

Listen, learn and respect: Indigenous cultural protocols and radio

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Table of Contents

1.	Introduction	2
1.1	Outline of this paper	3
2.	Radio and Indigenous people	4
2.1	Mainstream radio.....	4
2.2	Indigenous radio services.....	4
2.3	Indigenous specific programs.....	5
2.4	Australian Indigenous Communications Association (AICA).....	5
3.	Focus of protocols	5
3.1	Media and representation of Indigenous people	6
3.2	Indigenous cultural and intellectual property rights	8
4.	Radio Industry Protocols	9
4.1	ACMA Radio Codes of Practice	9
4.1.1	Community Broadcasting.....	10
4.1.2	Commercial radio	11
4.1.3	Compliance of codes.....	12
4.2	Media, Arts & Entertainment Alliance of Australia Code of Ethics.....	12
4.3	ABC editorial policy and Indigenous cultural protocols	13
4.4	SBS editorial policy and Indigenous issues.....	13
5.	Indigenous culture and copyright issues.....	15
6.	Protocols.....	17
6.1	Respecting rights to own and control culture.....	18
6.1.1	Acknowledging traditional country	18
6.1.2	Access to Indigenous land	19
6.1.3	Community events in public	19
6.1.4	Working in Indigenous communities.....	20
6.2	Consultation and consent issues	20
6.2.1	Recording and interviewing Indigenous people	21
6.2.2	Different situations may require different consent processes.....	23
6.3	Cultural integrity and authenticity	23
6.3.1	Music.....	24
6.3.2	Language and terminology.....	24
6.3.3	Oral stories.....	25
6.4	Respecting cultural beliefs.....	25
6.4.1	Sacred sites and material.....	25
6.4.2	Cultural mourning practices	26
6.5	Attribution.....	27
6.6	Sharing of benefits.....	27
6.7	Archiving and future uses.....	28
7.	Useful resources	29
8.	Conclusion	30
	Bibliography.....	32
	Acknowledgements.....	34

1. Introduction

Indigenous people are the Aboriginal and Torres Strait Islander people of Australia, the original owners and inhabitants of Australian mainland and islands. The recognition of Indigenous protocols within the Australian radio industry is relevant in the context of reporting of the news because research and reports in the past thirty years have confirmed that negative media reporting can create and reinforce negative stereotypes. Hence, codes for better reporting on Indigenous issues have been developed in radio.

The more recent issue of protecting Indigenous cultural and intellectual property is also an area radio programmers should consider in developing and broadcasting programs with Indigenous content. Indigenous cultural and intellectual property includes songs, stories, dances and traditional knowledge. These cultural assets are unique to the world. Indigenous people are keen to share their cultures in appropriate ways that promote its integrity, however, they raise concern about how their Indigenous cultural and intellectual property has been used and appropriated by mainstream cultures¹.

The dispersal of Indigenous cultural material via radio raises issues relating to Indigenous cultural and intellectual property rights. Concerns by Indigenous people have in the past addressed how they and their cultures are represented. However, Indigenous people call for the recognition of cultural ownership of their Indigenous cultural and intellectual property including their stories and information within Australian law and policy. This shift has ramifications for how radio content about Indigenous people and their culture is being programmed and broadcast; and the how this information is presented.

This paper encourages discussion about radio protocols when dealing with Indigenous content in all areas of radio production including the reporting of the news, and general programming content.

¹ Terri Janke, *Our Culture: Our Future: Report on Australian Indigenous Cultural and Intellectual Property rights*, Michael Frankel & Company, written and published under commission by the Australian Institute of Aboriginal and Torres Strait Islander Studies and the Aboriginal and Torres Strait Islander Commission, Sydney 1999, p. 25

1.1 Outline of this paper

The outline of the paper is as follows:-

Radio and Indigenous peoples

Indigenous concerns regarding ICIP in radio

- (a) Negative representations
- (b) Lack of representation
- (c) Inappropriate representation.

Frameworks for Indigenous Cultural Protocols

- (a) What are Indigenous cultural protocols?
- (b) Review of existing protocols relevant to radio practice
- (c) Summary of important considerations to take into account when reporting and dealing with Indigenous cultural and intellectual property in radio practice.

2. Radio and Indigenous people

Before we examine the issue of protocols in radio, we provide the following background information on Indigenous broadcasting in radio industry:-

2.1 Mainstream radio

Mainstream radio programs including news and magazine programs which feature Indigenous content is broadcasted to the general public, including Indigenous people.

2.2 Indigenous radio services

In the 1970s Indigenous people, the Aboriginal and Torres Strait Islander people of Australia, voiced their concerns over their representations or lack of it, in Australian media including film, television, print and radio. These concerns led to a demand for an Indigenous voice. In 1984 a report commissioned by the head of the Department for Aboriginal Affairs, Charles Perkins titled *Out of the Silent Land*² was released on Indigenous broadcasting and communications. The report identified that Indigenous people felt that cultural maintenance of Indigenous practices, languages and beliefs, particularly in rural and remote areas was at threat by an increasing wave of non-Indigenous produced media.

Since the 1990s, there has been growth in Indigenous radio services, especially at the grass roots Indigenous community level. Indigenous radio includes community radio through the Indigenous Remote Communications Association (IRCA) network, commercial Indigenous radio stations, community licensed Indigenous radio stations and their associated networks such as the National Indigenous Radio Services. Indigenous radio stations follow their own Indigenous cultural protocols within their practice.

² Department of Aboriginal Affairs, *Out of the Silent land: Report of the Task Force on Aboriginal and Islander Broadcasting and Communications*, August 1984, Australian Government Publishing Service, Canberra, 1984.

2.3 Indigenous specific programs

The national broadcasting radio stations ABC and SBS also broadcast radio programs that are Indigenous specific. This includes ABC Radio National's *Awaye* and *Speaking Out* and SBS's *The Aboriginal Program*.

