

Gunditjmara Language Protocols (in process)

This document is the beginning of Protocols for our Language and language use so is mainly comprised of excerpts to give you an overview of the things we need to consider as arts and cultural expression practitioners when we are using our cultural knowledges in our practice and in our sharing.

Gunditjmara Alive – Song Project Language Protocols

In this project we are writing and performing using our Mother Tongue language.

Principles

Mother Tongue is our birthright. We have this right to learn, speak, sing and use our language in our daily lives and in creative cultural expression.

We respect the cultural integrity of our Ancestral languages.

Translation processes

Translation of our lyrics will be in collaboration with and authorised by Senior Language Knowledge Holder/s*.

In undertaking our translations we will undertake basic level translations: that is finding words through the resources given through this Project.

Any language development will be done in collaboration as per above principles.

*If a participant is an authorised Senior Language Knowledgeholder then they will be able to do higher level translation work.

For the Gunditjmara Alive Song Project the Senior Language Knowledgeholders are Uncle Dr Richard Frankland and Yoolongteeyt Dr Vicki Couzens.

Excerpts From Indigenous Cultural Protocols and the Arts by Terri Janke 2016©

Intro

Indigenous cultures are steeped in thousands of years of heritage and continuing practice. Using and reproducing traditional cultural expression within new works requires consideration of Indigenous cultural protocols.

‘...protocols advocate the observance of ethical principles that set standards for recognising Indigenous ownership of Indigenous cultural expression as stated in the *Declaration on the Rights of Indigenous Peoples*.’

Principles: Snapshot

When implementing the protocols, arts practitioners should follow the principles outlined in the five protocols booklets. The following are examples of questions that the practitioner

should consider when developing the project methodology:

Principle 1 Respect

- Have you considered why your organisation is undertaking the project, why you are incorporating Indigenous material, and the perspective you bring to it?
- How will the project acknowledge the Indigenous groups where the project is located?
- In what ways should your project respect Indigenous worldviews, lifestyles and customary laws?
- Does your project encourage or promote diversity of Indigenous cultures?
- Will your project involve a public event such as a launch, exhibition, album release, performance, book release or event of local, state or national significance?
- What representatives of the traditional owners will attend and give a welcome to country?

Principle 2 Indigenous control

- How can your project set up systems for Indigenous control over ICIP material? For example, are Indigenous people in key creative roles; setting up an advisory committee?
- How will you consider who can represent particular language groups?
 - Did you consider who can give cultural clearances to use traditionally and collectively owned material?
 - Did you identify the Indigenous people in authority for specific stories, geographic locations, styles, songs, knowledge and imagery?
- Did you involve Indigenous people in all stages of the project? Including Indigenous artists, knowledge holders, curators, musicians and communities?
- Does your project involve a visit to Aboriginal lands or outer Torres Strait Islands? If so, did you obtain permission from the local land council/trust/the relevant community council?

Principle 3 Communication, consultation and consent

- Does your project deal with communally owned material (e.g. ritual knowledge, creation stories, songs, or traditional or tribal communal designs)?
- If so, how will you seek consent from the traditional owners or other relevant Indigenous people/groups? Consider the following:
 - How will you inform the relevant Indigenous person about the implications of consent?
 - Did you ask the Indigenous contributor whether he/she requires an interpreter? If so, did you ask them to identify a suitable person to translate?
 - Did you engage the services of an interpreter? If so, did you pay them for their services?

- How much time will you allow for obtaining cultural clearance and are you prepared for the possibility that approval will be denied or conditional on substantial changes to your project, music or book?
- Did you make sure that consent comes from the right person or faction(s) within a community?
- Does more than one Indigenous group have custodianship of an image or other heritage item? If so, did you seek consent from every group?
- Does your project contain secret and sacred material or gender-based works? If so, did you check whether special communication procedures are required to obtain consent?
- Is your project collaborative?
 - If so, did you obtain the consent of the Indigenous contributor and their communities in the initial development phase of the project?
 - Did you discuss the long-term control and use of the works (including copyright ownership of the works produced) in the initial development phase of the project?

