

ECONOMIC, SOCIAL AND CULTURAL BENEFITS OF COPYRIGHT PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS



Outline

- Traditional cultural expressions and key issues;
- Economic benefits;
- Social and cultural benefits;
- Protocols: *Best practice guidelines for working with Indigenous peoples and TCEs*;
- Birubi case: *ACCC v Birubi Art Pty Ltd*;
- IP Australia Indigenous knowledge program: Trademarks and Traditional knowledge;

Traditional cultural expressions and key issues in Australia

1. TCEs and TK include:

- language, stories, art, designs, symbols, songs, music, dance, know how, ancestral remains, sacred sites, land management, ecological and medicinal knowledge, bush foods;
- Gaps in existing intellectual property laws like copyright, designs, trademarks, patents;
 - No communal ownership recognition;
 - Limited subject matter protection;
 - Limited time of protection;
 - No protection of symbols, styles, designs, intangible cultural heritage;

Economic Benefits

- Australian Aboriginal art industry generates approximately \$AU200 million a year;
- Aboriginal Art Economy report in 2013;
- Fake Art Harms Culture Campaign in 2016;
- Parliamentary Inquiry into the Inauthentic Aboriginal and Torres Strait Islander art products;
- Productivity Commission investigation into the Indigenous art market in 2021;
- Indigenous artists make money from their TCEs through sales, copyright and resale royalties;
- Thousands of Indigenous artists across Australia: online sales, art prizes, art fairs and markets to sell work to consumers;
- International market is growing particularly in the USA- Steve Martin and Papunya Tula artists;
- Indigenous musicians: sales, streaming, awards, festivals and live shows;

Economic benefits continued

- Indigenous fashion- ethical collaborations with art centres, artists and designers;
- Australian Fashion week- Indigenous designers mentored and showcased;
- Gorman and Mangkaja art centre;
- Kip and Co x Babarra Womens centre;
- Magpie Goose shop;

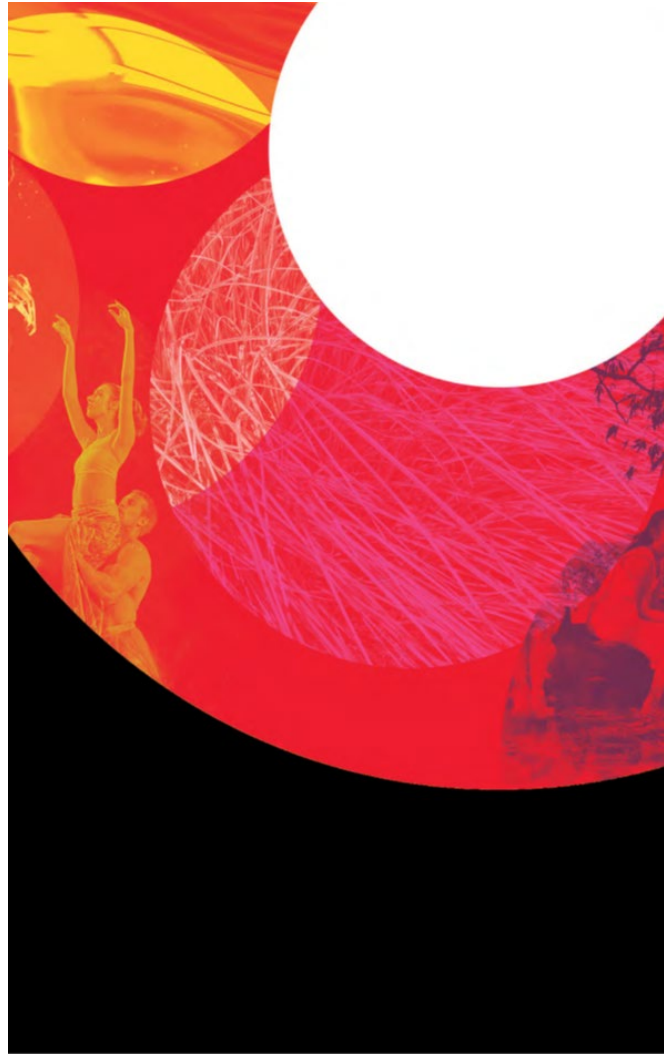


MANGKA
x gorma

Photographed by Charles Fréger
Location: Fitzroy Crossing, WA

Social and Cultural Benefits

- Wellbeing and mental health;
- Increase in school attendance for youth;
- Respect of Elders;
- Cultural revitalization;
- Local social enterprises;
- Social cohesion in society;
- Increase awareness of Indigenous culture and TCE in Australia;
- Pass on cultural knowledge to the next generation;
- Important, unique cultural brand of Australia: 60,000 years of the oldest living culture in the world;



FIRST NATIONS ART PROTOCOLS

Protocols for using First Nations Cultural and Intellectual Property in the Arts

Respect

Self-determination

Communication, consultation and consent

Interpretation

Cultural integrity and authenticity

Secrecy and confidentiality

Attribution

Benefit sharing

Continuing cultures

Recognition and protection

14 case studies

Visual arts;
Literature;
Theatre;
Music;
Dance;
Multi arts projects;
Emerging and Experimental arts;
Events based projects



