



Protection of Indigenous Knowledge in the Intellectual Property System



Consultation Paper

Response of First Nations Media
Australia

January 2019



This submission is made by First Nations Media Australia. Some members may make individual submissions in which case the First Nations Media Australia submission should not be taken to displace those submissions.

About First Nations Media Australia

First Nations Media Australia is the peak body for Indigenous media and communications. It was founded in 2001 as the peak body for remote Indigenous media and communications. In late 2016 it transitioned to the national peak body for First Nations broadcasting, media and communications.

Up to 105 Remote Indigenous Broadcasting Services (RIBS), 33 additional licensed retransmission sites across Australia, 8 Remote Indigenous Media Organisations (RIMOs) and 28 urban and regional First Nations radio services are eligible for representation by First Nations Media Australia.

About the First Nations broadcasting and media sector

First Nations broadcasters are not-for-profit community organisations providing a primary and essential service to their communities. Collectively, they reach nearly 50% of the Australian Aboriginal and Torres Strait Islander population. First Nations broadcasters and media producers also connect non-Indigenous communities with Aboriginal and Torres Strait Islander people and culture, developing greater understanding and building stronger relationships.

The sector comprises:

- Radio services able to reach around 320,000 First Nations people, including around 100,000 very hard to reach people in remote Indigenous communities, or approximately 47% of the First Nations population.
- A wide range of First Nations news and current affairs services including:
 - National Indigenous Radio Service (NIRS) and its National Indigenous News and Weekly News-in-Review
 - Central Australian Aboriginal Media Association's news service, including its Strong Voices program
 - Koori Radio's news and current affairs programming
 - NITV News and Living Black
 - Print media including Koori Mail, National Indigenous Times, Land Rights News

- A regional satellite TV service reaching 240,000 remote households and a free to air national TV service.
- Over 230 radio broadcast sites coordinated by 35 licensed, community-owned, not-for-profit organisations.
- A strong web presence with First Nations broadcasters active on social media. Plus indigiTUBE, a dedicated online platform showcasing aggregated content complimented by an app, each of which streams 20 radio services.

The First Nations broadcasting sector delivers programming in over 20 languages national, including the first language of many people in remote communities. In the remote context, it is the most reliable and ubiquitous radio and media service available to audiences. The sector is based in local communities and employs local people as broadcasters and media producers. It is a local and trusted voice as evidenced in the 2017 Social Return on Investment analysis of First Nations broadcasters.¹ The sector reaches significant audience share with 80% of people in remote Indigenous communities being regular listeners to radio services.²

Summary of First Nations broadcasting and media sector scope:

- **Radio:** Live shows, plus interviews, radio documentaries, news, emergency information, community events, government and other messaging within community broadcasting guidelines.
- **Video & film production:** Production of culture and language based content for broadcast & online distribution.
- **TV:** National (NITV) and regional (ICTV) TV services; local TV services (Goolarri TV at Broome, Larrakia TV at Darwin).
- **News production:** National, regional and local news and current affairs services for broadcast, as well as print and online news media.

¹ <https://www.firstnationsmedia.org.au/about/social-value-study-2017>

² <https://www.firstnationsmedia.org.au/projects/indigenous-communications-and-media-survey-2016>

In this Response



1. INTRODUCTION	5
2. PART A: INDIGENOUS KNOWLEDGE ISSUES IN AUSTRALIA	5
3. PART B: PROPOSED INITIATIVES FOR THE PROTECTION AND MANGEMENT OF INDIGENOUS KNOWLEDGE	7
4. COMMERCIAL USE OF INDIGENOUS WORDS AND IMAGES	8
5. SUPPORTING INITIATIVES	9



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1. Introduction

Media production is a dynamic and evolving means of maintaining and preserving Indigenous knowledge, recording a living history of aural and visual culture and language in modern formats. From the early 1980s to the present, First Nations media organisations provide an unbroken record of language usage, cultural knowledge, traditional skills, community events, family histories and oral histories. In this way, First Nations media makes an ongoing, active contribution to the maintenance and protection of Indigenous Knowledge.

This submission responds to IP Australia's *Protection of Indigenous Knowledge in the Intellectual Property System* consultation paper, published in September 2018. It does not address all questions posed in the consultation process, instead focusing only on areas of IP that should extend to the production of media content and the protection of audiovisual archival materials. It reminds IP Australia of the contribution First Nations media makes to the protection of language and the potential role our sector could undertake in education and awareness processes to support the proposals outlined in the consultation paper.

2. Part A: Indigenous Knowledge issues in Australia

In broad terms, First Nations Media Australia agrees with the six issues identified in relation to protecting and managing Indigenous Knowledge. This section responds to the consultation question:

1. Are there any other issues associated with the protection and management of Indigenous Knowledge not addressed above that you would like IP Australia to consider?

First Nations Media Australia encourages IP Australia to broaden *Issue 3: Recording and digitisation of Indigenous Knowledge* to include support for community-controlled archiving collections and systems. First Nations media organisations have collected a significant catalogue of recorded media over the past 40+ years. However producers, media organisations and custodians can be hesitant

about the digitization of culturally sensitive materials due to concerns about the protection of Indigenous Knowledge in digital formats.

In response to these concerns, and to urgent requirements to transfer materials from degrading magnetic tape formats before 2025³, First Nations Media Australia developed a Reference Group of First Nations representatives and major State/Territory/Australian collective agencies (including the National Film & Sound Archive and AIATSIS) in 2013. The Reference group developed the National Aboriginal and Torres Strait Islander Audiovisual Collections Plan for preserving and managing community collections which has the broad support of First Nations media organisations and partners.

