



Law, Ethics and Ownership: The Why and the How of the Primer

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Workshop: Law, Ethics and Indigenous Collections
19 June 2006

Background to the Primer

- Cultural institution sector with:
 - varying degrees of awareness of special issues surrounding Indigenous collections; and
 - varying degrees of implementation of new collection management policies and protocols in relation to Indigenous collections; and
 - certain common questions and issues that need to be addressed.
- See discussion in chapter 1.

The aim of the Primer

- Not intended to be a one-stop-shop on management of Indigenous collections.
- Main focus: legal principles in relation to the acquisition, use and reproduction of Indigenous cultural materials.
 - For discussion of interaction of principles of ownership, see chapter 2.

Types of rights and interests

1. Rights in tangible property

- Personal property law
- 'Bailment' (ie, loans)
- Law and charities
- Cultural heritage Legislation

CHAPTER 3

2. Rights in information

- Confidential Information
- Privacy law
- Freedom of Information
- Archives and public records legislation

CHAPTER 4

3. Copyright and allied rights

- Copyright
- Moral rights
- Performers' Rights

CHAPTER 5
AND
CASE STUDY

Law and Ethical Management

- Primer seeks to explain legal principles with reference to the special qualities of Indigenous collections:
 - consideration of ethical considerations in chapters focussing on legal principles; and
 - separate chapter drawing together themes regarding ethical management: chapter 6.

Example:
Confidential information

Cultural Institutions, Law and
Indigenous Knowledge Primer

Pages 37-42

Equitable obligations of confidence

- Does the relevant information have the necessary quality of confidence?
 - Information must not be in the ‘public domain’.
 - Note: absolute secrecy not required.
- Was information received or acquired in circumstances importing an obligation of confidence?
 - Direct relationship between confider and recipient not required.

Contractual obligations of confidence

- Obligation of confidence that arises pursuant to an agreement.
- A contract can create an obligation of confidence where no equitable obligation would arise.
- Key terms include:
 - Definition of confidential information;
 - Nature of recipient's obligations; and
 - Permitted uses of information.

Breach of confidence

1. Determine whether the collection item contains confidential information.
2. Identify the permitted uses of confidential information – is the proposed use or disclosure within or outside authorised activities?
3. If **within**: consider whether consultation or consent nevertheless required under ethical management principles (chapter 6).
4. If **outside**: identify the ‘owner’ of confidential information, and seek consent for the proposed activity.

Thanks for listening!

- Copies of the Primer can be downloaded for free at www.ipria.org.
- Bound copies can also be purchased: an order form is on the IPRIA website.