Local aims:

Inform researchers, academics, users, interpreters, participants and filmmakers of Indigenous Cultural and Intellectual Property (ICIP) rights and Intellectual Property (IP) rights (Section A).

Provide guidelines and resources for researchers, academics, users, interpreters, participants and filmmakers involved in the 'Deepening Histories of Place: Exploring Indigenous Landscapes of National and International Significance' project in relation to:

- Intellectual property, consent protocols and clearance forms (Section B); and
- Working with ICIP (Section C).

For more information please refer to the following resources:

- NFSA Indigenous Collections Management Protocols and Guidelines
- Culturally Restricted Materials Management Strategy
- Collection Policy – Indigenous Collections Policy
- Uluru-Kata Tjuta National Park Film and Photography: A Matter of Respect for the Park and Its People Uluru, 2002
A. Introduction

Round and Context

The project ‘Deepening Histories of Place: Exploring Indigenous Landscapes of National and International Significance’ is an Australian Research Council and Industry funded research project bringing together a unique interdisciplinary and inter-sectorial collaboration, archive resources and history to deepen the understanding of three internationally significant Australian landscapes: Mount Kosciusko/Mount Kosciuszko National Park, Central Australia and Australia’s Red Centre, and Arnhem Land/Kakadu.

With Article 31 of the United Nations’ Declaration on the Rights of Indigenous Peoples and the AIATSIS Guidelines for Ethical Indigenous Studies, the Project recognises the importance of respecting, protecting and upholding Aboriginal and Torres Strait Islander peoples’ rights to their cultural and intellectual property.

This Protocol is designed to encourage best practice in the recognition and treatment of Indigenous Cultural and Intellectual Property (ICIP). It applies to all Researchers and Partner Organisations (including employees and affiliates of those organisations) involved in the Deepening Histories Project. The Researchers and Partner Organisations are referred to collectively in this Protocol as the ‘Project Partners’.

‘Project Partners’ refers to any student or employee of any of the Partner Organisations who is responsible for collecting research information from participants and areas involved in the Project.

Organisations refers to the organisations involved in the Deepening Histories Project, including:

- Australian National University (ANU);
- Director of National Parks;
- Office of Environment and Heritage NSW;
- National Film and Sound Archive (NFSA);
- University of Sydney;
- Ronin Films;
- Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS).

They seek permission when making film footage, videotapes, sound recordings, transcripts and photographs of the cultural information and performances of Indigenous individuals, Community and Community lands for the Project. (The) ‘They’ include all edited versions made by the Researchers.

‘They’ may be used in student papers (Thesis) or research reports which may be published online, Some of the Recordings from participants and areas involved in the Project. The Research in Indigenous Studies, the Project recognises the importance of respecting, protecting and upholding Aboriginal and Torres Strait Islander peoples’ rights to their cultural and intellectual property.

Records and copyright in the Recordings will be assigned or licensed to the participants and communities for their use.

‘(Intellectual Property) is protected under federal legislation. Indigenous Cultural and Intellectual Property (ICIP) is not adequately protected in this intellectual property legal framework. However, work is underway in Australia and overseas for greater protection of ICIP. This support is formalised in the principles and protocols formalised in the principles and protocols of the AIATSIS Guidelines for Ethical Indigenous Studies. The cultural owners of these oral stories do not own copyright in them because copyright law only protects written works. Similarly, many traditional artworks cannot be attributed to an individual author, and are old and out of copyright. Yet photographs and filming of those traditional artworks are protected by copyright. Copyright owners are usually the recorders of culture. Even where copyright material protects ICIP, that protection does not cover works after the duration of copyright protection, nor does it protect works that are not adequately protected in the AIATSIS Guidelines for Ethical Indigenous Studies. The Researchers and Partner Organisations are referred to collectively in this Protocol as the ‘Project Partners’. This Protocol was written by Lucinda Edwards and Terri Janke and Company, 2011.

Terri Janke and Company, 2011
Protocols for Indigenous Research

Engaging in research on Indigenous lands and with Indigenous people requires specific considerations and clearances. This Protocol provides guidelines for working within communities which can be adapted to adhere to each community’s specific protocols.

Country

There are many different Aboriginal and Torres Strait Islander cultures and communities within Australia. Each of these communities has different rules and protocols relating to use of their cultural knowledge and for working within the community. All researchers must seek Consent for filming and research relating to Indigenous people and their communities.

