
ART PANEL

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Location: First Nations House of Learning
Speaker Names: Sally McCausland
Arts Law Centre of Australia
Peter Shand
University of Auckland & King's College London
Lou-Ann Neel
Consortium of Indigenous Arts
Dianne Biin
Consortium of Indigenous Arts
Bertha Joseph
Moderator

BERTHA JOSEPH

I apologize for the delay. In this session there we will be dealing with art, discussing art. I'm your moderator Bertha Joseph. Art is an outward expression of who we are as individuals and as a people in that it is an expression of our commentary with our families our ancestors and our creator. It's therefore extremely important that we protect our art forms and we ensure that it receives the recognition that it deserves.

Over the next the next hour and a half you'll have panellists who will be discussing the subject from the perspectives of artists as well as from individuals who are involved in protecting it from a legal perspective. Following our custom our first speaker, will be the person who has traveled the farthest to get here, and she's Sally McCausland, from the Arts Law Centre of Australia. Sally McCausland has an extensive background in intellectual property law. She most recently attended the University of BC Faculty of Law where she wrote a thesis on intellectual property rights and in particular on Indigenous cultural property, cultural heritage. She was supervised by John Burrows, and Douglas Sanders.

In addition to her legal analysis of Australian, Canadian and international developments her thesis included personal interviews with representatives of indigenous groups who are using legal strategies to protect their cultural heritage. In Canada, these were the Nisga'a, the Oh! I can't pronounce this. The...sorry...Nuxalk and the Comox Indian Band, as well as a number of groups in Australia and Sally received her Master's anyway in 1997 and she then returned to Australia where she is currently involved with the Arts Law Centre of Australia.

The Arts Law Centre provides advice to indigenous artists and communities on protection of their cultural property and traditional knowledge. Sally will speak on the type of work that the Arts Centre does, "Please Welcome, Sally McCausland". (Round of applause)

SALLY MCCAUSLAND

First of all I want to say that it's a really great honour to be invited to speak here at this conference, and I also want to thank the conference organizers, who have done an incredible job in getting it all together. I also wanted to thank the Canadian Consulate General in Sydney, who were kind enough to see this conference as a valuable cultural exchange, and I'd like to thank them. So today I want to talk about the Arts Law Centre and what we do. And I'm going to try to make it relevant to the context here, by talking about the type of dialogue that is going on, that we are privy to as legal advisers, so I wanted to talk about something that our Master of Ceremonies Millie Poplar was saying last night, that "education precedes change."

And I think that the sort of work that we are doing is a two-way street in a way because we are talking to both sides if you like we're talking to indigenous communities and artists about what they want to know about copyright to assist them in their dealings. And interestingly we are getting increasing queries from non-indigenous people including, non-indigenous artists, and lawyers representing big corporations who are very interested in indigenous intellectual property rights.

They want to know what is the right thing to do and they also want to know "what can I do and can't I do." So, I want to talk about both sides of that equation. We're kind of acting like as a traffic cop in a way. Referring people to other organizations that can give advice, indigenous organizations that can advise on protocols and referring indigenous artists in communities to pro bono lawyers, to prepare, and help them in their legal interests.

I'll start off talking about what indigenous people ring us up for. Basically, we're the national community legal Centre for the arts, which means that we advise people for free over the telephone. That's any artist, musician, performer, arts organization, not just indigenous but non-indigenous artists and organizations are increasingly contacting us to get free advice, and to get referrals to lawyers as well.

So that's the main bulk of what we do, and we have four lawyers, three at the moment actually. And we take turns going on shift, answering the phones, and telling people in fifteen minutes or more basically what we can tell them about what their legal issue might involve, and if we can help them send them an information sheet, recommend a sample contract that they might want to buy, we can sell those for about ten dollars, such as reproduction licenses, standard design commission agreements, that sort of thing that they find useful.

We also hold legal advice clinics, for that we charge a yearly subscription fee, but people can come in as many times as they need to during the year for a charge of fifty dollars which is certainly much less than you would be paying if you went and paid for it at a lawyer's. And that basically involves coming in and sitting down with your contract or your issue and having one of the top lawyers in Sydney or Melbourne, or Adelaide, or Hobart talking through your issue with you and receiving the benefit of their top-level advice that they're normally giving to large corporations. So, that's where I think it kind of evens the playing field a little bit.

We also hold seminars. One of the seminars I want to talk about is one that we held in May of last year called, "Collaborations", in which we invited people who are working and collaborating on projects in the performing arts between indigenous communities and companies such as Bangarra Dance Theatre who take traditional performances and make them into contemporary art forms with the consultation and approval of the relevant communities. And I think that that conference really illustrated that two way street because it was really well attended by the indigenous and non-indigenous people and covered a large dialogue about what's an appropriate way of dealing with these sorts of issues on a contractual model.

Sorry, that's probably more than I'm going to have time to fit in but let me finish that off by saying, "What do indigenous people ring us up for?" Well we have the national toll-free line so we get people calling from down in Tasmania, from the most remote places you can imagine. One of the things that we're able to do is bring copyright expertise if that's what they want to know about, bring contractual knowledge if that's what they want to know about, to the most remote areas where copyright lawyers don't generally travel. And if they need it we can set up legal advice as I've said with one of our pro bono lawyers and they'll talk them through the issues.