Principle 4 Interpretation, integrity and authenticity

- Does your work reflect the cultural value of the subject matter?
- Does it expose confidential, personal or sensitive material?
- Does it reinforce negative stereotypes?
- Do you use inappropriate or outdated perspectives and terminology?
- If you reproduced any Indigenous images, symbols, songs, stories or knowledge, did you discuss and gain consent for any material alterations? Who was consulted for that consent? Were you prepared to change your proposed use if the Indigenous language group or community did not agree with the proposed alteration/use?
- Was the authenticity of a work checked and verified by an appropriate authority?
 - Did the Indigenous contributor draw on their own particular cultural heritage when contributing to the project, rather than that of Indigenous regional groups to which he/she has no attachment?
- In marketing the project, have all the Indigenous participants and stakeholders agreed to the use of their knowledge, songs or designs, including reproductions and the use of biographical material and text?
- Were Indigenous stakeholders involved in the project given the opportunity to give feedback on drafts of the project before it was made publically available? Are they attributed or credited?
- Did you hold a project launch, album release, book release, performance or exhibition?
 - Did you involve Indigenous people in the development and management of the exhibitions, album release, book release, project launch or performance?
 - Did you promote *both* the Indigenous cultural values of the work *and* the Indigenous contributors and his/her Indigenous community?
 - Was the Indigenous contributor and/or relevant community present at the exhibitions, album release, book release, project launch or performance? If so, did you acknowledge them publicly and offer them hospitality?
 - Did you discuss the labelling and promotion of the project and each Indigenous contributor with those individuals and their community, including written material

about the exhibitions, album release, book release, project launch or performance in any catalogues?

Principle 5 Secrecy and confidentiality

- Does your project contain secret or sacred material? Have you discussed any restrictions on use with the relevant Indigenous groups?
- Does your project or accompanying material contain any reference to personal/confidential information about individual Indigenous people? If so, did you seek consent from anyone who might be affected by the disclosure (the individual themselves, their community/relatives) prior to publishing the information?
- Does your project feature any deceased Indigenous person? If so, did you obtain clearance from their family/community prior to publication?

Principle 6 Attribution and copyright

- Did you attribute Indigenous custodians, Elders, communities or other Indigenous individuals for any contribution which they may have made to the development of the project or use of their cultural material (e.g. providing cultural clearance, telling their stories, providing expert advice on aspects of Indigenous culture)? If so, *how* did you attribute their assistance?
- Does an image, song, performance or story originate from a particular cultural group? If so, did you attribute the group as the cultural source? E.g. an image originating from a particular language group should be attributed in each and every publication illustrating the art work.
- Did you ask the Indigenous person or community *how* they wish to be attributed with ownership of the artwork or cultural material?
- Are there any works of joint authorship in the project (e.g. more than 1 artist who would have copyright interest in the work)? If so, did you obtain the consent of the other artist before exercising their rights under copyright law (e.g. right to licence reproduction of the work)?
- Licensing the use of copyright material such as artwork/photography/traditional knowledge/music:
 - Have you negotiated a written contract with the artist?
 - Did you give the artist the opportunity to obtain proper legal advice?
 - Did you explain the contract to the Indigenous artist? Did you ask the artist whether they require a translator to explain the major issues of the contract?
 - Are the exhibitions, album release, book release, project launch or performance to be altered or adapted for mass production? If so, artists should be given the opportunity to approve or reject the alteration/adaptation.
 - Did you ensure that the agreement does not assign the copyright of the artist rather than license its use?
 - Did you seek advice on copyright licensing issues?
- Did you reproduce any artwork, songs, traditional knowledge, or traditional dance? If so, did you obtain copyright clearance from the artist? Was a written agreement used? Did you keep records of the rights granted? Did you ask for copies of the reproductions?
- Do you have any arrangements with educational institutions (e.g. schools and universities) for reproduction of the exhibitions, album, book, project or performance?

If so, did you check to see whether the artist is entitled to any royalties for use of their exhibitions, album, book, project or performance in books and films? Note that artists need to join agencies such as Viscopy, Copyright Agency and Screenrights in order to receive payment.

