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Albert Namatjira: Copyright Estates and Traditional Knowledge

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*A watercolour painting
Through melancholy eyes
The ghost gums, dirt dry river beds, the warm rain upon the ground
The assimilation dream*

David Bridie, 'Hermannsburg', Circus, Not Drowning Waving

Albert Namatjira was Australia's first Indigenous professional artist. He adapted Western-style painting to express his cultural knowledge of the Arrernte country, for which he was a traditional custodian. In his lifetime, Albert Namatjira achieved great acclaim for his exceptional ability as an artist. However, after his untimely death, he was ignored by the mainstream Australian art world, because of the aesthetic prejudices and social policies of the time. A recent exhibition entitled *Seeing the Centre: The art of Albert Namatjira (1902-1959)* curated by Alison French has sought to redress this neglect, and provide a retrospective of his work.

The exhibition has brought to light that the copyright in the artistic works of Albert Namatjira has not been passed onto his family descendants. In June 1957, Namatjira entered into a copyright agreement with John Brackenreg, the owner of a publishing company by the name of Legend Press, and the associated Artarmon Galleries in Sydney. It was agreed that Legend Press would pay royalties to Namatjira for the sole right to reproduce all of his paintings. Following Namatjira's death in 1959, the administration of his estate passed to the Public Trustee for the Northern Territory Government. The Public Trustee of the Northern Territory Government authorised the sale of Namatjira's copyright to Legend Press in 1983, thereby ending the ability of the descendants of Namatjira to benefit from on-going income from the reproduction of his works.

Senator Aden Ridgeway of the Democrats has called on the Federal Government to enter into discussions with the Northern Territory Government to buy back the copyright in Albert Namatjira's works. He argued that exclusive control of the use and reproduction of his works should be restored to his descendants, as well as the receipt of all financial benefits that result from the use and reproduction of his works under copyright protection. The Senator said: 'By doing this, we will all be rewarded, because finally, belatedly, we will be showing Albert Namatjira the reverence that he has always deserved. We will be protecting his legacy for future generations'.

Senator Aden Ridgeway argued that the copyright in Albert Namatjira's art works should be protected in perpetuity. He was concerned that the legal protection of Namatjira's works provided by the *Copyright Act 1968 (Cth)* will expire in 2009, bringing to an end the ability of the copyright owner to exercise an exclusive right to use and reproduce his works, or to allow others to do so in return for a financial benefit:

In the case of Albert Namatjira, this means that by 2009, fifty years after his death, the copyright in his paintings will expire. His works will enter the public domain, just at the time that they are likely to be enjoying the financial benefits that tend to follow in the wake of a retrospective exhibition of this kind. The potential for this to cause concern to the Namatjira family is exacerbated by the fact that most of his paintings are held in private collections - not public art galleries - which, especially in Australia, tend to implement strict guidelines and protocols associated with the reproduction of artists' works.

Although such a proposal is well-meaning, there is no scope under the *Copyright Act 1968 (Cth)* to extend the duration of copyright beyond its natural term in individual cases. The Federal Government would be unwilling to countenance the perpetual protection of copyright works generally because it runs contrary to the idea that cultural works should enter into the public domain. Therefore there would need to be *sui generis* legislation to provide indefinite protection of Indigenous cultural property.

In recognition of the contribution Albert Namatjira has made to the development of Australia's cultural identity and the need to protect his legacy for future generations, Senator Aden Ridgeway called upon the Federal Government to explore all relevant legal and other measures that will provide ongoing protection of the Namatjira name and his reputation and standing as one of our pre-eminent artists: 'It begs the question in my mind: if we as a nation are so willing to acknowledge Indigenous artists of Albert Namatjira's stature and fame as national treasures, why doesn't it follow that we show the same

level of concern and respect for their memory as we do for other 'national treasures'?' The Senator noted that Prime Minister John Howard had intervened to protect the name of the cricketer Sir Donald Bradman from commercial exploitation. The *Corporations Amendment Regulation 2000* (No. 8) adds Sir Donald's name to a select group whose names may not be used to register a company name if a connection, which does not exist, with one of these people or organisations, is suggested. The Senator argued that it was only proper that Albert Namatjira received similar protection given that he, too, was a national treasure.

The case of Albert Namatjira is not an isolated one. The writer and inventor David Unaipon - the man on the fifty dollar note - assigned his copyright in *Myths and legends of Aboriginal Australians* to W Ramsay Smith. His descendants are also trying to reclaim his intellectual property. Such cases demonstrate the need to ensure that general laws of intellectual property can be utilised to protect the traditional knowledge of Indigenous people. As Senator Aden Ridgeway observes:

It is critical that the laws catch up with the precedents that have been set in the courts - whether it be in relation to collective Indigenous moral rights (as seen in the Carpets case in 1995) - or the right of Indigenous communities to have standing in the courts so they can bring actions as a group (as seen in the Bulun Bulun case in 1998). And it is just as important that the general law acknowledges and upholds the traditional Indigenous laws and protocols that have allowed Aboriginal cultures to develop and survive over thousands of generations.

Furthermore the Senator highlights the need for *sui generis* protection of traditional knowledge to deal with issues such as the communal ownership of Indigenous cultural property in perpetuity. He commends the recommendations of Terri Janke in the report *Our culture: our future*, and the work of Terri Janke and Doreen Mellor in the discussion paper *Valuing art, respecting culture*.

At present, though, the Federal Government is recalcitrant, unwilling to provide *sui generis* protection of Indigenous culture. At most, the Government is contemplating amending the *Copyright Act 1968 (Cth)* to enable Indigenous clans to bring collective action in respect of the infringement of moral rights of copyright works. However, the story of Albert Namatjira demonstrates that more needs to be done to protect the legacy of Indigenous artists in Australia.

