**What is ICIP**

| **TIMECODE** | **SPEAKER** | **CONTENT** |
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| 00:00:05:00 | DANIELLE | Maiem, sew ngapa. Hello. My name is Danielle Ah Boo, and I am a proud Torres Strait Islander woman. I am the head of Screen Queensland's Aboriginal and Torres Strait Islander Unit, and I am delighted to be your host today, so thank you for joining us for our webinar today on Indigenous Cultural and Intellectual Property.  Before we begin, I would like to do an acknowledgement of country and acknowledge the traditional custodians of the lands in which we all meet today.  For myself, I am here in Meanjin, so on Turrbal and Yagera lands. I pay my respect to the elders past and present and extend that to all First Nations peoples joining us today.  I just want to say as well, as a nation, we are truly blessed to have the oldest living cultures as part of our history, but also part of our future. And wherever you're joining us from today, I encourage you to take a moment to reflect on the traditional custodians of the lands on your dialling in from today and honour their continued contributions and presence to our nation.  So today's sessions will explore the importance of ICIP, what it means, why it matters and how we can all contribute to protecting and respecting cultural rights, knowledge systems and expressions of Aboriginal and Torres Strait Islander peoples.  You'll be hearing from Stephanie Parkin, co-founder and principal solicitor of Parallax Legal based here in Brisbane. Steph is a well-respected intellectual property lawyer dedicated to promoting Aboriginal and Torres Strait Islander rights and protocols within arts and the broader industry.  As a proud Quandamooka woman of Minjerribah, Steph understands the importance of protecting intellectual and cultural property of Aboriginal and Torres Strait Islander artists and communities. Steph believes that Aboriginal and Torres Strait art is an expression of identity underpinned by knowledge, experience and connection to country.  And before I do hand over to Steph, just a couple of housekeeping notes. If you have got any questions for today's session, please put them into the Q&A box, which you will find at the bottom of your panel, and we will aim to answer those towards the end of the presentation. And also noting today's session will be recorded and made available on Screen Queensland's website at a later stage.  So thank you again for joining us. And it's now my great pleasure to hand over to Steph Parkin. Thank you, Steph, for joining in and helping us today. |
| 00:02:50:11 | STEPHANIE | Thank you, Danielle. And thank you to Screen Queensland for the invitation to present to you all today. So I'll get started. I'll go today from now till about 12:45 and we'll then open it up for some questions. So, as Danielle mentioned, if there are any questions throughout, please hold onto them towards the end or put them in the chat and we'll get to them at that time. So we'll get started and I'll just share my presentation with you all.  OK, great. So this presentation, as we mentioned, will be on the concept of Indigenous cultural and intellectual property. And it's great to see so many of you involved here today and wanting to have some more information and knowledge about what ICIP means.  Before I begin, similar to Danielle, I'd also like to acknowledge the traditional custodians of the land that we're gathering on today. And, again, I'm also in Meanjin and I'd also like to pay respects to my own country.  So on the screen here, you'll see a map of Quandamooka country. So within these boundaries is my connections to the place that I come from. And as Aboriginal and Torres Strait Islander people, it's always very important to identify who you are and where you come from. And as we go through today's presentation, something like an acknowledgement like this is also important to the concept of ICIP and protocols.  So, today, we'll go through a bit about the intellectual property landscape here in Australia. We'll touch on the concept of Indigenous cultural and intellectual property and the rights that are associated with ICIP. We'll go through some examples.  And then also, I think, part of the presentation that you'll find quite useful is thinking about ICIP in terms of engagements that you may enter into, whether you are a creative in the film or screen space, or involved in a production company, a writer, someone else involved in the screen industry, just thinking about how you engage in the space and the types of agreements and protocols that you may be requiring.  As Danielle mentioned, I'm the co-founder and principal solicitor of Parallax Legal. It is a 100% Indigenous-owned law firm that we operate out of Brisbane.  I, myself, is one of the principals. And the other principal lawyer is Cassie Lang, who's a Bundjalung woman who does a lot of work in native title and cultural heritage space. So together, we've joined forces to create Parallax Legal.  And I think, again, a lot of the work that we do is about raising awareness of the types of issues that impact our communities and representing and working with our communities and also those who want to work with them - creative organisations, other organisations, corporates and governments.  