

# Position statement: Indigenous Cultural and Intellectual Property (ICIP)

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NSLA recognises that Aboriginal and Torres Strait Islander peoples are the traditional owners and custodians of this continent, and that this recognition must be accompanied by clear and meaningful change within the library sector. The collections of NSLA libraries hold a great deal of information relating to Aboriginal and Torres Strait Islander peoples, languages and cultures. These collections reflect first contact between European and First Nations peoples, including pastoral, anthropological and cultural items as well as contemporary material created by First Nations peoples.

NSLA acknowledges that the management of First Nations collections based on conventional western parameters and laws has failed to fully or appropriately take into account the intangible and tangible cultural and heritage significance of these items for Aboriginal and Torres Strait Islander peoples. NSLA recognises that these systems were not designed to for First Nations people to benefit from or participate in.

NSLA also acknowledges that it has collective, individual and moral responsibilities to ensure that management and access to these collection materials is culturally informed and respectful: this includes recognition and protection of the ongoing, communal nature of Indigenous Cultural and Intellectual Property (ICIP) rights of First Nations material held by NSLA libraries.

The World Intellectual Property Organisation (WIPO) identified that these arise because the expression of ICIP (also known as traditional cultural expression):

- is handed down from one generation to another, either orally or by imitation
- reflects a community's cultural and social identity
- consists of characteristic element of a community's heritage
- is produced by 'authors unknown' and/or by communities and/or individuals communally recognised as having the right, responsibility or permission to do so
- is often created for spiritual and religious purposes
- is constantly evolving, developing and being invested within the community.<sup>1</sup>

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<sup>1</sup> Torsen, Molly and Anderson, Jane, 2010 *Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives*. Written for the World Intellectual Property Organisation (WIPO)  
[https://www.wipo.int/edocs/pubdocs/en/tk/1023/wipo\\_pub\\_1023.pdf](https://www.wipo.int/edocs/pubdocs/en/tk/1023/wipo_pub_1023.pdf)



ICIP is a multifaceted concept covering all aspects of cultural practice, traditional knowledge, and resources and knowledge systems developed by First Nations peoples as part of their identity, law, lore and culture. ICIP rights also cover: literary, performing and artistic works; languages; types of knowledge, including spiritual knowledge; tangible and intangible cultural property; First Nations ancestry remains, and genetic material; cultural environmental resources; sites of cultural or spiritual significance; documentation of First Nations heritage.<sup>2</sup>

Most importantly, ICIP directly links to the principle of self-determination, and is associated with a distinct set of rights, which include:

- protection of traditional knowledge and sacred cultural material
- respect for traditional laws and customary obligations
- remuneration for use
- full and appropriate attribution
- prevention of offensive, misleading or insulting use
- control recording of cultural customs and expressions, and language related to cultural identity, knowledge, skill and teaching about Indigenous culture.<sup>3</sup>

While NSLA remains supportive of conventional intellectual property law, it acknowledges these laws have failed to take into account the 'living nature' and communal dimension of Indigenous Cultural and Intellectual Property rights. In the absence of legislation, NSLA has endorsed national and international ICIP policy frameworks and protocols,<sup>4</sup> and committed to the following principles:

- Recognise Aboriginal and Torres Strait Islander peoples as the primary rights owners of Indigenous collection materials.
- Engage Aboriginal and Torres Strait Islander peoples in the management of Indigenous collection materials.
- Identify and respond respectfully to cultural documentation issues.
- Promote understanding and knowledge of ICIP through ongoing cultural awareness training.

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<sup>2</sup> Kearney, Jean, Intern Aurora, and Janke, Terri, 2018, *Rights to Culture: Indigenous Culture and Intellectual Property (ICIP), Copyright and Protocols* <https://www.terrijanke.com.au/post/2018/01/29/rights-to-culture-indigenous-cultural-and-intellectual-property-icip-copyright-and-protoc>

<sup>3</sup> Arts Law Centre of Australia, Information Sheet *Indigenous Cultural & Intellectual Property (ICIP)* <https://www.artslaw.com.au/information-sheet/indigenous-cultural-and-intellectual-property-icip-aitb/>

<sup>4</sup> These include the ATSIRILN protocols <https://atsilrn.aiatsis.gov.au/protocols.php> ALIA Statement on Copyright and Intellectual Property <https://www.alia.org.au/about-alia/policies-standards-and-guidelines/statement-copyright-and-intellectual-property> IFLA Statement on Indigenous Traditional Knowledge <https://www.ifla.org/publications/ifla-statement-on-indigenous-traditional-knowledge> and the United Nations Declaration on the Rights of Indigenous People <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

- Develop and regularly review with appropriate Aboriginal and Torres Strait Islander communities or representatives, policies and procedures to protect and manage access and use of ICIP.
- Ensure protocols and guidelines supporting local practice are made publicly available.
- Advocate for legislative reform to recognise and protect ICIP from inappropriate use and exploitation.