

INTELLECTUAL PROPERTIES

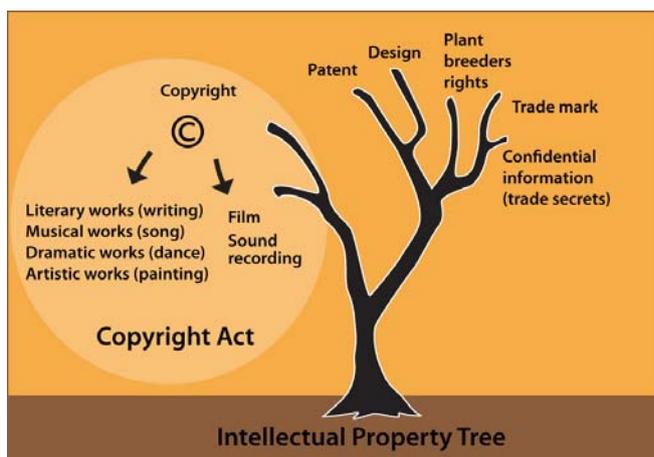
Yinjiya Guyula and Dhängal Gurruwiwi

interviewed by Trevor van Weeren with introduction by Michael Christie

October 2009

Introduction by Michael

There are always issues of intellectual property not far beneath the surface of university life. When Indigenous knowledge and digital technologies are introduced into the mix, the issues become more complex. We included attention to intellectual property issues in our planning for Teaching from Country from the beginning. There were two main reasons: One was to ensure that the IP of the Yolŋu knowledge authorities was protected as well as possible by Australian law. The other was to take the opportunity to look at issues of IP from the Yolŋu side as well as the Australian side. We were looking at Yolŋu and academic knowledge practices, and Yolŋu and academic ways of valuing and paying for participation, so we add IP to the both-ways discussion list.



We invited Robynne Quiggin, a solicitor who runs a legal business Vincent-Quiggin Legal & Consulting Services in Sydney. We had worked together on other projects, so I was happy when Robynne agreed to help. She looked carefully at the work we were doing, and prepared some legal advice as to how we could tighten up our work to better protect it.

After the Teaching from Country program had been running for a few months, we invited Robynne to come to Darwin for a one day workshop to talk with us about Intellectual Property. She brought with her a Powerpoint presentation which helped us to think through some of her ideas, and allowed the Yolŋu participants to make comments about Yolŋu intellectual property law.

What follows is an edited transcription of what Yiṅiya and Dhāṅgal had to say on video at the end of the day. Both were interviewed by Trevor van Weeren. Yiṅiya's wife Waṅgurrū, who was at his interview, transcribed and translated both interviews. I have added a few clarifications. The complete transcriptions and translations can be found on the website¹.

Yiṅiya and Waṅgurrū interviewed by Trevor van Weeren

Yiṅiya: Yuw, When Michael first mentioned ṅunhi, this lady was coming up from Sydney. Ga talked about nhawi, intellectual properties. That sort of made me, bitjana gam', That maybe sort of, that's something we need, to backup dhuwal ṅunhi dhāwu mala. Especially paintings mala. Rom wiripuny, ga gaka' mala, ga gamunungu.

We need some sort of legal protection when we put digital resources on the website.

Yaka limurr dhu ga yān bawalamirr nhirpan websitelil, without some sort of secure, security mala ya bitjan. Ga bala ṅayi dhuwali nhawin, yakan marṅgi, nhā dhuwali intellectual properties mala nhawi nhakun.

Performances are not protected under Australian law.

Very, very, mirithirr yan, important they, they should work together ga understand each other's, where we talk about properties mala ṅunhi protectedpuy, nhakun, like say nhawi, I saw on the screen there, what's being protected. Copyright protected, and what's not really copyright protected. I saw on what's not really copyright protected listṅur. Ga all the buṅgul mala, ga gaka' mala and the stories just being told.

Yuw waṅganydja dhāruk.

So when Michael first mentioned that Robynne was coming up from Sydney to talk about these intellectual properties, that sort of made me think that maybe we need something to protect our stories. Especially the paintings. As well as the culture, songs and dances, and the paintings.

We can't just put it out on the website, without some sort of security and protection. But we don't really know what these 'intellectual properties' are all about in Australian law.

