

# **INTELLECTUAL PROPERTY AND ABORIGINAL ART**

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## **Indigenous Restrictions**

Indigenous cultural values, intellectual property and modes of artistic expression vary greatly from tribe to tribe, and region to region. Far from being static, Aboriginal culture is constantly and dynamically evolving. Aboriginal artists are restricted in what they can depict without causing offence.

There were, in Australia, some 600 different tribes, before Europeans arrived, and there are still more than 250 tribes that are relatively intact culturally. Each of these has their own stories, song and dance and it is considered offensive to 'steal' images, dances and songs that do not belong to their own clan or tribal group. In other words, there is not ONE Aboriginal culture, there are hundreds. Young people in traditional communities have to earn the right to certain knowledge by going through initiation...for more important cultural information and stories they must go through many initiations, which often involve physical and mental hardship. What sort of message are tribal initiates receiving when any artist, black or white, can paint whatever they like, appropriating other peoples cultures. Whilst small tribal groups struggle to maintain language and cultural conventions, their young people drift away from their communities, indulging in alcohol abuse and petrol sniffing and other forms of self inflicted cultural suicide or just disappear in to the cities often ending up in a cycle of drug abuse?

## **Cross Cultural: Appropriation -Theft**

The genesis of the contemporary Aboriginal arts movement has been a modern day miracle. It has evoked a renaissance of cultural activity after the period of misguided assimilation policies, and it has changed the way in which tribal people, once nomadic and now sedentary, actually practice and pass on their culture to future generations. What we are seeing is a redefinition of traditional lifestyle and culture, and a state of dynamic equilibrium beginning to settle in urban and rural communities, but I must stress that the basis of that culture, the collective ownership of intellectual and cultural property is the very bedrock of the society and the basis of Aboriginal cultures and beliefs to this day

Before Aboriginal art was considered part of the 'contemporary art market' it was sold simply as an ethnographic curiosity or as artefact for study. It was considered of interest only in so far as it reflected a 'true' or 'real' aspect of traditional modes of behaviour ritual or daily life. Many of the accusations that have been levelled by uninformed and culturally ignorant journalists and commentators recently involve artists who are assisted by relatives in the execution of works of art. Their way of working today is absolutely no different than the way they have produced art for decades. The only difference is the way Europeans are looking at the art, as something that has to fit in to European conventions now that it is no longer considered ethnographic. This is nothing more than another form of Eurocentric cultural tyranny and has more to do with the conventions of 'investment and attribution' than it does with Aboriginal law and their own purpose in painting.

## **Fraud**

I do not want to spend any time at all talking about Fraud in the legal sense. Copying or faking well known artists work is a crime no matter how you look at it. In Indigenous arts the issues are identical to the wider art market. Except to say that Australian copyright law fails to protect Indigenous people in the same way that it does European artists. Shared ownership

and common cultural property rights has been tested time and time again with sweet little victories building one upon the other, setting one new legal precedent after another in the long road to a more accommodating and understanding legal framework for Indigenous artists in this country.

However appropriation, authorship and misattribution are issues that, in the Indigenous Arts, need to be treated differently and more culturally sensitively than when these same issues are dealt with for art that comes from the European tradition. When these issues arise in the Indigenous arts they must be dealt with by Indigenous people themselves. Not just any Indigenous people I hasten to point out. But the traditional custodians and Elders of the particular Aboriginal culture which is in dispute. ie. these issues must be dealt with by the community that controls and 'owns' the culture involved.

Perhaps this can be explored further in question time, but I feel that it is important to outline for you how many of those who work in the Indigenous arts industry and, who represent Indigenous artists, have been going about dealing with issues of ethics and fraudulent behaviour in the production and sale of Indigenous arts in Australia today.

