

A POSITIVE UNSETTLEMENT

The Story of Sakshi Anmatyerre

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This article tells the story of the mass marketing on stationery of the work of an artist, Sakshi Anmatyerre, whose claims to an Indigenous heritage and to the authority to paint particular designs, totems and motifs were vigorously contested, leading to the withdrawal of the stationery from sale. The efforts made by the publisher, Steve Parish, to atone for the offence caused to the Anmatyerre people are detailed. The article illustrates some of the issues involved in the commodification and commercial exchange of Indigenous artistic or cultural work — or rather, work which relies upon Indigenous connections for its aesthetic and financial value. The story told in this article is enlightening for what it reveals about the state of unsettlement that characterises debate over the 'appropriate' commercial use of Indigenous intellectual and cultural property, for the ways in which it is possible to achieve restitution when an offence against Indigenous law is alleged, and for the effects the process of seeking restitution has had on the business practices of one company.

Introduction

Indigenous influence and reference have been evident in Australian settler art and cultural production since the beginnings of colonisation.¹ Throughout this period, but particularly in recent years, there have been a number of instances of non-Indigenous artists and writers adopting Indigenous personas in their work.² And in the last couple of years the art world has struggled to come to

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¹ See N Thomas (1999) *Possessions: Indigenous Art/Colonial Culture*, Thames & Hudson.

² The most prominent recent cases are *My Own Sweet Time*, published by Magabala Books in 1994, claimed to be the 'autobiography' of Pitjantjara woman and stolen child 'Wanda Koolmatricie' but actually written by a non-Indigenous male, Leon Carmen; and 'Eddie Burrup', a man from the Pilbara and fiction of painter Elizabeth Durack's imagination. See L Westphalen, 'Betraying History for Pleasure and Profit: Leon Carmen's *My Own Sweet Time*' (1998) 150 *Overland* 75; 'When Two Worlds Collide: Blot on the Landscape', *The Australian* 8 November 2000. Guy Rundle situates the stories in an Australian cultural tradition of artistic masquerade: G Rundle, 'This Masquerade' (1997) 28 *Arena Magazine* 45.

terms with a number of cases of artistic 'collaboration' between Indigenous and non-Indigenous artists which have brought further attention to questions of attribution and authenticity and prompted the establishment of the Australian Indigenous Art Trade Association, or Art.Trade.³ But while Indigenous art has been taken up, celebrated, appropriated and defended in the fine art world since the 1970s, the mass production of commodities featuring Indigenous styles, designs and themes has not always been so respectful. Since the 1980s, there have been a number of high-profile cases in which Dreaming stories and works of Indigenous artists have been copied and reproduced on carpets, t-shirts and a range of other consumer items.⁴ The lucrative trade in Indigenous art (which the Australian Bureau of Statistics estimated in 1998 to be worth \$15 million, and which art dealers estimated to be around \$100 million in 1998)⁵ is dwarfed by the size of the market for tourist and souvenir items which utilise or appear to utilise Indigenous material. The difficulties of policing this latter market to the satisfaction of Indigenous people have been apparent for some time, with the Labels of Authenticity the latest attempt to ensure that profits from the sale of goods which trade on an Indigenous connection are equitably returned to Indigenous people.

Despite existing protections in copyright, corporations, contract and trade practices, much still depends on the business ethics of companies which produce or use Indigenous materials for commercial gain. This article focuses on the story of a painter and a publisher to illustrate some of the issues

³ Vivien Johnson argues that these 'scandals' are media events which, while serving to keep Indigenous art in its role as 'cultural witness' on the front page, also play into the hands of those who oppose the dialogue between Indigenous Law and the Australian legal system in areas such as land rights, environmental protection and copyright: V Johnson, 'The "Aboriginal art scandals" scandal' (2000) 20 *Artlink* 32. The most prominent examples involve Anmatyerre artists Clifford Possum Tjapaltjarri (see 'Brush-off: Paintings Not Mine, Says Artist', *The Australian* 25 February 1999; 'Aboriginal Artist Finds 20 More Fake Paintings', *The Weekend Australian* 27-28 February 1999; 'Art Fraud Claim: Possum Asked Me To', *The Australian* 24 January 2001.) and Kathleen Petyarre (C. Nicholls (2000) *From Appreciation to Appropriation: Indigenous Influences and Images in Australian Visual Art*, Flinders University, Adelaide). Questions were also raised about the authenticity of works by Rover Thomas ('Auctioneer on Rover Thomas Alert', *The Australian* 8 May 1998.) and Pintupi artist Turkey Tolson Tjupurrurla (C Nicholls, 'Opinion Piece' (1999) 1 *Art Trade News* 18). On the formation of Art.Trade, see S Simpson, 'An Ethical Vision' (1999) 1 *Art Trade News* 5; 'Taming Desert Art's Wildcat Ways', *The Australian* 7 December 1998; 'Aboriginal Art Trades Up to a New Era of Fair Play', *The Australian Financial Review*, 6-7 February 1999.