It is very, very, important that the two laws should recognize one another, and work together. When Robynne showed us the diagram of all the protected properties (under Australian law), we could see in one branch what's being copyright protected. On the other lists there were things that were not really copyright protected like ceremonies, dances, the steps and ways of performing and people telling stories.

Yes, and language was one of them.

¹ http://learnline.cdu.edu.au/inc/tfc/writings_ip.html

Languages, paintings on bodies, sand sculptures are not protected.

Yuw language, dhäruk, ga paintings mala.
Unless something ñayi ga ñorra ñula
nhäñur, wukirripuy. Yorr bäyñun nhakun
limurrurñ wukirripuy

There's bäyñu, no such writing yolñuw.
Only storyny ga ñorra, ga gamunurñgura
yan, painting mala

Ga painting ñunhi rumbalñur ga ñorra, that
is story. Yorr dhiyal bala Balanda sideñur
say that not really protected

Because it's only on a body. But that
is story written down ñayi rumbalñur.
Munathañur walal dhu ñunhi munatha
buma yolñuy djäma? Yuw, ñula nhaku
lupthunaraw, yuw. Yuw, munatha dhu
buma, sand sculpture for ceremonial
purposes.

*But it's the performances, the body paintings, sand sculptures which are exactly
what **are** protected by Yolñu law.*

Copyright works from yolñu nhawi, it's
nhawiñur ñunhi sand sculpture ñunhi
munathañur? That's a copyright, the design,
patterns. Exact design mala, patterns mala,
ga designs of paintings mala, gamunurñgu
mala.

Yolñu intellectual property is never owned by an individual person.

The paintings ga the stories ga paintings,
especially gamunurñgu mala, paintings are
not only owned by one, wangany person.

Yeah, language, words, and paintings on
bodies. Unless they are somehow written
down. But we don't have any means of
writing. There is nothing, no such thing as
writing for Yolñu. We just have the stories
and the designs. And the painting which is
on a body, that is actually a story. But that is
not protected under Australian law because
it's only on a body. But from our point of
view, the design is a story written down on a
body. When they make those sand sculpture
on the ground, senior Yolñu do it, whatever
it may be for, maybe a cleansing ceremony,
yeah.

Yeah, to form up the earth to create a sand
sculpture for ceremonial purposes

From the Yolñu point of view, those sand
sculptures are copyright. It's the designs
themselves, the patterns on ochre or in sand,
which are copyright.

There is nothing like 'individual creation'
especially in the painting designs, they are
not only owned by one person,(they were
handed down to groups of nations by the
creation ancestors).

It's not even owned by a single clan group.

There's a whole lot of clans that owns it, ga everyone in that clan, yothu-yindi, märi-gutharra, waku, ga even connecting clans mala through riṅgitjkurr, ceremonieskurr, they have certain power over looking after, making it strong, yuw ga bitjan gam.

Different clan groups have claims to other clans' designs: A group of people known as the Yothu (which is child from the clan into which a woman marries) and Yindi (which is used for mother's clan), Märi (mother's mother), gutharra (sister's daughter's child), waku (mother's mother's mother) and even the connecting clans through ceremonial linkages handed down by creation ancestors. They have certain authorities over looking after it.

Yolḷu would understand their Intellectual Property tree to link together all clans, with everything put in place by the creators.

Warrpam nhä mala ṅunhi rom ṅayi, waṅarryu mala gurru'kurrupar mana'manapanmin, nhakun ṅunhal east Arnhem Landṅur munathay ṅuruṅi, wäṅjay, gurritu mala ṅunhi ga dha-manapanmirr, makes a big, one big dharpa nhakun, big foundation ṅayi ga ṅorra e'.

Whatever there is in our law that the ancestral creators have given us in east Arnhem Land, they are inseparable. It's the land, the places, the kinship networks connect them together. It makes up our version of an Intellectual Property tree, that makes up our foundation.

Ga ṅunhiliny ṅayi ga ṅorran romna, e' intellectual propertyn nhakun, ṅunhilin ṅayi romna ga ṅorra. Whether ṅayi Dhuwa, or Yirritja, yolku, yolku bäpurruw, rom mala. Waṅganygurr yan dhu ga romgurr marrtji.

So there lies the law, called 'intellectual property', in that common law. Whether it be Dhuwa moiety or Yirritja Moiety, in all the clans, no matter who it belongs to (in East Arnhem Land).