We recently had, on one of the islands, up north from Darwin, a community that had been offered by one of the top auction houses in the world, to start using them to put artworks onto their web site. And the community had resolved that this was going to be a good thing for them to do in their interests because they

could cut out the middle man. Usually they have art dealers manly thousands of miles, away they're sick of not knowing the information with the buyers and all that sort of thing. And they wanted to deal directly with the markets. So, they decided that Internet auctions would be a good way for them to go.

And so, we organized for them, to get a probono referral in Sydney, and that firm agreed to take on representation in their negotiations. So, that was one of the things, we were able to do through this sort of referral service and through giving this sort of preliminary legal advice.

One of the things that has really struck me a lot about the indigenous people that call up is that they want to know what non-indigenous laws are in order that they can use those laws in their negotiations, and in commercial negotiations. And there is a lot of talk at the moment in Australia, and I've noticed here as well, about whether indigenous exploitation of their own cultures is appropriate. There is a Disneyland view of things, and there's a view that community development is gain, and basically as a lawyer I can opt out of that discussion and just take instructions so, I am the lucky one there.

But, I do recognize that while that's an issue it really is a good feeling to be able to help people if they want to advance a community project. We also have a lot of individual artists who call us up who say, "I want to know how to put copyright notices on my work, I don't want to get ripped off again it's happened before so now, I really want to know what the law is."

So, that is to look from the street from non-indigenous law to indigenous people. We often get invited out into communities to conduct copyright workshops. And I've done that, I've gone up to Darwin and one of my colleagues at Arts Law has gone down to Tasmania to a women's aboriginal organization and helped them set up their art shop, so, that's basically by invitation and because we don't have funding for travel, that's basically if they can get a grant to bring us down then we'll go.

I should add at this point, that we are an independent not for profit organization. We get our funding from government from the federal government and from some state arts ministries, but it's not tied funding, we're totally independent. We have a board, which consists of a judge, various lawyers and artists. And so, we basically choose our own agenda, and we also have requests from people when they want us to come out to their community, we basically say, "What would you like us to talk about?" We talk about copyright ok, so, they're the kinds of things that indigenous groups are ringing to talk about. Finally we are getting increasingly used as facilitators on panels where we are acting as independent facilitators so people can have a dialogue about issues such as commercialization, what copyright means to them, whether they wish to involve themselves in contracts and things like that. And so, basically we are involved in a sense that we might act as a intermediary answering to a panel and help people sort of bring together to discuss those sort of things.

And what might be more interesting to the audience that I wanted to talk about is what we advise non-indigenous people including lawyers for large corporations. A point that is interesting because it doesn't really come out if you look at the cases in Australia or what's happening politically is that many people are interested in respecting indigenous culture. In fact I would say that there is a large proportion of people who do want to know what the protocols are. How they can respect indigenous culture for example, if we have artists ringing up saying, "I'm not Indigenous, but I hear that if I want to use cultural symbols, then I should be careful about doing that. Can you tell me whom I should speak to?" And I say well of course I am not in any way an expert on any indigenous laws of Australia, or anywhere else. But I can tell you to ring up the National Indigenous Arts Advocacy Association. Perhaps they can refer you to a relevant group that has the ownership of that symbol or that name. And then you can start finding out as Madame Daes said, "Finding out about their *lex loci* and their law on what they say about it. And you should respectfully ask them if they don't want you to use it. Then it's a matter for you. But that's why I'm telling you this. Somewhere you can go to find out these sorts of

things. The other thing that people ring up for is people who say, okay tell me is it legal to do this, and I go “Well, do you want the short answer or the long answer?” (Laughter). And they go “well you tell me is it legal or not? And so over time I’ve evolved an answer which goes something like this “You’d be surprised how many people are calling, I did a talk at my old law firm about a year ago, and at the time I thought that it was all going over like a lead balloon, but you’d be surprised how many of them are sort of secretly ringing me up going, “I’ve got this client who wants to do this, what do you think would happen if they do that?”

So, one of them e-mailed me from London, just last week, and his query was “I’ve got a large media client, and when they’re covering the Olympics, they want to use some Aboriginal symbols on this. Great and I remember your talk, and you know is there a problem with this, and if it’s not legal, what is the law and if it is legal, what’s the story, and if I have to clear the rights where do I go and how long is it going to take?” So what I’ve said was, “Basically it all depends. I don’t what symbols you’re talking about, but having worked in a TV station, I can tell you that the graphic design team is possibly lift something from the nearest journal or magazine they can find. So it’s probably quite a big issue that you might have copyright clearance that you’ve got to get from those particular artists.

Okay next point, again I don’t know where the symbol is from. So let’s assume perhaps that it’s a religious symbol such as a *wandjina* that comes from the Kimberly region. Okay, now if there is a symbol that associated with a particular group, then under non-indigenous law, you could be in breach of fair-trading laws which say that you shall not imply an endorsement which you do not have, by a connection with trade which you do not have. How do you know that your client’s images aren’t being used as a common law trademark by some group which is selling their art works or something like that they could be using the *wandjina* in trade too. There are a few different tricky things that could be alleged here.

