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COPYRIGHT AND NATIVE COLLECTIONS: THE BIGGEST ISSUES
Map of Aboriginal Australian Languages
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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
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
Problems with 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
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?
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)
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
Unpublished
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.
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
Indian photographing tourist photographing Indian.

Zig Jackson 1994
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