It must abide by that same common law.

Yolḷu Intellectual Property law has mostly to do with stopping people from using designs, or performances without proper negotiations and permission.

Yaka guwal-budapthurr ga djaw'yurr wiripuṅuw. Balanyan mala ṅayi ga ṅunhiliny nhakun copyrightna ṅorra balanyan. Yaka manaṅi nhokal djälyu, ga ṅunha bala buṅgul djaw'yurr, or rom djaw'yuyrr, or gamunuṅgu djaw'yurr,

Do not mix the designs together or use some other group's design. That's what Yolḷu copyright law is about. Don't steal other people's designs just because you feel like it, or take someone's dance or ceremony, or design.

Wo wana bathiṅur, wana. Djaka nhuṅuwuy yān nhe mānṅu, nhā ṅayi ṅunhili waṅarryu mala nhuṅu gurrupar. Njunhili mala ṅayi ga ṅorra'ṅorra. Ga dhudiny ṅayi ṅunhiyi nhakun, balanyan nhakun Intellectual Property ṅayi ga ṅorra mala. Warrpam'thu limurr ga nhāma.

I can't decide to give an important person a sacred bag or painting belonging to my clan, without permission.

ṅunhi nhe dhu waṅganydhu bāpurruy wrong djāma, mistake ṅayi dhu bitjan. 'ṅarra bathi dhuwal bala gurrupan nhawiku Parliament houselil, to the Balanda Parliament house. Waṅgany tribe. Warrpam ṅunha bala wiripu clan mala walal dhu bitjan, 'Yaka, yaka balaṅ nhe bitjana because law says so.' Ee. Yolṅu law dhuwal, dhiyal within the intellectual propertyṅur, ga the law says, Yaka balaṅ nhe gurrupana bala.

People in a particular relationship to the sacred object and its clan are identified as having the rights to make decisions.

From different clan members mala, ga in those clans there could a māri-wataṅu for this particular rom. Dhuwal rom, or a djuṅgaya from another tribeṅur for this romgu. Ga waku-wataṅu. They all makeup, all the different clans that link up with nhawi mala.

Romgurr ṅunha ṅayi djalkirikurr ṅayi ga ṅorra that make it strong, ga bitjan yaka dhu ṅayi move. ṅuli, ṅuli nhe dhu ṅurrkam, ṅāthiliṅu rom balanya, ṅuli nhe dhu bathi ṅurrkam, ga gurthalil ṅurrkam, daw'dawmaram, nhe dhu garay burakirr. Dharpum nhuna dhu. That's the rom bitjan ga waṅa. Dhāgir ṅayi ga ṅorra.

For example the tassels attached to a sacred bag. Look after what it is that the ancestors have given you. That's where the law lies. At the base of all those practices is our Intellectual property law. We all have authority over one another and care for each other.

If one particular clan might make a mistake. 'I'll give this sacred dilly-bag to this parliamentarian, (because that person is our good friend)'. One particular tribe might do that. All the other surrounding clans will say, 'No, you shouldn't have done that, because our law say so.' Okay, that's Yolṅu law, here within our intellectual property, and our copyright law says you shouldn't have given that thing away without the right people from other clan groups agreeing.

People from different clans – like members of the mother's mother's clan, or djuṅgaya who is the custodian or the caretaker for his mothers' properties, or the 'waku-wataṅu' who calls this clan his grandmother's mother's mob also has total authority for preserving the copyrights as well.

It is the laws of the copyrights through connections to land that has authority, and can not be moved. If you throw that bag away, or burn it, or pull it to pieces, you will be speared. That's what the law (Yolṅu) says. There are punishment provisions.

These days disputes over these things are so bad, people are using witchcraft, which is a not good way to sort things out.

Nuli nhe dhu goᅇ-gurrupan bala, dhiyaᅇ
bala mak walal li ga galkan bunhamirr.

Galkan, ga, bāyᅇu gi dhiyaᅇ bala mirithi
waᅇi biyak, way, yaka nhe dhu bitjandhi.
You can't do that. Otherwise, next day
ᅇayi dhu bitjan, mak ᅇayi dhu rakunyna.
Because of dhuwali mala rom mala.

But yuwalktja ᅇayi, but ᅇunhiny galkany
cheating nhawi djāma ya balanya.

