

Intellectual Property and Safeguarding Cultural Heritage

A Survey of Practices and Protocols in the South Pacific

Prepared for the
World Intellectual Property Organization (WIPO)
by Malia Talakai



The views expressed in this Survey are those of the author, and not necessarily those of the WIPO Secretariat or its Member States. The Survey is current at the time of preparation of the initial draft (September 2007).

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ACRONYMS

AUSTRALIA

ABC: Australian Broadcasting Corporation

AFC: Australian Film Commission

AMO: Australian Museum Online

AIATSIS: Australian Institute of Aboriginal and Torres Strait Islander Studies

AICCM: Australian Institute for Conservation of Cultural Material Inc.

ATSIA: Aboriginal and Torres Strait Islander Arts

ATSILIRN: Aboriginal and Torres Strait Islander Library and Information Resource
Network

CAMA: Council of Australian Museum Associations

CICI: Copyright in Cultural Institutions

CCDNSW: Community Cultural Development New South Wales

CCOR: Continuous Cultures, Ongoing Responsibilities (document)

CMCL: Centre for Media and Communication Law of the University of Melbourne

DEH: Australian Government Department of the Environment and Heritage

IFA: International Film Archives

IPRIA: Intellectual Property Research Institute of Australia

MA: Museums Australia

NAA: National Archives of Australia

NFSA: National Film and Sound Archive

NLA: National Library of Australia

NLC: Northern Land Council

NMA: National Museum of Australia

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NSW's DAA: New South Wales Department of Aboriginal Affairs

PARADISEC: Pacific and Regional Archive for Digital Sources in Endangered Cultures

PPNO: Previous Possessions, New Obligations (document)

UMA: University of Melbourne Archives

UMRO: University of Melbourne Research Office

NEW ZEALAND

AM: Auckland Museum

HRC: Health Research Council of New Zealand

LIANZA: Library and Information Association of New Zealand's Aotearoa

MA: Museums Aotearoa

NRAM: National Register of Archives and Manuscripts

Te Papa: Museum of New Zealand Te Papa Tongarewa

PAPUA NEW GUINEA

PNG: Papua New Guinea

TONGA

TCM: Tupou College Museum

TNM: Tonga National Museum

TRA: Tonga Research Association

VANUATU

VCC: Vanuatu Cultural Centre

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WORLD

ASAO: Association of Social Anthropology in Oceania

ICOM: International Council of Museums

LC TGM: Library of Congress Thesaurus for Graphic Materials

LoC: Library of Congress

PIMA: Pacific Islands Museums Association

SPC: Secretariat of the Pacific Community

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EXECUTIVE SUMMARY

Cultural institutions, such as museums, libraries and archives, and cultural specialists such as anthropologists, historians and researchers, play an important role in preserving the world's cultural heritage. However, concerns have been raised by indigenous and traditional communities that the activities of cultural institutions and specialists can sometimes, inadvertently, undermine their rights and interests. For example, recording, digitizing and disseminating a traditional song or design, while valuable for preservation and promotional purposes, can also make them vulnerable to misappropriation and misuse, especially in a digital world. These concerns are heightened in the case of culturally sensitive materials.

In response to those concerns, the World Intellectual Property Organization (WIPO) commissioned this survey of intellectual property-related experiences and practices of cultural institutions and specialists in the South Pacific region. This survey is a contribution to the eventual distillation and development of intellectual property-related "best practices" and guidelines for managing intellectual property (IP) issues while safeguarding intangible cultural heritage, as part of WIPO's Creative Heritage Project. Similar surveys from other regions have also been commissioned.

This survey comprises information gleaned from publicly available resources and interviews on institutional practices and experiences in Australia, Fiji, New Zealand, Papua New Guinea, Palau, Tonga and Vanuatu. Certain regional initiatives are reported on. A questionnaire was also distributed to which some institutions responded. The author of the survey also participated in an international conference in Burra, Australia at which she provided information on this WIPO project and obtained valuable information.

The Pacific region comprises a fascinating diversity of countries, cultures and peoples rich in distinctive cultural expressions. The region is also home to some of the world's most advanced and forward-looking cultural institutions.

The practices and experiences of cultural institutions in the seven Pacific countries in relation to intellectual property issues differ widely, the survey finds. Institutions in Australia and New Zealand, such as the Australian Institute of Aboriginal and Torres Strait Islander

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Studies (AIATSIS), the Aboriginal and Torres Strait Islander Arts Board, Te Papa Museum in New Zealand and the National Library of New Zealand, are at the forefront of grappling with these issues, testing different approaches and developing cutting-edge policies and handbooks. They are keenly aware that intellectual property issues infuse all aspects of their daily activities, from collecting to cataloguing to disseminating, and they have put in place processes and policies that address these issues. Of course, much work still needs to be done and processes and policies are under continual evaluation and improvement. On the other hand, museums and archives in Fiji, Palau, Papua New Guinea, Tonga and Vanuatu are less familiar with intellectual property issues and have less experience in dealing with them. The survey attributes this largely to the broader systemic conditions within which these institutions work, such as lack of funding, which hinders them from acquiring and using newer technologies for collecting, recording, storing and interpreting cultural heritage materials and from conducting training and awareness-raising on these issues for their staff and the general public. Institutions and specialists in these countries expressed strong interest in and a need for information and training on intellectual property issues, and believed that model intellectual property guidelines would be of great assistance to them. Institutions in the region frequently expressed the view that as conventional intellectual property laws do not adequately protect the rights of the custodians and practitioners of traditional cultural expression, it is the responsibility of museums, archives, libraries and information services to be aware of these issues, provide relevant training and recognise and respond positively to the intellectual property-related interests of these custodians and practitioners.

Yet, there are some remarkable practices already in place in some of these countries. The Vanuatu Cultural Centre, for example, has put in place a Cultural Research Policy; the Pacific Island Museum Association (PIMA) has adopted a Code of Ethics; Pacific Island countries have elaborated a regional model law for the protection of traditional knowledge and cultural expressions; the Government of Tonga has developed Research Conditions; in Palau, the Cultural Affairs and Historic Preservations Office is responsible for the implementation of cultural policies; and, the Institute of Fijian Language and Culture has developed a training manual and recommended guidelines for conducting socio-cultural research in Fiji.

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The survey shows, therefore, that despite differences between the countries, questions around access to, ownership over and control of elements of intangible cultural heritage are under engaged and ongoing consideration throughout the region. The experiences and practices of Pacific countries contribute valuably to a wider international survey of experiences and practices, towards the eventual distillation and development of “best practices” and guidelines for managing intellectual property while safeguarding intangible cultural heritage.

This survey comprises two main parts. Part 1 describes various cultural resources, such as protocols, codes and guidelines, used by museums, archives, libraries and other institutions in Australia, Fiji, New Zealand, Palau, Papua New Guinea, Tonga and Vanuatu. Part 2 surveys the various IP-related activities, needs and experiences of these institutions, and concludes with preliminary conclusions and recommendations. The author’s recommendations, based on the consultations she had and the research she undertook, are that museums and other such institutions, especially in Fiji, Palau, Papua New Guinea, Tonga and Vanuatu, seek assistance with:

- setting up clear institutional infrastructures and systems for collecting, recording, storing and interpreting cultural heritage materials, including funding for the establishment and maintenance of inventories;
- training of staff in more up-to-date systems of collecting, storing, and recording of cultural heritage material;
- training of staff on intellectual property issues, generally and specifically in relation to museums and archives; and,
- developing and formulating good practices and guidelines that will guide staff in collecting institutions about how to deal with intellectual property issues.

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ACKNOWLEDGEMENTS

This work was possible due to the numerous support and assistance of several people. I want to thank Tania Schafer, Dr. Jane Anderson, Nick Thierberger and Dr. Alex Byrne (Australia), Sangale Buadromo (Fiji), Dr. Roger Niech, Terri Elder, Victoria Leachman and Associate Professor Richard Moyle (New Zealand), Kolokesa Uafa Māhina-Tuai, Dr. `Okusitino Māhina. Henelē Ma`afu Halatanu and Penisimani Lātū (Tonga), Ralph Regenvanu (Vanuatu), Faustina Rehuher (Palau), Dr. Jacob Simet and Dr. Andrew Moutu (PNG) and Rhonda Griffiths (Secretariat of the South Pacific Community).

I want to also thank Wend Wendland (WIPO) for his guidance, understanding and support throughout this project and for editing this report, Lulu Henriod (WIPO), for setting up the team teleconferences and to Jessyca van Weelde (WIPO) for co-editing of this report. Thanks also to the WIPO team of consultants who worked in the same period I did, Molly Ann Torsen, Laurella Rincon, Shubha Chauduri and Martin Skrydstrup for their numerous intellectual exchanges, discussions and input.

Finally, I want to say *mālō `aupito* to those from the seven Pacific countries who were able to support me and connect me to others, and to my family, especially to Frances Laupō-Ki-Vaha Halatanu, Ane Talakai and Juliann Bloomfield for their support during this period.

CHAPTER I: INTRODUCTION

1.1 INTRODUCTION

Cultural institutions¹ and specialists² play an important role in preserving our rich cultural heritage. However, concerns have been raised by indigenous and traditional communities that the activities of cultural institutions and cultural specialists do not always take adequate account of their rights and interests, and that documenting and displaying cultural heritage make these communities vulnerable to misappropriation. In response to those concerns, the World Intellectual Property Organization (WIPO) has commissioned a focused project³, which aims at developing intellectual property (IP) guidelines and best practices for recording, digitizing and disseminating intangible cultural heritage, with particular, but not sole, attention to “traditional” cultural expressions and knowledge.

A general list of cultural organizations includes:

- Museums
- Art galleries
- Science centres
- Art/cultural centres
- Libraries
- Archives
- Community cultural organizations
- Public collecting institutions

¹ The terms “cultural institutions” and “cultural organizations” in this paper are used interchangeably.

² The term “specialists” includes anthropologists, historians and researchers.