⁴ See Australia. International Trade Law and Intellectual Property Branch et al. (1994) *Stopping the Rip-offs: Intellectual Property Protection for Aboriginal and Torres Strait Islander Peoples — issues paper*; V Johnson (1996) 'Introduction: Aboriginal Art in the Age of Reproductive Technologies' in *Copyrites. Aboriginal Art in the Age of Reproductive Technologies. Touring Exhibition 1996 Catalogue*, NIAAA and Macquarie University.

⁵ 'Sellers Harvest Modest Profits', *The Australian*, 31 July 1998.

involved in the commodification and commercial exchange of Indigenous artistic or cultural work — or rather, work which relies upon Indigenous connections for its aesthetic and financial value. The story told in this article is enlightening for what it reveals about state of unsettlement that characterises debate over the 'appropriate' commercial use of Indigenous intellectual and cultural property, for the ways in which it is possible to achieve restitution when an offence against law is alleged, and for the effects the process of seeking restitution has had on the business practices of one company. At its heart is the story of Sakshi Anmatyerre, a painter whose Indigenous-inspired work was removed from sale in the face of public protest after the artist's claims of kinship with the Anmatyerre people from northeast Central Australia were refuted. It is a story that illustrates the disconnection between Indigenous and non-Indigenous understandings of authorship, artistic freedom and creative practice. It sits in the difficult and dynamic space that is the nexus between two belief systems, two laws, the seen and the unseen, the spiritual and the secular, the Dreaming and the dollar. It is a colourful story of the meeting of art and commercial enterprise. It is a story of a journey of discovery which in its resolution provides an example of the use of means other than litigation or legislation to achieve an outcome which goes some way towards healing the offence caused by inappropriate use and reproduction of Indigenous cultural property, and by extension of Indigenous law.

The Story⁶

In early 1997, the publisher and photographer Steve Parish was introduced to a Brisbane-based artist who called himself Sakshi Anmatyerre. Anmatyerre had recently gained some notoriety after being commissioned by the Sisters of St Joseph to paint the 'Dreamtime Ceiling' in the chapel at Mary McKillop Place in North Sydney. He had also sold his work to the Sultan of Brunei, the Packer family and members of the Brisbane Broncos organisation for prices reported to be around \$15 000. A video about the painting of the ceiling was shown to Steve Parish. Narrated by Indigenous actor Ernie Dingo, the video contained interviews with the artist about the process of painting, and the meaning of its designs. Parish saw commercial potential in the work which 'we at the time did not see as Indigenous art'. The artist told Parish that Anmatyerre was his mother's name, that she came from the area around Katherine in the Northern Territory, and that his father was an Indian doctor.

Steve Parish decided to publish Anmatyerre's work on a range of stationery which would be sold at Australia Post outlets, and other retail locations. Steve Parish Publishing is a highly successful company which publishes natural history and *Australiana* — books for children and adults,

⁶ This section draws heavily on two interviews conducted by the author with Steve Parish, one by telephone on 14 May 1998, and one face-to-face interview on 18 June 1999, and a further telephone interview with Michael Eather on 17 March 2001. Quotations in the text come from the second interview with Steve Parish. These interviews are supplemented by newspaper articles about the story from March 1998.

calendars, diaries, postcards, and so on. Many of the publications depict Australian flora and fauna, and many of the photographs have been taken by Steve Parish himself. The company is also a major music publisher. Steve Parish is a former Kakadu national park ranger.