Permits

Aboriginal Land Rights legislation requires filmmakers to have a permit when working on Aboriginal lands. These permits must be sought from the relevant land council:


Federal and State/Territory legislation require permits for any filming or research to be undertaken in national parks.

- For Western Australia, permission must be sought from the Western Australia Department of Environment and Conservation at [http://www.dec.wa.gov.au/content/view/30/941/](http://www.dec.wa.gov.au/content/view/30/941/).
- For NSW national parks, including Sydney and Blue Mountains areas, permission must be sought from the NSW Office of Environment and Heritage at [http://www.environment.nsw.gov.au/commercial/Film-makingAndPhotographyLicences.htm](http://www.environment.nsw.gov.au/commercial/Film-makingAndPhotographyLicences.htm).


Death Protocols and Deceased Warnings

In many Indigenous communities, the use of an image or the name of a deceased person can offend cultural mourning practices. Customary law regarding mourning practices will differ between communities. As such, it is best to consult with each community when discussing how the image and name of deceased community members will be treated in the research project. For the Deepening Histories project, the following protocol will be followed:

1. If a person dies during the course of the project, before the final lock off and publication, the relevant Project Partner will consult the family to discuss options and duration for concealing that person’s image or use of alternative names.
2. If a person is dead and the Project Partners wishes to use and publish his or her image in the Project, the family will be consulted if known, but if a family member is not known, the relevant Project Partner will consult and get permission of an Aboriginal organisation from the region the deceased comes from, or from an Indigenous organisation such as a land council or national organisation.
3. If a person dies after publication, the Project Partners will not be able to make any changes to the film or print publication published website and materials, but a notice will be placed on all publications warning of the potential of deceased images.
Reduction to ICIP Rights

Intellectual and Intellectual Property (ICIP) Rights refer to all aspects of Indigenous peoples' cultural heritage.

This heritage includes traditional knowledge, sacred sites, objects and ancestral remains, literary, performing and artistic documentation of Indigenous heritage. This heritage is a living heritage, transmitted from generation to generation to a particular Indigenous group or its lands and seas. Many generations may contribute to the development of cultural heritage which is communally owned.

With ICIP Rights, Indigenous people have the right to:

1. Use and control Indigenous Cultural and Intellectual Property;
2. Be recognised as the primary guardians and interpreters of their cultures;
3. Authorise or refuse to authorise the commercial use of Indigenous Cultural and Intellectual Property according to customary laws;
4. Maintain the secrecy of Indigenous knowledge and other cultural practices;
5. Control the recording of cultural customs and expressions, and the particular language which may be intrinsic to cultural knowledge, skill and teaching of culture.

See the basis of Section C: Principles and Protocols of Working with ICIP of this Protocol.

Copyright

'Act 1968' gives exclusive rights to the copyright owner of protected material. This means that any use of copyright material may infringe copyright. Copyright protects 'original' works, meaning the work must be held by an unincorporated collective community. Copyright will usually belong to the creator of the work, but may be transferred by written agreement. There are also specific laws which deal with copyright ownership in relation to performance on film and sound recordings.

Copyright protection in Australia is automatic, meaning that there is no registration process – original material will be protected from the time it is created. This means that copyright will protect works still in draft format, such as film rushes, draft research reports, and original material will be protected from the time it is created. This means that copyright will protect works still in draft format, such as film rushes, draft research reports, and literary works. Copyright in sound recordings and sound recordings, and may be used. A release or clearance form is best practice to ensure that the rights given to the filmmaker are clearly understood.

Reputation rights of authors, creators, performers and filmmakers are also protected under the Copyright Act. These principles are always acknowledged, and that their works may not be treated in a derogatory manner.

Copyright owners choose to waive some or all of their copyright rights and publish their content as open source material (free software licence). Use of that material may still be restricted in some ways, and the rights being granted by the open source licence confirmed before using open source material.

If copyright has expired, the work or other type of material becomes public domain. Public domain content may be used freely. Where public domain content contains ICIP, this Protocol will still apply, regardless of the copyright status of the material.
B. IP Ownership and Clearance Forms

Ownership of ICIP and IP in the Project

This protocol has been prepared for the researchers, academics, participants, users, interpreters and filmmakers involved in the Deepening Histories Project (the Project Partners). The work done by these individuals for this Project will be subject to the following conditions.

