



AIATSIS

AIATSIS Submission

Inquiry into the Copyright Amendment Bill 2025

November 2025

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About AIATSIS

The Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS) welcomes the opportunity to make a submission on the *Inquiry into the Copyright Amendment Bill 2025*.

AIATSIS is Australia's national institute dedicated to Aboriginal and Torres Strait Islander peoples' knowledge, societies and cultures. We are the custodian of Australia's national collection of Aboriginal and Torres Strait Islander peoples heritage materials.

AIATSIS, as a Commonwealth statutory authority, established by the *AIATSIS Act 1989*, has legislative responsibility to:

- develop, preserve and provide access to a national collection of Aboriginal and Torres Strait Islander culture and heritage
- use that national collection to strengthen and promote knowledge and understanding of Aboriginal and Torres Strait Islander culture and heritage
- provide leadership in the fields of:
 - Aboriginal and Torres Strait Islander research
 - ethics and protocols for research, and other activities relating to collections related to Aboriginal and Torres Strait Islander people
 - use (including use for research) of that national collection and other collections containing Aboriginal and Torres Strait Islander culture and heritage
- lead and promote collaborations and partnerships across sectors
- provide advice to the Commonwealth on the situation and status of Aboriginal and Torres Strait Islander culture and heritage.

AIATSIS is committed to ensuring Indigenous knowledge, cultures and governance are respected, valued and empowered by the laws and policies that concern them.

For more than 60 years, AIATSIS has developed and been the custodian of a unique collection that has contributed to building understanding and appreciation of Aboriginal and Torres Strait Islander peoples' culture and heritage.

The Collection includes academic research materials and works by Aboriginal and Torres Strait Islander knowledge keepers, artists, film makers, storytellers and writers.

It also includes important work by non-Indigenous people documenting the cultures, lives and experiences of Aboriginal and Torres Strait Islander peoples.

Our collection promotes a unique understanding of Aboriginal and Torres Strait Islander Australians, past and present, and many items cannot be found anywhere else in the world.

By providing access to the AIATSIS Collection we tell the story of Aboriginal and Torres Strait Islander Australia and create opportunities for people to encounter, engage and be transformed by that story. We support and facilitate Aboriginal and Torres Strait Islander cultural resurgence, and its capacity to shape our national narrative.

Introduction to AIATSIS' Submission

The majority of the AIATSIS collection material is copyrighted to depositors and donors. Many former depositors and donors have passed away or have not kept AIATSIS informed of their whereabouts, and it is often difficult to locate them or their next of kin for copyright permissions, which can be a barrier to access.

AIATSIS is also committed to supporting the Indigenous Cultural and Intellectual Property (ICIP) rights of Aboriginal and Torres Strait Islander peoples who are connected to our collection material.

For these reasons AIATSIS has an interest in appropriately managing orphan works and has contributed to consultations regarding proposed amendments to introduce an Australian orphan works scheme since 2023. After participating in the Copyright Roundtables in 2023, AIATSIS contributed as a stakeholder throughout 2024 and 2025. The submission on September 2024 *AIATSIS comments on Orphan Work Scheme Design Options Paper*, informs the comments below on the *Inquiry into the Copyright Amendment Bill 2025*.

In this short submission we focus on what the proposed inclusion of an orphan works scheme means for Aboriginal and Torres Strait Islander peoples.

Acknowledgement of Positive Elements of the *Copyright Amendment Bill 2025*

Indigenous Cultural Intellectual Property

AIATSIS welcomes the inclusion of ICIP as part of this package and that higher standards of a reasonable diligent search should apply for material that contains ICIP, as outlined in the *Copyright Amendment Bill 2025 Explanatory Memorandum* (Memorandum) in particular paragraph 27a:

The nature of the copyright material: higher standards may be expected for use of more recent copyright material or copyright material that has been produced for commercial purposes and for material that may be of a sensitive or private nature. Higher standards would also be expected for material that contains Indigenous Cultural and Intellectual Property (ICIP).¹

AIATSIS is pleased with the additional advice that:

In such cases, the user should also seek to get free, prior and informed consent from the cultural groups to whom the ICIP relates, noting they may be different from the copyright owner. This is consistent with First Nations peoples' rights to the protection and development of traditional knowledge and cultural expressions, which are recognised and affirmed in the United Nations Declaration on the Rights of Indigenous Peoples.²

We acknowledge the reference to ICIP and the alignment with the United Nations Declaration on the Rights of Indigenous Peoples³ and welcome further attention on these rights (see also Recommendations 5 and 6 below).

Affirmation of Existing Processes

Many of the requirements included in the Bill, especially the conditions laid out in s116AAE are already part of AIATSIS' internal processes when relying on s200AB. It is gratifying to see them consolidated in a neat and accessible way, and to see that access to their potential will be broadened by this legislation to make materials more accessible to more people.

Two of the biggest issues AIATSIS encounters when working with orphaned materials under s200AB, are certainty around our processes, and limitations on allowing our clients to copy or further use the materials themselves (see also Recommendation 4 below). This new legislation clearly alleviates some of these concerns.