So if you are looking for assistance in this area, not sure where to go to, you know, we're always...always available to assist you in anything that you need in relation to these areas.  So, intellectual property. I thought we'd start here because most people understand at least or have a bit of an idea of the concept of intellectual property in the creative space. And then it's always good to talk about this at a high level and then have the comparison as against to ICIP so you can really understand some of the differences that currently exist in relation to these two areas.  So, intellectual property, it's fair to say that copyright, probably in the creative space, is quite most commonly known and relied upon for creatives in being able to protect their rights. So I like to think about 'intellectual property' as an umbrella term, the broad umbrella term that sort of sits above these different categories of intellectual property. So copyrights, a category or a type of intellectual property. We also have trademarks and patents.  One of the distinguishing features about these types or categories of intellectual property is that they are underpinned by legislation. And that legislation does exist here in Australia and also internationally for these types of intellectual property.  Broadly speaking, IP is considered to be a bundle of intangible rights. So it gives you these rights that you can exercise over things that you create. And generally speaking, these are rights that relate to things that you create - the creation of your mind or intellect. And IP is relevant to sole traders all the way up to global companies.  And generally speaking, IP is based on these ideas of encouraging innovation, protecting original ideas and securing economic rights. And they provide protection for a set period of time. It allows the creators of works to exclusively monopolise or exercise their rights over their work, to obtain money and benefits over their work.  And then once the period of time or period of protection is up, works are then generally released in the public domain, free for all to use.  So definitely when used correctly and understood how to use correctly, intellectual property in all of these forms can be quite a valuable asset for you as a creative.  And just talking a bit more specifically in relation to copyright. So here in Australia, copyright is governed by the Copyright Act. So it's the one law that applies across the nation. And it protects your original artistic works, your literary works, your dramatic works, your films, your sound recordings.  And there generally are understandings of where copyright vests in the authors of creative works, the maker of a film or the publisher in published editions of work.  One of the really important things for creatives is that copyright does not protect your ideas. So it's for copyright protection to attract and for you to be able to exercise your rights over your work, your copyright must be expressed in a material form. So that means coming out of your mind or your creativity and produced in some type of material form, whether that be written down, recorded, documented in some type of original form. That is when the point at which copyright protection will be attracted.  And here in Australia, it is automatic protection. So there's no need to register your copyright. That automatically exists as soon as you turn your idea into your material form, whatever material form that might be.  Currently, the Copyright Act does not... It only...sorry, it only recognises individual or joint ownership of copyright. It does not currently recognise communal ownership, which we will come to see is one of the barriers or things that clash up against the concept of ICIP.  Copyright here in Australia lasts for 70 years after the death of the creator. So once you've created a piece of work, you've written a script, you've recorded a dramatic work, you've created a film, it will last for 70 years after the death of the author or the creator.  And copyright can also be changed by contract. So these might be the standard forms of where copyright generally vests, but the contracts that you enter into can change that position.  And copyright position will also change depending on whether you're an employee or a contractor. So we always like to make sure that creatives are aware of the types of arrangements that they're entering into to make sure they understand where the copyright and ownership sits.  And importantly, your copyright can be infringed. Now, I like to give this example of copyright infringement of a case that was decided in the early '90s, also known in short as the 'Carpets case'. I'm not sure how many of you may have heard of this case before. It is a case that really considered early notions of copyright that existed in Aboriginal works. And those works, in this case, were visual artworks, works that were created onto carpets. So the backstory to this case is that there had been works that had been created by artists in the Northern Territory and the artworks had been created in a portfolio of artworks that had been housed in an arts centre that was only for display in relation to this arts centre.  