LACK OF POLITICAL WILL OR ACADEMIC INERTIA?

The need for non-legal responses to the issue of Indigenous art and copyright

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For more than 30 years, Indigenous art and copyright commentators have levelled Indignant and frustrated voices at the state of Australia's copyright law. The initial focus of critique was the exclusion of Indigenous works from copyright protection, a situation which prevailed until the late 1980s. However, once formal equality between Indigenous and non-Indigenous works was achieved, the focus of commentary shifted to the substantive inequality occasioned by equal rights before the law. The special nature of the Indigenous context was deemed far removed from copyright's traditional wealth creation function and thus, special and culturally appropriate intervention was seen as necessary to protect Indigenous works from unsolicited reproduction. Commentators looked towards other sources of law, such as confidential information and native title, as well as the possibility of legislative intervention to remedy the deficiencies of the *Copyright Act 1968* (Cth).

Despite commendable and well-intentioned proposals, this extensive academic body of literature has failed to secure intellectual property protection that fully reflects unique Indigenous needs and circumstances. Indeed, very little academic progress has been made since the pioneering work of Janke, Golvan and Gray in the 1980s and 1990s.[1] Why have we faltered? Where did it all go wrong? And, most importantly, how do we overcome the inertia that is currently plaguing this issue?

To argue the absence of political will and admit defeat, as did the commentary as early as 1993,[2] is an unsatisfactory solution to a very real, important and pressing problem. At the point where politics is blamed for a lack of action, the door is opened to helplessness and academics chose to subjugate their agency to the whims of politicians. Cultural appropriation is ultimately an issue of behaviour standard-setting and not legal enforcement. To this end, it must be remembered that the law is not the only norm creator. Bottom–up, as well as top–down, approaches are possible.

We need to think outside of the law to 'fix' the problems posed by the *Copyright Act*. By thinking outside of legal principles and structures it is possible to draw upon the experience of the copyleft movement. The success of Free and Open Source Software (FOSS) communities in retaining control over their cultural property highlights that a strong customary norm can successfully regulate the behaviour of parties who deal with communal property. It is only once commentators let go of their preference for the legal that real progress can once again be made to protect the rights of Indigenous artists and their communities. Moral, yet passive, righteousness is no longer enough.

Different ways of knowing, owning and creating

Calls for protection of Indigenous artworks from appropriation arise due to the fundamental schism between copyright law's regulation of original works and Indigenous ways of owning, knowing, and creating art. Copyright law is actively concerned with providing an incentive to creativity by 'build[ing] a fence around the informational product… [so that the creator can] fully realise their intellectual capital as wealth'.[3] In contrast to copyright's end-goal of wealth, Indigenous communities regulate artistic production to secure cultural integrity. Clans exercise strict authority over who may paint what and the publication and reproduction of works. Art is regarded as an expression of cultural identity and the artist's role is considered similar to that of a custodian. There are also communal interests of varying degrees vested in works because of the division of labour and responsibility for a work.[4] The discrepancy between the Indigenous artistic context and the underlying incentive function of the *Copyright Act* leads to substantive inequality and justifies special intervention so that Indigenous artworks may be protected in a culturally appropriate way.[5]

From exclusion to formal equality

Indigenous art was initially excluded from the scope of the *Copyright Act* on grounds of non-originality. It was regarded as 'an exemplar of primitive society'[6] and, thus, unacceptable as art. For example, the 1987 *WIPO-Australia Copyright Program for Asia and the Pacific* report assumed that works with folkloric themes are repetitive and reliant upon tradition and, thus, that the scope for individual expression is limited. This construction of primitivity also authorised the development of the Aboriginal-style art industry between the 1920s and 1960s which reproduced Indigenous artworks without permission or sanctions in fine art paintings and a wide range of textiles, home wares and souvenirs.

