

COMMUNITY GUIDE:
**PROTECTING YOUR
INDIGENOUS CULTURAL
AND INTELLECTUAL
PROPERTY**



THE UNIVERSITY OF
NEWCASTLE
AUSTRALIA

ACKNOWLEDGEMENT OF COUNTRY

The University of Newcastle acknowledges the traditional custodians of the lands within our footprint areas. We respect the wisdom of Elders, past, present, and emerging.

The University of Newcastle extends this respect to the homelands of our Aboriginal and Torres Strait Islander students and staff.



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INTRODUCTION

The University of Newcastle is committed to changing the way it works with Indigenous people, their knowledge and cultural expression. The University of Newcastle Indigenous Cultural and Intellectual Property (University ICIP Protocol) is setting new standards for how University staff, students and partners will engage with Indigenous communities.

This Community Guide has been developed to work together with the University ICIP Protocol. This Guide explains to Indigenous people the key legal issues to look out for and includes some tips and tools to help protect your Indigenous Cultural and Intellectual Property (ICIP) when the University (or other non-Indigenous businesses or organisations) want to work with you.

This Guide is a tool for Indigenous people to help you know what questions to ask at each stage of a project where you are asked to contribute your ICIP. It will also include information about Australian laws such as copyright, which can affect your ability to own and control materials (e.g. research reports, books, artworks) that contain your ICIP. It includes the following parts:

- **Collaboration, Consultation and Consent: What should you do to protect your ICIP?**
- **Checklist for Project Partners**
- **Question and Answer: What is copyright and how can I use it to protect my ICIP?**

Historically, Indigenous communities and knowledge holders have been seen as participants or informants in projects involving their cultural knowledge. Indigenous individuals and groups have not been attributed, compensated, or hold legal rights to their ICIP. Indigenous people have had their ICIP misused or exploited without proper benefits returning to community.

Moving forward, the minimum standard for engaging with Indigenous communities, knowledge holders, creators and consultants is that non-Indigenous project partners (Project Partners) must build genuine relationships with Indigenous Peoples based on respect and mutual benefit.

The importance of respectful and meaningful collaboration and consent is outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The UNDRIP recognises Indigenous peoples' rights to self-determination and the right to maintain, control, protect and develop their cultural heritage, traditional knowledge, and traditional cultural expressions. The University ICIP Protocol is based on the UNDRIP.

This means that University researchers or other staff and students who want to work with Indigenous people or organisations need to explain:

- Why they want to work with you;
- How they want to use your ICIP including whether they will publish or share the ICIP, whether they will own the legal rights in materials they create that incorporates your ICIP;
- What benefits you will get in return for working with them; and
- What is the long-term plan to protect your ICIP once you share it with them.

WHAT IS INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY?

Indigenous Cultural and Intellectual Property (ICIP) refers to the tangible and intangible aspects of Indigenous cultural heritage. ICIP comes from Country; it is regarded as relating to a particular Indigenous group or its lands or seas. Indigenous heritage is a living heritage, transmitted from generation to generation. Many generations may contribute to the development of ICIP. In this way, Indigenous cultural

heritage is communally owned and constantly evolving. The traditional owners and custodians of their ICIP have roles and responsibilities to look after the ICIP and pass it on.

Indigenous people have the right to define what ICIP is, and the following diagram gives a breakdown of what ICIP can include:

