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# Constructing a database of Indigenous materials

## The legal issues

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# Imagine...

- A database that collects, stores, and makes accessible the history and culture of a people
- That individuals can add to, generating a treasure chest of information and a communal asset
- That is easy to use, and not confined just to text
- That could even be accessed or added to remotely
- That exists in a way consistent with community aims and rules about accessibility of information, particularly sensitive or sacred information.



# Two contexts

1. **Constructing the database:** how do you go about acquiring the legal **rights** to **include** basic materials in a database, and what are the practical issues that need to be considered?
2. **The issues that arise where you want an 'organic' database: one which individuals can contribute to, or even amend.**



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# Part 1

## Building the database: legal issues



# Step 1: Identifying copyright material and owners

1. Does copyright **subsist** in the material?
  - a) Is the material the **kind of thing** in which copyright subsists?
  - b) Is the material **still within copyright**?
2. Can you identify the **owner of copyright**?

***Rule of thumb: inquire when you acquire:  
when was it made, and by whom?***



# Approaches to the special problem of orphan works

1. Avoid using the material – find, or create, a substitute;
2. Take a risk management approach: consider:
  - a) the benefits from going ahead
  - b) the nature and extent of any risks of going ahead without permission
    - a) Copyright risks
    - b) Other risks
  - c) any steps that can be taken to reduce the risks
    - a) Permission from subjects
    - b) Disclaimers and demonstrated willingness to remove material



## Step 2: Thinking about the rights and permissions you need

1. What **rights** do you need, and what **scope**?
  - a) Rights
  - b) Duration
  - c) Geographical limitation
  - d) Users
  - e) Delivery platforms
2. Will you get rights by license (permission) or assignment?
3. How will moral rights be dealt with?
4. Consider the 'extra-legal' issues: consultation and cultural consents



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# Part 2:

## User-generated additions to, and alterations of databases



# Step 1: Identifying the copyright issues

1. Copyright in user contributions
  - a) Does copyright subsist in these contributions?
  - b) What permissions do you need from the users?
2. Issues regarding the effect on owners of *other* material in the database
  - a) Do user contributions infringe original contributor's copyright rights?
  - b) Do user contributions implicate moral rights?



## Step 2: Dealing with the copyright issues

1. Simple assignment/license: get full permissions or assignments from original contributors and users; or
2. Use open licensing eg Creative Commons
  1. Consider the terms: suitable for indigenous material?
  2. Tailor made licenses?



## Step 3: Other Issues

1. Other interests implicated by user contributions:
  - a) Information ownership (confidential information, privacy)
  - b) Release of information contrary to community rules re accessibility
  - c) Risks of offence



# Final (basic) checklist

Owners and Material	<ul style="list-style-type: none"><li>● Identify © material</li><li>● Identify owners where possible</li><li>● Determine risk management approach for orphan material</li></ul>	<ul style="list-style-type: none"><li>● Other legal issues: confidential material?</li><li>● Other non-legal issues: offensive material? Cultural sensitivity?</li></ul>
Rights	<ul style="list-style-type: none"><li>● What scope of rights?</li><li>● Licenses or assignments?</li><li>● Consents regarding moral rights?</li></ul>	<ul style="list-style-type: none"><li>● Consider cultural consents &amp; sensitivities:<ul style="list-style-type: none"><li>■ Separation of restricted knowledge?</li><li>■ warnings re sensitive material?</li></ul></li></ul>
Building in an organic way	<ul style="list-style-type: none"><li>● Ownership of user contributions?</li><li>● Implications of user contributions on owners of original materials (moral rights? Other rights?)</li></ul>	<ul style="list-style-type: none"><li>● Other legal issues: confidential material?</li><li>● Cultural consents: levels of access and community rules</li></ul>