During the 1980s cultural tourism and the elevation of Indigenous art to fine art status led to growth in the market for Indigenous art and a corresponding growth in unauthorised appropriations and cheap rip-offs. This meant that the broad issues of intellectual property rights and cultural heritage entered the public consciousness and eventually prompted the

REFERENCES

1. See, eg: Colin Golvan, 'Aboriginal Art and Copyright: The Case for Johnny Bulun Bulun' (1989) 10 *European Intellectual Property Review*; Colin Golvan, 'Copyright and Aboriginal Artistry' (1989) 2 *Intellectual Property*; Stephen Gray, 'Aboriginal Designs and Copyright: Can the Australian Common Law Expand to Meet Aboriginal Demands?' (1991) 9(4) *Copyright Reporter;* Stephen Gray, 'Wheeling, Dealing and Deconstruction: Aboriginal Art and the Land Post-Mabo' (1993) 3(63) *Aboriginal Law Bulletin* <austlii.edu.au/au/journals/AboriginalLB/1993/31.html> at 18 August 2009; Stephen Gray, 'Enlightenment or Dreaming? Attempting to Reconcile Aboriginal Art and European law' (1995) 2 *Arts & Entertainment Law Review*; Terri Janke, *Our Culture: Our Future: Report on Australian Indigenous Cultural and Intellectual Property Rights* (1999).

2. Gray (1993), above n 1.

3. Brian Fitzgerald, 'Intellectual Capital and Law in the Digital Environment' (2001) 5 *Southern Cross University Law Review*, 210.

4. See, eg: Wandjuk Marika, 'Copyright on Aboriginal Art' (1976) February *Aboriginal News*, 7; Colin Golvan, 'Aboriginal Art and the Protection of Indigenous Cultural Rights' (1992) 7 *European Intellectual Property Review*, 230; Stephen Muecke, 'Body, Inscription, Epistemology: Knowing Aboriginal Texts' in Emmanuel Nelson (ed) *Connections: Essays on Black Literatures* (1988), 46–7; Kenneth Maddock, 'Copyright and Traditional Designs – An Aboriginal Dilemma (1988) 2 *Aboriginal Law Bulletin*, 8; Margaret Martin, 'What's in a Painting? The Cultural Harm of Unauthorised Reproduction: *Milpurrurru & Ors v Indofurn Pty Ltd & Ors*' (1995) 17 *Sydney Law Review*, 593.

5. See, eg, Matthew Rimmer, 'Four Stories about Copyright Law and Appropriate Art' (1998) 3(4) *Media and Arts Law Review*, 190.

6. Brenda Factor, 'Marketing an Australian Identity' in Julie Marcus (ed) *Picturing the 'Primitif': Images of Racing in Daily Life* (2000), 188.

It is only once commentators let go of their preference for the legal that real progress can once again be made to protect the rights of indigenous artists and their communities. Moral, yet passive, righteousness is no longer enough.

reinterpretation of Indigenous art as original and artists as capable of individuality in their works. In support, the 1989 *Aboriginal Arts and Craft Industry Report* stated that the *Copyright Act* acknowledges the artistic works of Aboriginal artists. Also, in cases such as the *Carpets Case*,[7] traditional aspects of works did nothing to prevent original status under the *Copyright Act*.

Substantive inequality

While formal equality with non-Indigenous works secured some valuable rights for Indigenous artists, copyright protection of Indigenous art is nevertheless inadequate. The cultural context that marks Indigenous art production is not reflected in the provisions of the *Copyright Act*. As such, there is insufficient protection from unauthorised reproduction: particularly in the realm of the time duration of rights, the material form requirement and the definition of joint authorship.

Under s 33 of the *Copyright Act* copyright in original artistic works is limited to 70 years after the death of the author. After this time, a work is released into the public domain and able to be copied without restriction. By contrast, Indigenous law contains no such limitation because rights to culture exist in perpetuity.[8] Commentators such as Banks and Githaiga argue that this discrepancy potentially leads to cultural dispossession and impoverishment because copyright-lapsed works may end up in the hands of outsiders who could appropriate aspects of Indigenous culture without fear of tribal or copyright sanctions.[9] This threat of dispossession is particularly marked in the instance of cave paintings and images such as the *Wandjina, Mimi* and *Quinkin* figures which lack an identifiable author and are viewed as ancient and out of time for copyright protection.