About seven months after that first meeting, 'over 8 million catalogues' showcasing a range of notebooks, calendars, diaries, postcards and prints featuring Sakshi Anmatyerre's work had been printed and distributed in a national campaign supported by Australia Post. Parish also used the work on the covers of CDs by didgeridoo player Adrian Ross. In Parish's words, 'we exposed ourselves and Sakshi to the world in a way that no Indigenous artist in Australian history has ever been exposed'.

Some time in February 1998, Parish was contacted by a researcher from the ABC television current affairs program *The 7.30 Report* who had got wind of a story that Sakshi Anmatyerre was not all he claimed to be. Soon afterwards, Parish received a telephone call from the Australia Council about a complaint that the peak national arts body had received from a representative of the Anmatyerre people. Meanwhile, Australia Post had also been receiving a growing number of complaints from all over the country contesting the artist's claimed Anmatyerre kinship, his use of particular designs and motifs, and the narrative interpretations which accompanied his work.

On 23 March 1998, *The 7.30 Report* broke the story. Sakshi Anmatyerre was born Farley Warren Patrick French in Calcutta, India in 1950. He became an Australian citizen in 1975, and changed his name by deed poll in 1992. According to the report, Anmatyerre established himself as a private dealer in Indigenous art in Alice Springs in the mid-1980s. Different stories circulated about his origins. One had his Indian father meeting his Indigenous mother in the 1940s, when his father was working for the World Health Organisation. *The 7.30 Report* consulted Sister Helen Kettle, historian of the health of the Northern Territory, who advised that there was no record of an Indian doctor working in the Territory until the 1970s. Sakshi, it was reported, had flown to India several days before the report went to air.

The next day, the Brisbane *Courier-Mail* newspaper ran a story under the headline 'Elders Disown Indian Artist', quoting Anmatyerre woman Letty Scott saying that Sakshi did not have Anmatyerre ancestry. Australia Post began withdrawing Sakshi's work from sale. That evening, *The 7.30 Report* aired a follow-up report which included a grab from an interview with Steve Parish. After initially refusing to comment, Parish had sought legal advice and been assured that it would be difficult to make a case against Sakshi for copyright infringement or for passing-off. He had not yet been able to talk to his artist and hear his side of the story, and observed that at no point had Sakshi's work been claimed as 'traditional art'. In any case, the strength of the reaction to the work had helped Parish to realise that this was not the point.

On 26 March, Queensland Community Art Network (QCAN) organised a meeting to discuss the issues raised by the Sakshi episode, in particular the copyright implications and the prospect for a protocol to be developed. The story was of particular interest because both Sakshi and Steve Parish were Brisbane residents, and some in the community felt that the publicity was

damaging for Queensland Indigenous artists. Steve Parish was invited to attend the meeting and defend his position. He argued again that at no point had a claim been made that the work was 'traditional art', and that he had not yet himself been able to contact Sakshi to talk about the accusations. He said later:

At that particular point in my evolution in seeing art, I strongly believed that each individual person on the planet was entitled to express themselves creatively in any manner that they saw fit ... I argued [this view] very strongly when the issue became an issue ... I don't have that view today.

Shortly afterwards, Parish was invited to speak at a seminar held at the Queensland College of Art. Through these gatherings, Steve was introduced to Michael Eather, curator of Fire-works gallery in Brisbane. Eather would be Parish's guide through the next stage of his journey.

In April, Sakshi Anmatyerre gave his first interview since the story broke. He denied fabricating his origins or ever claiming an Indigenous identity in order to better sell his art, and asserted that as a child in an Indian orphanage he had been told that his mother was Aboriginal and his father an Indian doctor.

Around this time, Steve Parish received a letter from Martin Hardy, a lawyer representing the Anmatyerre people threatening legal action and seeking restitution for the offence. Parish wrote a letter addressed to the community in which he asked to talk to the community about what had happened. Some time later, Parish was able to convince Sakshi Anmatyerre to sign over the royalties he had earned to a number of Anmatyerre people. Parish paid a fixed sum to settle the claim, and agreed that stickers be placed on all remaining work advising that future royalties would be paid to Anmatyerre people. But the publicity around Sakshi, and the fact that Parish's biggest client, Australia Post, had already begun to withdraw the work from sale, meant that future royalties did not amount to much. Parish received word that the community wanted to hear what he had to say. Together with Martin Hardy, Michael Eather and the team from *The 7.30 Report*, Parish ventured out to Mt Allan. He stood in front of the community and apologised for what had happened. Members of the community then spoke about the meaning of 'Anmatyerre', the meaning of the paintings, and what the Sakshi episode meant to them. They showed their visitors work painted by Anmatyerre people.