For some way or some reason, the portfolio of artworks that had been housed in this arts centre had made its way over to a factory overseas and had been manufactured. The artworks out of this portfolio had been copied directly onto carpets. Those carpets had then been imported into Australia, unbeknown to the artists who had created these works in the Northern Territory. So the carpet manufacturer had altered the Aboriginal artists' designs, copied onto carpets and imported these works here into Australia. There was around 200 carpets with different price range had been incorporated and imported into Australia. The artists eventually were made aware of the copyright or the copying of their artworks onto carpet.  Interestingly, Indofurn, the company, had initially disputed that copyright existed in Aboriginal artworks due to being based on pre-existing or ancient designs. So there was this commonly held view not so long ago that Aboriginal art could not attract the protection of copyright under the Copyright Act, purely on the basis that these works were based in stories and concepts that existed from a long time ago. So those were some of the arguments that were put forward. And the view, because of that, that Aboriginal art could be used by anyone. And they were arguing, essentially, that copyright could not exist in Aboriginal art. So the judge knocked that concept on the head, thankfully, and found that copyright did actually exist and that while the stories and the concepts may have been based in very ancient and old stories, it was the individual artist who used their original skill and originality to represent and demonstrate those stories in their own individual way. And that was enough to satisfy the skill and originality threshold for copyright to exist.  And as part of the damages that had been ordered, there were also additional things like ordering up the delivery of the carpets, and the communities from which these artworks had come from were able then to destroy the carpets. Part of that was... Part of that requirement of destroying the carpets was that from a cultural perspective, these artworks were never, ever created to be walked upon, sat upon, as the carpets had been. So part of the damages was that there was a consideration of cultural harm that had gone into the infringement of these rights. So it was not only copyright infringement, but there was also this consideration of cultural harm as well.  I like to bring light or shine light upon cases like this because it speaks to instances where ICIP or cultural rights of creatives were not recognised, were not respected, were not treated in the way that they should be. And the steps that are taken since then, cases like this, to ensure that cases like this don't happen again, that there are things in place that allow ICIP to be protected and looked after properly.  Moral rights. Again, probably more relevant to the creators who are in the room as well. So moral rights also sit under the Copyright Act and they're personal rights that you have as the creator of works. And again, they apply to artistic, literary and dramatic works and musical works as well. And there are three parts of moral rights that exist - the right of attribution, the right against false attribution and the rights of integrity. So these are important rights, not only for Indigenous creators to ensure that they're being attributed properly, but also non-Indigenous creators as well.  Another type of intellectual property - again, just to show some of the differences that you'll see as we move through the presentation - trademarks. Trademarks is another category or type of intellectual property. You will come across trademarks if you are setting up businesses or selling goods and services and that you wish to have a logo, name or brand that distinguishes yourself in the market from others. Here in Australia, there is an act that governs the use and registration of trademarks and IP Australia is the body that handles all those registrations. Again, similar to copyright and other intellectual property rights, once you have protection under these categories of IP, it gives you the exclusive right to use that type of intellectual property and also to share it with others and to also stop others from using it.  One of the interesting comparisons that we have with ICIP in relation to trademarks is the case that was brought to the attention of the media and communities when a business, a non-Indigenous business, had attempted to register the word 'Gumby Gumby' as a trademark. For those of you online here who are aware of gumbi gumbi, it is, you know, generally recognised as a plant that's used across Queensland - different parts of Queensland and also Australia - for medicinal purposes. Can be boiled in tea, you know, put into capsules and is really a very strong...has very strong healing properties for a variety of different health issues. It's been used by our people, by that name, in the medicinal fields for a very long time, by different groups. But as this article from back in 2020 had identified a non-Indigenous people, person or organisation had attempted to register the words 'Gumby Gumby' as a trademark. And if that was the case, then that non-Indigenous company was able to then exclusively use the words 'Gumby Gumby' in the classes that they had claimed and exclude everyone else from using that word in those classes, including Indigenous people or traditional owners who had used that word and term for a very long time.  