

Licensing Aboriginal and Torres Strait Islander Art

Information to get you going.



Contents

This information kit contains four documents:

1. Overview
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The overview introduces the ideas and practices behind good licensing of Aboriginal and Torres Strait Islander art. There is information in here that is relevant to anyone who is, or wants to licence the art, design or images of Australia's First Nations people.

The other three documents give information for different groups within the licensing supply chain, but are meant to be read in combination with the overview.

Licensing Aboriginal and Torres Strait Islander Art and Design – Overview

INTRODUCTION

The art, design and cultural expression of Australia's First Nations 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.

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 and design generate benefits for manufacturers and retailers of these products as well as for the artists, their families and communities.

WHAT IS LICENSING?

Licensing means an artist gives someone (a person or a business) permission to use their artwork, design or image. A licence is a contract – a set of rules – that says how that artwork image can be used and what sort of fee will be paid for that use.

A licence is for a specific use of an artist's work. A licence does not mean the person or business owns the work or can use it any way other than what is written in the contract.

A licence is one of the ways in which an artist can use their copyright. Copyright is a law that says artists own the rights in their work, including the right to use – and allow others to use – their work.

These rights include selling or licensing the use of their work (whether it be artwork or designs). Copyright is a form of property created automatically, every time an artist creates a work.

Even if an artist sells an artwork, the copyright for that work remains with the artist regardless of who bought or owns the original artwork.

Similarly, when a customer buys an original artwork, they are not buying the copyright (or any other rights) in the artwork. A customer who buys the artwork still needs the permission of the artist (or their family/trustee) if they want to do anything with the artwork other than exhibit it.

It is rare for an artist to knowingly give away or sell the copyright in their work. This is because copyright can be very valuable to an artist. Copyright lasts for 70 years after an artist's death and during this time the artist (or their family/trustee) may be able to use the copyright and generate income and benefits. In nearly all cases it is best for an artist to remain the owner of their copyright and only licence other people or businesses to use their artwork for specific projects and time. This ensures artists remain in control of their artwork and obtain ongoing benefit from any use of it.

CONTEXT

At its best, licensing and merchandising of Aboriginal and Torres Strait Islander art, craft and design is fair and can work well for all those involved. But there is evidence that a lot of the items in the tourist market are branded, styled and sold as 'Aboriginal' when they are not. This is often referred to as 'fake', 'inauthentic' or 'Aboriginal-style' art and products. It is Aboriginal and Torres Strait Islander people and their culture that are being ripped off and exploited in a range of ways such as false claims about royalties being paid or the unapproved use of artwork, images or designs.

This is a complex situation. There are legal and ethical issues, commercial and cultural considerations and, at the centre, questions of equity and power relationships between artists and other parties. Topics such as copyright, trade practices, cultural authority and economic returns are mixed together in this issue.

This is also a simple situation. Aboriginal and Torres Strait Islander art and design can be licensed and turned into merchandise because of the images and story they present, an expression of the distinctive culture of Aboriginal and Torres Strait Islander people.

Respecting Aboriginal and Torres Strait Islander people and their right to maintain and express their culture must be at the centre of all good licensing and merchandising.

LICENSING IN ACTION

Licensing Aboriginal and Torres Strait Islander art and design means working together in a fair and transparent way.

This collaboration usually sees an artist working with a designer or manufacturer to turn their images into a product of some sort, which is then distributed and sold in a network of shops (including Aboriginal and Torres Strait Islander owned businesses and art centres). Each person, or business, brings their unique skills and knowledge and, together, they create and sell a product that generates benefits for each of them.

Licensing is more complicated than selling a painting to a customer. With licensing, there are many more variables, and specialised knowledge is often needed to work through the details. To avoid problems with licensing, it is vital that the licence terms are clear, documented and understood by everyone, regardless of language or literacy levels.

Because licensing can be so different each time and has so many variables, it is hard to set out standards or benchmarks. But there are some important things to think about each and every time an artist, or their representative, considers a licensing opportunity.

At the heart of good licensing is mutual understanding, respect and good communication. A licence is a way to confirm, and write down, the trust that two (or more) people (or businesses) have in each other.

FOR ARTISTS

Artists need to know and be realistic about:

- ❖ What they will earn.
- ❖ When and how they will be paid.
- ❖ What they will control.
- ❖ What they can do if they want anything to change.
- ❖ How they will be acknowledged.
- ❖ The manufacturer's costs and risks to produce the licensed product.

