

DR. JANE ANDERSON

COPYRIGHT AND NATIVE
COLLECTIONS: THE
BIGGEST ISSUES

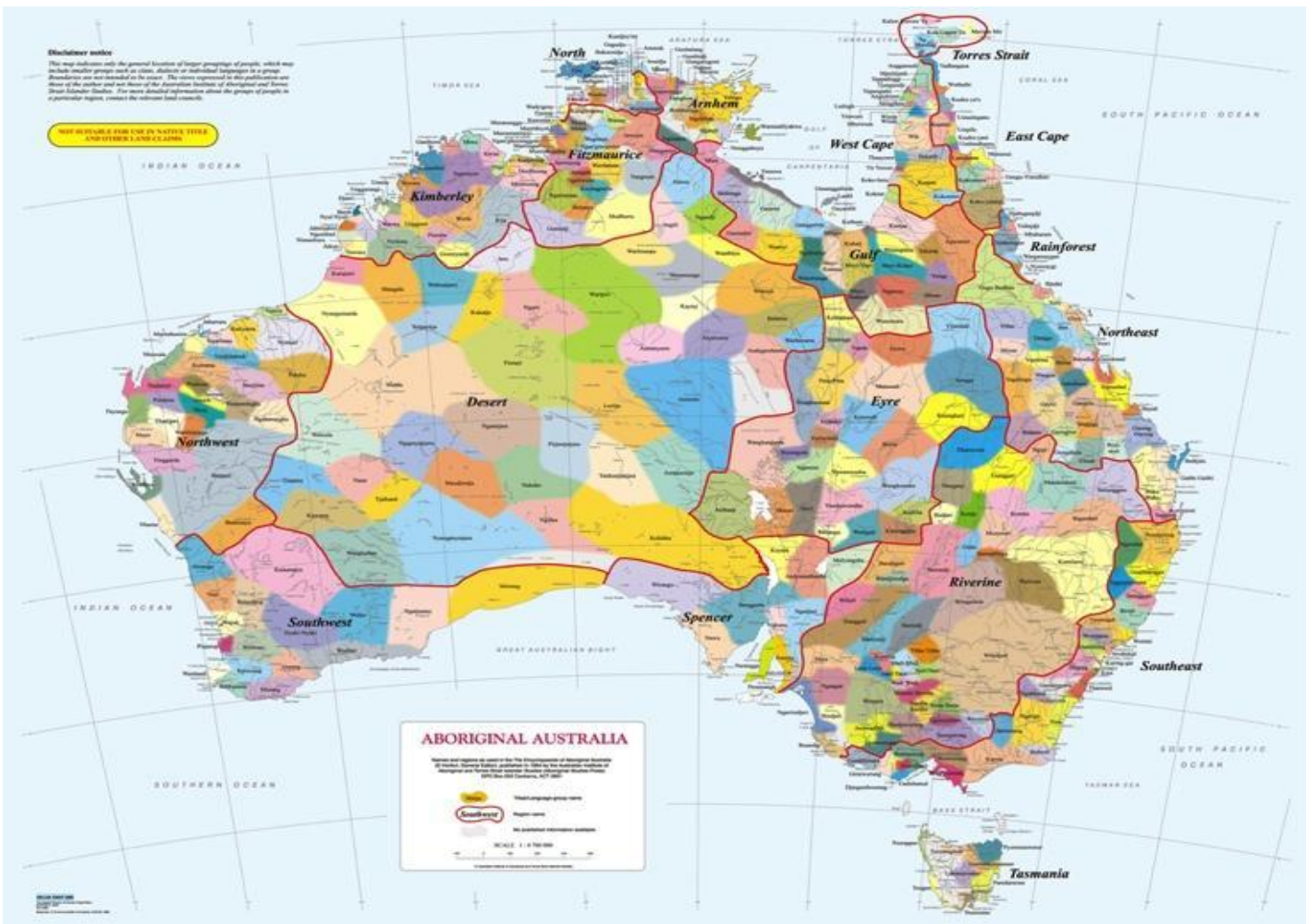
Association of Tribal
Archives, Libraries and
Museums

9 September 2015

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 precise. The names represented 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 land council.

NOT SUITABLE FOR USE BY 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 [gandji]

yalgardyan kewarnagan.
 e. atiny - to little out

g-on igaru luru nu nu
 atiny 330 left - right

buridjagers. bews bilfuro-
 big children 330 -

-maniz ggal buru belon
 -gama-33 kom. -candy dlat-out
 dlat-out

bo-djiris. g-on ruwid iginians
 o to 330 dlat-out ut 330 gajo

binidjiris bews kewarnagan
 material 330-33 ut little out

igergardiansnamb 3.
 33 - dlat-out man

g-on inirilugan v. bews
 dlat-out 330 [g-jaga] (gthar) fitchi

winj igergardians djiris
 330-33

fj -

WHAT KINDS OF MATERIAL:

- 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?

Culturally?

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

COPYRIGHT

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:

7. Works made by researchers working in tribal communities are owned and controlled by those researchers.
8. Cannot recognize different forms of knowledge stewardship and custodianship
9. Has difficulty in appreciating the inter-connectedness of knowledge/land/culture
10. Privileges some kinds of knowledge over others
11. Cannot be corrected retrospectively
12. 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

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?
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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

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.

If
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

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EMILY HUDSON,
& ANDREW T. KENYON



Indian
photographing tourist
photographing Indian.

Zig Jackson 1994

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