2.4 Australian Indigenous Communications Association (AICA)

The Australian Indigenous Communications Association (AICA) was incorporated in 2004 as the national representative body for all Indigenous media. It aims to lobby all areas of government to further the development of Indigenous owned and controlled media services in Australia.

3. Focus of protocols

There are two main areas that this protocols paper covers:-

1. Reporting of the news

Protocols for the reporting of the news and information focus on fair and accurate reporting of Indigenous people and were developed to take into account that in the past there has been a lot of negative media reporting on Indigenous people, and this reinforces negative stereotypes.

2. Indigenous cultural and intellectual property

Protocols for use of Indigenous cultural and intellectual property material, such as songs, stories and traditional knowledge address the need for recognition of the cultural ownership of this material by Indigenous people. This is because copyright laws focus on the protection of western forms of cultural expression in the material form, and a lot of Indigenous cultural and intellectual property is not adequately protected. These protocols are aimed at providing guidance when recording, broadcasting and managing Indigenous cultural and intellectual property.

3.1 Media and representation of Indigenous people

Indigenous people argue that, in the general mainstream media, many journalists do not report Indigenous issues accurately, positively nor respectfully or appropriately. Rather, the majority of representations are negative portrayals of Indigenous people thereby continuing and adding to the racist attitudes against Indigenous people in Australian society. Michael Meadows says that journalists do not understand the Indigenous cultural issues. The negative reporting that occurs is due to misconceptions from a lack of awareness, misinterpretation, ignorance, misquoting, sensationalism, exaggeration and their lack of concern.³ Indigenous people commonly agree that the problems stem from a lack of understanding of Indigenous peoples, our culture and history, a focus on negative issues such as alcoholism, domestic violence and other crimes, as well as sensationalism and poor Indigenous access to media.⁴

Dot West, Chair of Goolari Media, in her 1994 Boyer lecture warned that negative portrayals of Indigenous people can have dire consequences. She said that in Western Australia, negative media representations were to blame for the death of one Aboriginal youth. She said that “when media stereotypes Aboriginal and Torres Strait Islander people as drunks and no-hopers and radical ratbags, they’re helping to build the racist attitudes.”⁵

The National Inquiry into Racist Violence in Australia conducted by the Human Rights Commission in 1991 reported on the Australian media’s handling of Indigenous issues, the Racist Violence Report notes:

“The portrayal of Aboriginal people as a law and order problem, as a group to be feared, or as a group outside assumed socially homogeneous values provides legitimacy for acts of racist violence. Those acts of racist violence cover a wide range of incidents...However it is clear to the Inquiry that racist violence is

³ Michael Meadows, *A watering can in the desert: Issues in indigenous broadcasting policy in Australia*. Nathan: Institute for Cultural Policy Studies, Griffith University 1992

⁴ Michael Meadows, n.5, 1992, p 93

⁵ Dot West, Boyer Lecture 1993, ‘Indigenous media is a priority, and not just a luxury’, *Communications Law Bulletin*, Vol. 13 No. 4 Autumn, The Communications and Media Law Association 1994, p. 4

an endemic problem for Aboriginal and Torres Strait Islander people. The fact that Aboriginal and Torres Strait Islander people are faced with racial discrimination in almost every aspect of their daily lives is the underlying reason for the high levels of racist violence reported to this Inquiry.”⁶

In 2000, this sentiment continued to be expressed by Indigenous people. At a United Nations Forum on Indigenous media worldwide held in 2000, there was general agreement among the participants that the mainstream media tended to write about Indigenous peoples only when there was a conflict or tragedy.⁷ For example, “Dramatic Showdown” the Mohawk Oka Crisis 1990 in Canada⁸ was one incident mentioned by Chair of the Indigenous Media Workshop Chairperson Kenneth Deer.

Mainstream media has a great impact on how the Australian community perceives Indigenous people and culture. In recognition of the adverse effects of media on Indigenous lives, the Commonwealth government report on the Royal Commission into Aboriginal Deaths in Custody in 1992, encouraged that all media organisations to develop codes and policies relating to the coverage of Indigenous issues, the establishment of monitoring bodies, and the establishment of training and employment programs for Aboriginal employees.⁹ Registered Code of Practice no 2 under the Australia Communications and Media Authority relates to radio programming and includes codes about representing Indigenous people. This code is outlined below.

Furthermore, in recognition of Aboriginal people’s disappointment in their portrayal by the media, the report called for the media industry and media unions to encourage contact with Indigenous people in the media, including contact with Aboriginal organisations, for the purpose of creating better understanding on all sides of issues relating to media treatment of Indigenous

⁶ Human Rights and Equal Opportunity Commission, *Racist Violence, Report of the National Inquiry into Racist Violence in Australia*, Australian Government Publishing Service, Canberra, 1991, p 121.

⁷ United Nations, Economic and Social Council, Sub-Commission on the Promotion of Human Rights, Working Group on Indigenous Populations, Nineteenth session, 23 – 27 2001, (E/CN.4/Sub.2/AC.4/2001/3), p 5

⁸ Canadian Broadcasting Corporation http://archives.cbc.ca/IDC-1-71-99-581/conflict_war/oka/clip7

⁹ Commonwealth of Australia, *Aboriginal Deaths in Custody: Responses by Government to the Royal Commission*, Australian Government Publishing Service, Canberra, 1992, Volume 2, Recommendation 205, p 788

affairs and for greater employment and training for Indigenous people to work in all media.¹⁰

3.2 Indigenous cultural and intellectual property rights

Indigenous cultural and intellectual property rights refer to Indigenous people's rights to their cultural heritage. Indigenous people's heritage is a living heritage and includes objects, knowledge, stories and images that are created today or in the future, based on that heritage.¹¹ This cultural material is regarded as belonging to or originating from a particular Indigenous group or its territory. The stories of our ancestors are our heritage and so are the stories that recount Indigenous experience. This includes stories about living in the bush, growing up on missions and life in the city. These experiences shape Indigenous cultures and are of heritage significance to current and future generations of Indigenous peoples.

