful resources
- Building a institutional/community IP strategies that suit your needs and issues



**INTELLECTUAL PROPERTY
AND THE SAFEGUARDING OF
TRADITIONAL CULTURES**

Legal Issues and Practical Options
for Museums, Libraries and Archives


Written for the World Intellectual Property Organization (WIPO)
by Molly Torsen and Jane Anderson



Copyright &
CULTURAL INSTITUTIONS

*Guidelines for Digitization
for U.S. Libraries, Archives, & Museums*

PETER B. HIRTLE,
EMILY HUDSON,
& ANDREW T. KENYON



STRATEGIES

- 1. Do the legal research on specific collections. Sometimes ownership is not what it seems.**
- 2. Develop specific protocols to deal with legal categories and cultural categories.**
- 3. Develop cultural protocols for use and access of materials.**
- 4. Think about research happening now – or collections being created now – can the future ownership of these collections look different?**
- 5. Utilize TK Labels and Local Contexts for templates and useful information.**
- 6. We are working to set up a interconnected legal clinic to help provide support on these issues as well as develop training for non-Native institutions that hold material.**



Indian
photographing
tourist
photographing
Indian.

Zig Jackson 1994