Principle 7 Proper returns and royalties

- Did artists and contributors in the project receive royalties? Does anyone else receive royalties?
- Were fees paid for the commission of work at appropriate industry rates?
- Were written agreements used to govern the payment of royalties?
- Was copyright ownership and contributions discussed upfront?
- Are any of the Indigenous artists or contributors registered with a copyright collecting society?
- Did you arrange for non-pecuniary benefits to be provided to any Indigenous people or communities for their contribution to the development of your project (e.g. launch hosted in the Indigenous community)?
- Do the Indigenous contributors share in the benefits of any commercialisation of the project?
- When arranging speaking engagements and interviews, were issues such as payment, childcare and other services discussed?
- Have the artworks, books, albums, performances or other stories or knowledge been reproduced on the internet? If so, was consent obtained to use it in this way prior to publication? Were measures taken to limit the ease of copying? Did the website producer discuss how the work would be reproduced and ensure that proper attribution was given?

Principle 8 Continuing cultures

- Have you maintained relationships with other Indigenous contributors and communities in order to facilitate future consultation?
- Did you consider and discuss future uses of the contributions in the project that you may not have envisaged at the initial consultation?
- Have you negotiated ways that the cultural protocols could be included in future plans for the project (e.g. included on user terms and conditions or on other contracts)?

Principle 9 Recognition and protection

- Have you used written agreements and contracts to make sure that rights are cleared for proposed and intended uses? Did you seek independent legal advice on written releases and contracts?
- Do you require traditional custodian notices or any other special acknowledgements for Indigenous cultural and intellectual property.

Case Study examples

Music

Kaiwalagal Wakai: Music and Dance from the Inner Western Islands of Torres Strait

Introduction

Kaiwalagal Wakai is a Music and Dance CD and DVD celebrating culture from the Inner Western Islands of the Torres Strait. The filming and recording on the CD were initiatives of the Torres Strait Regional Authority (TSRA), who has to date completed similar projects with fourteen communities in the region. Karl Neuenfeldt, a music researcher who has recorded many Torres Strait Islander musicians including Uncle Seaman Dan, worked in collaboration with TSRA and co-producers Nigel Pegrum and Will Kepa. The project aimed to improve the lifestyle and wellbeing of Torres Strait Islanders and Aboriginal people living in the Torres Strait. Through doing this it hopes to gain recognition of Torres Strait Islander and Aboriginal rights, customs, and identity.

The CD and DVD have a variety of cultural activities which all play a role in cultural wellbeing for Torres Strait Islanders and Aboriginal people. The CD has a total of 18 songs and the DVD includes dances, interviews about music and cultural comments by traditional owners. The creation of the CD and DVD required the involvement of many members of diverse communities in the Inner Western cluster of Torres Strait Islands.

1. Respect

When working with Indigenous Australians it is respectful to correctly represent cultural material and information about life experiences.¹⁹⁸

The involvement of the TSRA, as the peak body for Torres Strait Islanders set the foundation for the cultural engagement required to undertake the project.

Karl Neuenfeldt explained that when he was working with Torres Strait Islanders on Kaiwalagal Wakai (meaning the voices of the people of the Inner Western Islands) those who worked on the project were invited to the CD and DVD launch. They were then able to decide who they wanted to represent them. Karl Neuenfeldt also ensured that he asked their permission before photographing or filming them at the event.

When holding a launch it is respectful to acknowledge the Indigenous land that the event is taking place on. This was done at the Kaiwalagal Wakai release. Karl Neuenfeldt also explained that during the Kaiwalagal Wakai project he tried to respect Indigenous worldviews, lifestyles and customary laws as much as he could. He did this through working with the TSRA to identify the correct Indigenous groups that were to be involved and

¹⁹⁸ Australian Council for the Arts, *Music: Protocols for Producing Indigenous Australian Music*, (2nd ed, 2007) 10.

informed about the project. Before the project was released he also ensured that the communities signed off on the material.

The funding body (which was the TSRA) selected Kaiwalagal Wakai because it promoted the diversity that exists in Torres Strait Islander and Aboriginal cultures. When selecting artists to perform or to provide art works Karl Neuenfeldt tried to select an equal number of male and female musicians, dancers and artists from various communities.