Unfortunately, the way that the current intellectual property systems and trademark systems are set up, it allows those types of applications to go through to a certain part of the trademark registration. And fortunately, there was a lot of community people who heard of this attempt to register 'Gumby Gumby' as a trademark and it got into the hands of the media and because of the pressure that had been applied on the applicant of the 'Gumby Gumby' trademark...they did not proceed any further with the trademark application process and it stopped. But if that had not happened, there was an opportunity or likelihood that that could have proceeded.  So again, we have existing intellectual property systems that really were not created with Indigenous rights or interests in mind and here we have this clash - incompatible systems that exist.  There are other types of intellectual property. We're not going to touch on those but just to be aware that they do exist.  One of the other areas where ICIP has sort of come out of in the last couple of years is this concept of fake art in the souvenir market. So it was only a few years ago that the ACCC brought an action against a non-Indigenous company for the production of fake Aboriginal art in the souvenir market. So we're looking at this type of work, if you like - if you'd like to call it work. So these are fake products. They have the look and feel of being made by an Aboriginal person when, in fact, they are not. So the Aboriginal style art and craft products made by non-Indigenous people from beginning to end...made overseas...and imported into Australia by a non-Indigenous Australian business and then sold en masse around. So you'd see all of these types of products... Less of them now because of this case. But you would have seen them at Queen Street Mall, the airport shops, Circular Quay. All of those tourist $2 shops would normally be saturated with this type of product.  So the ACCC did bring proceedings against a company. But the decision - yes, they were found to have been in breach of some of those provisions of the Australian Consumer Law, but it only is to protect the consumer. It doesn't go far enough to protect the rights of Indigenous people. So the way that the Australian Consumer Law currently stands is that this product is OK to be created - it can be created, there's nothing wrong with it - provided that the sellers are really clear on where the products have come from and where they've been made. For example, if you see that boomerang there on the slide, provided it's got a sticker on it that says 'Made in Indonesia' or 'Made in China', that's OK in the eyes of the law, because they say that the public is not misled as to where it's come from, even though it's clearly fake. Clear to some, but not others. So there's gaps in the law that exist, which is part of the problem of what we're seeing right now in relation to getting new ICIP laws created.  So when there was the issue of the fake art problem that existed, there was a parliamentary inquiry that looked into the issue and there was over 160 submissions that were submitted and a lot of Aboriginal and Torres Strait Islander people contributed to the parliamentary inquiry. And part of the work that was done was talking about how important artwork is. And I'm talking, I suppose, a lot about artwork right now, but artwork, it's the same concepts and same industries that apply across the board with screen, with other industries. And this just happened to be focused on the visual arts space. But ICIP, as you'll see, has common threads across all - all common threads and the importance of that work. So some of the quotes that you will see here from Aboriginal and Torres Strait Islander people talking about how important their cultural IP is, their Indigenous cultural and intellectual property, and that whether it's in the form of art, songs, dance, how important it is.  For example, that first quote there, "Our art is who we are. It helps us carry our culture from the past to now and into the future for our children. The stories we paint," or the stories we tell, "are from our grandmothers and grandfathers and theirs before them."  "Everything that goes into an artefact or painting is a part of us, it's a part of our culture and a part of our language."  And some of the three quotes down below for people who provided evidence as part of that parliamentary inquiry talk about the feelings that they have or the impact that it has when culture or when ICIP is not respected or not acknowledged or not looked after in the way that it should be.  "It really hurts. It really stings for me."  "It makes me feel ashamed and disgusted that Indigenous designs are stolen."  And again, "I'm here to voice my feelings about how we are tired, as Indigenous people, of watching our art being duplicated by fake products flooding the market." Again, this is talking about in terms of visual arts, but similarly, we can think about these concepts and the views in terms of stories as well, because art is a part of storytelling, as it is on screen.  