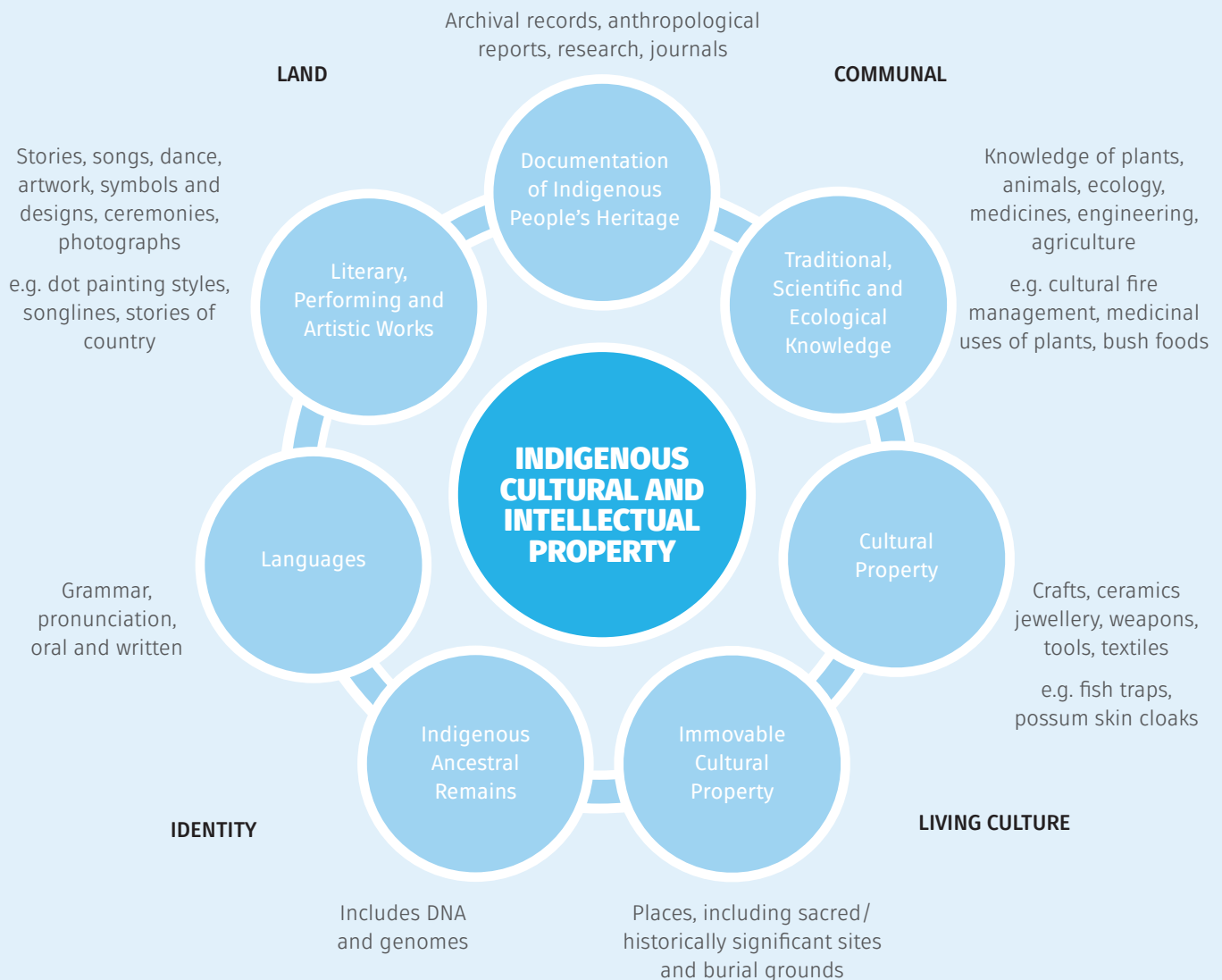


Figure 1: Categories of ICIP
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ICIP rights are not directly protected under Australian laws. Whilst some laws which do protect ICIP, such as cultural heritage legislation or copyright, there are gaps. There are however, international laws which recognise that Indigenous people have rights to their Indigenous Cultural and Intellectual Property.

Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples states:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well

as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their IP over such cultural heritage, traditional knowledge, and traditional cultural expressions.



GUIDING PRINCIPLES

The University ICIP Protocol and this Community Guide are based upon the following principles which will ensure that University of Newcastle staff and students treat ICIP and Indigenous peoples with respect.

RESPECT

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions.

SECRET, SACRED AND PRIVACY

Indigenous peoples have the right to keep restricted their secret and sacred ritual knowledge in accordance with cultural lore. Students and staff should respect confidentiality of information disclosed or made public in projects containing ICIP.

SELF-DETERMINATION

Indigenous peoples have the right to self-determination and the free pursuit of economic, social, and cultural development. This includes the right to make decisions about their cultural heritage, and in projects that affect their cultural heritage.

ATTRIBUTION

Indigenous peoples have the right to be attributed as the custodians of their cultural knowledge. When referring to Indigenous knowledge and peoples, staff and students should contextualise who and where the cultural heritage is from.

COMMUNICATION, CONSULTATION AND CONSENT

Indigenous peoples must give their free, prior, informed consent, for use of their cultural heritage, knowledge, and expression. This involves providing accurate information to participants so as to make informed decisions on behalf of themselves and their community.

BENEFIT SHARING

Indigenous peoples have the right to share in the benefits from the use of their cultural heritage and cultural knowledge. This includes both economic benefits from commercial use, and non-economic benefits such as capacity building or training.

INTERPRETATION

Indigenous peoples are the primary guardians and interpreters of their culture. Indigenous voices and views should be prioritised when discussing Indigenous topics.

MAINTAINING INDIGENOUS CULTURE

Indigenous cultural practice is the longest ongoing culture in the world, adapting and changing as it has been transferred down through generations for thousands of years. Staff and students should respect Indigenous cultural heritage, ways of being and ways of knowing. Use of ICIP should result in the strengthening and maintenance of Indigenous cultural heritage and knowledge.

CULTURAL INTEGRITY

Indigenous peoples have the right to maintain the integrity of the ICIP. This includes recognising the significance of cultural heritage to Indigenous cultures, and the right to uphold and maintain rules surrounding that ICIP so as to prevent derogatory treatment.

RECOGNITION AND PROTECTION

University staff, students and partners should use laws, contracts, policies and other tools to recognise and protect ICIP rights.

GUIDE TO COLLABORATION AND CONSENT: WHAT SHOULD YOU DO WHEN PEOPLE WANT TO WORK WITH YOUR INDIGENOUS KNOWLEDGE?

When you are approached by people from the University, or even the wider community (referred to as Project Partners – this can include all kinds of people including researchers, business owners or organisations), you should read this Guide and think about all the questions you want answered.

Then, you can explain what you want for your ICIP and explain your expectations for fair and equal collaborations where you, and other Indigenous people or organisations, are treated as respected partners or collaborators.

1. MEETING THE PROJECT PARTNER

Project Partners who want to work with Indigenous people and groups need to take time to build relationships of trust and mutual benefit. Indigenous people have valuable knowledge to share and should be treated as equal partners in a project. Engagement should not be treated as an afterthought or be a ‘tick-the-box’ approach at the end of a project once the majority of the work has been done or planned.

If a Project Partner is committed to respectful and meaningful engagement, they will take the time to develop relationships with you and your community, based on trust, respect and shared benefits.

