

Licensing Aboriginal and Torres Strait Islander Art

Information for Artists



Licensing of Aboriginal and Torres Strait Islander Art and Design - Information for Artists and Art Centres

WHAT IS LICENSING?

As an artist, you own the rights in a design, artwork or drawing as soon as you create it. This means that you own the 'copyright' in that work.

Copyright is important because it allows you to have control over your work and still let other people use your work (as long as you agree to that use). Using your copyright can be an important way for you to make extra money and grow your profile.

You own the copyright regardless of when or to whom the artwork is sold. Owning an artwork gives no rights to use it for anything other than putting it on display.

You might be asked to sell or assign your copyright, but it is not usual to do this. If you are asked to consider this, think it over carefully as you will no longer receive any payments when your artwork is used on another product or copied, and you will lose control over how your artwork is used.

A licence is one of the main ways for you as an artist to let someone else use your work. Licensing your work means you give someone (a person or a business) permission to use the image you created. A licence is a contract or agreement between you and another person that sets out how that other person can use your image and what fee they will pay you for that use.

Licensing your work can sometimes be simple and sometimes complex. It is simple because a person or business wants to use your work to make and sell a product and the licence enables this to happen. It is complicated because there are many ways you as an artist and the person or business can work together on a licensing agreement.

A licence is a contract – a set of rules – that writes down the way your image can be used and what fee you will be paid for that use.

GETTING READY TO LICENCE

As an artist, you need to know and be realistic about:

- ❖ What you will earn.
- ❖ When and how you will be paid.
- ❖ What you will control.
- ❖ What you can do if the other person or businesses wants to change anything.
- ❖ How you will be acknowledged.

The person or business you are working with should:

- ❖ Help build trust.
- ❖ Give you time to consider the contract and encourage you to get independent advice.
- ❖ Answer any questions you may have or give you extra information to help you understand how your work will be used.
- ❖ Respect your work, culture and intellectual property rights as an Aboriginal or Torres Strait Islander artist.

- ❖ Offer you fair and meaningful payment.
- ❖ Want strong provenance: this is about making sure the art or design belongs to you and you have cultural authority for what they produce.
- ❖ Want cultural information to help promote and sell the products. This can include artists' photos and biographies and other cultural information. This information must be yours, not something the business makes up.
- ❖ Want certainty of supply: quality, quantity and timeliness are crucial.

THE CONTRACT

Once you and a business have agreed to work together, this is written up in a contract. A contract must be fair to everybody. Fair means:

- ❖ You gain a meaningful benefit.
- ❖ You understand what you are getting under the contract and how they are allowed to use your work.
- ❖ The licence is mutual – all parties get similar benefits.
- ❖ You get independent advice.
- ❖ A level playing field with access to information as needed.

A strong contract is crucial. This means:

- ❖ A written contract.
- ❖ All contracts are independently checked and:
 - » Should include options for you to get out of the contract if you are not happy with the arrangement.
 - » Use clear words and in a form that you clearly understand.
 - » Specify the artwork to be used, the terms of use and all the product details such as timelines, quality and quantity etc.
 - » Include information about pricing, such as the proposed retail price of any product and how this relates to the fee you will be paid.
 - » Give you regular reports on sales and payments (at least quarterly).

Some things to look out for:

- ❖ Make sure you understand all the information.
- ❖ Ask questions or ask for more information if you are not sure about something in the contract.
- ❖ You are allowed to negotiate the terms of the contract and ask for changes if you want them (usually before you sign the contract).
- ❖ You may ask for a one-off payment or ongoing licence payment, or both.
- ❖ If you are offered a one-off payment for using your work, you have a right to know how many/what type of products are going to be made and all the ways your work will be used.
- ❖ If a business is only paying you when the work is sold, how often and when will they report the sales to you and make payment. Note: even with this type of arrangement there is generally a payment up-front to cover provision of the artwork.
- ❖ Mixing up what you will be paid with the exposure or other opportunities you (may) get.
- ❖ You have a right to be paid properly every time someone uses your artwork; that is different from growing your profile.

You are strongly advised to get professional advice before signing a contract. Some good organisations to talk to are listed at the end of this document.

MONEY STORY

There is no standard fee arrangement in licensing. This is because there are many different factors in a licensing arrangement. Because there are so many variables, it can be difficult to know if you are being paid properly. Therefore, legal or contractual advice is important.

These three examples highlight the range and complexity of licensing.

- ❖ A high volume of products sold nationally through a major store. This might mean a lower percentage for the artist, but because of the number of products sold, this could be a lucrative contract.
- ❖ Modest price point and volumes for consumer products or souvenirs. This contract might cover a range of products and/or be made over a period of time. This could mean mid-range fees for the artist that provide ongoing income.
- ❖ A low volume, higher-priced product. Such a contract often means a higher percentage for the artist, though the number of products sold is likely to be small. Often these payments are made in advance of sale, for the full production run.

It is important for you to understand the financial reality of licensing your artwork or design. For most artists, licensing provides small amounts of semi-regular income. Very few artists generate regular or large amounts. This is because making and selling a licensed product involves a chain of different people and businesses. Each person or business has costs to pay, such as freight, production, rent, wages, electricity and so on. The profit for each person or business is only a small part of their share of the total project.

Every licence is unique. A trusting relationship between the parties, backed up by independent advice, is crucial to getting licensing right.



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