Under s 22(1) of the *Copyright Act,* works must have material form before the conferral of exclusive reproduction rights to an author will be conveyed. The 'format' of a work cannot be the subject of copyright, nor can the themes, style or artistic techniques embodied in a work. Commentators such as Gray, Morris and Golvan have argued that the material form requirement has serious implications for Indigenous people because Aboriginal themes and styles such as cross-hatching, x-ray, and dot painting are regarded as ideas and therefore not the subject of copyright law. This may result in appropriation despite the fact that their use is strictly regulated in and amongst Indigenous communities.[10] As such, individuals who are not bound by Indigenous law are legally free to exploit the underlying characteristics of Indigenous works.

Under s 10(1) of the *Copyright Act* the only provision for communal claims lies with joint authorship. Joint authorship arises when two or more authors collaborate in producing a work and 'the contribution of each author is not separate from the contribution of the other'.[11] This definition is restrictive in an Indigenous context as Indigenous rights holders in an artwork created in accordance with tradition do not necessarily physically contribute to its production. In support, French J commented in the *Yumbulul case*[12] that 'Australia's copyright law does not provide adequate recognition of aboriginal community claims to regulate the reproduction and use of works which are essentially communal in origin'.[13]

The fact that the *Copyright Act* does not adequately accommodate competing understandings of authorship and communal rights was affirmed in *Bulun Bulun v R & T Textiles*.[14] In this case, joint proceedings were commenced by Mr Bulun Bulun, the copyright holder, and a second applicant, Mr Milpurrurru, who sued in his own right and as a representative of the Ganalbingu people. Milpurrurru claimed that the Ganalbingu people were the equitable owners of copyright in Bulun Bulun's work *Magpie Geese and Waterlilies at the Waterhole*. Justice Von Doussa held that the community's oversight and authority over reproduction was too ephemeral to amount to joint authorship.[15] Although Von Doussa J did hold that the relationship between Bulun Bulun and his clan should be protected by fiduciary principles,[16] this outcome does not remedy the joint authorship defect of copyright law because no freestanding communal equitable title was recognised.

Filling copyright's gaps with law

The *Copyright Act's* failure to meet Indigenous demands has led commentators to search for alternative legal solutions to remedy the issues faced by Indigenous artists and communities in protecting their art. For example, Gray has proposed extending the law of confidential information because in *Foster v Mountford*[17] the courts recognised communal interests in confidential information. Gray argues that Indigenous artworks embody communal tribal secrets and retain a quality of confidentiality, despite public display, as a work's secrets are known only to those authorised to know them through Aboriginal custom. Thus, Gray believes that appropriating works without permission could be understood as a breach of confidence.[18]

7. *Milpurrurru & Others v Indofurn Pty Ltd* (1994) 30 FCR 240; (1994)120 ALR 659; (1995) AIPC 91.

8. Terri Janke, 'Berne, Baby, Berne: The Berne Convention, Moral Rights and Indigenous Peoples Cultural Rights' (2001) 14 *Indigenous Law Bulletin,* 16.

9. Cate Banks, 'The More Things Change the More They Stay the Same: The New Moral Rights Legislation and Indigenous Creators' (2000) 9 (2) *Griffith Law Review,* 344; Joseph Githaiga, 'Intellectual Property Law and the Protection of Indigenous Folklore and Knowledge' (1998) 13 *Murdoch University Electronic Journal of Law* [26] <austlii.edu.au/au/journals/MurUEJL/1998/13.html> at 18 August 2009.

10. Colin Golvan, 'Aboriginal Art and the Public Domain' (1998) 9 (1) *Journal of Law and Information Science* 123; Stephen Gray, 'In Black and White or Beyond the Pale? The "Authenticity" Debate and Protection for Aboriginal Culture' (2001) 15 *The Australian Feminist Law Journal*,106; Scot Morris, 'The Protection of Folklore: The Australian Experience' (1998) 58 *Intellectual Property in Asia and the Pacific* 29.

11. *Copyright Act 1968* (Cth) s 10.

12. *Yumbulul v Reserve Bank of Australia* (1991) 21 IPR 481.

13. (1991) 21 IPR 481 [490] (French J).

14. (1998) 41 IPR 513.

15. *Bulun Bulun v R & T Textiles* (1998) 41 IPR 513 [525] (Von Doussa J).

16. Ibid [531] (Von Doussa J).

17. [1969] RPC 41 (Ch); (1976) 29 FLR 233; (1977) 14 ALR 71.

