

2 November 2022

IP Australia
PO Box 200
Woden ACT 2606

By email: IKproject@ipaaustralia.gov.au

To whom it may concern

RE: Submission in response to the Interim report on stand-alone legislation to protect and commercialise Indigenous Knowledge (2022)

The Australian Libraries and Archives Copyright Coalition (ALACC) together with the Australian Digital Alliance (ADA) welcome the opportunity to respond to IP Australia's Interim report on stand alone legislation to protect and commercialise Indigenous Knowledge (2022). Both organisations recognise the importance of Indigenous Cultural and Intellectual Property (ICIP), especially as it relates to the sectors to which our members belong.

The ADA provides a voice for the public interest in access to knowledge, information, and culture in copyright reform debates. The ADA unites those who seek copyright laws that provide reasonable incentives for creators and support the wider public interest in the advancement of learning, innovation, and culture. More information about the ADA is available at digital.org.au/about.

The ALACC is the main consultative body and policy forum for the discussion of copyright issues affecting Australian libraries and archives. The members of the ALACC support a copyright framework that appropriately protects the interests of rights holders while ensuring access to important cultural, educational, and historical content for the public's benefit. More information about the ALACC is available at alacc.org.au/about.

Member organisations of the ALACC and ADA hold, make accessible and use items that contain Traditional Cultural Expression (TCE) and Traditional Knowledge (TK). Notably, cultural institutions hold extensive collections created by or about First Nations Communities and are at different levels of awareness and

competence in dealing with these materials in conjunction with First Nations staff, advisory bodies, and communities. This submission should be understood in the context of these organisations discussing matters of direct impact and does not ascribe to more generalised knowledge about TK, TCE and ICIP across a wider context.

We would like to highlight that the impact of limited resourcing across these sectors to identify and describe collections has led to the invisibility of the extent of First Nations collections held within cultural institutions. The surfacing of these stories and voices within these collections, through appropriate First Nations led measures, would be invaluable for both First Nations communities and the general public.

The ADA and the ALACC support efforts across Government to recognise and protect ICIP in Australia and the extensive consultation with Aboriginal and Torres Strait Islander peoples, communities, and organisations. We are supportive of a First Nations led framework that builds on existing frameworks and protocols, particularly in the cultural heritage sector¹.

Element 1: Creation of a new Indigenous Knowledge right

We support a model that will create a new IK right that is First Nations led and recognises collective or communal rights in Traditional Cultural Expressions and Traditional Knowledge owned by communities, language groups or peoples who are the Traditional Owners of the TK and TCE.

In the creation of this right, we are mindful of the complications that may arise in tailoring a system that not only deals with commercial articles such as inauthentic boomerangs but may also apply to large collections of historical materials created by or about Aboriginal and Torres Strait Islander people held in collections of cultural institutions, educational resources and other places, and the complications that a non tailored solution may pose to these.

Additionally, we are supportive that legal or non legal instruments protecting TCE and TK are developed in harmony with the Government's implementation of [The Uluru Statement from the Heart](#), and with reference to the principles in the [United](#)

¹ [The Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services](#). Adopted 1995. Amended 2005, 2010, 2012.

[Nations Declaration on the Rights of Indigenous People \(UNDRIP\)](#). We also urge the findings of the National Cultural Policy to be incorporated, where appropriate.

We note that copyright as a system does not work well for historical materials, especially considering that often copyright is held by people other than the traditional owners and communities and therefore any changes should not be approached from a copyright point of view.

We are supportive of resource packages that support education and dedicated legal advice for Traditional Owners to enforce their rights, and education for the public on the implementation of new IK rights.

Element 2: Measures aimed at inauthentic product

We support the measures aimed at reducing the production and sale of inauthentic products. We recommend that any implementation of unique digital labels, for example blockchain technology, are developed in line with Indigenous data sovereignty principles. We support the voluntary labelling scheme accompanied by legislative measures designed to deter trade in inauthentic products.

Element 3: National Indigenous Knowledge Authority

The ADA and the ALACC endorse the findings in Terri Janke and Company's discussion paper on the need for an Indigenous decision making body to assist in the protection of IK and support the proposal to establish a National Indigenous Knowledge Authority. We encourage IP Australia to consider including a First Peoples cultural heritage representative on the panel of a National Indigenous Knowledge Authority. We also support the establishment of a voluntary database or register of IK information, if it is an appropriate mechanism.

Element 4: Measures to support competitiveness of indigenous business

We support this initiative which would complement the measures described in elements 1-3. We also endorse the suggestion that any programs developed are done so in addition to the already established Indigenous Visual Arts Industry Support (IVIAS) funding for Indigenous art centres and initiatives, including the Federal government's Indigenous Procurement Policy and the Supply Nation database of verified Indigenous businesses.

The ADA and the ALACC would welcome the opportunity to be involved in further discussions related to this consultation, particularly in relation to First Nations collections held in cultural institutions. Our contact for inquiries is Sarah Powell, who can be contacted at sarah@alacc.org.au or on 02 6262 1118.

Yours sincerely,



Justine Heazlewood

Chair

Australian Libraries and Archives
Copyright Coalition



Derek Whitehead

Chair

Australian Digital Alliance