³ See WIPO Creative Heritage Project at <http://www.wipo.int/tk/en/folklore/culturalheritage/index.html>

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1.2 OBJECTIVES OF THIS SURVEY

The main objectives of this survey are to:

1. Collect and compile examples of existing guidelines, codes of conduct, standard agreements and protocols currently in use by cultural institutions and cultural specialists;
2. Gather information on intellectual property issues, questions and claims that these institutions and specialists are dealing with daily;
3. Gather information on current initiatives and projects in relation to the recording, digitizing and public presentation of traditional cultural expressions; and,
4. Gather information on intellectual property-related concerns and needs in these areas.

This survey is only a sampling of cultural data, collected in a relatively limited time with limited resources. It does not provide an exhaustive reference to or information on every guideline, code of conduct, best practice, agreement and protocol in the region, and it is based on information and resources that are already publicly available.

1.3 RESEARCH METHODOLOGY

This survey reports on research conducted in seven Pacific countries, namely Australia, Palau, Fiji, New Zealand, Tonga, Papua New Guinea and Vanuatu. It comprises summaries and analyses on all the research findings that were obtained through:

1. An online search of publicly available and currently used guidelines, codes of conduct, standard agreements and protocols; and
2. Several face-to-face and telephonic interviews with officials and specialists working in museums and other relevant cultural institutions.

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The author also used a questionnaire⁴ to elicit information, and participated in several international conferences⁵, which include an international conference in Burra, Australia in December 2006, the ASAO⁶ conference in Virginia, USA in February 2007 and the TRA⁷ conference in July 2007 in Tonga, all at which valuable information was obtained.

1.4 STRUCTURE OF THE SURVEY

This survey is divided into two main parts. The first part outlines existing guidelines, codes, agreements and protocols used in each of the above mentioned Pacific countries. The second part focuses on identifying and analyzing intellectual property-related activities, needs and experiences of the cultural institutions, and includes the author's concluding remarks and recommendations. The last part, part 3 comprises of a set of annexes with materials which are complementary to this survey.

⁴ See Annex 1

⁵ For summaries of the attended conferences, please refer to the Annexes 4-6.

⁶ The Association of Social Anthropology in Oceania (ASAO) is an international organization based in the USA which focuses on studies in the Pacific. Their official website is <http://www.asao.org/>

⁷ The Tonga Research Association (TRA) which was formerly called the Tonga History Association, focuses on discussing, preserving and studying Tongan History at micro-level, see <http://www.latrobe.edu.au/anthropology/tonga/index>

PART 1: EXISTING CULTURAL RESOURCES IN THE PACIFIC

CHAPTER II: CULTURAL RESOURCES IN AUSTRALIA

2.1 MUSEUMS

National Museum of Australia (NMA)⁸

a) *Ethics Statement*⁹

This Ethics Statement outlines the aims of the National Museum in relation to ethical practices. The National Museum of Australia was established in 1980. Its role is seen as stewardship of objects of Australian history and cultural heritage. The museum is responsible for the care, interpretation and preservation of items. The Ethics Statement affirms that it is committed “to the repatriation of human remains and sacred/secret material in liaison with Aboriginal and Torres Strait Islander peoples”¹⁰. It is also “committed to the ethical use of objects and information held by or communicated to the National Museum”¹¹.

In relation to research, it states that it will undertake or encourage research and the dissemination of information relating to Australian history¹². In dealing with materials in its care, it “will arrange full documentation of objects in its custody, including contextual details and supporting material such as photographs and oral histories where appropriate”¹³. The National Museum of Australia upholds its relationship with various stakeholders by developing “strong links with other museums, educational and research institutions, their cultural agencies and community groups”¹⁴. Its relationship with these stakeholders is a significant part of its roles and responsibilities.

⁸ <http://www.nma.gov.au/index.html>

⁹ http://www.nma.gov.au/about_us/corporate_documents/ethics_statement/

¹⁰ http://www.nma.gov.au/about_us/corporate_documents/ethics_statement/

¹¹ http://www.nma.gov.au/about_us/corporate_documents/ethics_statement/

¹² http://www.nma.gov.au/about_us/corporate_documents/ethics_statement/

¹³ http://www.nma.gov.au/about_us/corporate_documents/ethics_statement/

¹⁴ http://www.nma.gov.au/about_us/corporate_documents/ethics_statement/

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*b) Copyright and Reproductions (C&R)*¹⁵

The National Museum of Australia has a Copyright and Reproductions (C&R) section which is responsible for providing copyright, trademark and cultural clearance for media assets. These assets mainly include images and audiovisual material. Both internal and external clients could make an inquiry to the C&R section. The purpose of the C&R section is “to ensure that the Museum's copyright is correctly used and acknowledged”¹⁶. The NMA has also developed some standard guidelines when acknowledging and captioning images in the form of an External Image Request Form¹⁷ and an Image Acknowledgement Form¹⁸.

Especially for external clients, who are interested in using any images owned by the NMA, provided that their inquiry has been accepted, the NMA has a special pricing schedule¹⁹ in which a particular fee must be paid for a certain activity. This schedule includes fees for services, delivery, production, licenses and an administrative fee.

Research Ethics 1998²⁰ issued by AMO²¹

The Australian Museum Online (AMO) has these Research Ethics which comprise of guidelines based on the Australian Vice Chancellors' Committee Guidelines and apply to research practices that have a focus on publication for a professional audience and media. They are to be read with other guidelines, codes of conduct and codes of ethics. For instance, it is noted that “these guidelines are based on the Australian Vice Chancellors' Committee Guidelines on Research Practice, and are compatible with the NSW Ombudsman's Administrative Good Conduct (January, 1997), Museums Australia's Code of

¹⁵ http://www.nma.gov.au/about_us/copyright_and_reproductions/

¹⁶ http://www.nma.gov.au/about_us/copyright_and_reproductions/

¹⁷

http://www.nma.gov.au/shared/libraries/attachments/corporate_documents/copyright_and_reproductions/external_image_request_form/files/9808/External%20Media%20Asset%20request%20form.pdf

¹⁸

http://www.nma.gov.au/shared/libraries/attachments/corporate_documents/copyright_and_reproductions/image_acknowledgments/files/9807/Image%20acknowledgments.pdf

¹⁹ http://www.nma.gov.au/about_us/copyright_and_reproductions/pricing_schedule/

²⁰ http://www.amonline.net.au/about/research_ethics.htm

²¹ <http://www.amonline.net.au/>

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Ethics for Art History and Science Museums (1994), and the Australian Museum's Code of Conduct, which are accessible on the Museum's network²².

The purpose of these guidelines is to promote the highest possible standards in research and discourage misconduct and fraud. They are to also encourage the open presentation and discussion of research results²³. In relation to intellectual property issues, they stress the importance of confidential agreements when it comes to protecting IP rights. For instance, confidential agreements may be agreed upon by the institution, indigenous peoples, the researcher and a sponsor of the research. But where such agreements limit free publication and discussion, limitations and restrictions must be explicitly agreed upon. Furthermore, data or objects that indigenous people wish to remain confidential must remain so²⁴. Issues relating to the establishment and ownership of, and access to, databases containing confidential information should recognize any limits put in place, as it is a practice which conforms to the Museum's Collection, Development and Maintenance Policy²⁵.

“Continuous Cultures, Ongoing Responsibilities: Principles and Guidelines for Australian Museums working with Aboriginal and Torres Strait Islander Cultural Heritage”²⁶ (2005) issued by Museums Australia²⁷

This document, written by Jane Dolan, is a revised version of the 1993 “Previous Possessions, New Obligations” (PPNO) document. The PPNO document was originally developed to highlight the roles and responsibilities of museums and galleries. In 1996, the same document was revised to respond to the needs of indigenous peoples. For instance, it notes that “this version gave indigenous Australian communities a clear understanding of what they should expect from Australian museums and galleries when it comes to dealing with their cultural heritage”²⁸. However, in 2003, the PPNO was revised and its title changed to “Continuous Cultures, Ongoing Responsibilities” (CCOR). The new title is to reflect the

²² http://www.amonline.net.au/about/research_ethics.htm, para.6

²³ http://www.amonline.net.au/about/research_ethics.htm, Principle 1.1

²⁴ http://www.amonline.net.au/about/research_ethics.htm, Principle 2.6

²⁵ http://www.amonline.net.au/about/research_ethics.htm, Principle 2.10

²⁶ http://www.museumsaustralia.org.au/dbdoc/ccor_final_feb_05.pdf

²⁷ <http://www.museumsaustralia.org.au/>

²⁸ http://www.museumsaustralia.org.au/dbdoc/ccor_final_feb_05.pdf, p.6

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changes during the period of 1993 to 2003 that some museums and gallery experienced, one being the change in their approach to indigenous cultural material. They have made changes by incorporating custodianship and caretaking rather than ownership. They also recognized the value of stories associated with the intangible and tangible objects, and recognized Aboriginal and Torres Strait Islander cultural practices and the creation of a reciprocal relationship between traditional custodians and museum institutions.

The CCOR focuses on “sets of principles and guidelines for policy and procedure”²⁹. The CCOR document recognizes the interests of Aboriginal and Torres Strait Islander peoples in the “spiritual and practical care and control of their cultural property”³⁰. Australian museums and galleries, who hold collections of Aboriginal and Torres Strait Islander cultural materials, have responsibilities to develop policies for their protection. The CCOR document deals with principles of self determination; management, collection, access to collection and information, assistance to Aboriginal and Torres Strait Islander communities, employment and training, policy formulation, cultural and intellectual property rights, and reconciliation. Finally, this document recognizes that “Aboriginal and Torres Strait peoples have the full right to their cultural heritage, both in respect to Australian Intellectual Property laws as well as relevant customary laws”³¹.

Copyright in Cultural Institutions (CICI)³²

The Copyright in Cultural Institutions (CICI) is a non-profit organization comprising of several cultural institutions in Australia. Currently there are 11 Australian cultural institutions which are members of this group³³. It acts as a network working group for copyright and intellectual property managers in these cultural institutions. The aim is “to assist its members and to raise awareness of intellectual property (IP) within cultural institutions”³⁴.