2. Indigenous Control

Indigenous control must be maintained throughout a project that involves Indigenous Australians.¹⁹⁹

Ensuring the correct representation of certain language groups is a part of this Indigenous control. When writing the orthography (a methodology of writing a language) for the booklet's songs' texts certain Torres Strait Islanders were consulted for the correct use of languages. Different Torres Strait Islander communities use different spelling for the same words and therefore some of the words in the orthographies were spelt differently. Karl Neuenfeldt explained that this was a challenge because there have been recent drives to standardise spelling – but out of respect for Indigenous control Karl Neuenfeldt ensured that spelling was corrected by the Torres Strait Islander communities. Karl gave the communities' spellings priority.

Cultural clearance is another part of Indigenous control. This means that the acknowledgements must be given to the relevant Indigenous communities or individuals. Karl Neuenfeldt ensured that the authorship of community music was acknowledged if it was known. If the authorship was not known or out of living memory, then the song was listed as 'Unknown'. If an author is deceased then, where possible, permission was obtained from a senior family member or community. In this way, that person acted as a custodian for the song.

An essential part of the project for Karl Neuenfeldt was including Indigenous people throughout all stages. He visited different Torres Strait Islander and Aboriginal communities after obtaining permission from the local community councils to enter the community.

3. Communication, Consultation and Consent

Communication, consultation and consent should be applied when working with Indigenous Australians.²⁰⁰

The relevant Indigenous people were identified through the funding body, and consulted about the implications of consent – this was done via an information sheet and signing of a release form prior to any involvement. Children were also involved in the recording and filming stages of the project, and their clearance and release sheets were done through their local schools. All of the production crew also had Queensland Blue Cards – prevention and

¹⁹⁹ Ibid 11.

²⁰⁰ Ibid 13.

monitoring system for people working with children and young people – this ensures a safe environment for children involved in the project.

If translation was required for a song's text then payment was provided to the translator. Karl Neuenfeldt explained that they always tried to seek consent from the correct person for that community or language group by asking the TSRA (who had all the contact information in the communities). The project was collaborative and therefore they ensured that consent was gained from each of the Indigenous contributors or communities involved. They also explained the long term control that the communities and individuals held.

4. Interpretation, Integrity and Authenticity

Indigenous musicians should have control over how their cultural heritage is being presented.²⁰¹

Karl Neuenfeldt explained that the project aimed to reflect the cultural value of the communities by allowing the Torres Strait Islander and Aboriginal people to select the songs, perform them and provide details of their interpretation for the orthography. The project is a celebration of culture, and promotes positive cultural messages.

Cultural consultants were also asked about the use of cultural images, sounds, stories or knowledge that went into the recordings, filming and CD and DVD design. If a Torres Strait Islander language group or community did not approve an alteration or use, then Karl was prepared to alter or remove the material. However, this situation was very rare as people were mostly pleased to see the material being used for the project. The important thing was that the material was checked by the correct Indigenous people.

The input into the project was very localized, so the communities involved made decisions about involvement of particular people or knowledge. Karl Neuenfeldt gave two examples:

- The first consisted of the involvement of a Torres Strait Islander teacher from another island, who was a temporary resident during the filming and recording project. He was not selected to participate because he was not considered a permanent part of that Island's community. The community selected other participants who had knowledge and connection to that Island's culture.
- The second was when an artist wanted to include a Papua New Guinean song on the CD. The community decided against it despite the close geographical connection between Papua New Guinea and the Torres Strait Islands and the fact that there is sometimes sharing of culture.

All the Indigenous art workers and photographers were paid a non-exclusive fee for their work before the CD and DVD were manufactured. The Indigenous stakeholders and participants were also sent an mp3 of the CD, a draft of the booklet and a draft of the DVD to sign off on before manufacture. If someone did not consent to the project then it was halted until the issues were rectified.

²⁰¹ Ibid 17.