Who is the author of a copyright work?

- a literary work, the author or writer
- an artistic work, the artist/photographer/sculptor
- a musical work, the composer of the music
- a dramatic work, the writer or choreographer

Who is the maker of copyright material?

- a sound recording, the producer (the person who commissions the recording)
- a film, the producer (the person who commissions the film), or the director where the film has not been commissioned
- a broadcast, the maker of the broadcast

Basic Principle:

Subject to the exceptions below, the owner of the copyright in any material created or used in the Deepening Histories Project will be the material’s author or maker. This includes material in draft and final format, and all knowledge.

Exceptions:

1. ICIP Material

Please refer to Part B Principles and Protocols of Working with ICIP in relation to the ownership of ICIP material, in particular Principles 1, 6, 7 and 8.

2. Performers (without ICIP)

Where there is no ICIP Material used, performers of musical, dramatic or literary performances will own the copyright in their performance, and in any Recordings or transcripts made from that performance.

3. Performers (including ICIP)

The relevant Indigenous community will advise who owns the copyright in a performance, and in any Recordings or transcripts made from that performance which uses ICIP Material. Performers of folklore or other ICIP material will have the right to elect ownership of the copyright in their performance, and in any Recordings or transcripts made from that performance. The copyright may be owned by the performer, another community representative or other community organisation.

4. Material created under commission or contract

Where material has been created by an individual under a commission or contract from a Partner Organisation, the ownership of copyright will be subject to the terms of the relevant contract. This exception does not apply to student Researchers at any participating University.

5. Material published on the Deepening Histories website

For material published on the Deepening Histories website, the following conditions will apply:

- The Deepening Histories website will be hosted and published by the ANU. Terms and conditions for use of material on the website will be developed for the Project and will be independent of the ANU’s website terms of use.
- The copyright owners in the material published on the Deepening Histories website will retain all rights in their content, granting to the Project a non-exclusive licence to publish the material on the website.
- The following copyright notice will be published on the Project website: “© Deepening Histories Project [year of publication]”. This notice will be published for information only and is in no way assigning or transferring rights in any material published on the Project website by the Project Partners to the Deepening Histories Project.

This is in addition to the other copyright owners whose material has been used in the project—for example, a scriptwriter or sound track composer.

mers (without ICIP)

there is no ICIP Material used, performers of musical, dramatic or literary performances will own the copyright, and in any Recordings or transcripts made from that performance.

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al created under commission or contract
Clearance Forms

Five clearance forms have been developed for use by researchers, academics, participants, users, interpreters and filmmakers in conjunction with the Deepening Histories project and form part of the NFSA Indigenous Audio-Visual Intellectual Property Toolkit. They reflect the obligations found under Part B IP Ownership and Part C Principles and Protocols of Working with ICIP.

The clearance forms are:

m 1 - On-Country and Communal Knowledge
m 2 - Individual Consent
m 3 - Individual Consent (under 18)
m 4 - Copyright Clearance
m 5 - Archival Material

These forms must be used for different occasions (sometimes multiple forms will be required). Refer to the guide at Attachment C for more information.
C. Principles and Protocols of Working with ICIP

10 Principles and Protocols must be adhered to by all Project Partners involved in the Deepening Histories Project.

holding the value of ICIP

1. Project Partners respect and acknowledge the value of ICIP, and the contributions by Aboriginal and Torres Strait Islander people.

Protocol:

a. People and communities who contribute information which contains ICIP will be consulted about the use of that ICIP by the relevant Project Partner.

b. Aboriginal and Torres Strait Islander contributors will own the copyright when their spoken words are written down, recorded or filmed for the Project. Clearance Forms 1 (On-Country and Communal Knowledge), 2/3 (Individual Consent) and 4 (Copyright Clearance) will be used.

c. Knowledge and information about traditional medicines and healing practices should only be used in the Project when Clearance Form 1 – On-Country and Communal Knowledge is granted. People should be advised that there is no legal protection for Traditional Knowledge and that IP laws have limitations. The risks of making this information available to a wide audience (such as online piracy and re-sharing) must be explained to the contributors.

d. All types of ICIP should be valued for its cultural significance to its custodians, with reference to the laws, customs and protocols of the relevant Aboriginal and Torres Strait Islander community, as communicated to the relevant Project Partner by that community or as contained in any local community protocols provided to the Project Partner.