Indigenous cultural and intellectual property rights include the right for Indigenous people to:-

- ◆ **own and control** Indigenous cultural and intellectual property.
- ◆ be recognised as the primary guardians and interpreters of their cultures; This raises issues relating to **representation** and how stories and information is presented.
- ◆ The **right to authorise or refuse the use** of Indigenous cultural and intellectual property according to Indigenous customary law;
- ◆ maintain the **secrecy** of Indigenous knowledge and other cultural practices;
- ◆ to be given **full and proper attribution** for sharing their heritage; and

¹⁰ *Ibid*, Recommendation 208, Vol. 2, p 799

¹¹ Terri Janke, *Our Culture: Our Future*, n. 1, p. 7

- ◆ control the **recording** of cultural customs and expressions, the particular language which may be intrinsic to cultural identity, knowledge, skill and teaching of culture.¹²

4. Radio Industry Protocols

4.1 ACMA Radio Codes of Practice

The Australia Communications and Media Authority (ACMA) formally known as the Australian Broadcasting Authority (ABA) have a range of roles and responsibilities in relation to radio. It plans the channels that radio services use; issues and renews licences; and regulates the content of radio services.¹³

It also regulates content by establishing Program standards that are grounded in law, within the *Broadcasting Services Act 1992*, which requires each broadcasting sector to develop its own Code of Practice and register this with ACMA. The Program standards require all radio stations to develop, in consultation with ACMA and taking into account of any relevant research conducted by ACMA, codes of practice that are applicable to the broadcasting operations of each of these sections of the industry.¹⁴ ACMA may determine program standards where it decides that the Code of Practice falls short.¹⁵ The Code of Practice is a document of self-regulation that relates to programming and operational standards for all stations holding a community broadcasting licence.¹⁶

ACMA has registered codes of practice for all broadcasting sectors, with the exception of the ABC and SBS codes which are notified to ACMA, which require regular review.¹⁷

¹² Terri Janke, *Our Culture: Our Future*, n.1, pp 47 – 48.

¹³<http://www.comlaw.gov.au/comlaw/Legislation/ActCompilation1.nsf/framelodgmentattachments/2AEF6979D3CEFED5CA256F71004C5489>

¹⁴ *Broadcasting Services Act 1993*, Part 9 Section

¹⁵ <http://www.cbaa.org.au/content.php/20.html>

¹⁶ <http://www.cbaa.org.au/content.php/20.html>

¹⁷ Section 123A of the *Broadcasting Services Act 1992* requires periodic review of the codes.

4.1.1 Community Broadcasting

Registered Code of Practice No 2 relates to guidelines for all Community broadcasting including radio. The purpose of this code is to encourage programming that reflects the principles of community broadcasting; to break down prejudice and discrimination; and to prevent the broadcast of material, which is contrary to community standards.¹⁸ The relevant sections relating to Indigenous content are:-

- 2.6 News and current affairs programs (including news flashes) programs should:
- (a) not misrepresent a viewpoint by giving misleading emphasis, editing out of context or withholding relevant available facts.

Indigenous programming and coverage of Indigenous Issues

This code acknowledges Indigenous peoples' special place as the first Australians, and offers a way to demonstrate respect for Indigenous cultures and customs, and to avoid offence with inappropriate words, phrases and actions. In the following section, 'Indigenous Australians' refers to the Aboriginal peoples and Torres Strait Islanders of Australia.¹⁹

- 2.7 When reporting on Indigenous people and issues, stations will take care to verify and observe the best way to respect Indigenous cultures and customs by:
- (a) considering regional differences in the cultural practices and customs of Indigenous Australians.
- (b) seeking appropriate advice on how to best respect Indigenous bereavement customs on the reporting of people recently deceased;
- (c) Using the appropriate words and phrases for referring to an Indigenous Australian and his/her regional group.²⁰

¹⁸ <http://www.aba.gov.au/radio/content/codes.shtml>

¹⁹ <http://www.cbaa.org.au/content.php/20.html> at 2.6 News and Current Affairs Programs

²⁰ <http://www.cbaa.org.au/content.php/20.html> at 2.7

- 2.8 Broadcasters will seek to involve and take advice from Indigenous Australians, and where possible Indigenous media organisations and/or Indigenous broadcasters, in the production of programs focusing on Indigenous people and issues.²¹
- 2.9 Broadcasters will avoid prejudicial references to, or undue emphasis on a person who is Aboriginal or Torres Strait Islander.²²

4.1.2 Commercial radio

Registered Code of Practice 1 (1.3) of the Commercial Radio Code of Practice provides that:

“A licensee shall not broadcast a program which:

- (e) is likely to incite or perpetuate hatred against or vilify any person or group on the basis of age, ethnicity, nationality, race, gender, sexual preference, religion or physical or mental disability.”

There are guidelines for the portrayal of Indigenous Australians in commercial radio which include the following:

1.3 “Media reports about Aboriginal and Torres Strait Islander peoples should respect the protocols of those peoples.”

1.6 “The positive portrayal of Indigenous people in programs and news media should ideally assist those communities to:

maintain and pass on to their descendants their cultures and traditions; and facilitate an understanding of Indigenous people’s cultures among all Australians.”

²¹ <http://www.cbaa.org.au/content.php/20.html> at 2.8

²² <http://www.cbaa.org.au/content.php/20.html> at 2.9

4.1.3 Compliance of codes

These codes apply to all community and commercial radio stations, including Indigenous radio stations. ACMA monitors complaints made to the broadcasters to assess whether the codes of practice are in keeping with prevailing community standards and concerns. Most codes require that complaints be made in writing.²³

4.2 Media, Arts & Entertainment Alliance of Australia Code of Ethics

The Media, Arts & Entertainment Alliance of Australia has a Code of Ethics for journalists, which is currently being updated. It presently endorses broad principles to the effect that:

“MEAA members engaged in journalism commit themselves to:

- Honesty
- Fairness
- Independence
- Respect for the rights of others”²⁴

The MEAA Code of Ethics does not identify Indigenous people as a group that requires any specific protocol concerns but does include a reference to other cultural practices in:

“2. Do not place unnecessary emphasis on personal characteristics, including race, ethnicity, nationality, gender, age, sexual orientation, family relationships, religious belief, or physical or intellectual disability.”

