
PATHWAYS & PROTOCOLS

A filmmaker's guide to working with Indigenous people,
culture and concepts

Terri Janke



Australian Government

SCREEN
AUSTRALIA

Contents

Preface	4
How to use this guide	6
1. Introduction	9
1.1 Indigenous Australians	9
1.2 Filmmaking and Indigenous culture.....	9
1.3 What are protocols?	10
2. Principles for protocols	11
2.1 Respect for Indigenous culture and heritage	11
2.2 Respect for Indigenous individuals and communities.....	15
3. Implementing protocols within film practice	19
3.1 Overview – protocols for documentary versus drama	20
3.2 Initial research and project development	21
3.3 Script development	25
3.4 Pre-production and production	29
3.5 Editing and post-production.....	38
3.6 Screening and broadcasting.....	43
3.7 Footage archiving	44
3.8 Summary Checklist.....	47
4. Communication, consultation & consent	51
4.1 Consultation and consent	51
4.2 When consent is required.....	52
4.3 When consent is recommended	55
4.4 Tips for successful consultation	56

5. Film & the law	63
5.1 Copyright.....	63
5.2 Performers' rights.....	69
5.3 Moral rights.....	72
5.4 Indigenous communal moral rights	72
5.5 Contracts	73
5.6 Defamation	74
5.7 Trade practices.....	75
5.8 Environmental legislation and national parks	76
5.9 Western Australian Heritage Regulations 1974	76
5.10 Where to go for more legal information	77
6. Contacts & appendices	79
6.1 Directories	79
6.2 Indigenous media associations and broadcasters	81
6.3 Remote Indigenous Media Organisations (RIMOs).....	85
6.4 Industry agencies with Indigenous components.....	88
6.5 Indigenous cultural advisors and script consultants	92
6.6 Land Councils	93
6.7 Permit offices	96
6.8 National Parks	99
6.9 Libraries and archival sources.....	101
6.10 Media law and copyright	105
6.11 Regulation.....	110
6.12 Industrial Agreements.....	112
Appendix 1: Sample clauses.....	114
For ICMR in a director's contract	114
Screen Australia ICIP Clause in Production and Investment Agreements.....	115
Appendix 2: Background research on other protocols.....	117

Preface

Indigenous Australians – Aboriginal and Torres Strait Islander people – are the original owners and inhabitants of Australia. For Indigenous people art, life, knowledge and identity are important aspects of a continuing tradition. The carrying on of knowledge, through the practice of art, is a legacy that Indigenous Australians must maintain for the benefit of future generations.

Filmmaking that involves Indigenous content or Indigenous people can cut across many levels of the cultural heritage spectrum. It can involve many different artforms, regions and Indigenous groups, and vary in its form from ethnographic films and documentaries to television series, feature films, short films, interactive media and online content.

There is no doubt that film and TV offer Indigenous people opportunities to use popular mediums to promote their perspectives and advance understanding. In the past, however, Indigenous people have also seen filmmaking as exploitative. They are concerned, for example, that their cultural heritage may have been appropriated without proper consultation or sufficient acknowledgment, and that some productions made from a stereotypical perspective may demean Indigenous cultural beliefs.

This guide has been produced to provide advice about the ethical and legal issues involved in transferring Indigenous cultural material to the screen. We hope that those working with Indigenous communities or Indigenous content will be inspired to use it as a framework for developing protocols for their own film, television and interactive media projects.

We also acknowledge the important role played by a range of earlier protocol documents, particularly:

- **Lester Bostock's** *The Greater Perspective: Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities* published by SBS in 1990¹
- **Darlene Johnson's** protocol commissioned in 2001 by SBS Independent²
- **The Northern Land Council's** protocol *Guess Who's Coming to Dinner in Arnhem Land*, produced in 1987 by Chips Maclnolty and Michael Duffy for filmmakers coming on to Aboriginal land.

Accessible, practical and transparent protocols are the key to facilitating respectful filmmaking involving Indigenous cultural heritage. And protocols that enhance the positive experiences of filmmaking encourage further collaborative opportunities between cultures.

1 Lester Bostock, *The Greater Perspective: Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities*, 2nd ed, SBS, Sydney, 1997.

2 Darlene Johnson, *Indigenous Protocol*, 2001.

I spoke to several Australian filmmakers in the course of this project. Many spoke of their experiences with Indigenous protocols in their film projects with Indigenous content. The overwhelming majority said that consultation with Indigenous communities had enriched their projects. They said following protocols made better films.

We also hope that the guide encourages debates, which enhances the production of many great films in the future. Comments and ideas should be forwarded to:

The Manager Indigenous Branch
Screen Australia
GPO Box 3984
Sydney NSW 2001

Acknowledgements

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I also thank the filmmakers and organisations who responded to the issues paper and met with me, or spoke to Toni Janke or myself over the phone. I am grateful to all those who provided their submissions by phone, fax, letter or made comments by other means.

Special thanks for the guidance and expertise of the Project Steering Committee comprising Sally Riley, Cathy Gray and Rosemary Curtis. Thanks also for support from the team at Terri Janke and Company, Sonia Cooper, Anastasia Charles, Andrew Pitt and Toni Janke.

Thanks everybody!

Terri Janke
April 2009

Important legal notice

The laws and policies cited in this guide are current as of 24 April 2008. They are discussed generally for the purposes of this document. No person should rely on the contents of this guide for a specific legal matter but should obtain professional legal advice from a qualified legal practitioner.

This guide was researched and written by Terri Janke of Terri Janke and Company Pty Ltd. It was commissioned by the Indigenous Branch of the Australian Film Commission, which became Screen Australia in 2008.

How to use this guide

This document is designed to encourage recognition and respect for Indigenous people's images, knowledge and stories in the production of audiovisual material in both documentary and drama form.

It should be seen as a starting point and general guide only. When you need specific advice on the cultural issues of a particular Indigenous group, we recommend you either speak to a person in authority, or engage an Indigenous cultural consultant with relevant knowledge and experience. (There is information on selecting a cultural consultant on pages 24–25.)

The framework set out in this guide can help you develop your own protocols when:

- working with Indigenous content, a film or program based on an Indigenous story, with Indigenous characters or featuring Indigenous culture in any form
- working with Indigenous people, whether as cast, extras, crew, or documentary subjects
- working in Indigenous communities, either as the subject of a film or through the use of the community as a location
- working on Indigenous lands.

The guide will also be relevant to:

- Federal and State Government departments
- industry agencies and film organisations
- broadcasters
- educational and training institutions
- Indigenous people who are approached by filmmakers who wish to include them or their cultural material in a film project, or film in their community or on their land.

We have attempted to provide a framework that can be used for both drama and documentary. However, specific guidance is also given that takes account of the differences between these two forms of filmmaking.

The document has five main sections:

- 1. The Introduction** defines 'protocols' as used in this guide, introduces Indigenous Australians, and looks at the special nature of filmmaking with Indigenous content.
- 2. Principles for protocols** briefly sets out the principles which should underpin filmmaking protocols, including respect for Indigenous culture and heritage, and Indigenous individuals and communities.
- 3. Implementing protocols within film practice** provides practical guidance on developing and applying protocols at the various stages of film and TV production. Checklists are included, along with case studies and commentaries from Indigenous and non-Indigenous filmmakers which identify challenges they have encountered in their own practice.
- 4. Communication, consultation and consent** offers tips for effective consultation, and explains when consent is required, as opposed to just consultation.
- 5. Film and the law** contains general information and advice on the main laws in Australia governing the use and reproduction of songs, stories, dance, artistic works, sound recordings and films.
- 6. Contacts and appendices** includes a list of contacts to be used as starting points for accessing relevant people and information, sample contract clauses, plus print and online resources.

APPLICATIONS OF THE GUIDE

Although this guide is intended specifically for use by film practitioners, it will also be useful to a range of organisations.

Film funding agencies

We encourage film funding agencies to support the adoption of protocols by advising funding recipients to follow this guide, perhaps referring to it in funding investment guidelines and requiring that the cost of research and community consultation be included in project budgets where relevant. The aim is to make the development and adoption of protocols a part of acceptable film practice.

Film agencies can also refer to the guide in developing their own protocols and Indigenous policy documents, in collaboration with Indigenous film professionals and Indigenous communities.

A clause which deals with Indigenous cultural and intellectual property rights in Screen Australia's development and production investment agreements is provided in Appendix 1 as an example.

Training institutions

Protocols for working with Indigenous content and Indigenous communities should be covered in all film and television production training. This guide provides an excellent framework for introducing students to the issues.

Industry and professional organisations

Organisations such as the Australian Directors Guild (ADG), the Australian Writers' Guild (AWG), the Media Entertainment and Arts Alliance (MEAA) and the Screen Producers Association of Australia (SPAA) can encourage their members to develop and adopt protocols for dealing with Indigenous people and Indigenous content, using this guide as a reference.

Broadcasters

Broadcasters are encouraged to adopt policies and codes on the appropriate handling of Indigenous material, covering both the production and broadcast of programs.

The ABC and SBS already promote the use of protocols when working with Indigenous communities and Indigenous content. This guide draws from these protocols and also includes areas not specifically covered by them.

The TV Industry Code of Practice covering the commercial broadcasters does contain some Indigenous issues. Although voluntary, it is registered with the Australian Communications and Media Authority (ACMA), and broadcasters do have a responsibility to adopt ethical practices.

National Indigenous Television

The NITV, established in 2007, acquires and commissions a range of programming which reflects the diversity of Aboriginal and Torres Strait Islander cultures and communities. The NITV encourages its commissioned filmmakers to refer to this guide.

1. Introduction

1.1 Indigenous Australians

The Indigenous people of Australia are the Aboriginal and Torres Strait Islander peoples. There are hundreds of different Aboriginal clan groups in Australia, all with their traditional country boundaries. For a map of different 'language' areas see David Horton's *Aboriginal Australia*, published by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS).

1.2 Filmmaking and Indigenous culture

Filmmaking for Indigenous communities has become an important tool for cultural expression. Film has been used for a range of purposes and in a range of ways, such as:

- telling Indigenous creation stories and life stories by way of drama
- conveying political messages and historical perspectives in documentary
- recording Indigenous ceremonies and celebrations
- educating people about Indigenous cultures
- maintaining and teaching Indigenous languages
- entertaining Indigenous people and wider audiences nationally and internationally.

Films such as *Lousy Little Sixpence* [director Alec Morgan, producer Martha Ansara, co-producer Gerry Bostock, 1983] were groundbreaking in raising the profile of Indigenous issues in the wider Australian political context.

*Frances Peters-Little*³

Indigenous people want to tell stories – historical, social and political. Indigenous film content can cover issues as diverse as domestic violence, stolen generations, race relations, love and return to homelands. A film can also draw together many different artistic elements including music, story (script), dance and graphic works.

Filmmaking is used by Indigenous people to get our point of view across.
When you entertain, you educate.

*Justine Saunders*⁴

3 Writer and filmmaker Frances Peters-Little, forum at Sydney Film Festival.

4 Telephone interview with actor Justine Saunders.

1.3 What are protocols?

Protocols are appropriate ways of communicating and working with others. Indigenous cultures place importance on the observation of cultural protocols. Across the spectrum of Indigenous Australia, there are many different protocols for communicating and working with Indigenous material, and interacting with Indigenous people and their communities.

A protocol cannot specifically address all the issues that may arise in a particular film project, but the framework it provides can be adapted and applied to specific situations. This guide offers such a framework. It is intended to give direction but still allow enough flexibility to deal with situations as they arise.

Protocols are not in themselves legally binding, but over time they establish practices that can be relied on as industry standards. Protocols may also be incorporated into filmmaking contracts, and endorsed by funding agencies and professional associations.

2. Principles for protocols

Two fundamental principles should underpin protocols for filmmakers working with Indigenous content and Indigenous communities:

- respect for Indigenous culture and heritage, including recognition of Indigenous cultural and intellectual property rights, maintenance of cultural integrity and respect for cultural beliefs; and
- respect for Indigenous individuals and communities.

2.1 Respect for Indigenous culture and heritage

Use of Indigenous cultural heritage in film is becoming increasingly popular. Oral stories, traditional knowledge, images, photographs, language, words and histories are just some of the Indigenous heritage materials that find their way into Australian and international films. Filmmakers should be aware that in some circumstances, this cultural material may never have been 'published' to the wider community before.

Respect for this cultural heritage is a fundamental principle for Indigenous filmmaking protocols. Filmmakers should recognise and respect Indigenous people's right to own and control their culture.

Indigenous cultural and intellectual property rights

Indigenous cultural and intellectual property rights refer to Indigenous people's cultural heritage. Heritage comprises all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory.

Indigenous people's heritage is a living heritage and includes objects, knowledge, stories and images, created now or in the future, based on that heritage.

A list of Indigenous cultural and intellectual property rights was compiled for *Our Culture: Our Future*,⁵ based on extensive consultations with Indigenous Australians. Based on this list, Indigenous people have the right to:

- own and control Indigenous cultural and intellectual property
- ensure that any means of protecting Indigenous cultural and intellectual property is based on the principle of self-determination
- be recognised as the primary guardians and interpreters of their cultures
- authorise or refuse to authorise the commercial use of Indigenous cultural and intellectual property according to Indigenous customary laws

5 Terri Janke, *Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights*, written and researched by Terri Janke, Michael Frankel & Company, Solicitors, for the Australian Institute of Aboriginal and Torres Strait Islander Studies, and the Aboriginal and Torres Strait Islander Commission, 1998, pp. 47–48.

- maintain the secrecy of Indigenous knowledge and other cultural practices
- be given full and proper attribution for sharing their heritage
- control the recording of cultural customs and expressions, and the particular language which may be intrinsic to cultural identity, knowledge, skill and teaching of culture.

Many generations may contribute to the development of an item of knowledge or tradition. In this way, Indigenous cultural heritage is communally owned. Currently, intellectual property laws do not recognise this element, focusing on material form and individual ownership, and only protecting for a limited period (see also Section 5, pages 63–77).⁶

Use of traditional dance in drama

Erica Glynn, Indigenous writer/director, talks about her film My Bed Your Bed (1998, produced by Chili Films)

In making *My Bed Your Bed*, I set out to tell a fictional story that reflected contemporary Aboriginal life in central Australian bush communities. Life in bush communities is so often over romanticised in Australian film and television. In the film, a young girl is promised to a young man in a traditional ceremony that has taken place for thousands of years in the bush. When the time comes for them to live together, they move into a modern house. In traditional communities, usually the people would be older, but for this story I wanted to show how people adopt values from both contemporary and traditional worlds.

I wanted to put a traditional dance as part of the promise ceremony at the opening of the film. The overall film ran for approximately 17 minutes, and the dance segment in the opening ceremony was to be approximately 2 minutes. At first, I wanted to use dance from my own Indigenous community. To get permission, the producer and myself approached senior Aboriginal people who were connected to me and were living in Alice Springs and working there as artists. We talked them through the story, letting them know it was a 'pretend one'. They went away and discussed it among themselves and talked to others in the community. They came back to tell me that although it was a good story, they thought that really they couldn't give consent at this time.

We respected their decision and consulted with elders from another Indigenous community. The producer of the film was personally known to these people. They were happy to allow parts of their traditional dance to be included in the film. This group, however, had more experience with the artistic use of their dances, having performed for tourists, and some had worked as extras on films before.

6 Ibid.

Use of the Wandjina image in the 2000 Olympics

In 2000, the Sydney Organising Committee for the Olympic Games (SOCOG) negotiated the use of the Wandjina figure used in the opening ceremony of the Olympics. The huge Wandjina was painted by Aboriginal artist Donny Woolagoodja, Chairman of the Mowanjum Artists Spirit Aboriginal Corporation.

The Wandjina image comes from the Kimberley region and represents three clan groups in the community: Ngarinyin, Worrora and Wanambul. The Wandjina is an ancestral spirit and custodians of this region believe the Wandjinias created everything on and in the earth and made the rules by which they live.

After meetings commenced, the traditional owners raised concerns about the filming of the Wandjina in the opening ceremony and the use of the image after the Olympics. Rights to broadcast the image for the opening ceremony were agreed to, and SOCOG and the Olympic Committee agreed to consult with the traditional owners for use of the images in other contexts after the Olympics.

A written agreement between the parties gave the International Olympic Committee the rights to film the Wandjina and to use the film as part of its promotions for the games. However, there was also another condition that if third parties wanted to use the footage for other purposes, they had to get the consent of the Olympic Committee and the traditional owners.⁷

Cultural integrity

For Indigenous people, keeping the cultural integrity of an event, story or artwork is of utmost importance. Integrity refers to the treatment given to the work or film. Under the *Copyright Act 1968* (Cth), the moral right of integrity gives individuals the right to protect against the 'derogatory' treatment of their works and films. The test for derogatory treatment is material altering and doing any other act to the work of film that is prejudicial to the author's honour or reputation. For example, altering the work or film by adapting, cutting, editing and/or enhancing may materially alter the work or film and cause harm to the author's reputation.

With Indigenous cultural material, maintaining the integrity of the work is important to the source *communities* as well as the individual. Although communal moral rights are not currently covered under Australian copyright law, the Commonwealth Government proposes to introduce them as an amendment to the *Copyright Act 1968* (Cth). If passed by parliament, Indigenous communities may obtain Indigenous communal moral rights by entering into an agreement with the copyright owner, provided the conditions of the new provisions are met.

7 Rhoda Roberts, former Director of the Indigenous Program, Sydney Organising Committee for the Olympic Games.

It is also important to recognise that Indigenous cultures are living and evolving cultures, not simply historical phenomena to be preserved as 'primitive'. Contemporary Indigenous art forms that may be represented in film may include responses to new stimuli using traditional methods of artistic expression, such as a traditional dance based on aeroplanes, or new forms of communal expression such as communal songs sung in English and played on the guitar, or choreography fusing new dance steps with communally owned Indigenous dance.

Given the nature of film, and the editing process, the presentation of Indigenous cultural material in a manner that promotes integrity requires careful consideration. Cultural integrity and the related issues of representation, authenticity and respect for cultural beliefs, need to be considered throughout the filmmaking process – during the writing stages, including the adaptation of existing material; during shooting, editing and post-production; as well as in marketing and arrangements for the future use of footage (see Section 3, pages 19–42).

Cultural beliefs

Sacred sites and material: Under Indigenous laws some sites, and images and knowledge relating to sites, are sacred. Objects, whether created or natural, may also be considered sacred or secret. 'Sacred and secret' refers to information and material that is restricted under customary law. For instance, some cultural information may only be learned or viewed by men or by women, or only after initiation. It is not appropriate for such sites and material to be referred to for other purposes or to be widely circulated. In some cases, it might not be appropriate to even speak about sacred and secret material.

Doris Pilkington Garimara speaks of director Phillip Noyce's (*Rabbit-Proof Fence*, 2001) observation of cultural protocols saying:

Phillip Noyce was sensitive to Indigenous cultural issues and recognised the importance of following Indigenous protocols. He wanted to make sure no customs were violated, and that no secret rituals or sacred sites were depicted in the film. He hired an adviser from Jigalong community which was good because the community keeps a strong check on what stories and knowledge can be made public. He also consulted with me by bringing draft scripts for me to check.⁸

Filmmakers should respect the right of Indigenous people to keep secret and sacred their cultural sites, beliefs, knowledge and images.

Representing deceased people: In a number of Indigenous communities, particularly those that still live under customary laws to a significant degree, the reproduction of names and images of deceased people is offensive to mourning practices. This applies, for example, to Yirrkala and many other Arnhem Land

8 Terri Janke, telephone conversation with Doris Pilkington, author, *Follow the Rabbit-Proof Fence*, 16 May 2005.

communities, and to Eastern and Western Desert communities for recently deceased people. In these cases it is important to note that the restrictions may last several years.

For other communities in more urban areas such practices may not exist. It is best to ask the relevant Indigenous group whether this is a practice in their particular family and group. The advice on applying protocols to film practice in Section 3 does not assume that the same protocol would apply across all communities: in the course of our consultations for this project, we heard of some Indigenous people who wanted to notify the filmmaker that they wished to continue to be named and represented in the film after their death.

Death protocols and news reporting

(submitted by the ABC Indigenous Programs Unit)

In early 2003, the death of a prominent Aboriginal artist highlighted the difficulties for broadcasters of respecting the cultural death protocol when reporting on deaths in the news.

Under the customary law of this particular artist, it is respectful not to mention the deceased's name until the family has notified the end of the mourning period. Early reports of the artist's death did not mention his name. However, later reports did so, without authority. An apology was given by the program but this was after the naming went to air.

Being able to contact family and the relevant community to ascertain the appropriate protocol and permissions for use of name and image is an issue for broadcasters. Where possible, filmmakers should incorporate these details into written releases obtained at the time the image is captured on film (see page 29).

2.2 Respect for Indigenous individuals and communities

Filmmakers enter into relationships with Indigenous people when they work together on film projects. A successful partnership should be based on mutual respect and trust.

A non-Indigenous person seeking to use Indigenous material in a drama film should treat the material with the respect they would expect themselves.
*Sue Milliken*⁹

For film projects involving life stories of living or deceased Indigenous people, the filmmaker should consider how she or he will involve the individual or family members, and the community. Filmmakers have an ethical obligation to deal appropriately and sensitively with the life experiences of individuals. Even where characters are totally fictitious, their representation can have an impact on an Indigenous community that needs to be considered.

9 Producer Sue Milliken, email.

This principle of respect for individuals and communities extends to:

Recognition of people's rights to privacy: Prior consent needs to be sought for writing scripts about individuals and communities, and when filming Indigenous people (see *Consents and clearances*, page 34). It is inappropriate to disclose confidential personal information without permission from the relevant person or group affected by the disclosure. This will also include information about people who are deceased.

The way sensitive issues are handled: Film projects dealing with contemporary Indigenous life, particularly those that include sensitive content such as health issues, or social problems like petrol sniffing, may require specialist consultation with relevant Indigenous professional and community groups. Initial research for a film project should consider whether sensitive material is to be included and how it is to be handled.

Appropriate attribution: Attribution means acknowledging ownership of material by a named person and/or community. Under moral rights law, the individual creators of a copyright work or film are entitled to attribution as authors of the work or film if any attributable act is done in relation to the work or film. In the case of cinematograph films, this means the copying, exhibition in public and communication to the public of films.¹⁰ Attribution must be in a reasonable form¹¹ or if the author has made known that the author wishes to be identified in a particular way, identification is to be made in this way if this is reasonable in the circumstances.¹² It is also required to be a clear and reasonably prominent identification.¹³ An identification will be taken to be reasonably prominent in the case of reproduction and adaptations of works and copies of films where the person acquiring the reproduction or copy will have notice of the author's identity. In practice, this means that the identification should be given at the start and end of the work or film and be reasonably distinct.¹⁴

Pending new legislation, we recommend that the principles of moral rights should be extended wherever possible to the uses of Indigenous cultural and intellectual property. Indigenous people should be given proper credit or appropriate acknowledgement, including copyright and royalties, for their role in the development and use of their Indigenous cultural material. Where clan-owned information is used, the clan or community should also be referred to.

