

Harold Thomas and the Legacy of Albert Namatjira

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When thinking about the Aboriginal flag and copyright and the desire of the government to intervene to overturn the copyright protections of the Aboriginal flag, owned by the flag's creator Luritja elder Harold Thomas, let us consider the case of Albert Namatjira.

Albert Namatjira, a Western-Arretnite man, was perhaps the first Aboriginal visual arts superstar. Painting in the European watercolour style he quickly became a celebrity and was able, at the peak of his fame and artistic power, to financially support huge numbers of close and distant family; a number estimated at around 600 during his life. He was not wealthy but his support was better than the nothing they had.

In 1957 he became the first Aboriginal person in the Northern Territory to become a full Australian citizen due, in part, to petitioning by non-Indigenous artists incensed by such a great artist being a ward of the state as all Aboriginal people were. All other Aboriginal people remained wards of the state, having approximately the same rights as orphaned children.

Regardless of his citizenship he was refused the right to build a house for his family in Alice Springs or to buy a cattle station so his extended family could have work and income. Despite his fame he was stuck between two worlds. He was citizen enough to pay taxes but was not citizen enough to buy land. His family, all of them except his wife, remained wards of the state.

In 1958, Namatjira was arrested and jailed for supplying alcohol to his Aboriginal family, despite the fact that under cultural obligations he could not refuse. Under cultural obligations he had to share everything, even though under whitefella law supplying alcohol to Aboriginal people was illegal. It's obvious he was never seen by the state as equal

In 1959 Namatjira died of heart problems; some say that his time in jail for merely obeying cultural mores (jail would have been a challenge for an Aboriginal man of his age) contributed to his early death. In his will he left his copyrights to his family, particularly his wife. He displayed strong agency with his rights, had made deals for the good of his family and ensured his family would be cared for. However the government did not respect his agency.

After some confusion, regarding his copyrights, they were disposed of, by the public trustees (appointed by the government) by selling them to a publisher, who had licensed reproduction rights from Namatjira while the artist still lived. His estate received a ludicrously low sum of \$8,500 for his legacy.

There has been some debate why the trustee sold Namatjira's rights for so low a sum. Some say he undervalued them. The public trustee said it was a paperwork/administrative error; that the intent was to lease the rights to the publisher for the remaining time on the agreements (<https://www.abc.net.au/news/2017-03-09/albert-namatjira-copyright-sale-a-mistake/8335624>).

Namatjira died in 1959 and his paintings were copyright for 70 years past his death and would have belonged to his family, earning them money, until 2029. Reproduction rights to his paintings would have been nearly priceless, would have kept his family out of poverty for the last 60+ years ... if they had not been sold.

Earnings from reproductions of his paintings were valued in 2012 at \$10 million (<https://www.sbs.com.au/nitv/nitv-news/article/2017/09/18/albert-namatjira-died-broken-man-his-family-hope-new-film-can-restore-justice>), a substantial sum for people living in poverty

Bear in mind that the public trustee did not sell reproduction rights but rather he sold the copyright itself outright, against Namatjira's will and that of his family. \$8,500 was a pittance compared to the utter fortune reproduction license fees would have earned them but instead went to a non-Indigenous business. The publisher owning the copyright outright meant they were not even obliged to pay royalties to the Namatjira estate.

If not for the decision of the trustees the Namatjira family, and through them countless other central Australian Aboriginal families, would have earned a decent living from his copyrights rather than living in poverty.

As recently as 2017, Dick Smith intervened and with a big hunk of his own money (substantially more than the \$8,500 the Namatjira estate gained from the trustee's sale) arranged for the copyrights to be returned. The copyrights, rightfully theirs, were returned to the Namatjira family for \$1. (<https://www.abc.net.au/news/2017-10-14/albert-namatjira-copyright-returned-to-family/9050550>)

Unfortunately they had only 12 years of copyright left but have since sued the government for compensation for their 60 years of lost copyright and it was settled for a sum that was not made public. I hope it was a fortune.

So, the Namatjira case was different to the Harold Thomas and the flag case that is unfolding but there are some things to unpack in their similarities and differences:

It's an important thing to consider that the Government is calling for changes to copyright law to snatch the flag copyright from an Aboriginal person (Harold Thomas) but were unwilling to intervene to take copyright ownership from a white person (the owner of the Namatjira copyrights) to give it back to Aboriginal people (Namatjira's family) despite the fact that the mistake in disposal of the copyrights was theirs.

In addition, if the copyright of the Aboriginal flag is stolen by the Government and later courts decide that was the wrong decision, Thomas and his family will have a huge claim and I personally hope they will take the government to the cleaners.

And the Namatjira case, combined with the Government's reluctance to make fake Aboriginal art illegal, suggests to me that the Government don't care about Aboriginal intellectual property at all.

Namatjira displayed agency with his copyrights, making good deals, leaving his copyrights to his family; he did all the right things, took good care of his business. The Government fucked him over and that might be what they plan to do to Harold Thomas.

It should be considered, perhaps, that a regular reaction by the Australian government to Aboriginal people with agency is to attempt to take it away. They are eternal mission managers, thinking they know what we need better than we do. There are serious discussions around compulsorily acquiring Thomas' copyright over the Aboriginal flag for all Australians but they never, despite having had many opportunities since 1983, attempted to compulsorily acquired Namatjira's copyrights to return them to his family.

After what happened to Albert Namatjira how can we trust the government to treat Harold Thomas with any respect.