18. Stephen Gray, 'Aboriginal Designs and Copyright: Can the Australian Common Law expand to meet Aboriginal demands?' in J Neville Turner & Pam Williams *The Happy Couple: Law & Literature* (1994), 257–8.

Gray has also proposed that the recognition of native title in *Mabo (No 2)*[19] could be extended to cover art as a 'nature or incident' of native title.[20] In Indigenous communities, art and land are seen as inextricably entwined and Gray argues that this concept is relevant to the question of property rights because native title is determined by reference to Indigenous law. Thus, Gray submits that if native title was extended to protect artistic expressions, Australian law would need to pay regard to Indigenous customs in assessing the legality of unauthorised appropriation of Indigenous cultural products, 'possibly even to the extent of according it [Indigenous law] full recognition'.[21]

As well as support for extending existing legal doctrines, there is also general consensus amongst commentators that culturally specific legislative provisions would be extremely beneficial and provide significant, tailored protection of Indigenous artworks.[22] Academic lawyers such as Janke and Golvan have been particularly proactive in developing practical sui generis measures to remedy the defects of the *Copyright Act*. Janke, an Indigenous Australian, supports the introduction of a new body of legislation. Under her model the limitations of copyright are overcome by provisions detailing that:

- rights are to exist in perpetuity;
- wilful distortion and destruction of cultural material is prohibited;
- misrepresentations of the source of cultural material is prohibited;
- sacred and secret materials are protected by confidentiality arrangements;
- payment must occur to Indigenous owners for commercial use of their property;
- authorisation is only permissible when prior authorisation occurs and is based on the notions of respect, negotiation and free and informed consent;
- decision-making bodies must include Indigenous participation;
- fair dealing defences are limited to traditional cultural and customary use, research and study.[23]

By contrast, Golvan prefers sui generis amendment to the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth). This Act is concerned with the protection of areas, relics, remains and objects of traditional Aboriginal significance. Golvan proposes that the definition of folklore under the Act be broadened to include the notion of artistic works as it is understood under the *Copyright Act*. He further proposes that the *Aboriginal and Torres Strait Islander Heritage Protection Act* be amended to provide a civil right of action to 'local Aboriginal communities' to protect communal interests in works, and that this change exclude copyright's time limitation.[24]

Lack of political will or academic inertia?

Despite proposals to fill the gaps left by copyright's incomplete and inadequate protection of Indigenous works, the law has not been extended either by the courts or the legislature. In 1993, Gray pointed to an inopportune political climate as the main culprit behind this lack of legal redress. He stated that while the introduction of sui generis legislative reform such as that suggested by Golvan 'seems clearly desirable, it is perhaps doubtful whether the political will currently exists to follow this legislative path'.[25] Gray's comment has proved influential and pervaded subsequent commentary. For example, in 2000, Vann commented that it is unfortunate that no legislative recognition of Indigenous communal title has occurred, and stated that it is sad that Gray's lack of political will response appears to be correct.[26]

And why not? It is nigh on impossible to argue against Gray's logic. Since 1993, there have been very few legal developments in the realm of Indigenous art and copyright, and none that have sought to rectify the totality of the current situation of substantive inequality. Political will is clearly lacking. Perhaps the strongest argument supporting this view is Anderson's damning critique of the recent Copyright Amendment (Indigenous Communal Moral Rights) Bill 2003 (Cth) ('the Bill').

The Bill represents the only attempt in Australia to address any of the three major issues posed by the *Copyright Act's* incomplete protection of Indigenous art with sui generis provisions; communal rights in works. It was proclaimed to provide Indigenous communities with a 'means to prevent unauthorised and derogatory treatment of works that embody community images or knowledge.'[27] Five conditions must be met before communal rights of attribution and integrity arise: (i) The work must be 'made'; (ii) it must draw on the traditions, beliefs, observances or customs of the community; (iii) it must be covered by an agreement between the author and the community; (iv) the community's connection with the work must be acknowledged with notice shown on the work; and (v) a written notice of consent must have been obtained by the author from everyone with an interest in the work.