Where possible, Aboriginal and Torres Strait Islander people who have contributed to the Project will be invited to participate in conferences, presentations and other events arising out of the Project.

2. Respect for Indigenous Laws, Customs and Protocols

Protocol:

a. Aboriginal and Torres Strait Islander communities involved in or the subject of the project should be given an opportunity to identify the ICIP that will be collected or recorded in the project and inform the relevant Project Partner of any laws, customs and protocols that govern its use. Given the nature of the project, it is likely that there may be a lot of ICIP involved. This should be done at the beginning of a project. Clearance Forms 1 (On-Country and Communal Knowledge), and 2/3 (Individual Consent) will be used.

b. Communities that are the subject of research should be encouraged to develop protocols surrounding the use of sacred, secret or sensitive information and knowledge, as well as access to and use of cultural sites, materials, languages and names.

Aboriginal and Torres Strait Islander communities involved in or the subject of the project should be given an opportunity to identify the ICIP that will be collected or recorded in the project and inform the relevant Project Partner of any laws, protocols that govern its use. Given the nature of the project, it is likely that there may be a lot of ICIP involved. This should be done at the beginning of a project. Clearance Forms 1 (On-Country and Communal Knowledge), and 2/3 (Individual Consent) will be used.
Involvement and participation

**Principle:**

Project Partners recognise that Aboriginal and Torres Strait Islander people and communities have the right to determine and develop priorities and strategies in research that involves or affects them and to be actively involved in the research affecting knowledge the importance of providing opportunities for Aboriginal and Torres Strait Islander people to develop author papers.

**Protocol:**

a. Project Partners will give Aboriginal and Torres Strait Islander people and communities the opportunity to participate in projects that involve the collection, use, publication and archiving of their ICIP.

b. Aboriginal and Torres Strait Islander people and communities have a right to be actively involved in the collection of ICIP and will be given the opportunity to be actively involved in its use, interpretation and dissemination of their ICIP.

c. The Project Partners recognise that Indigenous people's involvement and participation is on-going, and continues after publication of the website and its future uses and decisions relating to the longer term management of the project's results.

Free, Prior, Informed consent

**Principle:**

The Project Partners recognise that ICIP should not be collected or used in any way without the Free, Prior and Informed Consent of the Aboriginal and Torres Strait Islander person or community. Under this principle, Aboriginal and Torres Strait Islander people who are the subject of research, or whose ICIP is going to be collected or used in any way have the right to be consulted and to negotiate to reach mutually agreed terms for the collection and use of ICIP. This process should include the execution of formal written agreements on mutually agreed terms that have been reached in good faith.

**Protocol:**

a. Project Partners will seek Free, Prior, Informed Consent from Indigenous persons and communities that are involved in or affected by any research. This will include:

   - Representatives (whether community organisations or persons of authority) of traditional owners of land referenced in research materials; and
   - Any persons who contribute to or appear in the Recordings or whose ancestors appear in the Recordings or archival materials used, where those persons can be identified.

To obtain Free, Prior, Informed Consent, the relevant Project Partner will consult with community organisations with the communities, lands, cultures or heritage appearing in or referred to in the project. The relevant Project Partner will provide a rough copy of the research (such as a thesis, paper, film or recording) to the community representative and individual participant 30 days prior to release for comment and feedback by community organisations.

To obtain Free, Prior, Informed Consent, the Project Partners will give as much information about the research as possible, so that the Indigenous participant and the community can make an informed decision about whether they are happy to contribute to the research. The Project Partners will provide the following information:

- A general overview of the research project;
- Timeline for the research;
- Which people from specific communities will be asked to participate in the making of the research;
- Details of any particular sites and locations that will be documented;
- Where, when and by who the research will be seen and heard;
- Any areas of cultural sensitivity that will arise during the research;
- The government department involved and their intended use of the information;
- Where the intended use of the information is not known at the time of initial consultations, the Researcher will re-consult with the participant when the use is known.

f. Free, Prior, Informed Consent will be taken to have been given:

   - By performers or interviewees when the person has signed Clearance Form 2/3 (Individual consent) and 4 (Copyright Clearance);
   - By communities when Clearance Form 1 (On Country and Communal Knowledge), is signed, or where a permission letter has been signed by its representative community organisation, or if there is no representative community organisation by a person in authority.
Once Free, Prior, Informed Consent has been given, the Project Partners will assume it is continuous unless a communication is lodged with the Project Partners by the representative community organisation or individual participant revoking such consent.

