

# Respecting and Protecting Indigenous Cultural and Intellectual Property (ICIP)

Reconciliation Australia:  
**Community Truth-telling  
Pathways**

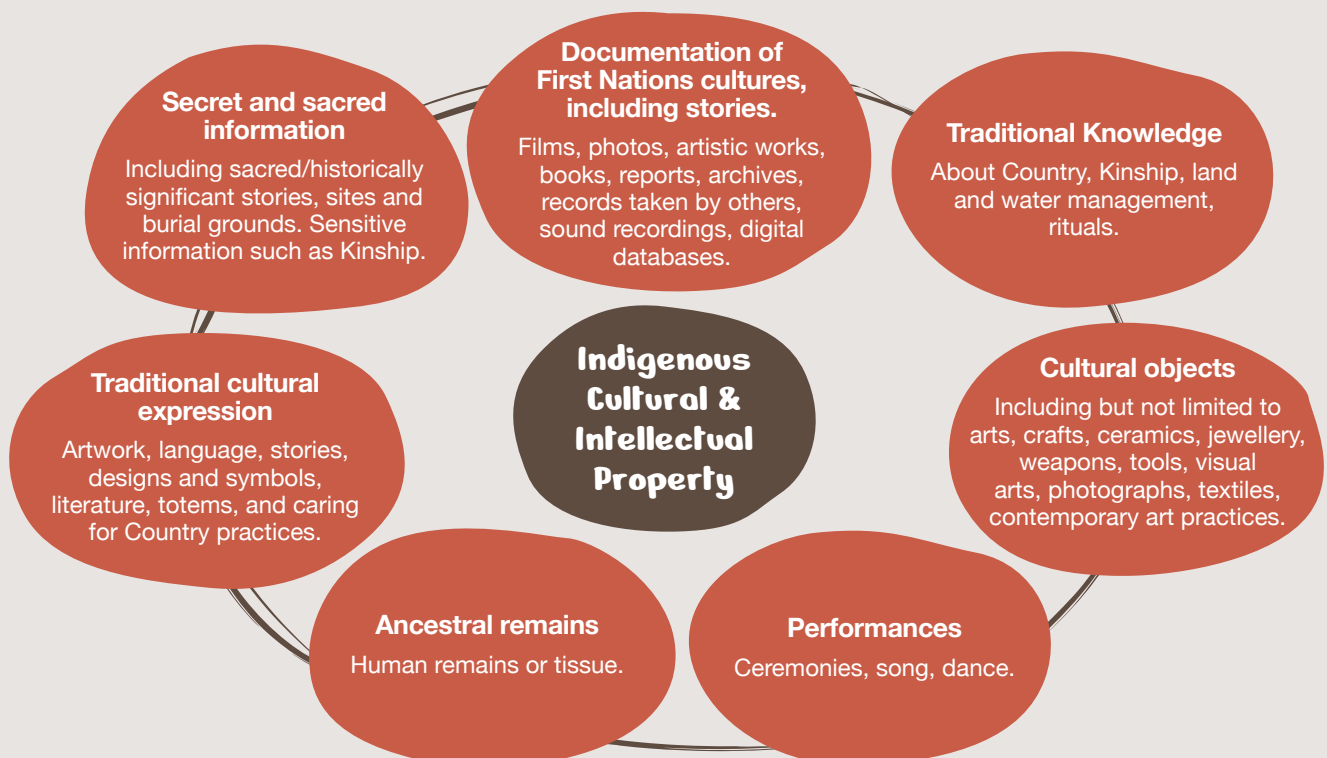
When First Nations communities share their knowledge and culture, including language, this is their Indigenous Cultural and Intellectual Property (ICIP). This can happen at many points in a community's truth-telling process, including casual conversation, formal consultations, or during a truth-telling initiative or event.

It is important to understand what ICIP rights are so you can uphold and protect them for yourself and your community, for the First Nations communities that you engage with and for future generations. For more in-depth information, please read the full [Respecting and Protecting ICIP Guide](#) on the truth-telling resources hub.

## What is Indigenous Cultural and Intellectual Property?

ICIP refers to the cultural heritage, traditional knowledge and cultural expressions of First Nations peoples. Some ICIP is physical, like a painting, and some ICIP is not physical, like a cultural story.

Leading ICIP experts Terri Janke and Company outline seven types of ICIP in the diagram below:



**Figure 1:** What is ICIP? Adapted with permission from © Terri Janke and Company, 2025.

## ICIP Rights

**‘Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions.’**

– *The United Nations Declaration on the Rights of Indigenous Peoples Article 31*

This means, First Nations peoples and communities have the right to:

- Allow or refuse the use of their ICIP by others, including anything that is secret or sacred.
- Be credited as the Traditional Owners, Custodians and interpreters of their ICIP.
- Benefit from or be paid for any use of their ICIP.
- Control the documentation or recording of their ICIP.
- Make sure their ICIP is used in a culturally appropriate way and not in ways that are insulting, offensive and misleading.

Rights under cultural law are not always fully protected under western law. This is why a creative approach is needed to protect cultural rights under Australian law, including copyright law.

## Protecting ICIP

Australian intellectual property law protects some ICIP rights, but not all of them. This is because these laws only protect things that are individually owned and in material form (written down or recorded with video and/or audio). Also, the legal protection is only for a set amount of time.

In contrast, ICIP can be owned by a whole community and is often not in a material form (like oral knowledge). ICIP rights do not end because they pass from generation to generation.

## Copyright law

In Australia, ICIP is sometimes protected by copyright law. Intellectual property that is covered by copyright law is automatically protected without you having to do anything.

### Copyright protects

- Books
- Music
- Artwork
- Photos
- Written recordings
- Databases
- Films and sound recordings
- Broadcasts

### Copyright does NOT protect

- Oral stories and songs
- Ideas
- Facts
- Techniques and styles
- Communal ownership/control of knowledge
- Content older than 70 years (has been handed down) or has not been turned into a new product

**Figure 2:** What ICIP is protected by IP law? Adapted with permission from © Terri Janke and Company, 2025

## Legal protections

Some ICIP that is not automatically protected under Australian law can still be protected if you take specific steps. For example:

- Oral stories are not protected by copyright law, but if put into writing, copyright law protects the written form for the author.
- A written agreement (contract) should be used whenever anyone wants to access or use First Nations communities' ICIP. It should include an ICIP clause that states how ICIP may or may not be used.
- ICIP clauses in contracts can also help where Australian law does not recognise intergenerational communal ICIP rights. You can protect the ICIP rights of future generations by recognising the Traditional Owners as the owners of ICIP in ICIP clauses in contracts.

The government is currently developing a standalone ICIP law but it may not come into effect for some time.

**Whether or not there is an ICIP law, there are things you can do to encourage awareness of and respect for ICIP rights.**

**For example: an ICIP Notice or Statement can be used to let people know that:**

- The material contains ICIP.
- The ICIP is owned by Traditional Owners.
- The ICIP rights should be respected.

**Using these notices is recommended even if an ICIP law comes into effect later.**

Reconciliation Australia commissioned Terri Janke and Company to develop a detailed Indigenous Cultural and Intellectual Property (ICIP) Guide. Read the full Guide - [Respecting and Protecting ICIP](#) on the truth-telling resources hub.

Information in this fact sheet is general information only and is not legal advice.



**[reconciliation.org.au/truth-telling](https://reconciliation.org.au/truth-telling)**

This resource was developed by Reconciliation Australia and Terri Janke and Company Lawyers and Consultants.