The third *7.30 Report* story on Sakshi and Steve Parish went to air on 15 September 1998. Later in the year, *The 7.30 Report's* Geoff Thompson, won a Walkley award for excellence in journalism for the stories.

As a result of the trip out to the community, and in an attempt to make good the offence caused by the Sakshi episode, some months later the new Indigenous publishing division of Steve Parish Publishing produced a range of stationery featuring work by members of the Anmatyerre and Warlpiri language groups from Papunya Tula. This work was sold through a variety of outlets, including Australia Post. The series was not as commercially successful as the Sakshi series had been. Steve Parish was subsequently

approached by the Yothu Yindi Foundation with a view to collaborating on the publication of educational materials.

The Artist and His Work

The range of Sakshi Anmatyerre's work reproduced on the stationery consists of five designs named 'Spirit of Knowledge', 'Spirit of the Country', 'Spirit of Our Land', 'Spirit of the Clouds' and 'Spirit of the Sacred Ground'. All five utilise recognisable Indigenous motifs, designs and artistic styles, including dot painting, roundels or circles, hand silhouettes and stylised depictions of animals, including snakes, turtles and fish. Two of the designs, 'Spirit of Knowledge' and 'Spirit of Our Land', depict the faces or profiles of bearded men. One of them, 'Spirit of Knowledge', uses patterns of dots and other designs in combination to form quite naturalistic depictions of a dingo, an emu, a kangaroo and a bird of prey.

The choice of names for the designs gestures towards an Indigenous connection by playing on the spirituality apparently inherent in the work, represented and authorised by the appearance of these recognisable motifs, designs and styles. Importantly, however, the names also evoke a possible defence for the non-Indigenous artist for whom Indigenous work and designs are an inspiration: the names might be taken to mean the art is *in the spirit of* Indigenous art and culture. That is, it could be claimed to be in sympathy with Indigenous beliefs and cultural practices. This impression is reinforced by the short explanatory paragraph which accompanies each of the four designs. The description reads:

My story is not important. Soon my spirit will leave for the sky-land. What is important is that the dreaming is eternal and anyone who passes on this culture to the people, preserving the traditions, becomes part of that eternity. This is of great importance.

It is important to note that the description does not at any point explicitly state that the artist is Indigenous. Instead, the middle sentence might be seen as a justification for an ostensibly sympathetic non-Indigenous artist to paint Dreaming stories, or work inspired by Dreaming stories. This is consistent both with the Romantic notion of the artist as creative genius who takes inspiration wherever they find it, and with the legitimate artistic practice of 'quotation' or borrowing to remake inspiring work. But, crucially, it is at odds with Indigenous understandings of the relationship between the artist and their work, which may be summed up in a phrase which was given prominence in an exhibition of work by Michael Nelson Jagamara: 'Without the story, the painting is nothing.'

A blurb about the artist in the catalogue produced by Steve Parish Publishing which accompanied his work blurs the issue even further:

Sakshi Anmatyerre is an Australian spirit, a traveller in this great country, who records the land and its stories, interpreting them in dazzling colours and with the intuitive eye and sure hand of a master

painter. In him is the harmonious meeting of cultures, ancient and modern. Through his paintings, which he creates using modern materials and techniques, he expresses his love and respect for these ancient islands, Australia — the people and the wild places and creatures. He is the proud father of three boys and a girl, and to them he passes his wisdom, his lore and his stories. But each startlingly beautiful painting tells its own story and to each person the story is different — it belongs to the beholder alone.

Here again there is no explicit statement that the artist is Indigenous, but the implications are clear. The fact remains that both of these descriptions obfuscate Indigenous codes and conventions regarding the granting of authority to paint particular Dreaming stories and designs. The artist's first statement, 'My story is not important', and the blurb's notion that the story 'belongs to the beholder alone' are not consistent with Indigenous understandings of the importance of story, and rights of reproduction (or 'passing on', in the artist's terms) of culture.