The relevant Project Partner will use its best endeavours to resolve the issue, however should the matter remain in dispute it will be forwarded to the IP Committee for resolution. In some situations it may not be possible to withdraw material after publication or broadcast has occurred.

**Confidentiality and Privacy**

**Principle:** Indigenous people have the right to keep their information confidential — including information about their communities, families and beliefs. Project Partners must respect Indigenous people’s right to withhold information from publication. Project Partners must show their respect, by seeking Free, Prior, Informed Consent before taking a photograph or filming Aboriginal and Torres Strait Islander people for the project. Aboriginal and Torres Strait Islander should also have the right to change their mind or seek the return of information, prior to publication.

**Protocol:**

- The Project Partners will comply with the obligations under the *National Privacy Act 1988*. National privacy laws affect the treatment of personal information. The Information Privacy Principles (IPPs) and the National Privacy Principles (NPPs) contain different obligations:
  - IPPs will apply to Project Partners which are government bodies or agencies:
  - NPPs will apply to Project Partners which are private sector organisations.

- The following additional requirements for privacy and confidentiality must be met when collecting or using ICIP material:
  - Where an Aboriginal or Torres Strait Islander person or community contributes to the research and identifies ICIP material, the Project Partners should act in accordance with the express wishes of that person or community. This may result in stopping the recording of the ICIP or the recording continuing subject to conditions and appropriate consultations regarding the cultural sensitivities around the use of that ICIP material.
  - Privacy for Indigenous people shall be given a high importance before, during, and after completion of the research.

**Integrity and interpretation**

**Principle:**

This principle recognises that Aboriginal and Torres Strait Islander people have a right to maintain the integrity of their arts, cultural expression information and knowledge, and that by virtue of this right Aboriginal and Torres Strait Islander people should be the primary interpreters of their cultural and intellectual property.

**Protocol:**

- The research methodology and timelines will allow for Indigenous consultation at the following stages:
  - Research and data collection stage; and
  - Drafting of reporting and/or editing of footage; and
  - Finalising research; and

  Where an Aboriginal or Torres Strait Islander person or community contributes to the research and identifies ICIP material, Project Partners should act in accordance with the express wishes of that person or community. This may result in stopping the recording of the ICIP or the recording continuing subject to conditions and appropriate consultations regarding the cultural sensitivities around the use of that ICIP material.

Privacy for Indigenous people shall be given a high importance before, during, and after completion of the research.
Attribution and acknowledgement

Principle:
The Project Partners recognise that Aboriginal and Torres Strait Islander people have the right to be acknowledged and attributed for their contributions of ICIP material and their participation in research. This includes individuals and communal groups.

Protocol:
The Project Partners will attribute the Aboriginal and Torres Strait Islander participants in the Project in accordance with their wishes and the wishes of the community, taking into account:

- The names or identity of the participant;
- The time and date of recording;
- The location of filming (including Aboriginal clan group associations or language groups);
- The name of the landscapes, in Aboriginal and Torres Strait Islander languages;
- The sequence in which the footage is used, and the proximity to other footage; and
- The names of consulted organisations.

If an Indigenous participant doesn’t want to be named or identified, the Project Partners agree to edit the participant’s name, image or sound from the Project in accordance with their wishes.

The use of ICIP material will be subject to the attribution and ownership conditions in Clearance Forms 1 (On-Country and Communal Knowledge) and 2/3 (Individual Consent).

Clearance Forms 1 (On-Country and Communal knowledge) and 2/3 (Individual Consent) will be used to clarify the ownership of each record created with the Indigenous person or communities involved.

Making a record as part of research activities will generate copyright in reports, films, sound recordings and data, and the Project Partners agree to exercise the copyright and ICIP in the resulting work according to this Protocol.

The attribution of authorship in the research will be given in accordance with Section B Ownership of ICIP and projects of this Protocol.

Aboriginal and Torres Strait Islander communities, individuals and organisations should be acknowledged for their participation and assistance.

