

Open letter to Australian authorities

by Donald Richardson, OAM, B.A., Dip.Art, T.Dip.Art, RSASA, and Vesna Tenodi, MA
Archaeology, artist and writer

requesting them to stop Aboriginal violence against artists by defunding projects and organisations which directly or indirectly condone and/or support Aboriginal violence.

ABORIGINAL HARASSMENT OF INTERNATIONAL ARTISTS

On 17 March 2013 Fairfax Media journalist Andrew Taylor published an article in *The Age* entitled “*Polish hotel tramples Aboriginal artist's work*”. It was also published by the *Sydney Morning Herald* on the same day. Over the following weeks it was quoted by various websites and blogs, with increasingly aggressive headings accusing Polish designer, Ewa Smuga, of “stealing”, “theft” and “rip-off” in her redecoration of the Eclipse Hotel in Domaslaw in Poland with a geometric-patterned carpet. Ewa Smuga was accused of breaching copyright and copying an artwork by Aboriginal artist Bibi Barba.

What is interesting is the change of a few words in those two articles. In one of the two otherwise identical texts, the words “geometric-patterned” magically disappeared.

The first article read:

Polish hotel tramples Aboriginal artist's work

Date February 17, 2013 Andrew Taylor Arts reporter

The interior of the Hotel Eclipse in Domaslaw, and Bibi Barba's work.

GUESTS at the Hotel Eclipse in Domaslaw, Poland, may be surprised to learn that its cutting-edge interior design is based on work by an Aboriginal artist.

They may be even more surprised to discover that Bibi Barba, whose Desert Flowers series of paintings is copied in the hotel's geometric-patterned carpets, cafe tables and wall panels, did not give permission for her artwork to be used in this way.

But in its altered version published online with the same date, the second article read:

Hotel designer denies copying Aboriginal paintings

February 17, 2013 Andrew Taylor Arts reporter

GUESTS at the Eclipse Hotel in Domaslaw, Poland, may be surprised to learn that its cutting-edge interior design is based on work by an Aboriginal artist.

They may be even more surprised to discover that Bibi Barba, the artist whose Desert Flowers series of paintings are copied in the hotel's carpets, cafe tables and wall panels, did not give permission for her artwork to be used in this way.

The words “geometric-patterned” were cut out. Could it be on the advice by some legal expert, who is aware that copyright law does not apply to geometric patterns?

Copyright law is very clear. Patterns, designs and styles are in the public domain. No-one can claim copyright. And no-one can claim any pattern in the public domain as their “intellectual property”.

Even more interesting is what the experts said. In the same article, Andrew Taylor quotes:

The chief executive of the Indigenous Art Code, John Oster, said information produced by Barba indicated there had been a breach of copyright by the interior designer.

The executive director of the Arts Law Centre, Robyn Ayres, said the vital and important parts of Barba's artworks had been reproduced by Smuga.

"In my opinion this constitutes an unlawful reproduction of the work under Australian copyright laws," she said. "If a court was to compare Bibi Barba's paintings with the carpets in the Polish hotel, the striking similarity would be apparent."

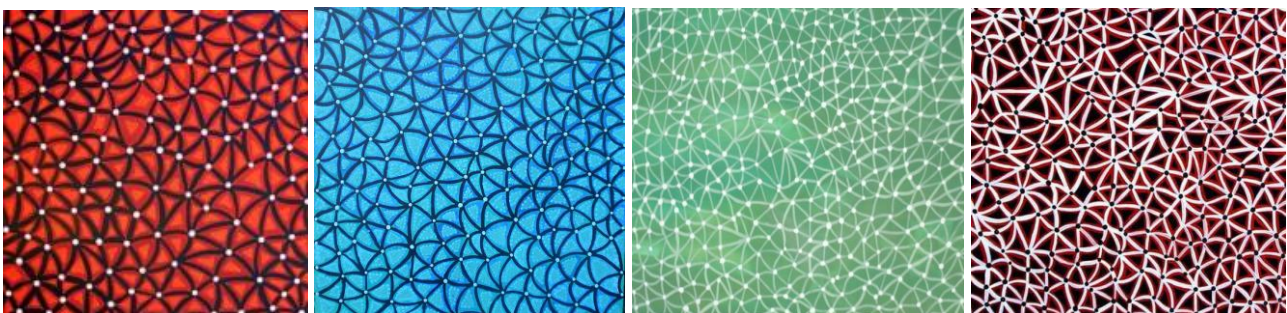
“Important parts of Barba’s artwork”? Meaning a series of repetitive triangle patterns?