This means that Project Partners should never come to you with a fully developed proposal and ask for your sign-off. Instead, they should approach with an idea or ask to have a conversation, and demonstrate that they are willing to invest time into building a relationship with you.

Project Partners who work with you must also be flexible and open to changing their ideas. A best practice approach would be where a Project Partner asks to work together based on what your community’s priorities and aspirations are.

2. FINDING OUT INFORMATION ABOUT THE PROJECT

When it is time to talk about a particular project, you need to know the relevant information so that you can decide whether to participate, and whether to share your ICIP during the project.

You may also wish to learn a bit more about the Project Partner, and see whether they are being honest and open with you.

The **ICIP Questionnaire** is a tool designed to do the heavy lifting for you. By getting the Project Partner to answer questions about their intentions, aims and other relevant details about the project, you can learn more about whether the Project Partner is a good fit. The ICIP Questionnaire is designed to help you find out all the facts so you can make an informed choice as to whether to work with the Project Partner.

The Project Partner may not have all the answers straight away, especially if you are only at the relationship building stage of the project. You may wish to use the ICIP Questionnaire a little later on into the project, to help you get an idea how what the project involves or is about,

whether there are any risks involved with sharing your ICIP, and how you or your community will benefit from being involved with the project.

When you use the ICIP Questionnaire you should speak up if you have concerns or don’t understand the answers. The Project Partner may need to explain further including during face-to-face meetings.

If you don’t wish to use the ICIP Questionnaire, you may wish to ask your own questions including information about:

- Timeline of events; an accurate timeline of events that will take place in the project.
- Pace; what can and cannot be slowed down
- Reversibility; what happens once ICIP is contributed to the project? Can it be removed? What happens to the project if we leave?
- Duration of a project; how long will the project run for?
- Locality; where is the project based? Whose Country is it located on and who else is involved?
- Social, economic, cultural, and positive/negative impacts; what is the effect of a decision to say yes to the project?
- Costs; what costs are we expected to pay, if any? Will the Project Partner cover our legal fees to get advice on the contracts?
- Stakeholders; who is funding the project? Who has interests in the project?
- Communication; how will individuals and community be consulted throughout the project? What is the medium of communication?
- Ownership and copyright; who will own the outputs from the project? Will any ownership be transferred to someone else as part of publication, etc.?
- Attribution and acknowledgement; what type of attribution or acknowledgement will the community receive for their involvement in the project?

3. WHAT ARE YOUR EXPECTATIONS OR RULES FOR WORKING TOGETHER?

When designing the project methodology or plan with the Project Partner, or when discussing with your community whether to take part, you should think about what your expectations are.

What do you want from the project, and how should the Project Partner behave? You may wish to think about and discuss the following matters:

- Are there any local cultural protocols that need to be followed in the project?
- Are there any specific Indigenous people who must be involved or give their approval for the Project, e.g. Elders? Will you take on the responsibility of speaking with them, or does the Project Partner need to meet and work with them?
- How often should the Project Partner communicate with you? How? (e.g. face to face, online meetings, emails)
- Do you want Indigenous people or organisations to own the copyright in materials created during the project?
- Do you want the right to check all the materials created by the Project Partner before they are allowed to use or publish them? What about future uses?
- Do you want a copy of the materials that get created during the project? Where will these materials be stored for future generations?
- Do you want to be paid for your involvement?
- What benefits will your community receive? e.g. training, sharing of research results, public recognition of your contributions, opportunities to speak and present ICIP, paid opportunities (e.g. rangers, buying from Indigenous businesses)

You should make a plan of what the big issues for you are and make sure that these are discussed with the Project Partner during the planning stages. You may have some things that are not negotiable.

If the Project Partner cannot work with you to meet your expectations, then you may decide not to participate in the project.

This is why it is good to share your expectations upfront and get answers via the **ICIP Questionnaire**, so that you do not waste time and money when the Project Partner is not a good fit.

4. USING CONTRACTS AND POLICIES – THINGS TO KNOW

It is important to be aware of how contracts and copyright laws can affect what you agree to with the Project Partner. You may use contracts to protect yourself and your ICIP.

Universities generally have strict contracts which say who owns the copyright in the materials created as part of the project. This is why it is important to read every legal agreement you are asked to sign – if you don't understand, you need to get legal advice. You may wish to ask the

Project Partner to pay for your legal fees. If you do not read the contract, you may agree to something you are not happy with.

You should read the **Copyright Question and Answer** and then ask questions or seek legal advice if you don't understand the contract. You have the right to include clauses in every contract that protects your Indigenous Cultural and Intellectual Property.

If the Project Partner is not willing to change their standard contracts, you may decide it is not the right project for you or your community.

Here are the important contractual issues to think about:

4.a. Using a Memorandum of Understanding (MoU)

You may wish to enter into a Memorandum of Understanding (MoU). This is a non-binding agreement which sets out all the rules and expectations for the project. The idea is that by developing the MoU together, Indigenous people and the Project Partner will be clear on your common goals and how you will work together.

Your MoU may set out:

- What is the vision for the project
- What each party is bringing to the table
- Expectations of the Indigenous Partner(s) and the Project Partner(s)
- Contributions from each partner: who has to do what?
- Who will own the legal rights to the materials that get created during the project?
- How will ICIP be protected?
- Who will make decisions and when?
- Points of contact – who has to communicate when, and with who?

