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GROUP PRODUCTIONS

A Cultural Rights Charter: Respectful Ways of Working & Learning through Listening

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September, 2020.

DOI: [10.6084/m9.figshare.12950852](https://doi.org/10.6084/m9.figshare.12950852)

Preamble

We assert that a Cultural Rights Charter is perpetually in draft.

As a living document the onus of a cultural rights charter is not on punitive nor absolute dictum through which to persecute those who are only familiar with common law. Nor does a cultural rights charter seek to 'edition' change rather, be in observance of that change and to attribute those ("subjects") whose contributions have ensured that change .

Often proprietary practice and the falsity of licensed contracts negates the very founders of the cultural knowledge and intellectual property developed solely or in unity with others. As a result, dispensation¹ and preclusions as orchestrations to common law ² often ignore or override cultural rights, presented here in three main topics, acknowledging the diversity of opinions in this social science; an introduction through 'conversation'.

Personal Attribution

In acknowledging cultural rights amongst a sea of wrongs, emphasis must be brought to bear on those responsible for their human behaviours and actions that impact upon others. That ensures that individuals, groups or whole communities have a means of defence arrived at through a respectful position of 'Ngikalikarra'³ - listening both ways - first and foremost.

A cultural rights charter necessitates respectful consultation so, as a 'map', this document introduces why clear personal attribution is critical for the success of any cultural rights charter through the use of scenarios. The term (personal) attribution means in this context, 'the action of ascribing a work or (re)mark to a particular author, artist, or person'.

Attribution ensures that any activities which are likely to result in the creation of intellectual property or cultural knowledge are conducted with cognisance from the outset of recording those who wish to benefit individually or in collective recompense. Attribution is conducive to sustainable and often alternative means to economic parity, mindful that equity ⁴ does not equate nor result always as social equality ⁵.

¹ A political, religious, or social system prevailing at a particular time

² This is particularly salient when considering that in the jurisprudence of the canon law of the Catholic Church, dispensation in many cases is the exemption from the immediate obligation of common law.

³ Hayes, A. (2020). The Socioethical Implications of Body Worn Computers: An Ethnographic Study, Doctor of Philosophy thesis, School of Computing and Information Technology. *University of Wollongong*, p.465. <https://ro.uow.edu.au/theses1/853>.

⁴ The quality of being fair and impartial.

⁵ The state of being equal, especially in status, rights, or opportunities.

This modus of 'outset attribution', meaning 'consultation from the beginning', is therefore the means through which to arrive at negotiation firstly at collective recompense, notwithstanding that the development of cultural knowledge and intellectual property requiring free, prior and informed consent will differ with individuals in almost all cases.

As this document outlines, countless topics, which contain concept clusters that coalesce and form themes commensurately all have common attributes which cannot be held hostage to corporate processes such as commercial-in-confidence, copyright to the exclusion of all others or retribution in the form of patents which alienate those very people whose lives could be markedly improved as a result of equality of access at an affordable rate. Rather, any such agency of conveyance must transparently 'map'⁶ or record all activities using 'way-points'; unique and significant markers of those contributing to that activity, mindful also that personal attribution differs markedly from the continuum of licensing creative works ie. GNU General Public License⁷, Creative Commons⁸ through to the most restrictive forms of Copyright⁹.

Scenario 1

A well meaning, internationally recognised researcher, author and public speaker engages with an Aboriginal community regarding a significant historical figure in discussions and digitally recorded interactions.

As a result of the engagement, multiple forms of media are created, publicised, sold and distributed yet, little or no attribution in writing or mark making is given to those who contributed, nor monetary recompense made to individuals or the community collective.

Resolve: From the outset, attribution is afforded every individual and group, notation is made in all publications and products bearing such attribution and license types truly reflect the considered distribution of these outputs. Reward is negotiated at the beginning of consultative practice and all forms of recompense are transparently made available in situ, free of encumbrance or through investigation or audit.

⁶ The notion that a cultural rights charter is a journey arrived at through listening, evolving not devolving through statutes of the Crown nor any other adversary to that cultural group or community.

⁷ The GNU General Public License is a free, copyleft license for software and other kinds of works.