Anderson has levelled acerbic criticism at the Bill's requirements for the vesting of the communal rights, particularly the third requirement that requires voluntary submission. The need for voluntary submission to Indigenous communal interests leads Anderson to comment that 'it is difficult to imagine any circumstance arising where remedy could be attained for infringement'.[28] Those who would have abided by Indigenous law would have done so anyway, and those who do not want to be bound, aren't. Thus, Anderson argues that the Bill ignores all aspects of cultural context that potentially challenge existing legal relationships between creators and users of cultural property and privileges the interests of users despite avowing to protect the interests of Indigenous communities. Anderson concludes that the Bill's weak form supports the accusation that it was purposefully designed to lack utility in a legislative sleight of hand to take the controversial issue of communal rights off the political agenda.[29] Her argument and evidence clearly supports her conclusion that there is a lack of political will to introduce *effective* legal measures.

19. *Mabo & Others v Queensland (no 2)* (1992) 175 CLR 1.

20. 'The nature and incidents of native title must be ascertained as a matter of fact by reference to those laws and customs' in *Mabo v Queensland (no 2)* (1992) 175 CLR 1 [58] (Brennan J).

21. Gray, above n 18, 246.

22. See, eg, Janke, above n 1, xxi, xxxvi; Jon Altman, *The Aboriginal Arts and Crafts Industry: Report of the Review Committee* (1989), 296; Attorney-General Department, Issues Paper, *Stopping the Rip-Offs: Intellectual Property Protection for Aboriginal and Torres Strait Islander Peoples* (1994), 8; Senate Environment, Communications, Information Technology and the Environment Committee, *Indigenous Art: Securing the Future — Inquiry into Australia's Indigenous Visual Arts and Crafts Sector* (2007), Recommendation 25, xiv.

23. Terri Janke, 'Respecting Indigenous Cultural and Intellectual Property Rights' (1999) *University of New South Wales Law Journal*, 636–7; Janke, above n 1, xxxvi-xxxviii.

24. Golvan, above n 4, 230.

25. Gray (1993), above n 1.

26. Vicki J Vann, 'Copyright By Way of Fiduciary Obligation – Finding a Way to Protect Aboriginal Artworks' (2000) 5(1) *Media & Arts Law Review*, 21.

27. Liberal Party of Australia, *The Howard Government: Putting Australia's Interests First: Election 2001 — Arts for All* (2001) in Jane Anderson, 'The Politics of Indigenous Knowledge' (2004) 27(3) *University of New South Wales Law Journal*, 597.

28. Jane Anderson, 'Indigenous Communal Moral Rights: The Utility of an Ineffective Law' (2004) 15 *Indigenous Law Bulletin*.

29. Ibid.

In contrast to copyright's end-goal of wealth, Indigenous communities regulate artistic production to secure cultural integrity.

While the peculiar nature of the Bill which proclaims to grant rights, yet simultaneously undermines them, is symbolic of the lack of legal developments in this field, it does little to excuse the inertia of academics. Both Gray and Anderson are right. Clearly the timing of this issue is all wrong. But this still does not justify the fact that in recent years there has been very little commentary capable of exciting responders, as did Gray's, Golvan's and Janke's groundbreaking work in the late 1980s and 1990s.

It appears the observation that political will is lacking may have become a catchcry, an all too familiar lament that excuses academic commentators from having to deal with this issue in a new way. By trumpeting their moral righteousness, yet ultimately passing the blame for a lack of action onto the political realm, commentators fail to recognise the self-defeating and incredibly descriptive and repetitive nature of their approach. At the point where politics is blamed for a lack of action, commentators justify their own inaction and open the door for a sense of helplessness to enter the commentary which limits the scope of further discussion.

Far from contributing to the campaign for the greater recognition of Indigenous rights in cultural works, the prevalence of this attitude has stalled progress in Indigenous art and copyright commentary. This stance assumes the law is the only means to secure cultural autonomy over the artistic realm. However, blind faith in the legal has so far failed to make inroads into the eurocentrism of copyright. At this late stage, we have nothing to lose by looking outside of the legal system for other ways to encourage and develop culturally appropriate behaviours in those who deal with Indigenous art. Bottom–up, as well as top–down approaches are not only possible, but plausible.

Indigenous art and copyright commentators should reconsider the popular legal approaches to the issue of copyright's inadequate protection of Indigenous artworks. By thinking outside the realm of legal principles and solutions, alternative approaches, such as that of FOSS communities may be drawn upon to show that norms for dealing with cultural property can be created outside of the legal system. Once the commentary moves on from its legal focus, it can regather a sense of purpose and agency and make inroads into securing culturally appropriate protection of Indigenous art.