“... striking similarity would be apparent”? Of course, because a triangle is a triangle is a triangle.

Robyn Ayres expresses “her opinion”. It is to be noted, the Arts Law Centre is a taxpayer-funded organisation, with a duty to accurately inform on Australian copyright laws. When accusations are made, its duty is to establish the facts first and establish the legal validity of any Aboriginal claim in the context of Australian law. Furthermore, its duty is to inform people that “Aboriginal traditional lore” has no legal standing in Australian law, and that any recommendation under “Indigenous Art Code” is *voluntary*, not a matter of law.



The geometric-patterned carpet in the Eclipse Hotel [left] published mid 2012 and Bibi Barba’s painting [right] published on the internet on 2 October 2012



Some of Barba’s paintings

“SACRED” PATTERNS ON THE INTERNET

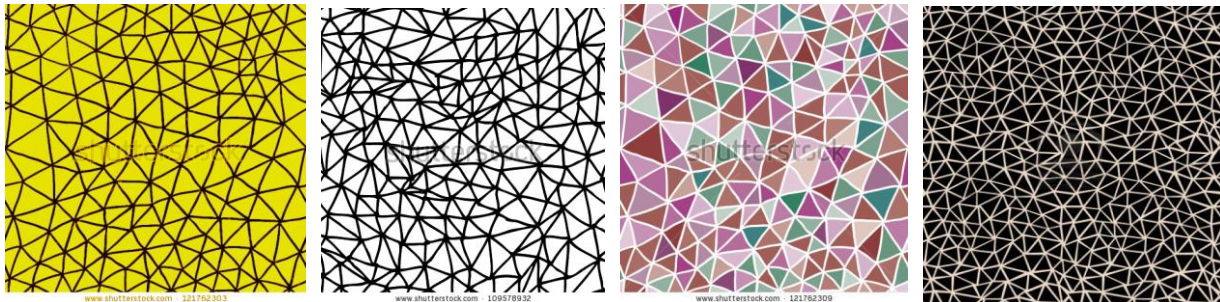
It would take an hour or less on the internet to establish that seamless triangles are one of the thousands of royalty-free patterns in the public domain, freely available on the internet. Any artist can use any of these patterns.

Type the words ‘endless triangles’ into Google and see what happens. Our brief search for royalty-free patterns and designs in the public domain turned out hundreds of them in a matter of minutes.

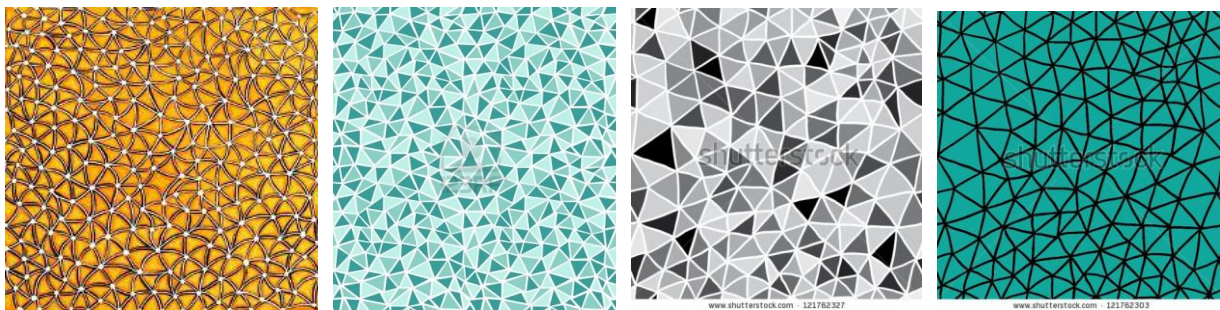
Besides patterns that are relevant to the Eclipse hotel carpet design, there are hundreds of other vector-based, stained-glass and mosaic patterns identical to what today passes for “contemporary Aboriginal art”.