If there is no known author but rather a communal ownership, such as in the case of oral stories, dances or songs performed and handed down through the generations, then a process of communal attribution should be adopted. This process can be properly done in consultation with the relevant traditional owners, and the contributors to each particular film project.

10 Section 194(3) *Copyright Act 1968* (Cth)

11 Section 195(1) *Copyright Act 1968* (Cth)

12 Section 195(2) *Copyright Act 1968* (Cth)

13 Section 195AA *Copyright Act 1968* (Cth)

14 S Ricketson and C Creswell, *The law of intellectual property: Copyright, designs & confidential information*, 2nd ed, Law Book Co, Sydney, 2002, para 10.70.

In the case of uses of stories, attribution should also extend to the attribution of the storyteller. For example, a particular story, if this was approved, could be attributed as a traditional story of family X, as told by Mr Y.

Sharing of benefits: Indigenous people should be given opportunities to share in the benefits that flow from the use in films or TV programs of their images, stories, dances and knowledge.

Indigenous people should be paid for their knowledge. The intellectual property of the stories, dances and knowledge belongs to Indigenous people and filmmakers need to negotiate filming rights and share benefits. In my last film, *Whispering in Our Hearts*, we split the copyright three ways between the producer, the director and the community on the understanding that if we picked up any profit or awards, these would be shared three ways.

*Michelle Torres*¹⁵

Even where direct payment is not made, filmmakers should find ways of giving back to Indigenous communities if they make use of their images, stories and knowledge. There are many ways that this can be done including:

- *Skills development:* Indigenous people can be involved and learn the craft of filmmaking.
- *Copies for cultural preservation:* Copies of the film can be given to individuals, family and community members. Some filmmakers allow community organisations to use footage not included in the final film for their own promotional purposes.

Whenever I work on a documentary film I always give the community or family VHS dubs of all the rushes from the film. For the families and contributors the film becomes an ongoing archiving process for that group.

*Catriona McKenzie*¹⁶

Note that if material is given to archival institutions, clearance from the community must be obtained (see page 44).

- *Other support:* One film crew was asked to support a community's swimming pool fund as a payment for them allowing films to be made in their lands, and concerning their cultures.¹⁷

Some filmmakers have developed methods of sharing profits when large-scale projects are undertaken. Such projects also involve the exchange of technical information and training with the contributors, and provision of free copies of the published product to the contributing cultural groups.

15 Writer/director Michelle Torres, telephone interview.

16 Filmmaker Catriona McKenzie, telephone interview.

17 David Jowsey, ABC.

3. Implementing protocols within film practice

Filmmakers are urged to develop and implement protocols for all stages of their film project. This section provides a best practice guide to how this could be done.

Important points to remember are:

There is not just one Indigenous culture, there are many: Protocols differ from one Indigenous community to another. While there are many similarities in dealing with cultures, there may also be major differences. When applying these protocols, you should also take into account any issues from the specific Indigenous community. If filming crosses over clan boundaries the appropriate Indigenous people from all clans may need to be consulted.

Torres Strait islanders have their own distinct identity, history and cultural traditions: There is a difference between Aboriginal and Torres Strait Islander cultures. For information on Torres Strait Islander cultural protocols see *Mina Mir Lo Ailan Mun: Proper communication with Torres Strait Islander people*.¹⁸

Protocols apply in urban and contemporary contexts as well as to rural and remote communities. As Erica Glynn states:

Cultural protocols still exist in major cities like Sydney or Melbourne. People should make contact with the key Indigenous organisations or community members. It should still happen as a matter of course. In fact, the bigger problems are not always in traditional communities. Some filmmakers assume that because an Indigenous community is not living a traditional lifestyle, they do not have to consult with local organisations, elders and so on. This can cause all sorts of problems. Whilst there is a need to be aware of the differences between traditional and urban communities, protocols should still be applied in urban communities.¹⁹

Protocols are ethical standards: Protocols aim to encourage ethical conduct and promote interaction based on good faith and mutual respect. Protocols are not legally enforceable and are only effective if people voluntarily adopt the standards or incorporate them into contractual arrangements (for example, in the arrangements for giving filmmakers access to a community's lands, stories or expertise).

18 Department of Aboriginal and Torres Strait Islander Policy and Development, *Mina Mir Lo Ailan Mun: Proper communication with Torres Strait Islander people*, www.atsip.qld.gov.au/resources/documents/minamir.pdf, accessed 22 April 2008.

19 Erica Glynn, telephone interview with Toni Janke.

Protocols may change over time: Like societies and laws, protocols may change over time and it is important that your filmmaking protocols be updated. These guidelines will also be subject to ongoing review in order to reflect the changing nature of cultural relationships in Australia.

The best of intentions

One Indigenous writer/director has included the following clause in her agreement with the production company for her film:

The parties acknowledge that the Film requires specific cultural practices and considerations to be met and the Director agrees to advise the Production Company to the best of her endeavours of any specific cultural issues that may arise in the making of the Film. The Director and the Production Company agree to consult and work with each other and members of the relevant cultural community to ensure that all cultural responsibilities and requirements are met. In the event of a dispute arising in relation to specific cultural practices, the parties will use their best endeavours to resolve the dispute.

3.1 Overview – protocols for documentary versus drama

The same principles of respect – for Indigenous culture and heritage, and for Indigenous individuals and communities – apply to both drama and documentary filmmaking, and just as it is standard practice for filmmakers to consult on documentaries, we also recommend that filmmakers consult on dramas that involve Indigenous stories or that include Indigenous cultural and intellectual property content. The advice in the following sections is therefore generally relevant whatever the genre.

However, filmmakers have identified a range of key issues specific to each.

For **documentary production**, key issues include:

- dealing with sensitive issues in Indigenous communities (see in particular *Private lives of individuals*, page 22; *Real events*, page 23; and *How will the story be told?* page 23)
- whether participants will be paid (see *Recognising the value of Indigenous cultural and intellectual property*, page 33)
- handling dramatisations within documentaries; whether this is appropriate will require consultation (see *Real events*, page 23)
- handling a situation where the subject of the film changes during or after

shooting. For example, it is not ethical to open a door into the community by saying the documentary is about customary law, but then focus on public drunkenness.

For **drama productions**, key considerations include:

- If the film makes significant use of Indigenous cultural heritage, the filmmaker needs to be aware of why and how this is used, including issues of authenticity, representation and cultural integrity. If the film is based on a story from a particular area, for instance, what impact will this story have on the culture from which it is drawn? Are the language, music and cultural items used correctly?
- If the story is based on real events or the life of a real person, similar considerations to those for documentaries apply (see *Private lives of individuals*, page 22; *Real events*, page 23; and *How will the story be told?* page 23).
- If the film has Indigenous characters, even where they are not based on real people, issues of representation and authenticity again arise (see *How will the story be told?* page 23).
- If the Indigenous characters are leads, it is advisable also to engage Indigenous writers or directors or other Indigenous key creative professionals and consult with Indigenous scriptwriters (see page 26).
- If the character is a minor one, reasonable steps should be taken to ensure that the character is not based on a real person. If the character's role involves some aspect of Indigenous heritage, there should be consultation on that point.

3.2 Initial research and project development

Getting the right focus and the right people involved early is important. Indigenous input or consultation during the early/concept stages of film development will help create authentic work that is culturally and historically accurate, and minimise the chance of future problems.

If the consultation process is right from the very beginning, then most of the other issues that relate to Indigenous content, such as copyright, permission, cultural integrity, authenticity and so on, would be covered.

Grant Hansen, Melbourne Film Workshop conducted by Terri Janke²⁰

Involving Indigenous practitioners in the conception and development of the project will also encourage Indigenous perspectives on the story.

Why is the film being made?

Before advancing a film project, Indigenous filmmaker Darlene Johnson recommends filmmakers consider the question: "Am I the best person to tell this story?"²¹ Indigenous writers and directors often bring specialist cultural knowledge

20 Grant Hansen, Songlines Aboriginal Corporation.

21 Meeting with Darlene Johnson, Sydney.

to their work, and experience in cultural heritage management and cross-cultural exchange. Screen Australia also encourages projects with Indigenous people in writer and/or director roles. In any case, it is important that all filmmakers consider ethical issues and discuss them with the relevant people. Other questions considered by filmmakers should include:

- What expertise am I bringing to the project?
- What perspective?
- What effect might this film have on the individuals, family members and community it portrays?
- Will Indigenous peoples' rights to their cultural knowledge or stories be compromised by the film?

When making films with Indigenous subject matter, some filmmakers write the story and then look for customs, sacred sites or other cultural factors that can be incorporated into the film story. The process should be the other way around. Focus on the community, find the place and the cultural themes will develop from this source.

What is the basis of the film?

Existing materials: The adaptation of novels to film is common practice within the film industry. There have been a number of Indigenous authors whose works have been made into films, such as Doris Pilkington, whose *Follow the Rabbit-Proof Fence* became the film *Rabbit-Proof Fence*, and Archie Weller, whose *The Day of the Dog* became the film *Blackfellas*. Also, books by non-Indigenous authors have been adapted for the screen, such as Phillip Gwynne's *Deadly Unna*, which became the film *Australian Rules*.

It is important for the filmmaker to consult with Indigenous people even though the film may be based on an underlying text. Transferring the story to a new medium may introduce new considerations that the written text did not have.

Films based on traditional stories or works such as dance that aren't in material form also require consultation if adapting them to film.

Private lives of individuals: It is not appropriate to disclose confidential personal information without permission from the relevant person or group affected by the disclosure. This will include information about people who are deceased.

If film projects depict the life of an identifiable Indigenous individual or community, ask the individual, community or relatives of the individual for permission and observe close consultation and consent throughout the process. Legally, prior permission is in your best interest. You may need to negotiate the rights in return for payment for dramatised versions. It is important to avoid disclosing sensitive information without discussion and consent.

Be aware that including personal material may be sensitive. If it is strongly objected to by family or clan representatives, leave it out.

Real events: Films based on real events will need consultation and preferably consent. This is accepted practice in mainstream films, whether they involve Indigenous subjects or not.

Dramatised sections within documentaries require special care because of the extra 'authenticity' that the documentary context can give to what is essentially an interpretation, rather than a presentation, of real-life events.

How will the story be told?

Representation: This refers to how cultural material is interpreted and represented. In filmmaking, the representation of Indigenous people on film has been manifest in the use of words, language, story, plot and cultural symbols.

In the past, Indigenous people have expressed concern that their heritage material has been appropriated without any respect or recognition that the material comes from a distinct cultural group. Concerns have also been expressed that some representations of Indigenous cultural heritage material have compromised its cultural integrity.

Authenticity: This refers to the cultural source of Indigenous heritage material. Giving proper consideration to authenticity means respecting customary laws or cultural obligations and ensuring that the appropriate context is given to the cultural material. To take cultural heritage material out of context or use it inappropriately can displace the cultural authenticity of a film. For example, in some cases filmmakers have attempted to present a story in a particular place but used an Indigenous language and cultural symbol from a different Indigenous cultural group.

Contacting and getting advice about these issues from the right people at an early stage is crucial (see Section 4, pages 51–62).

Avoid stereotypes: Filmmakers should aim to represent Indigenous people in appropriate ways that are not stereotypical or offensive and demeaning. Filmmakers should undertake reasonable research into their subject and proposed characters to avoid stereotyping.

Wrongful and hurtful portrayals can cause divisions in communities; people need to consider this.

*Pauline Clague*²²

Language: A filmmaker must also be sensitive to language use in films. Make sure the language fits the story. That is, the language is that of the people portrayed. Be aware that certain words used in one area or by one community can mean something totally different in another community. The local language should be used and cleared because it could be offensive. Check with relevant Indigenous advisers.

22 Filmmaker Pauline Clague, meeting.

Also consider carefully the use of derogatory or offensive words such as 'Abo', 'Boong' or 'Gin'. Do they add to the story or are they gratuitous?

Consult **sensitive issues** early on. Initial consultation will save time, money, frustration, pain and suffering.

Rachel Perkins on authenticity

Non-Indigenous filmmakers who want to portray Indigenous stories must take responsibility for finding out about the cultures they are representing. Filmmakers often don't respect the authenticity of stories and cultural material. Yet Aboriginal audiences can pick out the false cultural references, for instance, where the names and languages are not from that particular area and the stories and the dances are wrong. It's like putting a plastic bag in an English period film.

A lot of film representations of Indigenous cultures are pastiches from a variety of Indigenous nations. Filmmakers don't do the proper research about the cultural content for Indigenous films, and often they just make it up. But Indigenous culture is bound by a highly developed system of Aboriginal law and social organisation, so if filmmakers want to make films about us, our culture and our experience, they should do the work and find out about our law.²³

Checklist for initial research and project development

Preliminary

- Have you considered why you are making the film or program, why you are using Indigenous material, and the perspective you bring to it?
- Have you sought advice on the cultural issues that need to be addressed through consultation?

Consultation

- Has consultation with relevant Indigenous individuals and communities been initiated?

Representation

- How will your work affect the Indigenous group it is based on?
- Does it empower Indigenous people?
- Does it depict or expose confidential, personal and/or sensitive material?
- Does it reinforce negative stereotypes?
- Have you researched your characters?
- Is the use of language appropriate?

²³ Telephone conversation with filmmaker Rachel Perkins.

Cultural integrity

- Are you proposing to adapt or alter traditional knowledge, communally owned material or cultural heritage material in any way? If so, have you explained the adaptation you propose, given people time to comment, and obtained consent?
- Will the individual or community who is the subject of the work have an opportunity to see the work prior to public dissemination? Have their suggestions been incorporated?

Authenticity

- Have you established that any Indigenous cultural and intellectual property in your film is used in the correct cultural context?
- Have you established whether there are any restrictions on the material and the exact meaning of any words in the language if unsure?
- Do you use heritage material such as imagery, music and language with proper regard to gender, clan affiliations and cultural restrictions?

Sensitive or sacred material

- Is the material culturally sensitive? Is it secret or sacred? Is it a women's or men's area?
- Are there any themes that refer to sacred or secret material that may need consultation with Indigenous people?
- Are there contemporary sensitive issues involved?
- If so, how should it be handled? How do you plan to involve the relevant Indigenous specialist agencies in the development of the film project?
- Have you spoken to elders or other relevant Indigenous people from the relevant area to identify any sensitivities and sacred or religious issues that might prevent depiction of the image, story or event?

3.3 Script development

Early engagement with the Indigenous content of a project is crucial and should continue through script development. Often, production and the latter stages of filmmaking can become contentious because of an oversight or failure to ensure Indigenous input to the script.

Involving Indigenous people in the script writing process can include:

Using Indigenous writers: A growing number of Aboriginal and Torres Strait Islander people are writing for the screen. Production companies could engage Indigenous writers to write the script.

Using Indigenous script consultants: It may be useful to engage the services of a consultant to work and advise writers at the time the script is being written. Often consultation occurs after the script is finalised but consultation during the writing phase can focus content and enhance the story.

Using Indigenous script assessors: For films with Indigenous content, the script should be assessed by an appropriate Indigenous person as part of the development process.

The Black Book is an excellent way of finding Indigenous practitioners (see *Directories*, page 79).

Development of *Whale Rider* and the close involvement of Indigenous people

In the development of the New Zealand film *Whale Rider*, non-Indigenous writer/director Niki Caro worked closely with the Maori writer Witi Ihimaera in adapting his novella for the screen, as well as with local communities.

The film depicts the legend of the Whale Rider, Kahutia Te Rangi, ancestor of the people of Te Tai Rawhiti, who travelled from Hawaiki, the place of the Ancients, to the east coast of New Zealand. His descendants are the Whangara people, or Whangara iwi.

The film featured a wholly Maori cast, some of whom come from the tiny village on the east coast of the North Island where the film was shot. The filmmakers also developed cultural protocols for working with cultural heritage and presenting it in the film.

Choosing an Indigenous script adviser

Choosing the right Indigenous consultant can be difficult. It might be the genre of the film, or the geographic area where the assessor comes from that draws the filmmaker to choose that particular consultant. The following criteria should be considered:

- relevant technical area of expertise and ability to deliver and provide necessary services
- cultural knowledge, background and relevancy to the particular film
- experience in the industry.

Funding agency encourages use of script consultants

The NSW Film and Television Office supports the engagement of script consultants at an early stage and employs Indigenous readers to report on projects with Indigenous content at the script development stage. The script is assessed for representation and authenticity. As the FTO notes:

We specifically ask readers to identify areas of the script, characters, plot, dialogue that may be offensive and/or inaccurate. Where the reader tells us they do not have knowledge of that community, we refer it to another reader with the appropriate cultural background.²⁴

Questions for Indigenous script assessors

Below is a list of questions that may be useful for script assessors to consider during an assessment:

- What is the identity of the writer/filmmaker?
- Which community is he or she from?
- Have Indigenous communities been consulted?
- Are there any cultural aspects relating to heritage, language, location, or 'sacred'/sensitive issues that need to be authenticated or affirmed by Indigenous people or their families?
- Does the writer/filmmaker have permission from the communities to make the film?
- Is the story based on fact or fiction?
- How are Indigenous people portrayed?
- Is there 'negative stereotyping' of Indigenous people or communities? If so, is it likely to offend Indigenous people or communities?
- Is it 'necessary' to include specific scenes in the film?
- Is the cultural value of the underlying story enhanced or undermined by the film?
- Does the film accurately reflect the historical or cultural facts?

Checklist for script development

- Have you considered using Indigenous writers or script consultants?
- Has the script been assessed by an Indigenous script assessor and their suggestions taken on board?
- Has the final draft script been endorsed by the representative organisations portrayed in the film, or the representatives/descendants of individuals portrayed in the film?

Remote Area Nurse – script adviser

For the television series *Remote Area Nurse*, the producer, Penny Chapman, engaged three script writers – John Alsop, Sue Smith and Alice Addison. In coming up with the plot, Penny was inspired by the experience of her sister, who worked as a nurse on Masig Island. She considered that the film should generally be about a non-Indigenous woman. "She is an outsider, who desperately wants to belong in a Torres Strait Island community. At the end, she feels she can't so she leaves," said Penny.

At the start of the project, Penny visited Phillip Mills, a Torres Strait Islander health manager in the Torres Strait. She asked him if he had any suggestions about who she should engage as a cultural adviser to read the treatments and scripts and check the cultural content. Phillip Mills referred her to George Mye who agreed to be the consultant. She sent a brief synopsis of the series to George, which he liked. She then got the writers to work on the first drafts for each episode.

"We had a written contract with George setting out what we wanted him to do – to advise us on the strengths and weaknesses of the portrayal of Torres Strait Islander culture. The agreement also set terms for payment. Every time we did a new treatment – which was several times – we sent it to him. We also sent him draft scripts. When George got the first episode script, he like it so much he couldn't wait for the next episode. He gave us advice on cultural issues and sensitivities. For instance, he suggested that we change the name of a character, because someone of that name had just died on Masig."

Penny says that once the draft was finalised consultation continued with even more people. "Even though you have a cultural script consultant you can't assume that what the consultant said is going to be agreed upon by everyone in the community."

The script was given to potential Torres Strait Islander actors to read. One actor raised concerns and Penny organised the writers to meet and discuss the concerns with the actor. "They listened to the different concerns, some of which conflicted with comments from Islanders they had already worked with. They took on board the things that were useful."

The reading of the script by the cast also gave an opportunity for consultation.

"Before filming we read through the script on Masig Island with all the cast. We got lots of feedback. This was useful because many of the cast were local people and represented daily life in the Torres Strait. One of the writers, Alice Addison, was there and able to meet with the cast and the adviser, Rocky Gela. Alice would listen and then make changes to the script. Even during filming we continued to get feedback. It takes time for people to unfold so they feel they can say what they think. As the comments flowed, we were able to send comments back to the other writers in Sydney, who could make the necessary changes."

The script changed for the better as a result of the consultation. Penny highlighted some examples:

"We changed the adoption story. Originally it was portrayed as a source of sadness and grieving. But for Torres Strait Islander culture, adoption is a gift. Torres Strait Islanders have a cultural practice of adoptions where children are given to family members who can't have children, or who are lonely, to look after. There is continued interaction between the birth mother and the adopted family. Adoption is not seen as something that comes out of a tough necessity. The script was changed to reflect this."

"There was a death on the island when we were filming and this required further sensitivity to filming and portraying the script's death scene."

The wedding scene's portrayal involved lively debate about Torres Strait Islander wedding ceremonies. "Ceremonies in the Western Islands were different from the Eastern islands. There was much discussion about how the wedding scene should be filmed, which led to a competition about which ceremony was better."²⁵

3.4 Pre-production and production

In pre-production, issues arise when choosing locations, engaging cast and crew, developing costings and budgets, raising finance, and ensuring all the relevant consents and contracts are in place.

Locations

Respect for sacred areas and objects: Picking the right place to film will require consultation and often written consent. It is important not to film sacred sites or park heavy vehicles on sacred land. You should also ask permission to film objects, or pieces of artistic works. (See Section 4, pages 51–62; and also Section 5, pages 63–77 for information on filming copyright works.)

Filming in Indigenous communities: If you want to film in an Indigenous community you should contact the relevant community, organisation or council for

25 Penny Chapman, telephone interview, 17 April 2008.

permission to film, and provide them with details of your film project (see Section 4). It is a good idea to establish formal lines of communication between the crew and the community by, for example, hiring someone from the community to act as liaison. This applies to remote, rural and urban communities.

Getting permission: When visiting Indigenous communities for the purpose of filming, it is important to get the consent of the community.

Some filmmakers do not get the necessary consents and find they are not allowed on Indigenous land. Or they turn up at an organisation ready to film, and have not briefed people adequately about the film project. In some instances, Indigenous people may not allow filming unless protocols are followed. This can have an impact on the project, particularly the budget.

See *Location permits* (page 54) for more details on when a permit is needed and how to get one.

Permit too late

One film crew travelled to the Torres Strait to film on Murray Island, but were not allowed to film because they had not applied for and received a permit before travelling.

Filming Uluru

A documentary maker had included parts of Uluru in a documentary but had not applied for or received a permit for filming and did not consult the filming guidelines. After being told by the broadcaster of the requirements for a permit, the filmmaker applied for one but was rejected. The film included sacred sites in the final cut, deviating from the shooting script, and promoted the climbing of Uluru, which is against the film and photography guidelines. In the end, the filmmakers had to take the footage from the final cut before screening. Its focus was largely on mainstream tourism and it did not promote Anangu culture.

Filming on location in the Torres Strait: *Remote Area Nurse*

In the process of selecting a suitable location to film the mini-series *Remote Area Nurse*, producer Penny Chapman and co-producer Helen Panckhurst made several trips including those to a Cape York community and the Torres Strait islands of Masig, Mabuag, Erub and Yam. "In the end, we chose the Torres Strait as a film location because of its exotic location," said Penny.