Yaka ᅇunhi justice galka rom.

The University should be willing and able to supervise the protection of the digital work I do which is on their website.

If you give away your sacred objects
to someone else, these days people still
exercise witchcraft (as retribution).

Witchcraft, people don't speak publicly
about it, and say you can't do that.

Otherwise if you breach that copyright law,
the next day you might be dead because
of these laws. But really the witchcraft
practices are unjust, and cheating and unfair
you see. Witchcraft practices are not really
the right way of justice.

When I was doing Powerpoints (at the start of the project), I didn't really have an understanding about where the control, actually lies. Where I can actual have a copyright and have it protected.

You never know that somebody out there might take the painting of my dhapi ga djamarrkuli dhapi painting mala. Even facial nhawi designs ga bathi mala wana. But when this came along made me really think yaka dhuwali manymak narra dhu nhawin start thinkna. But as we went through, ga. Put it this way long as nunhi dhu marrtji nhawin nhakun djämany, I want all my work mala protected. Copyright protected through the system that is more stronger. Ga, through the university dhiyal nhakun, Yolŋu studiesjur.

Ga widely dhiyal nhakun, when, before it goes into nhawiŋur websitelil mala. That the whole of university can be a support in protecting all my copywork, nhawi djäma mala. Ga walal dhu ga nhakun gungam, nhawi ya bitjan, nayatham. They have knowledge through Balanda systemgurr that I don't. But I have knowledge through Yolŋu systemgurr.

Ga one day napurr dhu get together, mak university, or organization nunhi napurr li ga djäma, ga yolŋu rom get together.

The law that says that copyright is extinguished after 70 years won't work for us. Our copyright is a copy of something that has been in the ground since time began.

When I was making power point presentations, I didn't really understand the Australian copyright law or what we could do to have my work protected.

Someone could steal the photograph on my powerpoint of the boy painted for his dhapi ceremony. Even the image of the facial designs and the sacred ceremonial dilly-bags and the tassel attachments. But when this workshop came along, it made me think seriously about, that it was not good, I started to think about it. But as we went through the discussion it became clear to me that now I feel all my work can be protected. Copyright protected legally through a system that is strong and secure. Also through the university here of course, through the Yolŋu studies department.

Before things go up on a website, the university should have some practices in place to look after and better protect my work. They can hold it and protect it. They have knowledge through the white man's system of protecting work that I don't understand. But I have knowledge of how the Yolŋu copyright system works.

One day we'll come to understand each others systems of intellectual properties and copyright protection and both systems may work together.

There are some paintings dhuwal ga ŋorra'ŋorra warranul. This is only a, nhä, mak nhä, duplicate, or reflection, or is a carbon copy of what is really dhiyal ŋayi ga ŋarakanur ŋorra wäŋanur, what the ground holds. So that's only a carbon copy. But you can't, you can't take anything, nhä something out of the groundur. Because, sure people say, nhawi Balanda mala say you can't really understand your nhawi copyright, Yolŋu paintings ga dhäwu mala because that's too old. Of course it is too old, it's been here a long, long time, ever since time began, and it's always been here.

These paintings that are used for public purposes are only a duplicate or a reflection or carbon copy of what is actually lying in the land.

Yolŋu law existed ever since time began. The copyright laws were handed down once and for all. You can't say you can't protect our intellectual property because it's too old. Of course it's old! It's been here a long, long time, ever since time began, and it's always been here!

Dhäŋgal interviewed by Trevor at Yirrininba's house. Clarifications added by Yiŋiya and Waŋguru during the transcription.

Dhäŋgal: The talk with Robynne? Yeah, that was very interesting she delivered it in a way that we understood about the copyright systems especially how we didn't even know it in the first place, but the way she presented that, was good and we understood the whole sort of, understood the system properly, better than we had before.

Australian law has all the different branches like the tree – Yolŋu law it is all connected in links through the clan groups.

Yes, the way I understood it, is that by comparing it with our rights of everything within our culture, and the western society? Of how each section (in Australian law) are different, I mean, in different areas, sections. But in the Yolŋu way, it is all sort of connected in, between the clan groups. It doesn't really involve just the actual, one clan but involves different others, like in the situation where we say is 'yothu-yindi'.

In one example, the people in one clan group are the custodians of the intellectual property of the group which they call 'mother'.