¹ *Copyright Amendment Bill 2025 Explanatory Memorandum* (Memorandum) para 27a pg11

² *ibid.*

³ United Nations Declaration of the Rights of Indigenous Peoples, 2008

Support for Continuing Use

AIATSIS supports the several sections within the Bill (116AAD(4) and 116AAF) that allow for continuing use, where the defendant has followed all necessary steps to locate and contact the copyright owner. These sections may be of particular use if AIATSIS or other cultural institutions, have already published material, or are in the midst of an exhibition when a copyright holder comes forward.

Table of Recommended Amendments to the *Copyright Amendment Bill 2025*

No.	Section	Recommendation	Reason
1	116AAB(1) 116AAE(6)	Change 'identified and located' to 'identified or located' (emphasis added)	Often owners are identified but cannot be located. This change would also make the wording in the Bill consistent with the wording used throughout the Memorandum.
2	116AAE(4)	Change 'identifiable and locatable' to 'identifiable or locatable' (emphasis added)	As above.
3	116AAE(10)	Change 'maybe' to 'may be'	Grammar suggestion
4	NEW SUB-SECTION Embedded within 116AAD & 116AAE	Specify that third parties may rely on recent satisfaction of orphan works conditions by archives, libraries, museums and education facilities, IF: <ul style="list-style-type: none"> • within a reasonable period of time, AND • the third party ensures that the conditions have also been satisfied sufficiently for the third party's intended use. 	AIATSIS supports the statement in the Memorandum that, '.... a user may rely on the reasonably diligent search conducted by another person if they are satisfied the conditions in clause 116AAE have been met.' (para 32) ⁴ However, paragraph 34 greatly narrows and reduces the utility of this permission, as does its reservation to the Explanatory Memorandum and non-inclusion in the Bill itself.

⁴ Explanatory Memorandum paragraph 32, pg 13

			<p>We understand the risks of making this part too broad but suggest broadening it beyond coworkers to include clients of public access institutions.</p> <p>AIATSIS and other similar institutions play an important role in facilitating access to cultural materials and have often conducted an orphan works process before providing access. Allowing such respected institutes to share their outcomes with clients and other collecting institutions would further facilitate access, support the purposes of the Bill, reduce duplication, and reduce potentially annoying repetitious requests for information to intermediary entities such as publishers and universities.</p>
5	116AAE(8)	<p>Include an additional matter to be taken into account as an addition subsection, potentially as c or d (with the remainder of the list shifting down one letter): 'whether the material contains Indigenous Cultural and Intellectual Property (ICIP)'</p> <p>See further ICIP recommendations below</p>	<p>AIATSIS acknowledges the inclusion of ICIP in the Explanatory Memorandum and the fact that industry guidelines sometimes refer to ICIP, but also notes, that if ICIP does not appear in the Act itself, many people will not think of it or think to consider it in their investigations. AIATSIS seeks to promote consideration of Indigenous rights in Indigenous materials, in this instance, by seeking inclusion of that consideration in the primary document.</p>
6	NEW NOTE Following 116AAE(8)	<p>Include an explanatory note at the foot of the section: 'Indigenous Cultural and Intellectual Property (ICIP) is a running concern, relevant beyond the duration of copyright and regardless of orphan status. See relevant Indigenous Cultural</p>	<p>As stated in the row above. Visibility is key. While ICIP has always been important, many people are just coming to learn about it. Most people in their day-to-day use of the Copyright Act, won't be looking to the Explanatory Memoranda. To be truly considered, these elements need to be immediately visible when a person is reading the legislation.</p>

Intellectual Property (ICIP)
protocols and guidelines for
details

Indigenous Cultural Intellectual Property – Further Recommendations

We reassert our position that protection of ICIP must apply to the use of any material that contains ICIP regardless of copyright status, whether material is still in copyright, out of copyright, or (potentially) orphaned.

AIATSIS recommends that guidance material relating to the orphan works scheme takes the opportunity to emphasise that use of any material that contains ICIP requires attempts to identify and consult Aboriginal and Torres Strait Islander people or communities with an apparent connection to that ICIP regardless of copyright status of the material.

This consultation should not only be a part of a diligent search process but also be an embedded process for ensuring that ICIP is protected.

It is necessary to address requirements for use of material that contains ICIP in the ICIP legislation currently under development and we look forward to further input into this new legislation.

AIATSIS recommends that again, guidance material related to this subsection can support users by giving general advice on how to find and appropriately consult with ICIP holders.

AIATSIS notes that the new ICIP legislation will initially address only the harm caused by fake First Nations style art, merchandise and souvenirs and it may be some time before formats other than visual arts and crafts that contain ICIP will be addressed.

Availability for Further Consultation

AIATSIS understands that many of the issues considered in the Bill can be complex. As a government authority empowered to advise on Indigenous collections, we are at your disposal to discuss any of the recommendations put forward here.