²⁹ http://www.museumsaustralia.org.au/dbdoc/ccor_final_feb_05.pdf, p.7

³⁰ http://www.museumsaustralia.org.au/dbdoc/ccor_final_feb_05.pdf, p.9

³¹ http://www.museumsaustralia.org.au/dbdoc/ccor_final_feb_05.pdf, p.14

³² http://www.nma.gov.au/about_us/copyright_and_reproductions/cici/

³³ For a list of member institutions, see

http://www.nma.gov.au/about_us/copyright_and_reproductions/cici/membership/

³⁴ http://www.nma.gov.au/about_us/copyright_and_reproductions/cici/cici_aims_and_objectives/

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The CICI works on a voluntary basis and therefore its membership is open to all IP managers in cultural organizations and there are no membership fees or obligations³⁵. The group furthermore has a volunteer secretariat which is at present hosted by the Australian Film Commission (AFC). The National Museum of Australia, on the other hand, is hosting the CICI website³⁶.

The CICI has 4 main objectives: 1) to provide a discussion forum, 2) to act as a lobbying platform, 3) to facilitate continual training, and 4) to support liaison with similar institutions³⁷. An example of activities conducted by the CICI is the workshop on the management of Indigenous cultural materials, 9 February 2006, which formed part of the joint project by AIATSI and IPRIA³⁸.

2.2 ARCHIVES AND LIBRARIES

National Film and Sound Archive (NFSA)³⁹

a) Collection Policy 2005⁴⁰

The National Film and Sound Archive (NFSA) dates back to the National Historical Film & Speaking Record Library, which was established in 1935⁴¹. The NFSA is the national audiovisual archive of Australia and it collects, preserve and manages access to Australia's moving images and recorded sound heritage⁴². NFSA decisions are based on a framework of policies and a Code of Ethics. These Collection Policy⁴³, Code of Ethics⁴⁴ and Charter⁴⁵, therefore outline the principles by which NFSA operates.

³⁵ http://www.nma.gov.au/about_us/copyright_and_reproductions/cici/

³⁶ http://www.nma.gov.au/about_us/copyright_and_reproductions/

³⁷ http://www.nma.gov.au/about_us/copyright_and_reproductions/cici/cici_aims_and_objectives/

³⁸ http://www.nma.gov.au/about_us/copyright_and_reproductions/cici/news_and_information/2006/

³⁹ http://www.screenound.gov.au/about_us/

⁴⁰ <http://www.nfsa.afc.gov.au/pdf/collectionpolicy.pdf>

⁴¹ <http://www.nfsa.afc.gov.au/screensound/screenso.nsf/HeadingPagesDisplay/About+Us?OpenDocument>

⁴²

<http://www.nfsa.afc.gov.au/Screensound/Screenso.nsf/HeadingPagesDisplay/About+UsWhat+We+Do?OpenDocument>

⁴³ <http://www.nfsa.afc.gov.au/docs/collectionpolicy.pdf>

⁴⁴ The NFSA Code of Ethic is complementary to the Public Servants Code of Ethics and can be found in Appendix A of the full NFSA Collection Policy, <http://www.nfsa.afc.gov.au/docs/collectionpolicy.pdf>

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NFSA also acknowledges and respects the legal and moral rights of indigenous owners of tradition in relation to cultural material. It also recognizes complex historical relationships and current negotiations in relation to recording of indigenous culture and the accumulation of indigenous culture. Therefore, in providing access to the indigenous collection, it is sensitive to the cultural and social context of these materials.

The NFSA Code of Ethics complements the Australian Public Servants Code of Conduct⁴⁶. It also makes reference to the Code of Ethics⁴⁷ of the Australian Institute for the Conservation of Cultural Materials (AICCM)⁴⁸, Council of Australian Museum Associations (CAMA)⁴⁹, International Film Archives (IFA)⁵⁰ and the Code of Conduct for Museum Curators (UK)⁵¹.

b) Collection Development Policy 2003⁵²

The National Screen and Sound Archive, now also called the National Film and Sound Archive (NFSA), has a series of policies⁵³, which include the Collection Development Policy⁵⁴. These series of policies cover issues such as access and public programs, collection development, distributed national collections, indigenous materials, preservation and professional standards. This policy focuses on the development of “a collection of audiovisual and related materials of enduring cultural significance”⁵⁵. The Policy is governed by 4 main sections, which covers the Archive’s collection development aims, key collecting principles and collection development guidelines and procedures. Particularly the key collecting principles guides the collection development decision-making process by covering issues such as access, collection, distribution, indigenous material, international and professional standards.

⁴⁵ The NFSA charter sets out its objectives and principles

⁴⁶ The Public Servants Code of Conduct 1995 is not an exhaustive document but it provides a set of principles to guide public servants, see <http://www.apsc.gov.au/publications96/conduct.pdf>

⁴⁷ <http://www.aiccm.org.au/public/content/ViewCategory.aspx?id=19>

⁴⁸ <http://www.aiccm.org.au/index.aspx>

⁴⁹ <http://www.museumsaustralia.org.au/index.php>

⁵⁰ <http://www.reading.ac.uk/library/resources/fiaf.html>

⁵¹ http://www.museumassociation.org/asset_arena/text/cs/code_of_ethics.pdf

⁵² <http://www.nfsa.afc.gov.au/docs/policy-collectiondevelopment.pdf>

⁵³ See <http://www.nfsa.afc.gov.au/docs/collectionpolicy.pdf> for the complete series of policies.

⁵⁴ http://www.nfsa.afc.gov.au/the_collection/collection_policy.html

*c) Indigenous Collections Policy 2003*⁵⁶

The Indigenous Collections Policy is another of the series of policies which has been developed by the National Screen and Sound Archive. This policy is an attempt by the NFSA to recognize the rights of indigenous owners in relation to cultural property. This policy sets therefore out what the Archive will do in relation to indigenous material. The Archive recognizes the inadequacies of current copyright law to protect rights of traditional owners so they have identified best ways to deal with the current inadequacies both in practical terms and policy-wise.

Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)⁵⁷

*a) Collection Management Policy Manual*⁵⁸

The Audiovisual Archive of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) holds collections of moving images, recorded sound and photographic materials that relate to Australian Aboriginal and Torres Strait Islander cultures and histories. The items held in the Audiovisual Archive are from field research and historical and contemporary items which are deposited by individuals, families or organizations for safekeeping and for appropriate access. AIATSIS has a Collections Management Policy Manual⁵⁹ which outlines its Registration Policy⁶⁰, Acquisition Policy⁶¹, Documentation Policy⁶², Preservation Policy⁶³, Access Policy⁶⁴, Deaccessioning Policy⁶⁵ and a Code of Ethics

⁵⁵ <http://www.nfsa.afc.gov.au/docs/policy-collectiondevelopment.pdf>, p.1

⁵⁶ Chapter 5 of the full NFSA Collection Policy, <http://www.nfsa.afc.gov.au/docs/collectionpolicy.pdf>

⁵⁷ <http://www.aiatsis.gov.au/>

⁵⁸

http://www.aiatsis.gov.au/audiovisual_archives/audiovisual_archives_collection_management_policy_manual

⁵⁹

http://www.aiatsis.gov.au/audiovisual_archives/audiovisual_archives_collection_management_policy_manual

⁶⁰

http://www.aiatsis.gov.au/audiovisual_archives/audiovisual_archives_collection_management_policy_manual/registration_policy

⁶¹

http://www.aiatsis.gov.au/audiovisual_archives/audiovisual_archives_collection_management_policy_manual/acquisitions_policy

⁶²

http://www.aiatsis.gov.au/audiovisual_archives/audiovisual_archives_collection_management_policy_manual/documentation_policy

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Policy⁶⁶ for staff. The Code of Ethics was developed by staff to show their commitment to Aboriginal and Torres Strait Islander cultural materials. The AIATSIS Council endorsed the Code of Ethics in 2005. Additionally, in its effort to promote best practices in the Archive, it has developed forms to be used when dealing with cultural materials which are the Agreement Procedures Forms⁶⁷ between the depositor and the archive, the Form for Authority to Dispose of Audiovisual Materials⁶⁸, the Transfer of Materials Agreement Form⁶⁹, and the Form for Deposit of Material Agreement⁷⁰.

*b) Guideline for Ethical Research in Indigenous Studies 2000*⁷¹

The AIATSIS Guideline provides best standards of ethical conduct and procedures to follow when conducting research. It is intended for research sponsored by the AIATSIS. This Guideline has a statement of the principles of ethical research, and an explanation of principles and practical ways to how the guideline can be applied. The Guideline declares that the intellectual and cultural property rights of indigenous peoples should be respected and preserved. It should also recognize indigenous peoples' continual ownership of cultural and intellectual property rights in materials on which the research is based.