Untitled, *giran*
2018 © Jonathan
Jones

Australian Consumer and Competition Commission v Birubi Art Pty Ltd [2018] FCA 1595

- Misused and misappropriated TCEs, in terms of Indigenous art has been prevalent for decades in Australia
- The misappropriated or inauthentic Indigenous art takes money from real Indigenous artists and communities
- From 2015-2017, Birubi Art sold 50,000 boomerangs, didgeridoos, message stones and bull roarers in Australia
- These objects were all made in Indonesia but did not declare this point on the labels;

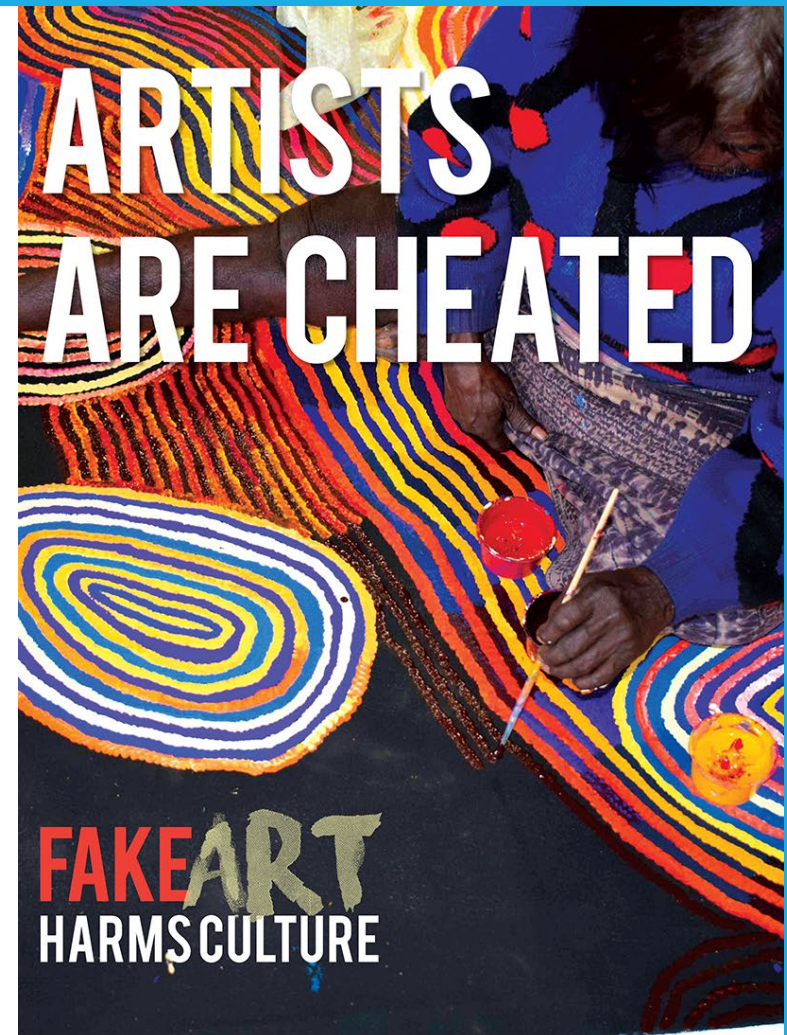


Birubi case

- The ACCC acted against Birubi Art claiming that Birubi had misled the public by the sale of objects that contained Indigenous styles and symbols;
- Objects were not hand painted by Indigenous artists and not made in Australia;

Key Findings

- Whether the conduct of Birubi was ‘misleading and deceptive’ under schedule 2, item 18 of the Australian Consumer law;
- The representation of the products sold by Birubi misleading the public to think that the objects were hand painted by an Indigenous person or made in Australia?



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Birubi case findings

- The Court looked at who the consumer was when deciding whether any misleading conduct had taken place
- Consumers= tourists and locals;
- Found that consumers were likely to be misled by the design on the products in conjunction with labels that claimed products were made in Australia;
- Also, products were placed alongside authentic products;
- Consumers had limited understanding of Indigenous culture so more likely to be misled;
- Justice Perry found that consumers had impression that objects were made in Australia and painted by Indigenous artists;
- Birubi Art found in breach of Australian Consumer law and fined \$AU2.3m

Birubi case commentary

- The largest amount of damages awarded in an Indigenous art case;
- A warning bell for other dealers and galleries;
- Need to sell ethically sourced Indigenous art;
- No more exploitation of Indigenous artists and their TCEs;
- Win for the Indigenous Art Code and the Fake art harms culture campaign

IP Australia Indigenous knowledge program

- Indigenous expert reference panel established in 2021;
- Non-Indigenous people should not be trading off culture;
- The Expert panel should consider applications to understand the intent behind use of IK and whether use is with consent;
- If the Panel finds a use of IK is inappropriate or harmful the Registrar or their delegate should act on this decision;
- Examiners identify applications that need Panel consideration

Thank you



Erub Ladies with their giant squid 2019