Copyright Issues and Indigenous Language Materials

Introduction

* The digital era has increased the amount and quality of Indigenous language materials available
* Indigenous and non-Indigenous perspectives on copyright and intellectual property differ in some aspects
* The challenge for linguists is to negotiate these differences when dealing with archiving and access in documentation and conservation of language materials

<table>
<thead>
<tr>
<th>Western law</th>
<th>Indigenous customary law</th>
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<tbody>
<tr>
<td>IP rights are owned by individual creators</td>
<td>IP rights are communally owned</td>
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<tr>
<td>IP can be freely transmitted and assigned, usually for economic returns, for a set time and in any medium</td>
<td>IP rights are not transferable but transmission (if permitted) is based on cultural qualifications</td>
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<td>Emphasis on economic rights</td>
<td>Emphasis on preservation and maintenance of culture</td>
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<tr>
<td>Copyright applies to original work</td>
<td>Works may draw on cultural heritage</td>
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<tr>
<td>Copyright applies to an identifiable author</td>
<td>Identification of authorship may be implicit or communal</td>
</tr>
<tr>
<td>Copyright does not protect styles, methods or ideas</td>
<td>Images and styles belong to specific groups of people</td>
</tr>
<tr>
<td>Copyright protection lasts for the life of the author plus 70 years</td>
<td>Cultural works are significant in perpetuity</td>
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Orphan works

* Some materials do not name the people involved in the creation of the work
* This means it’s not known who can give permission (items currently hidden from view)

**TIP:** Always attribute copyright status and who created the works

Section 200AB

* The Copyright Act 1968 includes a specific section for those working in educational institutions, libraries, archives, etc.
* Section 200AB was introduced to allow certain people to use copyright material for socially beneficial purposes, without permission and without payment, provided certain criteria are met

**TIP:** This criteria can allow collections to make materials public which otherwise would remain hidden due to copyright law

http://www.copyright.org.au/pdf/ICC/Information_Sheets/Special_Case_or_Flexible_Drafting_Exceptions_Section_200AB.aspx

The context

* The Living Archive of Aboriginal Languages (www.cdu.edu.au/laal) is an open access digital repository of endangered literature in Indigenous languages of the Northern Territory
* Starting with materials published in remote NT schools with bilingual education programs, it now has over 2500 items from over 30 communities across the NT

The problem

* Copyright for materials produced by employees of an organisation belong to that organisation
* Many resources in the Living Archive are copyright by the NT government through the Department of Education
* This excludes the voices of the original storytellers, artists, translators, editors, etc who created these books
* While their moral rights of attribution are protected within the law, the creators have limited rights to refuse to allow their books to be made public on a website such as the Living Archive

The Living Archive solution

* Get a license from the copyright holders (eg government department, other producers) to digitise and publish online.
* Ask creators (or family of those who’ve passed away) to sign permission allowing their materials to be made public online
* Clearly state a ‘take-down’ policy whereby people can request items be removed from public view
* Select a Creative Commons license to give users a clear understanding of what they can/can’t do with materials from the website

Indigenous Cultural and Intellectual Property (ICIP)

* ICIP refers to all the rights that Indigenous people have to protect their traditional arts and culture
* Australian intellectual property laws only protect some forms of ICIP (http://tinyurl.com/ICIP-ch11)

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Take home message

* Linguists creating language materials should clearly identify the copyright holders and their conditions of access to the materials
* Collections and archives working with legacy materials need to consider all these issues
* Each collection is different, so what works for one may not work for any other project

**TIP:** Help is available! Get legal advice

www.cdu.edu.au/laal