On-going obligations and future use

Principle:
The Project Partners recognise that there is an on-going obligation to work in collaboration with Aboriginal and Torres Strait Islander people and communities regarding the use, access to, publication, dissemination, utilisation, promotion and commercialisation of material collected for research and results of research. Free, Prior, Informed Consent is a continuing obligation.

Protocol:
- All known uses of the research should be negotiated with the relevant Aboriginal and Torres Strait Islander groups of research.
- If a Project Partner wishes to use ICIP material for a purpose that was not originally contemplated by the project and cleared by the community, permission for the new use must be sought in accordance with this Protocol. This will require re-consenting with the community or individual, the written consent (via Clearance Form) for the new use, and any additional ICIP clearances.
suitable sharing of benefits

**Principle:**
Aboriginal and Torres Strait Islander people and communities have the right to an equitable share of the benefits derived from or based upon their ICIP and their contributions to research.

**Protocol:**

- Benefits will be agreed between the Project Partners and the community in an open and informed negotiation, and will be finalised before the research commences.
- Benefits may include:
  - monetary benefits such as financial payments;
  - education and training;
  - employment and community development;
  - improved infrastructure (such as equipment and computers);
  - access to research materials and footage, including raw and edited footage;
  - assignment of copyright in, or a licence to use the Recordings;
  - repatriation of pre-existing archive collections relevant to an Indigenous community involved in the Project.

Benefits should always be shared in a culturally appropriate manner taking into account the wishes of the relevant community.

**Cultural Maintenance and Access**

**Principle:**
The Project Partners understand that the cultures of Aboriginal and Torres Strait Islander people are not static and that provision must be made so that Aboriginal and Torres Strait Islander people can maintain, revitalise and advance their cultures. Provision should be made so that current and future generations are given long-term access to any ICIP, data, research results and materials that are collected or created by the Project Partners.

**Protocol:**

- The Project Partners will, where possible, give plain English copies of reports and findings to the Aboriginal and Torres Strait Islander research participants and communities.
- One copy of the Recordings will be offered to the relevant participant and/or to the Indigenous community involved in the research.
- During the Project the Project Partners will safely and securely store the Recordings.
- On the completion of the Project the Recordings, research reports, and other material will be offered to the NFSA/AIATSIS which will be responsible for archiving the material in accordance with its own protocols and policies. These organisations respect cultural sensitivities relating to collections held by the organisation on behalf of Aboriginal and Torres Strait Islander communities.
- AIATSIS and the NFSA are required to abide by the conditions placed on the access and use of collections by depositors and will require those wishing to use the Recordings to seek participant or community clearances as required.

**Complaints and Disputes Procedure**

The Partner Organisations acknowledge that disputes may arise from time to time over the use of the Recordings and the ICIP and IP rights of contributors in the Project. Where disputes arise, the Partner Organisations involved in the dispute agree to resolve the issues in a prompt and cooperative manner in accordance with the principles found within this ICIP and IP Protocol. Partner Organisations with a pre-existing complaints and disputes policy may utilise those policies to attempt to resolve the dispute.

Being mindful of the principles upon which this Protocol is founded, the Partner Organisations are responsible for ensuring that the Protocol is followed by: monitoring all Researchers, filmmaker and academic compliance with this Protocol; managing the resolution of disputes and complaints relating to the use of IP and ICIP in the Deepening Histories project; referring disputes to an independent third party where the dispute is not able to be resolved between the disputing parties and the Partner Organisation. Independent third parties will be qualified mediators or dispute resolution service providers (for example, the Arts Law Centre of Australia or LEADR).

A copy of this protocol will be held by the NFSA, ANU and AIATSIS for future long term reference.
<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Duration of Copyright Protection</th>
</tr>
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<tbody>
<tr>
<td>Fine art, photographs, sketches, works of artistic craftsmanship</td>
<td>70 years after the death of the artist</td>
</tr>
<tr>
<td>Published writings, fiction and non-fiction, poems, theses, transcripts and song lyrics</td>
<td>70 years after the death of the author</td>
</tr>
<tr>
<td>Musical arrangements or remixes</td>
<td>70 years after the death of the creator</td>
</tr>
<tr>
<td>Plays, dance, film scripts</td>
<td>70 years after the death of the creator</td>
</tr>
<tr>
<td>Archival rushes, field notes etc</td>
<td>70 years from the year of first publication</td>
</tr>
<tr>
<td>Recording of moving images and accompanying sounds</td>
<td>70 years from the year film is first published</td>
</tr>
<tr>
<td>Films, actuality films and photographs made before 1 May 1969</td>
<td>70 years from the year the recording is first published</td>
</tr>
<tr>
<td>Works and films:</td>
<td>50 years from the year the broadcast is made</td>
</tr>
<tr>
<td>Copyright material that is created under the control or direction of the crown</td>
<td>50 years from the year the material is first published</td>
</tr>
<tr>
<td>Any copyright material that is created under the control or direction of the crown</td>
<td>50 years from the year the material is first published</td>
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</tbody>
</table>