In 1990, Diana Plater, journalist, had written papers which broached the possibility of adopting specific Indigenous Australian guidelines including the

²³ <http://www.aba.gov.au/radio/content/codes.shtml>

²⁴ Media, Arts & Entertainment Alliance of Australia Code of Ethics available online http://www.alliance.org.au/index.php?option=com_simplefaq&task=display&Itemid=27&catid=15

recognition of the ‘importance attached by Indigenous people to sacred sites, ceremonies and other practices associated with traditional Aboriginal culture’²⁵, and it is hoped that acknowledgement be given to Indigenous Australians concerns in their updated “Code of Ethics”.

4.3 ABC editorial policy and Indigenous cultural protocols

The ABC’s Editorial Policy and Code of Practice specifically address Indigenous programming:

- Clause 10.8 addresses issues of discrimination adding that journalists should seek advice from the ABC’s internal Indigenous Programs Unit.
- Clause 10.11 - Indigenous Programs address issues of assumption about the way Indigenous people may look. This clause outlines the need for diversity in ABC’s broadcasting, recognises that Indigenous people consume media and that English may not necessarily be a first language, recognises the need for respect, makes journalists aware of the diversity of Indigenous cultural practices, recognises the significance of the terminology and language used to identify Indigenous peoples.

In addition, ABC Online’s “Message Stick” website publishes an Indigenous Protocol site hoping to assist journalists, filmmakers, producers and documentary makers to understand the importance of abiding by Indigenous Protocols. This document has been written as a guide to help bridge the gap between the needs of Television and Film makers and the Indigenous people and their customs but it is equally used by radio broadcasters.²⁶

4.4 SBS editorial policy and Indigenous issues

SBS’s editorial policy contains policies relating to the reporting of Indigenous people and the presentation of Indigenous programming.²⁷ Clause 2.1.2 includes the following:-

²⁵ Diana Plater, *The Journalist*, September 1990, page 9.

²⁶ ABC Messagstick, *Cultural Protocols*, <<http://www.abc.net.au/message/proper/>>viewed 18 October 2005.

²⁷SBS Corporation, *Codes of Practice*, Clause 2.1.2 refers to Indigenous Australians, <<http://www20.sbs.com.au/sbscorporate/index.php?id=1061>>, viewed 18 October 2005

“In the production, commissioning and presentation of indigenous programming, SBS will endeavour to ensure that proper regard is paid to the sensitivities, cultural traditions and languages of indigenous peoples. SBS recognises the need of indigenous communities to maintain their cultures, languages and traditions, and will seek to provide programs to that end.

SBS will be sensitive to the many cultural issues that surround media presentation of indigenous people and issues.

It is critical that the cultural practices of Aboriginal and Torres Strait Islander peoples are observed in any media programming and news reporting. The bereavement practices of indigenous people are region specific. It is the responsibility of program makers, news editors and producers to verify and observe local practices when making programs that depict or represent recently deceased Indigenous people or reporting on recently deceased Indigenous people.

Where appropriate, footage or sound recordings of deceased Indigenous people will be preceded by a warning.

Program makers, producers and journalists will refer to the SBS publication *The Greater Perspective*, written by leading Indigenous radio and television professional, Lester Bostock,²⁸ which contains the Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities.

The Greater Perspective sets out six principles which program makers, producers and journalists should follow when making or producing programs relating to Indigenous Australians. These principles refer to the need for program makers and producers to:

- be aware of and challenge their own prejudices, stereotyped beliefs and perceptions about Indigenous people;

²⁸ Lester Bostock, *The Greater Perspective: Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities*, SBS Corporation, Sydney, (2nd ed, 1997).

- be aware that an Indigenous view of Indigenous issues may differ from a non-Indigenous view;
- consult with Indigenous people in the making of programs about Indigenous people, particularly with those who are the subject(s) of the program;
- conduct dealings with Indigenous people openly and honestly which includes informing Indigenous people involved of the consequences of any proposed agreements and of their right to seek independent legal advice;
- respect the lands and cultural property of Indigenous people, as well as the subject(s) of programs; and
- be sensitive to the cultures of Indigenous people and undertake consultation and negotiation with the people concerned prior to and during the making of a program.”²⁹

5. Indigenous culture and copyright issues

In Australia the main body of law that provides ownership and reproduction rights to creators is the Copyright Act 1968 (Cwlth). The Copyright Act provides individual creators with specific economic rights that allow them to exploit their works without others being allowed to copy that creative input. The copyright owner of works, recordings and films has the exclusive rights to reproduce, sell and distribute the copyright work, recording or film.

A great number of generations may contribute to the development of an item of Indigenous knowledge or tradition. In this way, Indigenous cultural heritage is communally owned.

The formal Australian legal system does not adequately protect and guard the interests and rights of Indigenous owners of cultural material. Under copyright laws, the recording of information has been a common means by which Indigenous information and traditional knowledge, which is generally orally transmitted, is made publicly available, and moved out of the hands of Indigenous people.

²⁹ Lester Bostock, *The Greater Perspective*, n. 28.

Currently intellectual property laws fail to protect oral forms of culture and those of great antiquity. The focus is on protecting works that are in material form, and individual authorship is recognised. A work is also only protected for a limited period, that is 70 years after the author dies.³⁰ This is because the story may be oral, and not in a material form. It might also be a story that has been passed on through generations, and there is no one creator author but many that has contributed over years of refining the story.