At the scripting stage of the film project, they engaged a Torres Strait Islander film consultant, George Mye, to provide feedback and advice on every stage of the scripting with regard to cultural matters. Once they progressed further, on George's advice, they wrote to and consulted with the chairmen of the various island councils.

"At that stage it was hard to make contact because the chairmen had no idea who we were. We'd write or leave messages, and no one would call back. The hardest thing for us was to understand that we had to keep calling back. I kept calling and eventually got to talk to people," said Helen Panckhurst.

The filmmakers spoke to relevant councils about what filming on location would involve. Some of the chairmen thought that the filming would be too disruptive to their island's society, and did not want the filming on their island.

After much discussion, Masig and Yam Islands were short-listed as the two most appropriate. The two chairmen met on Thursday Island and they decided that Masig would be the most appropriate island to film. As it turned out, Masig Island had been the island Penny Chapman's sister had worked on as a remote area nurse. Her experience had been an inspiration for the series.

Once they got the permission to film on the island, Masig Island's Chairman, Don Mosby, selected Rocky Gela as the key liaison person. Rocky was from Erub, but married to a Masig Islander. As an in-law, culturally people had to listen to him. Penny said, "Rocky was the person who we met with every day. He would ask what's happening and would talk to the elders. He was incredibly patient."

There were many issues for filming on location that the film crew had to respect. As Penny recalls:

"The Masig Islanders didn't want us to film in the cemetery. They considered that it was very bad spirit to dig a hole in the ground and not put anything in it. Rocky went around to the elders. Shooting a scene in the cemetery where the script contained a burial scene was not acceptable. They didn't want to have an empty coffin. So we had to take it apart. We asked if we could have the burial on an uninhabited island. This was discussed and one senior man, Dan Mosby, said it was okay to film the scene on his land on a nearby uninhabited island."

Filming on location took over three months. The film crew had to be mindful of their impact on island life. The crew gave up alcohol because Masig is a dry island. Also, whilst they were there, an islander passed away, and filming was shut down for a day to respect the family.²⁶

Actors and consultants should be paid

If Indigenous people are used as consultants for cultural advice, they should be paid an agreed fee in line with other consultants such as a script editor.

Further, if an actor on a project is also the consultant on cultural material they should be paid an additional fee to their acting fee. This should be in line with fees paid to other consultants such as a script editor.

26 Penny Chapman and Helen Panckhurst, telephone interview, 17 April 2008.

All actors working in feature films, television series or serials and dramatisations within documentaries should be paid according to the relevant award or agreement (see *Industrial Agreements*, page 112 for SPAA and MEAA contact details).

Actors who have questions about the fees they should be paid should contact the Media, Entertainment & Arts Alliance Award (see *Industrial Agreements*, page 112 for MEAA contact details).

The question of whether participants in documentaries should be paid is not so clear cut. Some people thought that participants (subjects who are interviewed) are entitled to a fee, depending on whether the person's contribution is a key component of the film and the expertise that participant brings. Other people consulted thought that paying informants and participants could be seen as paying for a story.

This aspect should be fully negotiated with the participants well before filming. Such costs would obviously need to be taken into account in the film's budget.

Cast and Crew

It is appropriate for performers and crew to ask if consultation has been undertaken and if needed, consent has been given by the relevant Indigenous communities or individual/s.

It is not appropriate to assume that an Indigenous actor or crew member be responsible for the cultural integrity of the project. This is the responsibility of the production company.

Indigenous actors and crew may be happy to take on this role, but this needs to be discussed early in the casting and crewing process, well before they take up positions or filming begins. If they are to take on the role of Indigenous consultant they should be remunerated in line with fees paid to other consultants.

Submission from the Media, Entertainment & Arts Alliance

Indigenous performers too often find themselves in invidious positions when appropriate consultation has not been undertaken or relevant consents have not been secured.

As employees, they can find themselves being directed to undertake a performance in the absence of appropriate consent or asked to give a performance that might be culturally offensive in some respect. In such circumstances, their options are then reduced to refusing to work, thus jeopardising filming (and potentially putting the members in breach of their employment contract) or undertaking work in the knowledge that appropriate procedures have not been followed.

The ramification for Indigenous performers can be very serious. The Alliance is aware of at least one instance – in the early 1990s – where an Indigenous performer was, in this way, exposed to the risk of triggering physical punishment in accordance with the community law that was offended.

The issues are most acute for performers as undertaking a performance that might be culturally offensive will be clearly linked to them individually – their actions are recorded on screen. On the other hand, crew members undertaking or participating in an activity where appropriate consultation has not been undertaken or appropriate consent secured are not so readily identifiable. However, their options are as limited as those of performers in the same circumstances.

It is important that cast and crew be confident that due process has been followed and that they not be in the position where they are asked to participate in activities that others (and themselves) may find offensive.

Recognising the value of Indigenous cultural and intellectual property

In the arts and film industry it is commonplace for users of intellectual property to pay fees to, or share profits with, the owners of copyright works. For example, if a book is adapted into a film, the author has the right to ask for and be paid a fee and/or royalties.

In the same way, the value of Indigenous cultural and intellectual property should be recognised. If the cultural material such as songs, dances and artistic work are to be used for commercial purposes, make certain that the Indigenous owners of the material receive appropriate financial compensation. In some cases this might involve a one-off payment, but if the image is to be used widely, it may be better to negotiate a royalty payment.

It is important to note that the ability of film producers to pay royalties and fees

will depend on their film's budget, and whether the film makes any profit. A lot of documentary production, for instance, does not recoup profits. It might be unrealistic for an Indigenous community to expect high fees and payments for a documentary production that has a low budget. However, for a larger feature film, this would be different.

The issue of copyright ownership of cultural expressions that have been filmed or recorded in some other way should be discussed up front. The copyright of the recording and filming of Indigenous people's cultural expression will not, under general law, belong to the Indigenous communities but with the recordists and filmmakers. However, as noted in *Our Culture: Our Future*, it is an important Indigenous cultural right for Indigenous people to control commercial exploitation of their Indigenous cultural and intellectual property. In some cases where filmmakers have recorded a substantial amount of Indigenous cultural and intellectual property, such as the recording of 'traditional creation' stories, they have shared the copyright and royalties with the relevant Indigenous group, to recognise Indigenous ownership of cultural stories and the value of Indigenous cultural and intellectual property.²⁷

An Anangu Story

Uluru – An Anangu Story was a Film Australia National Interest Project title produced in 1986 in conjunction with the Mutitjulu Community from Uluru-Kata Tjuta National Park. It is for sale on video only. The material is not to be sold as stock footage without the permission of the Mutitjulu Community Incorporated, an Indigenous community organisation which represents Anangu people living at Mutitjulu in UKTNP. A percentage of the profits from the sale of the video is distributed to the community. The film has grossed over \$167,000. Approximately \$34,000 of this has been distributed to the community.

Consents and clearances

After proper information about the film project has been provided to Indigenous participants or subject communities, consents should be obtained, preferably in writing. It is standard practice in the film industry for filmmakers to require participants to provide a standard release, or negotiate the rights under written contract. Written contracts should deal with Indigenous cultural and intellectual property rights (see *When consent is required*, page 52; and Section 5, pages 63–77).

This release or contract can also include a protocol to be followed in the event of the person's death: for example, whether they wish their name and/or image to be represented, or whether they would prefer to be known by another name after their death.

²⁷ Terri Janke, *Our Culture: Our Future*, pp.47–48.

Shooting

By the time the film starts shooting, cast and crew should all be aware of the protocols developed for the project, including what is appropriate behaviour and any sensitivities involved.

During the shoot, it's important to monitor the relationship between the crew and the community, and this is a key role for a liaison person. Communicating any changes that occur is especially important; these are inevitable on a film shoot but have the potential to destroy a good working relationship.

Appropriate language

(provided by Beck Cole and Warwick Thornton)

Whilst working within an Indigenous community, it is important to give the appropriate level of respect to elders and those in positions of authority. Warwick Thornton had an experience a few years ago while shooting a documentary on an Aboriginal community with a largely non-Indigenous crew.

Without meaning to offend, the director (non-Indigenous) called a group of traditional men 'boys'. The men were furious and completely insulted as they were senior lawmen within their community. They decided that they did not want to work with the director and the entire shoot came to a grinding halt.

Everyone was confused and upset by an experience that could have been avoided had the director asked a few simple questions regarding protocol within that particular community. Every Indigenous community is different and protocols will vary.²⁸

28 Email response to questionnaire, Beck Cole and Warwick Thornton.

Checklist for pre-production and production

Locations

- Have locations been chosen with due regard and respect for cultural beliefs?
- Have the required permits been obtained?
- Have the relevant contacts been identified and a liaison person appointed?

Cast and crew

- Has the use of Indigenous people as cast and crew members been considered?
Are they being paid appropriately?

Consents

- Have the required consents been obtained, eg for the use of Indigenous cultural and intellectual property, or to film Aboriginal or Torres Strait Islander people?
- Have protocols been discussed for dealing with the death of any actors or interviewees captured on film, and clearances been obtained?

Budgets and financial returns

- Have fees or other benefits been negotiated with the contributors and traditional custodians?
- Is the cultural value of the work recognised in financial returns?
- When applying for funding, have fees or financial returns for all creative contributors been incorporated into the project budget?

Shooting

- Are cast and crew briefed about the protocols developed for the project, appropriate behaviour and any sensitivities involved?
- Is there a procedure in place for monitoring relationships with the community and communicating changes?

Ten Canoes

Ten Canoes (d: Rolf de Heer and Peter Djigirr, 2006) is a collaborative film produced with the people of Ramingining. The entire cast of the film is Indigenous from Ganabingu and related clans. They were involved in the script, and made the cultural objects which are used as props.

Rolf de Heer met David Gulpilil, the Aboriginal actor, whilst working on the film *The Tracker* in 2000. David invited Rolf to spend time with him in his community. Rolf travelled to the Arafura Swamp, spending time with David, and the two discussed the potential of making a film in this location with a focus on Yolngu culture. When Rolf was leaving, David showed him a black and white photograph taken by the anthropologist

Donald Thomson in the 1930s which depicted ten canoeists embarking on a goose egg hunt. "We need ten canoes," said David. Rolf agreed and the photograph became the inspiration for the film.

According to Rolf, the development of a story about the goose egg hunt created a problem in that the hunt was no longer a common cultural practice. The filmmaker discussed this issue with the community at length, and the community agreed to revitalise the craft of making the canoes with reference to the Thomson photographs.

Another storyline issue was how to add the drama, which was a necessary component to entertain a Western audience. Should the story be about conflict between non-Indigenous and Indigenous people? The community valued the time Donald Thomson lived in their communities and did not want it portrayed as a period of conflict. Hence, they decided to set the film in the long ago pre-contact period. To emphasise the historical time setting, the filmmakers and the community discussed whether the story could be represented in black and white. Under the terms of the investment agreement, the film had to be in colour. Rolf de Heer notes: "In the end, those and other problems were solved by introducing one device into the film, which was to have the main dramatic part of the story set in mythical times, when for the Yolngu anything was allowed to happen, and shoot that part in colour ... That dramatic story could then be told as a cautionary tale during a goose egg hunting expedition, which would be shot in black and white to reflect the Thomson photographs. A script which pleased both cultures was then possible."²⁹

The film is the first feature filmed in Aboriginal (Yolngu) language (predominantly Ganalbingu), although David Gulpilil, the narrator, speaks in English, and there are English subtitles. There are 16 clans in the Ramingining community who speak up to eight Indigenous languages. The actors came from different clans, and spoke different languages but they could all understand each other. Several cast members spoke fluent English and as filming commenced they were able to translate problems between the filmmakers and the others.

Three different language versions of the film have been produced including the version theatrically released with Yolngu language, English narration and subtitles, and another version made solely in Yolngu language without any subtitles.

The process for casting the film required the filmmakers to consider cultural affiliations and kinship issues. The ten canoeists in Thomson's photograph have been identified and have many descendants and relatives living in Ramingining. The men with the strongest claims to heritage chose to play their ancestors.³⁰ The women were chosen because of their kinship relationships to the main men.

29 Libby Tudball and Robert Lewis, *Ten Canoes: A Study Guide*, p. 11, www.tencanoes.com.au, accessed 24 April 2008.

30 Ibid.

The selection of the actors also informed the story. For example, one cast member was overweight in a way that no one would have been in traditional times. Hence, a comical role was written into the storyline about this character's love of food, especially honey.

Through constant consultation with the relevant Indigenous people on casting, storyline and filming processes, the filmmakers were able to resolve conflicts. Although this was not always easy, the film director had to be patient and learn to read the subtleties of cultural interchange.³¹

The film's first public screening was in Ramingging in December 2005, which gave the community the chance to see it before it was widely released.

The local Aboriginal arts centre, Bula'bula Arts, played a facilitating role and also worked with artists and community members to make the costumes and props such as mosquito huts, woven bags, waist string bags, spears and woomeras. The community and the film production company agreed that these items and the canoes could form part of an exhibition at Bula'bula Arts, *13 Canoes*, which then toured to the South Australian Museum in 2006.

3.5 Editing and post-production

There should be Indigenous consultation and involvement in the post-production stages to make sure that protocols have been adhered to. Filmmakers need to allow enough time for this. It often takes a long time, and is equally as important as other production stages.
*Erica Glynn*³²

Indigenous people should be consulted at the post-production stage before the picture lock-off and sound editing period. Any changes required after the film's picture lock-off may be extremely expensive. Consultation and checking beyond this period would require further negotiation. Initial contact and negotiations should establish the extent of this consultation.

At the very least, Indigenous communities and participants should be given the opportunity to view the film at the rough-cut stage, and given a reasonable turnaround period to provide comments (at least seven days or otherwise negotiated). The filmmakers should take reasonable steps to ensure they are aware of any potential cultural issues, so they can address any concerns that arise at this stage. It is preferable to do this in person.

Some Indigenous communities have wanted to be involved in the film editing process, and to view a final cut of the film. This may be advisable if the film involves very sensitive material or a large amount of cultural heritage material where it is extremely

31 *Making Ten Canoes*, SBS Independent, 2006.

32 Erica Glynn, telephone interview with Toni Janke.

important for the context to be correct. If a filmmaker is unable to provide this due to time and budget constraints, this should be discussed with the Indigenous communities *before filming starts*.

If you want to ensure that a film respects Indigenous beliefs relating to sacred sites and material, be prepared to edit or cut out any secret or sacred material, particularly for feature films. This should be given priority.

In documentary making, a project may sometimes change substantially during the editing process. Be aware of the implications this has for the consents you have received from the subjects of the film. Trade practices law is also relevant here (see Section 5, page 75).

Representations of deceased people

Special attention needs to be paid at post-production stage to the potential for the film to name or portray images of deceased people, as this is offensive to mourning practices in many communities (see *Cultural beliefs*, page 14). Although families or communities are increasingly allowing a person's image and/or name to remain in a film after their death, the appropriate protocol should always be discussed on a case-by-case basis.

If you are aware that an actor or interviewee has died and they have signed a release form indicating that they do not wish their name and/or image to be included, the name will need to be removed and/or the image either removed or pixelated so the person is not identifiable. This would also apply to the voice of the person, irrespective of whether the voice was accompanied by an image of the deceased.

A post-production cultural clearance should also be obtained from the relevant communities, and this should ask whether any deceased people are named and/or represented and how their identities should be handled. The proposed distribution of the film and any broadcasting licences granted should be stated. The clearance should also make clear if the budget will not allow removal or pixelation of the image after the film is completed.

Even if a particular individual or community has given permission for a person's name or image to remain in the film after their death, it may still be offensive to some Indigenous people, so in all cases a warning should be placed at the beginning of the film.

A visual warning symbol such as a logo or device can also be incorporated, with audio dubbed over the image in the language of the community depicted in the film.

Use of archival footage

Filmmakers accessing film from archives should:

- respect the integrity of the film material obtained in good faith
- only use the film material in a way approved of by the individual or community filmed
- contact the relevant community for consultation if the proposed use is not consistent with any details stated on the deposit forms
- respect the confidentiality of secret/sacred and other restricted material
- when using film materials, proper attribution should be given to the individuals, community and the original filmmaker.

Filmmakers should also consider sensitivities about representation of deceased people when using archival footage:

- If old film footage is to be included in new films (and the old footage was shot in the last 50 years) reasonable attempts should be made to find out whether people have died, and whether the footage is suitable for use in the proposed new film.
- If the film footage is very old (ie it is more than 50 years since it was shot) the context should be checked by an Indigenous advisor, or representative from the family, or cultural group (if identifiable).
- If there is no identifiable group, or no group to speak for the footage, refer to the Indigenous Collections Branch of the National Film and Sound Archive (NFSA) or AIATSIS for advice. (See box next page).
- If in doubt, leave it out.

Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS)

If you wish to access archival footage from the AIATSIS Audiovisual Archives, you will be required to comply with the Code of Ethics, *Collections Management Policy Manual*.³³ The Code addresses personal conduct relating to archived materials, care of collections and access to secret and sacred materials. It also recognises the rights of Indigenous communities and individuals by requiring that they consent to the publication of archival material. AIATSIS's Audiovisual Code of Ethics states that "copies of material will only be provided for publication purposes 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."³⁴

33 The Australian Institute of Aboriginal and Torres Strait Islander Studies Audiovisual Archive's Code of Ethics was examined and endorsed by the AIATSIS Council in August 2005.

34 Australian Institute of Aboriginal and Torres Strait Islander Studies Audiovisual Archive's Code of Ethics, *Collections Management Policy Manual*, Canberra. Endorsed by AIATSIS August 2005. Clause 10.3.2 Access to the collections.

Indigenous materials in the National Film and Sound Archive

The National Film and Sound Archive (NFSA) holds an estimated 16,000 titles, or 3 per cent of the national collection of films, recordings and programs, which includes depictions of Indigenous peoples, culture and experience, presented from a variety of perspectives and historical attitudes.

The NFSA has drafted an Indigenous Collections Policy which includes provisions for the management, access and preservation of the Indigenous film archives it holds including:

Access to secret sacred material: 5.4.2 'In relation to Indigenous subject matter, sensitivities have greatest force when the works and other material accessed include recording and/or depictions of secret and/or sacred events recorded with or without permission. In the past, some Aboriginal peoples have given secret information to respected researchers, not realising that the information would be published and made available to the general public. In such circumstances, an item need not be readily available to everyone simply by virtue of its prior publication, and may require specific permission from the relevant peoples of association.'

Access by Indigenous community: 5.4.4(f) 'Respond appropriately to any request from an Indigenous community for copies of material of specific relevance to the community for its use and retention.'

The full policy can be found on the NFSA website at www.nfsa.gov.au

Appropriate attribution and film credits

The owners of Indigenous cultural and intellectual property should be asked for instructions on how they wish to be acknowledged. It may be particularly important to identify the names and clans of people who appear in images. The failure to attribute perpetuates the anonymity of Indigenous faces and continues to silence Indigenous voices.

Indigenous cultural advisors such as script editors and cultural liaison officers should also be credited for their professional knowledge in film credits, just as other cast and crew are recognised. And where actors are consulted for cultural advice on a production they have been cast in, they should be credited for this separate role and expertise, as well as for their performance.

It is important not just for ownership and acknowledgement, but often other Indigenous people want to know when the credits roll who was consulted on this or that film.

*Tony Briggs, actor*³⁵

35 Tony Briggs, Melbourne Indigenous Filmmakers Cultural Protocols Workshop, Ilbijerri Theatre Company, 29 July 2003.

Acknowledging the use of Indigenous cultural advice through the input of individuals and via community networks can also enhance the credibility of the film.

Checklist for editing and post-production

Consultation

- Have the Indigenous people involved been consulted before the picture lock-off and sound editing, preferably at rough-cut and fine-cut stages?
- Have the Indigenous communities and participants been made aware of any potential cultural issues and been given the opportunity to view the rough cut?
- Have participants, actors etc, their families and community been advised that the film will be widely circulated?

Representations of deceased people

- If reproducing deceased people's images, has permission been sought from the family or clan representatives for the proposed use, and have they been advised of proposed distribution and any broadcasting licences granted?
- Has a warning been placed in a prominent position at the beginning of the film, after discussing the proper wording with relevant family and community members?
- If referring to deceased people's names in your film, have you checked with the relevant family and community whether it is appropriate to mention that person's name, or whether they would prefer to be referred to by another name?

Attribution

- Have Indigenous contributors, writers, creators, communities and custodians who contributed to the work in any important way been named?
- Has proper recognition been given to the writer and the source community, or other relevant Indigenous people, in a form agreed upon with those to be attributed?
- Have the clan affiliations of Indigenous creators been included after their own names if this has been requested?
- Have Indigenous custodians, contributors and Indigenous organisations contributing resources and knowledge been given a significant credit as collaborators on the project where relevant?

3.6 Screening and broadcasting

As a general rule, the filmmaker should ensure that a 'deceased persons' warning is screened before the film whenever it is shown. If films are screened in remote areas where the death protocol is strictly adhered to, warning signs could be placed outside the theatre.

'Deceased persons' protocols

The **ABC** and **SBS** have adopted a practice of broadcasting a warning before a program that features Indigenous people.

For example, the ABC screens: 'Aboriginal and Torres Strait Islander viewers are warned that this program may contain images and sounds that may relate to deceased persons.'³⁶

The ABC has also given some warnings, where relevant, in Indigenous language. For example, the documentary *Vis A Vis* on Ningali Lawford-Wolf, produced by Nick Torrens Films, contained a warning in language for domestic broadcasts.

SBS refers to the community when repeating the films made under the National Indigenous Documentary Fund, a month before the film goes to air. Under the terms of the broadcasting licence agreement, SBS gets three runs of the program over five years.

Another example of a warning is:

WARNING: Aboriginal and Torres Strait Islander viewers should exercise caution when watching this program as it may contain images of deceased persons.

Marketing strategies and opening nights

Marketing strategies may require some consultation, particularly in relation to the use of Indigenous cultural material or footage from the film in a marketing context. If there are any marketing issues that might involve changes to the original context, these should be discussed with the relevant Indigenous people.

Opening nights, launches and ceremonies associated with launches are a good focus for recognising the contribution of Indigenous people to the film. Do not forget to invite the Indigenous participants to such occasions where possible. If the film has significant Indigenous content, it's a good idea to involve an Indigenous person in the occasion itself; for example, a welcome to country could be conducted.

As some Indigenous communities may not access mainstream press regularly, it is recommended as a courtesy that you notify Indigenous participants of the broadcast dates.

36 Meeting with David Jowsey, Pauline Clague and Paul Brandt, ABC.

Checklist for screening and broadcasting

- Have the relevant Indigenous people been consulted about the use of a 'deceased persons' warning?
- Have the relevant Indigenous people been consulted about the use of Indigenous cultural material or footage from the film in a marketing context?
- Have Indigenous participants been invited to participate in any launch or opening night celebrations?
- Have you notified Indigenous participants of the launch and/or broadcast dates?