Aboriginal and Torres Strait Islander Arts Board (ATSIA)⁷²

The Aboriginal and Torres Strait Islander Arts Board (ATSIA) has developed and published five protocols⁷³, which are a) New Media Cultures, b) Visual Cultures, c) Performing

⁶³

http://www.aiatsis.gov.au/audiovisual_archives/audiovisual_archives_collection_management_policy_manual/preservation_policy

⁶⁴

http://www.aiatsis.gov.au/audiovisual_archives/audiovisual_archives_collection_management_policy_manual/access_policy

⁶⁵

http://www.aiatsis.gov.au/audiovisual_archives/audiovisual_archives_collection_management_policy_manual/deaccessioning_policy

⁶⁶

http://www.aiatsis.gov.au/audiovisual_archives/audiovisual_archives_collection_management_policy_manual/code_of_ethics

⁶⁷ Forms can be obtained from the Archive

⁶⁸ Forms can be obtained from the Archive

⁶⁹ Form can be accessed from the Archive

⁷⁰ Form can be accessed from the Archive

⁷¹ http://www.aiatsis.gov.au/data/assets/pdf_file/2290/ethics_guidelines.pdf

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Cultures, d) Song Cultures and e) Writing Cultures. The purpose of these guides is to provide information and advice on Aboriginal and Torres Strait Islander peoples and their cultural heritage. The five guides each address specific indigenous art forms but they are shaped by the same principles, which are 1) respect, 2) indigenous control, 3) communication, consultation and consent, 4) interpretation, 5) integrity and authenticity, 6) secrecy and confidentiality, 7) attribution, 8) proper returns, 9) continuing cultures and recognition and protection. These principles function as frameworks for respecting indigenous heritage and they explicitly or implicitly relate to intellectual property issues.

a) Protocols for Producing Indigenous Australian New Media 2002⁷⁴

This Protocol is written as a reference point when planning to work with indigenous cultural material or for those wanting to work with a indigenous new media practitioner. “New Media” is used in this context to refer to creative web based projects, new applications for film or video, installations incorporating mixed forms of art such as sculpture, sound and visual technologies, digital manipulation of images such as photographs or video and computer-generated art such as DVDs and CD-ROM, games and databases.

The principle of “recognition and protection” specifically deals with issues relating to intellectual property rights. For instance, it states, that “indigenous peoples have the right to protection of their cultural and intellectual property. Australian laws and policies should be developed and implemented to respect and protect indigenous rights to cultural and intellectual property”⁷⁵.

b) Protocols for Producing Visual Culture 2002⁷⁶

This Protocol relates to the use of cultural heritage material in visual arts practice. “Indigenous visual arts” is used in this guide to refer to painting, printmaking, crafts, photography, sculpture, multimedia and new media. The principle of “recognition and

⁷² http://www.ozco.gov.au/boards/atsia/about_the_board/

⁷³ <http://www.ozco.gov.au/boards/atsia/>

⁷⁴ http://www.ozco.gov.au/arts_resources/publications/new_media_cultures/files/311/proto_newmedia.pdf

⁷⁵ http://www.ozco.gov.au/arts_resources/publications/new_media_cultures/files/311/proto_newmedia.pdf
p.36

⁷⁶ http://www.ozco.gov.au/arts_resources/publications/visual_cultures/files/314/proto_visual.pdf

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protection” states that an “indigenous artists owns copyright in his or her artwork giving him or her control of reproduction and dissemination of the work”⁷⁷. What is important about this guideline is the fact that it also proposes the use of legal mechanisms such as contracts and agreements.

*c) Protocols for Performing Cultures 2002*⁷⁸

This Protocol is for those who want to work with indigenous cultures. “Indigenous performance” is used in this protocol to refer to acting, dancing, dramaturgy⁷⁹ and directing. It also draws on and embraces a variety of dramatic styles and forms, such as street theatres, improvisation, readings, ceremony, dance performance, dramatic performance and festivals.

*d) Song Cultures Protocol 2002*⁸⁰

“Indigenous music” is used in this guide to refer to music and lyrics, instrumental pieces, indigenous rhythms and songs cycles. The Song Cultures Protocol “aims to formally identify issues arising from the interaction between indigenous cultural concerns and the law protecting the rights of artists”⁸¹. This Protocol identifies the nine principles that can be applied or used by indigenous musicians, singers, songwriters, record companies or anyone that wishes to work with indigenous music or with indigenous musicians.

*e) Writing Culture Protocol 2002*⁸²

This Protocol is a guide to producing indigenous literature. It “aims to formally identify issues arising from the interactions between indigenous cultural concerns and the laws protecting the rights of authors”⁸³. “Indigenous literature” is used in this Protocol to refer to short stories, plays, novels, non-fiction, writings, poetry, autobiography, biography, community and oral histories and children’s stories.

⁷⁷ See http://www.ozco.gov.au/arts_resources/publications/visual_cultures/files/314/proto_visual.pdf, p.34

⁷⁸ http://www.ozco.gov.au/arts_resources/publications/performing_cultures/files/312/proto_perform.pdf

⁷⁹ Dramaturgy means “the art of the theater, especially the writing of plays”, see <http://www.answers.com/topic/dramaturgy>

⁸⁰ http://www.ozco.gov.au/arts_resources/publications/song_cultures/files/313/proto_song.pdf

⁸¹ See http://www.ozco.gov.au/arts_resources/publications/song_cultures/files/313/proto_song.pdf, p.2

⁸² http://www.ozco.gov.au/arts_resources/publications/writing_cultures/files/315/proto_writing.pdf

⁸³ See http://www.ozco.gov.au/arts_resources/publications/writing_cultures/files/315/proto_writing.pdf, p.4

The Government of New South Wales (NSW); Department of Aboriginal Affairs (DAA)⁸⁴

*a) A Journalist's Guide to Working with Indigenous Communities 2000*⁸⁵

This guideline was set up as a best practice guide for media and journalists who worked with indigenous communities prior to the 2000 Sydney Commonwealth Games. Its purpose was to inform both local and visiting media on appropriate contacts and culturally sensitive practices when working with Aboriginal and Torres Strait Islander communities.

*b) Aboriginal Cultural Protocols and Practices Policy*⁸⁶

This is part of the work of the Government of New South Wales (NSW) to recognize the unique place of Aboriginal peoples in Australia and in doing so it tries to incorporate Aboriginal cultural practices into official events. The purpose of this Policy is to guide the NSW Public Sector Agencies in applying appropriate protocols to recognize the place of Aboriginal peoples in events where the Government of New South Wales is a major sponsor. This Policy takes into account indigenous peoples' intellectual property through the services they offer. In recognition of services and intellectual property of indigenous peoples in artistic performances and ceremonies, it states that a fee should be paid to performers.

Practical Protocols for Working with the Indigenous Community of Western Sydney⁸⁷
issued by the CCDNSW⁸⁸

The Community Cultural Development New South Wales (CCDNSW) developed this protocol. It focuses on cultural projects, which have tangible social, community and artistic outcomes. It was set up specifically as a guide for those that are working with Aboriginal communities in Western Sydney. This Protocol also highlights the inadequacies of copyright

⁸⁴ <http://www.daa.nsw.gov.au>

⁸⁵ <http://www.daa.nsw.gov.au/publications/gettingitright.pdf>

⁸⁶ <http://www.daa.nsw.gov.au/data/files//Aboriginal%20CulturalProtocolsandPracticesPolicyFINAL.pdf>

⁸⁷ <http://www.ccdnsw.org/ccdnsw/pdf/protocols.pdf>

⁸⁸ <http://www.ccdnsw.org/ccdnsw/default.php>

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law to protect aspects of indigenous cultural and intellectual property. Therefore, it proposes good practices such as consultation and informed consent.

The National Archives Collecting Policy⁸⁹ issued by NAA⁹⁰

The National Archives of Australia (NAA) collects official Commonwealth government records, and the records of Commonwealth personnel such as governors-general, prime ministers, ministers, federal and High Court judges and some senior Commonwealth public servants. The National Archives' records complement those of the official record. Hence "one of the most important functions of the National Archives is to determine, on behalf of the nation, which Government records should be kept as 'national archives' – those records the Archive most needs to preserve"⁹¹. The selection process of these records is guided by a publication called "Why Records are kept: Directions in Appraisal"⁹² which summarizes the Archive's objectives and criteria settings. The National Archive furthermore has policies for collecting and record keeping, which are outlined in the Archives Act, 1983⁹³. The Act sets out the role and responsibilities of the Archive and defines its collecting policy.

Collection Development Policy 2005⁹⁴ issued by the UMA⁹⁵

The University of Melbourne has its own Archive (UMA) that "collects, manages and provides access to the historical records of the University, Victorian businesses, trade unions, community, cultural organizations and personal material"⁹⁶. For processing, and reproduction of copyright materials for the purpose of study or research, they would have to comply with the fair dealing provisions⁹⁷ of the Australian Copyright Act, 1968⁹⁸. Processing of images held by the Archive for other purposes must not occur without prior consent and

⁸⁹ http://www.naa.gov.au/Publications/fact_sheets/fs218.html

⁹⁰ <http://www.naa.gov.au>

⁹¹ http://www.naa.gov.au/recordkeeping/disposal/why_keep/summary.html

⁹² http://www.naa.gov.au/recordkeeping/disposal/why_keep/summary.html

⁹³ http://www.austlii.edu.au/au/legis/cth/consol_act/aa198398.txt/cgi-bin/download.cgi/download/au/legis/cth/consol_act/aa198398.rtf

⁹⁴ <http://www.lib.unimelb.edu.au/collections/archives/publications/collectionpolicy.html>

⁹⁵ <http://www.lib.unimelb.edu.au/collections/archives/>

⁹⁶ <http://www.lib.unimelb.edu.au/collections/archives/>

⁹⁷ These provisions are embedded in "Division 3 – Acts not constituting infringement of copyright in works" of the Copyright Act, 1968.

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several processes control this. These include a photography form, an image order form, and an application for permission to publish or reproduce materials.

Conditions of Access⁹⁹ and Deposit of Material¹⁰⁰ Forms issued by PARADISEC¹⁰¹

The Pacific and Regional Archive for Digital Sources in Endangered Cultures (PARADISEC) conducts digital conservation of endangered materials from the Pacific region, which include Oceania, East and Southeast Asia. The organization is a collaboration of four universities: the Universities of Sydney¹⁰², Melbourne¹⁰³, New England¹⁰⁴ and the Australian National University¹⁰⁵.

PARADISEC has established a framework for accessioning, cataloguing and digitizing audio, text and visual materials. It preserves digital copies to promote good practices in field documentation and digital archiving. In other words, “PARADISEC is a national repository for recorded material related to the indigenous cultures of the region around Australia”¹⁰⁶ and its responsibilities lie in “safeguarding the interests and sensitivities of the indigenous people to whom any material in the collections relates”¹⁰⁷.