And however if that’s not enough do you understand that there is possibility of political boycotts’ happening around the Olympics, would you like to be drawn into that sort of debate? There will be a spotlight on indigenous culture you could quite obviously expect that there will be some publicity about your station doing this and perhaps a well publicized demand to take down those images. Now it’s a matter for your client. But I think you’d be negligent not to advise your client of this risk? “Oh, okay, so where can you go to clear these images?” I don’t know what images they are but maybe you should start by contacting the National Indigenous Arts Advocacy Association, who have their own protocol about using cultural symbols and perhaps if they can identify where the image comes from then they can refer you to the relevant Band Council, Band or Tribe who might have ownership of it. Now we’ve had several of these queries in relation to indigenous words, icons and scenes.

So what I wanted to point out, with this is that basically there is a dialogue going on, there is interest and there is fear out there in "corporate land." I think that one of the speakers was saying that earlier, I think it was actually Madame Daes was saying that corporations do realize these days that to be sensitive is a good thing for their shareholders. I think that’s a strong negotiating tool for indigenous communities trying to protect their knowledge and their culture in the absence of comprehensive laws at this stage. And certainly, we’re seeing that at Arts Law, we’re seeing people who ring up because they would like to know either “one”, how to be respectful “two”, how not to be the subject of a negative publicity campaign, so I think that that’s probably all I would like to say about that.

I just finally wanted to talk about the Collaborations Seminar we had I think that kind of brings together the points that I’m saying about this two-way street which I think is happening in Australia, and I imagine is probably happening here as well but you never get to read about it in Law reports or anything like that.

It is something that people mentioned this morning I think that it was Catherine Bell mentioned that the legal framework or the threat of possible legal action is actually is something that can influence beyond the doors of law courts. I'm not a fan of litigation at all. I think it can be very messy and painful, but it can also set test cases for people who are brave enough to actually put themselves through that process.

The advantage of the fact that you could go to court is that you can create that sort of uncertainty which gives you some bargaining power and makes people listen to what you're saying about what could happen and trying to sort of engender that dialogue in that respect. The collaboration seminars as I said brought together some representatives of indigenous groups who talked about their experience of collaborating with an outside world. In one way you could say, a commercialization of their culture although I think that they would say a show-case and a teaching tool. They were performing arts groups who're working together with Indigenous communities, training their dancers and taking their things around Australia and overseas.

And one of the really interesting things, that came out of it was that contract or basically agreement is a practical way to implement points that you want to have in your negotiations for example, Bangarra Dance Theatre, talked about how they use stories which come through elders who are used as consultants and who have to approve things.

They have representatives who come down, watch performances and royalties, which come from Bangarra Dance Theatre's very successful repertoire, a percentage is siphoned off to the community trust fund. Now, if you were looking at Australian Law, you'd would not see that this was a necessity, but, they felt that this was a necessity in order to get that cooperation and that on-going relationship and I think that there is a lot that can be done by negotiation, if people are willing to have that dialogue. So, I think that's probably enough, if people want to ask me questions? I'd be more than happy to take them if here or later.

I had actually prepared a talk about Australian developments, which I think Turner Jackie going to pick up on Interim talks so you can either talk to her or I. But thank you very much for listening. (Applause).

Moderator: Thank You Sally. We'll have time for questions after all the presenters have completed Our next speaker is Peter Shand who comes to us from King's College in London where he is studying for his Master's in Law. He is leave from his position as senior lecturer at the Fine Arts Department of the University of Auckland New Zealand. But, Peter is concentrating his research in two principal areas I understand it, cross-cultural appropriation and different issues in art. Would you welcome Peter Shand please! (Peal of applause)

PETER SHAND

Good Afternoon, my parents my parents immigrated to New Zealand from Wales Scotland and England My mother's parents being Welsh speakers and brought up in Welsh speaking homes. Suffered the sorts of humiliation and violence that was spoken of eloquently this morning by a number of people. My mother was born in *(unknown word) which is a small rural district in the far north of the north island of New Zealand. My father in *(unknown word) which is a suburb of the main urban centre of Auckland. I was brought up on the shores of the Monokoia harbour, which is the second harbour in Auckland, and obviously that's the city that I come from

My name is Peter Shand, as you've heard. I teach at Auckland and am currently studying in London so I guess I'm between homes almost precisely being here and for that reason I'm extremely grateful to the Musqueam people for your welcome and permission to speak at this important conference. I'm grateful to the Union of BC Indian Chiefs and Donald Bain and I'd also like to say I'm extremely grateful to Kim Chief Adam and the others of you who are involved in this morning's session which I thought was profoundly moving and

also incredibly significant and is something which I can rely on, because obviously, one of the problems with any sort of discussion, of the legal issues is the propensity for western legal systems to try to slice up what it is that we are struggling for and so I want to recognize the contribution that you've made and thank you enormously for that and also say that it feeds directly in to the sorts of issues which I want to talk about which I want limited to just one field of individual property law, which is copyright.

I'd also like to thank Andrea who has been given the unenviable task of *(unknown word) cause they wouldn't fit in the *(unknown word) thing. So if you could put the first one in please that be great. What I'm looking to do in this paper really is there is a switch for the screen? There's something wrong with the screen. Great thank you. What I want to do in this paper is just to briefly look at some of the inter-weavings between the visual arts indigenous and individual property rights and, and copyright. The difficulty I had with this area is of enormous cache in the rural universities, so I want to just give you three riders on my talk.

