Introduction

Deepening Histories of Place was a multi-partner project which investigated the Indigenous social and environmental links that create historical ‘highways’ of understanding. These ‘highways’ include song-lines, tracks, exploration, trade, pastoral and tourism routes. The aim of Deepening Histories was to gather together publications, archive resources and history relating to three different Australian landscapes to deepen the layers of Australian history. Those landscapes were the Sydney Blue Mountains, Central Australia and Arnhem Land Kakadu. Initiated and led by Ann McGrath, a Professor of History at the Australian National University, The project was funded by the Australian Research Council’s Linkage scheme, which aims to link scholarly expertise with outside organisations for national benefit. The industry partners included the National Film and Sound Archive, the Australian Institute of Aboriginal and Torres Strait Islander Studies, Office of Environment and Heritage New South Wales, Ronin Films, Australian Government Research Council, Australian National University, and University of Sydney, Australian Government Director of National Parks/Parks Australia, with additional support from the Northern Territory Government and, University of Western Sydney and the Office of Environment and Heritage. More information about Deepening Histories of Place can be found at http://www.deepeninghistories.anu.edu.au/.

The project partners wanted to ensure that the collection and use of Indigenous knowledge in the project was handled ethically and according to best practice. This was important on a number of levels. The project involved the collection of Indigenous people’s stories and experiences about connections and histories to place. The project also included filming on traditional Indigenous lands, as well as national park land. The records and information collected would be used by both researchers and the project partners for publications, documentaries, archival and tourism purposes. In order to achieve best practice, the project partners sought to consult with and obtain consent from Indigenous peoples and communities affected by the project. To deal with this, the National Film and Sound Archive, a project partner, engaged Terri Janke and Company to develop protocols and clearance forms for consent.

1. Respect

Indigenous people are fundamentally entitled to own and control their own cultural heritage.

The Project Partners observed the principle of respect for ICIP by understanding that the collections of Indigenous people’s stories and connections to country should be subject to cultural protocols. They were mindful that the project would create recordings of Indigenous cultural knowledge and life experience which would be adapted into different formats made widely available.

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136 Deepening Histories of Place, http://www.deepeninghistories.anu.edu.au/, accessed 1 May 2015. This was funded by the Australian Research Council, ARC Linkage Project LP100100427, in combination with the listed Industry Partners.


138 Deepening Histories of Place, above n.
When the National Film and Sound Archive (NFSA) began working on ANU’s Deepening Histories project, they engaged Terri Janke and Company to create protocols. This enabled the Deepening Histories Project to inform academics, filmmakers, researchers and participants about the protocols that were to be followed when working with Indigenous Cultural and Intellectual Property (ICIP).

Development of those protocols demonstrated respect for the cultural heritage of Indigenous Australians in accordance to Article 31 of the United Nations’ Declarations on the Rights of Indigenous Peoples and the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) ‘Guidelines for Ethical Research in Australian Indigenous Studies’.

The respect for culture continued throughout the project to the launch of the Deepening Histories website at the Australian National University where a welcome to country by the local Indigenous elders was an integral part of the event.

2. Indigenous Control

Indigenous people have the right to self-determination of their cultural affairs and the expression of their cultural material. The Deepening Histories recognised that Indigenous people had control over their ICIP by seeking permission from them to be in the project, and be recorded, and by then granting the copyright in the recordings and films to the Indigenous participant.

The Deepening Histories protocols were modelled on the Australia Council standards and guidelines. The Deepening Histories protocols explain that researchers must advise participants of the nature of the project when making film footage, videotapes, sound recordings, transcripts and photographs of the name, voice, image, biographical information and performances of Indigenous individuals, Community and Community lands. This acknowledged not just the individual right to control their story, but the community’s right to control how their country was filmed and presented.

Under the individual clearance forms, copyright in the recordings taken of individuals sharing their knowledge would be owned by the knowledge holder. This means that individuals could control the use of the recordings under copyright law.