It was important to get Torres Strait Islanders involved in the project. Therefore, one out of the three producers, Will Kepa, was a Torres Strait Islander. Most of the recording and filming of the project was of Indigenous origin and participated in by Indigenous people.

Death and its attendant rituals and cultural protocols play significant roles in the Indigenous Australian community. Specific decisions should be discussed. Karl Neuenfeldt explained that a process was developed to deal with the future management of the recording. Under this process, if someone from the community passes away after production, the recording and film would be checked by a cultural consultant rather than the whole community. If requested, deceased contributors would be denoted as 'Late'.

Promotional information was also included in discussions with Indigenous communities so they understood that the CD and DVD would be sent to national archives such as the National Library, National Museum, National Film and Sound Archives, State Libraries and local keeping places. The CD and DVD package was also sent to media outlets such as SBS Radio and TV, ABC Radio and TV and other local news outlets.

5. Secrecy and Confidentiality

Some Indigenous cultural material is not suitable for wide dissemination on the grounds of secrecy and confidentiality.²⁰²

The CD and DVD did not contain any secret or sacred information. However, there were times when people in the community passed away during or after production and release of the CD and DVD. This was discussed with the community and families and terms were developed as to what would happen with the recordings and information. It was sensitively approached, but in reality, it is not always possible to easily edit a film and recording after someone passes away. The culturally appropriate approach followed was to pay respect for mourning practices of family and community and to seek informed consent from family representatives.

6. Attribution and Copyright

Indigenous people should be attributed for use of their cultural heritage in musical works.²⁰³

Different permissions were obtained from each specific individual and community for use of their cultural heritage in such musical works. The local clan, totem and language group are always referenced in the booklet. Karl Neuenfeldt also explained that the attribution was discussed with the communities and usually attribution was placed in alphabetical order unless Elders were noted first.

The contract given to Indigenous individuals or communities was explained to them by the project funder, and the TSRA explained the copyright and licencing issues. It was important that the copyright vested in the artist and any rights granted to the project were clearly stated in a written contract.

²⁰² Ibid 18.

²⁰³ Ibid 19.

7. Proper Returns and Royalties

Participation in the album was gratis because it was a community arts project with a limited budget and it involved a lot of people. Each participant received a free copy of the CD and DVD. If a song from the CD or a dance from the DVD is to be used in a documentary or a television show then the TSRA would work with the community or individual to grant a licence. The producers do not claim or receive any fees. The producers advised that the copyright owners of the songs could join APRA in order to control the music rights and receive any benefits from public performance royalties or other commercial exploitation.

In some instances it was difficult to explain the copyright ownership of the CD and DVD content due to distrust or dislike of governmental bodies.

8. Continuing Cultures

Indigenous people are responsible for ensuring the practice and transmission of Indigenous cultural expression is continued for the benefit of future generations.²⁰⁴

The CD and DVD allow for Indigenous culture and knowledge to be understood and learnt. The relationships formed with the communities during the production have been maintained and artists or groups from each community often apply for grants to do full CDs or other arts-based projects.

9. Recognition and Protection

Often it is too expensive and complex for low budget community projects to give all participants individual legal advice. A way to deal with it is to develop a single rights agreement and give advice about it to the community and participants.

To provide recognition of ICIP, the Indigenous individuals and communities were recognised in the CD and DVD booklet.

The copyright in the album was vested in the TSRA who was recognised as the publisher of the CD and DVD.

Key Lessons:

1. It is important to try and include Indigenous people throughout all stages of a project in which Indigenous Intellectual Property and Cultural Expression is being used.
2. Ensure that the Indigenous people involved in the project understand any legal information they must sign.
3. Ensure Indigenous control through giving Indigenous contributors the opportunity to select the Indigenous Intellectual Property and Cultural Expression that they want to use.

²⁰⁴ Ibid 37.

Yabun Festival

Introduction

The Yabun Festival is the largest one-day Indigenous festival in Australia. It is a free community event held annually in Victoria Park, Camperdown on the 26th of January to celebrate the survival of Australia's Indigenous cultures and peoples. Yabun is run by the Gadigal Information Service Aboriginal Corporation, which also operates Koori Radio. It features an extensive line-up of both well-established and up-and-coming Indigenous musicians as well as leading artists, performers and community figures. Yabun has become a hallmark celebration of Indigenous cultures and talent since its inception in 2002 and now attracts between 15 000 to 20 000 people annually.