First one is on*(unknown word) of New Zealand which means I'm not an indigenous person. But I do wear the name of any nickname given to me by the Maori of New Zealand.

The second is the on and off story of my training, so I hope my legal stuff isn't really appalling. *(unknown word). The third one is because of those two things I think that my paper's quite contingent, I'm really sort of trying to work through some ideas rather than having particular solutions. As those of you who're present this morning will understand and those of you who weren't but have been affected by it the collection of indigenous tangible cultural heritage has gone on since really in it's modern phase between the twin aegis of enlightenment and empire where things like everything was made available to the all-scrutinizing eye of the centres of Central Europe and in particular, "Could I have the next slide please Andrea?"

Whether because of their display in all sorts of bizarre mysteries or informal isolation or different museums, the objects that involve importance and significance and are not sacred significance of peoples was made over into one very singular version of what objects can be and can name and it worries me that the current propensity in major centres of western Europe and North America are things such as world music or third-world *(unknown word) or mystical experiences for enlightened intellectual liberals and so on show the attraction of others as something which is still with us and something which I think is quite dangerous.

So with that in mind, I just want to put three things in relation to cultural appropriation. What appropriation is a technical term for is just the way in which people will take I'm looking at imagery and reuse that not necessarily is it their own, more from the North as if it were these brochures which are going around if you can possibly see them, relate to the use of the *(unknown word) which is an indigenous decorative motif and museum in a line of swimwear. So I hope that's not offending too many of you? Which is in line with Andrea if we could have the next slide? And it's use in fashion houses

The difference with the Moontide lines and they've been there's two seasons that you have the smaller one s last season and the large one which is for this season is that the use of those particular images was fully negotiated with an entrepreneurial group from *(unknown word) in the North Island of New Zealand and that the profits with, a portion of the profits from the sales of that line will be going to the *(unknown word) sub-tribe of that particular group.

Now the line garnered a lot of attention when it *(unknown word) Sydney fashion weight and I think most of that's because of it's ethical treatment of the Indigenous design issue. So I'm going end up having my fingers up in the air all of the time. The interesting thing I think for me is that what at first could seem like something

which is at least bit dodgy, if not outright disrespectful is that it was a fully negotiated enterprise I think that throws up all sorts of different and potentially unexpected questions when we're just faced with than those we face with the image as it stands. If we could have the one that's hopefully labelled *(unknown word) the *(unknown word) side the spirit of the dead keeps watch. If you can see the label I'll just continue on in any case.

The second type of affinity which is one which I think we're least likely to complain about than the exploitation of Indigenous design for commercial purposes is an art so the best example of this I can think of is Paul Gauguin whose staff at the Modern Phase Affair. Gauguin took off from being a banker in Paris and eventually ended up in Tahiti which stood for then pretty much what it stands for now a sort of a pliant *(unknown word) sexual place where you know where one can have a nice holiday where meanwhile a few hundred miles away the French had recently stopped testing nuclear weapons as you're more than aware.

What Gauguin was up to though was quite interesting, as a fusion of three different aspects of cultural appropriation. First you can see from this image "The Spirit of The Dead Keeps Watch" or *(unknown word) the figure on the bed so there's a painting of the life that he was seeing and to an extent the life he was leaving. *(unknown word) you can see the dark figure behind what he's also doing is he's appropriating the style of in this case The *(unknown word) so it's a utilization of the stylistic interests of *(unknown word) and thirdly, and more profoundly, in the case of this one is that he's doing his version of what this probably girl though it's not entirely clear was thinking. So he's trying to enter into her mind and could we skip no Violet could we have the next one please? So we can be able to *(unknown word) through there

Parallel version of this in New Zealand that keeps the*(unknown word). Thank You *(unknown word)

Bizarrely, it's a very weird thing that, the interesting that's happened to New Zealand, is that it is much weirder on that scale isn't it, than it looks. What was he thinking? God, could we have the one that's labelled *(unknown word) please? I'll try not to blush. In New Zealand the principal form that you've got and a variant in the bathing costumes in front of you, is a form of painting, which is extremely diverse and interesting and complicated. Which forms one of the key platforms for what is I suppose traditional Maori art. One of the interesting ways that this has been used, is a way of New Zealand artists to show that they are from New Zealand. *(unknown word) so that's not indigenous artists. One of the most important examples is a guy called Gordon *(unknown word) so Gordon's *(unknown word) slide would be great *(unknown word).

It's not important the mounts for the slides are far too big. What this does is and if you can tilt your heads that way, (laughter) okay it's cool. It's cool. Hi! Sorry to tease you What this artist does is take what is a very organic interweaving and extremely sophisticated and complex system of painting and turns into a newly sophisticated version and I'm not going to say that this is really bland.

Although, a lot of commentators argue that this straightening out of what is a curve linear *(unknown word) to these straight lines which stops on the end of them. Much less the fact he is a white person doing this acts as a silencing of the original or the authentic version of that which will see in *(unknown word) at the beginning or on the interior of houses or the decoration of various objects and those of you who have seen all the art will be very familiar with the use of this particular form. But at the same time, this is complicated too, because, an image like this one not actually this picture which is called Genealogy, but an image like this one turned up on a cover of a book which was about cultural and racial relations in New Zealand, and it was widely interpreted including by Maori academics, as signifying the importance of a bi-cultural vision for New Zealand. Some of us find that it more difficult than that some don't.