Reclaiming vitality through the non-legal

The copyleft movement grants insight into how communities regulated by custom may overcome the perceived limitations of copyright law and operate autonomously. Copyleft is a reactionary social movement and copyright management scheme that advocates freedom in the use of materials such as software and literary works. Freedom in this context involves the users' freedom to run, copy, distribute, study and improve the work. However, the distribution of works is subject to the general proviso, enforced via a licence, that any resulting improvements or modifications have no restrictions added to deny other people's central freedoms in using the work. Thus, although free access to source code is central to FOSS communities, downstream use of the code is managed, providing for community authority and control.

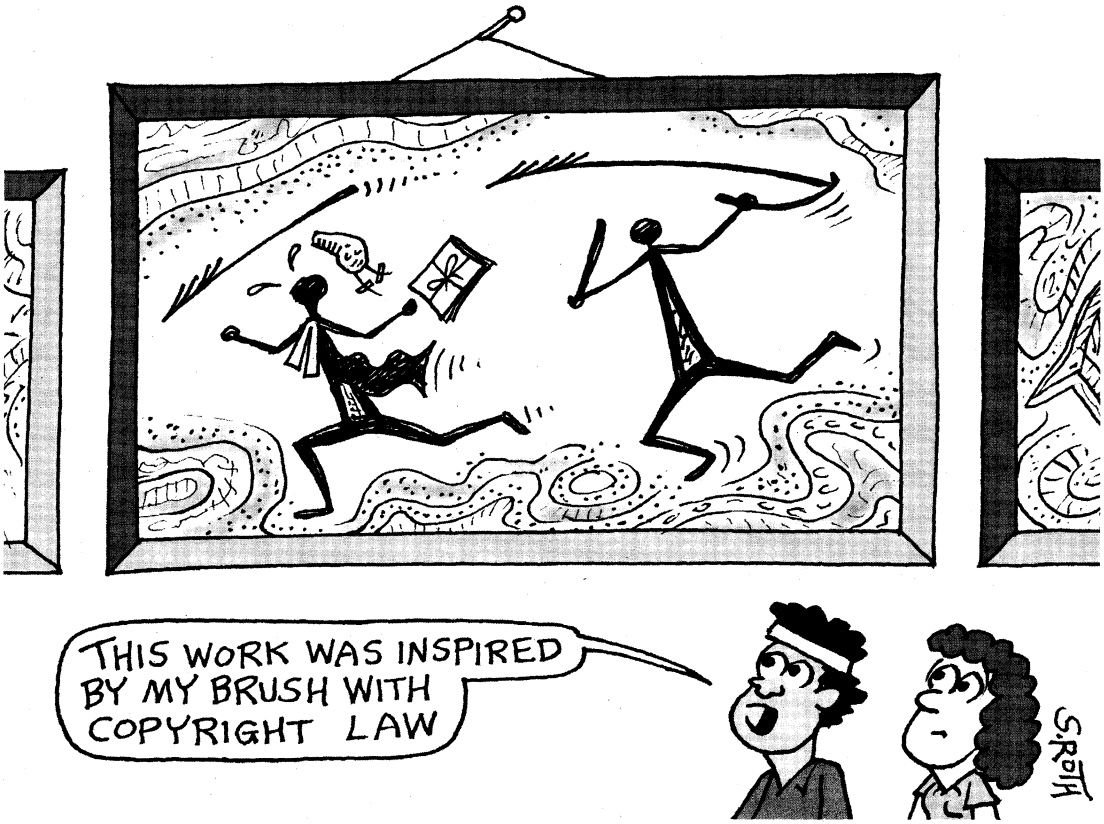
Kathy Bowrey is one of the few commentators who has drawn upon the success of FOSS communities to argue that the issue of Indigenous art and copyright may be advanced without formal legal intervention through community involvement. She argues that Indigenous communities may benefit from the experiences of FOSS because at a conceptual level, both Indigenous and FOSS communities seek to maintain their community and retain the freedom to elect to control and enclose aspects of their production.[30] Although Bowrey rightly recognises the emancipatory potential of FOSS for Indigenous communities because of the emphasis on informal grass-roots community arrangements, her analysis could be considered flawed because she interprets the success of FOSS from a purely legal perspective, believing that the existence of private law rights explains the adherence to FOSS's sharing norm. As such, she argues Indigenous art protocols should be elevated beyond voluntary guidelines to enforceable private law rights.[31] However, by assuming that legal ramifications are the only coercive force, Bowrey prevents the transfer of FOSS principles to the Indigenous art context in a meaningful way. The appropriation of Indigenous styles, themes and copyright-lapsed works by strangers cannot be the subject of contractual rights and this is arguably the most common instance of appropriation. As such, Bowrey's interpretation of FOSS communities has restricted application to Indigenous communities.