### **Three years - Three meetings - Three significant results**

#### ***Result # 1            Bringing the Commercial Stakeholders Together***

The inaugural meeting in Brisbane (February 1998), attended by representatives of 50 commercial galleries and retailers, set in place a steering committee and the framework for the establishment of Art.Trade, an organisation dedicated to professional standards in the production, presentation and sale of Indigenous arts.

The steering committee spent a year involved in wide industry consultation on a draft constitution and code of ethics and held regional meetings in every State, involving every sector of the industry including producer organisations, retailers, advocacy and government bodies.

At the 1st National conference held in Alice Springs on the 14th-18th of November 1998, a large number of prominent Indigenous art industry delegates gathered, at their own costs, for the purpose of establishing the organisation which is a vehicle for change - an organisation which represents best ethical practice in the promotion and sale of Indigenous art and artefacts, cultural designs and products.

#### ***Result # 2            Incorporation and Setting the Legal Parameters***

##### *Aims and Structure of Art.Trade*

The principle aim of Art.Trade is to promote the Indigenous Culture of Australia at the highest level insuring respect and economic empowerment to Indigenous artists. To achieve this, standards were established that committed Art.Trade members to stock only authentic Indigenous products, and to excellence in presentation and service in the sale of Indigenous art and artefacts.

Art.Trade aims to foster consumer confidence and promote honesty and integrity in dealings between dealers, consumers, public museums, and indigenous artists and their representatives.

Prerequisites of membership are a high standard of knowledge and industry experience. Once accepted, members must uphold an extensive code of ethics, provide active and sustained support for Indigenous artists, and promote the role of artists and community organisations in the preservation and maintenance of cultural life.

Members are required to be able to provenance any of their individual artworks on request from the board as well as agreeing to allow the board's representative to examine their stock and trade in pursuit of any investigation the board may be undertaking from time to time.

As well as strengthening ties between dealers, artists, agents and government, Art.Trade is committed to assist in the development and promotion of a National standard for authentication of Indigenous art and artefacts. It actively supports or opposes legislative or other measures affecting the business and ethical interests of its members and the welfare of Indigenous artists and the art centres that represent them. It circulates to members statistics, issues and other information in regard to the Indigenous art trade or any legislation affecting it, and publishes material through the Art.Trade magazine to further these aims.

Art.Trade undertakes arbitration, settlement and adjudication of disputes between members which may arise out of unethical practice, trade or commerce. This is just part of Art.Trade's all encompassing mission for the promotion of ethical practice in the Indigenous Cultural Industry.

The Association was Incorporated in January 1999 and has attracted more than 60 financial member organisations during its first year with a further 8 currently being processed toward membership.

### *Result # 3 Cultural Ethical Self Determination*

At the 2nd National conference and 2nd. AGM the members voted unanimously that determination on all cultural issues and ethical standards in the production of Indigenous arts will rely solely on the collective experience and investigations of a Cultural Advisory committee comprised of Indigenous representatives only. These representatives are drawn from Art.Trade membership and broader community advisers from regions throughout Australia. The Cultural Advisory Committee will use the community from which artists come as their point of reference and their decisions will be absolutely binding on the board.

These three major initiatives

- the harnessing of commercial expertise
- the legal and ethical framework
- Indigenous authority over all cultural issues

provide the three critical components of a system that can, for the first time, address pressing ethical issues in the production, presentation and sale of Indigenous arts on behalf of the entire Indigenous Cultural Industry.

## **BOGUS PRODUCTS**

### **Indigenous Cultural Industry**

Art.Trade was established to provide an organised co-operative approach to ethical standards within the industry which would enhance economic development of indigenous people and communities throughout Australia. This is the same approach that will be required from Government and non Government agencies if they are to address the issues of cultural copyright and the mass production of Aboriginal products being passed off as authentic while being produced by non-Indigenous people. Only in this way can true self determination and economic independence be established through the ownership of the Indigenous cultural industry by Indigenous people.