Among thousands of patterns under various categories are these:

Seamless texture with triangles, mosaic endless pattern – Seamless triangle pattern



Among “tessellated pattern” and “seamless stylish geometric patterns” are these:



Among “geometrical doodle seamless pattern, vector illustrations” are these:



A search for ‘stained glass’, ‘wall-paper’, and ‘weaving-patterns’, turned up thousands of patterns with, to quote the Arts Law Centre experts, “striking similarities” to Aboriginal art. The only difference seems to be that patterns painted by Aborigines come with pompous titles, often with words such as “sacred”, “dreaming” and “ancestors”, as a warning to everyone else that they are not allowed to critique such artwork, for fear of “offending” Aborigines.

How many Aboriginal artists just pick any random pattern, adjust it slightly, or copy it, attach some pompous title and display it as “deeply sacred and spiritual”, genuine Aboriginal art?

Aboriginal newspaper *Koori Mail* on 27 February 2013 published an article by Darren Coyne entitled “Artist to take action over Polish rip-off”. He added what he thought was a really important development: “Barba was due to meet with lawyer Terri Janke, widely regarded as one of the country’s top lawyers in Indigenous cultural and intellectual property”. Barba said she aims to sue both the hotel and the designer. “I want to be fully compensated for my licensing rights,” she said.

Do we now need Aboriginal permission to paint a triangle? Or a circle? Or to put a few dots together? How many expert lawyers is it going to take to establish that there is no copyright on any of those or any other geometric pattern?

Some art produced by Aborigines is beautiful and made by genuine artists, with genuine inspiration, especially art from the bygone era when it was not contaminated by overproduction of doodle-style paintings, decorative art, too “sacred” to objectively criticise. Few dared to speak out for fear of becoming a target of violence. However, some brave critics did make their opinion clear:

“Aboriginal art is hot and the palette of adjectives is lurid: brilliant, magnificent, mesmerizing, exuberant, perfect, sublime, dramatic, lyrical, beguiling, bold and unique. My favourite is 'ineffable', defined as 'defying expression or description'. This is precisely the point. There is no critical analysis at all.” [Frank Campbell, the Australian, 2007]

“Art critics are prejudiced in favour of Aboriginal art, propping it up with superlatives and vacuous praise. That's the impression you get from Frank Campbell's article... No critic has the guts to stand up and say what needs to be said. All naivety is turned into genius, and untrained messiness is artificially construed as a spontaneous demonstration of deep cultural meaning.” [Robert Nelson, 2007]

Aboriginal art was a taboo until recently. But we see that its “spiritual value” and real quality is now being tentatively discussed. How is an average person, standing in front of a pompously titled Aboriginal artwork, to know whether it is genuine? Or is it kitsch? Is it aesthetic junk, as one critic put it? What constitutes “cultural significance”? What is the notion of “sacredness”? All these matters call for rational discussion, devoid of emotion.

We can discuss the notion of sacredness in any culture, from major religions to stone-age animistic cults. But we cannot discuss Aboriginal art; it seems to be too sacred to allow any objective assessment. And what is really worrying is that the most violent among the Aboriginal tribes use “sacredness” and “sacred tradition” as excuse for all their harassment and in some instances violence and vandalism. With the Arts Law Centre happy to oblige and support them every time they feel “offended” and angry.

But these irrational claims are nothing new. Australian artists, inspired by anything Aboriginal, have been vilified since Margaret Preston seventy years ago. These days it is getting worse, as overseas creative people are being targeted as well.

Ewa Smuga is just the latest example in a number of similar attacks on overseas artists that we looked at. Not one of the artists we researched had any intention to offend. But the reaction is the same every time, someone starts complaining about how “offensive” a painting, an article, a dress, or a carpet is and that sets the entire Aboriginal industry in motion. Being offended is a great excuse for not taking responsibility for anything and to keep up bad behaviour.