After the MoU is drafted, your Project Partner may ask you to enter into a research agreement.

4.b. Starting out: do you need a confidentiality agreement?

If you are going to share important information during the planning stages of the project, you may wish to have the Project Partner sign a confidentiality agreement before you tell them that information. This way, if negotiation or discussions fall through, the Project Partner still has an obligation to protect and not use or share what you tell them during the planning stages.

Your confidential information may include things like ICIP but it may also be private or business information.

A confidentiality agreement (also known as a Non-Disclosure Agreement or NDA) is where the Project Partner agrees to keep the information confidential and not use it without your permission. You may wish to include specific rules around what your confidential information includes.

IP Australia has a tool where you can create an NDA online, see: <https://www.ipaustralia.gov.au/understanding-ip/getting-started-ip/ip-contract-generator>.

4.c. Intellectual Property (IP) clauses

All agreements will have a clause about IP – it will say who owns the IP and what each person is allowed to do with it.

It is very important to check this clause to make sure you are not giving away rights where that is not what you want to do. Consider the issues about IP in the **Copyright Question and Answer Guide**, and be clear if you want to own and control your copyright.

The IP clause may also say if anyone else (e.g. the University, a research funding body) is allowed to use the material that gets created as part of the project. If this material is going to contain important ICIP, you may wish to change this rule.

You may need to ask the Project Partner to explain what the clause says (and they may need to get their lawyers to explain it to them). You may wish to get legal advice on the contract or ask a lawyer to change the clause so you are happy with it. Costs to cover legal fees could be discussed during the planning stages of the project.

4.d. Recording Consent from Indigenous contributors

Where the Project Partner wants to record ICIP, they should get consent to do so from the individual Indigenous person who shares it. This may be an Elder or other knowledge holder who may speak their ICIP orally and have the Project Partner write it down or make a recording of them.

Project Partner should use consent forms to get this permission. It is recommended that consent forms be clear and simple so it can be understood by the person agreeing to sign it. A consent form should only be a few pages long but should set out:

- Name of the person giving consent
- Who will own the copyright in the recordings made of the person and their ICIP
- What are the permitted uses of the ICIP
- Storage of the recordings
- Benefits that the person will get for their participation
- Rights to check the use/re-use of the recordings
- Next of Kin

You may prefer that the Project Partner talks through these issues with you orally and records your consent another way (for example, a film recording of them explaining the consent to the knowledge holder, and the knowledge holder asking questions or saying whether they agree). This way, where people are uncomfortable signing an agreement, they may feel more confident to participate and share ICIP after speaking with the Project Partner.

5. WHAT BENEFITS WILL YOU RECEIVE FOR BEING A PART OF THE PROJECT?

An important topic to discuss with the project partner is what benefits you, your organisation, and/or your community will receive for being a part of the project.

Projects developed with community should deal with benefit sharing as part of the planning stages. The Project Partner should set aside funds or other resources to make sure that Indigenous people benefit from their involvement. The Project Partner will be receiving the benefit of being able to use the ICIP as agreed, and so should be willing to share a benefit in return. This may be monetary or non-monetary. Consider:

- Are there any particular benefits you/your community would like to see? E.g. Training and Employment opportunities, learning the skills that the Project Partner has?
- Can the project create jobs or roles for Indigenous people?
- What resources or payments can the Project Partner give to you/your community?
- If there are commercial benefits to the project, what split of the income do you want to have?

The Project Partner must also be willing to pay Indigenous people who will provide services to the Project (for example, Rangers or Language Teachers). It is important to recognise that these are contributions provided by experts, and the rates of pay should be equal to what non-Indigenous consultants or specialists would be paid for similar types of services.

6. COMPLAINTS AND FEEDBACK

It is important to be clear on who you can speak to if you have a complaint about how the Project Partner is working with you. You may also wish to develop a process with the Project Partner so you can be clear on who to speak to and what will happen if you wish to make a complaint.

Where the Project Partner is the University of Newcastle, the following policies could be used to assist with developing a complaints process:

- Complaints and Grievances Services - <https://www.newcastle.edu.au/current-staff/our-organisation/governance/assurance-services/complaints>
- Research Concerns - <https://www.newcastle.edu.au/research/excellence/research-integrity/managing-concerns-about-research>
- Student Conduct Rules - <https://policies.newcastle.edu.au/document/view-current.php?id=34>



UNIVERSITY OF NEWCASTLE ICIP COMMUNITY GUIDE

QUESTIONNAIRE FOR PROJECT PARTNERS

INTRODUCTION

This ICIP Questionnaire is a tool for Indigenous individuals, groups or organisations. You can give this Questionnaire to people from the University or other organisations who want to do work with you or your ICIP.

This Questionnaire is an inquiry form – it asks the person or organisation who wants to collaborate with you (known as the ‘Project Partner’) to explain their project and how they want to work with Indigenous people. In particular, it asks about the way the Project Partner want to use you or your group’s knowledge, artwork or other cultural heritage (also known as ‘ICIP’ or ‘Indigenous Cultural and Intellectual Property’).

Project Partners who want to work with Indigenous people and groups need to take time to build relationships of trust and mutual benefit. This includes being honest and open about their project and sharing all important information so that Indigenous people can make an informed choice about whether to work with them.