### **The Problem in Microcosm - Cairns, Tropical Far North Queensland**

Cairns has an international market base with 82% of tourists wishing to experience some form of Indigenous culture.<sup>1</sup> The viability of the retail market for Indigenous designs and products can be measured by the number of stores and businesses selling them.

Whether they are authentic or mass produced by Asians in Asian countries, created by backpackers or other non-indigenous people, is of little concern to the majority of retail and wholesale businesses at this point of time. Most currently claim their products are authentic when in fact they are not, therefore denying Indigenous people economic progress. They undermine the only thing Indigenous people have available to them to ensure economic development and employment within their communities, their culture.

While Indigenous artists have developed a strong market niche, the situation is different for the general tourism market. Cairns is a regional example of the difficulties faced by Indigenous people in competing in that market, yet there is a strong demand for AUTHENTIC Indigenous products.<sup>2</sup> A major problem is the large number of souvenirs and t-shirts that have been found to reproduce Aboriginal art. Such reproduction is culturally inappropriate. The cheap end of the tourism market is creating its own version of Aboriginal art and artefacts and claiming them to be authentic.

### **Cultural Maintenance and Integrity**

Since the birth of Art.Trade, and its efforts in addressing ethical issues in the market place, Indigenous producers and organisations have been joining the organisation in an effort to combat the issue with an organised approach. The Association believes that unless visitors are made aware of the damage being done to Indigenous artists the problem will intensify with the Sydney Olympics and the Centenary of Federation as marketeers search for images and emblems that are distinctly Australian. This search has lead, over the past years, increasingly to Indigenous culture.

The development and implementation of an **effective strategy** to ensure cultural copyright, guaranteeing authenticity of Indigenous cultural products that are presented to the local, National and International retail and wholesale markets, will in turn increase Indigenous employment and provide Indigenous people with on-going economic benefits.

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<sup>1</sup> QTTC and other Tourism survey studies

<sup>2</sup> National Aboriginal and Torres Strait Islander Cultural Industry Strategy 1995

## The National Authenticity Label

Only limited information has been provided on the implementation of the National Authenticity Label developed by NIAAA. This indicates that further options still remain to be explored. In a recent paper to the national Indigenous art industry conference, Prof. Jon Altman, bemoaned the lack of industry leadership and a coordinated approach on many important issues. In regard to the authenticity label he commented:

*At times particular agencies strive to provide leadership on specific issues, as with NIAAA's attempt to develop a national authenticity label. A problem with such action is that it often fails to mobilise the support of other regional support agencies or of art centres and art practitioners themselves. There is a need for a broad industry alliance or for one agency to take a decisive leadership role for the entire Indigenous art industry.*<sup>3</sup>

## The Authenticity Logo as a Brand <sup>4</sup>

The new National Authenticity label can be looked upon simply as a logo or trademark but its commercial application will be significantly enhanced if it is able to be established and recognised as a **mega-brand** that people can **trust**. Genuine Indigenous cultural products will continue to have their own individual company and regional labelling however the National Authenticity label will cover all of these and differentiate between these 'genuine' products and 'fake' products. If the label is to be successful in the marketplace it must become so identifiable and known that customers seek it out and give it as much weight or even more than the normal considerations when buying ie.

Do I like the design?  
Is the price right?  
and  
To these we must add

Does it directly benefit Indigenous people?

More and more often in today's commercial markets, retailers and manufacturers are working together to put their combined imprint on products. If the Logo is to work it must make a promise the consumer can trust.

I trust that product; therefore I buy it.  
I trust that store; therefore I buy there.