So, I mean the interesting thing here is about whose eyes are seeing these pictures as much as whose hands are painting them. So if I could up one it's by Dick Frizell, it's called *(unknown word) The third version of Appropriation I just want to sketch in here is post-modern appropriation, which potentially is as dangerous if not more so than these other ones.

What it's based on is an assumption that quite contrary to one of the platforms that Dr. Daes was suggesting this morning that locality fails so see I that locality being crucial or important it is rendered insignificant along with certainty, place, meaning, and one of the key ways that that is registered in post-modern practice is through a quotation so what you have here is a work by a *(unknown word) artist and what he puts together in this particular image, are the *(unknown word) of Maori warriors or *(unknown word) which is the tattooing of the face always significantly more complex than what is illustrated by this particular example and I want to go for his chain of convenience stores. It's just titled the four square man

So, depending on what standpoint you can see this from that fusion of the sacred and the every day commercial and non-commercial different systems of knowledge and learning depending on where you stand that's going to carry profoundly different meanings for you and what you are actually seeing when you look at this image and again it was complicated.

A few of us rose to the bite of this particular one and got into a bit of trouble. But that's a different story. But at the same time, some of the catalogue itself, which accompanied this show, was written by Maori writers. So this is very fraught and very difficult and I certainly don't want to make a determination as to the rights or wrongs that individuals do in these particular situations as much as I have my own point.

So cultural appropriation in general is about this play with images that perhaps that you and I might think ought not to be played with. What it does is it gets around issues of control and in controlling access in particular and situates the image with a much more singular field of vision which is the field of vision which traditionally objects of importance for indigenous peoples were put in and now carted off away from their homes and into the flash institutions of the world.

Now what I want to do is I just want to briefly talk about what really could be a pessimistic talk I think about the ways in which ordinary notions of copyright will fail to protect the interests of indigenous artists. The third section is the heart of the section but it's a bit long I might not be able to get through it. So we can always talk about it later, because it does have some solutions

What you have in terms of the muted forms of reform for indigenous and sexual property are mostly three-fold. Two of which have already been slighted in different sessions today. First, you have international agreement and the changes that that can force and obviously that's profoundly important. The other one is a specific or *(unknown word) someone mentioned that earlier today national legislation.

Again, that's profoundly significant in order to achieve sweeping aims and sweeping objectives. The difficulty I had is that in many instances indigenous artists need decisions now and sometimes writing is really difficult so perhaps copyright might provide a transitional field in which to try to get some decisions going in the right way despite the fact that I'm aware that comments which Dr. Daes and Rosemary Coomb have made about the way in which the law can shape indigenous concerns to fit the language that *(unknown word) never understands which is effectively a strategy of silencing not unlike what happened to my grand mother not unlike what some people would argue happened in the Gordon Welch's painting that we've just seen

The four basic platforms for copyright protection are authorship, originality, fixation and duration. And on each of those four platforms they are significant gaps between what different legislation seeks to protect and

what indigenous peoples are seeking to have protected. So on the first one of authorship with small exceptions for works which has called been joint authorship works or collective authorship works it's basically about protecting the rights of the individual. And in negative protection so it stops say it stops me from copying you On that individual basis the clear thing that is missing from that is that images, stories, narratives, designs, sciences, knowledge itself, is not necessarily owned by one individual it is not necessarily just for them to use until discreet negotiations with people but is collectively held.

Collective ownership in this context would extend to say "A group of women working on weaving together or a group working on carving together or I don't know if women carve in the different traditions of the Northwest. That sort of thing where is a palpable evidence of physical involvement in the work so there's a gap.

The second one is originality. Now originality pertains not to doing something extremely novel. But where the work comes from. And obviously what stories that has been held down, given down which are essentially for heirlooms that can be a problem too. But, usually, the most test of what is original is extremely low so that even though stories can find some protection but only in so far as their manifestations of an individual author's version of them. So, again, there's a gap.

The third one is fixation. Which I don't mean to mean that it's obvious that it relates to it has to be in an object. And the difficulty with that is that it's seldom the object which is actually the thing most valued, and that it doesn't take account of the immaterial.

The fourth one is duration. And this is an enormous problem because it means that the Canadian legislation for example is the life of the author, plus fifty years. Now that was intended to protect two generations of people. What it clearly doesn't register is the importance of multi-generational protection. So what copyright does is essentially is that it provides protection for individuals in relation to specific objects for a limited periods of time. So it's not surprising in so much as it has been put into the other forms of protection. Now like I say, there are ways out, particularly, in light of Delgamuukw, the twists that are available out of that. And the Constitution Act in section 35, and what it provides for indigenous artists. But if you have questions on that I think it's probably best to introduce those at the end. If I could just do a quick tidy summary in terms of what happens in this clash.

It's essentially a clash of two different authentic systems. One is an authentic system of indigenous art making and the law which is involved with that and invested in that. It's about title to land being here who you are. The other one is an authentic system about the Law writes, which is generally the Euro-centric law which is generally *(unknown word) it's about solving problems after they've arisen. It's what Patricia Montour Angus is saying, as the essential problem is that one of those is always available for negotiation, which is to say Indigenous interests and of them is never available for negotiation, which is Crown sovereignty. That is the challenge of this particular area and the extent to which we can take up a particular I can take up as a white academic the challenge that was given this morning (A round of applause)

Moderator: Thank you very much Peter.