'Yothu' means the child, 'yindi' means the mother, it's actually talking about the clans. What's your mother clan, you act as the custodian of that group of people. It's not an individual, it's a group, so the 'child' has right to take care of his 'mothers'.

And in another example people look after the intellectual property of their mother's mother's group.

And then again there's another family structure which we come under, is the 'märi-gutharra' relationship. 'Märi' is the grandmother, 'gutharra' is the grandchild and that goes within all groups connected.

Like we can look after our grandmother clans' things, like the dance, the song, the painting, the stories, and so forth with our mother's clan nation. And who ever is my grandmother they have every right to that, what you would call the custodianship.

And in another example the mother's mother's group especially look after everything for their grandchildren. They are responsible for your funeral and your initiation.

They have every right to, they have a last say, especially our grandmothers because that's when they take care of us when we are gone. They are the first for all the ceremonies, then my clan would go, come after them, but the grandmother lives on. As for the mother it can come in when ever asked by the grandmother clan nation. When you die your body becomes sacred and the people who take care of the funeral ceremony are your grandmothers' mob (your mother's mothers' clan). Her clan has responsibility over all your affairs after you've died; if there is a boy's initiation ceremony they have all responsibility.

Individuals have permission to tell stories, but the sacred business underneath those stories is not their property.

Individual people doesn't have copyright, if, it's just a story we can be directed to tell at such a level and what is underneath the story that story that has to be consulted with the leaders.

We, as individuals can only talk and tell stories about public ceremonies, but any sacred and serious issues must always be consulted through the senior elders in the clan.

Trevor: If a judge was to ask you, she's an expert in copy right law if, if the judge want to ask you from your perspective as a Yolŋu woman. How could you explain copyright for example over a painting that you might do. Or over a story that you told or a dance that you know How would you explain that to the judge, how, how copyright works?

Dhänḡal: There are many different stages of every songs, painting and dance. So I would only be telling of the first level of everything like the painting the song and the dance. I wouldn't talk about the second or the third level. There are public and confidential stories, where women and unauthorized persons may only talk about stories that are in the first level, or public stories, second, or third deeper meanings and sacred stories are left to the senior elderly men to talk about away from public places.

The paintings, I'll start with the painting first, the painting tells a story it speaks of the land, it speaks of the creation first, then the land, and what is in the land that was created. And when we talk about the land what the person does is just put it on a bark or a canvas, but there's deeper meaning behind it, and what is shown to the public talks about the land.

There is not even a separation between the artist and the land that the painting refers to.

And land and the person are one, the land isn't divided into different sections, when we talk about the land, we refer to ourselves as the land, and we are part of the land.

Trevor: Yeah some of the things that we started talking around, which were a bit confusing was that copy right law doesn't cover things like language or a story that's been told or a dance. Is that a concern to make sure that the western law understands that?

The failure of the media to distinguish between the different performances as belonging to different groups of people and their land is a problem

It is concern that western law should understand. People see, especially in videos or DVD's nowadays or on television, people dancing, but what they don't know is, what group is dancing on the DVD? And which clan do they belong to, the clan nation they belong to. That they don't know. They just tell us that it is Yolŋu, and that's from the North East Arnhem and that's it. No, there is, this identity in every clan nation. That every clan nation has particular areas, to cover through the dancing, about the land, the sea, the sky, even the clouds or the birds... everything! It's just that, what we see ourselves as, we're the land, and the land is us.

Trevor: I wonder if we could talk a little about, all the discussion that went today, how that makes you feel about all of the recordings and the teaching sessions that we have done with the Teaching from Country project, and the copy right that is inside those videos that you took and the stories you told, and how it gets looked after by groups like CDU.

Dhāṅgal: We're grateful for the ways that CDU's documenting all these things what we've talked about, during our Teaching from Country, and it's a good way of documenting these things. Because we've had it, within us, and so some of those special things can be put away for the use of future generations if they want to go into it, and if we have the chance of getting the information ourselves and if we want to do future documentation with our own clan nations. So it'll be accessible for the future generations to go into it. And get those informations. I feel good, yes about those things. We know it's going to be safe and that nothing is going to get it. If it uses a proper way of making sure it's in a safe place and we as the lecturers know...how to get in to it and be able to get that information for later use. All we want is for the western society to know the copyright is there within the Yolŋu law.