

# Licensing Aboriginal and Torres Strait Islander Art

Information for Retailers



# Licensing of Aboriginal and Torres Strait Islander Art and Design - Information for Retailers

## INTRODUCTION

The art, design and cultural expression of Australia's First Nations people is a powerful means of communication and education. The stories and knowledge behind Aboriginal and Torres Strait Islander artwork bridge gaps in language, history and understanding with the wider Australian community and are sought-after by tourists and Australian consumers.

While the art and design of Aboriginal and Torres Strait Islander people is an act of maintaining and sharing cultural expression, it is also a means of economic independence. Products that include Aboriginal and Torres Strait Islander art and design generate benefits for manufacturers and retailers of these products as well as for the artists, their families and communities.

## WHAT IS LICENSING?

An artist owns the rights in an image or design as soon as they have created it. This right is known as copyright. A licence is one of the main ways for an artist to allow others to use their copyright. Licensing means an artist gives a person or a business permission to use an image they created. A licence is a contract that sets out the way/s an image can be used and what fee will be paid for that use.

***Artists retain the copyright regardless of when or to whom an artwork is sold. Owning an artwork gives no rights to use it for anything other than putting it on display.***

Licensing is both simple and complex. It is simple because a person or business wants to use the art or design of an Aboriginal or Torres Strait Islander artist to make and sell a product and the licence enables this to happen. It is complicated because there are many ways in which an artist and a business can work together on licensing; however, with clear, fair and transparent licence terms, this can be achieved.

## WHAT DOES IT MEAN FOR ME AS A RETAILER?

By stocking and selling products that use Aboriginal or Torres Strait Islander artwork or design, you play a crucial role in the supply chain. The decisions you make about the wholesalers and distributors you work with directly affects the livelihoods of Aboriginal and Torres Strait Islander artists and communities.

## WHAT TO ASK – WHAT TO LOOK FOR

One of the most powerful things you can do as a retailer is to ask for information about the Aboriginal and Torres Strait Islander products you source and sell. Ask the manufacturer or distributor:

- ❖ Was the product made under licence?
- ❖ What sort of fee/s or percentage does the artist get? Are they paid a percentage?

- ❖ Where do you source the cultural information or story you include with the product?
- ❖ Where was the product made?
- ❖ Are the businesses involved members of the Indigenous Art Code?
- ❖ Who is the artist and are they a member of an Aboriginal or Torres Strait Islander art centre? Which one?

## WHAT'S FAIR?

For a range of reasons Aboriginal and Torres Strait Islander people are often not able to negotiate the terms of a contract equally. As a retailer, this means being aware that fairness and transparency are crucial anytime a person or business wants to use Aboriginal or Torres Strait Islander art on their products or for other commercial purposes. Fairness means:

- ❖ Artists gain meaningful benefit.
- ❖ A licence is mutual – that is, all parties are getting similar benefits.
- ❖ A level playing field with access to information as needed.
- ❖ All contracts are independently vetted.
- ❖ The contract accurately specifies the artwork to be used, the terms of use and product details, for example timelines, quality and quantity etc.
- ❖ A cooling off period, the right to terminate and price information are in the contract.
- ❖ Use of clear language and in a form that is clearly understood.
- ❖ Include information about pricing, such as the proposed recommended retail price of any product.
- ❖ Provide regular reports on sales and payments (at least quarterly).

This type of information provided by a manufacturer or distributor aims to help and encourage you as a retailer to source, stock and sell products that are ethically and accountably produced and genuinely provide benefits to Aboriginal and Torres Strait Islander artists and communities.

## WHAT'S NOT FAIR?

If a supplier tells you they pay the artist a one-off fee – it's probably not fair. The one-off fee means that while the artist received an upfront payment, it is not linked to the number of products made using their artwork.

If it's a product manufactured in quantity and/or frequently selling, it is not fair.

### **If a business tells you things like:**

'but it is a promotional opportunity for the artist'

'we are providing the artist with exposure'

'we give money from the product to charity'

'the artist gave me the story to use'

These sorts of responses mean the supplier is feeling justified in not paying the artist fairly. The supplier does not say these things as justification for not paying the printer or the businesses who makes the mugs, t-shirts or other items on which the artists' work is reproduced.

## LICENSING FEES

There is no standard fee arrangement in licensing. This is because there are so many variables in a licensing arrangement. Because there are so many variables, it can be difficult for each party to know if they are being paid properly.

These variables include how an artist's artwork or design will be used (including things like size and number of products), how long an artist's work will be used for, whether the licence is a one-off or for a range of uses, the territory the licence covers (e.g. local, Australia or worldwide) and what sort of other uses might be included (for example, using the works to promote the product on social media or in advertising).

***Every licence is unique. This emphasises the value of a trusting relationship between the parties as well as the importance of getting independent advice.***

## REMEMBER

The product you are selling relies on the original artwork to make it a desirable product. Aboriginal or Torres Strait Islander artwork has intrinsic cultural value and is central to the success of that product. One way to show this value is through fair licence terms and meaningful remuneration of the artist. As with any other commercial agreement – the printer or freight company for example – a fee is agreed on. The artist's contribution is equally as important.



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