Lou-Ann Neel is Kwagwiltz from Northern Vancouver Island. She has a background, which includes ten or so years as an artist involved in textile painting, and silver engraving. She's also had fifteen years of experience in Community Economic Development.

Dianne Biin is from the Tsilqhot'in people of the Central Interior. She has experience in the Arts of textile making, beadwork, and basketry. She has also been involved in the arts field for approximately ten years, and community economic development, within the same period of time. They are going to be giving a presentation on their experiences as indigenous artists and they'll be also giving you additional information on the Consortium. Please welcome them. (Applause)

LOU-ANN NEEL

*(unknown word) These are the names the real names that Daisy spoke of earlier the tribes that we actually come from. A lot of people call us Kwakwakawa'kw, which literally translates to the Kwakwakawa'kw speaking people. I was originally born in Alert Bay and I've lived most of my life in Victoria, and as Dianne mentioned we've been involved in community development work over the years.

I started off wanting very much to be an artist wanting to be a carver, and it didn't take long before we took one look at the industry around us, the tourism industry gift market industry, and just the commercial industry overall and realized it would be a really scary thing to step out into a marketplace with my products as a artist and have no protection for them. So for about twelve years I've been creating and designing works and they haven't gone anywhere. They haven't been put out on the market, they've been shown a few times in community events but we've gone on a little bit of a rampage, about six or eight years ago and decided that if we really want to be involved in the industry we're going to have to something about the industry first.

So, I'm really honoured that we have an opportunity to speak at this conference really thankful to the UBCIC and also to the Musqueam people for always making us feel welcome over here I think what we're going to do is just go over a couple of slides really quickly there's an awful lot of information gathered from the last six years of work. We have a couple of reports; we have a paper in the conference proceedings.

What we're going to do is just give a really quick overview from our perspectives, not only as artists, but from the perspectives of other artists that we've spoken with over the last few years. It's been really difficult getting out to the communities. We basically do this as our spare time/free time work in-between contracts. We have a lot of artists out there who have asked us to come back to them and let them know, what we've done with their information and how we've presented the information. So we're really thankful for all these artists.

There's been several hundred of them over the past few years that have given us lots of great information. They've taught us a lot, and they've helped us to frame some of the diagrams that we're going to show you today. I think one the things, that the main point that we're trying to get across in our discussion is that under both Peter and Sally alluded to, under the Canadian copyright system, protection isn't entirely there as we'd like to see it. At the same time, international reports, the UN reports the most recent federal report, all talk about the importance of communities, making the free *(unknown word) to interpret copyright more thoroughly.

And that's what we're trying to do is to create an initial template, an initial something for people to have a discussion with, and that's actually what the paper in your conference is, is a discussion paper just to begin talking about what we can do *(unknown word) Haisla. Good afternoon and welcome, my name is Dianne Biin; I'm from the Chilcotin Region within the central region of the interior. To the Southwest of us we have the Coast Salish. To the southeast of us we have the Shuswap peoples the northern part of our territory, we have the Carrier Peoples and to the west we have the Bella-Coola peoples that's within our traditional territory here in BC.

DIANNE BIIN

Today we're here to talk a lot of the work that we've been doing for the past six to eight years, specifically working with artists. Lou-Ann and myself come here as community developers, artists, and entrepreneurs. I've mentioned in my introduction in the paper that I've been an entrepreneur all my life and that is true. My mother's an entrepreneur; my father's an entrepreneur. We've earned our living from our talents, our skill, and are still doing so, to help pay the bills.

So, Lou-Ann is going to put a slide to kind of give what how we understand copyright right now, but before we go into that, I'd just like to have a quick show of hands here, how many here consider themselves artists? How many of you were trained in your traditional disciplines? How many of you have walked from store to store to try to sell your pieces? It's a lot of us! It's called the school of hard knocks.

When we originally started hearing about copyright, we thought it was the "Golden Cage" Oh, this was wonderful, all we have to do is just put this wonderful little symbol on our art and it's protected. Like we don't have to worry about our pieces our images, our creations, showing up on something that is demoralizing to us, demoralizing to our family, demoralizing to our community.

Once we see that little "c", have our name on that piece that it's protected. And it's a one-way interaction that we realized that copyright is, especially here in Canada. As Peter was mentioning, you know it's protects a physical piece that that artist has created, which is an authentic, original piece. For the artist's life plus fifty years. And we're sitting there looking at that and it's going but that makes no sense in our systems. That makes absolutely no sense. And even after you have this image, this little "c" put onto your work, there's no guarantee that no one else is out there in the marketplace can just use it on something else. It's called self-policing at that point.

You have to keep control keep your eye tuned into the marketplace, into the industry to watchdog. You are your own watchdog. There's no one out there that'll do it. The Federal legislative powers are very limiting when it comes to that, and just the interaction that is used in the creation of that piece is not even recognized. You've noticed that on the diagram, we start with the artist who creates an art piece. That art piece is then put in to the public domain.