Artists must be fairly remunerated. Fair means:

- ❖ Gaining meaningful benefit.
- ❖ Is not to the artists' detriment.
- ❖ The licence is mutual – that is, all parties are getting similar benefits.
- ❖ All parties understand the terms of the contract.
- ❖ Is supported by independent advice.
- ❖ A level playing field with access to information as needed.
- ❖ A cooling off period, right to terminate and price information in the contract.

A clear, strong contract is crucial. This means:

- ❖ All contracts are independently checked.
- ❖ Including options for the artist to get out of the contract if an artist becomes unhappy.
- ❖ Using clear words and a form that is clearly understood.
- ❖ Accurately specifying the artwork, image or design to be used, the terms of use and all the product details such as timelines, quality and quantity etc.
- ❖ Including information about pricing, such as the proposed recommended retail price of any product.
- ❖ Providing regular reports to the artist on sales and payments (at least quarterly).

Artists and their representatives are strongly advised to get professional advice before signing a licence agreement or any other contract involving the use of Aboriginal or Torres Strait Islander images, artwork or designs. Suggested contacts are provided below.

FOR MANUFACTURERS, WHOLESALERS AND RETAILERS

Good businesses will:

- ❖ Help build trust.
- ❖ Respect Aboriginal and Torres Strait Islander art, design and culture.
- ❖ Want strong provenance, ensuring the art or design belongs to the artist and they have cultural authority for what they produce.
- ❖ Want certainty of supply: quality, quantity and timelines are crucial.
- ❖ Want cultural information to help promote and sell the products. This can include artists' photos and biographies and other cultural information. For example, this might be a story about Country. This needs to be the artist's story not something the business makes up.
- ❖ Give artists time to consider the licence and encourage them to get independent advice.

MONEY STORY

There is no standard fee arrangement in licensing. This is because there are many different factors in a licensing arrangement and every situation is unique.

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).

Licensing can involve both money and other benefits for the artist. For example, an artist may be paid a fixed and/or ongoing amount of the sale price of a product. But the business producing or selling that product may offer other benefits – they may contribute money to a community project or provide employment. Artists need to decide if such arrangements make sense and are fair to their situation. Where other benefits are offered they should not be in place of fair payment.

Because there are so many variables in a licence arrangement, it can be difficult for artists (or their representatives) to know if they are being paid properly. This highlights the importance of getting legal or other professional advice.

It is important for artists to understand the financial reality of licensing. While licensing products can supplement an artist's income, very few artists generate regular or large amounts. This is because making and selling a licenced product involves a chain of different people and businesses. Each person or business has costs to pay, such as freight, production, rent, wages, insurance and so on. The profit for each person or business is only a small part of their share of the total project.

Under a licence agreement, payments to artists are generally a percentage of the sales price. These three examples highlight some of the variations in 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 high number of products sold, it is likely to be a lucrative contract for the artist.
- ❖ Modest price point and volumes for consumer products or souvenirs: such a contract might cover one product or a range of products, made over a period of time. This could mean mid-range licence fees for the artist, providing 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. These payments are usually made in advance of sale, covering the full production run.

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

Aboriginal or Torres Strait Islander artwork has intrinsic cultural value and is central to the success of a licenced product. One way to show this value is through fair licence terms and meaningful remuneration of the artist. As with any other commercial agreement – the printer or freight company for example – a fee is agreed on. The artist's contribution is equally as important.

If you are an artist, art centre, manufacturer, wholesaler or retailer of merchandise that is licensing Aboriginal and Torres Strait Islander art and design, and you'd like more information, refer to our other information sheets or contact one of the agencies below.

CONTACTS

Indigenous Art Code of Conduct

P: 0438 637 862
E: gabrielle@indigenousartcode.org
W: indigenousartcode.org

Copyright Agency

P: 1800 066 844
E: visualarts@copyright.com.au
W: www.copyright.com.au

Arts Law Centre of Australia

P: 1800 221 457 (toll-free)
E: artslaw@artslaw.com.au
W: www.artslaw.com.au

Desart

P: 08 8953 4736
E: mail@desart.com.au
W: desart.com.au

Arnhem, Northern and Kimberley Artists Aboriginal Corporation (ANKA)

P: 08 8981 6134
E: info@anka.org.au
W: anka.org.au

Indigenous Art Centre Alliance (IACA)

P: 07 4031 2741
E: admin@iaca.com.au
W: iaca.com.au

Aboriginal Art Centre Hub of WA (AACHWA)

P: 08 9200 6248
E: contact@aachwa.com.au
W: aachwa.com.au

Ananguku Arts

P: 08 8227 2788
E: info@anangukuarts.com.au
W: www.anangukuarts.com.au



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