So that brings us now to the concept of Indigenous cultural and intellectual property. So we've seen a little bit about intellectual property. We understand that there's different categories of IP. Here in Australia, there's recognised laws that protect copyright, trademarks, designs, patents, those sorts of things. They're already recognised - there's a system in place for recognition, enforcement and management of those rights. We then come to Indigenous cultural and intellectual property, ICIP. Currently, there's no laws in place that recognise ICIP. We're hopeful that that will change in the not-too-distant future. But at the moment, we don't have laws in place that recognise that in a formal sense.  So ICIP for short - or 'cultural heritage' is another term that people use. When we are talking to creatives or communities, I always tell communities or people, they might not have heard of ICIP, but they might have...they know it in a different form. It's their story. It's their language. It's part of their artwork. It's things that have been handed down to them through the generations. So ICIP is more of a formal term, but our people engage with ICIP and cultural heritage on a day-to-day basis and might know of it in different forms.  So I like to describe ICIP as the embedded knowledge that Aboriginal and Torres Strait Islander people have which informs cultural practice and expression. And it's grounded in the thousands of generations of our people observing and living with the all-encompassing environment. And the result of that is the knowledge that comes from multigenerational and multidimensional lived experience. So the knowledge that our people had living an uninterrupted lifestyle, if you can imagine that, what it used to be like. The very valuable knowledge that comes from observation, that comes from living with each other as groups, living with the land, living with the country and the animals and everything around us. What that would have been like being able to develop that knowledge, understanding the seasons, understanding migration of animals, understanding the complex family relationships with one another. Ceremonies, songs. The result of that lived experience is very valuable knowledge and that is where ICIP comes from. That valuable knowledge that our people have developed over thousands of years ago and passed down in different forms to where we are here today.  So we like to see ICIP as real and living. It's not stagnant. Like our people have developed over many years, so has ICIP in the way that it's conveyed, told - film being one of them. And it's evolved with how our communities have evolved over time as well.  And ICIP, it's found in art, stories, songs, languages, but also ways of living. Our perspectives, how we see and view the world. And it's also part of our protocols and practices and ceremonies and sites. So it's very encompassing, not only in the visual arts or arts practice you'll see here, but has informed other areas - medicines, our relation with bush foods, pharmaceuticals and other different things. So it's a very all-encompassing concept that requires a different level of management, as we'll see.  So as we've said, I think one of the big key takeaways here is that the legal framework provides limited recognition or protection of ICIP rights currently here in Australia. So we've got limited ways in which we can protect ICIP. And that's really then where your contracts and protocols become really important to understand what ICIP is, how you can manage it and how you can do that through the agreements and protocols that you have.  Thankfully, there is quite a bit of resourcing and guidance around there right now in relation to protocols and use of ICIP. So Screen Australia, if you're not already aware, they do have protocols that were developed back in 2009. So those are available online. You also do have protocols for using First Nations cultural and intellectual property in the arts. And that's been put out by Creative Australia. So those are really good documents to be able to refer to and get some guidance on understanding ICIP in these different areas.  I won't go into all of these different parts of ICIP development for the sake of time, but it's just to show you that in the recent couple of years, there's been a lot of work done in relation to the development of ICIP. And at the moment, there is an expert working group looking to develop ICIP laws, and that's being put together by the Office for the Arts at the federal level. They've got an expert working group that have met quite a few times already. But, of course, they're now under caretaker convention, so that work in relation to ICIP laws has currently stopped. But there is real appetite there to ensure that these new laws get over the line.  So we know that there's no laws that govern ICIP. So you really are relying on the goodwill and the want of people to do the right thing, really, in relation to ICIP right now. And some of the rights that generally are recognised, that people have to ICIP, are listed here on the screen. So the right to protect traditional knowledge and sacred cultural materials, the right to ensure that traditional laws and customary obligations are respected. Importantly, the right to be paid for the use of ICIP, not just in relation to the use of copyright or other things that might come out of an engagement that you'll have, but also to recognise the value of ICIP. So, naturally, that comes the right to be paid for the use of ICIP. The right for full and proper attribution from the communities or owners of the ICIP. And then the flip side to that is that Indigenous people have the right to enforce their ICIP rights, so to stop offensive or insulting use of their ICIP in different forms. Again, because the gaps currently exist in the law, we look to declarations like the United Nations Declaration on the Rights of Indigenous People, and, in particular, we look to Article 31, and these types of articles set good standards that you can look to that we like to suggest that people use in their agreement making your contracts and your protocols.  