

Senate Select Committee on the Aboriginal Flag
ANSWERS TO QUESTIONS ON NOTICE
Hearing Date 22 September 2020

Agency: Australian Institute of Aboriginal and Torres Strait Islander Studies

Topic: Aboriginal flag design

Senator: Senator Dodson

Type of question: Hansard – 22 September 2020

Number of pages: 2

Question:

Senator DODSON: I'm trying to look at it in another way. We've heard from people who've told us passionately that this is the Aboriginal people's flag. There's no basis in the Western law for Aboriginal people to assert that, but because it symbolises these very serious concepts within the cultural life of Aboriginal people, and their identification with those concepts, there's obviously this resonance. You mentioned that yourself at the start. There's a resonance. Do you agree with that?

Mr Ritchie: As I say, the institute does recognise that the flag, as currently presented in its design, has come to mean something very powerful for Aboriginal people. So, yes, it does have resonance.

Senator DODSON: And as to that resonance, people might identify their purposes in different ways. Someone mentioned that wrapping themselves in the flag gave them security. That is also a very important concept. I'm trying to deal with the question of intellectual property. If that intellectual property fundamentally vests in the community, as opposed to the use of those concepts in a design, how can you not recognise the community's rights in the flag?

Mr Ritchie: I don't know. I'm not an expert in these issues in relation to law and the interaction between an individual artist's rights in terms of an artwork and a design and how people might understand the various elements of that design.

Senator DODSON: Yes. But the artist in this case is an Indigenous person, so he's coming from within the culture of Aboriginal people. It's not as if he's an alien to the cultural realities. The problem we have is that Western law pays little attention, if any, to the collective ownership that has now grown through the use of this flag by First Nations peoples. Has the institute done any work in relation to this sort of First Nations community collective property and an artist's individual property right?

Mr Ritchie: Quite possibly, Senator; again, I would have to check. I would have to provide an answer to that particular question, as to whether we've done any work, on notice.

Answer:

AIATSIS has undertaken some work on community and collective property, but not in the context of an artist's individual property right. This work is in AIATSIS' February 2019 response to IP Australia's consultation paper on the Protection of Indigenous Knowledge in the Intellectual Property System.

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Senator: Senator Malarndirri McCarthy

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Number of pages: 2

Question:

CHAIR: I'll continue with Senator Thorpe's questioning. Can you explain the symbol again. The shield is the symbol for AIATSIS?

Mr Ritchie: Correct. That's our trademark. The design is based on a shield that's in our collection, from North Queensland. It was adopted by the council of the institute in the sixties, I think, and we use it, as I say, with the permission of the community from which it comes in North Queensland, in particular the artists and their families.

CHAIR: So the further information you're going to provide is about that community and the artist?

Mr Ritchie: No, the further information I thought Senator Thorpe was asking for was on the use of the flag.

CHAIR: Sorry. Are you able to tell us more about the community and the artist?

Mr Ritchie: I can provide more information on notice about that. I don't believe there is any agreement between us and the people who produced the shield—the artists and the community—involving any financial transaction, if that's what you're driving at.

CHAIR: I'm not so much driving at it; I'm just trying to understand how that process works, as it really comes to the heart of the copyright of the flag. How does a statutory organisation like AIATSIS know that this particular shield will forever be okay to use if it doesn't have some kind of contractual arrangement?

Mr Ritchie: I'm sure we have an agreement in place, and that agreement is subject to it remaining current in the sense that people are still happy for us to use the shield. The family and members of the community, in relation to the shield, were down in the institute last year, reviewing the arrangements and reviewing the shield before it went on public display as part of an exhibition that we held with the museum last year.

CHAIR: Are you able to table the agreement you have with the artist or the family?

Mr Ritchie: I'll have to take that on notice, because we'll have to check with them.

Answer:

The Kokobera shield is one of four commissioned by Ursula McConnell at Yarrabah in 1931 whilst undertaking fieldwork in North Queensland. The Kokobera shield was adopted as the emblem by AIATSIS' first Council in 1963.

No agreement exists between AIATSIS and the family or community of the people who produced the shield. However, AIATSIS has undertaken significant engagement with the families of the original shield creators and the communities in which these families are located. Family and community representatives continue to support the image of the shield being used as the logo for AIATSIS.

The shield logo is the registered trademark of AIATSIS. The design of the logo is inspired by the Kokobera shield rather than a replication of the shield.

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Question:

CHAIR: Would AIATSIS be able to differentiate which of those over one million items are legally owned by AIATSIS and those which are not?

Mr Ritchie: To the extent that we have complete documentation in relation to all of the items, we can certainly identify those items in our collection that are in a sense the legal property of the institute and those that are held on deposit. Yes, we can.

CHAIR: Would you like to provide that information? Would you like to take it as a question on notice for the committee?

Mr Ritchie: I'm happy to provide you what information I can in relation to that, yes. Just to be clear: in terms of the number of items that fall into either of those categories—

CHAIR: That's correct, yes. So how many of those over one million would be legally owned by AIATSIS as opposed to how many are just there because of the goodwill of the depositors.

Mr Ritchie: I can't answer that question now, but I will be able to get you information on that.

Answer:

Ownership of the AIATSIS Collection varies greatly by format. It is difficult to provide an exact number across all collection types, however we estimate that AIATSIS owns less than 10% of its total collection. In recent years, we have undertaken work to review and update historical deposit arrangements, resulting in several cases in the transfer of title of collection items to AIATSIS.

AIATSIS recognises the rights of creators and cultural custodians to control their intellectual property; when items are transferred to AIATSIS, intellectual property rights are retained by their creators, though some contributors to the Collection do also decide to enter into agreements for the licensing or transfer of copyright to AIATSIS.

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Senator: Senator Davey

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Number of pages: 1

Question:

Senator DAVEY: Is any of the material you use or publish under ongoing royalty or licence arrangements?

Mr Ritchie: The books we publish are sold, and there are royalty agreements built in to the publishing agreements as is the usual practice in the publishing industry. I can't think of them off the top of my head, but I'm happy to take on notice if you would like, other circumstances in which material is published and licensing agreements are entered into. But I can't identify any of those circumstances off the top of my head at the moment. I'm happy to take it on notice if you'd like.

Answer:

AIATSIS' Publishing arm, Aboriginal Studies Press have ongoing book publishing agreements that include royalty payments. The standard royalty amount for a paperback/hardback book is 10% of the Recommended Retail Price (RRP). Some of our publishing agreements include rising royalties, whereby royalties increase when a book sells above a certain number of copies. E-book royalties are a standard 15% of the Gross income. All of these figures are industry standard.

Under our *Access and Use Policy*, staff and clients seeking to reproduce materials from the AIATSIS Collection must obtain permission from rights holders, including copyright owners and custodians of Indigenous Cultural and Intellectual Property rights. All agreements are negotiated with the rights holder and/or their preferred representative; conditions vary depending on the nature of the material and the intended use.

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Senator: Senator Thorpe

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Number of pages: 1

Question:

Senator THORPE: Have you ever used the Aboriginal flag for publications or email signatures or anything at all in the past?

Mr Ritchie: To my knowledge, no. You may be aware that the logo of the institute is a shield—a representation of the Koko Bera Shield from North Queensland—that we use with the permission of the traditional owners and in fact the family of the artists who produced it. That's our primary brand, if you like. To my knowledge we haven't, but I don't have in my memory the full history since the early seventies. Again, I can take that on notice and come back to the committee, if that would be helpful.

Answer:

No. It has never been AIATSIS' practice to use the Aboriginal flag in e-mail signatures, or as a branding or promotional element in publications.