Note: films made before 1 May 1969 were protected as a combination of photographs, dramatic works and sound recordings (at that time, there was no independent protection for films). For more detailed information on copyright duration visit the Copyright Council of Australia’s website at http://www.copyright.org.au.
<table>
<thead>
<tr>
<th>Copyright rights</th>
<th>Underlying Copyright</th>
<th>ICIP Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Original literary works are protected by copyright</strong>&lt;br&gt;You need to get permission from the copyright owner to use the written material before you publish or archive – permission should be granted at the collection stage&lt;br&gt;Moral rights – you have to attribute the copyright owner in each piece of written material</td>
<td><strong>Sometimes other people’s written material contains copyright material belonging to other people. You need to get permission from this third person if you wish to use any part of their copyright material.</strong>&lt;br&gt;Written materials may include quotes or extracts from other works (including poems, speeches) or even photos and images. If you are using a substantial part of those underlying works, you need to seek clearance from the copyright owner. The writer of the original text will usually provide a reference or a name which will assist in locating the other copyright owners.</td>
<td><strong>It is important to check for ICIP material. Where material, you will need the relevant commun representative) to use the Project.</strong></td>
</tr>
<tr>
<td><strong>Films are protected by copyright.</strong>&lt;br&gt;If you’re using someone else’s film footage, you need to get permission from the copyright owner of the film beforehand.&lt;br&gt;Moral rights – you have to attribute the copyright owner of the film&lt;br&gt;Special rules apply to the filming of children. Parental consent must always be sought before filming children.</td>
<td><strong>Film Footage will include other material which is subject to copyright protection, and must also be cleared. This includes films that you are using created by someone else and films that you create. For example:</strong>&lt;br&gt;Dramatic or literary works which are read aloud or performed;&lt;br&gt;All sounds and sound recordings (including music)&lt;br&gt;Artistic works featured in the film (you do not require clearance if the artwork is only ‘incidental’ to the film, not the subject of it)&lt;br&gt;Performer’s rights – performers (not interviewees) have rights to authorise their recordings, and in accordance with this Protocol will own the copyright in their performance.&lt;br&gt;Moral rights – you need to attribute the copyright owners of all the underlying works featured in the film</td>
<td></td>
</tr>
<tr>
<td><strong>Copyright in the sound recording itself</strong></td>
<td><strong>Sound recordings of interviewees speaking will mostly be of a live performance not based on an underlying work.</strong>&lt;br&gt;Sound recordings feature underlying works which can include music, poetry or literary works read aloud.&lt;br&gt;Moral rights – you will need to attribute the copyright owners of all the underlying works featured in the sound recording.</td>
<td><strong>Sounds recordings may include ICIP material, you will need the relevant commun representative) to use the Project.</strong></td>
</tr>
<tr>
<td><strong>Artistic works and photographs are protected by copyright</strong></td>
<td><strong>Some photographs include other copyright material in the image – such as</strong></td>
<td><strong>Images (including art drawings) and photog</strong></td>
</tr>
</tbody>
</table>
### Future use of research materials

<table>
<thead>
<tr>
<th>Right Rights</th>
<th>Underlying Copyright</th>
<th>ICIP Rights</th>
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</thead>
<tbody>
<tr>
<td>If you received permission from all copyright owners to publish their work in:</td>
<td>Have you received permission from all the underlying copyright owners to publish their material in:</td>
<td>Where the Project contains ICIP materials, have you received permission from the relevant communities (or appointed representative) to store the research materials?</td>
</tr>
<tr>
<td>the format being published (article, chapter, book etc)</td>
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</tr>
<tr>
<td>the territory being published (e.g. NSW, Australia, each overseas country)</td>
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</tr>
<tr>
<td>the period of time you are publishing or archiving the material</td>
<td>The period of time you are publishing for</td>
<td>The period of time of publishing (e.g. NSW, Australia, each overseas country)</td>
</tr>
</tbody>
</table>