3.7 Footage archiving

Films by and about Indigenous people are important records of culture and provide sources of information for future generations. There are two main issues for filmmakers to consider:

- the need for films about Indigenous people or cultural materials to be archived with enough information to identify participants and content in future, including clearance forms obtained at the time of shooting
- the need to balance future access with the need to preserve the cultural and physical integrity of the original footage.

All potential and proposed uses of the film should be cleared with the Indigenous people involved, *before* beginning to film with them.

Depositing film in archives

Indigenous people represented in a film or whose cultural heritage is used in a film should be advised when the film is deposited in archives and libraries. If depositing material that was not included in the final cut, such as rushes, it is important to clear this extra material too.

It's important for the Indigenous people involved to fully understand the implications of depositing the film – it could be made available to filmmakers in the future and used in new films, for example – and to be given the opportunity to be consulted about future uses.

This may be particularly relevant for Indigenous filmmakers, who often get information on tape that might not be told to a non-Indigenous film crew, precisely because they are Indigenous or might be in a family or community relationship or connection with the interviewee.

Another issue is whether the participants consented to secondary uses of their film beyond the making of the first film. For example, an Indigenous film participant might consent to their image and interview being used for a documentary about their

particular culture, but it would not be appropriate to then use that image as stock footage for news items in another Indigenous community.

Footage should be archived with the following information as a minimum:

- the names of the producer, writer and director
- the names of people filmed, including language group and clan group, and the relevant contact details
- the names and contact details of any community organisations involved in the project
- details of where the filming took place
- date of filming (important where access arrangements depend on date)
- if applicable, the Aboriginal or Torres Strait Islander nation depicted
- the individual, group or organisation to contact for future clearance (eg a land council or community council could be named as a first point of contact)
- any clearance and consent documentation obtained
- whether the film includes sensitive information
- whether related materials such as scripts, rushes, production files etc giving context to the film are included in the deposit
- format or medium information, including type, such as 16mm black and white film
- status of the film, eg master, duplication or reference copy.

Custodianship of ethnographic films at Film Australia (now Screen Australia)

In order to deal with custody and future use issues of a significant ethnographic film collection, Film Australia and the filmmaker Ian Dunlop signed a *Memorandum of Understanding on a Policy for the future custody and use of the ethnographic film collection produced by Ian Dunlop for Film Australia between 1962–1996*. The document is detailed and refers to material for five major projects, four of which are Indigenous Australian: Aurukun Project, Western Desert Project, Yayayi Project and Yirrkala Project.

The general principle of the memorandum is that: "all the material ... was collected under an explicit or implicit moral contract between the community being filmed and the filmmaker. This contract confers certain obligations and responsibilities upon the filmmaker (Ian Dunlop) and the production company (Film Australia Ltd)."

"In particular the filmmaker and the production company have an obligation to honour the trust placed upon the filmmaker by the communities being filmed by: (a) respecting the integrity of the material obtained in good faith; (b) only using the material in a way approved of by the community filmed, including any secondary uses of the material and; (c) respecting the confidentiality of secret/sacred and other restricted material."

The memorandum provides guidelines as follows:

- Film Australia is bound by obligations of confidence entered into by the filmmaker regarding film work containing sacred and personal materials (Clause 1.3).
- Prints in distribution can continue to be marketed by Film Australia.
- Future use of material, including secondary use of material already in distribution, must only be allowed under strict conditions. Any new use must have the approval of the community filmed; no material may be used as straight stock-shot footage (Clause 1.4.4). There are specific guidelines for secondary use approvals, which require requests to be made in writing to the Chief Executive of Film Australia. Material must not be used in a way that contravenes the spirit or intent of its original use, as approved by the community portrayed. Each request for footage is assessed individually. Appropriate use might be in (Clause 2.1.3 iv):
 - a relevant Film Australia production
 - production of history of film
 - serious anthropological, historical and scientific production
 - a production made by or for the community portrayed
 - a production endorsed by the community portrayed
 - part of a display in a reputable museum or gallery.
- In relation to restricted material the document recognised that "conditions of restriction are ultimately the preserve of communities depicted in the material." Whilst the document provides guidelines it is noted that "the attitude towards restricted material by communities which maintain traditional values is a shifting one or sections of films which are currently not restricted could become so in the future and vice versa." (Clause 1.4.3)

Checklist for footage archiving

- Have Indigenous participants been advised if footage is to be archived and consents obtained for this if required?
- Have Indigenous participants been advised where the footage is to be archived?
- Has the required information been included with the film and any other footage that has been archived?

3.8 SUMMARY CHECKLIST

Initial research and project development

Preliminary

- Have you considered why you are making the film or program, why you are using Indigenous material, and the perspective you bring to it?
- Have you sought advice on the cultural issues that need to be addressed through consultation?

Consultation

- Has consultation with relevant Indigenous individuals and communities been initiated?

Representation

- How will your work affect the Indigenous group it is based on?
- Does it empower Indigenous people?
- Does it depict or expose confidential, personal and/or sensitive material?
- Does it reinforce negative stereotypes?
- Have you researched your characters?
- Is the use of language appropriate?

Cultural integrity

- Are you proposing to adapt or alter traditional knowledge, communally owned material or cultural heritage material in any way? If so, have you explained the adaptation you propose, given people time to comment, and obtained consent?
- Will the individual or community who is the subject of the work have an opportunity to see the work prior to public dissemination? Have their suggestions been incorporated?

Authenticity

- Have you established that any Indigenous cultural and intellectual property in your film is used in the correct cultural context?
- Have you established whether there are any restrictions on the material and the exact meaning of any words in the language if unsure?
- Do you use heritage material such as imagery, music and language with proper regard to gender, clan affiliations and cultural restrictions?

Sensitive or sacred material

- Is the material culturally sensitive? Is it secret or sacred? Is it a women's or men's area?
- Are there any themes that refer to sacred or secret material that may need

consultation with Indigenous people?

- Are there contemporary sensitive issues involved?
- If so, how should it be handled? How do you plan to involve the relevant Indigenous specialist agencies in the development of the film project?
- Have you spoken to elders or other relevant Indigenous people from the relevant area to identify any sensitivities and sacred or religious issues that might prevent depiction of the image, story or event?

Script development

- Have you considered using Indigenous writers or script consultants?
- Has the script been assessed by an Indigenous script assessor and their suggestions taken on board?
- Has the final draft script been endorsed by the representative organisations portrayed in the film, or the representatives/descendants of individuals portrayed in the film?

Pre-production and production

Locations

- Have locations been chosen with due regard and respect for cultural beliefs?
- Have the required permits been obtained?
- Have the relevant contacts been identified and a liaison person appointed?

Cast and crew

- Has the use of Indigenous people as cast and crew members been considered? Are they being paid appropriately?

Consents

- Have the required consents been obtained, eg for the use of Indigenous cultural and intellectual property, or to film Aboriginal or Torres Strait Islander people?
- Have protocols been discussed for dealing with the death of any actors or interviewees captured on film, and clearances been obtained?

Budgets and financial returns

- Have fees or other benefits been negotiated with the contributors and traditional custodians?
- Is the cultural value of the work recognised in financial returns?
- When applying for funding, have fees or financial returns for all creative contributors been incorporated into the project budget?

Shooting

- Are cast and crew briefed about the protocols developed for the project, appropriate behaviour and any sensitivities involved?
- Is there a procedure in place for monitoring relationships with the community and communicating changes?

Editing and post-production

Consultation

- Have the Indigenous people involved been consulted before the picture lock-off and sound editing, preferably at rough-cut and fine-cut stages?
- Have the Indigenous communities and participants been made aware of any potential cultural issues and been given the opportunity to view the rough cut?
- Have participants, actors etc, their families and community been advised that the film will be widely circulated?

Representations of deceased people

- If reproducing deceased people's images, has permission been sought from the family or clan representatives for the proposed use, and have they been advised of proposed distribution and any broadcasting licences granted?
- Has a warning been placed in a prominent position at the beginning of the film, after discussing the proper wording with relevant family and community members?
- If referring to deceased people's names in your film, have you checked with the relevant family and community whether it is appropriate to mention that person's name, or whether they would prefer to be referred to by another name?

Attribution

- Have Indigenous contributors, writers, creators, communities and custodians who contribute to the work in any important way been named?
- Has proper recognition been given to the writer and the source community, or other relevant Indigenous people, in a form agreed upon with those to be attributed?
- Have the clan affiliations of Indigenous creators been included after their own names if this has been requested?
- Have Indigenous custodians, contributors and Indigenous organisations contributing resources and knowledge been given a significant credit as collaborators on the project where relevant?

Screening and broadcasting

- Have the relevant Indigenous people been consulted about the use of a 'deceased persons' warning?
- Have the relevant Indigenous people been consulted about use of Indigenous cultural material or footage from the film in a marketing context?
- Have Indigenous participants been invited to participate in any launch or opening night celebrations?
- Have you notified Indigenous participants of the launch and/or broadcast dates?

Footage archiving

- Have Indigenous participants been advised if footage is to be archived and consents obtained for this if required?
- Have Indigenous participants been advised of where the footage is to be archived?
- Has the required information been included with the film and any other footage that has been archived?

4. Communication, consultation & consent

The process of consultation is always fundamental to filming with Indigenous people or using Indigenous material – for drama or documentary. The depth of the consultation process will be reflected in the quality of the final product. Sometimes, however, consultation alone is not enough, and a project will require consent – usually in written form.

4.1 Consultation and consent

Consultation and consent in Indigenous communities are interrelated. Through consultation a filmmaker can come to understand what requires consent and the correct people to give it, and the people giving consent can more fully understand what they are consenting to.

Consultation refers to the process whereby people exchange views and information. Consultation is not just a one-way process, but a process of sharing knowledge and opinions. Consultation means working together, listening to what the other party has to say and acting upon it.

Consent is a process whereby permission is given, based on a relationship of trust.

Consent should be informed and this means filmmakers need to provide a clear explanation of the filmmaking process, timeframes, contract details, possible benefits, impacts and future uses of footage at the time of seeking consent, to avoid misunderstandings at a later time. The consent process should be transparent for all parties, and information should be explained in plain English or with the help of an interpreter.

Whether you need consent or just need to consult will depend on the nature of the film project and the role played by the Indigenous people or cultural materials involved.

Consent is **legally required** for the following:

- Filming on land and areas owned by third parties including Aboriginal land under the Northern Territory (NT) *Land Rights Act*, and land privately owned by an Indigenous organisation. (Specific consents or permits are also required for filming in national parks and filming at specific sites such as the Devils Karlu Karlu (The Devils Marbles) in the NT may require an Authority Certificate from the Aboriginal Areas Protection Authority.)
- Filming Indigenous people (note that relying on implied consent if a person allows themselves to be filmed is risky and written consent is recommended; see page 56).

- Filming copyright works and/or adapting copyright works for film projects.
- Filming at live performances including at festivals and concerts. (See, for example, NT's Garma Festival – applications to film must be made prior to attending, and copyright approval forms signed.)

Consent is **recommended** for the following:

- a documentary about a particular living person, group or geographic community or a particular group's cultural traditions and beliefs
- a drama that depicts real-life events
- a drama about an identifiable Indigenous person or group of people
- a drama containing identifiable Indigenous traditions, beliefs, songs and stories.

In these cases rights should be negotiated with the relevant people or organisations, and consent obtained in writing covering the issues outlined in this guide. There may be implications in trade practices and defamation law without this consent.

Consultation without specific consent is appropriate for other film projects with Indigenous content or with Indigenous characters where the context is minimal, or general, and the situations specified above do not apply.

To consult, the filmmaker will need to contact relevant Indigenous organisations, professionals and communities for advice and guidance (see *Tips for successful consultation* on page 56).

4.2 When consent is required

When seeking consent Indigenous people should be informed of the intended film project *before* filming begins (see *Pre-production and production*, page 29). The following issues may need to be canvassed:

- What are the potential benefits and impact of the film for the relevant Indigenous individuals and/or community?
- Do all parties understand the concept of the film project? Have any requests for further information made by the relevant Indigenous people been responded to?
- Has the proposed project and dissemination of the film been fully explained? Is it understood that the film will be publicly exhibited, for sale and/or distributed worldwide?
- What future uses are to be made of the film and/or film clips taken in the course of shooting?
- Do people fully understand what they are signing?

Written approval from communities and individuals is required by film funding bodies such as Screen Australia. For instance, the NSW FTO requires that documentaries

dealing with Indigenous communities and individuals provide written approval from appropriate representatives of those individuals, families and communities at the time of their funding application. "This is to ensure that the filmmakers have made clear their intentions to the community and that they will involve the community in consent and consultation."³⁷

Consent to film Aboriginal and Torres Strait Islander people

The performer's rights provisions of the *Copyright Act 1968* (Cth) provide performers with protection against certain unauthorised use of their performances (see *Performers' rights*, page 69). For this reason, it is good practice for filmmakers to seek a person's written consent before filming them. Filmmakers should make sure Indigenous people understand what they are consenting to (see questions at the start of this section), so that they can make an informed decision to agree to be filmed or not. They should be advised that they can exercise their right not to be filmed.

Children should be taken through any consent forms in the presence of their parents or guardians, and in practice the forms are signed by the parent or guardians. Laws pertaining to the employment of children vary between different states and territories and information regarding these laws should be researched before engaging children.

Indigenous people filmed on the street in Alice Springs

(provided by the Central Australian Aboriginal Media Association)

When an overseas production company filmed Indigenous people on the main street of Alice Springs for a documentary, they told the people who were filmed and interviewed nothing about the project, or how their images were to be used. Even though the people did not object at the time (and so their consent could be implied), the fact is that they were not aware of their rights, and were concerned that their images were captured without proper consultation and consent. The individuals now feel violated and are reluctant to take part in any future film projects.

This negative outcome could have been avoided if the people had been consulted properly beforehand.

37 NSW FTO submission.

Location permits

Filming on Aboriginal land: State Aboriginal Land Rights legislation makes it a requirement for filmmakers working on Aboriginal land to get a permit. Contact local Aboriginal Land Councils for information on peak bodies for Indigenous land film permits (see *Land Councils*, page 93).

The Aboriginal and Torres Strait Islander communities themselves, and the traditional owners or custodians of a location have a right to say 'No' to any proposals put to them by others for acceptance. Their decision should be respected.

*Lester Bostock*³⁸

Filming in the Torres Strait Islands: For filming in the Torres Strait (including on Thursday Island and the outer islands) consult with the Torres Strait Regional Council. See the Torres Strait Regional Authority (TSRA) website for contact details:

www.tsra.gov.au

Filming in national parks: State legislation requires that permits be obtained for filming in national parks, for example, in Tasmania the filming of areas managed by the Parks & Wildlife Services Tasmania (see **www.parks.tas.gov.au/permit/commercial_filming.html**). Commonwealth national parks that publish film guidelines and permit processes will also require permits and there are also fees attached (see *Environmental legislation and national parks*, page 76). Parks owned and jointly managed by Indigenous people, such as Uluru-Kata Tjuta National Park, have introduced procedures for ensuring Indigenous traditional owners are consulted on uses of imagery so that the cultural values of the park are maintained and promoted.

Filming in Indigenous urban areas: You should also notify people of your intended visit when you are visiting urban areas frequented by Indigenous people, or where you intend filming within an Indigenous organisation, event or institution. For example, permission to film at the Sydney Yabun Concert on 26 January each year should be obtained from the concert's convenors, Gadigal Information Services.

Filming on private property: Consent to enter someone's property and film is required from the property owner. To do otherwise could amount to trespass.

There is a network of Indigenous media organisations throughout Australia that have expertise in working on media and film issues within Indigenous communities. These organisations are a useful first point of contact (see *Indigenous media associations and broadcasters*, page 81).

Filming at festivals and events: Contact the event organisers and inquire about the necessary processes and clearances.

38 Lester Bostock, *The Greater Perspective*, p. 25.

4.3 When consent is recommended

Consent for the use of Indigenous cultural and intellectual property

Do you need community consent for all Indigenous stories, dances and other cultural expression? It depends on the nature of the material. If traditional stories are to be depicted on film, filmmakers should get special permission from people in positions of authority in the relevant community. However, if the story is a contemporary 'new' story, permission may not be required. For example, the story of an Aboriginal disco dancer may not need any special consents from a community (although if it is based closely on an individual person, you might want to get that person's consent; see page 51).

It is important to recognise that some Indigenous knowledge is collectively owned and that in order to obtain informed consent it may be necessary to consult and obtain permission from a number of levels of authority. That permission, if given, may also be subject to conditions and ongoing reassessment.

Many Indigenous filmmakers use their own heritage, and would therefore discuss the use of the material with their own family and community. However, Indigenous people using other Indigenous people's heritage would still need to get permission; they too must work with the relevant communities and have processes in place for getting consent.

Andrew McLeod and Lleyton Hewitt – film permit issues

In 2005, Andrew McLeod filed a trade practices claim against Lleyton Hewitt arguing infringement relating to access to Aboriginal land, and what uses can be made of film taken when entry to Aboriginal land is subject to permit. McLeod alleged that Hewitt did not obtain permission from the traditional landowners of the Northern Land Council to use the footage in his DVD. Hewitt defended himself saying that he was unaware further permission was required to use the footage commercially. The matter was settled before the court set date for trial.

4.4 Tips for successful consultation

The consultation process should begin at the conceptual stage of any film or television project (see Section 3, pages 19–50).

Identify the right people

The term 'Indigenous' is seen as being a pan-definition. Non-Indigenous filmmakers should make sure they are consulting with the appropriate people in the community or from the specific area or region involved ... it's about educating people about the diversity within Indigenous cultures and communities.

*John Harding*³⁹

Indigenous people come from specific areas, and their cultural heritage also has origins in a specific geographic group. When identifying the right people to speak to it is important to go to the source community for representation. For example, if you are working on a film based in Yirrkala, you should deal with Aboriginal people who come from Yirrkala.

In most cases more than one person will need to be consulted and this may involve an entire community. Remember that consultation with select members of a community does not necessarily mean that the community as a whole supports the film project. There can often be division within the community about issues. Consult widely so as to gain the perspectives of the community as a whole. Decisions about the film should be based on the wider perspectives.

In situations where the most appropriate community or individuals within that community are not easily identifiable, filmmakers may contact local, regional or state Aboriginal Land and Community Councils, Indigenous media associations or medical and educational centres for assistance. The Australian Broadcasting Corporation (ABC) website has a useful reference list of these organisations.⁴⁰

When reporting or including sensitive subject matter such as drugs and alcohol abuse, we recommend consultation with specialist Indigenous agencies. A documentary on sensitive issues such as alcohol abuse or petrol sniffing in Indigenous communities may require more specific consultation with Indigenous advisory groups than a dramatic film. (See *Contacts and appendices*, page 59 for more details.)

Extreme care should be taken when filming individuals and consideration given to whether the footage exposes any legal risks of defaming people (see *Defamation*, page 74).

39 John Harding, playwright and Chairperson, Ilbijerri Theatre Company, Melbourne film workshop conducted by Terri Janke.

40 www.abc.net.au/indigenous/education/cultural_protocol/contact_community.htm

Allow enough time

Filmmakers need to understand the length of time that is required for consultation to take place before any development of the story and again before any filming. Consultation may take six months or two years.

Kim Mavromatis, filmmaker

Planning time for consultation with Indigenous communities is important. Many Indigenous communities contacted in the development of this guide noted that filmmakers often come late with enquiries relating to Indigenous cultural issues.

Filmmakers must weigh up the time factors as time is often of the essence in film funding agreements. Film productions, by their nature, run on very tight timelines, particularly when it comes to editing and post-production, where an edit suite is often booked for only a certain number of days at a large cost per day. These critical timelines should be explained to Indigenous people involved with the film at the outset so they do not have unrealistic expectations about consultation during the editing stage.

An effective protocol for working with Indigenous communities and with Indigenous content would reflect the practical scheduling requirements of film production. Both the community and the filmmaker need to advise each other of the relevant time factors.

Forge trusting relationships

It is important for the filmmaker to get to know the community and for the community to get to know the filmmaker. Forming a bond makes for a better understanding of Indigenous issues.⁴¹ Consultation with Indigenous people involves developing a high level of trust. *The Greater Perspective*⁴² encourages filmmakers to ensure that all obligations involved in maintaining trust with Indigenous people be observed. This is a fundamental premise for filmmaking protocols.

Provide information

In order for any consent or consultation process to be meaningful and to help build trust, Indigenous people should be provided with information about the film project from the start, and before they or their cultural material are filmed or recorded in any written form. Indigenous people should be advised of:

- the nature of the project
- their proposed role or the proposed role of their material in the film
- the extent of the use of the image
- whether opportunities will be given to review the material prior to broadcast
- commercial issues, such as whether they will be paid a fee for their involvement
- production issues, including key creative team, time frame and proposed broadcast, viewing and distribution.

41 Kim Mavromatis, submission.

42 Lester Bostok, *The Greater Perspective*.

Filmmakers need to be upfront about what they are proposing. In this way, the expectations of the Indigenous community can be managed. A written proposal that addresses the issues in the above list should be provided and a face-to-face meeting held with the appropriate people from the community.

Darlene Johnson's SBS protocols outline a process for informing Indigenous subjects who agree to take part in a documentary. The first step for the filmmaker is to be satisfied that the subject(s) fully understands the terms of the agreement and that this agreement is documented in clear plain English.

It is also important to acknowledge that many Indigenous peoples may not have English as a first language. As Ali Baker notes, "in these instances the filmmaker needs to accommodate this, and provide interpreters."⁴³ Erica Glynn agrees:

There should be translators in negotiations. This should be allowed for in the budget, eg translation allowances and time to make sure that everyone knows what is going on and has been consulted properly.⁴⁴

Filmmakers should consider sitting down with the Indigenous community or persons involved and reading through the script in detail, explaining issues as they arise. The advantage of this process is that the filmmakers see first-hand the reaction to their story from the people whose story they are telling.

Invite feedback

Ask Indigenous people for feedback on the film project in the initial stages, during the writing process and at certain stages of production. This is to ensure that communities are represented in an appropriate way.

We always involve members of the Indigenous community in which we intend to work. This often involves getting feedback and advice from other Indigenous filmmakers, and/or organisations such as CAAMA [Central Australian Aboriginal Media Association] who have vast experience in working with Indigenous communities on many levels.
*Beck Cole and Warwick Thornton*⁴⁵

43 Ali Baker, email submission.

44 Erica Glynn, telephone interview by Toni Janke.

45 Email submission to questionnaire.

Visualising Mimi

(provided by Erica Glynn and Rachel Perkins)

Rachel Perkins and Warwick Thornton were working on the drama *Mimi*. They had a visual concept for a Mimi figure, like a cartoon character. Early in the development of the film project, they met with the men responsible for the Mimi story to discuss their film and the plans to use a Mimi cartoon character. After the meeting, the men informed the filmmakers that the cartoon representation wasn't appropriate. The men and the filmmakers considered the storyline and came up with the idea of using an animated wooden Mimi carving as the 'Mimi' figure in the drama. It was much better to find this out early in the project, rather than spending time and money developing a cartoon character and making the film.

