

# 11.

## KEEPING YOUR STORY STRONG



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While many dealings in the carbon market are a direct transaction (i.e. project produces carbon credit, project sells carbon credit) it is becoming increasingly apparent that in the Indigenous carbon industry, this is rarely the case.

*“Many buyers of Indigenous carbon credits are interested in sharing your story and attaching your story to their brand.”*

If this is done in an agreed and respectful manner, it can offer many benefits to you and them.

Buyers are interested in the ‘co-benefits’ or additional environmental, socio-economic, or cultural benefits associated with Indigenous carbon projects (see above). Alongside this, buyers may also want to improve or enhance their brand through association with an Indigenous carbon project. Therefore, a request to buy Indigenous carbon credits is often coupled with a request for access to media materials (photos, videos, interviews, or other forms of media).

When you are negotiating a carbon credit sales agreement, it is often easy to overlook these things, and sometimes, requests for media and marketing only come up later, once an agreement is already in place.

To avoid this, have discussions with the buyer upfront about whether they are interested in sharing your story, and if so, what, how and why. If you already have a sales agreement, and the buyer is now asking to share your story, it is not too late to negotiate a media agreement that will ensure they use your story respectfully.

A combination of smart, strong branding that you control and clearly drafted legal agreements is a good way to keep your story strong. Take the time to work through what you are and are not comfortable with and get media and legal advice to support your decision making.

### THE ‘WHAT, HOW AND WHY’ OF SHARING YOUR STORY

For Indigenous carbon projects selling carbon credits, buyers may often ask for something more in return for their purchase than just a carbon credit – for example videos or photos to use in advertising.

It is important to have a good understanding of what buyers want, how they want to use it, and what messaging (why) they want to be associated with it.

## What buyers want

The type of things a buyer may ask for includes:

- Photos of people or the area involved in the project: for example, photos of rangers doing burning, photos of rock art or aerial images of the country being burnt.
- Videos of people doing activities on country: for example, doing fire burning or talking about the cultural or environmental importance of burning.
- A description of the project or the Indigenous group and why it is important to people and country.
- A right to use the name, logo or brand of the Indigenous organisation, carbon project or ranger group.
- Access to a spokesperson from your organisation for an event which they will then promote, e.g. through Twitter, media release or photos

Companies may ask that instead of groups providing these things, they are allowed to come on to country and take photos, videos, or recordings themselves. This request will have implications for ownership and control of media.

## How they want to use it

There are a lot of different ways a company may wish to use the images or information they receive. This could involve using photos, videos, or information:

- On a company website
- In social media posts e.g. Facebook, Twitter
- In marketing materials e.g. magazines, flyers, advertisements, newspaper stories
- As information to staff or shareholders e.g. Power Point presentations, Annual Reports

They may wish to use the information once or keep using the information long-term. When thinking about how a company can use your story, you should also think about how long they will use it.



*Tiwi Resources, working with Outback Helicopters*

## Why they want to be associated with it

Finally, the reasons why a company wants to use your story will vary between different companies and groups. It is useful to understand what messages they want to send and why, as this can help you make informed decisions about its use. For example:

- How does the company profit from using your brand, image and/or reputation e.g. attract more customers, gain trust or social licence for its activities, or build shareholder confidence?
- How is the company's market value tied in with your brand, image and/or reputation?
- How do the company's values and activities align with your values and activities?
- Does the company want 'exclusivity' i.e. be the sole (only) supporter of your carbon project?
- Are they interested in saying they are supporting co-benefits? If so, what ones? Do they require these co-benefits to be separately authenticated? Are they paying a premium for the co-benefits?
- Does the company care about your individual story? Will they help enhance your brand, or will your images just be used generically as 'an Indigenous project'?
- Is there a particular reason the company wants to be associated with your story? What might that mean for your brand? Are they trying to overcome a perceived bad reputation for previous engagement with Indigenous groups?

### Sharing your story - how, what, why



*“Having discussions upfront with buyers about what, how and why they want to use your story can be a useful starting point for a carbon credit sales discussion.”*

## **WHAT IS IMPORTANT TO ME?**

Having companies use your story can impact not only your relationship with other buyers of carbon credits, but also your relationship with partner organisations and stakeholders. It can also put added demands on your organisation, for example if people need to participate in or organise filming.