The protocols also set out the rights of Indigenous people to their cultural heritage – both under Australian and international law, and through protocols. The protocols acknowledged that Indigenous people are the guardians and interpreters of their cultural heritage who have the right to control their cultural heritage.

3. Communication, Consultation and Consent

It is important to communicate and consult with the relevant Indigenous people in a project which uses ICIP so that project partners can be better informed about the use of knowledge before seeking formal consent.

When the protocols were established for the Deepening Histories project, the researchers met with Indigenous people and communities to discuss the project before any filming commenced. It was important to acknowledge cultural mourning protocols in the project. This

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139 AIATSIS guidelines were also useful for developing these protocols. Terri Janke and Co worked with a protocols steering group of Dr Luke Taylor from AIATSIS, a NFSA staff member and historian and project manager Dr Mary Anne Jebb.

140 Ibid 13.
meant that there were protocols in place in case an Indigenous person had previously died and was mentioned or died during or after the release of the recordings.

The protocols that were to be followed included:

- If a person was to die during the course of the project then the relevant Project Partner was to consult with the family as to the recommendations that might be put in place in order to respect the Indigenous person.
- If a person is dead and the Project Partners wish to publish something about the Indigenous person the family must be consulted. If the family is unknown the relevant Partner will consult an Indigenous organisation that resides in the region that person came from.
- If a person dies after the publication, the Project Partners may not be able to do anything, but a warning will be placed on the film in order to inform viewers of the inclusion of the deceased person.

A copy of the Deepening Histories Cultural Protocols was given to participants in the project so they understand the nature and size of the project. This was particularly important because the recordings of ICIP were intended for use in commercial and tourism industries which would be seen and viewed by people across the world.

Consent was given in the form of clearance forms. There were five different clearance forms offered in the Deepening Histories project. They were:

- On-Country and Communal Knowledge
- Individual Consent
- Individual Consent (Under 18)
- Copyright Clearance
- Archival Material

The On-Country and Communal Knowledge clearance form aimed to gain community consent for filming on country, use of Indigenous Cultural and Intellectual Property, maintain cultural integrity in the editing stage and attribution of the relevant community or individual.

The Individual Consent form sought permission from the individual to be filmed, photographed and recorded for the project and to clear any ICIP and third party copyright material used by the individual. It also contains the instructions if the participant passes away. The form also contains next of Kin information. If the next of Kin produces a will or last testament that conflicts with the Individuals consent form then the partners will discuss the matter with the next of kin and come to an agreement on the actions that need to be taken.

The Individual Consent form for those under the age of 18 discusses the same consent as the Individual consent form although it must be signed by a parent or guardian.

The Copyright Clearance form is a non-exclusive licence to use the copyright material for the use of the research project.

The Archival Material form means that cultural clearance of old photographs footage and recordings can be used if the family of the person/people is unknown.

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141 Ibid.
142 Ibid.
143 Ibid.
4. Interpretation, Integrity and Authenticity

Interpretation refers to the representation of Indigenous Cultural and Traditional Knowledge. When working with Indigenous Australians it is respectful to include an authentic view of the information and to also show integrity in the information that is being presented.

Authenticity was gained through seeking out the correct person in the community to share knowledge. This meant that before a project started consultation with a community was encouraged. Therefore relationships and trust needed to be built to determine who had the cultural authority to share this knowledge.

The individual consent forms that were signed during the project ensured that the individual would warrant that they had the cultural authority to share such cultural knowledge. The community clearance form also ensured that a community representative would clear the filming of the project on Indigenous country.

This was an important aspect of the project because it ensured that authenticity and interpretation was guaranteed and that only the culturally appropriate sites were the ones that were being filmed. This means that no secret sites were to be shown.