Involve Indigenous people

It is good practice to actively involve Indigenous people in film projects that use Indigenous content. This would need to be allowed for in the film's budget.

Some ways that Indigenous people could be involved in projects include:

As film professionals: Indigenous people could be employed at all stages of pre-production, production and post-production – from best boy to director and producer.

As local support people: Some Indigenous filmmakers contact the closest Indigenous media organisation or Remote Indigenous Media Organisation (RIMO) and involve them in the production. Find out whether there are any Indigenous community members who are interested in working on the shoot with the crew. Film projects have an important role in providing professional development opportunities for Indigenous people with an interest in film and television production.

Involving locals

Indigenous filmmakers Beck Cole and Warwick Thornton involve local Indigenous community members in working collaboratively with the film crew throughout the shoot:

"In doing so, the community becomes a part of the filming process, they have real input. They will also have a stronger understanding of what the filmmakers are trying to achieve.

Also, if an Indigenous community member is working on the film, there is always someone nearby who can answer questions and point the crew in the right direction."⁴⁶

46 Beck Cole and Warwick Thornton, email submission to questionnaire.

Use Indigenous cultural advisers

There is a growing force of Indigenous consultants or cultural advisers working on Indigenous film projects (see *Indigenous cultural advisors and script consultants*, page 92). Their role is to ensure that the film reflects Indigenous views, respects cultural heritage or portrays Indigenous people accurately.

Many of the recent slate of feature films which deal with Indigenous issues have hired Indigenous cultural liaison advisers to work with the film production team. Examples include *Remote Area Nurse* and *Rabbit-Proof Fence*.

For large-scale film projects it is a good idea to employ an Indigenous person to take on the position full-time during the course of the project. In this role they can:

- provide support to Indigenous cast and crew
- advise the production team of cultural integrity issues and sensitivities
- act as an intermediary with the Indigenous community when raising concerns.

First Australians (Blackfella Films)

SBS approached Blackfella Films in 2001 to make a documentary series about the history of Indigenous Australians, similar to the 1995 US history series on American Indian tribes, *500 nations* (directed by Jack Leustig).

Blackfella Films advised that a history series of this nature would need extensive consultation with Indigenous Australian communities. To undertake the project, they would require considerable funding to embed the necessary consultative processes within the film project's schedule. SBS agreed and gave ample funding to allow consultation.

"SBS appreciated and acknowledged that consultation was the key to the success of the series and supported this process by providing the budget," said Darren Dale.⁴⁷

Initial consultations with stakeholders – community, elders, academics, historians and descendants – commenced at the start of the project. Members of the team travelled to every state, from Alice Springs, Tasmania, the Kimberley and the Torres Strait. One year into the process, the filmmakers were ready to consult on the first draft of the scripts. The academics were able to read the scripts for review but the communities and families needed face-to-face consultation. In some instances, the writers, which included Rachel Perkins, Louis Nowra and Beck Cole, spent time reading the script to groups and individuals.

47 Terri Janke interview with Darren Dale, Executive Producer, *First Australians*, 11 April 2008.

"We had ideas of how to make the program and advance a concept through photographs, paintings or interviews. Many stakeholders were not familiar with this, so we had to spend time explaining how we could present this information. In the first consultation phase, we reinforced that this was a draft, a road map. This was time for them to give feedback. We discussed how we might unfold the story, for instance, by telling the story by following a character," said Darren Dale.

After the script consultation, the writers commenced another draft of the script. They made the decision not to film recreations but use paintings for early contact history. They also discussed with the community who was the appropriate person to interview or to tell an ancestor's story.

As Darren Dale recalls, "it wasn't always possible to get consensus but we listened to people's comments. We were honest and clear that it was a film project and our interpretation was based on extensive consultation and research. We had to be impartial and fair. We were not taking sides in any disputes on native title."

After the script re-draft, the filmmakers consulted again with stakeholders. This time they showed people the images selected from collections to illustrate the story. The use of these images involved not only clearances from collections, but also Indigenous Cultural and Intellectual Property (ICIP) Rights clearances. To deal with the complexity, Blackfella Films created a comprehensive database with details of each image, where it was held, the language group, the place and where possible, the people. An ICIP Rights category was included to record clearances and consultations.

The consultation involved hosting meetings, and as this took up people's time they paid an ICIP consultation fee to a community organisation that represents the community, or where directed by the community, to certain persons who were recognised as sole rights holders.

Permission to film landscapes was also part of the process, and in some instance, cultural consultants were hired to assist the film crew. "We got cultural clearances to film at specific sites, and in some areas, such as the Kimberley, we had a cultural consultant accompany us and paid fees for this service," notes Darren Dale.

Fees were not paid to the people they interviewed because they did not want to be seen as paying a person to take a particular view. They wanted to make it clear that the views expressed were not manipulated.

Archival issues were also discussed during consultations. The filmmakers had selected the Australian Institute of Aboriginal and Torres Strait Islander Studies to store the material for long-term safekeeping. Some people also wanted copies kept at local cultural centres.

The interviewees were asked to sign releases clearing rights to use their interviews. The filmmakers discussed the issue of broadcasting their interview after they pass

away in order to respect Indigenous cultural mourning practices, which restrict the dissemination of a deceased person's representation. Rachel Perkins noted that many participants wanted their image to continue to be shown: "There has been a cultural change where people will allow the image to be viewed for film and television. A number of traditional interviewees agreed that their representation could be used after his death, and another said that the restriction should only last one year after his death."

Interviewees were given copies of their interviews for their personal records. No copies of the rough cut were distributed to protect the investors' interests.

The project reached rough cut stage around eight to 10 weeks into the edit. The film schedule was structured with a gap to allow time for consultation. At this time, the filmmakers re-consulted with stakeholders and showed them the rough cut. It was a chance for people to see how the ideas and script were put together but to also have the opportunity to say something, and make comments. Mostly there was a positive response, however, one group did not like it, and communication stopped because they refused to have anything to do with the project. It took time to re-connect with this group.

The filmmakers also had to manage their obligations to the various investors. They kept SBS informed at Board level about the progress of consultations.

In negotiating the rights agreements, the filmmakers quarantined the ICIP Rights.

According to Rachel Perkins, "One of the investors wanted the rights to re-version and re-edit the film, without the need to re-consult. We had obligations to the stakeholders. We explained the importance of these rights to the communities and used an example to illustrate this. We said it wouldn't be appropriate to use a song from the Kimberley with film footage with Victorian content. It was in their interests also to ensure authenticity. They agreed to come back to the filmmakers for re-approval and checking of the ICIP Rights. The ICIP Rights clause was included in the contract and a set period for the filmmakers to respond was also included."⁴⁸

The fine cut stage was shown to the key people. The series went to air on SBS in October 2008.

48 Terri Janke interview with Rachel Perkins, Writer/Director, *First Australians*, 11 April 2008.

5. Film & the law

An understanding of key legislation is essential for filmmakers working with Indigenous people in Australia.

An understanding of the legal issues that arise in filmmaking is essential for filmmakers.

A good guide is published by the Australian Copyright Council (ACC), entitled *Film & Copyright – a practical guide*.⁴⁹ It can be purchased from the ACC online at www.copyright.org.au

In this section, we aim to provide some general legal advice for filmmakers working with Indigenous people in Australia to assist them in identifying where legal issues might arise. For particular legal matters, we recommend obtaining legal advice from a fully qualified lawyer.

5.1 Copyright

What is copyright?

Copyright is a bundle of specific rights granted to the authors of literary, dramatic, artistic or musical works and the makers of sound recordings and films, 'published editions' and broadcasts under the *Copyright Act 1968* (Cth). Copyright currently protects the works of Indigenous artists and creators in the same way it does for other Australians.

In Australia there is no need to register copyright for a work to be protected. A work, film or recording is protected as soon as it is created. Other countries, such as the United States of America, do have copyright systems that allow copyright registration for protection (registration is now optional rather than mandatory in the US because of the country's membership of the Berne Convention (from 1989) which does not require member states to follow formalities such as registration for the subsistence of copyright). For this reason, filmmakers who are seeking to distribute their films internationally should seek legal advice about whether registration is necessary in other countries.

Requirements of copyright

Copyright exists in an original work as soon as it is created in a material form or in a sound recording or film as soon as it is made, provided that certain statutory requirements are met. For all copyright material it is necessary that there be some connection with Australian law. For example, if the work is first published in Australia or

49 Australian Copyright Council, *Film & Copyright – a practical guide* (B71v6), Australian Copyright Council, Sydney, November 2003.

made by an Australian resident or citizen, it will be protected. Australian copyright law also protects works, films and recordings that have the required connection to another country that is a signatory to the major intellectual property international convention.

For published works, the following requirements must also be met:

- *Original work*: The new work must not be copied, and the author must have used the necessary degree of skill, labour and effort to create a new work.
- *Material form*: A work must be written down or recorded in some fixed form.
- *Qualified person*: That the author of the work was a qualified person immediately before his or her death.⁵⁰

For films and recordings:

- *Material form*: A film must be 'embodied in an article or thing'⁵¹ such as tape, a disc or CD. A recording must be 'embodied in a record' such as a disc, tape, paper or other device in which sounds are embodied.⁵²

Definition of 'cinematograph films'

The *Copyright Act* defines a 'cinematograph film' as 'the aggregate of the visual images embodied in an article or thing so as to be capable by the use of that article or thing

- of being shown as a moving picture; or
- of being embodied in another article or thing by the use of which it can be so shown

and includes the aggregate of sounds embodied in a sound-track associated with such visual images.'⁵³

So film copyright protects the moving pictures together with any associated sounds, including the soundtrack.

Copyright ownership

The general rule for copyright ownership is:

- (a) For works, the owner is the author or creator of the work.
- (b) For cinematograph films, the owner is the person who undertook the arrangements for making the film (eg the film producer).
- (c) For sound recordings, the owner is the person who owned the equipment on which the sound recording was first made (ie. the master recording).

50 Section 32(2)(d) *Copyright Act 1968*.

51 Section 10(1) *Copyright Act 1968*, see definition of 'cinematograph film'.

52 Section 10(1) *Copyright Act 1968*, see definition of 'sound recording' and 'record'.

53 Section 10(1) *Copyright Act 1968*, definition of 'cinematograph film'.

There are some significant exceptions:

- Where the work is produced under a contract of employment, copyright will belong to the employer.⁵⁴
- A person commissioning musical, artistic, literary and dramatic works does not necessarily own the copyright in the commissioned work.
- Where a person makes, for valuable consideration, an agreement with another person for the taking of a photograph for private or domestic purposes, the painting or drawing of a portrait or the making of an engraving by that person, and the work is made under this agreement, the commissioner is the copyright owner.⁵⁵
- Where a work, recording or film is produced under the direction or control of the Commonwealth or State government, the Commonwealth or State may be the owner of the copyright (Section 177 and 178[2]). These provisions may be modified by agreement where it is agreed that the copyright in that work, recording or film is to remain with the author or maker, or any other specified person (Section 179).
- The commissioner of a film will own copyright in that film.
- Directors of non-commissioned films have an interest in the copyright of that film.
- Artists and filmmakers retain moral rights in their commissioned works.
- The general rules of copyright ownership may be modified or excluded by agreement (Section 35[3]).
- An Indigenous community may have an interest in equity which may require them to give permission in certain cases: *Bulun Bulun v R & T Textiles* (1998) 41 IPR 513.

How long does copyright last?

The duration of copyright has changed since the Australia–US Free Trade Agreement. To find out whether copyright in a particular item still subsists, you need to first consider if the material was created before 1 January 2005, and work out whether copyright expired under the old rules. If copyright was still subsisting on 1 January 2005, then the new rules apply.

The period for protection of copyright is now generally:

- For artistic (other than photographs), literary, musical and dramatic works – 70 years from the death of the creator (at the end of that calendar year) (Section 33[2]).
- For literary, musical and dramatic works that at the death of the creator are unpublished, not previously broadcast or performed in public or records

54 Under section 35(6) *Copyright Act 1968*, where works are made by authors in the terms of their employment by another person under a contract of service, the copyright is owned by the employer.

55 Section 35(5) *Copyright Act 1968*.

offered for sale to the public (ie works published, performed or broadcast posthumously) – 70 years from the date of first publication, performance or broadcast (whichever occurs first) (Section 33[2]). Protected indefinitely if not published.

- For photographs (except photographs first published anonymously or under a pseudonym) – 70 years from the death of the author (Section 33[2]).
- For works published anonymously or under a pseudonym – 70 years from publication, if author's identity not generally known or reasonably ascertainable before then.
- For sound recordings – 70 years from first publication; indefinite if unpublished (Section 93).
- Films made before 1 May 1969 are not protected by film copyright, but could be protected both as:
 - a series of photographs (including actuality footage involving the filming of live events) – these are protected for 70 years after the death of the cinematographer; and
 - a dramatic work if the footage was 'original' in the sense that the 'arrangement, the acting form or the combination of incidents represented gives the work an original character'⁵⁶ – protected for the life of the creator of film as a dramatic work. This could be the life of the cinematographer or director depending on the facts, plus 70 years (Section 222).
- For films made after 1 May 1969 – 70 years after first publication, indefinite if unpublished (Sections 99, 94 and 223).

It is important to note that the copyright duration rules for Government copyright did not change after 1 January 2005. Material made under the direction and control of the Government is generally 50 years from the date of publication. (See the ACC's copyright duration sheet G23 available from www.copyright.org.au)

Once copyright expires, the material enters the public domain and can be freely used by others.

However, Indigenous people express the view that copyright belongs to their cultural material in perpetuity. To maintain this cultural connection, Indigenous people argue the right to be consulted on uses beyond the copyright period.

If releasing the film internationally, be aware that the copyright in material might have expired in Australia but still be on foot in other countries where periods of copyright protection are longer. This could especially be the case for photographs.

56 Section 204, *Copyright Act 1968*.

The rights of the copyright holder

Under the *Copyright Act 1968* (Cth) rights granted to copyright owners are:

For literary, dramatic or musical works (such as reports, novels, screenplays/scripts, plays or songs)

The exclusive right to:

- reproduce in material form
- publish the work
- perform the work in public
- communicate the work to the public
- make an adaptation of the work (Section 31[1][a]).

For artistic works (such as paintings, photographs, sculptures or engravings)

The exclusive right to:

- reproduce in material form
- publish the work
- communicate the work to the public (Section 31[1][b]).

For sound recordings (such as tapes and CDs)

The exclusive right to:

- make a copy of the sound recording
- cause the recording to be heard in public
- communicate the work to the public
- enter into a commercial rental arrangement (Section 85).

Cinematograph films (such as videos and movies)

The exclusive right to:

- make a copy of the film
- cause the film to be seen or heard in public
- communicate the work to the public (Section 86).

Infringement of copyright

It is an infringement of copyright to copy or deal with a copyright work without the consent of the copyright owner. A person will infringe copyright in a musical, dramatic, artistic or literary work, sound recording or film if he or she does any of the acts outlined above. For example, if a filmmaker includes a copyright work in the film without the consent of the owner, the filmmaker is infringing the copyright owner's exclusive rights.

It is not necessary for an entire work to be copied, communicated, publicly performed etc in full for an infringement of the exclusive rights of a copyright owner to occur. If a *substantial* part of the material protected by copyright is reproduced without authority from the copyright owner – such as part of a song reproduced in a film or part of an

artistic work filmed – this may constitute an infringement of the copyright. But it will always be a question of degree. It is not so much the quantity of what is copied or reproduced that is relevant, but the quality, ie the 'nature' of what is copied rather than the amount of the material used relative to the original work. In deciding on the issue, the court will consider the circumstances of each particular case.

If you are using less than a 'substantial part' you may not be infringing a work. However, as noted above, whether what is used is 'substantial' is a question of fact or degree. It is recommended that you get legal advice on this point, and in general seek permission for uses of copyright works even if a small amount of an overall work is to be used in the film.

Fair dealing provisions

The *Copyright Act 1968* (Cth) recognises that some uses of copyright works and materials can be made for certain purposes if the use is 'fair', without the user having to get copyright permission. These fair dealing provisions include:

- for research or study purposes (Section 40 for works and Section 103C for the use of audio–visual items)
- for criticism or review, whether of that work or of another work, provided sufficient acknowledgment of the work is made (Section 41 for works and Section 103A for the use of audio–visual items)
- for the purpose of, or associated with the reporting of news in a newspaper or magazine provided a sufficient acknowledgement of the work is made, or for the purpose of, or associated with reporting of news by means of a communication or in a cinematograph film (Section 42 for works and Section 103B for the use of audio–visual items)
- as part of judicial proceedings or a report of judicial proceedings, or, for the purpose of giving professional legal advice by a legal practitioner (Section 43 for works and Section 104 for the use of audio–visual items)
- if the work is used for the purposes of parody or satire (Section 44A and Section 103AA for the use of audio–visual items).

You do not need to get permission from the copyright owner for a fair dealing use of a copyright work or pay a fee for use. However, if you want to rely on one of the above exceptions, please note that you must be genuinely using the copyright material for one of the fair dealing purposes and the use must be 'fair', otherwise you may infringe copyright. Again you should seek legal advice if you think you may be able to use material based on 'fair dealing'. For more information on these see the Australian Copyright Council's information sheet: Fair Dealing (G079v04) available at www.copyright.org.au

Filmmakers should also be aware that if the film is being distributed overseas, the same fair dealing provisions may not apply in other countries.

Clearing copyright for use in films

As set out above, copyright protects particular categories of creation such as artistic and literary works. A film will therefore usually contain a number of copyright works (each of which may have separate copyright owners) and may include copyright on the:

- script
- music
- choreography
- video/existing film footage
- animation
- sounds
- photographs
- artworks.

Copyright clearances must be obtained for all works, from each and every copyright owner in respect of each element of the film.

You will also need to get permission from the copyright owner of the film to reproduce and use existing films and incorporate them into a new work.

5.2 Performers' rights

Since October 1989, performers' rights have been given limited rights under the *Copyright Act 1968* (Cth) to their performances. From 1 January 2005, performers' rights were extended to recognise performers as 'makers' of sound recordings of their live performances. Performers' moral rights came into force in Australia on 26 July 2007.

What performances do the rights apply to?

Performers' rights apply to performances and improvisations of dramatic, literary and musical works; readings, recitals, dance performances, circus or variety acts and expressions of folklore (Section 248A(1) defines 'performance'). An expression of folklore could include an Indigenous cultural expression such as dance, a story or ceremony.

What rights are given to performers?

Performers' rights allow performers to prevent certain unauthorised uses of their performances (Section 248J), such as direct or indirect recordings, a broadcast or communication of the performance, and an unauthorised inclusion of an audio recording of the performance in a film soundtrack (Section 248G) without the authority of the performer. It is also an offence to copy a recording knowing that it is an unauthorised recording.

Exceptions

There are some exceptions to these rights including news reading, recital or delivery (Section 248A[2][b]); sports activities (Section 248A[2][c]); and performance by an audience member (Section 248A[2][d]).

Permission is also not required for exempt recordings such as recordings for domestic use, scientific research and educational purposes.

Obtaining permission

These laws provide that consent must be obtained by filmmakers for filming performances of dance and stories. Such consent may be implied or oral, but to avoid confusion over what has been consented to, we strongly recommend that rights be cleared in writing so that the terms can be clearly understood. Once consent is given, the filmmaker can deal with the film for the agreed purposes as authorised by the performer.

Authorising recordings

A performer's right is not the same as copyright.⁵⁷ Once a performer has given permission for a recording or broadcast of their performance, the performer generally has no further rights and cannot prevent its use unless they expressly limited the use that could be made of their performance.

An Indigenous performer may think they are consenting to be filmed for one purpose only although the filmmaker intends the use to be much wider. The film may be circulated to a much wider audience than the original performance.

There are industry agreements between the Screen Producers' Association of Australia (SPAA) and the Media Entertainment and Arts Alliance (MEAA) that determine the rights of the performer and filmmaker.

Duration of performers' rights

Performers' rights to control the recording of their performance, and subsequent copying and use of the recordings, last for 50 years from the date of the 'performance'.⁵⁸

The story or dance performance told on the film is in this way controlled by the filmmaker without the ability of the relevant Indigenous community to ensure that the cultural material is portrayed in a respectful way. There are also cultural issues in some communities where it is against customary practices for images of deceased persons to be circulated. This type of cultural practice is not recognised under the *Copyright Act*. However, there is a developing practice within the Australian film industry to include a warning and notice before broadcasting images of Indigenous people that may have died since the filming occurred (see Section 3, page 40).

57 Terri Janke, *Our Culture: Our Future*, p. 56.

58 Section 248CA, *Copyright Act 1968* (Cth).

Performers' rights to sound recordings

In response to the Australia–US Free Trade Agreement, new performers' rights have been given to performers in relation to audio aspects of live performances. From 1 January 2005, the 'maker' of a sound recording of a live performance will be the record company/producer of the sound recording and the performer or performers who contributed to the sounds fixed in the sound recording. There are exceptions to this new extension and a performer will not be a maker or co-owner of copyright in a sound recording in the following instances:

- If the performer was performing under a contract of employment. In this case, the employer will own the share of copyright the performer was entitled to.
- The sound recording was commissioned. Here, the commissioner will own the copyright in the sound recording.
- A written agreement signed by the performer states otherwise. For instance, where a release or recording agreement assigns the performer's rights to the recording company or the maker of the recording.

Performers' moral rights

Since 26 July 2007, performers have moral rights in their live performances and performances captured in sound recordings. The rights, which apply to a performance consisting of sounds, are:

- the right of attribution of performership
- the right not to have performership falsely attributed; and
- the right of integrity of performership.

Moral rights will vest in each performer who contributed to the sounds of a performance, and the conductor of the performance.

For more information

See the following fact sheets:

Arts Law Centre of Australia, Performers' Rights

www.artslaw.com.au/LegalInformation/PerformersRights.asp

Australian Copyright Council, Performers' rights

www.copyright.org.au/pdf/acc/infosheets_pdf/G022.pdf

5.3 Moral rights

The *Copyright Act 1968* (Cth) provides individual authors of literary, dramatic, musical or artistic works and films with moral rights. These are:

- the right for an author to be attributed
- the right of an author not to be falsely attributed
- the right of an author to have a work treated with integrity.

The author of a work has a right to be identified as the author of a work where his or her work is reproduced in material form, published, performed in, or communicated to, the public; or adapted (Section 194[1]). Identification of the author of a work must be clear and reasonably prominent (Section 195AA).