Sharing your story raises many questions, including:

- Do you want to give the buyer exclusive (sole) use of your story?
- What is the market value of your story in relation to this sale?
- What is strictly not ‘for sale’?
- What rules, if any, need to exist about the use of images of deceased persons?
- How long are buyers allowed to keep using your story for?
- Are there any companies which you do not want your story associated with?
- Do you need to control the messaging that is used (for example, the airline bought carbon credits, but does that mean it can say it supports the rangers)?



*Aerial burning, APN Cape York*

The example below highlights why it is important to think about how you will protect your story, and what permission you will give to companies wanting to use it.

Imagine a scenario where an Indigenous carbon project – the Healthy Fire Carbon Project – produces 100,000 carbon credits in a particular year. They sell 80,000 carbon credits into the ERF. They sell 15,000 carbon credits to Oil & Gas Pty Ltd, and they sell 5,000 carbon credits to Airline Pty Ltd. The oil and gas company and airline both ask for some photos and videos to promote the carbon credits, which the Indigenous organisation provides.

At its AGM, the Oil & Gas Pty Ltd tells its shareholders that it is a major supporter of the Healthy Fire Carbon Project. However, one of the shareholders takes a plane home and sees an advertisement on the plane saying that Airline Pty Ltd is the sole supporter of the Healthy Fire Carbon Project and Healthy Country Rangers. The shareholder is confused.

Later, the Australian Government approaches the Healthy Fire Carbon Project and asks to make a video about the project and the ERF. The rangers don't work for five days while they help to make the video, which is run on government media channels.

The airline contacts the Healthy Fire Carbon Project. They are annoyed because they wanted to say that they were the only supporter of the project.

Two years pass. The Australian Government is still running the video about the project. Meanwhile, Oil & Gas Pty Ltd has started undertaking work on Indigenous lands and are becoming increasingly unpopular with some people. They try to increase their 'social capital' by saying that they are supporting the Healthy Country Carbon Project, although they haven't bought any more carbon credits in the last two years.

Separate to the carbon project, the Healthy Country Ranger Group have applied to the Australian Government and philanthropic organisations for more funding. These funders ask why the Healthy Country Rangers need more funding, given that they are supported by Airline Pty Ltd.

The Healthy Fire Carbon Project once again seeks to sell carbon credits but find that there are less buyers and that they cannot attract a very high price because its brand is associated with all these other businesses.

## HOW CAN WE PROTECT OUR STORY?

There are a range of options available for ensuring you maintain ownership and control over your story. These can range from marketing strategies – such as branding and trademarks – through to agreed policies or protocols and media schedules in legal agreements.

It is important to choose an approach (or approaches) that is right for you. Don't trust the buyer to recommend the best approach, as they have different interests to you. You may want to get independent legal and marketing/media advice. Sometimes, your lawyer might need reminding that the carbon credit sales agreement concerns more than just carbon credits! You could point them to this document as a possible resource.

When thinking through different approaches, it's important to be aware that with protecting your rights comes certain obligations. For example, if you want to check every media statement that a buyer wants to make, then you need to have someone available on staff to do those checks. If media and marketing is a big part of your carbon credit sales agreement, and you don't have an existing media officer, you might have to think about what additional burden will be placed on staff and how this will be met.

## BRANDING AND MARKETING

A brand is more than a logo, it is also the story attached to your business and product. When your brand is marketed properly, people will see your logo and immediately understand and connect with your story.

*Interrelationship between brand, logo and story*



*“In relation to carbon credits, branding is as much about maintaining control over your product as standing out in the marketplace. To have a strong brand, you need to have a good marketing strategy.”*

## What brand will we use?

You might choose to associate your carbon project with the brand of your Aboriginal organisation or ranger group, or you might choose for it to have its own brand, just for the carbon project.

## What makes your brand unique?

There are elements of your story that no-one can take away from you – your language, connection to country, and culture. You will want to associate some things with your brand, while other things you might choose keep private.

For example, language could be an important part of your brand. Language is not only unique but will help retain control over your story. If you speak in language about your project, then no one else can speak for you. When using language, it is important that you also think about any possible Cultural Intellectual Property considerations and get advice from a marketing expert with experience in Indigenous enterprises.

## How will you market your brand?

Branding is more than putting your logo on things. In order to develop your brand you also need to tell your story on social media, television, radio, newspapers, tourism, events and festivals. You need to make sure that when people see your logo, they know about your product and associate it with your story. Think about what opportunities there are to get your brand known.