THE SHOE IS ON THE OTHER FOOT

In our opinion, legally-unfounded harassment by lawyers of Australian non-indigenous artists and threats of legal prosecution of artists overseas, constitutes a form of violence. Someone should be accountable for increasingly aggressive demands and threats of legal action against anyone who “offends” their Aboriginal clients, for reasons that have nothing to do with neither Australian nor international law.

While this insanity is going on, overseas traders and galleries should assess for themselves any Aboriginal artwork offered as “sacred” and “deeply meaningful”, even though it might be obvious that it is a repetitive decorative pattern.

Before any purchase of such an artwork, it would be wise to carry out proper research and carefully examine the artwork on offer, to establish whether it is art or just a copy of some copyright-free and royalty-free pattern in the public domain.

Additional information: In May 2010 the Arts Law Centre of Australia and their solicitor Delwyn Everard assisted the Kimberley tribes in lodging a complaint against ModroGorje Gallery owners and artists with the Australian Consumer and Competition Commission (ACCC), requesting legal action. The complaint contained a number of false accusations and legally unfounded statements.

The ACCC examined the case, rejected the complaint and refused to take action, confirming that the accused parties were doing nothing wrong and that no-one needs Aboriginal permission to create and sell any artwork.

In our opinion, if the Arts Law Centre experts have so little expertise that they need the ACCC to tell them such basic information, they do not deserve any Government funding.

And yet, unhappy with the ACCC advice, the Arts Law Centre continued to publish a number of derogatory submissions and offensive articles against the ModroGorje gallery owners and artists. Delwyn Everard repeatedly made disparaging and offensive statements and false assertions, including in an article published in the WIPO (World Intellectual Property Organisation) magazine.

The Arts Law Centre keeps ignoring the law, and shows utter disregard for the safety of non-Aboriginal artists. Their inflammatory comments were used by Aborigines as an excuse to keep up their campaign of hate and violence.

Earlier submissions regarding problems in Australian art and archaeology (www.modrogorje.com):

1. **Request for enquiry into the conduct of the Arts Law Centre of Australia and Blue Mountains City Council, in relation to censorship of the *Wanjina Watchers in the Whispering Stone* sculpture by artist Benedikt Osváth and attacks on the “Dreamtime Set in Stone” book by Vesna Tenodi and “Wanjina Watchers” paintings by Gina Sinozich, November 2011**
2. **Complaint against discrimination, harassment and vilification of non-indigenous artists and other ModroGorje art-project participants and supporters in Australia, with a request for the Australian Government to enquire into the conduct of the Arts Law Centre of Australia and Blue Mountains City Council, January 2012**
3. **Request for de-funding the Arts Law Centre of Australia and Mowanjum Aboriginal centre, and for scrapping of the Australia Council for the Arts “Protocols for producing Indigenous Australian visual arts”, March 2012**

Other References:

Aboriginal Violence against Australian Artists, 2013

The Problem with Aboriginal Art, Quadrant 2008

Forbidden Art, Politicised Archaeology and Orwellian Politics in Australia:

The way that art, science and politics were used to create our present, dominated by Aboriginal political goals was explored in *“Forbidden Art, Politicised Archaeology and Orwellian Politics in Australia – about Aboriginal violence, art censorship, and legally-sanctioned scientific fraud in Australia”*, available for free download:

https://docs.google.com/file/d/0B6a_Uxy44-BwSUVmQUhPZGFYms/edit?pli=1

Polish hotel tramples Aboriginal artist's work

Date February 17, 2013, Andrew Taylor, Arts reporter



The interior of the Hotel Eclipse in Domaslaw, and Bibi Barba's work.

GUESTS at the Hotel Eclipse in Domaslaw, Poland, may be surprised to learn that its cutting-edge interior design is based on work by an Aboriginal artist.

They may be even more surprised to discover that Bibi Barba, whose *Desert Flowers* series of paintings is copied in the hotel's geometric-patterned carpets, cafe tables and wall panels, did not give permission for her artwork to be used in this way.

She has not been paid by interior designer Ewa Smuga or the hotel, which opened in June 2012.

Smuga said she had "redesigned" Barba's paintings for her interior designs for the hotel. But Barba said she was "gutted" when she found pictures of the hotel on the internet featuring interiors that reproduced her *Desert Flower* paintings.