*With a 'brand' there has to be a reason why customers do not buy, rather than do buy, because they are already predisposed to buy.*

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<sup>3</sup> The economics of the Indigenous Visual Arts Industry: Issues and prospects for the Next Decade. A paper presented to the 1999 national Aboriginal Visual Arts and Crafts Conference, Cairns, 1-3 November 1999

<sup>4</sup> What's in a Name?-Brand strategies for the New retail economy, Price Waterhouse Coopers, June 1999 in Critical issues: A retail Intelligence System Publication

## **Proposals**

It is suggested that:

- (a) The label could be applied as a decal to the front window of the retail premises of businesses that have become members through due process.
- (b) Individual independent artists, art centres manufacturers and licensors who qualify for the label can be listed in a manual of approved suppliers vetted by NIAAA and provided to Art.Trade member galleries.
- (c) NIAAA can provide forms that members can fill in and fax to their office when suppliers approach them who are not listed in the manual (bible). These can immediately be approached by NIAAA so that they can register and be included in regular updates of the manual, or be exposed through the Art.Trade magazine as being bogus operators.
- (d) Policing and monitoring of the label can be conducted by members, regional representatives, regional council arts bodies, and artists in each region.
- (e) The right to scan and print the label on to all documentation should be provided pro forma to all art centres upon payment of a single yearly registration fee rather than to their individual artists. This fee would entitle them to Art.Trade membership.
- (f) Businesses to pay a joining fee of \$500 and a yearly fee of \$500 (half price for Indigenous, privately owned businesses and art centres). This to give them ownership over the scheme rather than be licensed and policed by 'big brother'.
- (g) Art.Trade to admit members in a new category designated for Individual owner operated businesses employing 2 people or less. These individual artist owned businesses to pay a yearly \$30 membership fee only.<sup>5</sup>

After an in initial implementation period the label will become self sufficient through membership fees and income generated through the sale of the Art.Trade magazine and other revenue generating measures.

## **Fine Art Production and the issues of Authorship, Attribution, Appropriation and Fraud**

It is unlikely that authorship, attribution, appropriation and fraud would ever be able to be dealt with by applying the authenticity label to Fine Art. Nor will issues dealing with the inappropriate use of Indigenous imagery by Indigenous people themselves. Art.Trade is the only agency that has developed a definitive approach to these issues. At its second National conference the membership agreed that all issues that relate to cultural practice and convention as well as all matters related to Indigenous cultural initiatives be the sole responsibility of a Cultural Advisory committee. That this committee be elected by and comprised of only the Indigenous Members of Art.Trade and that the committee be empowered to appoint any additional Indigenous people to the committee from outside of the membership that it needs to undertake its tasks. Further the members agreed that all decisions by the CAC be binding on the board. The current Chairman of the CAC is Art.Trade Deputy President Greg Singh and the committee is currently expanding its network Australia wide in preparation for dealing with any matters that require immediate attention.

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<sup>5</sup> 'I just want to own my own business' Jimmy Robertson Tjampitjimpa, Chairman of the Lajamanu Artists' committee at the National Conference 1999.

The entire membership voted overwhelmingly that cultural issues are not, and never have been, matters that should be decided by any other than Indigenous people themselves. This includes all issues relating to the way art is produced and attributed. They recognised that each and every tribe and community has their own cultural conventions and that the last people to be making comments publicly about these issues are uninformed European Australians or foreigners.

After convening a meeting of Indigenous delegates only they returned to the conference and announced the formation of the Cultural Advisory Committee and declared that it would:

- take up all consultation to direct Art.Trade on all cultural issues
- to form the link between Art.Trade, communities and individual artists.

The CAC agreed to accept the following responsibilities:

- deal with the misuse of art styles on a case by case basis
- deal with fraudulent issues on a case by case basis
- establish a network to consolidate the authenticity process
- assist Art.Trade in the production of fact sheets and videos to inform and
- educate clients and artists of the issues surrounding authenticity of fine art

It is only in this way that decisions which take in to account individual tribal values and modes of expression, when dealing with the production of fine art, can be addressed in a culturally appropriate way. This marks a watershed in dealing with ethical issues in the production of Indigenous fine art. For the first time in the history of the industry there is a mechanism in place to immediately address public criticism and accusations of malpractice, and deal with them in an effective, timely and culturally appropriate manner.