When working in radio, content developed by a radio station for broadcast might involve aspects of traditional culture. For example:

- use of oral stories,
- information about sites, places and cultural practices;
- traditional knowledge, language words and histories; and
- recording of songs and performances.

Use of this material in radio programs should be discussed with the relevant people at the time of making the recording. Issues to discuss include:-

- Advise that they are being recorded and where it is to be distributed (e.g. replays on the station, geographic area it will go to, podcasting)
- If the copyright material is used, the copyright owner can seek financial payment in the form of licence fees and royalties for such use. The copyright owner can also assign his or her rights to third parties.
- When recording and broadcasting other people's copyright works, it is necessary to attain the rights from the relevant copyright owners. It is standard industry practice for these rights to be cleared in writing noting that some Indigenous people may not wish to sign forms but are happy to give oral consent which should be recorded. However, if there is no copyright, or the copyright in the material is owned by a third party, then, should you need to get permission from the relevant Indigenous group? It is respectful to attempt to identify the relevant community and if possible the relevant traditional custodians of material, to discuss use of this material for broadcast.

³⁰ Section 33 of the *Copyright Act 1968* (Cwlth)

- This recognises the archival use of recordings that have been stored for posterity not necessarily with permission granted and/or understanding of its intended uses at the time of recording.

6. Protocols

As noted above, both the codes of the commercial radio stations and the community broadcasting codes recommend observance to protocols. Firstly let us consider the question, what are protocols?

Generally, protocols are appropriate procedures for interactions; they provide a basis for the way dealings occur within a particular situation, community, culture or industry.³¹ Agreeing to comply with the accepted protocols of other cultural groups promotes interaction based on good faith and mutual respect, thus encouraging ethical conduct.

Indigenous cultural protocols are about acknowledging and respecting cultural Indigenous cultural beliefs and practices. In this regard, Indigenous protocols will differ from community to community. Protocols are the specific etiquette that should be adopted when interacting with another culture, and especially when using another's cultural material.

This might be Indigenous to Indigenous; Indigenous to non-Indigenous but the general principle should be that radio practitioners have a responsibility to inform themselves of Indigenous cultural protocols so that they can:-

- ◆ Prepare for programs on Indigenous cultural material, or when dealing with Indigenous people;
- ◆ Communicate and consult with communities for better understanding;
- ◆ Appropriately manage material that they collect and store; and,
- ◆ Where appropriate, pay respect to Indigenous cultural practices.

This section will examine some of the more general Indigenous cultural protocol issues that may arise in radio practice when working with Indigenous

³¹ Terri Janke, *New Media Cultures: Protocols for producing Indigenous Australian new media*, written for the Aboriginal and Torres Strait Islander Board of the Australia Council for the Arts, Commonwealth of Australia, Sydney, 2002, page 2.

communities. However, we stress that protocols will differ from community to community.

6.1 Respecting rights to own and control culture

Indigenous people seek the right to own and control cultural heritage. It is fundamental to recognise and respect this ownership. This right is a collective ownership to a culture heritage, including tangible and intangible.³²

6.1.1 Acknowledging traditional country

Respecting rights to culture includes recognition of traditional land. The Cooperative Research Centre (CRC) Torres Strait is a research institution based on Thursday Island. Its role is to inform the widespread communities in the Torres Strait about research, sustainable development of marine resources, marine environment and the social, cultural and economic well being of the Torres Strait Peoples. The CRC Torres Strait advises researchers to inform the community of their research by doing radio interviews on Torres Strait 4MW, before visiting, during and after the Torres Strait for a research project. The CRC advises of the appropriate protocol of acknowledging Traditional Owners by saying “I would like to acknowledge the Traditional Owners of this land”, before starting a radio interview.³³

In his podcast shows “Lets Talk” 4AAA Murri Radio’s Tiga Bayles also acknowledges traditional owners and the elders of the area/s he broadcasts to...³⁴ Likewise does, 93.7FM Koori Radio’s Helen Anu of the Torres Strait Islander program “Ina Meriba Wakai”.

When interviewing people, Nancia Guivarra notes the importance of asking Indigenous interviewees to identify themselves, however they want to be identified, at the start of any interview. This is to ensure their roles within a community are stated accurately for the purposes of the establishing of their authority to speak and also not to stereotype them. For example, in the mid 90s,

³² Terri Janke, *Our Culture : Our Future*, n. 1, page 8.

³³ CRC Torres Strait, www.crctorres.com/forcrctorres/radioprotocols.htm

³⁴ 4AAA Murri Country website <http://www.989fm.com.au/letstalk/>

Noel Pearson was often referred to in the mainstream media as “Aboriginal Activist” when in fact he was employed as a lawyer with Arnold Bloch Leibler a reputable law firm in Melbourne. It also helps to qualify correct pronunciations of names and places before starting the recording or actual interview.

6.1.2 Access to Indigenous land

In many Indigenous controlled lands, the media need consent or a permit to record or film within the Indigenous land area or community. When going into an Indigenous community (an Indigenous defined area such as land controlled under the Aboriginal Land Rights (NT) Act 1976 (Cwlth) or the Queensland Local Aboriginal bodies (DOGIT or ALGAQ) you will require a permit for entry.

Even if not required to legally get a permit, it is also considered respectful and courteous to advise people of your intended visit, and its purposes, if there is some recording or live broadcasting to be involved.

The Torres Strait Regional Authority (TSRA) advises that Island councils should be contacted prior to arrival with a letter of intent stating your purposes and requesting permission. When going to Thursday Island, then the TSRA should be advised, this is not a formal process. However in the Torres Strait the outer island communities require council permission to visit for whatever purpose and further you need permissions to make a recording at their location (i.e. on their land).

The Northern and Central Land Council have developed protocols for entering their country that are available online.³⁵ The Northern Land Council requires a special application for media reporting in their country.³⁶ This may be the case for many other Indigenous communities.