These Access and Deposit forms can be accessed and downloaded from their web page¹⁰⁸. The main point to consider when depositing a material to PARADISEC is that the depositor should provide the explicit information on “the community that may have the rights in the material”, the depositor’s “understanding of the position of the community towards the intention to deposit” and “any special conditions towards handling the material

⁹⁸ <http://www.adelaide.edu.au/legals/docs/copyright1968.pdf>

⁹⁹ <http://www.paradisec.org.au/PDSCaccess.pdf>

¹⁰⁰ <http://www.paradisec.org.au/PDSCdeposit.pdf>

¹⁰¹ <http://www.paradisec.org.au/home.html>

¹⁰² <http://www.usyd.edu.au/>

¹⁰³ <http://www.unimelb.edu.au/>

¹⁰⁴ <http://www.une.edu.au/>

¹⁰⁵ <http://www.anu.edu.au/>

¹⁰⁶ Quote taken from the explanatory notes belonging to the Deposit form, see <http://www.paradisec.org.au/PDSCdeposit.pdf>

¹⁰⁷ Quote taken from the explanatory notes belonging to the Deposit form, see <http://www.paradisec.org.au/PDSCdeposit.pdf>

¹⁰⁸ <http://www.paradisec.org.au/downloads.html>

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and type of access”¹⁰⁹. Conditions of Access, on the other hand, include the duty to acknowledge “both the depositors of the data used and PARADISEC”¹¹⁰. When access is granted, the use of the material remains mostly restricted to “personal use”¹¹¹.

ATSILIRN Protocols 2000¹¹² issued by ATSILIRN Inc.¹¹³

ATSILIRN is the trading name of the Aboriginal and Torres Strait Islander Library and Information Resource Network Inc. The Network was launched after it became clear that “there was a need for a support and information network for Aboriginal and Torres Strait Islander people working in libraries”¹¹⁴. The Network has since 1995 endorsed a set of protocols¹¹⁵ for the purpose as to stimulate and guide libraries, archives and information services to interact with the Aboriginal and Torres Strait Islander people when dealing with materials of Aboriginal and Torres Strait Islander content¹¹⁶.

The protocols consist of five main objectives which are a) to recognize the moral rights of Aboriginal and Torres Strait Islander peoples as the owners of their knowledge, b) to appropriately deal with other important issues arising from Aboriginal and Torres Strait Islander content and perspectives in documentary materials, media and traditional cultural property, c) to address issues on access to libraries, archives and information resources by Aboriginal and Torres Strait Islander peoples, d) to encourage for both the involvement and the participation of Aboriginal and Torres Strait Islander peoples in the governance and operation of libraries, archives and information services, and e) to appropriately represent

¹⁰⁹ Quotes taken from the Deposit form, see <http://www.paradisec.org.au/PDSCdeposit.pdf>

¹¹⁰ Quote taken from the Access form, see <http://www.paradisec.org.au/PDSCaccess.pdf>

¹¹¹ See <http://www.paradisec.org.au/PDSCaccess.pdf>

¹¹²

http://www1.aiatsis.gov.au/atsilirn/protocols.atsilirn.asn.au/index0c51.html?option=com_frontpage&Itemid=1

¹¹³ <http://home.vicnet.net.au/%7Eatsilirn/>

¹¹⁴ <http://home.vicnet.net.au/%7Eatsilirn/>

¹¹⁵ <http://www1.aiatsis.gov.au/atsilirn/protocols.atsilirn.asn.au/ATSILIRNprotocols.pdf>

¹¹⁶

http://www1.aiatsis.gov.au/atsilirn/protocols.atsilirn.asn.au/index0c51.html?option=com_frontpage&Itemid=1

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Aboriginal and Torres Strait Islander peoples and their cultures in libraries, archives and information services¹¹⁷.

In relation to intellectual property issues, the protocols state that libraries, archives and information services should “become aware of the issues surrounding cultural documentation and the need for cultural awareness training; develop proper professional recognition of the primary cultural and intellectual property rights of Aboriginal and Torres Strait Islanders and consult with appropriate Aboriginal or Torres Strait Islander peoples on their application; develop ways, including the recognition of moral rights, to protect Aboriginal and Torres Strait Islander cultural and intellectual property and share information on initiatives involving cultural documentation”¹¹⁸. In contrast to the older version of the protocols, such as the one of 1994, which focused on institutions sharing information involving the documentation of cultural material, these protocols focus on practical means of how to share information involving the documentation of cultural material.

The Copyright Law of Australia protects rights of authors and publishers but does not explicitly protect the collective rights of owners and custodians of traditional cultural expressions and knowledge. Therefore, it is the responsibility of libraries, archives and information services to address such limitations in their activities by “becoming aware of issues surrounding cultural documentation and the need for cultural awareness training”¹¹⁹. They are also to “develop proper professional recognition of the primary cultural and intellectual property rights of Aboriginal and Torres Strait Islander peoples”¹²⁰ and the recognition of moral rights of these peoples. Observant of such responsibilities, institutions should “protect Aboriginal and Torres Strait Islander cultural property and share information on initiatives involving cultural documentation”¹²¹.

¹¹⁷ <http://www.cdu.edu.au/library/protocol.html>

¹¹⁸ <http://www.cdu.edu.au/library/protocol.html>

¹¹⁹ <http://www1.aiatsis.gov.au/atsilirn/protocols.atsilirn.asn.au/ATSILIRNprotocols.pdf>, p.4

¹²⁰ <http://www1.aiatsis.gov.au/atsilirn/protocols.atsilirn.asn.au/ATSILIRNprotocols.pdf>, p.4

¹²¹ <http://www.cdu.edu.au/library/protocol.html>, para. 8

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Creative Nations: Commonwealth Cultural Policy 1994¹²² issued by NLA¹²³

The National Library of Australia (NLA) collects Australian material of all kinds and includes works in print form, online publications, unpublished materials, oral histories, performing arts and dance. The aims of this Cultural Policy are to define the scope and nature of collecting materials from both Australia and abroad. It also provides a practical interpretation about the legal obligation of the Library under the National Library Act, 1968. This Cultural Policy also speaks to new or expanded national institutions that collect and preserve heritage. Ensuring that it functions well and efficiently, it is significant that it adapts technological means that will assist in preservation and dissemination of materials. In doing so, it is creating new avenues for artistic and intellectual growth and expression, and Australian artists and writers are becoming aware of global changes in a way that will positively safeguard and promote Australian national culture¹²⁴.

In relation to cultural rights, this Policy recommends that the Government of Australia commits to a Charter of “Cultural Rights” that will guarantee all Australians “the right to an education that develops individual creativity and appreciation of the creativity of others, the right of access to our intellectual and cultural heritage, the right to new intellectual and artistic works, and the right for community participation in cultural and intellectual life”¹²⁵.

Issues Paper: Towards a Protocol for Respecting Indigenous Heritage Places and Values 2003¹²⁶ issued by AFC¹²⁷

This Paper outlines the Australian Film Commission’s (AFC) work to develop a new protocol for filmmakers working in the indigenous area. This protocol will cover documentaries, drama, short stories, feature films and television drama. This is to recognize and respect the images, knowledge and stories of indigenous people. This Paper proposes that indigenous cultural and intellectual property rights include the rights “to own and

¹²² <http://www.nla.gov.au/creative.nation/creative.html>

¹²³ <http://www.nla.gov.au/>

¹²⁴ <http://www.nla.gov.au/creative.nation/creative.html>

¹²⁵ <http://www.nla.gov.au/creative.nation/creative.html>

¹²⁶ http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/aus_film.pdf

¹²⁷ <http://www.afc.gov.au/>

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control indigenous cultural intellectual property, ensure that any means of protecting indigenous cultural and intellectual property is based on the principle of self determination, be recognized as the primary guardians and interpreters of their cultures, authorize or refuse to authorize the commercial use of indigenous cultural and intellectual property according to indigenous customary law, maintain the secrecy of indigenous knowledge and other cultural practices, be given full and proper attribution for sharing their heritage, control the recording of cultural customs and expressions, the particular language which may be intrinsic to cultural identity, knowledge, skill and teaching of culture”¹²⁸. A protocol was released in December 2005¹²⁹, which is entitled to “DEH – Heritage Strategy”.

Cultural Protocols for Indigenous Reporting in the Media¹³⁰ issued by ABC¹³¹

These Protocols issued by the Australian Broadcasting Corporation (ABC) provide a framework to guide journalists who intend to work or who are working with indigenous people. The Protocols are based on the principles of respect, indigenous control, consultation, communication and consent, interpretation, integrity authenticity, secrecy and confidentiality, attribution and continuing culture. These Protocols recognize that indigenous people's cultural and intellectual property is not adequately protected under western intellectual property systems and it stresses why it is important that people working with indigenous people's intellectual cultural property are aware of the issues.

Protocols for Visiting Aboriginal Land¹³² issued by NLC¹³³

The Northern Land Council (NLC) has developed two protocols on Media Access¹³⁴ and Media Behaviour¹³⁵. The purpose of these Protocols is to ensure that activities and material published are not offensive to the cultural heritage of Aboriginal people. These Protocols outline the processes visitors must follow in order to obtain permission to enter Aboriginal

¹²⁸ http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/aus_film.pdf, p.7

¹²⁹ <http://www.environment.gov.au/heritage/publications/strategy/pubs/deh-heritage-strategy.pdf>

¹³⁰ <http://www.abc.net.au/message/proper/culturalprotocol.pdf>

¹³¹ <http://abc.net.au/message/about/>

¹³² http://www.nlc.org.au/html/visit_media.html

¹³³ <http://www.nlc.org.au/index.html>

¹³⁴ http://www.nlc.org.au/html/files/Media_Access.PDF

¹³⁵ http://www.nlc.org.au/html/files/Media_Behaviour.PDF

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land, whether it would be for visiting, to conduct research, publish any photographs or written material or produce a film or documentary. Those who wish to produce a film or a documentary based on their visit require a special permit.