So again, while there's gaps in the law, you can look to these articles to ensure that there's at least some good recognised standards in your agreement-making. So, for example, Article 31 - "Indigenous people have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge..." "They also have the right to maintain, protect and develop their IP over such cultural heritage, traditional knowledge and traditional cultural expressions."  Australia was one of the, I think, the last four to eventually endorse the DRIP back in 2009. We got there kicking and screaming with New Zealand, the USA and Canada. But, of course, it then takes...needs the next step to be introduced into domestic law. So we're hopeful that some of these concepts as well will be incorporated into the new laws that are hopefully going to be developed this year.  So at a very high level, hopefully you can sort of see there, there are some inconsistencies and clashes between existing IP systems and ICIP. Overall, we can see that IP is based on these Western concepts of individual use or joint use, exclusivity, monopolising the IP for a certain period of time, and then into the public domain, full disclosure once those time periods are up.  You compare and contrast that with this concept of ICIP. The use is based on cultural protocols, underpinned by principles of respect, consent and consultation, which is ongoing - it's not just a one-off - self-determined and attribution.  And again, in order to ensure that these principles are recognised, given some voice, we like to ensure that the declaration of principles are also included in any agreements that you might be making and also to have a standard position that any IP or ICIP in particular remains owned by the relevant group that you're engaging with.  So depending on your arrangement, depending on the project that you might be working on, the level of ICIP that you're wanting to use from an individual, from a community, best practice tells us that the ICIP always remains with the traditional owner group.  You as a production company or other organisation who wants to use that ICIP or IP, you can use that by ensuring that the appropriate licence is granted to you under the agreements that you might be having for the use of IP and ICIP of the relevant groups. So there's ways around how you can structure your agreements to make sure that you are able to use ICIP in the most respectful way.  I am now just going to move through some of these examples quite quickly, just for the sake of time again, so to give you some context of...into ICIP as an example.  An example of the seasons, OK? So the procession of the caterpillar, a welcome sign ahead of the annual mullet season. So Josh Walker, also Quandamooka, from where I come from, in this article, there is a quote from him that he says, "When they start to move," - the caterpillar, that is - "When they start to move in their long lines, that's an indication to all our people here in Moreton Bay that all of the mullet fish are making their way out of the streams and rivers south of here into New South Wales."  That is an example of ICIP, the traditional knowledge that Josh has spoken about, that when they see the caterpillars walking in that way, they know that the mullet season is coming, and to get ready. People go out, they know that the mullet's on its way. Great, that's how they know.  You know, other examples from my own mother, who tells me, when there's a certain flower in season and flowering, we know that the mullet is on that way, on their way.  And how do we know this? Because of the observational skills that our old people had from many generations ago, signs of observation, very valuable knowledge passed down into generations, and expressed in different ways that we have here now, this being one of them, an example of ICIP, traditional knowledge.  This is another example of traditional knowledge being used in a commercial sense. I won't go into the details, but, again, ICIP can be very valuable when used in the most appropriate way. So traditional knowledge used in relation to a particular grass. University, other government departments see real value in commercialisation of that knowledge. Traditional owner groups working with others in collaboration to create commercial outcomes that create benefits for everyone involved. And at the core and at the heart of these types of arrangements is the proper recognition of their ICIP and traditional knowledge.  So on the flip side of these uses of ICIP, there's also ICIP discussions going on all of the time amongst communities and recognition that particular styles or stories may come from a particular region.  