Barba told the hotel and Smuga she believed her copyright had been infringed and suggested a resolution involving an exhibition of her work at the hotel. The hotel did not respond.

She has sought legal advice and written to the World Intellectual Property Organisation about the alleged copyright infringement. She wants financial compensation from the interior designer and hotel, and to show that artists can fight for their rights.

But in an email to the Copyright Agency, which collects royalties for artists, Smuga denied plagiarising Barba's work.

"My inspiration does not have regard to material benefits and I only wish [to] spread Australian culture among Europeans," she said.

"I haven't copied her work. I redesigned it so that it was an emotional reference to Australian art."

Smuga said she had acknowledged Barba as the "inspiration" for her designs and planned to promote her work in Poland. She also claimed Barba's artwork was "generally known" and available on the internet.

Barba's *Desert Flowers* is a series of six acrylics on silk painted in 2009 while the artist was going through a divorce. The paintings were sold to private collectors for \$3000 to \$5000.

Barba's website has, in the past, referred to the Hotel Eclipse, but she said she had never given permission for her artwork to be used to decorate its interiors.

"I guess the viewpoint she had was I'm in the desert in Australia - I'm not going to find out, I have no access to a computer," Barba said.

The chief executive of the Indigenous Art Code, John Oster, said information produced by Barba indicated there had been a breach of copyright by the interior designer.

The executive director of the Arts Law Centre, Robyn Ayres, said the vital and important parts of Barba's artworks had been reproduced by Smuga.

"In my opinion this constitutes an unlawful reproduction of the work under Australian copyright laws," she said. "If a court was to compare Bibi Barba's paintings with the carpets in the Polish hotel, the striking similarity would be apparent."

Ayres said copyright laws applied to works that were available on the internet.

Smuga's acknowledgement of Barba was not a defence to using her artworks without permission.

Poland is a signatory to an international convention dealing with copyright and has copyright laws.

In an email to Fairfax Media, Smuga said she had not breached any of Barba's rights and denied the artist's allegations.

The Hotel Eclipse has not responded to questions sent by Fairfax Media.

MEDIA RELEASE – Ewa Smuga, Warsaw, Poland

21 April 2013

Re: Response to Andrew Taylor’s article “*Polish hotel tramples Aboriginal artist’s work*”, The Age and the Sydney Morning Herald, February 17, 2013

and request for apology

I am the designer who was attacked and falsely accused in Andrew Taylor’s article “*Polish hotel tramples Aboriginal artist’s work*”.

As I explained in my response to Viscopy Copyright Agency in September 2012 and to the Fairfax Media journalist Andrew Taylor in February 2013, I have not copied nor reproduced Barba’s work. I was inspired by some geometric patterns, which I use in my design work, and by the colours of Australia.

I use geometric patterns which are in the public domain, are generally known and available on the internet. There is no copyright on such patterns and anyone is free to use them. I noticed that Aboriginal artists, including Bibi Barba, use repetitive geometric patterns and I wanted to promote Aboriginal art. I am not sure what her real name is, as she is using three different names – Bibi Barba, Evette Morgan and Yvette Evie Ryan.

However, seeing such an aggressive, hostile and threatening response, I changed my mind and no longer wish to promote anything Aboriginal. In my work, I use repetitive geometric patterns and designs, as is my right. As anyone can see on the Internet, a great number of Aboriginal artists are using repetitive patterns which are also in the public domain.

If they wish to claim ownership of the triangles or circles or rectangles or any other pattern which is in the public domain, that is their decision. But if they try to draw me into attempts to claim ownership of any such design, I reserve my right to enforce my legal rights and seek compensation for the damage caused to me and my reputation. The abovementioned artist, the organisations that vilified me, the journalist and the media which published unverified claims and false accusations, failed to act with due diligence, showed complete disregard for the journalistic and legal practitioners’ code of ethics, and for my right to be represented in a fair and balanced manner.

The offensive comments and false accusations reported in the Australian media caused me great distress and damaged my reputation. I request an apology and retraction by those responsible for making and publishing these claims.

Media contact, authorised representative in Australia: Vesna Tenodi, ves@theplanet.net.au