When the Deepening Histories website was being put together there were a lot of permissions necessary to gather from the copyright owners. Therefore, before they were placed on the website permissions were sought from the directors, producers, performers and also ICIP knowledge holders. They were to watch over or listen to the footage and then approve or disapprove the release onto the site. This was not only for copyright purposes but also to ensure that the information being released had integrity. 145

A digital data asset management system was developed by Dr Jason Ensor with a password-protected research commons. Materials placed on the commons were tagged according to privacy and access levels in the agreements. Only items tagged ‘public’ could appear on the website. When the aggregated materials are archived each item retains its privacy tagging within the metadata. 146

5. Secrecy and Confidentiality

Some ICIP is either secret or confidential and only those who have gone through the right proceedings are allowed to hear it. Therefore, the proper Indigenous elders must be consulted before any ICIP is used. 146

The Deepening History partners did not want to use any secret or sacred knowledge in their materials. This was because the results of the project would be made widely available to the public. The researchers collecting knowledge from Indigenous knowledge holders discussed this before recording to ensure no secret or sacred or culturally restricted knowledge was shared at the time of recording.

144 Deepening Histories of Place, above n.
145 Email discussion between Sarah Grant and Mary Anne Jebb
146 Australian Council for the Arts, Media Arts, above n 21.
The protocols also respected the individual privacy of the individuals and communities working with the project partners. The privacy of Indigenous people was put as the highest importance before, during and after the project. The protocols gave participants flexibility when sharing their private information. The forms explained the rights that the Indigenous participants had and therefore they could make the decision as to what would be protected and what would be freely allowed.

6. Attribution and Copyright

When working with Indigenous Australians it is respectful to attribute the copyright of any Cultural or Intellectual Property to them.

The Deepening Histories protocol gave information about copyright laws in Australia. Under the Copyright Act 1968 (Cth), copyright exists in a recording taken of knowledge being shared. This can be in the form of a sound recording, or a cinematograph film, or an original literary work for notes taken. In addition, performers have rights in their performance. Performers include interviewees and performers of folklore.

Copyright law is complex, but the Deepening Histories protocol attempted to create some simple tools for informed project participants about how copyright may affect the project. Since copyright belongs to different people for different reasons and there may sometimes be confusion as to who the copyright of a work belongs to, the Deepening Histories protocols discussed the framework that copyright may fall under and therefore who it belongs to.

The protocols recognised the right of Indigenous people and communities to be attributed for the use of their ICIP. This is in addition to any moral rights that a person may have under the Copyright Act 1968 (Cth).

Benefits

Indigenous people are able to seek benefits based on their ICIP contributions to the project. The benefits would be discussed in an open negotiation between the community and the Project Partners. The benefits available for participation in Deepening Histories included financial payments, education and training, employment and development, improved infrastructure, access to research materials and footage, including raw and edited footage, assignment of copyright in, or a license to use the recordings and repatriation of pre-existing archive collections relevant to an Indigenous community involved in the Project.

People that were involved in the project were also invited to conferences, events and presentations that might arise out of the project. On the website, those who were involved in film recordings, sound recordings, transcripts or performances were recognised.

7. Continuing Cultures

Cultures are dynamic and evolving, and the protocols within each group and community also change.
The Deepening Histories project was designed to deepen knowledge of ICIP, through this deepening knowledge, recognition for Indigenous Australians ICIP is a step closer. It also encouraged researchers and academics to research and understand ICIP.

8. Recognition and Protection

The project partners and the Deepening Histories project acknowledged the rights of Indigenous people to their cultural heritage. The protocol for the project supported the ambitions of the Declaration on the Rights of Indigenous People, and went further to implement contractually binding obligations on the partners to respect those ideals.

It was the desire of the project and partners to not only create best practice for the Deepening Histories project, but to leave a framework for other researchers and future projects to build upon. To do this, the project made their protocol and all associated clearance forms and contracts publically available on their website. This builds upon the success of the Australian Council industry protocols to develop more examples of how organisations work to respect the rights of Indigenous people to control their cultural heritage.

Key Tips

1. When working with Indigenous Australians, writing up consent forms offers a comprehensive and helpful ways of letting them know what their rights are and gaining their permission.
2. Copyright should be non-exclusive unless other circumstances have been discussed and understood by the Indigenous participant.
3. The acknowledgement of Indigenous Cultural and Intellectual Property helps build towards a society that better understands Indigenous culture.