## Do you need to protect your brand through a Trademark?

A Trademark is a way of protecting your brand (word, phrase, or logo) so that no one else can use it. Without a Trademark, there is nothing (legal) stopping people from using that same name.

However, trademarks only protect the name or brand, not necessarily the story behind it. You need to weigh the cost and complexity of registering a trademark against the likely risk that someone will try to copy your brand, and if it will be successful in protecting your story.

## Legal agreements

Another way to protect your story is by including clear terms and conditions in your Carbon Sales Agreement (contract). In addition to setting out what can and cannot be said about the sale, it can also set out the rules and obligations for the use of images and video. This will not only help protect your story but can provide a strong foundation for a respectful and strong partnership with the buyer.

Table 2 identifies some of the issues related to protecting your story that may be addressed through a contract in relation to media. This is not an exhaustive list, and you will need to think about your individual circumstances. Working through these questions can take some time, however the pay-off is a strong story and a strong partnership.

If your contract is short-term, once you have come up with a strong set of rules, you may want to use the same rules for future agreements. For a longer-term sales contract, clear rules and guidelines can reduce the likelihood of a dispute and strengthen your chances of a respectful and productive partnership. This information may also be relevant to other partnership agreements.

If you already have a contract in place, it is not too late to think about these issues. If the buyer you have partnered with wishes to use your story, then you can work with them to negotiate rules relating to media that sit alongside your existing contract.

The information provided here is of a general nature. It does not constitute legal advice. ICIN recommends that, prior to entering into any agreement, you obtain legal advice on this and all other aspects of a carbon project.



Laynhapuy Rangers in 2013 (Photo: ILSC)

Table 2: Issues relating to your story and Carbon Sales Agreements

Issue	Explanation	Example	Ideas and Considerations
<p><b>Confidentiality</b></p>	<p>Confidentiality is about what aspects of the carbon credit sale will be confidential, what can be discussed (is not confidential), and with who. It is important to consider how this will fit with any agreement on media.</p>	<p><i>Can the price which carbon credits were sold be made public?</i></p> <p><i>Can the name of the buyer or seller be stated publicly?</i></p>	<p>You can have rules about what is and is not confidential in your sales agreement.</p> <p>Balancing confidentiality requirements against media requests can be an area of confusion.</p> <p>Consider providing a plain English explanation or summary of how confidentiality and media requests interact.</p>
<p><b>Intellectual Property and Copyright</b></p>	<p>Intellectual Property is about protecting new or unique ideas. Copyright is a way of protecting certain types of Intellectual Property, like videos.</p> <p>If videos, films or photos are being used or produced, you will need to consider who will own these and who has the right to use them.</p> <p>If relevant, it can be important that your agreement contains strong Clauses around Intellectual Property, and ‘licencing’ use, because this will help protect your story.</p>	<p><i>The buyer of carbon credits wants to come on to country and make a film about traditional fire burning and carbon credits.</i></p> <p><i>Who will own the images, and who will have the right to control how they are used will depend on what is agreed in relation to Intellectual Property, Copyright and licencing.</i></p>	<p>Think through who should own Intellectual Property in any media produced or shared under the sales agreement, and set this out in the sales agreement</p> <p>For example, you might use a ‘licence’ to allow one Party to use media but keep ownership (Intellectual Property) with the other party.</p> <p>Think about what should happen with any videos/photos etc. at the end of the Agreement.</p> <p>Think about how long media can be used for, and for what purpose, and make sure that your sales agreement reflects this in any Licence or Intellectual Property clauses.</p>

Issue	Explanation	Example	Ideas and Considerations
<p><b>Aboriginal and Cultural Intellectual Property</b></p>	<p>Aboriginal and Cultural Intellectual Property is about your unique cultural and traditional knowledge.</p> <p>Cultural Intellectual Property may need to be considered if there is going to be media which refers to or contains cultural references, to ensure that these remain the property of the Indigenous group</p>	<p><i>Videos or documents which contain people speaking in their language, images of rock art, or discussions about cultural sites or stories may bring up issues of Aboriginal or Cultural Intellectual Property.</i></p>	<p>Think about and get advice on whether you need to include protection of Aboriginal and Cultural Intellectual Property in your sales agreement.</p>
<p><b>Exclusivity</b></p>	<p>Some buyers may want to be the only ones allowed to promote your partnership.</p> <p>Or, you may want your buyer only to promote your partnership.</p>	<p><i>An airline wants to advertise that they are the sole purchaser of your carbon credits.</i></p>	<p>Exclusivity can work two ways, think about whether there are any benefits to you of requiring – or agreeing to – exclusivity.</p> <p>Ensure exclusivity clauses, if required, are carefully drafted so as not to inadvertently impact non-carbon partnerships.</p>