By getting the Project Partner to answer these questions, Indigenous people can learn more about whether the Project Partner is a good fit. It will allow Indigenous people to find out all the facts so you can make an informed choice as to whether to work with them. This includes an understanding of the project, any risks involved with sharing ICIP, and how the Indigenous individual or their community will benefit from being involved with the project.

Non-Indigenous who want to work with you must also be flexible and open to changing their ideas. Indigenous people using the ICIP Questionnaire should speak up if you have concerns or don’t understand the answers. The Project Partner may need to explain further including during face-to-face meetings.

Once this form is filled out, the Project Partner may want you or your organisation (the Indigenous Partner) to enter into a contract. Project Partners should use simple agreements and speak in plain English. Indigenous people should not sign anything you don’t understand. You may need to seek legal advice on the contract.

What is Indigenous Cultural and Intellectual Property?

Project Partners should disclose whether their project involves any proposed use of cultural heritage, traditional knowledge or traditional cultural expression belonging to a particular Indigenous people. This includes:

- all traditional and cultural knowledge (e.g. sciences, plant and animal knowledge, stories, designs and symbols, ritual knowledge, literature and language);
- cultural objects (including, but not limited to arts, crafts, ceramics, jewellery, weapons; tools, visual arts, photographs, textiles, contemporary art practices);
- performances (ceremonies, dance and song);
- human remains;
- family histories and genealogies;
- the secret and sacred (including sites); and
- documentation of Indigenous heritage.

Project Partners should also disclose whether any data will be collected about an Indigenous group or community, or Indigenous lands, seas or waterways.

Collectively, this is known as ICIP.

ICIP QUESTIONNAIRE

ORGANISATION CONTACT DETAILS:

Name _____

Position _____

Number _____

Email _____

Address for Service _____

DEFINITIONS

In this Questionnaire, the individual or organisation will be referred to as the 'Project Partner'. 'We' and 'us' are the Indigenous individuals or organisations who provide the ICIP Questionnaire to the Project Partner.

PROJECT INFORMATION

This section looks at the specific details of the proposed project, including what the project is about, who is involved, timelines, and what ICIP might be involved. This questionnaire and other open discussions should be carried out at the very start of discussions about the project.

We may require additional discussions after this questionnaire is completed to allow us to fully understand your proposal and to negotiate changes to the project. It is important to respect our decision-making processes, which may often take longer than expected. Project Partners should not rush this process and allow relationships to be built over time and on mutual understanding.

Why?

1. Why do you want to work with us?
2. Why should we work with you?

What do you seek?

3. What is the purpose/objective of the project?
4. Do you wish to use any ICIP?
5. What do you want to do with our ICIP? What are you hoping to achieve?
6. What role do you see us playing in this project?
7. What are the benefits expected to come to our community?
8. What is the scale of the project or activity that involves the ICIP?
9. What are the risks? How do you expect these to be mitigated?
10. What are the costs involved?
11. What reporting requirements do you have?
12. What dispute resolution or complaints process will this project have?

Who is involved?

13. Who else have you consulted with?
14. Who is the project team? Do they have experience working with Indigenous Peoples?
15. Who at the Project Partner has oversight of this project? Who makes the final decision?
16. Are there any funding bodies or other organisations involved in helping this project go ahead?
17. Have you sought ethics approval for this work? If so, please provide details.
18. Have you considered developing ICIP Protocols for this project?

When?

19. When do you expect this project to commence?
20. What will you do if we do not consent?
21. What legal remedies are available to our community if there is a misuse of our ICIP?

INTELLECTUAL PROPERTY

These questions focus on the future use of IP created, and long-term aims of the project. Data and information created may have cultural significance for Indigenous communities, therefore parties should begin with a data management plan in mind to ensure that the principles of Indigenous data sovereignty are respected. Indigenous data sovereignty refers to the right of Indigenous people to govern and own data that is about them, their communities, and their ICIP.

Resulting IP

22. Will you write down or record our ICIP, or any other information we share?
23. Who will own the copyright or other IP in the written or recorded forms of our ICIP? Will we own the copyright in recordings of our ICIP? If not, who will own the copyright?
24. What control will we have of the ICIP once it is recorded? Will we be copyright owners of the material? Will there be a contract which requires you to come back and consult with us about new uses of the material?
25. What do you intend to do with any IP or information coming out of the project? List all uses where known, including any possible future uses.
26. Will you share the IP or project information online? Who is the audience and/or intended market?
27. What are your expectations for commercialisation of project information or IP? Including timeframe.
28. Who will have access to IP and ICIP shared as part of the project, including external parties and community? Can this be changed?
29. Will participants be provided with copies of materials created as part of the project? Will we be able to use the material for our own purposes?
30. Where and how will data be stored?
31. How will the data be categorised?
32. Future use of Project IP (including ICIP in Project Intellectual Property)
33. How will free, prior informed consent be obtained for future use, including commercial opportunities?
34. Will the ICIP be incorporated into future works, such as copyright works (e.g. Educational Materials)?
35. How will Indigenous participants and community be attributed for the ICIP?
36. Who will have oversight of the future works?
37. What benefits will the Indigenous people and community receive from future use? (e.g. Opportunities to present culture or provide services)

Organisation Information

The purpose of these questions is to assist us to understand whether the Project Partner is the right fit. We also want to know who will be making decisions, and what data security is available for any ICIP that is shared with the Project Partner. For the Project Partner fulfilling this questionnaire, it is an opportunity demonstrate your organisations commitment to working with Indigenous communities, who will be responsible for making decisions, and what protections you have in place for any ICIP shared with you.