There are also several “Permit Application Forms” made available for researchers for intellectual property rights clearance and publication control by communities and by the NLC itself¹³⁶. These forms are “Research Permit Application Form”¹³⁷, “Media Permit Application Form”¹³⁸ and “Commercial Filming Application Form”¹³⁹.

“The Greater Perspective: Protocol and Guidelines for the Production of Film and Television on Torres Strait Islander Communities”¹⁴⁰, 1997

This Protocol, written by Lester Bostock, was developed to guide filmmakers, television programmers and other media practitioners in the production of programmes about Torres Strait Islander or any programmes on lands of indigenous peoples. The guideline is set out to advise and guide practitioners in their day-to-day activities and work. In relation to indigenous and cultural intellectual property, the guideline states “no damage of any kind should be done to the lands of indigenous peoples’ cultural property, nor to subject(s) of programs. Special consideration should be given to the applicability of non-indigenous notions of intellectual property rights, especially copyright, to the cultures of indigenous people”¹⁴¹.

¹³⁶ http://www.nlc.org.au/html/visit_media.html

¹³⁷ http://www.nlc.org.au/html/files/Research_Permit.PDF

¹³⁸ http://www.nlc.org.au/html/files/Media_Permit.PDF

¹³⁹ http://www.nlc.org.au/html/files/Commercial_Permit.PDF

¹⁴⁰ http://www.sbs.com.au/sbsi/sbs_booklet.pdf

¹⁴¹ http://www.sbs.com.au/sbsi/sbs_booklet.pdf, p.9

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“Cultural Institutions, Law and Indigenous Knowledge: A Legal Primer on the Management of Australian Indigenous Collections”, 2006¹⁴² issued by AIATSIS¹⁴³ and IPRIA¹⁴⁴

This Legal Primer is a result of a collaborative project between the Australian Institute of Aboriginal and Torres Straight Islander Studies (AIATSIS) and the Intellectual Property Research Institute of Australia (IPRIA). The aim of the Primer is to “assist institutions implement these guidelines and policies by examining legal principles relevant to the acquisition, access, use and reproduction of collection items”¹⁴⁵. The Primer looks at legal issues that arise for cultural institutions and bodies. It also deals with the acquisition, use and reproduction of Aboriginal cultural material. It does not deal with human remains and genetic resources.

This Legal Primer is important for this WIPO project for two obvious reasons. Firstly, the Legal Primer deals with legal issues, which arise out of dealing with cultural institutions, a question that this project is also addressing. Additionally, the Primer discusses the legal principles by making reference to best practices in indigenous collections. Secondly the Legal Primer includes information obtained through consultation with staff that work in cultural institutions about their experiences in the management of indigenous collections. There is a separate chapter on practices employed by cultural institutions and indigenous owners of cultural expressions.

“Copyright and Cultural Institutions: Short Guidelines for Digitization”¹⁴⁶ 2006 issued by IPRIA¹⁴⁷ and CMCL¹⁴⁸

This Paper was written by Emily Hudson and Andrew T. Kenyon. It contains short practical guidelines with flowcharts for cultural institutions in Australia on how effectively to deal with emerging copyright issues. As these issues start to play a more significant role in the

¹⁴² <http://www.ipria.org/publications/Reports/Legal%20Primer.pdf>

¹⁴³ <http://www.aiatsis.gov.au/>

¹⁴⁴ <http://www.ipria.org/>

¹⁴⁵ <http://www.ipria.org/publications/Reports/Legal%20Primer.pdf>, p.8

¹⁴⁶ <http://www.law.unimelb.edu.au/cmcl/publications/Copyright%20Guidelines%20Shortform.Pdf>

¹⁴⁷ <http://www.ipria.org/>

¹⁴⁸ <http://www.law.unimelb.edu.au/cmcl>

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daily conduct of these cultural institutions, it has become increasingly critical to know how to deal with them.

These guidelines provide information, based on the Australian Copyright Act, on recording, digitization, dissemination practices of cultural materials by Australian cultural institutions. These guidelines supplement a longer form of guidelines which are also available¹⁴⁹. The purpose of these guidelines is to help staff and volunteers understand the copyright law and identify instances where digitization might infringe copyright.

**“The Role of Information Technologies in Indigenous Knowledge Management”¹⁵⁰
2005, Chapter 9 of “Australian Indigenous Knowledge and Libraries”, Australian
Academic and Research Libraries, Canberra**

This Paper, written by Jane Hunter, discusses the significant role that information technology (IT) can play in the preservation, management and dissemination of traditional knowledge and folklore, also referred to as “indigenous knowledge”¹⁵¹, in the digital era. As digitization practices are becoming increasingly common, this paper outlines the notion of developing “local knowledge bases” or “indigenous knowledge management” (IKM) system. These can be perceived as a sort of database where digitized indigenous knowledge can be stored.

The unique aspects of this system are that it can be specifically customized according to the customary laws and other requirements and purposes of the communities themselves and that it is supposed to be controlled by them as well. Furthermore, it would “enable the traditional owners to describe, contextualise and annotate resources in their own words, their own languages and from their own perspectives”¹⁵².

On the other hand, the foremost obstacle is the fact that “customary laws and intellectual property needs of traditional knowledge holders vary enormously among indigenous

¹⁴⁹ http://www.wipo.int/tk/en/folklore/creative_heritage/museum/link0003.html

¹⁵⁰ <http://epress.lib.uts.edu.au/dspace/bitstream/2100/57/1/Libraries+and+Indigenous+Knowledge.pdf>

¹⁵¹ <http://epress.lib.uts.edu.au/dspace/bitstream/2100/57/1/Libraries+and+Indigenous+Knowledge.pdf>,
p.94

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communities throughout the world”¹⁵³. Another challenge is to identify the “authorized elders who can make decisions about access constraints, reaching community agreement on both access constraints and individual’s attributes and authority, and building community trust in the system”¹⁵⁴.

This IKM system could in fact be an option to consider for cultural institutions holding indigenous knowledge in their collections. As these institutions are increasingly facing ownership challenges in respect of their indigenous collections, they may increasingly opt for collaborative projects with communities in order to determine the most respectable way to preserve and disseminate the materials.

Another IT system project is community mapping, which is used as “a tool for community-based resource management”¹⁵⁵ that links a certain indigenous community to a territory as “land” is indeed perceived as an important aspect in the lives of a community. These IT projects have already commenced in several countries, namely Australia, Malaysia, Indonesia, Philippines, Cambodia, Mozambique and Ecuador.

¹⁵² <http://epress.lib.uts.edu.au/dspace/bitstream/2100/57/1/Libraries+and+Indigenous+Knowledge.pdf>, p.104

¹⁵³ <http://epress.lib.uts.edu.au/dspace/bitstream/2100/57/1/Libraries+and+Indigenous+Knowledge.pdf>, p.99

¹⁵⁴ <http://epress.lib.uts.edu.au/dspace/bitstream/2100/57/1/Libraries+and+Indigenous+Knowledge.pdf>, p.103

¹⁵⁵ <http://epress.lib.uts.edu.au/dspace/bitstream/2100/57/1/Libraries+and+Indigenous+Knowledge.pdf>, p.98

CHAPTER III: CULTURAL RESOURCES IN FIJI

3.1 INSTITUTE OF FIJIAN LANGUAGE AND CULTURE, MINISTRY OF FIJIAN AFFAIRS, CULTURE AND HERITAGE

The Ministry of Fijian Affairs, Culture and Heritage¹⁵⁶ of Fiji has actively developed practical and policy measures¹⁵⁷ to preserve and safeguard Fiji's cultural heritage, with the aim to "strengthen the conservation, preservation, promotion and protection of all forms of cultural and natural heritage. These include intangible and tangible, movable and immovable heritage and cultural industries"¹⁵⁸. Guidelines and manuals have been published to guide researchers on how to conduct research involving Fiji's cultural heritage¹⁵⁹.

Training Manual on Field Research Methodology Designed for Cultural Mapping Field Officers¹⁶⁰, 2005

This Training Manual is a collaborative work by the Institute of Fijian Language and Culture and several experts in the field of social cultural research. The Training Manual was designed for the training of cultural mapping field-officers.

The objectives¹⁶¹ of this Training Manual are i) to develop "a clearer understanding" of the Fijian governmental bodies dealing with cultural heritage and indigenous communities, ii) to discover intellectual property rights issues for the development of a "Model Legislation" in protecting "traditional knowledge and cultural expressions", iii) to derive a "cultural mapping exercise and database", iv) to explore all aspects of "anthropology" including research methods and design as a 'cultural research' practice, and v) to develop "a fieldwork and research guideline for the institute".

¹⁵⁶ <http://www.culture.gov.fj/>

¹⁵⁷ <http://www.culture.gov.fj/Annual%20Reports/SDP%20Culture%20NPO%20-Website%20version.pdf>

¹⁵⁸ <http://www.fijianaffairs.gov.fj/Culture%20&%20Heritage/index.htm>

¹⁵⁹ See WIPO case studies at <http://www.wipo.int/tk/en/folklore/culturalheritage/surveys.html>

¹⁶⁰ http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/fiji_manual.pdf

¹⁶¹ All quotes in this paragraph are taken from the Manual at http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/fiji_manual.pdf, p.3

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This Manual also provides several recommendations in terms of methodological approaches that social cultural researchers should consult and follow when they undertake fieldwork in cultural settings. These methodological approaches are heavily influenced by anthropological approaches to research and anthropological ethical conduct and guidelines.

Fiji has a Copyright Act 1999¹⁶², Property Law Act 1978¹⁶³, Patents Act 1978¹⁶⁴, Merchandise Marks Act¹⁶⁵, Industry Emblem Act¹⁶⁶, Trademarks Act 1978¹⁶⁷ and Fair Trading Act 1992¹⁶⁸. However, according to the Institute, they are found to be limited in application, restrictive and inadequate to protect Fijian traditional knowledge and expression of culture.