The right of integrity allows an author to bring a legal action if the work or film is subjected to derogatory treatment so that the author's honour or reputation is prejudiced (Sections 195AJ, 195AK and 195AL). This may be, for instance, where a work is edited or altered in a way that is derogatory to the author. But if the person who subjected the work to derogatory treatment can show that the treatment was reasonable in all the circumstances, then this will not be an infringement of moral rights (Section 195AS). Filmmakers must ensure that they respect the moral rights of any authors whose works they incorporate into their films.

Often film contracts will require individual authors such as writers to agree to waive moral rights or give a wide consent to the use of their material in a way which may otherwise infringe their moral rights. See the AWG/SPAA moral rights schedule as a guide. An issue remains as to whether these Indigenous communal moral rights to guard the integrity of a work can be waived by the individual (see further discussion below). There are proposed new laws relating to this.

5.4 Indigenous communal moral rights

Moral rights are individual rights only. If the work or film is derogatorily treated, only the individual author would have a remedy under moral rights. However, an Indigenous community which is the source of cultural material incorporated in a film or work does not have any moral rights under the *Copyright Act* even though under their customary laws the clan, or a person on behalf of the clan, may have responsibility to safeguard the cultural integrity of the song, dance or story embodied in the film. The moral rights framework under the *Copyright Act 1968* (Cth) also excludes Indigenous persons with authority other than the author (creator) from legally exercising moral rights over works embodying traditional ritual knowledge.⁵⁹

59 Terri Janke, 'A Moral Issue: Moral Rights and Indigenous People's Cultural Rights', *NIAAA Newsletter*, Autumn, 2001, pp. 2–3.

A practice of including a traditional custodian's notice in publications that reproduce traditional ritual knowledge has developed in the arts and publishing sector. The Arts Law Centre recommends that following traditional custodian notice in artworks with traditional knowledge:

'The images in this artwork embody traditional ritual knowledge of the (name) community. It was created with the consent of the custodians of the community. Dealing with any part of the images for any purpose that has not been authorized by the custodians is a serious breach of the customary law of the (name) community, and may also breach the Copyright Act 1968 (Cth).

For enquiries about permitted reproduction of these images contact (community name).'

A proposed new regime

In December 2003, the Australian Government drafted proposed amendments to the *Copyright Act 1968 (Cth)* for Indigenous Communal Moral Rights. The government's stated aim in releasing the draft bill was to give effect to its 2001 election policy commitment and to a commitment made to Senator Aden Ridgeway in Parliament during the passing of the Moral Rights Bill in December 2000.⁶⁰ The Exposure Draft of the Copyright Amendment (Indigenous Communal Moral Rights) Bill 2003 (the Bill) was sent to approximately 20 Indigenous organisations for comment. The Bill has yet to be presented in parliament. The extent of the protection afforded in this proposed Indigenous Communal Moral Rights Bill is unknown and further legal advice should be sought by filmmakers once this legislation is in force.⁶¹

In the meantime, this guide recommends that the principles of integrity and attribution should be extended wherever possible to all uses of Indigenous cultural and intellectual property, and where appropriate, the rights of the community should be discussed.

5.5 Contracts

A contract is an enforceable agreement between parties, setting out the terms of the relationship between the parties, conferring rights and imposing obligations on the parties.

Contracts play a large role in the film industry with many relationships defined under written contract. Here are just a few types of agreements relevant to film practice:

60 Intellectual Property Branch, Department of Communications, Information Technology and the Arts and the Copyright Law Branch, Attorney-General's Department, 'Indigenous Communal Rights Paper', December 2003.

61 Robyn Ayres, Executive Director, Arts Law Centre of Australia, Submission on third draft of *A Guide to Protocols for Filmmakers Working with Indigenous consent and Indigenous Communities*; see also Arts Law Centre's executive summary on the Indigenous Communal Moral Rights Bill, accessed 13 December 2006, www.artslaw.com.au/_documents/files/ICMRLetterAndExecutiveSummary2006.pdf.

- **Actor's employment agreement**
Agreement between the actor and production company where the actor grants the rights to use his or her performance, name and likeness for the film.
- **Production and investment agreement**
Agreement between the investors and the production company for the production and delivery of the film; includes provisions relating to amount of finance, payments schedule and delivery items.
- **Director's agreement**
Agreement between the production company and the director for provision of services.
- **Writer's agreement**
Agreement between the production company and the writer for provision of script drafting services.
- **Distribution agreement**
Grants the distributor the rights to distribute the film in listed territories.
- **Location agreements**
Written contracts that set out the terms for filming on property, signed between the production company and the owner of land.

There is scope for contracts to play a significant role in ensuring that when third parties are authorised to make use of Indigenous cultural and intellectual property in films, that economic and other benefits flowing from the film are shared with Indigenous people.

Some terms in contracts for film projects have included the following rights to Indigenous communities:

- sharing of copyright
- sharing of royalties and payment of fees
- the option of viewing the rushes and draft edits
- the power to reject sensitive footage from the edited drafts.

To guide directors and writers, filmmakers may want to include a contractual term in their service agreements that require them to use and refer to this protocols guide.

5.6 Defamation

Defamation laws protect the reputation of individuals and organisations by providing the injured party the right to sue for damages. Defamation is the communication by one person to another of words, pictures, or other material that adversely affects the personal reputation of a third person. To establish defamation, generally the following must be present:

- a defamatory statement (or material) or imputation
- the plaintiff is able to be identified
- the statement (or material) is published to a third person.

It is important to note that the courts look at the whole publication when determining whether or not material is defamatory. In this respect the whole context is relevant. Also, to be liable for defamation, those meanings or imputations do not have to have been intended. Filmmakers should therefore consider the context in which individuals are represented and portrayed, and also the context of how stock footage is used.

A 2002 defamation case related to the inappropriate out of context use of stock footage of a biker's wedding.⁶² This is an example of where defamation laws can be used by film subjects when their images are used out of context.

The law of defamation is complex and costly. It is difficult to defend and there can be substantial damages awarded. Before 2006, the laws varied depending on the state law that applied. In 2006, uniform defamation laws were introduced in all states and territories. For more information on defamation see the Arts Law Centre of Australia's useful information sheet, 'The law of defamation – for material published after 1 January 2006' at www.artslaw.com.au/LegalInformation/Defamation/DefamationLawsAfterJan06.asp

5.7 Trade practices

The *Trade Practices Act 1974* (Cth) prohibits corporations from engaging in conduct that is 'misleading or deceptive or which is likely to mislead or deceive' (Section 52). This provision focuses on the protection of consumers regarding representations made by corporations *in the course of trade and commerce*. There are also provisions that made it illegal for corporations to represent that goods or services have 'sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have' (Section 53).

In 2003, trade practices claims were argued in relation to representations made by a filmmaker to interviewees. The case of *Hearn v O'Rourke* involved an allegation under the *Trade Practices Act* that the filmmaker misled two young girls into being interviewed for a documentary, which the filmmaker told them was about "racism in Cunnamulla"; however, when the final film screened, it focused on the sex lives of the young girls.⁶³ The Federal Court was of the opinion that trade practices could apply to the filmmaker in this case because filmmaking was 'in the course of trade and commerce'. The case was due for trial but in 2007 it was dismissed after the filmmaker was successful in defamation proceedings: *O'Rourke v Hagan*.⁶⁴

62 *Jackson & 9 Others v TCN Channel 9 Pty Ltd* [2002] NSWSC 1229 (20 December 2002). See also Ellen Connolly, 'Nine takes bikie bride for a ride, and pays \$1.6 m', *The Sydney Morning Herald*, 21 December 2002. The footage was originally shot for the show *Weddings* and then used four months later for a story on organised crime in biker gangs.

63 *Hearn v O'Rourke* [2003] FCAFC 78 (2 May 2003).

64 *O'Rourke v Hagan and Anors* [2007] ACTSC 61.

In 2008, *TCN Channel Nine Pty Ltd v Ilvari Pty Ltd* revisited the issue.⁶⁵ The NSW Court of Appeal appeared to read down the Federal Court of appeal decision in *Hearn v O'Rourke* to suggest that it will be unlikely for filmmakers' interviews to be deemed to be done 'in the course of trade or commerce' – unless they make a misleading representation in the course of the interviewee's business – as in this case, where the interviewee was a builder, and the interview pertained to his business, Craftsman Homes.

5.8 Environmental legislation and national parks

Under the *Environment Protection Biodiversity Conservation Act 1999* and associated *Regulations* (Cth), a permit is required from the Director of a National Park to film and photograph features of a national park, where the Director has published guidelines.

Regulation 12.24 provides that a person must not capture an image in or of a Commonwealth Reserve without a permit from the Director of the National Park.

Regulation 12.38 provides that a person must not use a captured image of a Commonwealth Reserve to derive commercial gain. The penalty is 30 penalty units (\$3,300). A 'captured image' includes images that were not captured for a commercial purpose or in contravention of *the Act* or the regulations (eg amateur photography).

The Uluru-Kata Tjuta National Park has Filming and Photography guidelines that advise on where appropriate filming can occur. No filming of sacred sites, for instance, is allowable. For information on the guidelines contact the Public Communications Officer at:

Uluru-Kata Tjuta National Park
PO Box 119
YULARA NT 0872
Ph: (08) 8956 2299
Fax: (08) 8956 2360

5.9 Western Australian Heritage Regulations 1974

The Aboriginal Heritage Regulations 1974 (WA) apply 'in relation to any Aboriginal site or protected area or land held subject to a covenant in favour of the minister in relation to which the minister has a duty under the Act'.⁶⁶ Regulation 10(h) states that 'written permission is required before photographs or recordings of Aboriginal sites can be

⁶⁵ *TCN Channel Nine Pty Ltd v Ilvari Pty Ltd* [2008] NSWCA 9.

⁶⁶ Aboriginal Heritage Regulations 1974 (WA) s 3(a).

published or used for commercial reproduction'. These regulations require people to get permits for commercial filming of Aboriginal sites. The written permission of the Minister of Aboriginal Affairs or the Registrar is required to photograph or to record any Aboriginal site or protected area for commercial reproduction or publication. A fine of \$50 occurs for breaches.⁶⁷ The Department of Aboriginal Affairs information sheet advises people to speak to the local Indigenous community with associations with the site and explain why you want to photograph or film the site, prior to applying to the Registrar for formal consent. For more information contact the Department of Indigenous Affairs (DIA), WA (for contact details see the Aboriginal Lands Trust on page 98).

5.10 Where to go for more legal information

- Australian Copyright Council
- Arts Law Centre of Australia
- Communications Law Centre
- Solicitors practising in this area: information can be obtained from the Law Society in your state or territory.

67 Department of Indigenous Affairs, Photographing and Filming Aboriginal Sites for Commercial Publication, FAQ. See also www.dia.wa.gov.au

6. Contacts & appendices

6.1 Directories

The Black Book Directory

Ph: (02) 9380 4000

Toll Free: 1800 226 615

Fax: (02) 9319 5030

mail@theblackbook.com.au

www.theblackbook.com.au

Portal to Indigenous arts and media in Australia. Includes a directory with more than 2,700 listings of Indigenous organisations and individuals working across 95 professions in the arts, media and cultural industries.

Black Pages

www.blackpages.com.au

Black Pages is Australia's first and only national online Indigenous Business and Community Enterprise Directory.

Encore Directory

Reed Business Information

Tower 2, 475 Victoria Avenue

Chatswood NSW 2067

Ph: (02) 9422 2999

Fax: (02) 9422 2922

encoredirectory@reedbusiness.com.au

www.reedbusiness.com.au

A comprehensive directory of producers, directors, personnel, companies, facilities and organisations in the film, television and digital media industries.

Indigenous Portal

www.indigenous.gov.au

The Office of Indigenous Policy Coordination (OIPC) is Australia's central Indigenous agency. The OIPC's Indigenous Portal is a window to resources, contacts, information and services for Aboriginal people and Torres Strait Islanders.

The Production Book

PO Box 55

Glebe NSW 2037

Ph: (02) 9571 1100

Fax: (02) 9660 0885

info@productionbook.com.au

www.filmtvbiz.com.au

A contact and information provider for personnel, facilities and services in the Australian film, TV, advertising and digital media industries.

Screen Australia Industry Links

www.screenaustralia.gov.au

Gateway to Australian film and television on the Internet.

Showcast: The Australasian Casting Directory

PO Box 2001

Leumeah NSW 2560

Ph: (02) 4647 4166

Fax: (02) 4647 4167

danelle@showcast.com.au

www.showcast.com.au

A comprehensive directory of Australian and New Zealand performers – actors, actresses, stunt people and children. Provides the agent's contact for each entry. Available online and in hard copy.

The Writers' Directory

Australian Writers' Guild

8/50 Reservoir Street

Surry Hills NSW 2010

Ph: (02) 9281 1554

Toll Free: 1300 552 228

Fax: (02) 9281 4321

admin@awg.com.au

www.awg.com.au

Online directory with alphabetical listing of many Australian professional scriptwriters showing categories of work undertaken, major credits and experience. Includes a state index combined with full list of members.

6.2 Indigenous media associations and broadcasters

Australian Indigenous Communications Association (AICA)

PO Box 4235

Ainslie ACT 2602

Ph: (02) 6242 1358

Fax: (02) 6255 7932

aica.org@bigpond.net.au

www.aica.asn.au

The Australian Indigenous Communication Association Incorporated is a body that represents members of the national Indigenous media and communications industry. The representative association advocates for and formulates policy on behalf of this sector.

Brisbane Indigenous Media Association (BIMA)

PO Box 6239

Fairfield Gardens Qld 4103

Ph: (07) 3892 0100

Fax: (07) 3892 0101

info@4aaa.org.au

www.4aaa.org.au

BIMA holds the licence for and runs 4AAA Murri Country 98.9FM Radio station, providing training and opportunities for Indigenous broadcasters.

Central Australian Aboriginal Media Association (CAAMA)

www.caama.com.au

Owned by the Aboriginal people of Central Australia, CAAMA has a clear mandate to promote Aboriginal culture, language, dance and music, while generating economic benefits in the form of training, employment and income generation. CAAMA produces media products that engender pride in Aboriginal culture, and informs and educates the wider community about the richness and diversity of the Aboriginal peoples of Australia. The CAAMA Group comprises: 8 KIN FM, a radio network; CAAMA Shops, a retail, wholesale and distribution business; CAAMA Music, a recording studio and record label that produces Indigenous music for the world; CAAMA Productions, a film and television production company that produces world-class programs about Aboriginal culture, lifestyles and issues; and Imparja Television, a commercial television station that broadcasts via satellite to one of the largest television service areas in the world.

Central Queensland Aboriginal Corporation for Media

PO Box 663

Rockhampton Qld 4700

Ph: (07) 4921 4648

Fax: (07) 4921 4649

Broadcast Radio 4US on 100.7FM around Rockhampton area, 6.00am–6.00pm weekdays.

Gadigal Information Service Aboriginal Corporation

PO Box 966

Strawberry Hills NSW 2012

Ph: (02) 9564 5090

Fax: (02) 9564 5450

info@gadigal.org.au

www.gadigal.org.au

Operates Koori Radio in Sydney. Occasionally releases CD compilations of local artists. Stages events including Yarbun concert held annually.

Goolarri Media Enterprises Pty Ltd

PO Box 2708

Broome WA 6725

Ph: (08) 9192 1325

Fax: (08) 9193 6407

goolarri@gme.com.au or reception@gme.com.au

www.gme.com.au

Offers television broadcast and film and video production and post-production, has a radio station (Goolarri 99.7) and a narrowcast television licence (GTV). It also has music recording studios, an event management arm and IT and graphic facilities. GME is owned by the Broome Aboriginal Media Association and also manages the operations of the Broome Musicians Aboriginal Corporation.

Imparja Television

4 Leichhardt Terrace

Alice Springs NT 0870

Ph: (02) 8950 1411

Fax: (02) 8950 1422

imparja@imparja.com.au

www.imparja.com.au

The first Aboriginal-owned and controlled commercial television service in Australia. Imparja, which means footprint in traditional Central Arrernte language, is the central Zone Remote Commercial Television Service (RCTS) licensee, which broadcasts throughout the Northern Territory, South Australia, Victoria and New South Wales.

Indigenous Remote Communications Association (IRCA)

10a Wilkinson Street
Alice Springs NT 0871
PO Box 2731
Alice Springs NT 0871
Ph: (08) 8952 6465
Fax: (08) 8918 8100
Mobile: 0437 798 076
manager@irca.net.au

IRCA is the representative body of members of Australia's remote and very remote Indigenous media organisations. Eight leading media associations representing over 120 remote communities form the membership of IRCA. PY Media, TEABBA, PAW Media, RIMAQ, RICA, CAAMA and Ngaanyatjara Media are on the IRCA board.

Mt Isa Aboriginal Media Association

PO Box 1794
Mt Isa Qld 4825
Ph: (07) 4749 1338
Fax: (07) 4749 0270
Mobile: 0408 491 332
miana@bigpond.com

Includes television facilities and production company, recording studios, a radio station that broadcasts continually and produces a newsletter. Also offers training for Indigenous people.

National Indigenous Television (NITV)

5 Parsons Street
Alice Springs NT 0870
Ph: (08) 8953 4763
Fax: (08) 8953 4764
admin@nitv.org.au

www.nitv.org.au

National Indigenous Television is a 24-hour television service established by Aboriginal and Torres Strait Islanders to improve the lives of our people. NITV is focused on locally produced content.

South Eastern Indigenous Media Association (SEIMA)

48 Mary Street

Preston Vic 3072

Ph: (03) 9471 1305

Fax: (03) 9471 1054

info@3knd.org.au

www.3knd.org.au

Primarily involved in broadcasting and assisting training for broadcasting with the main project being 3K'N'D Kool and Deadly Radio. Also acts as a liaison between the community and radio. New members welcome.

Torres Strait Islander Media Association (TSIMA)

PO Box 385

Thursday Island Qld 4875

Ph: (07) 4069 1524

Fax: (07) 4069 1844

admin@tsima4mw.org.au

Represents residents and cultural community in the Torres Strait and Northern Peninsula area through media. Covers issues relating to people in the region and assists in maintaining culture through video and radio production.

Townsville Aboriginal & Islander Media Association (TAIMA)

271–279 Sturt Street

Townsville Qld 4810

PO Box 5483

Townsville Qld 4810

Ph: (07) 4772 5466

Fax: (07) 4721 1902

mail@4k1g.org

The Townsville Aboriginal and Islander Media Association (TAIMA) is one of the largest media associations in the Indigenous broadcasting sector. It has a staff of 29 and an annual budget of \$1.9 million. The Townsville Aboriginal and Islander Media Association is a community-owned and controlled radio station, which is 4K1G Townsville.

Uniikup Productions Ltd

PO Box 3230

South Brisbane Qld 4101

Fax: (07) 3864 3975

Mobile: 0407 379 822

www.colourise.com.au

Indigenous Arts and Media organisation. Established in 1986, trading as Murriimage Community Video and Film Service, Uniikup Productions Ltd is an Indigenous community development organisation whose function is to contribute to the creation of a unique Indigenous screen culture.

6.3 Remote Indigenous Media Organisations (RIMOs; formerly BRACS Regional Coordination Units)

Remote Indigenous Broadcasting Services (RIBS) are community media services that have the ability to locally control television satellite services in their community. These communities are also able to create radio and television productions for transmission over a 5–10 kilometre radius in their region. The facilities were provided under a previous government program called BRACS, which is no longer active. RIBS communities are regionally coordinated by larger Indigenous media associations called Remote Indigenous Media Organisations or RIMOs. It is advised that you firstly liaise with these associations when making contact or doing business with RIBS communities.

Please note, at the time of publication, two of the eight RIMOs, namely the Remote Indigenous Communications Association (RICA) in the Torres Strait, and the Remote Indigenous Media Association of Queensland (RIMAQ) were being re-established. Further contact information for RICA or RIMAQ communities is available through IRCA on 0417 501 700, or email: irca@waru.org

Central Australian Aboriginal Media Association (CAAMA)

PO Box 2608

Alice Springs NT 871

Ph: (08) 8951 9777

Fax: (08) 8951 9717

reception@caama.com.au

www.caama.com.au

Represents four BRACS Community organisations in the central desert including Ltyentye Apurte, Ntaria, Areyonga and Papunya.

Ngaanyatjarra Media

Wingellina Community PMB 52

Via Alice Springs NT 872

Ph: (08) 8956 7307

Fax: (08) 8956 7182

media@ngaanyatjarra.org.au

www.waru.org/ngmedia

Service provider for the 13 regional communities in the Western Desert area. Provides training, operational and administrative support for Irrunytju, Papulankutja (Blackstone), Mantamaru (Jamison), Warbuton, Warakurna, Wanarn, Karilywara (Patjarr), Tjukurla, Kiwirrkura, Cosmo Newberry, Coonana, Tjuntjuntjara and Tjirrkarli.

Pilbara and Kimberley Aboriginal Media (PAKAM)

PO Box 2708

Broome WA 6725

Ph: (08) 9192 1325

Fax: (08) 9193 6407

neil@gme.com.au

<http://pakam.homestead.com/>

Coordinates the following BRACS in the Pilbara Kimberley Region: Ardyaloon (formerly Bardi) Balgo, Bidyadanga, Djarindjin, Jigalong, Kalumburu, Looma, Yungngora, Yandeyarra, Yiyili, Warmun, Oombulgurri, Ngalapita, Warmun and Beagle Bay. Also manages the PAKAM satellite radio network.

Pitjantjatjara Yankunytjatjara (PY Media)

PO Box 4607

Via Alice Springs NT 871

Ph: (08) 89950 5444

Fax: (08) 8954 8163 or 8952 6425

Mobile: 0438 501 575

will@waru.org

www.waru.org

Works in both radio and video production. Feeds BRACS programming into the 5NPY radio network. Provides training for radio and video production for the 11 BRACS communities in the Anangu Pitjantjatjara Lands of SA, NT and WA. Assists with technical and administrative advice.

Top End Aboriginal Bush Broadcasting Association (TEABBA)

PO Box 41644

Casurina NT 811

Ph: (08) 8939 0400

Fax: (08) 8939 0401

teabba.radio@teabba.com.au

www.teabba.com.au

Serves 25 communities in the top end of NT. Identifies training needs and provides technical maintenance, installation and training for BRACS communities. TEABBA is the hub for the bush broadcasting network through TEABBA Radio.

Warlpiri Media Association

Yuendumu CMB

Via Alice Springs NT 872

Ph: (08) 8956 4024

Fax: (08) 8956 4100

Mobile: 0428 564 024

info@warlpiri.com.au

www.warlpiri.com.au

Regional media training in radio, video and digital production. Community television and satellite radio throughout the PAW (Pintubi Anmatjerre Warlpiri) network.

Services Kintore (Walungurru), Ali Curang, Laramba (Napperby), Pmara Jutunta, Nturiya, Mt Leibig, Nyirripi, Yuelamu (Mt Allen), Lajamanu and Willowra.