There's ongoing discussions within our own communities around the use and development of ICIP in creative and commercial practice. This includes who is benefiting, who has the authority to use ICIP or give consent to use ICIP. These are really big discussions that are being had. What are the protocols around the use of ICIP, and what process should creatives go through to ensure respectful use of ICIP? Again, we're talking about use of language, traditional knowledge, cultural expressions in creative and commercial practice.  And I think it's fair to say that there is a lot of diversity within all of our groups from across Australia. And so when you are engaging with Aboriginal and Torres Strait Islander communities, it's not a one-size-fits-all approach. There will be differences. We are not one group, all of the same. All different. There might be some common threads amongst different groups, but different groups would generally have their own protocols and ways to approach respectful use of ICIP.  There can be overarching frameworks around use of ICIP, so respect, self-determination, ongoing consent and consultation, but the specific protocols of how to do things will generally be informed by the group or individual that you're working with in whatever type of project that might be.  One of the examples from a film perspective, so 'In My Blood It Runs' from 2019, we know that this was a documentary. And from the Screen Australia Pathways and Protocols document, there is recognition of documentary versus drama, so the ways in which different organisations or companies can work with Indigenous groups or people.  So whether it's a documentary, a drama, other type of genre, the same principles, those same underlying principles and standards, would generally apply to filmmakers to consult on documentaries would also apply to dramas that involve stories or ICIP content, and again, whatever the genre might be.  So 'In My Blood It Runs', I'm sure a lot of you would be aware of this documentary that was released in 2019, and it followed the story, documentary-style story, of a 10-year-old child, Dujuan, who was from Mparntwe, in Alice Springs, and it followed his complex story of family and interaction with school systems and other people in the community.  I think one of the important and interesting things when looking at the way in which that documentary was created, it was developed over a period of three years and they knew there was quite delicate and significant issues that needed to be told in this story.  But they took a very collaborative approach to it. And, in particular, they spoke about the core pillars of their approach when dealing with communities and also the ICIP that sat alongside this work.  So some of the core pillars of their approach... This was from the director. "Some of the core pillars of our approach included partnership with those represented, a team of advisers, consent as an ongoing process, formal recognition of traditional owners of the land on which we filmed, meaningful and ongoing consultation, share profit with those represented, and a team structure that has equal First Nations and non-First Nations filmmakers at the core of the creative process."  And again, you have a quote here from an elder who was part of that process and film adviser talking about how a different approach was needed and how that the creatives who were involved in telling that story were open to doing things differently, and that resulted then in an outcome that this elder, Uncle William Tilmouth, was quite proud of.  This concept of authenticity, before we sort of come to the end of the presentation and then we'll open up for questions, it's quite, I thought, quite a unique and important quote that comes out of, again, I'm referencing the Screen Australia Protocols on page 24 of that document. Rachel Perkins - Arrente and Kalkadoon film and TV director, producer and screenwriter - she speaks about this issue of authenticity.  And there's a quote here which I think is quite important for all of us to be aware of. "Non-Indigenous filmmakers who want to portray Indigenous stories must take responsibility for finding out about cultures they are representing.  "Filmmakers often don't respect the authenticity of stories and cultural material, yet Aboriginal audiences can pick out the false cultural references. For instance, where the names and languages are not from that particular area and the stories and dances are wrong.  "Filmmakers don't do the proper research about cultural content for Indigenous films and often they just make it up. But culture, our Indigenous culture, is bound by a highly developed system of Aboriginal law and social organisation.  "If filmmakers want to make films about us, our culture and our experience, they should do the work and find out about our law."  That's quite a strong statement there. And equally, I would say, these types of concepts also apply to Indigenous filmmakers and storytellers as well. There is also obligations on us as Indigenous people to make sure that we are also doing the right thing and following protocol when we're representing stories of our communities and also others.  So, specifically, this slide hopefully makes some sense to you. But when I am talking to different organisations and groups around dealing with ICIP, I like to think about it in terms of this circular diagram here, your pre-engagement, your engagement phase and then also your post-engagement.  