As a regular and very popular annual event involving numerous Indigenous artists and performers, Yabun serves as an important case study for its presentation of various Indigenous performances and cultural activities.

1. Respect

When working with Indigenous Australians it is respectful to correctly represent cultural material and information about life experiences.²⁰⁵

As a prominent Indigenous festival, respect for Indigenous peoples, cultures and protocols is a very important aspect of Yabun's success. The festival opens in the morning with a smoking ceremony which cleanses the area and welcomes festivalgoers to Gadigal Country. Following that, a corroboree is performed, welcoming visitors through dance and emphasising the Indigenous cultures within New South Wales where the festival is held. After these acknowledgements and welcomes, cultural performances from all over Australia are held to celebrate the vast range of culture present across the nation.

A particularly noteworthy inclusion at the event is an Elders' tent. This is an area for Elders to relax and rest in the shade, with plenty of water available. The inclusion of this service demonstrates respect and thoughtfulness towards the Elders who attend Yabun – it reflects the respect for Elders that is embedded within Indigenous communities, and makes the event accessible and attentive to cultural practices.

2. Indigenous control

Indigenous control must be maintained throughout a project that involves Indigenous Australians.²⁰⁶

Yabun Festival is an initiative of the Aboriginal corporation, Gadigal Information Service ("Gadigal"). It is managed and planned by Indigenous staff and Yabun Festival Manager

²⁰⁵ Australian Council for the Arts, *Music: Protocols for Producing Indigenous Australian Music*, (2nd ed, 2007) 10.

²⁰⁶ Ibid 11.

Kieran Satour. This enables the festival as a whole to be controlled by Indigenous people and be mindful of Indigenous needs.

All featured artists and performers are Indigenous. This means the event operates as an Indigenous celebration of Indigenous cultures, and a culturally safe and accessible festival for the entire community to enjoy.

3. Communication, consultation and consent

Communication, consultation and consent should be applied when working with Indigenous Australians.²⁰⁷

Yabun requires all performers to sign an Artist's Agreement to ensure they are informed about their rights and responsibilities in relation to their performance. This enables the performers to be aware of the conditions surrounding the nature of their performance and its broadcast, so they can make an informed decision about whether or not to consent.

As part of these agreements, performers are required to have appropriate consent to perform community-owned cultural materials. This ensures that Yabun does not feature or broadcast any culturally-significant material without the knowledge and consent of the traditional owners.

Gadigal has a long history in the local Indigenous community. In order to maintain its positive relationship with the community, it seeks to operate Yabun in accordance with the community's wishes and in a way that can benefit the local community. Using the Corroboree Ground to acknowledge and welcome people to Gadigal Country reflects Yabun's consultation with the community. The Corroboree Ground was a response to comments from community members calling for a stronger dance component of Yabun. Its implementation addressed these comments, created the opportunity for broader participation by Indigenous communities and strengthened the Yabun Festival's perception as a gathering ground similar to a traditional corroboree.

4. Interpretation, integrity and authenticity

Indigenous musicians should have control over how their cultural heritage is being presented.²⁰⁸

Yabun is organised by Indigenous people to be an Indigenous event for the celebration of Indigenous cultures. This means musicians and performers get to perform within a culturally-supportive and appropriate setting. All performers at Yabun are Indigenous. Along with the culturally-appropriate atmosphere, this allows the performances to be interpreted within an Indigenous context.

Yabun's Artist Agreement requires the performer to obtain appropriate consent for the performance of cultural knowledge and traditional dances or songs at Yabun. This helps to

²⁰⁷ Ibid 13.

²⁰⁸ Ibid 17.

ensure the performances are appropriate for public display. A further clause requests that the performer inform Gadigal of any cultural protocols which should be taken into account for “the staging, filming and broadcast including any attribution that should be given to Indigenous clans or communities”. By acting in accordance with these protocols where possible, Gadigal can help to further ensure the integrity and authenticity of the performances.