Those arrows are a one-way arrow, nothing comes back to the artist, a simple fee, for work done. And in that fee, there's a lot us who feel once we sell that piece that we no longer have any say of how that piece will be shown. How that piece will be sold. But under copyright legislation we do have rights moral rights. Morally, if we feel that that piece is not being shown properly we can step forward and state that is the improper use of my form, I would like it used or not used at all. You do have that right; you still retain that right. So that was one thing within copyright law that, it's a little bit of a silver lining and even with the artwork itself, the piece that's created, there's no real, and this is where we come into the public education side of things. As a tourist, walking down Government Street, as a tourist walking in Gastown, you have no idea who that artist is, you have no idea of our history, our structures, our laws, how that piece came into being, how that piece came to be in front of them, so they can touch it, they can buy it, they can take it home, they can hang it above their fireplace or wear it

There is nothing provided like that in galleries. Some galleries will provide a little bit of a biography about what the artist, and at that point you have your statement. But there's no real; there's no connection it's not inter-connected. And in our laws, inter-connection is key, it is crucial to how we create those pieces, it is crucial to how we present those pieces.

Ye I have, there's another little kind of a circle, up above and it's family, a lot of us who are, when we're doing our work, about six years ago, in the Aboriginal Arts project, we actually did a survey across BC with artists holding focus groups, asking the artists how did you receive your training

A lot of the artists, who came back said they learned from it their mothers, they learned it from their fathers, they learned from their cousins their uncles, their aunts, that there was no real formal training, the only formal training institute here in BC right now is K'san, and that's up in Hazelton area. So when you look at the family of the artist, there's no connection right now with the current industry to recognize how that artist is recognized as an artist. Because definitions right now of a recognized artist is different than how we perceive ourselves to be recognized. I'll let Lou-Ann go through this wonderful system, because it's her system.

Lou-Ann: So I put this diagram together, with the best knowledge I have of about how our system works, mostly from how I understand it how I've been taught through my family and through the artists who taught me how to carve. One of the things, that's always intrigued me about the terms art and artist, within the context of copyright is that we seem to be missing one crucial point about all of this, the big crucial point of course is that we have our own systems, but within those systems, within our larger social systems we have very formal disciplines in art. Whether it is dance or painting, or carving, or weaving, its very, very structured discipline.

And so, I went to the dictionary, and I looked up the word discipline, and I found three definitions. One says it is a system of rules governing conduct. The second says it's a field of study. And the third says to train or develop by instruction. And then I thought about whether any of those apply to me as an artist, and to anyone else I knew in my community.

And soon discovered that there wasn't anywhere to turn. There wasn't any formal place where I could go to just learn basic carving techniques. How to sharpen knives, do all that kind of thing except for within the community, within the family. And that's if you're enough to still have anyone within your family able to teach you.

So, with this diagram, what, what we're trying to illustrate just to take the whole idea of copyright one step further to add a little bit of that definition, is to take, is to realize that it is very much a two-way street within our system. It flows both ways. Flows out from an individual to their family, to their community and the nation overall, but it also flows back in the way of things like responsibility, and accountability.

So that's what we're trying to capture here, is when I introduce myself, I mentioned four different tribal names. So that's why I put four families up there. Who each of those families, there is a potential to be named, to receive a name, and within that name carries a whole bunch of responsibilities. So it flows down with the middle of your name, it's meaning, it's literal meaning, and other meanings, the tradition of the name, all the people who've held the name before you particularly, if it's a name associated with your being an artist and all of the history leading up to you having that name put on you in the first place.

Going outward from your name, all of the green circles represent the kinds of things that are attached to your name. Your standing within the Potlatch system, your prerogatives, the prerogatives you have by virtue of your name, which don't come about in an individual way at all, they come about because who you are in your family.

The obligations that you have, whether that be within the Potlatch itself or out in the modern world. The obligations, to as in mentioned in the keynoter, to uphold the integrity of the artist, very important. So of course it makes sense that you have to be taught properly to all of this. On this side, show the roles, the responsibilities and accountabilities. All those things are attached just to the name, to begin with, before you even start producing any work.

Flowing out of your name, come two different kinds of rights. I know it's a lot more complex than there is but we wanted to just capture it within the context of the artist. Ownership rights over things like songs, what

Daisy Senior Smith mentioned this earlier somebody creating a song, or having a song commissioned. So there's ownership there and there's usage where a song for example might then, be given permission to be used, during a certain ceremony. So, usage rights are something a little different.

In the middle just to give you some examples the kinds of things, associated with the different kinds of rights, are songs, dances, masks, regalia, ceremonial items, coppers, crests, dance*(unknown word)(word not clear) and then going all the back again to our connection with the land, and fishing.

All of the things that, that I've illustrated here, are what form our discipline, and we currently don't have I've been working a little bit in education, post secondary education, this last few years. We don't currently have any courses that even begin to teach this or the different kinds of systems from all the other nations in BC. So we don't have that, we don't have it specifically as it applies to artists or anyone in creating any kinds of creative works. And what we're going to try and say is that, that this complex system as opposed to those three little circles, where it goes from an artist who may from a family member goes straight as an art piece and then goes out to the public domain.