6.1.3 Community events in public

If you go into the public street or at a community event, you should also consider adopting processes about interviewing people at public events. Consider the following examples,

³⁵ Central Land Council <http://www.clc.org.au/media/publications/protocols/protocols.asp>

³⁶ http://www.nlc.org.au/html/files/Media_Permit.PDF

- Prior consent to go into an Indigenous community or to attend an Indigenous event. For example, attendance by media at the Garma Festival is by invitation only. The Laura Festival is strict on media approval due to past problems and now authorised media to attend. Also, the NSW Koori Knockout requires permission from the organisers.

For example, when recording music or part of performances at festivals, you must ask permission from the organising entity to record and broadcast performances. You should also ask the permission of each performer or group to record and broadcast their dances and songs. Written permission is advised. Copyright clearance may also be necessary. For “traditional music”, permission should also be obtained from the relevant custodians even though copyright laws may consider these works in the public domain.

6.1.4 Working in Indigenous communities

When working in the Indigenous community on an ongoing basis, you should make yourself known as someone who makes recordings for the use of the station you are working for, and what program, when it goes to air and how else it will be distributed. For instance, you should advise the Indigenous community if the recording is going to be placed online; if any other new media products and if there is going to be digital distribution.

6.2 Consultation and consent issues

Indigenous people should be consulted on the how their Indigenous cultural and intellectual property is to be interpreted. As noted above, Indigenous people are concerned about their representation as often being negative and also false or appropriate. Mainstream media is perceived as not consulting with the communities themselves when making stories about them. This has made Indigenous people sensitive to requests to make stories about them. The Royal Commission into Aboriginal Deaths in Custody recommended greater contact between non-Indigenous media and Indigenous communities.

It is good practice to set up good relationships up front before going into a community. Consideration should be given to identifying the right person to

interview on a topic related to a specific community. Some complaints by Indigenous groups have been that the wrong people are consulted with. It is important to identify the peak organisations, the elders and other persons in authority.

Seek advice from peak media organisations working in the geographic or subject area. This could include Aboriginal and Torres Strait Islander media organisations. A list of media organisations can be found in the *Black Book*, available on line at www.blackbook.afc.gov.au .

Other useful Indigenous organisations include land councils, native title bodies and relevant government departments and organisations.

Nowadays many Indigenous organisations are media savvy, they employ their own public relations and media officers to regulate the media and to better ensure that their own concerns are heard. Always talk to this person (or alternatively the organisers/committee) to seek permission.

Some issues to consider:-

- Who should be consulted - an individual; a family or a group?
- Where are they located?
- How are decisions made?
- Do you require an interpreter?
- Be aware of your own stereotypes³⁷
- Are there any existing processes or guidelines for media in this community?

6.2.1 Recording and interviewing Indigenous people

Under copyright law, the performer has the right to control dissemination of his or her performance by virtue of performer's protection provisions.³⁸ To record a performance for radio broadcast, performers' rights clearances are required. It is also respectful in terms of cultural protocols. Written releases are best practice,

³⁷ Lester Bostock, *The Greater Perspective*, n 28, page 9.

³⁸ Part XIA, Copyright Act 1968 (Cwlth)

but although it is possible for consent to be given by word, or implied by conduct.

The prior informed consent of the Indigenous people to be recorded for broadcast should be respected. Some examples in practice are:-

- When attending public events, you must ask permission to record from relevant media contacts, and advise of the details of broadcast.
- A community event, that is not a press or media event, but a performance at an event recommend that you do not record people without their knowledge.
- It is courtesy to let a performer or interviewee know the extent of how their performance or interview will be used. For example, do not use a great grab from your guest's performance to make a promotion for your station unless you have asked them for permission.

Releases should be used in field recording situations like at festivals, sporting and cultural events and preferably sought in advance of the events to allow them time to consider your request thoroughly.

Case Study: Sydney Writers Festival 2005

ABC Radio National's *Awaye* program asked readers to sign written consents (release forms) to allow them to record and broadcast the performance, "Blak Poets Night" at the Sydney Writers Festival in 2005. The consent form allowed for the taping and broadcast of the reader's performance for the program *Awaye* only.

Honouring Words at Boomalli 2003

Nancia Guivarra spoke to the writers who were reading their work and advised them of the program. She had a face to face discussion because the readers were hard to access prior to the broadcast as they were from overseas. She informed them it was a live broadcast and there was no recording and how far the live broadcast (footprint of the station) would be heard i.e. Sydney, Newcastle, Wollongong and the Blue Mountains.

6.2.2 Different situations may require different consent processes

Consent procedures may differ depending on the situation:-

Studio interviews

If you asked a person to come into the studio, and you made an appointment and they came into the studio, there is an assumption that they are consenting to the interview and agree to the broadcast of the interview. However, you should let them know if the interview is going to be recorded and used in other contexts (refer also 6.2.1).

News of the day

In disseminating news and particularly information from speeches/performances that are for the news of the day, consent may not necessarily be required³⁹, however, the recording should only be used for the news item, and not put into future programs, without prior consent.

6.3 Cultural integrity and authenticity

Concerns have also been expressed that some representations of Indigenous cultural heritage material are used out of context. There is also the issue of authenticity. “Authenticity” refers to the cultural source of Indigenous cultural and intellectual property. Giving proper consideration to authenticity means respecting customary laws or cultural obligations and ensuring that the appropriate context is given to the cultural material. Consider what measures you need to adopt in order to ensure that you do not take cultural material out of context or use it offensively.

Derogatory or inappropriate representations of Indigenous people in the media has caused past offence to Indigenous people.

- Is the representation culturally accurate?
- Consider how Indigenous people are portrayed including through language, character and cultural symbols.

³⁹ Section 42 of the Copyright Act 1968 (Cwlth)

- Is the speaker the most appropriate person to speak on the behalf of the community in relation to the issue?
- If using an archival recording of a group or individual, have you sought permission from the relevant council, organisation, individual or other authority (e.g. children of someone who has passed away)?