38. Where is your organisation located?
39. What is your business model?
40. What existing partnerships do you have with Indigenous communities?
41. Do you have an Indigenous engagement policies? (e.g. Reconciliation Action Plan, Indigenous Procurement Policy? ICIP Protocols?)
42. What is the decision-making process within your organisation?
43. Are you bound by any funding guidelines? Does the funding body get access or rights to the ICIP shared?
44. Do you or your organisation have an IP policy?
45. What security will there be for project material - IP and data? What are the rules for access and use, including into the future?

UNIVERSITY OF NEWCASTLE ICIP COMMUNITY GUIDE

COPYRIGHT AND ICIP

QUESTION AND ANSWER

WHAT IS COPYRIGHT AND WHY DO I NEED TO KNOW ABOUT IT?

When it comes to protecting and controlling who can use your ICIP or your creations, the most important area of law to know about is copyright. This is because copyright will automatically apply to written or recorded materials that contain your ICIP. This can include things like research notes, reports, films, sound recordings, books, photographs, teaching and learning resources, posters, websites, games or apps, or even websites.

Copyright is a bundle of rights given to authors and creators under the Copyright Act 1968 (Cth). These rights allow creators to make money from their and stop others from using their creations without permission.

Copyright applies as soon as the creation is written down or recorded, and the law automatically decides who is

the owner of the copyright in the material created. This means that non-Indigenous people can end up being the copyright owners of recordings of ICIP.

For example: A researcher goes out onto Country and asks an Elder about their plant knowledge. The Elder speaks the information orally, and the researcher writes notes, takes film footage and photographs. The researcher is said to be the 'creator' of the notes, film and photographs. The Elder does not own copyright in any of the material.

Contracts can be used to transfer copyright ownership to the individual Knowledge holder or to a suitable Indigenous organisation who can hold the copyright for the benefit of the collective.

WHAT DOES COPYRIGHT PROTECT?

Copyright only protect things that are written down or recorded. Some examples of copyright material are:



Literary Works

- Novels
- Notes
- Screenplays
- Song lyrics
- Poems
- Reports
- Journal articles
- Theses
- Transcripts of recordings



Sound Recordings

- Recordings of songs, stories, interviews, or music.
- Digital sound files
- CDs, tapes, cassettes or MP3 files, etc.



Artistic Works

- Paintings
- Drawings
- Cartoons
- Sculptures
- Craft Work
- Architectural plans
- Buildings
- Photographs
- Maps



Broadcasts

- TV and Radio broadcasts
- Web broadcast
- Podcasts



Dramatic Works

- Choreography and Dance
- Plays
- Mime pieces
- Scripts



Films

- Recordings of moving images and accompanying sounds
- Animated and feature films
- Documentaries
- TV Programs
- Filmed interviews



Musical Works

- Songs
- Musical Score
- Sheet music



Published Editions

- Encyclopedias
- Anthologies
- Collections
- Books and scholarly journals

WHAT DO I NEED TO DO TO GET COPYRIGHT PROTECTION?

In Australia, copyright protection is free and automatic. This means you don't need to do anything to receive copyright protection. There is no registration required.

There are certain requirements that your creation must meet in order to be protected by copyright:

Material Form: The creation must be written down or recorded; and

Originality: You must use your 'skill, labour and effort' to create something original. This means you cannot copy from someone else's work.

IS THERE ANYTHING COPYRIGHT DOES NOT PROTECT?

Copyright does not protect ideas, oral expression (such as stories), facts or information.

Ideas and oral expressions must be put in writing (or some other material form) to receive copyright protection. It may be in electronic form or hard-copy. However, it is the material thing (or writing) that will be protected, not your idea.

For example:

An Elder tells a story On Country to a group of students. The story is about the river that flows through Country and created all life. The story contains knowledge of Country such as food sources and medicinal uses of plants.

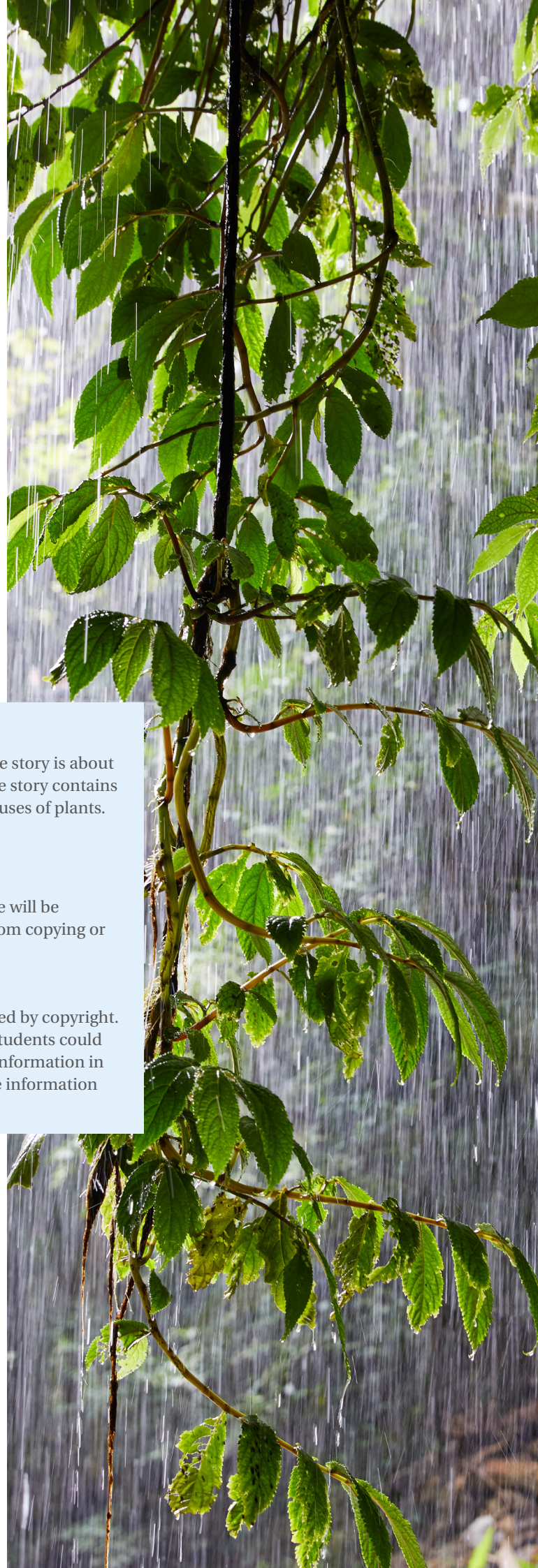
What will be protected by copyright?