'I feel that I make journeys into my own dreams, I harvest the visions and bring them back myself,' the artist said in an interview shortly after the screening of the first of the *7.30 Report* stories. 'Nobody can claim that I'm copying them.'⁷ This apparent endorsement of and justification for non-Indigenous — or perhaps, more correctly, non-authorised — artists to paint designs or Dreaming stories which hold significance for particular Indigenous communities is a somewhat different and more nuanced position than the one the artist adopted for his painting of the Dreamtime Ceiling at Mary McKillop Place. As Christine Nicholls reports, there is no indication in the Chapel that the artist is not of Anmatyerre descent, although 'the four fake "Dreamtime" stories' which accompany the painting give the impression to visitors that the artist is indeed a custodian of these stories, and therefore likely to be Indigenous.⁸

This rivals the image painted in Roy Masters' article on the popularity of the work with the Brisbane Broncos. Masters notes that buyers of Anmatyerre's work are given a one-page 'narrative of the relevant legend' which is claimed by the artist not to translate the most culturally sensitive information. He claims to be an 'agent' for Indigenous people and Dreamings with authority to put his own spin on the stories:

Only the initiates in the tribe would be indoctrinated with the secret and sacred dreamings. I'm careful not to desecrate those legends. I am aware of the trust placed in me by the Aboriginal people as their agent. But some compromise has taken place. Every buyer wants to know what is hanging on his wall and each work has its own story which is

⁷ 'I Have Aboriginal Blood', *Advertiser*, 11 April 1998.

⁸ C Nicholls (2000) *From Appreciation to Appropriation: Indigenous Influences and Images in Australian Visual Art*, Flinders University Art Museum, p 12.

told only to the purchaser. I take a story, give it my own interpretation which is different to the traditional style.

Broncos player Chris Johns testified to the power of the work and the uses to which it was put within the club:

When you come in to renegotiate your contract with Ribes (John Ribot, chief executive of the Broncos), you find yourself hypnotised by all the dots and trying to work out the legends. You walk out of the office with a \$20 000 cut in pay and a lecture on art.¹⁰

The Offence and *Locus standi*

While the legal advice given to Steve Parish suggests that Sakshi Anmatyerre's work did not infringe copyright regulations and that a claim of misleading or deceptive conduct under the *Trade Practices Act* or state and territory fair trading statutes could be strongly contested, the various complaints about the work indicate that the work was considered to contravene Indigenous law. The absence of an explicit statement confirming the Indigenous heritage of the artist did not deter many complainants, who voiced objections to the work on the grounds that the artist's choice of name appeared to indicate that either the artist was himself Indigenous or that authorisation had been given by Anmatyerre people for the use of their stories and imagery. Neither, it was asserted many times, was true. In essence, most complaints contested the artist's authority to paint the totems and designs incorporated in his work. This is a particularly difficult issue to understand in the frames available to non-Indigenous viewers and commentators, since both the 'romantic view of the expressive author as organic origin of the text' and the postmodern justification for artistic appropriation on the lines that 'there can be no originality, that all texts are simply a "tissue of quotations"' and that appropriation is a legitimate critical act offer potential cultural (and legal?) defences of the artist's conduct.¹¹ By contrast, restrictions on the use and circulation of particular images and information which are common in many Indigenous communities can be interpreted within these frames as censorship and infringements of the artist's right to freedom of expression. These restrictions were elaborated in the judgment of von Doussa J in *Milpurrurru v Indofurn Pty Ltd*, a case involving the unauthorised reproduction of Indigenous artworks on carpets:

⁹ 'The Artistic Spirit Behind the Broncos', *Sydney Morning Herald Good Weekend Magazine*, 13 August 1994, p 50.

¹⁰ *ibid*, p 51.

¹¹ P Anderson, 'On the Legal Limits of Art' (1994) 5 *Arts and Entertainment Law Review* 72. On the treatment of appropriation and postmodern representational practices in law, see B Sherman, 'Appropriating the Postmodern: Copyright and the Challenge of the New' (1995) 4 *Social and Legal Studies* 31.