To overcome the limitations of Bowrey's approach, it is necessary to see FOSS's success in regulating the

30. Kathy Bowrey, 'Alternative Intellectual Property? Indigenous Protocols, Copyleft and New Juridifications of Customary Practices' (2006) 6 *Macquarie Law* Journal, 93.

31. Ibid 68.

32. Debra Jopson, 'Misused Spirits of Creation Returned to Proper Custodians' *Sydney Morning Herald* (Sydney), 7 March 2001, 7.



use of communal property through licensing, not in terms of the community source of rights, but through its superior ability to advertise the sharing norm. It is possible that the *knowledge* of customary norms might induce as much compliance with FOSS's sharing norm as the threat of legal action for breach of contract. By reading the success of FOSS communities in these terms, the advent of copyleft may be taken to its outer limits and the opportunity explored for a completely non-legal approach to remedying the deficiencies of the *Copyright Act* in protecting Indigenous artworks from appropriation.

FOSS tells us that a powerful community norm can regulate the behaviour of users of communal property. It remains to be seen whether the Indigenous art industry can create a norm as powerful as FOSS's sharing norm to protect cultural interests in artworks. However, perhaps a custom of users checking for vested interests in Indigenous works before they deal with the property could be widely taken up. Such a custom of checking could be encouraged by something as simple as a website that acts as a photographic depository for works. This depository could log all the vested interests attached to each work, including communal rights, perpetual rights, and rights in styles and themes. Attached to all works could also be a copy of any relevant protocols that apply.

While it is difficult to quantify whether knowledge of a vested interest may influence a person's choice to behave in a culturally appropriate way, I like to believe that most Australians would not want to cause cultural harm to others. This belief is supported by the recent campaign of Ngarinyin people to reclaim the Wandjina from use in popular culture. When the owner of the domain name <www.wandjina.com> was made aware of the importance of the Wandjina image to the Ngarinyin people, he handed over the name to a group of Kimberley elders in Perth and apologised. A similar outcome was evident when a Sydney businesswoman and owner of the public relations company Wandjina Pty Ltd renamed her company as an act of reconciliation after the Ngarinyin people contacted her and explained the cultural significance of Wandjinas.[32] By advertising and seeking to increase knowledge of the cultural significance of works and how to deal with them in an appropriate way, inducing the compliance of third parties has a chance of success.

While the political climate is not ideal, it is necessary to look beyond the traditional legal approaches of the commentary to the issues raised by the *Copyright Act's* incomplete protection of Indigenous works from unauthorised appropriation. The commentary has clearly gone as far as it can in advocating decades old responses. Now, it is integral that non-legal responses such as, but not limited to, those stemming from the experience of copyleft communities are examined and developed so the current state of academic inertia may be overcome. A lack of political will should no longer operate as a symbol of collective helplessness. It is imperative commentators shake off their passivity and once again actively seek culturally appropriate protection of Indigenous works.

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Dear Editors,

In your Volume 34(1) issue of your journal Ms Nicola McGarrity wrote an article criticising my, and Bob Carr's, writings against bills of rights.

Focusing exclusively on one newspaper column (of dozens) of mine and one radio interview — and completely ignoring without a single mention some 20 odd peer reviewed articles I have written in the last dozen years that deal with the anti-bill of rights position, and with statutory bills of rights especially — Ms McGarrity purported to be concerned about misrepresentation, by me, and about the fact Australians need to be better educated on this issue.

Readers interested in my reply can find it in the December issue of *Public Law Review*.

Yours sincerely,
Professor James Allan
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