⁸ Copyright licenses which provide a simple, standardized way to give permission in sharing and using creative work.

⁹ Copyright is a form of intellectual property that protects the original expression of ideas. It enables creators to manage how their content is used.

Free, Prior and Informed Consent

The maintenance and continuance of development of a cultural rights charter is the responsibility of all, unlike a manifesto co-authored and published in editions as a guideline for well being. It must be noted that a democratic society unequivocally facilitates fora through which all representatives may express lawful freedom of speech. The key difference is the focus on members of any community or nation understanding and having a forum ie. arbitration for recourse or the means through which attribution, consent or mediation is expedited.

Sadly, unknown to most of Australian citizens:

“The Australian Constitution does not explicitly protect freedom of expression. (...) the High Court has held that an implied freedom of political communication exists as an indispensable part of the system of representative and responsible government created by the Constitution.” (Australian Human Rights Commission, 2013).

Free, prior and informed consent (FPIC)¹⁰ though, juxtaposed with freedom of expression critically informs any case of protecting human rights as described by Aboriginal Author Ronald Roe, Walman Yawuru descendant and Goolarabooloo Elder:

“It is abundantly clear that the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration), of whom Australia is signatory, has a focus since 2018 on ‘free, prior and informed consent’ (FPIC) for Indigenous peoples and their communities. (Roe, R., 2020)

For cultural rights to manifest, Roe asserts that resolutions at the level of the United Nations General Assembly, in his own cultural context, any universal declaration protecting the rights of Indigenous peoples must be enacted politically and hold moral weight. Specifically, the principles as set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (United Nations, 2020; 2016) carry obligations under the seven core United Nations human rights treaties of Australia is legally bound by the obligations in these treaties.” (United Nations Human Rights Office of the High Commissioner, 2018).

The importance of free prior and informed consent is evidenced in the many ways in which respect of cultural rights can avoid the genocidal action of extinguishment and protects intellectual property through communications that respectfully offer mediation and

¹⁰ FPIC is a principle protected by international human rights standards that state, ‘all peoples have the right to self-determination’ and – linked to the right to self-determination – ‘all peoples have the right to freely pursue their economic, social and cultural development’.

embargo until resolutions can be reached. The notions of consent also differ culturally, where the assumptive¹¹ models of 'caretaker' are deconstructed through ethical accord, each person capable of providing or denying consent without retribution. This is particularly important where the roles of contribution differ in the development of 'cultural cogency', that is, each person's contribution is through attribution differentiated, not 'bundled' under one agreement, thereby denying each individual their rights for consent through capitalist convenience or assumptive moral accord.

Many examples of where common law complaints have been served on those in advocacy or conveyance (Editor) without any free, prior and informed consent of the ("subject") which in turn, denies the subject carriage of the complaint, precludes how that complaint is being pursued and removes all inalienable rights to seek mediation. It must be noted that without freedom of speech, the right to free, prior and informed consent lacks consequence, benefiting only those who auspice common law through their own means of dispensation, at best:

"coercive diplomacy (that) is unacceptable and lacks reciprocity and mutual respect." Roe, R. & Hayes, A. (2020)

In the cultural rights context, the ability of all parties to cogently express themselves as contributors to decision making is the first right before any other rights, before all further benefits which arise from issuance or denial of consent. FPIC therefore must be intermediated¹² agreeably, affording those otherwise affected by actions or inaction.

Scenario 2

A member of a cultural corporation receives word from third parties that special resolutions are being carried and sustained by Board members without the knowledge, nor consultation arriving through consent of those motions.

As constituents, they are also denied their rights to question due process which in this example are serious allegations of impropriety as they are only able to table questions during monthly board meetings or Annual General Meetings to which answers are never fielded through independent arbitrators.

Resolve: Intermediation enacting resolution by means of forensic investigation, all matters on hansard not arrived at by unveiling secrets and every matter always available to members or constituents.

¹¹ Arrogant or presumptuous

¹² Agency or vehicle of conveyance who act as intermediary ie. mediation.