The evidence led at trial, including the evidence of an Aboriginal artist, Mr Bruce Wangurra, called by the respondents, explained the importance of the creation stories and dreamings in the cultures of the clans to which they relate. Those stories are represented in ceremonies of deep significance, and are often secret or sacred, known only to a few senior members of the clan chosen according to age, descent, sex, initiation, experience in the learning of the dreamings and ceremonies, and the attainment of skills which permit the faithful reproduction of the stories in accordance with Aboriginal law and custom. Painting techniques and the use of totemic and other images and symbols are in many instances, and almost invariably in the case of important creation stories, strictly controlled by Aboriginal law and custom. Artworks are an important means of recording these stories, and for teaching future generations. Accuracy in the portrayal of the story is of great importance. Inaccuracy, or error in the faithful reproduction of an artwork, can cause deep offence to those familiar with the Dreaming.

The right to create paintings and other artworks depicting creation and Dreaming stories, and to use pre-existing designs and well-recognised totems of the clan, resides in the traditional owners (or custodians) of the stories or images. Usually that right will not be with only one person, but with a group of people who together have the authority to determine whether the story and images may be used in an artwork, by whom the artwork may be created, to whom it may be published, and the terms, if any, on which the artwork may be reproduced.

... If unauthorised reproduction of a story or imagery occurs, under Aboriginal law it is the responsibility of the traditional owners to the action to preserve the dreaming, and to punish those considered responsible for the breach. Notions of responsibility under Aboriginal law differ from those of the English common law. If permission has been given by the traditional owners to a particular artist to create a picture of the dreaming, and that artwork is later inappropriately used or reproduced by a third party, the artist is held responsible for the breach which has occurred, even if the artist had no control over, or knowledge of, what occurred.¹²

For many Indigenous communities, alongside the 'complex social system based on a series of qualifications, depending on descent, kinship and marriage'¹³ through which particular Dreamings — and hence the right to reproduce designs, themes and stories — are passed on, is a 'complex obligatory system, which binds not only the giver and the taker but also interconnects the taker into ... other underlying previous commitments'¹⁴

¹² (1994) 30 IPR 209 at 214–15.

¹³ T Janke, 'Protecting Australian Indigenous Arts and Cultural Expression: A Matter of Legislative Reform or Cultural Policy?' (1996) 7 *Culture and Policy* 1, p 15.

¹⁴ C Morris, 'Movieworld and Dreamworld: The Dreaming' 7 *Culture and Policy* 1, p 72.

when those designs, themes and stories are used, exchanged or purchased. This is one of the aspects that distinguishes Indigenous and non-Indigenous art. As Michael Nelson Jagamara explains, the obligation extends to the viewer or purchaser of Indigenous art because rights to speak are always accompanied by responsibilities of hearing:

Aboriginal Art is different to Non-Aboriginal Art. They make it up in their imagination but ours are not just pretty pictures. Our stories are given to us to carry and pass on to our children. Non-Aboriginal people have to be prepared, when they see our paintings, to learn something about Aboriginal culture.¹⁵

The kernel of the Indigenous law case against Sakshi Anmatyerre is that he has painted a Dreaming story, or part of a Dreaming story, that he is not entitled to paint. The artist's actions implicate the custodians of the Dreaming story, who are responsible for maintaining its integrity even when it becomes commodified and transformed into a Western form of property, and therefore given a material value. On the issue of rights to speak or paint, Anmatyerre artist Kathleen Petyarre has said:

I'm not allowed to paint other [Anmatyerre] people's Dreaming ... I've just got to do my own Dreaming. Otherwise big trouble — our Law says, 'Not allowed!' Doing wrong Dreaming (someone else Dreaming) — that would make big trouble for me, big problem.¹⁶

Nicholls describes Sakshi Anmatyerre's misrepresentations and inventions as 'tantamount to blasphemy', perhaps as a reminder that the judiciary has on a number of occasions used religion as a framework for understanding and accommodating law.¹⁷

Stephen Muecke has suggested that 'the relative legality of a discourse or speaking position is perhaps the central issue for an Aboriginal criticism'.¹⁸ Amanda Pask has taken this suggestion further to argue that questions regarding rights to speak are not only central to Indigenous Law, but are one component of its dynamism.¹⁹ It is important to stress that the limitations imposed on Indigenous artists do not ossify or essentialise their work, or render it 'unoriginal'. Banduk Marika has said 'I've got to make my work look

¹⁵ 'Michael Nelson Jakamarra' 2000 Jinta Desert Art, www.jintaart.com.au/bios/michaelbio.htm, accessed 19 March 2001.