6.4 Industry agencies with Indigenous components

Australian Broadcasting Corporation (ABC), Indigenous Program Unit www.abc.net.au/indigenous/

Information on current, upcoming and completed projects at the ABC's Indigenous Program Unit, including programs in production and previously screened, and information on the National Indigenous Documentary Fund.

Australia Council for the Arts, Aboriginal and Torres Strait Islander Arts Board

PO Box 788

Strawberry Hills NSW 2012

Ph: (02) 9215 9000

mail@australiacouncil.gov.au

The Aboriginal and Torres Strait Islander Arts Board assists Aboriginal and Torres Strait Islander people to claim, control and enhance their cultural inheritance. The Board supports this right through its grant categories and through the implementation of the Australia Council's National Aboriginal and Torres Strait Islander Arts Policy (NATSIAP).

Australian Film Television and Radio School (AFTRS), Indigenous Program Initiatives (IPI)

The Entertainment Quarter

130 Bent Street

Moore Park NSW 2021

PO Box 2286

Strawberry Hills NSW 2021

Ph: (02) 9805 6611

Toll Free: 1300 13 14 61

Fax: (02) 9887 1030

www.aftrs.edu.au

A national program designed to upgrade the creative and technical skills of Indigenous Australians already working in the film, broadcast and related industries, and to assist them to progress into key creative positions. AFTRS' specific objective is to increase the number of Indigenous Australian producers, directors and scriptwriters, and thus increase the number of Indigenous voices in our film, video and digital industries.

Australian Indigenous Communications Association Incorporated (AICA)

PO Box 4235

Ainslie ACT 2602

Ph: (02) 6242 1354

Fax: (02) 6255 7932

aica.org@bigpond.net.au

www.aica.asn.au

The Australian Indigenous Communication Association Incorporated is a body that represents members of the national Indigenous media and communications industry. The representative association advocates for, and formulates policy on behalf of, this sector.

Film and Television Institute WA Inc (FTI)

92 Adelaide Street

Fremantle WA 6160

PO Box 579

Fremantle WA 6959

Ph: (08) 9431 6700

Fax: (08) 9335 1283

www.fti.asn.au

Administers the Stanley Wilbur Trust, which offers support for Indigenous screen artists. For advice on new developments in this ongoing program, please contact the FTI.

Indigenous Screen Australia (ISA)

PO Box 1714

Strawberry Hills NSW 2012

Ph: (02) 9380 4070

www.indigenousscreenaustralia.com.au

Peak organisation for independent Indigenous filmmakers and Indigenous media organisations. Established in 2000, ISA is committed to promoting opportunities and the Indigenous screen industry. Key priority areas: distribution, production and finance, training and employment, policy and screen culture. First public event was the Tudawali Awards, presented at the Opera House in January 2000.

Metro Screen, Sydney, NSW

Sydney Film Centre, Paddington Town Hall

Cnr Oatley Road and Oxford Street

Paddington NSW 2021

PO Box 299

Paddington NSW 2021

Ph: (02) 9361 5318

Fax: (02) 9361 5320

www.metroscreen.com.au/lbs.html

Administers the Lester Bostock Scheme, a joint initiative between Metro Screen and the NSW Film and Television Office (FTO), offering Indigenous storytellers the opportunity to make a short film. Participants have access to free training, equipment and facilities, plus they team up with an experienced industry producer/director who acts as a mentor to guide them through the production process. The aim of the scheme is to encourage new Indigenous filmmakers living in NSW to present ideas, develop their skills and experience in television and video production, and increase their prospects for employment in the film and television industry. An Indigenous mentor/producer assists each filmmaker through the development, production and post-production of their project.

Pacific Film and Television Commission (PFTC)

Level 15, 111 George Street

Brisbane Qld 4000

PO Box 15094

City East Qld 4002

Ph: (07) 3224 4114

Fax: (07) 3224 6717

www.pftc.com.au

The Indigenous Filmmakers Fund provides development and production finance for Indigenous filmmakers to tell their own stories.

SBS Television, Indigenous Media Unit

Locked Bag 028

Crows Nest NSW 1585

Ph: (02) 9430 3058

Fax: (02) 9438 1590

<http://news.sbs.com.au/livingblack>

Produces Indigenous programs, including the current affairs program Living Black, for broadcast on SBS. Provides training for Indigenous people in television.

Screen Australia, Indigenous Branch

Ph: (02) 8113 5800

Toll Free: 1800 213 099

indigenous@screenaustralia.gov.au

www.screenaustralia.gov.au

Offers professional development to Indigenous filmmakers by providing development and production investment funding for drama, documentary, interactive and animation projects. These projects may be in the short, short feature or feature-length format.

Also provides travel grants to filmmakers who have a film screening in an international film festival and provides funding for filmmakers to train on feature films and documentaries. Contributes to Screen Australia policy development issues relevant to its area and assesses projects with Indigenous content that are submitted to the Screen Australia development funding programs and marketing programs.

ScreenWest's Indigenous Filmex initiative (INDEX)

Level 7, Law Chambers

573 Hay Street

Perth WA 6000

PO Box 8349

Perth Business Centre WA 6849

Ph: (08) 9224 7340

Fax: (08) 9224 7341

info@screenwest.com.au

www.screenwest.com.au

Designed to extend the experience of Indigenous filmmakers, particularly directors, writers and producers, by supporting the production of short films.

6.5 Indigenous cultural advisors and script consultants

Australian Writers' Guild

8/50 Reservoir Street

Surry Hills NSW 2010

Ph: (02) 9281 1554

Fax (02) 9281 4321

admin@awg.com.au

www.awg.com.au

Script assessments and clinics are available to Australian Writers' Guild members. The Assessment Service is available for all scripts – documentary, feature, short film, television, radio and stage.

The Black Book Directory

Ph: (02) 9380 4000

Toll Free: 1800 226 615

Fax: (02) 9319 5030

mail@theblackbook.com.au

www.theblackbook.com.au

Portal to Indigenous arts and media in Australia. Includes a directory with more than 2,700 listings of Indigenous organisations and individuals working across 95 professions in the arts, media and cultural industries.

Indigenous Film Services

PO Box 972

Darlinghurst NSW 1300

Ph: (02) 9332 2066

Fax: (02) 9332 2166

www.indigenousfilmservices.com

Indigenous Film Services is a film, video and multimedia resource centre offering production support to Indigenous communities.

Metro Screen's Project Development Services

Sydney Film Centre, Paddington Town Hall

PO Box 299

Paddington NSW 2021

Ph: (02) 9361 5318

Fax: (02) 9361 5320

www.metroscreen.org.au

Metro Screen's Project Development Services are available to Metro Screen members and provide assessments of scripts or treatments of any length. It is an excellent opportunity for filmmakers and screen practitioners to be given sound advice on what does and doesn't work. Metro Screen offers a selection of successful high-profile industry practitioners to choose from, including at least one consultant with a background in Indigenous film.

6.6 Land Councils

Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), Native Title Research Unit

<http://ntru.aiatsis.gov.au/other/links.html>

Contains a comprehensive list of Native Title Representative Bodies as well as general Native Title information.

New South Wales

New South Wales Aboriginal Land Council (NSWALC)

Head Office

33 Argyle Street

Parramatta NSW 2150

PO Box 1125

Parramatta NSW 2124

Ph: (02) 9689 4444

Fax: (02) 9687 1234

penwurru@alc.org.au

www.alc.org.au

Zone Offices:

Northern Zone (Coffs Harbour) Ph: (02) 6659 1200

Eastern Zone (Parramatta) Ph: (02) 8836 6000

Southern Zone (Queanbeyan) Ph: (02) 6124 5333

Western Zone (Dubbo) Ph: (02) 6885 7000

The NSWALC is New South Wales' peak representative body in Indigenous affairs. It is made up of 13 regional land councils, contained within four zones. A map showing the zone regions is available on the NSWALC website.

Northern Territory

Central Land Council

Head Office

31–33 Stuart Highway

Alice Springs NT 0871

PO Box 3321

Alice Springs NT 0871

Ph: (08) 8951 6211

Fax: (08) 8953 4343

media@clc.org.au

www.clc.org.au

The Central Land Council region covers 771,747 square kilometres of remote, rugged and often inaccessible areas in the southern half of the Northern Territory.

Northern Land Council

Head Office

45 Mitchell Street

Darwin NT 0810

GPO Box 1222

Darwin NT 0810

Ph: (08) 8920 5100

Fax: (08) 8945 2633

www.nlc.org.au

The Northern Land Council represents traditional Aboriginal landowners and Aboriginal people in the Top End of the Northern Territory of Australia.

South Australia

Anangu Pitjantjatjara Yankunytjatjara (APY) Land Council

PMB Umuwa Via Alice Springs NT 0872

Ph: (08) 8954 8111

Fax: (08) 8954 8110

www.waru.org

Anangu Pitjantjatjara Yankunytjatjara (APY) Council area covers more than 103,000 square kilometres of arid land in the far northwest of South Australia. Communities on the Lands include: Amata, Fregon, Indulkana, Mimili, Pipalyatjara and Pukatja (Ernabella).

Queensland

Cape York Land Council

Head Office

32 Florence Street

Cairns Qld 4870

PO Box 2496

Cairns Qld 4870

Ph: (07) 4051 9222

Toll Free: 1800 623 548

Fax: (07) 4051 0097

reception@cylc.org.au

www.cylc.org.au

The Cape York Land Council was established in 1990 to serve the Aboriginal communities and traditional owners of Cape York Peninsula.

Torres Strait Regional Authority (TSRA)

1st Floor, Torres Strait Haus

Victoria Parade

Thursday Island Qld 4875

PO Box 261

Thursday Island Qld 4875

Ph: (07) 4069 0700

Toll Free: 1800 079 093

Fax: (07) 40691879

info@tsra.gov.au

www.tsra.gov.au

The TSRA region stretches 150 kilometres north from the tip of Cape York Peninsular in North Queensland to just south of the south west coast of Papua New Guinea.

Western Australia

Kimberley Land Council (KLC)

36 Pembroke Street

Broome WA 6725

PO Box 2145

Broome WA 6725

Ph: (08) 9193 6199

Fax: (08) 9193 6279

klc@klc.org.au

www.klc.org.au

The Kimberley Land Council Aboriginal Corporation (KLC) is an association of Aboriginal people in the Kimberley region. It is a peak regional community organisation.

Ngaanyatjarra Council Aboriginal Corporation

1/58 Head Street

Alice Springs NT 0871

PO Box 644

Alice Springs NT 0871

Ph: (08) 8950 1711

Fax: (08) 8953 1892

ngcouncil@ngaanyatjarra.org.au

The Ngaanyatjarra Council Aboriginal Corporation represents over 2,000 Pintupi, Ngaanyatjarra, Ngaatatjarra and Pitjantjatjara people living in the Central Desert region of Western Australia.

6.7 Permit offices

Northern Territory

Aboriginal Areas Protection Authority

Darwin Office
1st Floor, T.I.I. Building
74 Cavenagh Street
Darwin NT 0801
GPO Box 1890
Darwin NT 0801
Ph: (08) 8981 4700
Fax: (08) 8981 4169

Alice Springs Office
Ground Floor, Belvedere House
Cnr Bath and Parsons Streets
Alice Springs NT 0871
GPO Box 3656
Alice Springs NT 0871
Ph: (08) 8952 6366
Fax: (08) 8952 2824
enquiries.aapa@nt.gov.au

All Aboriginal sacred sites in the Northern Territory are protected by law. An Authority Certificate must be obtained before any filming is done in the area.

Central Land Council

Head Office
31–33 Stuart Highway
Alice Springs NT 0871
PO Box 3321
Alice Springs NT 0871
Ph: (08) 8951 6211
Fax (08) 8953 4343
permits@clc.org.au
www.clc.org.au
Alice Springs and Tennant Creek regions.

Northern Land Council

Head Office

45 Mitchell Street

Darwin NT 0810

GPO Box 1222

Darwin NT 0810

Ph: (08) 8920 5100

Fax: (08) 8945 2633

permits@nlc.org.au

www.nlc.org.au

Darwin, Nhulunbuy and Katherine regions (including Arnhem Land).

Tiwi Land Council

5/3 Bishop Street

Stuart Park NT 0820

PO Box 38545

Winnellie NT 0821

Ph: (08) 8981 4898

Fax: (08) 8981 4282

Melville and Bathurst Islands.

South Australia

Anangu Pitjantjatjara Yankunytjatjara (APY) Land Council

permit@anangu.com.au

www.waru.org

Pitjanjara land within Northern South Australia, Western Australia and Northern Territory.

Maralinga Lands Council

PO Box 435

Ceduna SA 5690

Ph: (08) 8625 2946

Aboriginal lands within Central South Australia (via Anne Beadell Highway).

Yalata Community Inc

www.yalata.org/permits.htm

Permits are not required to travel through Yalata Aboriginal lands (south-western South Australia). However, if you intend to stay in the area you will need a permit.

Western Australia

Aboriginal Lands Trust

PO Box 7770

Cloisters Square

Perth WA 6850

Ph: (08) 9235 8000

Fax: (08) 9235 8093

www.dia.wa.gov.au/Land/Permits

The Aboriginal Lands Trust has an online application and processing system for issuing Aboriginal reserve entry permits. There is also an auto-approval feature allowing travellers to enter their details and print out permits immediately. For more information, or to apply for a permit, visit the website or contact the DIA permits officer.

Ngaanyatjarra Land Council

58 Head Street

Alice Springs NT 0871

PO Box 644

Alice Springs NT 0871

Ph: (08) 8950 1711

Fax: (08) 8953 1892

ngcouncil@ngaanyatjarra.org.au

Lands surrounding the Gunbarrel Highway (between Alice Springs and Western Australia).

6.8 National Parks

This list includes only Commonwealth National Parks. For information about commercial filming permits for State Government-managed national parks and reserves, contact the relevant state agency.

Booderee National Park

Village Road

Jervis Bay NSW 2540

Ph: (02) 4442 1006

Fax: (02) 4442 1063

booderee.mail@deh.gov.au (allow 24 hrs for confirmation)

Permits: Contact the Permits Officer

Allow a minimum of one month for processing of your application from the date that the Permits Officer receives the permit application. News reporters, photographic and film crews are required to undergo a briefing.

Department of the Environment, Water, Heritage and the Arts (DEWHA)

John Gorton Building, King Edward Terrace

Parkes ACT 2600

GPO Box 787

Canberra ACT 2601

Ph: (02) 6274 1111

Fax: (02) 6274 1666

www.environment.gov.au

Three of the six Commonwealth National Parks, namely Kakadu National Park and Uluru-Kata Tjuta National Park in the Northern Territory and Booderee National Park in the Jervis Bay Territory, are managed jointly by the Australian Government (through DEWHA) and Aboriginal traditional owners.

Kakadu National Park

PO Box 71

Jabiru NT 0886

Ph: (08) 8938 1120

Fax: (08) 8938 1115

kakadunationalpark@deh.gov.au

Permits: Contact the Permits Officer, ph: (08) 8938 1100

Allow a minimum of 10 to 14 working days for the processing of your application from the date that the Permits Officer receives the permit application.

Uluru-Kata Tjuta National Park

PO Box 119

Yulara NT 0872

Ph: (08) 8956 1100

Fax: (08) 8956 2064

uluru.admin@deh.gov.au

Permits: Contact the Senior Media and Information Officer

Phone: (08) 8956 1113

Fax: (08) 8956 2360

uluru.media@deh.gov.au

Please note for applications relating to Uluru-Kata Tjuta National Park, allow 56 days for processing if you wish to record Anangu or Anangu cultural material.

6.9 Libraries and archival sources

Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Library

Acton Peninsular, Lawson Crescent

Acton ACT 2601

GPO Box 553

Canberra ACT 2601

Ph: (02) 6246 1182

Fax: (02) 6261 4287

sales@aiatsis.gov.au; library@aiatsis.gov.au; research@aiatsis.gov.au

www.aiatsis.gov.au

AIATSIS is an independent Federal Government statutory authority devoted to Aboriginal and Torres Strait Islander studies, and is Australia's premier institution for information about the cultures and lifestyles of Aboriginal and Torres Strait Islander peoples. The library contains one of the most comprehensive collections of print materials on Australian Indigenous studies in the world, and has adopted the Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services. Specialist services are available for those doing genealogical research and native title research.

Online: The Collections catalogue is available online.

Publications: AIATSIS publishes books, a journal, films, cassettes, CDs and papers. Most are produced by the AIATSIS publishing house, Aboriginal Studies Press. The Native Title Research Unit publishes papers and newsletters, some of which are available online.

Australian War Memorial

Treloar Crescent

Campbell ACT 2612

GPO Box 345

Canberra ACT 2601

Ph: (02) 6243 4211

Fax: (02) 6243 4325

www.awm.gov.au

The Australian War Memorial's photographic database has over 470 images of Indigenous Australians and its private records database lists 11 relevant collections.

Battye Library

Alexander Library Building
Perth Cultural Centre
Perth WA 6000
Ph: (08) 9427 3111
Fax: (08) 9427 3256
info@slwa.wa.gov.au

www.liswa.wa.gov.au/abortorres.html

The Battye Library is the primary research collection of Western Australian documentary heritage, containing an impressive amount of information on Aboriginal and Torres Strait Islander people of Western Australia.

National Archives of Australia

PO Box 7425
Canberra BC ACT 2610
Ph: (02) 6212 3600
Fax: (02) 6212 3699
archives@naa.gov.au

www.naa.gov.au/collection/explore/indigenous-australia/index.aspx

The National Archives of Australia is responsible for preserving and making available for public access the archival records of the Australian Government, including audiovisual records. The collection largely dates from 1901 and is generally available for public access after 30 years. Information about the National Archives' holdings of records, including film, photographs and files in relation to Indigenous Australians, access arrangements and record keeping advice for government agencies is available on its website (**www.naa.gov.au**).

National Film and Sound Archive (NFSA)

Head Office
McCoy Circuit
Acton ACT 2601
GPO Box 2002
Canberra ACT 2601
Ph: (02) 6248 2000
Toll Free: 1800 067 274 (within Australia)
Fax: (02) 6248 2222
enquiries@nfsa.gov.au

www.nfsa.gov.au

Access to the collection is also available at state libraries in Adelaide, Brisbane, Hobart and Perth.

The National Film and Sound Archive plays a leading role in preserving and collecting Australia's film, television and sound heritage. The NFSA collection includes books, journals, CD-ROMs, films, video and sound recordings, as well as photographic stills, posters, lobby cards, publicity materials and press clippings.

National Library of Australia

Canberra ACT 2600

Ph: (02) 6262 1111

Fax: (02) 6257 1703

www.nla.gov.au/muragadi

The National Library of Australia's resources on Aboriginal and Torres Strait Islander people includes an overview of manuscript and oral history holdings.

New South Wales State Archives

PO Box 516

Kingswood NSW 2747

Ph: (02) 9673 1788

Fax: (02) 9833 4518

srecords@records.nsw.gov.au

www.records.nsw.gov.au/publications/aboriginalguide/aboriginalguidetoc.htm

The website of State Records New South Wales includes an extensive and detailed Guide to New South Wales State Archives relating to Aboriginal People.

State Library of New South Wales

Macquarie Street

Sydney NSW 2000

Ph: (02) 9273 1414

Fax: (02) 9273 1255

library@sl.nsw.gov.au

www.sl.nsw.gov.au/picman

A search in the State Library of New South Wales' Picman database reveals over 3, 340 entries of pictures and manuscripts of relevance to Indigenous people.

State Library of South Australia

Corner North Terrace and Kintore Avenue

Adelaide SA 5000

GPO Box 419

Adelaide SA 5001

Ph: (08) 8207 7250

Fax: (08) 8207 7247

info@slsa.sa.gov.au

www.slsa.sa.gov.au/site/page.cfm?area_id=15&nav_id=509

The State Library of South Australia has a significant and developing amount of specialist material relating to Australian Aboriginal and Torres Strait Islander cultures including published material, archival records, photographs, films, sound recordings and art works.

State Library of Queensland

PO Box 3488

South Brisbane Qld 4101

Ph: (07) 3840 7666

Fax: (07) 3846 2421

www.slq.qld.gov.au/info/ind

Indigenous Library Services operates within the State Library of Queensland to provide information services relevant to Aboriginal and Torres Strait Islander people.

State Records of South Australia

GPO Box 1072

Adelaide SA 5001

Ph: (08) 8226 7750

Fax: (08) 8204 8777

srsageneralenquiries@saugov.sa.gov.au

www.archives.sa.gov.au/aboriginal

State Records of South Australia provides an online overview of its holdings of records relating to Aboriginal people. It includes information about guides, research kits and its name index as well as copies of a few records and pictures.

6.10 Media law and copyright

Arts Law Centre of Australia

The Gunnery
43–51 Cowper Wharf Road
Woolloomooloo NSW 2011
Ph: (02) 9356 2566
Toll Free: 1800 221 457
Fax: (02) 9358 6475
artslaw@artslaw.com.au

www.artslaw.com.au

National community legal centre for the arts. Established with the support of the Australia Council in 1983 to provide specialised legal and business advice and referral services, professional development resources and advocacy for artists and arts organisations. Advice and information on contracts, copyright, business names and structures, defamation, insurance and employment. Also runs a specialist Indigenous arts law service which focuses on advising all Indigenous artists, communities and arts organisations around Australia on arts-related legal problems.

Telephone legal advice from Monday to Friday: 9.30am–12:30pm and 2pm–5pm EST. Arrangements can be made for Arts Law subscribers to have a face-to-face or telephone Legal Advice Night (LAN) consultation with a volunteer lawyer from private practice.

Specialist library: Appointment only.

Publications: ART + Law newsletter; sample contracts; information sheets; seminar and conference papers; and handbooks.

Australasian Mechanical Copyright Owners Society (AMCOS)

New South Wales Head Office
6–12 Atchison Street
St Leonards NSW 2065
Locked Bag 3665
St Leonards NSW 1590
Ph: (02) 9935 7900
Toll Free: 1800 642 634
Fax: (02) 9935 7999
apra@apra.com.au

www.amcos.com.au

AMCOS represents the interests of music publishers and their writers in Australia and New Zealand. We administer a number of reproduction rights for our members and collect royalties for the use of their music.

Australasian Performing Rights Association (APRA)

New South Wales Head Office

6–12 Atchison Street

St Leonards NSW 2065

Locked Bag 3665

St Leonards NSW 1590

Ph: (02) 9935 7900

Toll Free: 1800 642 634

Fax: (02) 9935 7999

apra@apra.com.au

www.apra.com.au

A smorgasbord of information for composers and music publishers including detailed articles on copyright, the quarterly magazine *APRAP* and the latest news on music competitions and awards.