Copyright

Australia is no stranger to brutality with the most sickening of atrocities committed under the pretext of divine occupation¹³. The same 'right' where **sameness**¹⁴ is common moral accord and any other opinion deserving of extinguishment due to insurrection, whatever the cause, is the very 'sameness' that exacts its revenge in the form of copyright.

For most readers, the only means by which they express 'protection of creative rights is through the exclusivity of copyright, its opposite 'copyleft'¹⁵ or intermediate Creative Commons as unknown. In this context, copyright is not the only means through which to protect cultural knowledge and creative rights, rather, only one aspect on the continuum of licensing works and punitive measures for breach of license.

Personal attribution on the other hand differs markedly to the notion of copyright therein, as most people use the term unaware of the vast body of means at their disposal to protect and license their individual, commercial and communal collaborative works. In the context of this cultural rights charter, the very act of considering what license type to bind a creative works use must also mindfully acknowledge and support those who assert their rights to enforce the opposite - free and unfettered distribution under the open public domain.

The term 'data genocide' though differs markedly also from that of genocide, ecocide and democide¹⁶ according to Jade (2015), as FPIC equates (despite the cognitive leap in topic area) to:

"departing from the 'norm' of binomial reductionism in this space (although being a scientist I completely understand and value the science and research behind the 'for' or 'against' arguments); and as is honourable (I truly believe in the maxim "Don't do anything about me without me.")." (Jade, 2015).

Reducing creative endeavours and artefacts or intellectual property to generic 'data' Jade advises must be answerable to; (a) Where does the data go?; (b) Who owns the data? and; (c) Can the data be resolved back to the community at all times ("Yirrabana") for the next seven generations?"¹⁷

¹³ See 'Freedom of Religion, Belief and Indigenous Spirituality, Practice and Cultural Rights' (2011) by Associate Professor Katja Mikhailovich and Alexandra Pavli.

¹⁴ See 'Politics of Sameness: Redacted' film by Magali McDuffie PhD.

¹⁵ An arrangement whereby software or artistic work may be used, modified, and distributed freely on condition that anything derived from it is also bound by the same conditions.

¹⁶ See Steven Pinker's book 'The Better Angels of Our Nature' (2011) Figure 6-7.

¹⁷ See '#walkingoncountry' (2015) by Mikaela Jade. *Paramodic*.

In this example, FPIC and copyright are polarised, as inalienable rights are practically unattainable unless a unique cultural rights charter guides activity to which licensing may or may not be of priority over that of ensuring all knowledge is 'returned to Country'. It could be argued that Jade considers that Copyright therefore has the 'propensity' of dictum and reductionism, whereas Creative Commons and Public Domain lessens the footprint of exclusivity, characteristic of colonial practices.¹⁸

An example of how a cultural rights charter successfully 'frames' cultural practice is evident when considering copyright as precluding:

"... cultural rights, [which] can exist independently of legal texts to confirm them. The existence of a Right is a moral conception of co-living; a mature society might [does] not need to reduce it to normative texts." (Interarts Foundation, 2002)

Scenario 3

By invitation, guests attending a cultural film festival showcasing international examples of film focussed on human rights and social justice are witness to an impromptu performance of dance and public ceremony.

The hosts of the event are the community itself and the facilitator for the event is a contractor by virtue of appointment. Additional 'crew' members travelling with the facilitator have tacitly arranged to document the event through film and photography, although the audience is not informed of their intent nor did they give consent to be recorded. During the public performance these photographers and videographers are seen to be capturing every facet of human and non-human activity in high definition digital form.

On approach, the topics of consent, subject and cultural rights produces a reactionary response from the contractor. Subsequent communications are reinforced through the contractors use of data in other publications again without free, prior or informed consent. Discussions since have devolved into an argument over copyright and 'fair-use' despite the community's expressions of malcontent.

Resolve: All digital source materials collected by the Contractor are returned and all other copies destroyed. Acknowledgement of a breach in community protocols brings all parties together in mediation, whereby the Community also attributes its own lack of prior 'ways of working' with contractors in the absence of a cultural rights charter. The challenge in securing the return of the data is assigned to an independent and appropriate liaison contact and matters of impropriety are struck from any register upon return of the source data.

¹⁸ See '404: Data Genocide' by Mikela Jade (2015) *Paramodic*.

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