¹⁶ C Nicholls (2000) *From Appreciation to Appropriation*, p 8.

¹⁷ *ibid*, p 12.

¹⁸ S Muecke (1988) 'Body, Inscription, Epistemology: Knowing Aboriginal Texts' in Nelson, *Connections: Essays on Black Literatures*, Aboriginal Studies Press.

¹⁹ A Pask, 'Cultural Appropriation and the Law: An Analysis of the Legal Regimes Concerning Culture' (1993) 8 *Intellectual Property Journal* 57. See also Frow, who uses questions of 'a place from which to speak' as a launching pad for an attempt to reconceptualise the public domain: J Frow, 'Public Domain and Collective Rights in Culture' (1998) 13 *Intellectual Property Journal* 39.

as my own, I've got to have my own idea. I've gotta have my own originality. I can't make it look exactly like everybody else's in my family. There might be similarity, you can relate your work to your father's or mother's — but it's still yours, it's still your own design.'²⁰ The key, as Christine Nicholls identifies, is 'permission', although obtaining this permission is by no means always easy or straightforward.²¹ Wanjuk Marika has said: 'It is not that we object to people reproducing our work, but it is essential that we be consulted first, for only we know ... and only we can give permission.'²² As Elspeth Young describes in relation to land rights, Anmatyerre people have adopted a 'flexible approach to resource rights and use' in relation to the land claim at Yalpirakinu (Mt Allan), about 270 kilometres from Alice Springs.²³ Indeed, this flexibility 'demonstrates the persistence of the principles of customary ownership ... sharing the land, accommodating changing social and economic circumstances, and coping with overlapping rights'.²⁴ The history of the Yalpirakinu claim and land use, Young argues, provides a practical example of the ways in which Indigenous and non-Indigenous concepts of land management (and, by extension, of law) can be reconciled. Perhaps Steve Parish's experience provides another.

The Solution and Problems of Value

The entitlements of Aboriginal people to retain control over their cultural heritage, oversee and negotiate agreement upon the use of their cultural imagery, and establish and maintain their own institutions for development of art and education in Aboriginal art and culture are fundamental elements of the right of self-determination which they possess.²⁵

Steve Parish's journey to front the Anmatyerre community and seek to make good the offence that had been caused was a recognition and acknowledgment of the community's right of cultural and political self-determination. Mathew Rimmer has written that it is preferable for cases involving Indigenous artists borrowing from 'traditional' designs to 'be resolved within Aboriginal communities, rather than under adversarial systems of litigation'.²⁶ The Parish story demonstrates it is possible to resolve cases

²⁰ Cited in Johnson (1996) 'Introduction: Aboriginal Art in the Age of Reproductive Technologies'.

²¹ Nicholls (2000) *From Appreciation to Appropriation*.

²² Cited in Johnson (1996) 'Introduction: Aboriginal Art in the Age of Reproductive Technologies', p 4.

²³ E Young, 'Reconciliation or Exclusion? Integrating Indigenous and Non-Indigenous Land Management Concepts for Australia's Native Title Era' (1999) 40 *Asia Pacific Viewpoint* 165.

²⁴ *ibid.*, pp 166–67

²⁵ F Johns (1995) 'Portrait of the Artist as a White Man: The International Law of Human Rights and Aboriginal Culture', *Australian Year Book of International Law*, Butterworths, p 173.

²⁶ M Rimmer, 'Four Stories about Copyright Law and Appropriation Art' (1998) 3 *Media and Arts Law Review* 187.

involving non-Indigenous artists in this way, because resolution became a moral and ethical issue for Parish rather than a legal one.