Issue	Explanation	Example	Ideas and Considerations
<p><b>Publication</b></p>	<p>Publication is anything which publicly discusses your story or the carbon sales. It could be printing photos, broadcasting videos, or making statements on Facebook.</p> <p>This is where you need to decide what the process is before someone can say anything publicly.</p>	<p><i>The buyer wants to run a newspaper advertisement, which includes an image from your project and a statement that 'We support the ... Carbon Project'.</i></p>	<p>For example, one option is to agree key messages (see below) and an image bank at the time of the agreement, and only require permission if the publication is outside of this.</p> <p>Pre-agreeing messages and images can help streamline some requests later, and therefore reduce the burden on you to handle media requests but can also reduce flexibility.</p> <p>Another option is to develop a template for seeking permission for publication. Developing a template and including this in your Agreement can ensure that any request for publication includes all the information you require (what purpose, what will be said, what image/images, who is in images, what timeframe etc).</p> <p>Timing is often crucial when it comes to media. Having clear timeframes set out in the agreement can help to manage expectations and avoid any disputes.</p> <p>Timeframes might have to vary depending on type of request – e.g. request to film a video might require longer to approve than a request to release a Facebook post.</p>
<p><b>Credit for images</b></p>	<p>Consider what branding you want attached to any Publication, and whether this varies depending on whether you supplied the images/footage or if the buyer captured it.</p>	<p><i>You could require that every use of an image must reference the name of the carbon project, or of the native title group, aboriginal corporation or ranger group</i></p>	<p>Clearly set out what credit must be included in each Publication.</p> <p>Consider how does required credit vary between different type of media (e.g. a Twitter Post can't necessarily contain the same information as a film).</p>

Issue	Explanation	Example	Ideas and Considerations
<p><b>Use of brand or logo</b></p>	<p>Do you have a logo or brand that you want to be used in any Publications? What rules and permissions are required for its use?</p> <p>Are there any circumstances when you might want to use the buyer's brand in a publication?</p>		<p>You could outline in the agreement the rules for use of brand and logo for both the buyer and seller.</p>
<p><b>Key Messages</b></p>	<p>Agreeing key messages about your story and the sales can help streamline Publication requests.</p>	<p><i>Should publications refer only to the carbon project, or can they refer to the Aboriginal Corporation or Ranger Group?</i></p> <p><i>Must all publications acknowledge and refer to the Carbon Project/ Ranger Group/Aboriginal Corporation, or can they just name e.g. the single individual in the photo?</i></p> <p><i>Can Publications only be made for a specific purpose – e.g. to promote the carbon project – and exclude use for other more generic advertising purposes?</i></p>	<p>For example, you could develop a schedule or media guide with key messages as part of the Sales Agreement. This could be a static or live document.</p> <p>You may want to think about, if Publication uses key messages, does it still require notification? Prior permission?</p> <p>In addition, or alternatively, you could agree key communication principles, and require that all messaging must align with this, or key purposes, for which communications can be made, for example.</p>

Issue	Explanation	Example	Ideas and Considerations
<p><b>Photo or Image bank</b></p>	<p>It may be useful to pre-approve the use of some images or videos.</p>		<p>You could include a photo or image bank in the Agreement.</p> <p>These might be the only ones ever used under the agreement, or more might be added or developed later.</p> <p>Make sure that Intellectual Property/ copyright is clearly set out and agreed, as well as agreement on how long the images can continue to be used for (e.g. can photos continue to be used beyond the term of the sales contract?)</p>
<p><b>Cost</b></p>	<p>Developing Publications can be costly. Even if the buyer is responsible for this cost, it can still result in an indirect cost to the Indigenous organisation.</p>	<p><i>The time involved in having staff review and agree to Publications could be significant, particularly if there is no pre-agreed messaging or image bank.</i></p> <p><i>Where buyers request to come on-country to take images or make recordings, the time involved in staff, Traditional Owners, Directors or Rangers being involved in this can also be significant.</i></p>	<p>You may want to include something in the agreement which outlines who will pay for the development of Publications.</p> <p>For example, if indirect costs are likely to be significant on the Aboriginal Corporation, this also may need to be factored into the sales Agreement.</p>