Progress has been made on methods and standards for the collection, metadata cataloguing and management of collections in a manner that ensures culturally important and sensitive materials can be maintained on-country under the custodianship of cultural law keepers. On-country archiving work is cost-effective, enabling local decision-making about access and media handling. However, archiving processes have been hampered by a lack of funding for the equipment, software, training, employment and support needed to manage digitization and preservation on-country. First Nations Media Australia is pursuing funding support for these activities as part of the [9 Calls for Action](#) we're asking of the Australian Government currently.

First Nations Media Australia promotes sovereign voices through advocating for First Nations media organisations and encouraging mainstream media to abide by Indigenous Engagement Protocols in the reporting of matters relating to Aboriginal and Torres Strait Islander peoples. Retaining First Nations control of access to recordings (and any economic benefits they may generate) is paramount in our work. We believe the relationship between media reporting and access to archived recordings is intrinsically linked. Therefore, we encourage IP Australia to include acknowledgement of community media collections in any dialogue relating to *Issue 3: Recording and digitizing of Indigenous Knowledge*.

³ Date identified by NFSA as end-of-life date for analog materials and equipment

3. Part B: Proposed initiatives for the protection and management of Indigenous Knowledge

Responses to consultation questions:

3. What are your views on the proposals considered above for the protection of Traditional Knowledge?

Our response to this question relates directly to *Proposal 2: Standardise research protocols and guidelines*. A number of protocols have been developed to provide guidance to media around the representation of matters relating to Aboriginal and Torres Strait Islander people in the research, collection, production and publishing of media stories. These protocols have been developed to meet the needs of different media organisations (eg. [SBS](#), [Screen Australia](#), [Media Diversity Australia](#)) and while they are similar in nature, they don't follow a standardized set of guidelines for engagement. First Nations Media Australia does not offer an opinion on the necessity for standardizing research protocols and guidelines, but does encourage IP Australia to include media should a national set of protocols to harmonize existing industry standards be developed to ensure the Traditional Knowledge collected through the researching and presentation of media materials is protected.

4. Are there other ways in which collaboration between Indigenous communities and researchers could be encouraged and supported in order to create economic opportunities?

The inclusion of archived audiovisual recordings in a national database of Traditional Knowledge and genetic resources could reinforce adherence to copyright law. This would encourage repatriation for the use of those materials, resulting in greater economic opportunities, for First Nations produced content. First Nations Media Australia encourages IP Australia to consider archived media materials and the ongoing production of new media content in the development of all proposed initiatives aimed to protect Indigenous Knowledge.

4. Commercial use of Indigenous words and images

Response to consultation question:

8. Are you aware of any existing databases or collections of Traditional Cultural Expressions that could be used or built upon to implement the database option (Proposal 9) outlined above?

First Nations media organisations currently broadcast in over 25 Indigenous languages nationally, including the first language of many people in remote communities. In this way, our sector contributes to the ongoing maintenance of Indigenous languages every day. Beyond this, many First Nations media organisations provide programming to record and protect endangered languages. The use of culturally significant words is encouraged through education-based radio and television programming and the engagement of young people in broadcasting activities. In this way, the media archives collected in recent decades act as a dynamic audiovisual database of culturally significant words and imagery used with context.

Beyond daily in-language broadcasting for information, what might be more useful as a contribution to the development of a database of Traditional Cultural Expressions are some of the 'word-of-the-day' programs or programming aimed to educate children in the use of language produced by First Nations media organisations. This content often includes instructions for correct pronunciation and context. Many First Nations media organisations have produced short segments, audiovisual 'time capsules', documentaries, interviews and short series that focus on culturally significant language. Some of this material is already showcased on the indigiTUBE platform, with new additions almost daily. indigiTUBE is a dynamic platform for sharing language content publicly. First Nations Media Australia could encourage our membership to contribute those materials (where appropriate) to a database of Traditional Cultural Expressions should it be developed.

5. Supporting initiatives

Response to consultation question:

13. Do you have any suggestions for how an education and awareness campaign should be conducted and whether any particular community of interest or industry sectors should be targeted?

First Nations Media Australia encourages IP Australia to draw on the resources, reach and expertise of the First Nations media sector in education and awareness activities. First Nations media practitioners are professionally trained to act as a key conduit for information relevant to communities across the country. The First Nations media sector has the capacity to report on complex information in a manner appropriate to the needs of their local audience, and in many cases to translate information into appropriate language. This results in meaningful engagement with audiences as means of two-way dialogue, with some listeners describing talkback programming as a public meeting in the community through direct participation in radio broadcasts.

First Nations media organisations can enhance understanding of the range of IP rights that could assist commercialization, educate about the provision and documentation of consent to use Indigenous Knowledge and inform businesses about the negative effects of misusing Traditional Cultural Expressions. This can happen through the provision of information in news and talk-related programming, through appropriately produced information campaigns produced by First Nations media organisations, through interviews with relevant stakeholders and through the dissemination of information through social media channels.

First Nations media practitioners are active spokespeople in their communities. The nature of their work fosters ongoing relationships with a broad range of community organisations and stakeholders, alongside direct audience engagement. Broadcasters are trained to use their networks to draw on expert advice for any given topic. Our sector is well placed to support the education and awareness requirements IP Australia will have in expanding its initiatives to protect Indigenous Knowledge.