### Archiving of research materials and use of archival footage

<table>
<thead>
<tr>
<th>Right Rights</th>
<th>Underlying Copyright</th>
<th>ICIP Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have you received clearance from all copyright owners in underlying works to archive the material?</td>
<td>(refer to the Collection stage) Have you received clearance from all copyright owners in underlying works to archive the material?</td>
<td>Have you received clearance from all copyright owners in underlying works to archive the material?</td>
</tr>
</tbody>
</table>

### Publication of research materials

- Extra care should be taken when publishing online because of the increase in audience size. Researchers should clearly explain the implications of publishing ICIP material to the community.
- Be sure to list the exact websites that the work will feature on when getting permission.

### Materials and use of archival footage

<table>
<thead>
<tr>
<th>Right Rights</th>
<th>Underlying Copyright</th>
<th>ICIP Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have you cleared the storage rights on all of the copyright owners? his must be done before archiving.</td>
<td>(refer to the Collection stage) Have you received clearance from all copyright owners in underlying works to archive the material?</td>
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</tr>
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<tbody>
<tr>
<td>Have you cleared the storage rights on all of the copyright owners? his must be done before archiving.</td>
<td>(refer to the Collection stage) Have you received clearance from all copyright owners in underlying works to archive the material?</td>
<td>Have you consulted with the relevant community or representative about archiving the material?</td>
</tr>
</tbody>
</table>

---

Terri Janke and Company, 2011

This Protocol was written by Lucinda Edwards and Terri Janke (ICIP) and Intellectual Property (IP) Protocol Deepening Histories, Indigenous Cultural
# Community Clearance Form

<table>
<thead>
<tr>
<th>Use this when:</th>
<th>You are researching on-country or your research is likely to contain ICIP material or communal knowledge.</th>
</tr>
</thead>
<tbody>
<tr>
<td>s:</td>
<td>Community consent for recording on country, use of ICIP material, cultural integrity in the editing stage and attribution of the relevant community or individual.</td>
</tr>
<tr>
<td>NB:</td>
<td>Researchers may provide signed documentation from the relevant community instead of this form. For instance, the land council may use their own licence agreements with permit controls.</td>
</tr>
</tbody>
</table>

# Individual Clearance Form

<table>
<thead>
<tr>
<th>Use this when:</th>
<th>You are filming, photographing or taking sound recordings of someone as part of the research.</th>
</tr>
</thead>
<tbody>
<tr>
<td>s:</td>
<td>Permission from the individual to be filmed, photographed and recorded for specific uses in the project and to clear any ICIP and third party copyright material used by the individual. It also contains rules in the event the participant passes away. The next of kin details provided on the form will be used by Project Partners when clearing copyright material. If the next of kin notifies the relevant Project Partner of a will or last testament which conflicts with the information provided on the form, the Project Partners will discuss the matter directly with the next of kin to reach a resolution.</td>
</tr>
</tbody>
</table>

# Individual (Under 18) Clearance Form

<table>
<thead>
<tr>
<th>Use this when:</th>
<th>You are filming, photographing or taking sound recordings of a minor (someone under the age of 18) as part of the research.</th>
</tr>
</thead>
<tbody>
<tr>
<td>s:</td>
<td>The same permissions granted in the Individual Clearance Form, given by the parent or guardian of the child.</td>
</tr>
</tbody>
</table>

# Copyright Clearance Form

<table>
<thead>
<tr>
<th>Use this when:</th>
<th>You are using copyright material in the research (for e.g. when an artwork or song features on a recording or an excerpt of a poem is published in a report). This form must be signed by the copyright owner or his or her authorised agent.</th>
</tr>
</thead>
<tbody>
<tr>
<td>s:</td>
<td>A non-exclusive licence to use the copyright material for the purposes needed for the research project.</td>
</tr>
</tbody>
</table>

# Archival Material (Cultural Clearance) Form

<table>
<thead>
<tr>
<th>Use this when:</th>
<th>You are using historical archival footage or records (for e.g. an archived photograph, film or sound recordings)</th>
</tr>
</thead>
</table>