

BEST PRACTICE GUIDANCE FOR USING INDIGENOUS ARTWORK IN A CORPORATE OR COMMUNITY PUBLICATION

So, you want to use an Indigenous artwork or image for your corporate or community publication but aren't sure where to start? We have put together some best practice guidance to help you:

- demonstrate respect for individual Indigenous artists, Indigenous history, cultural knowledge and information;
- recognise and address Indigenous Cultural and Intellectual Property (ICIP) in your planning and arrangements with artists (Stand-alone Indigenous Cultural and Intellectual Property Legislation | Office for the Arts);
- do your due diligence and establish and foster mutually beneficial relationships (for example, the ongoing partnership between Balarinji and Qantas);
- do not inadvertently support 'fake' Indigenous art as Fake Art Harms Culture (see also the 2018 Parliamentary Inquiry); and
- avoid reputational damage (like Netflix series After Life and Nike's unauthorised Samoan tattoo pattern).



Do identify the traditional custodians of the land/s (Country) on which you work and do business, and (if possible) source artworks created by an artist who is connected to the Country you are on.

Why? Each group has their own connection to Country and you should give consideration to prioritising the traditional custodians of the Country you are on.



Do pay an Indigenous artist, and get their written consent to how exactly you intend to use their artwork.

Why? You should agree with the artist and document: parameters for use of the artwork, based on intended reproductions; review procedures for new/updated reproductions of the work; how the artist will be attributed; and the description of the artwork/story.

Do reserve a budget to source Indigenous art ethically. The budget should not only include the amount to purchase, commission or license the artwork, but also time to meet with the artist (online or face to face), time for the artist to review or approve drafts of the artwork and time and costs for the artist to attend any event relevant to the artwork.

An artwork may be more meaningful to your organisation if you engage a local artist in the area in which your office is located, or commission an artwork containing a particular story or displaying specific values that speak to your organisation and its journey.



Do seek guidance from the artist on the proper wording and spelling of names when attributing individuals, families, communities or groups in relation to the artwork.



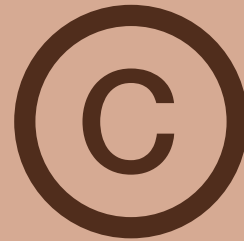
Do source art pieces directly from local Indigenous artists (if possible), art centres or from members of the Indigenous Art Code or Copyright Agency.

These organisations are involved in promoting the rights of Indigenous artists and art centres, and have experience negotiating licensing agreements on behalf of Indigenous artists (Copyright Agency).

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Do your due diligence, and ask questions before you buy, commission or license an artwork, including: Who is the artist? Where are they from? How does the artist get paid? What style has been used, and where is it from? Does the artist have cultural authority to tell their story through the artwork? What story is told in the artwork? How does that resonate with your organisation?



Don't assume that you have consent to copy, change, adapt or monetise an Indigenous artwork, even if you purchased it.

Why? The artist owns the copyright and ICIP in the artwork, so they have the right to decide how it is reproduced (e.g. photographed, copied, printed), distributed and communicated to the public. Taking these actions without consent may infringe copyright and ICIP.

If you wish to reproduce an artwork you have purchased or commissioned, a license agreement must be entered into addressing the scope of use and license fees payable to the artist.



Do allow the artist to review a draft before publishing the final product, especially where the artwork is to be edited or modified in any way, or used in different mediums.

Why? The artist has a right of integrity and can take legal action if their artwork has been used or presented in a misleading or disrespectful way. The placement of symbols and colours in an artwork can have particular cultural meanings or reflect specific stories. The editing and modification of the artwork can therefore change or distort the meaning and story of the artwork.

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Do make sure the artwork is authentic and sourced ethically. Look for authenticity certificates attached to artworks including those that comply with the Indigenous Art Code.

Why? The Indigenous Art Code provides: guidance for fair, ethical and transparent trade of Indigenous artwork; and requirements and procedures for the issue of certificates of authenticity.



Don't use a stock image or Google image.

Why? Stock image suppliers often do not verify whether artworks are authentic or sourced ethically (including relevant cultural or ICIP permissions for use of the image).

Further, you may not have permission from the copyright owner to use an image found on Google. The copyright owner may take legal action for any unauthorised use of an image. Rather than using stock images, take the time to build a genuine relationship with an artist and understand the community from which they come from. This demonstrates best practice and demonstrates goodwill in valuing the artist, their ICIP and the artwork to be used.



Do always acknowledge the artist, where they are from, and the community which is the source of that traditional cultural knowledge and expression (also referred to as Indigenous Cultural and Intellectual Property (ICIP) or 'cultural heritage').

Why? Many Indigenous artworks contain symbols, connect to country, or communicate stories that belong to the artist and their community. Proper attribution shows respect for the artist, community, and cultural expression.



Don't copy (partially or wholly), imitate or recreate an Indigenous artwork, or use an image generated by artificial intelligence (AI).

Why? This could be considered 'fake art'. Indigenous art is rich with history and culture, which cannot be replicated by someone who does not have that lived experience, or AI. The cultural significance of symbols and stories are devalued and disrespected when exploited by non-Indigenous people and AI. 'Fake art' stops Indigenous people from earning an income and maintaining ownership, attribution and control of cultural expressions and heritage.



Don't falsely attribute the artwork to someone else, or deal with the artwork in a way that misleads others or harms the artist's reputation.

Why? An artist is entitled to take legal action if these moral rights are infringed.

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Don't take or use a photograph of an Indigenous person unless you have their personal permission to do so.

Why? Photographs of an individual should not be taken or used without express consent, particularly if the image is to be used for promotion or marketing by your organisation or used on social media. Consent is ongoing, and can be retracted at any time. Cultural protocols may differ from time to time, so it is best to liaise regularly with Indigenous stakeholders, including being clear on the purpose and duration your organisation wants to use the photograph. Images of an individual who is deceased may cause distress to Indigenous people

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Disclaimer

The content of this guidance document is current at May 2024 and is intended to provide a general guide to the subject matter only. The guidance document does not constitute legal advice. Obtaining specialist advice about your specific circumstances is recommended.