6.3.1 Music

When compiling a story or program which makes use of music, it is best to choose culturally appropriate music that represents the geographic and cultural content. Radio programmers need to be aware of the diversity of Indigenous music and should choose content that is culturally appropriate for example, checking what the song is about with the artist or record label or management or your interviewee and not just selecting the most well-known Aboriginal or Torres Strait Islander music because it sounds good, particularly when working with music in Aboriginal languages. There is plenty of Indigenous music from just about every geographical area.

When using music in a radio program, ask 'Is this music relevant to the person, community or place this story is about? See Australia Council's *Song Protocols Guide*.⁴⁰

6.3.2 Language and terminology

Consider also the use of language and terminology when referring to people. For example, use of Koori is a term that refers to Aboriginal people from New South Wales and Victoria. To use this reference to refer to Aboriginal and Torres Strait Islanders who come from other areas is inaccurate. Be aware that different regions have different identifying group names or nations. Ask your guest or interviewee what they want to be referred to as.

The former National Indigenous Media Association produced an advisory note to assist radio staff avoid reinforcing stereotypes and beliefs.

⁴⁰ Robynne Quiggin, *Song Cultures: Protocols for producing Indigenous Australian Music*, Terri Janke & Company Entertainment, Cultural Heritage and Media Lawyers and Consultants, Australia Council for the Arts, Commonwealth of Australia 2002

“Reporters and program makers should be careful not to use language which Aboriginal people find offensive and discriminatory. This includes terms such as Full-blood, Half-caste, Part-Aboriginal...”⁴¹

See also the ABC’s Message Stick Online website’s Indigenous cultural protocols which includes more guidelines regarding languages and lists regional terms used to describe Aboriginal and Torres Strait Islander people.⁴²

6.3.3 Oral stories

When recording Indigenous oral stories and histories make sure that the informer and storyteller is aware that this is being recorded, and what uses are to be made of the recording. Be careful not to broadcast anything that is sacred or sensitive. Written releases and permission should be sought, and recordings should be properly labeled. Consider if there should be payment if the use of the story is for wider dissemination, or for dramatic or radio documentary purposes. Don’t assume Indigenous people should not be paid.

6.4 Respecting cultural beliefs

6.4.1 Sacred sites and material

Under Indigenous customary laws, some places, objects and knowledge may only be known by women or men or only the initiated and sacred and secret knowledge cannot be seen or made known to the general public.

- Is the material you want to use sacred? Remember it is not always appropriate to record ceremonies or sacred sites.⁴³

⁴¹ National Indigenous Media Association of Australia, *Draft Code of Ethics*, NIMAA, Brisbane, October 1997.

⁴² <http://www.abc.net.au/message/proper/>

⁴³ AJA Code of Ethics as cited in Plater, D. (1992) *Guidelines on reporting Aboriginal & Torres Strait Islander Issues*. In: *Signposts: a guide for journalists*. Australian Centre for Independent Journalism, UTS and reproduced on ABC website, http://abc.net.au/message/proper/med_protocol.htm#meaa, viewed at 20 June 2005.

- Is it closed information that the community does not want made public? To what extent can the story be made widely known?
- In some Indigenous communities, information can be held and disseminated only by certain genders. Eg: women's business. Consider gender issues for your project.
- Naming and depicting deceased people is prohibited under the customary laws, and can be offensive to many Indigenous people.

6.4.2 Cultural mourning practices

In many Indigenous communities, the naming and depicting of Indigenous people recently deceased is prohibited under customary laws. This may last for weeks or even years until the relevant ceremonies have finished. As the code of practice for community broadcasting radio advises:-

When this occurs different names are used to refer to the deceased. For example, Dr Charles Perkins passed away in October 2000 and a media statement released by his family advised media to refer to him as Kumantjayi Perkins in accordance with traditional custom.⁴⁴

With television broadcasts, the ABC and SBS use warnings to advise Indigenous viewers of the possibility of deceased images being shown. The Northern Land Council recommends the following warning to be used for television and film media: - "Aboriginal people should be aware that it is possible that some people depicted may have since passed away."⁴⁵

If a person dies after being recorded for a radio program, discuss customary law practices of restricted use of voice or references of a deceased person with local community or family representatives about the appropriate practice of referring and representing a recently deceased person. Where appropriate use warning at the head of the program to alert listeners who may be affected by these practices.

When using archival recordings of deceased people, consultation with the Indigenous community, family and representatives about the appropriateness of

⁴⁴ Perkins family, "Statement by Family of Dr Charles Perkins" < <http://www.mail-archive.com/recoznet2@paradigm4.com.au/msg04504.html> > viewed at 21 June 2005.

⁴⁵ Northern Land Council, *Protocols for media Access*, NLC, Darwin, http://www.nlc.org.au/html/files/Media_Access.PDF >, viewed 20 June 2005.

the proposed use may assist to identify any protocols that need to be followed and respected.

6.5 Attribution

In the past, there has been a concern that such archival and other recorded materials are appropriated without any respect or recognition that the material comes from a distinct cultural group. Where possible, the source of any Indigenous music, songs and any traditional knowledge should be acknowledged, by stating the name of the performer and if applicable, the relevant Indigenous community.

It is important to acknowledge Indigenous culture and people respectfully during broadcast. Consider the following:-

- What attribution and credit provisions are to be given to the family or group or organisation that is the source of the cultural material?
- Discuss with the relevant people, the wording to be used.
- Which specific people or other host organisation should be thanked?

6.6 Sharing of benefits

Indigenous people seek the right to benefit commercially from the authorised use of their Indigenous cultural and intellectual property, including the right to negotiate terms of such usage.⁴⁶ Consider whether the use being made requires payment, or if there are ways that the sharing of benefits for use of the person's story or information can be given back to the community in terms of skills development, or cultural maintenance. This may be particularly relevant for radio drama and documentary purposes or other funded projects and should be included into your budgets.