In response to this finding, Fiji is currently working to adopt the “Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture”¹⁶⁹, developed by Pacific Island Countries with the assistance of WIPO, and create a national database to record and collect traditional knowledge and expressions of culture. Access to this database will be under the control of the authoritative body referred to in the Model Law. The database is the focus of the National Inventory Project¹⁷⁰ for Traditional Knowledge and Expression of Culture in Fiji. The aim of this project is to document Fiji’s culture and traditions. The database will identify existing traditional knowledge and expression of culture and their traditional owners from within the 14 provinces of Fiji.

¹⁶² http://www.itc.gov.fj/lawnet/fiji_act/copyright1999.html

¹⁶³ http://www.itc.gov.fj/lawnet/fiji_act/property_law.html

¹⁶⁴ http://www.itc.gov.fj/lawnet/fiji_act/patent.html

¹⁶⁵ Reference has been made to this Act and for more information on its existence, see http://www.itc.gov.fj/lawnet/fiji_laws_i.html

¹⁶⁶ Reference to existence of this Act can be viewed at http://www.itc.gov.fj/lawnet/fiji_laws_i.html

¹⁶⁷ http://www.itc.gov.fj/lawnet/fiji_act/trade_mark.html

¹⁶⁸ Reference to existence of act can be viewed at http://www.itc.gov.fj/lawnet/fiji_laws_f.html

¹⁶⁹ http://www.wipo.int/tk/en/laws/pdf/spc_framework.pdf, this framework is referred to as the “Pacific Model Law”.

¹⁷⁰ For more information on the inventory project, see http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/fiji_nemani.pdf

**Recommended Guideline for Socio-Cultural Researchers when Undertaking
Fieldwork in Cultural Settings 2005¹⁷¹**

This Guideline came about as a result of a training workshop on field research methodology for cultural mapping field officers. It clearly sets out important processes and a code of conduct for any researcher wishing to do research on Fijian people and culture. There are three stages to this Guideline. The first is the pre-research stage. This stage involves the identification of the research topic, the methodology, individual preparation for the field and the actual fieldwork preparation. The second stage is the actual research stage. This is where the researcher must seek the consent of the head of village before the actual research or interaction with villagers and participants occur. The third stage is post-research. This stage involves data analysis and researcher's re-evaluation of ethical issues such as anonymity of participants/informants and practical significance of such research for the researched community.

¹⁷¹ http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/fiji_guideline.pdf

CHAPTER IV: CULTURAL RESOURCES IN NEW ZEALAND

To assist in the reading of this Chapter, Annex VII comprises a “Glossary of Maori Terms and Concepts”.

4.1 MUSEUMS

Te Papa Museum¹⁷²

Te Papa is New Zealand’s national museum and is located in Wellington. Its main funding comes from the New Zealand government. Te Papa was established in 1998 and is a contemporary museum in its collections and in its use of high tech equipment and material. Its key tasks are to “preserve and present the *taonga*¹⁷³ of New Zealand peoples and to interpret the country's heritage for national and international audiences”¹⁷⁴. There are five major areas in Te Papa’s collections. These are i) Art and Visual Culture, ii) Māori cultural treasures, iii) Pacific Cultures, iv) History and the v) Natural Environment¹⁷⁵.

Te Papa museum’s functions are set out in section 7 of the Museum of New Zealand Te Papa Tongarewa Act 1992, which include:

“collecting works of art and items related to history and the natural environment, acting as an accessible national depository for collections of art and items relating to history and the natural environment, disseminating information relating to its collections, and to any other matters relating to the Museum and its functions as to develop, conserve, and house securely the collections of art and items relating to history and the natural environment in the Board's care, exhibit, or make available for exhibition by other public art galleries, museums and allied organizations”¹⁷⁶.

Research on its collections is determined by the Board and Te Papa assists researchers who conduct research on any of its collections.

¹⁷² See information about Te Papa on <http://www.tepapa.govt.nz/TePapa/English/AboutTePapa/>

¹⁷³ This Maori term means “treasures”, see Annex VII for the glossary of Maori Terms

¹⁷⁴ <http://www.tepapa.govt.nz/TePapa/English/AboutTePapa/>

¹⁷⁵ <http://collections.tepapa.govt.nz/welcome.aspx?ReturnUrl=%2fDefault.aspx>

¹⁷⁶ <http://www.tepapa.govt.nz/TePapa/English/AboutTePapa/AboutUs/WhatWeDo/The+Act.htm>

*a) Te Papa's Collection Development Policy 2001 (includes revision of 2005)*¹⁷⁷

Te Papa's Collection Development Policy provides policy and guiding principles for acquisition and collection processes. These guiding principles involve *kaitiakitanga*¹⁷⁸, repatriation, *kōivi tangata*¹⁷⁹, acquisition and deaccessioning procedures and protocols on "conflict of interests resolutions". Of particular interest to this WIPO project and in relation to how Te Papa deals with indigenous material, the Policy "recognizes that the spiritual ownership of *taonga* may rest with the *hapu, iwi and whanau*. Te Papa's guiding principle in the care and management of *taonga Māori* is the acknowledgement that Te Papa is *kaitiaki* – guardian of *taonga* and that it will develop partnerships with *Iwi* in respect of *taonga* in order to fulfill its responsibility. Te Papa acknowledges that *Iwi* are the holders of *mātauranga Māori* and therefore they have the role to determine the use of and access to *mātauranga Māori*"¹⁸⁰.

*b) Te Papa Copyright and Museums Resource Guide 2001*¹⁸¹

This document provides important guidelines for museums in New Zealand. It has a focus on the management of collection, exhibitions, publications and management of their websites. The rationale is that museums use copyright material that belongs to others and holds copyright in their own materials. This document is naturally based on New Zealand's Copyright Law 1994¹⁸².

¹⁷⁷

<http://www.tepapa.govt.nz/TePapa/English/CollectionsAndResearch/CollectionCareAndAccess/AcquisitionProcess/>

¹⁷⁸ *Kaitiakitanga* refers to "guardianship" of Maori treasures, see

<http://www.tepapa.govt.nz/TePapa/English/CollectionsAndResearch/CollectionCareAndAccess/AcquisitionProcess/>

¹⁷⁹ In this respect, *kōivi tangata* means the management of "human remains", see

<http://www.tepapa.govt.nz/TePapa/English/CollectionsAndResearch/CollectionCareAndAccess/AcquisitionProcess/>

¹⁸⁰ *Mātauranga Māori* covers a broad range of knowledge and practices.

¹⁸¹ <http://www.tepapa.govt.nz/NR/rdonlyres/6A8EAEBD-5EDD-4DF9-AF09-C13A7C7BC8CF/0/Copyright.pdf#Page=2>

¹⁸² <http://rangi.knowledge-basket.co.nz/gpacts/reprint/text/2005/an/060.html>

c) Te Papa Picture Library's Terms and Conditions of Use¹⁸³

Te Papa's Picture Library's Terms and Conditions of Use provides important information when reproducing items such as paintings, prints, photographs, maps, manuscript, books, artifacts, natural history objects or any material in its collection. Some of these conditions are that Te Papa grants permission to "reproduce only for the occasion and use specified on the request form¹⁸⁴. Any additions or alterations, such as copying or overprinting, require the permission of Te Papa. All reprints, further editions, reuse of the printing plates or transparencies require a new application and fee¹⁸⁵, and are not covered by the original permission granted"¹⁸⁶.

Te Papa does not allow the taking of photographs without special permission and reserves the right to refuse applicants or charge a fee. Where permission is granted, Te Papa can request the return of transparencies and palates of photographs. Such items remain the property of the owners but Te Papa can charge a search fee and the applicants will be responsible for the safe return of all transparencies or CDs lent by Te Papa. In relation to copyright issues, Te Papa requires applicants to obtain permission of the copyright holder and to also provide "written authorization" from the copyright holder before any permission for reproduction is granted.

¹⁸³ <http://www.tepapa.govt.nz/images/termsconditions.asp?language=english>

¹⁸⁴ For more information, see <http://www.tepapa.govt.nz/images/termsconditions.asp?language=english>

¹⁸⁵ For information on fees, please see

<http://www.tepapa.govt.nz/images/termsconditions.asp?language=english>

¹⁸⁶ <http://www.tepapa.govt.nz/images/termsconditions.asp?language=english>

Resource Guides¹⁸⁷ issued by Te Papa National Services¹⁸⁸

a) *A Guide to Guardians of Iwi Treasures He Tohu ki nga Kaitiaki o nga Taonga-a-Iwi*¹⁸⁹ 2001

Museums in New Zealand are recognizing that *Iwis* must be involved in the interpretation, exhibition and care of *taonga* or treasures. The involvement of *iwis* and communities can be achieved through effective partnership. Therefore, this document provides a guide as to how museums can work towards a partnership with *Iwis* and communities. This Guide looks at developing relationship with *ivi* in relation to *taonga* that are in the care of the museum. In developing relationship with *ivi*, the Treaty of Waitangi¹⁹⁰, 1840, is an important point of reference. In dealing with Maori treasures in the museum, museum professionals must have an understanding of *tikanga* Maori because it enables the formulation of culturally appropriate ways to deal with *taongas* and *iwis*. *Tikanga* prescribes the correct way of doing things so it also relates to customs and protocols that deal with Maori cultural heritage.

b) *Working with the Media 2001*¹⁹¹

This Guide provides ways for museums to work collaboratively with the media. Te Papa acknowledges through this Guide that a carefully considered communication policy is important for cultural institutions such as museums because they draw in and enhance public attention to their events and exhibitions. The media also raises museum profiles and provides awareness for the public about their collections, exhibitions and events. This is a relationship based on honesty and integrity.

