



Music and Indigenous Cultural & Intellectual Property

Description

Read about how Indigenous Cultural and Intellectual Property relates to protecting music and Indigenous culture and what aspects of ICIP are currently protected under Australian law.

What is ICIP?

ICIP refers to all the rights that Indigenous people have, and want to have, to protect their traditional arts and culture. For more information on ICIP generally, see Artists in the Black information sheet on ICIP.

ICIP in relation to music encompasses the following rights:

- Right to protect traditional knowledge and sacred cultural material
Such as the right to stop a non-Indigenous male band playing a sacred women's ceremonial song
- Right to ensure that traditional laws and customary obligations are respected, particularly when money is made from ICIP
Such as when a traditional ceremony is performed for tourists, the dances and the music should be ones that are permitted to be performed in public this way.
- Right to be paid for use of ICIP, particularly if it has been used in a way which is inconsistent with traditional laws or without the community's permission
Such as if someone records traditional music and uses it in their film without permission, then the community is compensated for the illegal use of that work
- Right to full and proper attribution or naming of the community connected with the ICIP
For example, when a community group is invited to perform a traditional song at an event (such as the opening ceremony at the Commonwealth Games) the program and promotional materials should identify not only the performers and musicians but the tribal or language group whose traditional music is used
- Right to prevent insulting, offensive and misleading uses of ICIP in all media
Such as the use of traditional music to advertise Chinese food or a theatrical performance considered to be racist
Such as attributing the music of one Indigenous group to the wrong language group and

describing it incorrectly

- Right to control the recording of cultural customs and expressions, and language which may be essential to cultural identity, knowledge, skill and teaching about Indigenous culture
Such as Aboriginal and Torres Strait Island communities can place conditions on an anthropologist who wants to record their ceremonies and music and write a book about it.

Does Australian law protect ICIP in music?

Australian intellectual property laws only provide limited protection to ICIP. Insofar as music is concerned, there are Australian laws which protect composers, lyricists, musicians, choreographers and performers. There are no laws in Australia which recognize communal rights in traditional Indigenous music and dance.

In Australia, the law protects:

- Musical, dramatic, literary and artistic works created by individuals who are living or recently passed away (within 70 years) which are protected by the Copyright Act 1968 (Cth) such as songs, lyrics, and music videos. For more information see Artists in the Black's information sheet on Copyright in music and lyrics.
- Moral rights of those who write or perform music to be named in relation to their music and performances and to have their music and performances treated respectfully. For more information see Arts Law's information sheet on Moral Rights.
- Individual performer's rights. For more information see Arts Law's information sheet on Performers' Rights.

Australian law does not protect other aspects of ICIP, including:

- The rights of a particular community or language group to their traditional music and ceremonies
- The underlying idea or information that is put into a musical or dance work eg the story told in a dance or the rules about the use of certain music (eg only for women)
- A style or type of performance or music eg clapping sticks or didgeridoo playing
- Traditional music or dance that has been performed for many generations
- Performances such as dance and music which have not been recorded or written down

For more information see Arts Law's information sheets on [Copyright in Music and Lyrics](#) and [Performers' Rights](#).

ART FORMS

1. Aboriginal and Torres Strait Islander Culture & Knowledge
2. Music

LEGAL TOPICS

1. Indigenous cultural & intellectual property

Meta Fields