As noted by journalist, Nancia Guivarra, "We go to great lengths to give copies of broadcast material back to the community because Indigenous people are well

⁴⁶ Terri Janke, *Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights*, note 1, page 47.

documented saying they are always being asked for information and nothing is given back to them.”

6.7 Archiving and future uses

Radio stations collect, over time, a lot of recordings that contain Indigenous cultural material. This forms part of a valuable cultural record. In managing these recordings, consideration should be given to how to ensure that there is respect for Indigenous cultural and intellectual property rights. Some of the issues include:-

Is the recording suitable for future use?

If archived and the recording is to be put to another use, there should be consultation with Indigenous people on the use of old film footage before making it available.⁴⁷

Archiving processes should address how to identify material. Put clear instructions on tape and disc contents, including people, contact details, clans and places and the nature of the material contained therein and any restrictions on how they are to be used in the future. E.g. to be used only in “This Program” seek further permissions for any other use.

⁴⁷ Film Australia has a Memorandum of Understanding relating to the use of ethnographic footage taken by Ian Dunlop. This thorough document covers secondary uses and even lists organisations for gaining consent for certain uses of the film materials. It even lists the people and organisations to be consulted. This practice is to be commended, page 249-250

7. Useful resources

In an effort to promote better understandings between Indigenous and non-Indigenous peoples within various sectors of arts, education and cultural affairs, Indigenous communities and relevant industries have been developing protocols to guide relationships between the users and the owners of Indigenous cultural material. Indigenous protocols have been developed for various sectors of our wider cultural industries that work with Indigenous communities. These documents are standard-setting protocol and ethical documents. They include:

- Diana Plater, “Going for Red, Black and Gold: The Indigenous Media Manual” written for Jumbunna Centre at the University of Technology Sydney, published by the Jumbunna centre at the University of Technology, 1994
- Australian Film Commission, “Towards a Protocol for Filmmakers working with Indigenous”⁴⁸ - protocol for the Australian film industry on respecting the Indigenous cultures, when using cultural material for film content.
- Australian Institute of Aboriginal and Torres Strait Islander Studies, *Guidelines for Ethical Research in Indigenous Studies*.
- Lester Bostock, *The Greater Perspective: Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities*, SBS Corporation, Sydney, (2nd ed, 1997).
- Alex Byrne, Alana Garwood, Heather Moorcroft and Alan Barnes, *Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services*, endorsed by Aboriginal and Torres Strait Islander Library and Information Resources Network (1995).
- Darlene Johnson, *Indigenous Protocol*, written for Special Broadcasting Services (2003) – refers to documentary production.⁴⁹

⁴⁸ Terri Janke for the Indigenous Unit of the Australian Film Commission, *Towards a protocols for Filmmakers working with Indigenous content and Indigenous communities*, Australian Film Commission, Sydney, 2003

⁴⁹ Available at <<http://www.sbs.com.au/sbsi/documentary.html>>.

- Australia Council protocols for various Indigenous artforms, written for the Aboriginal and Torres Strait Islander Board of the Australia Council's Culture Series:
 - Terri Janke, *Visual Cultures: Protocols for Producing Indigenous Australian Visual Art and Craft*.
 - Terri Janke, *Writing Cultures: Protocols for Producing Indigenous Australian Literature*.
 - Terri Janke, *New Media Cultures: Protocols for Producing Indigenous Australian New Media*.
 - Robynne Quiggin, *Song Cultures: Protocols for Producing Indigenous Australian Music*.
 - Robynne Quiggin, *Performing Cultures: Protocols for Producing Indigenous Australian Performing Arts*.

8. Conclusion

Radio is a form of communication; providing an opportunity to represent Indigenous people, their culture and issues to wider and mostly appreciative audiences.

Many Indigenous stories are only now being heard in mainstream media such as traditional creation stories, cultural information and stories about Indigenous experience such as stories about the stolen generations. Like other peoples, Indigenous people are keen to have their stories heard in an appropriate and non-discriminatory or non-stereotypical manner. And, like other peoples they see media as an important tool for educational purposes and to promote better understanding and to inform people about their circumstances, often with a view to bringing about positive change.

It is important that Indigenous stories and other cultural knowledge are treated respectfully and ethically with proper acknowledgement of their protocols and practices.

Accordingly, there is increasingly a growing recognition with Australia, about the importance of Indigenous cultural protocols in all sectors of the arts and media and the radio sector should also address these issues within radio practice.

In representing culture, radio broadcasters record and collect Indigenous people's knowledge, oral stories and information. Protocols are recommended for use within all radio practice to guide broadcasters on how to represent Indigenous people and their culture as well as on interacting and advising Indigenous people about how this information is recorded, represented, managed and stored.

This Discussion paper is a starting point for general information to radio broadcasters, students, program managers, media organisations, institutions, academics, and other people working in radio such as administrators or any interested persons.

Ultimately it is the responsibility of the individual broadcaster, producer, journalist or program manager to find out and apply the protocols within each specific community. In this way we can foster better relationships, understanding and communications between Indigenous and Non-Indigenous communities in Australia.

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Terri Janke is of Aboriginal and Torres Strait islander descent. She is a solicitor and writer. Her law firm Terri Janke and Company Pty Ltd is based in Sydney and specialises in copyright and Indigenous arts and cultural issues. Terri is the author of *Our Culture: Our Future: Report on Australian Indigenous Cultural and Intellectual Property rights* (1999) and *Minding Cultures* (2003) – eight case studies on Indigenous Australians use of intellectual property laws to protect their cultural expression, commissioned by the World Intellectual Property Organisation. Her first novel *Butterfly Song* was published by Penguin (2005).

Nancia Guivarra is a Meriam (Magaram), Wuthathi and Bindal Juru woman with a Bachelor of Applied Science (UQ 1988) and a Graduate Diploma of Arts (Journalism) (UTS 2004). She is a cross-media journalist in the ABC formerly presenter/producer on Radio National's *Away!*, as a Message Stick TV Producer and is currently the Online Producer of ABC Message Stick and Message Club online.

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