Two things are worth noting about the Central Desert stationery series produced by Steve Parish Publishing after the publisher's meetings with Anmatyerre people and representatives. First, it is significant that the artists whose work is featured in the Central Desert stationery series are all from Papunya, the small community 240 kilometres west of Alice Springs where the Indigenous art movement is normally said to have begun in the early 1970s. And second, it is enlightening to compare the notes and descriptions which accompany the Central Desert art stationery series from those which accompanied the Sakshi Anmatyerre series. 'A Message from the Publisher', in which Parish expresses his pride in bringing 'this important and beautiful work' to the public, occupies a prominent place in the diary. Parish continues: 'It is our conviction that bringing the art of Australia's Indigenous peoples to non-Indigenous Australians and the world will promote a wider appreciation of this living and dynamic culture'. A further statement headed 'Artists and Country' also features prominently. It contains the following declaration: 'The artists' original work represents authentic ceremonial designs by the artists and their community who receive royalty payments from the sale of this product. The copyright in the paintings remains with the artists.' In addition to these statements, explanatory notes written by Michael Eather accompany each of the works. These brief notes point out the significance of the subject matter, and explain some of the symbols used in a practice reminiscent of that of art dealers and curators (Eather is both). They attempt to situate the art in its 'meaning context' while simultaneously opening them up for appreciation that goes past surface aesthetics.

In the fine art trade, it is common practice for dealers to provide some kind of explanation of Indigenous work because 'without this accompanying written discourse to authenticate Indigenous art work, its value is considerably diminished'.²⁷ The explanatory notes attempt to get around 'certain intrinsic problems of valuation and even evaluation' which Indigenous art poses for 'the speculative art market'.²⁸ These problems arise because of differences between Indigenous and non-Indigenous understandings of authorship, authority and creative practice. As the Sakshi Anmatyerre/Steve Parish story demonstrates, they are not confined to the art market, but spill over in to a range of points of engagement or 'entanglement' between Indigenous creative practice, cultural production and consumer capitalism.

The initial problem in this case can to some extent be seen to result from the collision of three different value systems. The first is Kantian aesthetics with its over-investment in beauty and form, focus on art as the work of an individual creative genius, and emphasis on 'originality' as the first property of

²⁷ Nicholls (2000) *From Appreciation to Appropriation*, p 13.

²⁸ E Michaels (1993) 'Bad Aboriginal Art', in J Frow and M Morris (eds), *Australian Cultural Studies. A Reader*, Allen & Unwin.

the work of art.²⁹ The second is a popular aesthetic based on 'the integration of aesthetic consumption into the world of ordinary consumption'³⁰ by which the aesthetic, cultural and moral value conferred on Sakshi's art by its mixture of styles and symbols and by the Indigenous connections his name and his work imply is deemed to make a major contribution to the saleability of a range of stationery. Indigeneity functions here for Sakshi Anmatyerre's work as what Richard Branson calls an 'attribute' brand which '[does] not relate directly to one product ... but instead to a set of values'.³¹ The third system is the Indigenous system, which frames and values creative and authorial practices in terms of the rights and responsibilities they entail.

It is this collision of values which creates unsettlement or unease, and which means that reconciliation can 'never [be] a fully realisable category'.³² But, as Gelder and Jacobs argue, this condition is desirable because 'unsettlement' can *activate* the social in ways which encourage productive consideration of the practicalities of achieving the goal of reconciliation:

It incites discourses and counter-discourses; it produces alignments and realignments; most of all, it reminds us that (whether we like it or not) 'all of us' are implicated to greater or lesser degrees in this modern predicament.³³

The 'unsettlement' which the Sakshi Anmatyerre episode gave rise to could indeed be looked on as a positive, productive state. Steve Parish was able to turn a sequence of events that had the potential to do great harm to his reputation and that of his company into something that could be of mutual benefit to him and to the offended community. His business practices and business ethic have been permanently affected by the dialogue with Indigenous Law's codes and conventions which the events presaged. Meanwhile, a number of Anmatyerre and Warlpiri artists have had their work published and widely distributed under conditions in which they retain controls over its reproduction and representation.

²⁹ See I Kant (1957) 'The Critique of Judgement', in T Greene (ed) *Selections*, Scribner.

³⁰ P Goodall (1995) *High Culture, Popular Culture: The Long Debate*, Allen & Unwin, p 72.

³¹ N Klein (2000) *No Logo: Taking Aim at the Brand Bullies*, Random House, p 24.

³² K Gelder and J Jacobs (1998) *Uncanny Australia: Sacredness and Identity in a Postcolonial Natio*, Melbourne University Press, p xvi.

³³ *ibid.*