Australian Communications and Media Authority (ACMA)

Canberra Head Office

Purple Building, Benjamin Offices

Chan Street

Belconnen ACT 2617

PO Box 78

Belconnen ACT 2616

Ph: (02) 6219 5555

Fax: (02) 6219 5200

Melbourne Head Office

Level 44, Melbourne Central Tower

360 Elizabeth Street

Melbourne Vic 3000

PO Box 13112

Law Courts

Melbourne Vic 8010

Ph: (03) 9963 6800

Fax: (03) 9963 6899

TTY: (03) 9963 6948

Sydney Head Office

Level 15, Tower 1 Darling Park

201 Sussex Street

Sydney NSW 2000

PO Box Q500

Queen Victoria Building NSW 1230

Ph: (02) 9334 7700

Fax: (02) 9334 7799

www.acma.gov.au

The Australian Communications and Media Authority (ACMA) is the independent federal statutory authority responsible for the regulation of broadcasting, radiocommunications, telecommunications and online content. ACMA's responsibilities include: promoting self-regulation and competition in the telecommunications industry while protecting consumers and other users; fostering an environment in which electronic media respect community standards and responds to audience and user needs; managing access to the radiofrequency spectrum, including the broadcasting services bands and representing Australia's communications and broadcasting interests internationally.

Australian Copyright Council

245 Chalmers Street
Redfern NSW 2016
PO Box 1986
Strawberry Hills NSW 2012
Fax: (02) 8815 9799

www.copyright.org.au

Information about the Australian Copyright Council and its services and publications. Information sheets and newsletters available for download. They also operate a limited legal advice service for creators. For information see their website.

Communications Law Centre

Level 1, 283 Queen Street (entrance via Little Lonsdale Street)
Melbourne Vic 3000
Ph: (03) 9600 3841
Fax: (03) 9670 7902
melbourne@comslaw.org.au

www.comslaw.org.au

Independent, non-profit, public interest organisation specialising in media and communications law and policy. Provides professional training to Australia's leading media organisations as well as courses in media and communications law at UNSW and Victoria University. Oz NetLaw is the Internet legal practice of the CLC and is a community-based practice that provides free legal information about Internet- and e-commerce-related law.

Findlaw Australia

www.findlaw.com.au

Findlaw Australia is a searchable online database of Australian lawyers, with links to Entertainment, Intellectual Property and Communications law specialists throughout Australia.

Phonographic Performance Company of Australia (PPCA)

PO Box Q20

Queen Victoria Building NSW 1230

Ph: (02) 8569 1100

Fax: (02) 8569 1183

www.ppca.com.au

PPCA is a national, non-government, non-profit organisation representing record companies and recording artists.

Screenrights (formerly Audio–Visual Copyright Society)

Level 3, 156 Military Road

Neutral Bay NSW 2089

PO Box 1248

Neutral Bay NSW 2089

Ph: (02) 9904 0133

Fax (02) 9904 0498

www.screen.org

Screenrights is a non-profit copyright collecting society that collects royalties from various licensing schemes on behalf of copyright owners. The website contains information on their services, how to benefit from these, and how to claim royalties. It also explains how to get a licence and what can and can't be done under their licence agreements.

United States Copyright Office

101 Independence Ave. S.E.

Washington, D.C. 20559–6000 USA

Ph: +1 (202) 707 5959

www.copyright.gov

Copyright registration for the USA.

Viscopy

45 Crown Street

Woolloomooloo NSW 2011

Ph: (02) 9368 0933

Fax: (02) 9368 0899

www.viscopy.com

Viscopy is the copyright collecting society for visual artists in Australia and New Zealand.

World Intellectual Property Organization (WIPO)

PO Box 18

CH-1211 Geneva 20 Switzerland

www.wipo.org

The World Intellectual Property Organization (WIPO) is an international organisation dedicated to helping to ensure that the rights of creators and owners of intellectual property are protected worldwide.

6.11 Regulation

Organisations responsible for classification of film, television and related media.

Australian Communications and Media Authority (ACMA)

Canberra Head Office
Purple Building, Benjamin Offices,
Chan Street, Belconnen ACT 2617
PO Box 78
Belconnen ACT 2616
Ph: (02) 6219 5555
Fax: (02) 6219 5200

Melbourne Head Office
Level 44, Melbourne Central Tower
360 Elizabeth Street
Melbourne Vic 3000
PO Box 13112
Law Courts
Melbourne Vic 8010
Ph: (03) 9963 6800
Fax: (03) 9963 6899
TTY: (03) 9963 6948

Sydney Head Office
Level 15, Tower 1 Darling Park
201 Sussex Street
Sydney NSW 2000
PO Box Q500
Queen Victoria Building NSW 1230
Ph: (02) 9334 7700
Fax: (02) 9334 7799

www.acma.gov.au

The Australian Communications and Media Authority (ACMA) is the independent federal statutory authority responsible for the regulation of broadcasting, radiocommunications, telecommunications and online content. ACMA's responsibilities include: promoting self-regulation and competition in the telecommunications industry while protecting consumers and other users; fostering an environment in which electronic media respect community standards and responds to audience and user needs; managing access to the radiofrequency spectrum, including the broadcasting services bands and representing Australia's communications and broadcasting interests internationally.

The National Classification Scheme

www.classification.gov.au

Information on the activities of The National Classification Scheme, a Commonwealth Agency in the Attorney-General's portfolio. It is responsible for classifying films and videos, computer games and publications in accordance with Commonwealth, State and Territory legislation regarding classification matters.

6.12 Industrial Agreements

The Media, Entertainment & Arts Alliance (MEAA)

245 Chalmers Street

Redfern NSW 2016

Ph: (02) 9333 0999

Toll Free: 1300 656 512

Fax: (02) 9333 0933

federal@alliance.org.com

www.alliance.org.au

The MEAA is the relevant union for all performing artists and entertainment industry technicians and production personal. The awards and enterprise agreements which specifically cover production personnel are:

- *Actors Feature Film Agreement 2003*
- *Actors Television Programs Agreement 2004*
- *Australian Television Repeats and Residuals Agreement 2004*
- *Actors Etc (Television) Award 1998*
- *ABC Actors Agreement 2003–2006*
- *Australian Film, TV and Radio School Agreement 2000*
- *Entertainment and Broadcasting Industry – Motion Picture Production Award 1998*
- *Motion Picture Production Agreement 2007–2009*

These agreements cover most aspects of employment for cast and crew in film and television production. They are binding between the Screen Producers Association of Australia (SPAA) and with the Media Entertainment & Arts Alliance (MEAA). The MEAA has separate agreements with Village Roadshow Production Services (located on the Gold Coast, Queensland) and with Fox Studios in Sydney, New South Wales. For information on any of these agreements contact either the relevant organisation or the Federal office of the MEAA.

The Screen Producers Association of Australia (SPAA)

34 Fitzroy Street

Surry Hills NSW 2010

Tel: (02) 9360 8988

Fax: (02) 9360 8977

spaa@spaa.org.au

www.spaa.org.au

SPAA is the peak body representing and advising producers and production companies on all aspects of their industrial and commercial affairs. It advises on and services all of the major industrial agreements and awards pertaining to the screen production industry. These include:

- *Actors Feature Film Agreement 2003*
- *Actors Television Programs Agreement 2004*
- *Actors Television Repeats and Residuals Agreement 2004*
- *Actors Etc (Television) Award 1998*
- *Entertainment and Broadcasting Industry – Motion Picture Production Award 1998*
- *Motion Picture Production Agreement 2007–2009*

These agreements are binding and can only be used by members of SPAA and copyright in those agreements is held by SPAA and the MEAA. If you are not a member of SPAA, you will need to negotiate your own contracts with the MEAA, which represents performing artists (see contact details, page 112).

Appendix 1: Sample clauses

Background clauses such as the following could be used in film contracts to cover issues relating to Indigenous Cultural Intellectual Property (ICIP).

For Indigenous Communal Moral Rights (ICMR) in a director's contract

1. Indigenous communal moral rights

- 1.1 In respect of any Indigenous Communal Owned Works that the Director incorporates into her or his contribution of the Film, the Director shall:
 - 1.1.1 advise the Production Company of the appropriate attribution to be given to the Indigenous community before the rough cut stage of the Film, so that the Production Company can include such attribution in the Credits;
 - 1.1.2 prior to incorporating the Indigenous Communal Owned Works into the Film, contact and consult with the relevant Indigenous community on the proposed use of the Indigenous Communal Owned Works in the Film and obtain its agreement for use of the Indigenous Communal Owned Works in the Film, and for the purposes of this Agreement; and
 - 1.1.3 provide written details of the name and address of the relevant Indigenous Community representative to the Production Company prior to picture lock off stage of the Film.
- 1.2 The Director and the Production Company agree to consult and work with each other and members of the relevant Indigenous Community to ensure that any Indigenous cultural protocols are observed. In the event of a dispute arising in relation to specific cultural protocols, the parties will use their best endeavours to resolve the dispute.

Screen Australia ICIP Clause in Production and Investment Agreements

This is an example of an ICIP clause used in a Production and Investment Agreement where Screen Australia and SBS are parties, along with the Production Company.

DEFINITIONS

"ICIP Rights" means Indigenous Cultural and Intellectual Property Rights, being a reference to Indigenous people's rights to their heritage. Heritage comprises all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory. The heritage of an Indigenous people is a living one and includes objects, knowledge and literary and artistic works which may be created in the future based on that heritage. Heritage includes:

- (a) literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages and designs);
- (b) Scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and the phenotypes of flora and fauna);
- (c) All items of movable cultural property;
- (d) Human remains and tissues;
- (e) Immovable cultural property (including sacred and historically significant sites and burial grounds);
- (f) Documentation of Indigenous peoples' heritage in archives, film, photographs, videotape or audiotape and all forms of media.

ICIP RIGHTS (Documentary)

1. You and Screen Australia and SBS acknowledge the existence of ICIP Rights of Indigenous participants in the Film. You agree and undertake to endeavour to ensure that the ICIP Rights of the Indigenous participants are respected and upheld in the production and all aspects of distribution of the Film.
2. In the event that you wish to include ICIP Rights material in the Film, you shall obtain a non-exclusive licence from the ICIP Rights holder/s or custodian/s to include such ICIP Rights material in the Film.
3. In the event of a dispute regarding the ICIP Rights of any Indigenous participant in the Film, all parties to the dispute shall use best endeavours to resolve the dispute.

ICIP RIGHTS (Drama)

1. You and Screen Australia and SBS acknowledge the existence of ICIP Rights in Indigenous cultural heritage material. You agree and undertake to endeavour to ensure that the ICIP Rights of the relevant Indigenous peoples are respected and upheld in the production and all aspects of distribution of the Film.
2. In the event that you wish to include ICIP material in the Film, you shall consult with and obtain a non-exclusive licence from the relevant ICIP Rights holder/s or custodian/s to include such ICIP material in the Film and shall advise us on:
 - (a) attribution to be given to Indigenous groups;
 - (b) any cultural protocols to be specifically addressed when using this material (Cultural Protocols).
3. The parties agree and undertake to endeavour to ensure that the ICIP Rights of the Indigenous groups represented in the Project are respected and upheld in the Project, and agree to comply with the cultural protocols.
4. In the event of a dispute regarding the ICIP Rights of any Indigenous participant in the Film, all parties to the dispute shall use best endeavours to resolve the dispute.

Appendix 2: Background research on other protocols

Australian sources

Websites

ABC Indigenous – *Cultural Protocol*

This document has been written as a guide to help bridge the gap between the needs of television and film makers and the Indigenous people and their customs.

Using a search engine configured for Australian pages, search with the sequence:

ABC Indigenous Cultural Protocol

Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services

From Charles Darwin University (CDU)

Using a search engine configured for Australian pages, search the exact name of the website

All Media Guide to Fair and Cross-Cultural Reporting

Chapter 14 of the publication covers Indigenous Australia.

From Griffith University

Using a search engine configured for Australian pages, search the exact title of the publication

Australian Copyright Council – *Protecting Indigenous Intellectual Property*

Using a search engine configured for Australian pages, search the exact name of the website

Australia Council – *Indigenous protocol guides*

Series of five Indigenous protocol guides published by the Aboriginal and Torres Strait Islander Arts Board: Performing arts, Media arts, Music, Visual Arts, Writing.

Using a search engine configured for Australian pages, search the exact name of the website

Commercial Radio Australia – *Guidelines on the Portrayal of Indigenous Australians on Commercial Radio* (part of the *Commercial Radio Codes of Practice and Guidelines*)

Published in the Radio Codes and Standards section of the Australian Communications and Media Authority (ACMA) website.

Using a search engine configured for Australian pages, search with the sequence:

Commercial Radio Australia Guidelines on the Portrayal of Indigenous Australians on Commercial Radio

Department of Aboriginal and Torres Strait Islander Policy and Development – *Proper Communication with Torres Strait Islander Peoples*

Using a search engine configured for Australian pages, search with the sequence:
Proper Communication with Torres Strait Islander Peoples

Department of Aboriginal and Torres Strait Islander Policy and Development – *Protocols for Consultation and Negotiation with Aboriginal People*

Using a search engine configured for Australian pages, search with the sequence:
Protocols for Consultation and Negotiation with Aboriginal People

FreeTV Australia – *Advisory Note: The portrayal of Aboriginal and Torres Strait Islander Peoples* (part of the *Commercial Television Industry Code of Practice*)

Registered by ACMA and published in the Television Codes and Standards section of their website.

Using a search engine configured for Australian pages, search with the sequence:
ACMA Commercial Television Industry Code of Practice

Janke, Terri, *Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights*, Michael Frankel and Company, Sydney, produced under commission of the Aboriginal and Torres Strait Islander Commission and the Australian Institute of Aboriginal and Torres Strait Islander Studies, 1998

Using a search engine configured for Australian pages, search with the sequence:
Frankel Lawyers Our Culture Our Future

NSW Ministry for the Arts – *Doing It Our Way: Contemporary Indigenous Cultural Expressions in New South Wales*

Using a search engine configured for Australian pages, search with the sequence:
NSW Ministry for the Arts Doing It Our Way

NSW Ministry for the Arts – *Indigenous Arts Protocol, A Guide*

Using a search engine configured for Australian pages, search with the sequence:
NSW Ministry for the Arts Indigenous Arts Protocol

Print publications

Australian National Maritime Museum, *Connections: Indigenous Cultures and the Australian National Maritime Museum*, Australian National Maritime Museum, Sydney, 2005

Bostock, Lester, *The Greater Perspective: Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities*, 2nd ed, SBS, Sydney, 1997

Everett, Jim et al, *Respecting Cultures: Working with the Tasmanian Aboriginal Community and Aboriginal Artists*, Arts Tasmania, 2004

Using a search engine configured for Australian pages, search with the sequence:
Arts Tasmania Respecting Cultures pdf

Janke, Terri and Guivarra, Nancia, *Listen, learn and respect: Indigenous cultural protocols and radio*, written under commission for the Australian Film Television and Radio School (AFTRS), Sydney, 2006

Johnson, Darlene, *Indigenous Protocol*, SBS, 2001

Mellor, Doreen and Janke, Terri, *Valuing Art: Respecting Culture – Protocols for Working with the Australian Indigenous Visual Arts and Craft Sector*, written under commission for the National Association for the Visual Arts (NAVA), 2001

Museums Australia

– *Taking the Time – Museums and galleries, cultural protocols and communities*, 1998

– *Previous Possessions, New Obligations – A plain English summary of policies for museums in Australia and Aboriginal & Torres Strait Islander peoples*, 1994

Using a search engine configured for Australian pages, search: Museums Australia

Other relevant publications

Aboriginal and Torres Strait Islander Commission, *Digital Dreaming: A National Review of Indigenous Media and Communications* (Executive Summary), ATSIC, Woden, ACT, 1999

Review to assess status of Indigenous media and communications and identify further developments.

Aboriginal Intellectual and Cultural Property: Definitions, Ownership and Strategies for Protection, Rainforest Aboriginal Network, Cairns, 25–27 November 1993

The conference followed a World Heritage listing of NE Qld's wet tropical forests. A strict colonial management regime was set up in the area, which is surrounded by large population of Aboriginal peoples, rich in history, tradition and heritage. The conference aimed to find workable strategies for protecting Indigenous intellectual and cultural property.

Daes, Mrs Erica-Irene, *Protection of the heritage of indigenous people – Final Report of the Special Rapporteur*, United Nations, 1995

Includes revised principles and guidelines for the protection of the heritage of Indigenous people.

Department of Home Affairs and Environment Canberra, *Report of the Working Party on the Protection of Aboriginal Folklore*, 1981.

Working Party (Attorney-General's Dept; Australia Council; Copyright Council; Dept of Aboriginal Affairs; Dept of Home Affairs and Environment; Dept of Prime Minister and Cabinet) recommendation that an Aboriginal Folklore Act be introduced to enable traditional owners to control the use of items of Aboriginal folklore.

Eggerking, Kitty and Plater, Diana (comps), *Signposts, A Guide for Journalists: A guide to reporting Aboriginal, Torres Strait Islander and ethnic affairs*, 1992, Australian Centre for Independent Journalism.

Includes a good directory and bibliography.

Hodge, Robert, 'Aboriginal Truth and White Media: Eric Michaels meets the Spirit of Aboriginalism', *Continuum* 3:2 (1990)

There is also a guide to Eric Michaels' written work.

Ifould, Donna Marie, *Compilation of Indigenous Aboriginal and Torres Strait Islander Publishing Related Papers, Indigenous Aboriginal and Torres Strait Islander traditional cultural property and copyright issues, 1992–93*, paper table at National Aboriginal & Torres Strait Islander media conference for the Year of Indigenous People, Brisbane, 1993

Jacobsen, Rhonda, *Cultural Heritage: A Reflection on Images, The camera as a tool of the colonisation of Indigenous Australian Culture*, written for the Australian Film Commission, 1996

Concerns the return of all film footage containing Indigenous Australian culture back to the people who are the subjects of such footage. Includes table of cases and table of legislation.

Jennings, Karen, *Aboriginality in Australian Cinema: representations of Aborigines in selected features and documentaries, 1955–1987*, unpublished thesis, Perth, Murdoch University, 1988. Also published as *Sites of Difference: Cinematic Representations of Aboriginality and Gender*, South Melbourne, Australian Film Institute, 1993
Examines seven features and four documentaries all of which have a substantial focus on Aboriginal women or race relations between white women and Aborigines.

Langton, Marcia, *Well I heard it on the radio and saw it on the television: an essay for the Australian Film Commission on the politics and aesthetics of filmmaking by and about Aboriginal people and things*, Australian Film Commission, North Sydney, NSW, 1993

Malone, Peter, *In Black and White and Colour: Aborigines in Australian feature films – a survey*, Nelen Yubu Missiological Unit Series no. 4, Leura, NSW, 1987

From the silent era to 1986.

May, Harvey, *Broadcast in Colour: Cultural Diversity and Television Programming in Four Countries*, written for the Australian Film Commission, 2002

The US, UK, New Zealand and Australia are examined.

McPherson, Shirley and Pope, Michael, *Promoting Aboriginal and Torres Strait Islander Involvement in the Film and Video Industry*, written for the Australian Film Commission, 1992

Report and recommendations.

Michaels, Eric, *Bad Aboriginal Art: Tradition, Media and Technological Horizons*, University of Minnesota Press, Minneapolis, 1994

Michaels studied the impact of television on remote Aboriginal communities.

Moran, Albert (ed), *Film Policy: An Australian Reader*, Institute for Cultural Policy Studies, Griffith University, Brisbane, 1994

'Part 3 – Aborigines' includes chapters on Australian, New Zealand and Canadian policy.

Nugent, Stephen, Loncar, Milica and Aisbett, Kate, *The People We See on TV: Cultural Diversity on Television* (Monograph 3), Australian Broadcasting Authority, North Sydney, 1993

Includes chapters on level and nature of representation of Aboriginal people.

Plater, Diana (ed), *Going for Red, Black and Gold: Hints on how to handle the media for Aboriginal and Torres Strait Islander organizations and communities*, Jumbunna Centre for Australian Indigenous Studies, Education and Research, UTS, Sydney, 1994

International sources

Websites

Aboriginal People's Television Network (Canada) – *Aboriginal Language Broadcasting in Canada*

Canadian broadcaster's site with information for Aboriginal producers and other producers of Aboriginal content material. This relates directly to the broadcaster's own programming.

Using a search engine configured for web pages, search with the sequence:
aptn.ca Aboriginal Language Broadcasting in Canada

Black Film Research Online (BFRO)

A resource guide for the study of Black film culture, produced and maintained by the University of Chicago. The site states: "We define Black film culture quite broadly to include the works of Black filmmakers from across the African Diaspora; the production, distribution, and exhibition of films by, for and about Blacks; issues of Black spectatorship and reception; and images of Black people in film from the invention of the medium in the late 19th century to the present."

Using a search engine configured for web pages, search with the sequence:
Black Film Research Online (BFRO)

Native Networks

Native Networks Website – Native media throughout the Americas. Extensive site includes film/video/radio catalogue, festivals, media resources, film/video organisations, etc.

Using a search engine configured for web pages, search the exact name of the website

Ngai Tahu Filming Guidelines (South Island)

Guidelines for screen production companies wishing to film on lands of importance to Ngai Tahu, which includes land administered by the Department of Conservation, have been drawn up by Ngai Tahu and SPADA.

Ngai Tahu and SPADA have drawn up the guidelines, partly as a result of a need highlighted by the recent draft Aoraki National Park Management Plan, to help in the planning of film productions with Ngai Tahu on lands. The guidelines point out intellectual property and location issues that may be of concern to the Iwi so that production companies can either avoid problems or plan a mitigation strategy. The guidelines include advice and assistance which will help with the necessary consultation with local tribal councils. These are the first such guidelines produced, intended to enhance relationships with Iwi.

Using a search engine configured for web pages, search with the sequence:
Ngai Tahu Filming Guidelines

NZ On Air's Rautaki Maori

The strategy has three objectives as follows:

- NZ On Air aims to enhance the on-screen outcomes of mainstream Maori programming for television.
- NZ On Air aims to improve the broadcast experience for Maori practitioners through better consultation and communication.
- NZ On Air also aims to improve its internal capabilities to develop and maintain understanding of relevant Maori issues, as well as relationships with Maori.

Using a search engine configured for web pages, search with the sequence:

NZ on Air Rautaki Maori

Other relevant publications

Browne, Donald R, *Electronic Media and Indigenous Peoples: A Voice of Our Own?*
Iowa State University Press, Ames, Iowa, 1996

Addresses the efforts of Indigenous peoples to present themselves on radio and TV, documents program-making of the Welsh in Wales, Irish-speakers in Ireland, Native Americans in US/Canada, Sami in Scandinavia, Aboriginals in Australia, and Maoris in New Zealand.

Nga Aho Whakaari, *Nga Rarangi Korero: Working with Maori in Film & Television*,
Renee Mark, Auckland, New Zealand, 2007

Prepared in response to heightened interest in Maori stories and images from local and international filmmaking sectors. Focuses on a variety of sectors in the industry, identifies areas of concern and emphasises the importance of ethical behaviour when working with Maori.

