

Licensing Aboriginal and Torres Strait Islander Art

Information for Manufacturers
and Wholesalers



Licensing of Aboriginal and Torres Strait Islander Art and Designs - Information for Manufacturers and Wholesalers

INTRODUCTION

The art, design and cultural expression of Aboriginal and Torres Strait Islander people is a powerful means of communication and education. The stories and knowledge behind Aboriginal and Torres Strait Islander artwork bridge gaps in language, history and understanding with the wider Australian community and are sought-after by tourists and Australian consumers.

While the art and design of Aboriginal and Torres Strait Islander people is an act of maintaining and sharing cultural expression, it is also a means of economic independence. Products that include Aboriginal and Torres Strait Islander art or design generate benefits for manufacturers and retailers of these products as well as for the artists, their families and communities.

WHAT IS LICENSING?

An artist owns the rights in an artwork or design as soon as they have created it. This right is known as copyright. A licence is one of the main ways for an artist to allow others to use the copyright in their artwork or design.

Licensing an artwork or design means that an artist gives a person or business permission to use that artwork or design for a specific purpose. A licence is a contract that sets out the way/s the artwork can be used and what fee will be paid for that use.

Artists retain copyright in an artwork regardless of when or to whom an artwork is sold, unless they sell or assign that copyright. It is not good practice to ask an artist to assign the copyright as part of the sale of the artwork. Owning an artwork gives the buyer no rights to use it for anything other than putting it on display.

Licensing is both simple and complex. It is simple because a person or business wants to use the art or design of an Aboriginal or Torres Strait Islander artist to make and sell a product, and the licence enables this to happen. It is complicated because there are many ways an artist and a business can work together on licensing; however, with clear, fair and transparent licence terms, this can be easily achieved.

WHAT DOES IT MEAN FOR ME AS A MANUFACTURER OR WHOLESALER?

By making or distributing products using Aboriginal or Torres Strait Islander art or design, you play a crucial role in the supply chain. The decisions you make about how you source and use Aboriginal and Torres Strait Islander art and design directly affects the livelihoods of artists and communities.

WHAT'S FAIR?

For a range of reasons Aboriginal and Torres Strait Islander people are often not able to negotiate the terms of a contract equally. As a manufacturer or wholesaler, this means being aware that fairness and transparency are crucial anytime you want to use Aboriginal or Torres Strait Islander art or designs on the products you manufacture or sell. Fairness means:

- ❖ Artists gain meaningful benefit.
- ❖ A licence is mutual – that is, all parties are getting similar benefits.
- ❖ A level playing field with access to information as needed.
- ❖ All contracts are independently vetted.
- ❖ The contract accurately specifies the artwork to be used, the terms of use and product details, for example timelines, quality and quantity etc.
- ❖ A cooling off period, the right to terminate and price information are in the contract.
- ❖ Clear language is used and in a form that is clearly understood.
- ❖ Including in the contract information about pricing, such as the proposed recommended retail price of any product.
- ❖ Giving regular reports to the artist on sales and payments are provided (at least quarterly).

You can include this type of information in your licence agreements with Aboriginal and Torres Strait Islander artists and use the information to help promote the product/s to create an important point of difference to other products. This information can also encourage retailers to source, stock and sell products that are ethically and accountably produced and genuinely provide benefits to Aboriginal and Torres Strait Islander artists and communities.

WHAT TO DO

As a manufacturer or wholesaler, you are in a powerful position in the supply chain of products that use or incorporate Aboriginal or Torres Strait Islander art and design. You should:

- ❖ Find ways to build respect and encourage Aboriginal or Torres Strait Islander control and involvement in the development of the product – this includes, where possible, building a good relationship with the artist or artist's representative.
- ❖ Check that the artist/s have the authority over the artwork, designs and content they are providing.
- ❖ Respect and promote cultural and creative diversity. Don't mix and match styles and stories from different language groups or regions. Don't assume – ask questions about these issues if you are unsure.
- ❖ Include artist and artwork information with all products and/or packaging that uses Aboriginal or Torres Strait Islander art or design. This might be an artist's biography or photo or a story about the artwork.
- ❖ Recognise that Aboriginal and Torres Strait Islander people share cultural stories and authority with their community. While copyright and other legal frameworks do not recognise communal ownership, this does not reflect the reality for many artists and communities. Wherever possible, look for ways to acknowledge or respect the shared nature of much of Aboriginal and Torres Strait Islander culture.

- ❖ Allow appropriate time for approval and permission processes.
- ❖ Consider becoming a member of the Indigenous Art Code: indigenousartcode.org
- ❖ For detailed information on the protocols of working with Aboriginal and Torres Strait Islander artists, see: www.australiacouncil.gov.au/workspace/uploads/files/visual-protocols-for-indigenou-5b4bfce4b0333.pdf

LICENSING FEES

There is no standard fee arrangement in licensing. This is because there are so many variables in a licensing arrangement. Because there are so many variables, it can be difficult for each party to know if they are being paid properly.

These variables include how an artist's artwork or design will be used (including things like size and number of products), how long an artist's work will be used for, whether the licence is a one-off or for a range of uses, the territory the licence covers (e.g. local, Australia or worldwide) and what sort of other uses might be included (for example, using the works to promote the product on social media or in advertising).

Every licence is unique. This emphasises the value of a trusting relationship between the parties as well as the importance of getting independent advice.

REMEMBER

The product you are making or distributing relies on the original artwork of an Aboriginal or Torres Strait Islander artist to make it a desirable product.

Aboriginal or Torres Strait Islander artwork has intrinsic cultural value and is central to the success of that product. One way to recognise this value is through respectful relationships, fair licence terms and meaningful remuneration of the artist.

As with any other commercial agreement in the product supply chain – the printer or freight company for example – a fee is agreed on. The artist's contribution, for the use of their artwork or design, is equally as important.



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