This is why we are saying it doesn't work. Because once we go all the way through this whole system and then, take the arrows back up again, who are we accountable to, we're accountable all the way back to our families and the entire system. And it really is painful to walk down into the tourist trap areas, and see one of my family crests on an ashtray. Even though I am a smoker, I still don't appreciate that. So what we're really trying to get at is with this just as a start, this just as a framework, this just from the little bit of knowledge I have about our system and the system I come from that what we need in Canada, especially in BC is to take a look at systems like this parallel them as much as we can with modern organizational systems and create a way to bring them back, because this level of accountability and this level of responsibility and then by doing that upholding the integrity of our art.

I think the last point I want to make about anything within this system is when we're talking of artists back in '95 we asked people what they thought how we should characterize our wording around what belongs to us, and several of the artists really liked the analogy of the Old Boy can split you. The fact that they'll be calling Old Board now that sheep, doesn't appear anywhere else on the planet. It's never appeared anywhere else on the planet. It comes from our people, it comes from our origins, stories, and it belongs to us. The Split Ewe is the same. There is no other on the planet before any of this started; there's no other place they have split ewes.

And there's nowhere else that takes an Old Boy and a Split Ewe and puts it together and turns it into a Thunderbird. That's what we mean when we say these designs belong to us, they belong within this system. It's multi-layered, it goes off in many different directions, and we have to protect that and create a new kind of a framework that we can bring that back for beginners, and then we look at things like section 35 of the Constitution and the BC treaty process. All of those things that are going on right now outside of this canvas don't even have that as a consideration right now. So that's what we're looking at.

Dianne Biin: Another thing too, when we're doing the Aboriginal Artists Report land trying to figure out how people are trained, and how people go out and can sell their pieces. It's not a thing to be ashamed of; we've been doing it thousands of years. All of the practitioners and the masters in their disciplines would be commissioned to do pieces for people. As showing your history, showing your wealth, showing your treasures.

So that the totems you see in the Grand Hall those were commissioned pieces. They were to demonstrate and to show to everyone who this person is, who this family is, where they come from, where they stand within the system. It's so funny you know, talking about a watchdog, just the other day we're surfing the Internet, and we realized that one of the Totems that was carved by Ellen Neel is now being used as a promotional item on a

web site. So we sent a message to the web site asking have you contacted the family to ask for permission to show this image on your web site? And the company came back and said “we had a web design company do it, so why don’t we talk to them and ask them how they got that image. And what had happened was a fellow that walked around with a camera took a bunch of images, they laid it out all on the table and chose the ones that looked the most attractive, and put it on to the web site.

And then the company came back to us and stated “Well, if we could talk to the artist and try to figure out a way to have this done, that would be great, but in the interim we will take it off the web site. We realize that it is not appropriate.

So there’s a lot of public education that has stuff going on out there, and us as artists we hold that right, we hold that authority. We can sit there and we can tell folks this is my art, this is what it means. This is how it can be shown, and that brings us into the entrepreneurial side of it, because at that point if you want you piece to sell, so that you know other people would like your pieces, how would like that piece presented? Let the galleries know, Let the museums know, let the shops know that you deal with, and that you know if you’re not getting the right way, that you can go somewhere else.

It’s great that in Australia that they have a referral system where you can call a toll-free line and talk to a lawyer. In our discussions for the past six years, we’ve been very fortunate in just bumping into lawyers who can just sit down and walk us through a lot of this then when we mention this to them, “Well this is how we understand it, and this is how it could be applied, this is how it could be done”. And one of the projects we’re actually working on right now, under the CIA, is knowledge from the way of the songs. Re-instating the discipline of singing and composition to the youth back in the communities

Talking to the singers, and the composers right now because it their role, it is their obligation, it is their right to teach that to the new generations, to apprentice, to bring in apprentices, to keep that system going. And that’s a very important point we have to keep this going. And it’s often where the songs is where really fun for *(unknown word)(three words not clear) I guess we started back in September, working with the composers looking at the whole process of how do you compose a song, how do you sing a song? When is it appropriate to sing that song? When is it not appropriate to sing that song? And knowing that when you’re in the Bighouse, you’re in Potlatch system. You know specifically what happens, and what does not happen, and how you carry that out of the house, and how you practice it in day to day living.

And how we’re going to present that is kind of a neat teaching format. There is an enhanced CD-ROM with multi-media application. You put in your CD player you hear the song samples. When you put into your computer, the whole multi-medium comes up. It talks about the history of the song, a whole translation of the song, so that when youth are looking at it, you got keep up with how people learn, and how you can transfer it. And once you figure out that technique, if we can get the youth to keep learning the language, to keep respecting the rights to keep understanding that those responsibilities, that are within our nations then at that point, we’re doing a lot of training within our own communities. Thank You. (Applause)

Lou-Ann Neel: The last thing that I wanted to say was that all the work we’ve been doing has been mostly sponsored by through our non-profit organization, which is the Victoria, Kwagiulth Urban Society and what they’ve done is created the CIA as their arts and culture committee. The CIA will eventually break off and become it’s own organization but we’re trying to be wise and step very slowly on that. They also have a writer’s group and an Indigenous group that helps with these initiatives and urban society has commitments to stay with us for a couple of years to move all the projects along. Thank You (Applause)

Moderator: Thank you very much to the speakers, I'm sorry if we to have encouraged you move along and knowledge to share however I wanted to ensure that we have time left for questions from the audience. So if we have any questions, you can go to the microphone there and identify whom you want to direct the question to.