Issue	Explanation	Example	Ideas and Considerations
<p><b>Capturing media (taking photos or videos)</b></p>	<p>Often, buyers may want to come onto country to capture their own photos or videos. This can be a nice way to obtain high-quality media, but raises questions of ownership (Copyright, Intellectual Property), as well as the time-burden on staff and notification periods.</p>	<p><i>The buyer contacts the Aboriginal Corporation and tells them they have a film crew who would like to come and film burning operations next week. They will use the footage for a variety of purposes in years to come.</i></p>	<p>A carefully drafted agreement which ensures that images/footage is only captured and used for the agreed purpose and timeframe is essential for protecting your story.</p> <p>Frequently, requests will coincide with the busiest time of year from a land management perspective. You may want to make sure you have the right to decline a request, if it does not suit you.</p> <p>Consider developing a template request form as part of the Agreement to ensure any request includes all the information you require (when, where, how, who).</p> <p>Check whether your agreement sets out the requirements for the buyer taking photos and videos including, for example:</p> <ul style="list-style-type: none"> <li>- Notification timeframes for making requests.</li> <li>- Who will own the final footage/ images.</li> <li>- What purpose can they be used for.</li> <li>- How long they can be used for.</li> <li>- Whether a Traditional Owner or staff member must be present for all filming/image capture and who will cover this cost.</li> <li>- Whether imagery will be reviewed and approved by Indigenous group prior to use.</li> </ul>

Issue	Explanation	Example	Ideas and Considerations
<p><b>How can your story be used?</b></p>	<p>Understanding where and how your story will be used and setting this out in the Agreement is useful.</p>	<p><i>Can images can be used on Facebook, Instagram, Website, Power Point presentations to shareholders etc.</i></p>	<p>For example, you could agree an exhaustive list of places where media can be used, or you may wish to decide on a case-by-case basis.</p> <p>This could dovetail with the requirements on Key Messages, so that (for example) pre-approved channels (and messages) do not require permission, but Publication outside of these channels requires additional permission.</p> <p>If you take this approach, you might consider including a template permission form for this purpose.</p>
<p><b>Use by third parties</b></p>	<p>Can the buyer give access to your images or story to third parties, and if so, on what basis?</p>	<p><i>The buyer wants to give some of your images to a client for use in the clients advertising.</i></p>	<p>Carefully consider the benefits and risks of this.</p> <p>For example, access could be allowed to a pre-defined group of third parties or agreed on a case-by-case basis.</p> <p>If third party use is allowed, you may want to make sure that third parties should be bound (at minimum) to the same rules and conditions as they buyer.</p>

Issue	Explanation	Example	Ideas and Considerations
<p><b>Agreement from individuals</b></p>	<p>Who will be responsible for getting agreement from individuals captured in photos or videos to their use? What considerations need to be put in place if someone is deceased. How can this be managed?</p>		<p>Agree on who is responsible for obtaining Participant Release Agreements.</p> <p>It could depend on who has captured the footage, or consider who is best-placed to obtain it. If the Seller is responsible for obtaining this, be aware of the time-burden this puts on them.</p> <p>You may want to develop a pre-agreed template and include a protocol around cultural mourning and use of images of deceased people.</p> <p>Discuss whether it is possible for the buyer to withdraw all Publications of deceased people.</p> <p>It might be difficult to remember all the media that has been done. Keeping a summary of all media, as well as a contact sheet of people used, can help to manage things such as cultural mourning.</p>
<p><b>Media by the seller</b></p>	<p>You may also want to do media about your sales agreement. Think about what you would like to say, how and where.</p>		<p>For example, the Agreement should be drafted to support Publication by both the buyer and seller.</p>
<p><b>Timeframes</b></p>	<p>Once the sales agreement expires, it is important to consider whether the buyer can continue advertising the relationship, and the impact this could have on future sale opportunities.</p> <p>It is important to agree how long Publications can be made for, and how long the right to use your images, footage and story continues.</p>		<p>For example, agree the duration for which rights are granted, and make sure that this is consistent throughout your entire agreement.</p> <p>Where necessary, you may want to include a process around the return of footage.</p>



*Mimal Land Management (Photo Renae Saxby)*

### Disclaimer

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