5. Secrecy and confidentiality

Some Indigenous cultural material is not suitable for wide dissemination on the grounds of secrecy and confidentiality.²⁰⁹

To ensure this principle is met, Yabun engages Indigenous performers who have control over what they present to the public in terms of cultural knowledge. Gadigal has no desire for sacred material to be performed at Yabun. The new Artist Agreement requires performers to ensure that their performance contains no such material and is “suitable to be performed and broadcast to a general audience”. It also states that the performance must not cause offence to Indigenous people.

Furthermore, the Artist Agreement states that in the event of a performer’s death, the family may contact Gadigal to request any restrictions upon the continued circulation of the performer’s image (as recorded at Yabun).

6. Attribution and copyright

Indigenous people should be attributed for the use of their cultural heritage in musical works.²¹⁰

Gadigal attributes all of Yabun’s Indigenous performers through the Festival’s written program which is published for the public. The MCs are also informed on the day of the identity of the performers and what they are performing so that the artist can be acknowledged in front of the audience. The requirement for the performer to inform Gadigal of any cultural protocols for the performance also gives Gadigal the opportunity to make an appropriate cultural attribution where necessary.

As well as acknowledging the artists themselves, Yabun acknowledges the Country of the artist – both at the festival and in its printed program.

7. Proper Returns and Royalties

Royalties are a vital form of income for musicians. Copyright owners are entitled to receive royalties as payment for radio broadcasts, television and internet use of their music and public performances.²¹¹

²⁰⁹ Ibid 18.

²¹⁰ Ibid 19.

²¹¹ Ibid 34.

There are two levels of benefit-sharing through Yabun:

- Firstly, artists are remunerated for their performances and royalties are paid for the public performance of copyright material. In order to allow royalties to be appropriately paid to all artists, the set-lists of performers (as well as the list of songs played by the DJ between performances) are submitted to the Australasian Performing Right Association (APRA). This enables all artists and songwriters to receive the royalties they are entitled to from the public performance of their music.
- Secondly, Gadigal seeks to maximise the cultural and economic returns to the local Indigenous community by allowing community members and organisations to set up stalls at Yabun Festival to sell their cultural works to the public. These stalls are priced so that the lowest fees are paid by charitable/not-for-profit organisations and Indigenous people/businesses selling handmade works, while other businesses and corporations pay higher fees. This enables the wider community to participate in this celebration of Indigenous cultures by making it accessible for them to sell their cultural works to the public.

8. Continuing cultures

Indigenous people are responsible for ensuring the practice and transmission of Indigenous cultural expression is continued for the benefit of future generations.²¹²

The continuation and celebration of Indigenous cultures lies at the heart of Yabun Festival. It was established to celebrate the survival of Indigenous peoples and their cultures, and is designed to be a positive, empowering celebration for Indigenous artists, performers and community members. As Yabun features different Indigenous performers each year (and does not limit itself to those who are already well-established) it gives numerous Indigenous people a platform to showcase their talents and culture. The live broadcast of these performances over Koori Radio enables an even larger audience to hear the performer and increase their exposure.

9. Recognition and protection

Gadigal's Artist Agreement stipulates that Indigenous performers retain all copyright over their musical work. Gadigal is only given the right to record a performance and broadcast that recording.

In order to protect Yabun itself, Gadigal has registered "Yabun" as a trademark protected under the *Trade Marks Act 1995* (classes 9 and 41). A registered trade mark provides legal rights to words, logos and other branding devices and is valuable registered intellectual property. Gadigal registered their trade mark in 2006. The registered trade mark ensures the Yabun brand is exclusive to Gadigal in relation to the reproduction of music through CDs and DVDs, as well as live music events, entertainment services, events relating to Indigenous arts or crafts, etc. This protects the Yabun brand from misuse or appropriation.

²¹² Ibid 37.

Key Lessons

1. When holding an event, consult with the local community about how best to acknowledge their Country.
2. Use written agreements with your performers to outline the terms of their payment and protection of their copyright.
3. To protect your business register a trade mark for your festival name and brand.