So this would apply to if there are individual creatives online on this meeting right now. So again, yourself, when you are going through this process, to be thinking about things around copyright but also your own position when it comes to ICIP - what's your own approach and your own protocols for ICIP?  And then equally, if you are involved in production companies and other companies involved in the screen industry. Again, your own pre-engagement phase, your engagement and post-engagement.  And that can tie into your research and project development stage, your scriptwriting, your pre-production and production, editing and post-production, screening and broadcasting and archiving.  Throughout all of these different aspects of engagement - and when I say 'engagement', dealing with Indigenous creatives or communities - you're not only thinking about consents, collaboration, how the work is going to be written, produced, where the location is going to be, who's going to be engaged, thinking of ICIP in each of these different aspects of the work that you're doing.  And again, referring to principles that are already identified in these international declarations can really help to drive that relationship. We're talking about not only the agreements that you're making but also the relationship that you're building with Aboriginal and Torres Strait Islander individuals and communities in order to use their ICIP in the most important way.  And I think building that relationship to begin with is absolutely key. And allowing enough time... I know everyone's on strict timeframes and deadlines, but allowing enough time for that relationship to build, and trust to be built as well, can really assist in the arrangements and negotiation of things as they occur throughout the lifetime of the project.  So just before we go to questions, all of that in terms of how to protect. So we have these really big sort of overarching concepts of IP and ICIP. We know that there's no laws in place that currently protect ICIP. So you're looking to your agreements and protocols.  So what do you have in your written agreements, your written documents, that outline how you approach ICIP and how you engage with Aboriginal and Torres Strait Islander people for the respectful use of their ICIP? Again, we know that there's protocols that exist that can guide you in the frameworks for that type of work.  Really importantly, it's not just what you have in your written documents. It's what you do outside of those documents. The written documents are important, but it's how you build that relationship. Why are you wanting to create the work that you're wanting to create? Why are you wanting to write the script or produce this film with concepts of ICIP or cultural material? What is it? What are you trying to convey?  Part of understanding that why is really doing the research into the area and building the relationships that you have with the right people and also time. I really cannot stress the time aspect enough. We see that across the board, when organisations are wishing to engage with our Aboriginal and Torres Strait Islander creatives, time and to not feel pressured in those circumstances.  Some of the written agreements, protocol documents, are there. I won't go through them again. If you are looking for assistance with these types of documents, how to approach them, there are, of course, aspects that we can, at Parallax Legal, assist you with from that point of view.  And again, some of the important aspects in those agreements, the scope and use of the ICIP, ownership of IP and ICIP, the payment structure and the benefits. So not only financial benefits, but what are some of the, you know, non-financial, non-economic benefits that are flowing back to communities for use of their ICIP? And to be really clear about the expectations of each party.  I think we might stop there just to ensure that we've got a bit of time for questions, Danielle, if that's fine. So I'll stop sharing the presentation now.  But as we've seen just on that last slide here, we've covered off on IP and ICIP, some examples, really identified that engagement life cycle, which is where ICIP can be managed and looked at at the different stages. And also some of the agreements that need to be in place, and protocols, to ensure that you're leading in the right way for the use of ICIP. |
| 00:51:03:03 | DANIELLE | Thank you very much, Steph. And a very big thankyou. That was a very deep dive into ICIP, which I hope that a lot of people will have a lot of takeaways from this session. And I think you did so well that we have zero questions, which is fantastic. And especially given we've only got five minutes left in the session. There's a couple of comments coming through now to say thank you.  And, you know, very much, you know, Parallax Legal, we are happy to share their details as well to anyone wanting to reach out to Steph and the team, re. any ICIP contract work and further information, if ever needed, a further chat.  But thank you very much, Steph. Really appreciate you taking the time to take our audience today through ICIP. So thank you once again.  And thank you everyone for dialling in, and we'll touch base again soon. Thank you. Have a great day, all. |