

I recently attended a Webinar offered through Arts Law Centre of Australia and two days later attended Productivity Commission webinar about ICIP and Aboriginal and Torres Strait Islander Arts and Crafts and came away from two different sessions unsure about how the new legislation might work and how will be certain I don't inadvertently infringe ICIP.

The webinars from the two different organizations seem to indicate that ICIP is will be addressed by the implementation of a parallel system of copyright legislation? A separate but not equal system?

From the Australian Arts Law ICIP diagrams (diagrams from the Productivity Commission session were confusing and a bit vague) two troubling issues emerged for me: the copyrighting of "techniques" - dot point (Western pointillist painters of the 1880s springs to mind) and cross hatching (by way of example). I understood dot painting was introduced to Aboriginal artists in the 1970s and was used by them to "hide" or disguise certain images and information considered sacred to them...from non-Indigenous people. I did not think shapes and images (in the commons?) could be copyrighted...or does this apply only to the replicating of specific works using dots?

My understanding (as a non-Indigenous artist trying both respect the law and Indigenous culture) is that the Dreamtime story is over 65,000 years old and has served as the foundation of Aboriginal/TSI religion/culture to explain unexplainable events that happened, how the universe came to be, how human beings were created and how their Creator intended for humans to function within the world as they knew it at that time. I also understand that Aboriginal/TSI peoples believe themselves and their culture to be very religious/spiritually--based...although they do not refer to their belief system as a "religion" (a matter of semantics?). My understanding is that rather than praying to a single god they cannot see, each group/clan generally believes in a number of different deities, whose image(s) are often depicted in some tangible, recognizable form - in rock art, bark carvings, etc. A religion is generally viewed and described as a specific set of organised beliefs and practices, usually shared by a community or group; Spirituality is generally more of an individual practice, and has to do with having a sense of peace and purpose. (Forgive the gross generalizations here).

As a non-Indigenous artist, I'm struggling with the idea that concepts/ideas can be copyright protected. I can't come to terms that ANY metaphysical/magical/invisible belief system can become enshrined in legislation - Western/Eastern religions fall into this category as well, So, in a secular society the thought that even an ancient system of organized beliefs/practices based on invisible beings becoming enshrined in legislation causes me concern.

The idea of the protection of "cultural expression" also seems a bit vague particularly if the knowledge and information that serves to inform cultural expression is essentially "ring fenced" from non-Indigenous people. For example, women and men of a particular Indigenous clan/group are not allowed to know each other's "secret business" and relationships also play a role in access to information. It goes without saying that non-Indigenous people are automatically prohibited from this cultural knowledge. As a result, without legitimate access to prohibited cultural expressions I would no doubt inadvertently or unintentionally infringe ICIP. Yes?.

Other thoughts and questions about protecting and respecting ICIP (in no particular order):

- * It doesn't seem that the courts should determine what is cultural expression...and I imagine Indigenous people would not be happy with this either – I'm making an assumption here.. It may be that Indigenous community members should be given the opportunity to establish a Cultural Court, guided by their own representative to decide matters relating to culture and their communities. Perhaps this Cultural Court could serve as the arbiter for disagreements or as "first contact" for copyright permission?

- * Education programs need to be proactively developed for Aboriginal/TSI artists as well as wider community about these issues – I would hope this is part of the plan.

* There certainly needs to be enforcement mechanisms with **heavy** fines to penalize makers, importers, businesses and distributors of "fake" Aboriginal/TSI art.

* One of the questions raised many times during the webinar had to do with how to find the legitimate person/community/clan/elder to seek copyright permission from if an artist wished to use any section of a work from an Aboriginal/TSI artist. It seems logical to develop (determined by an Aboriginal/TSI body) of a Logo that could be attached (similar to the "Australian Made" logo) onto every piece of Authentic Aboriginal/TSI Art (as vetted by the appropriate A/TSI body). One of the problems for non-Indigenous people is knowing WHO to consult for permission to use any artistic image/music/etc. and HOW to know that all the correct person/group/elder and all stakeholders have contacted to give the correct authority. A label identifier logo to certify authenticity and perhaps also note the group/clan/organization to contact for more info would make this clear. This might be the role of the Cultural Court as arbiter?

* The general public needs to understand why sacred and secret images, etc are even exhibited or seen in the public arena if they should not be seen, copied or used by those who are outside the authorized group.

* Since images and audio are shared freely on social media, ..I can't imagine how it is feasible to stop copyright infringement for any artist and particularly to protect special ICIP materials. As it currently stands, all artists are trying to cope with the unauthorized sharing and copying of their works. The rule of thumb most of us follow is "don't post something without the copyright symbol and don't post it at all if you don't want it shared." Since most of small-time artists without a corporation or large organization behind us, we don't have the financial capacity to pursue a copyright infringement case.

* As a non-Indigenous artist, I photo document the process of my work from start to finish in an effort to show how my work came about, how I developed MY concept, technique and expressed my ideas. I hope that will be enough. None of us can ever "unsee" what we have viewed at some prior point in time and now I'm a bit paranoid about viewing ANY Aboriginal/TSI art or learning about their culture for fear I might inadvertently tread on sacred ground.

* There are countries who consistently violate copyright (China for example) because they do not recognize Intellectual Property or Copyright and continue to be a source of much of the fake art, music, clothing that is sold in tourist venues, through social media and online. We can't stop China, we can only control what is imported and by whom. The Internet/social media poses their own set of enforcement problems. The sweatshop clothing production out of India and E. Europe is another example of an industry impossible to control w/r/t copyrights.

* I'm concerned that a parallel, separate and unequal copyright system will be developed and so far, the explanations of how it will/could work are daunting. I imagine many artists could be discouraged from even considering artistic collaborations with indigenous artists, or even learning more about Indigenous culture/art/world-view as a way to ensure they respect the culture by simply steering clear of incorporating and idea/image/expression that could inadvertently cause harm.

* I'm increasingly confused as to how to work with groups who want their cultural values of their history respected (I'm all for this) while groups chose continue to live "as they used to" – the Amish and Mennonite communities spring to mind as do other examples. The difficulty I think is the idea of being a person/people of the "third culture" (like migrants who must blend cultures).

I believe I, and my network of non-indigenous artists, do want to do the right thing regarding ICIP but we're struggling to understand what we should do and how legislation will work. I don't believe that commercial enterprises or countries dealing in fake art and pirated materials feel the same way.