If the story is told orally, it won't be protected by copyright.

However, if the story is written down, the words on the page will be protected by copyright. This would prevent other people from copying or using the exact words of the story.

What won't be protected?

The underlying information in the story will not be protected by copyright. As long as the exact words of the story are not copied, the students could go away and retell the story in their own words, or use the information in the story (e.g. start their own bush foods business using the information they learned about the food sources).



WHAT RIGHTS TO DO I GET TO THE THINGS I CREATE?

As the copyright owner, you get the right to:

- Make copies of your creation;
- Adapt or edit your creation (e.g. use parts of an artwork in a new artwork, or make the same artwork using different colours)
- Publish, broadcast, or make it available online;
- Sell or share your creation; and
- Publicly perform your creation.

If other people do any of these things without your permission, it is a breach of your copyright unless they have a valid exception.

CAN I SELL OR GIVE AWAY MY COPYRIGHT?

Copyright owners can sell the rights they have to their work, or give them away for free. This can be done when the copyright owner enters into an agreement that assigns copyright ownership to someone else. For assignment to be effective, it must occur in writing, and be signed by the copyright owner.

An assignment of copyright can happen after the creation is made, or before it has even been created. This is where contracts can be very important, as it can give the creator of material and other parties certainty around who is the owner of the copyright material, and what rights each person gets to the material.

WHAT ARE MORAL RIGHTS?

Where you are the author or creator of a copyright work, you have personal rights which cannot be bought or sold like copyright. These are known as Moral Rights, and they refer to your rights to:

The right of attribution:	The right to be identified as the author and creator of your work.
The right not to have authorship falsely attributed:	The right to exclude others from being falsely named as the author of your work.
The right of integrity:	The right to bring legal action to stop people who make changes or alterations to your work in a way that is inappropriate or damaging to the work or your reputation.

People can have moral rights to material, even where they aren't the copyright owners of that material. People contracted or commissioned to create things or perform may not have copyright ownership, but they will have moral rights. Their rights will need to be respected by anyone who uses that material.

WHAT HAPPENS IF I CREATE A WORK WITH SOMEONE ELSE?

Two or more people may work together and contribute to the creation of a material. If you physically create a work with someone else, this is called 'joint copyright' – e.g. you both paint an artwork, or you both write a book. Joint copyright owners will both be recognised as co-owners and share copyright.

Joint copyright does not apply if you are the person doing all the work to create the physical material or recording, and your partner is contributing information or knowledge orally.

If you have created something jointly, you can only authorise the use of that material jointly. This means both copyright owners have to get together to decide how the copyright may be used – including for use of the material by others. If someone wants to use a copyright creation that is jointly owned, they have to get the permission from both (or all) of the owners.

WHO OWNS COPYRIGHT IN THE CREATIONS I MAKE AT WORK WHERE I AM AN EMPLOYEE?

Employees generally do not own the copyright to their creations made as part of their employment. The copyright to that creation is usually owned by the employer.

Employers will not own copyright to work that you create that is not a part of your job description. For example, if you are a teacher and paint an artwork on the weekend, you will still own the copyright to your artwork.

WHAT DOES IT MEAN TO LICENCE MY COPYRIGHT? HOW CAN I DO IT?

By licensing your work, you are giving one or more people permission to use the material without infringing copyright. The licence is an agreement to use the copyright material on the terms agreed between the copyright owner (you) and the licensee (the person(s) you have given permission). Often, this agreement will involve you receiving payment(s) in exchange for the right to use your work, but it doesn't have to.

Licences do not have to be in writing – you may verbally agree to someone using your work. However, it is good to get the rules of the licence written down somewhere (this could be in an email exchange or a letter). This is so that in the future you can remember what was agreed to.

The licence may contain specific rules or limits around the use of your copyright. For instance, the agreement may talk about:

- Duration (e.g. my artwork can be used for 12 months only)
- Geography (e.g. in Australia only)
- Sub-licences (the licensee can use my work AND let others use the work)
- The kinds of rights you are granting the licensee (how the licensee will be able to use the copyright material – e.g. can they make changes to your work?)
- Payment (flat fee, periodic fee or royalties).

Different types of licences offer different rights to copyright material. These include:

- An exclusive licence, which allows only the licensee to use the copyright material in a prescribed way (so other people or even you may be stopped from using the copyright material while the licence is in effect)

For example, Harold Thomas granted an exclusive licence to WAM Clothing to display the Aboriginal flag design on clothing. Therefore, only WAM Clothing had the right to sell clothing with the flag on it.

- A non-exclusive licence to multiple people:

For example, Alexia paints an artwork of her Country. The local school approaches Alexia and asks if they can use her artwork on front of their Year 12 school jersey for the year 2022. Alexia agrees to grant the school a simple licence to print her artwork on 150 jerseys for the Year 12 class of 2022. Then, Alexia also allows a gallery to display the work and publish a magazine with a photograph of her artwork in it.

WHAT IF I ENTER MY ARTWORK INTO A COMPETITION? DO I STILL OWN THE COPYRIGHT?

If you enter your artwork into a competition, you should always read the terms and conditions. The rules of the competition may say that you give away your copyright in the artwork to the organisation running the competition.

Usually, the terms and conditions will say that if you submit an entry to the competition, you give the competition owner a licence to use your artwork for any purposes. This means that if you win the competition (or even if you submit your artwork and do not win), the organisation running the competition may get the rights to use your artwork on products, in their advertising or for other reasons without consulting you or paying you any money. Always think about whether you are okay with this, and if you are not, then do not submit your artwork.





HOW CAN I STOP PEOPLE FROM STEALING MY ARTWORK ONLINE?

If you intend to make your material available online, it is important that you ensure people know that you are the copyright owner of your work. Although it is not required for copyright protection, placing a Copyright Notice © in a prominent position of your artwork is one effective way to tell people that you are the copyright owner. In doing so, you are putting others on notice that you have rights in the material.

The Arts Law Centre of Australia has also made a number of recommendations to artists wishing to protect their work, including:

- adding a visible watermark to your images before uploading them
- disabling right-click
- adding invisible information to your images online
- telling users that a high-quality version is available to buy
- uploading low-resolution images only – no more than 72dpi
- putting the © notice with your name next to your work.
- giving people the possibility to contact you – for example, by displaying your email address someone may ask for your permission to use your work.^[1]

CAN I USE PICTURES OR OTHER MATERIAL I FIND ON THE INTERNET?

Internet material such as pictures and images are generally protected by copyright law. Just because the picture or information is available on the Internet doesn't mean it can be used without permission.

Copyright exists automatically provided certain conditions are met. No formal requirements are necessary for copyright to exist. Therefore, although the © symbol or other Copyright Notices may not always appear on works or subject matter available on the Internet, it is always safe to assume that copyright exists.

For example, Jimmy is a photographer specialising in ocean photography. He decides to upload his original photograph of a turtle under water to his Instagram page. Jimmy often advertises his photographs on his Instagram page to sell.

Penelope is scrolling through her Instagram when she discovers the photograph on Google Images. She decides to download the image and uses it as a cover for the upcoming release of her book. Penelope has infringed Jimmy's copyright to that photograph.

As the creator, Jimmy has the exclusive economic right to benefit from that photograph, including the exclusive right to publish or display that work online.

If you use someone's creation without permission, you may be infringing their copyright. Be careful and think about the risks involved – for example, if you want to include artworks in a book you will publish, it is best to get permission. If you are copying images from the Internet for your own personal use and not re-sharing online, it is unlikely that the copyright owner will know or find out and you may wish to take the risk.

[1] <https://www.artslaw.com.au/legal/raw-law/how-do-you-protect-your-work-on-the-internet/>



WHAT IS THE DIFFERENCE BETWEEN ICIP AND COPYRIGHT?

Indigenous Cultural and Intellectual Property is cultural heritage. Western copyright laws have a completely different focus and underlying principle – they are about giving creators economic rights over their creations, for a limited time, in order to encourage more creation. This

system is different to cultural rights that Indigenous people want to their Indigenous Cultural and Intellectual Property.

The main differences between ICIP and copyright are:

	Western IP laws	Indigenous Cultural and Intellectual Property
Community Ownership	IP looks for an individual author or creator (or ‘joint owners’ when the material is created by more than one person).	ICIP is collectively owned (by groups, families) and contributed to by many people as it is maintained, developed, and passed down through generations.
Material Form	Western IP laws only protect material things (i.e. text or artwork), which means only the words on the page or the images in the artwork are protected.	ICIP can be tangible or intangible – often ICIP is orally shared, or shared in a performance. ICIP includes knowledge or information, e.g. knowledge of the uses of plants. Languages are not protected.
Rights to IP/ICIP	Western IP laws are designed to give creators economic rights. Moral rights are also recognised.	Cultural rights and customary laws apply to the use of ICIP.
Management of IP/ICIP	Western IP laws allow you to give your IP away.	Indigenous Custodians have a responsibility to manage and protect ICIP in accordance with customary law or cultural protocol.
Duration of protection	Western IP laws protect creations for only a limited period of time e.g. 70 years after the death of the creator.	ICIP Rights are perpetual. Indigenous communities have an ongoing connection to ICIP, which will often have been in existence for thousands of years (such as old songs, stories, rock art, or cultural practices).



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