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<http://www.tepapa.govt.nz/TePapa/English/NationalServices/Resources/ResourceGuides/ResourceGuidesDownload.htm>

188 <http://www.tepapa.govt.nz/>

189 <http://www.tepapa.govt.nz/NR/rdonlyres/392E5CBE-93B2-4934-A9B9-E0FE4994E63D/0/Iwi.pdf>

190 <http://www.geocities.com/SouthBeach/Port/2470/maori/treaty.html>

191 <http://www.tepapa.govt.nz/NR/rdonlyres/B8B2C3BF-D0A5-4EAA-A3F7-A5523A9B433D/0/Media.pdf>

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c) Developing a Training Plan 2001¹⁹²

A part of best practice processes that museums have is providing training for its workers. This document provides guidelines on how to put together a training plan for the development of people that work at Te Papa museum.

d) Valuing Collections 2001¹⁹³

Museums are legally required to make valuations of their collections. This document aims at providing a valuation guide for purposes of insurance, protection and management of collection, bookkeeping and accountancy and a good incentive for computerized data basing¹⁹⁴. This guide recognizes that valuing collections in monetary terms does not undermine the spiritual and cultural values of objects. The guide provides that when *taonga* are valued, the valuation must be accompanied by a declaration that says “this valuation is solely for financial statement purposes. Financial statement does not take account of the cultural and spiritual significance of items valued”¹⁹⁵.

e) Developing your Collection: Acquisition and Deaccession Policies 2003¹⁹⁶

This document provides a guide for acquisition and deaccession. Both policies help the museum to make decisions in developing a collection that you can house and care for properly. It also provides procedures where they can clarify issues of ownership and other legal and ethical matters to inform the public, staff, governing body, and other interested people about how the collection is developed¹⁹⁷.

¹⁹² <http://www.tepapa.govt.nz/NR/rdonlyres/3AE5DA37-AB25-45D5-B07E-21EC714CAF65/0/DevelopTraining.pdf>

¹⁹³ <http://www.tepapa.govt.nz/NR/rdonlyres/3CD33B57-1F32-4F79-83BD-2E67535D69B8/0/Valuing.pdf>

¹⁹⁴ For more on why value your collection, see <http://www.tepapa.govt.nz/NR/rdonlyres/3CD33B57-1F32-4F79-83BD-2E67535D69B8/0/Valuing.pdf>

¹⁹⁵ <http://www.tepapa.govt.nz/NR/rdonlyres/3CD33B57-1F32-4F79-83BD-2E67535D69B8/0/Valuing.pdf>, p.7

¹⁹⁶ <http://www.tepapa.govt.nz/NR/rdonlyres/135AC849-1EDD-4768-9A20-4C34486F606E/0/DevelopingCollection.pdf>

¹⁹⁷ <http://www.tepapa.govt.nz/NR/rdonlyres/135AC849-1EDD-4768-9A20-4C34486F606E/0/DevelopingCollection.pdf>, p.1

f) Matauranga Maori and Museum Practice 2006¹⁹⁸

This document provides a practical guide on how to deal with *matauranga Maori* and how museums can incorporate them into their practice. Te Papa museum interprets *matauranga Maori* as “a dynamic and evolving system of knowledge”¹⁹⁹ which is linked together by genealogy and kinship connections. Te Papa museum acknowledges that *matauranga Maori* creates *imi* and community involvement in the way treasures are cared for and managed, and it also provides a partnership between the museum and the *imis* and communities. What important in this system of knowledge are the protocols that govern use of such knowledge for Maori.

g) Acquisition Strategy 2006/07²⁰⁰

The Acquisition Strategy sets out the desired outcomes, directions and priorities for the collection development on a three-yearly basis. The Strategy sets out Te Papa’s desired outcomes to include being a depository for the preservation of cultural and natural heritage and having collections that will enhance understanding of New Zealand culture, flora and fauna.

h) Mana Taonga Principles 1992²⁰¹

This document highlights a recommendation made by the Maori Advisory Group to the Museum Development Board, to endorse the concept of *mana taonga*²⁰² as a principle to be used by the museum. This principle has been recognized by Te Papa and it is the recognition of the spiritual and cultural connections of treasures to their people through their genealogy.

¹⁹⁸ <http://www.tepapa.govt.nz/NR/rdonlyres/390CC99C-C4DB-4E60-B917-5C33A4587E14/0/MataurangaMaori.pdf>

¹⁹⁹ <http://www.tepapa.govt.nz/NR/rdonlyres/390CC99C-C4DB-4E60-B917-5C33A4587E14/0/MataurangaMaori.pdf>, p.3

²⁰⁰ For information on the strategy, see <http://www.tepapa.govt.nz/TePapa/English/CollectionsAndResearch/CollectionCareAndAccess/AcquisitionProcess/>

²⁰¹ <http://www.tepapa.govt.nz/TePapa/English/CollectionsAndResearch/Collections/TaongaMaori/>

²⁰² See Annex VII for the glossary of Maori Terms

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Governance Policies²⁰³ issued by AM²⁰⁴

The history of the Auckland Museum (AM) dates back to 1852. The Auckland Museum is a local museum and is funded by local bodies and organizations. It remains the museum in New Zealand housing the largest collections of Maori and Pacific material.

The Auckland Museum Governance Policies direct the museum in its practices when dealing with cultural heritage. The Governance Policies provide guidelines on four main topics. The first is “collection management” which deals with acquisition, de-accessioning, loans, storage and conservation of objects, collection information systems, guardianship of *taonga* and human remains. The second is “corporate services” and this deals with financial, human resources and relationship with Maori iwis and communities. The third looks at “gathering knowledge” in terms of research and policies that relates to museum practice and use of research. The fourth is in relation to “sharing of knowledge” and it includes policies on sharing collections, interpreting collections, exhibiting and library information services.

4.2 ARCHIVES AND LIBRARIES

Archive of Maori and Pacific Music, the University of Auckland²⁰⁵

The Archive of Maori and Pacific Music is home to the biggest Pacific ethnographic sound collection in the world. The Archive was founded in 1970 with as purpose “to promote research into the music of the indigenous peoples of New Zealand, the Maori, and those of the peoples of the Pacific Islands”²⁰⁶. This also includes the awareness-raising of “knowledge and understanding of Maori and Pacific music, from the past and present”²⁰⁷. The Archive stores, curates, records, copies, disseminates and promotes access to its collections.

²⁰³ <http://www.aucklandmuseum.com/default.asp?t=249>

²⁰⁴ <http://www.aucklandmuseum.com/>

²⁰⁵ <http://www.arts.auckland.ac.nz/research/index.cfm?P=1980>

²⁰⁶ <http://www.arts.auckland.ac.nz/research/index.cfm?P=435>

a) Guidelines for Use 2006

This document provides a guide for users of the Archive. It outlines the resources the archive holds and the system it uses. It also provides procedures for requesting materials. Of importance for this project is its reference to those who wish to make copies of copyright materials and the procedures that must be followed. The Archive uses contracts in their dealings with depositors of material and users of the Archive.

National Library of New Zealand²⁰⁸

The National Library is governed by the National Library of New Zealand Act 2003²⁰⁹. The role of the National Library of New Zealand is to “collect and maintain literature and information resources that relate to New Zealand and the Pacific, make this information readily available and preserve New Zealand's documentary heritage for generations to come”²¹⁰. The National Library has four key policies.

a) Collection Policy²¹¹

The Collection Policy covers the Alexander Turnbull Library Collections, National Libraries General and Schools. This policy also outlines who owns materials that are kept in the National Library and its other branches. The Library recognizes the fundamental importance of Maori and Pacific resources and it acts as a trusted guardian of Maori and Pacific materials.

b) Charging Policy²¹²

This Policy provides guidelines for charging for the use of specialists' knowledge to locate information. The Policy states that charging will be made in accordance with the product and services required by the group or individual.

²⁰⁷ <http://www.arts.auckland.ac.nz/research/index.cfm?P=1980>, p.1

²⁰⁸ <http://www.natlib.govt.nz/en/about/1corpinfo.html>

²⁰⁹ <http://www.natlib.govt.nz/catalogues/library-documents/nlnz-act-03>

²¹⁰ <http://www.natlib.govt.nz/catalogues/library-documents/nlnz-act-03>

²¹¹ http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/nz_collections.pdf

²¹² http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/nz_charging.pdf

*c) Preservation Policy*²¹³

This Policy highlights the National Library's commitment to care and preservation of material in its care. This policy complements the National Library of New Zealand Collection Policy, 1996²¹⁴. The provisions of s55 of the Copyright Act, 1994²¹⁵ are referred to in this Policy in relation to when copies may be created in forms such as microforms, photocopies, photographs, transcripts, video and other technological mediums.

*d) Access Policy*²¹⁶

This Policy ensures access to collections, databases, products and services provided by the Library. The National Library supports access for individuals, researchers, schools, Maori and other interested individuals and groups. However, access to materials in the National Library must comply with the Copyright Act, 1994.

Deposit Agreements, Policies and Conditions issued by the Macmillan Brown Library of the University of Canterbury²¹⁷

The Macmillan Brown Library has a formal agreement²¹⁸, which governs its relationship with depositors of materials. The University of Canterbury's Music Collection Policy Document²¹⁹ deals with a variety of topics, which ranges from music, library and monographs. It also deals with preservation, security and its relationship with other libraries.

*a) University of Canterbury Library Policy, A Guide for Research Students and their Supervisors 2005*²²⁰

This Policy outlines the University of Canterbury's position on intellectual property particularly in the context of student research. This Policy addresses issues such as

²¹³ http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/nz_preservation.pdf

²¹⁴ See Preservation Policy document:

http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/nz_preservation.pdf

²¹⁵ <http://www.knowledge-basket.co.nz/gpacts/public/text/1994/an/143.html>

²¹⁶ http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/nz_access.pdf

²¹⁷ <http://library.canterbury.ac.nz/mb/>

²¹⁸ www.canterbury.ac.nz/ucpolicy/GetPolicy.aspx?file=collectiondevelopmentpolicy.pdf

²¹⁹ <http://library.canterbury.ac.nz/collserv/cdpmusic.shtml>

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copyright, embargoes, joint publication, sponsorship, contracts and agreements. Intellectual property rights arises out of students' work so it is important that students know their rights, and who owns copyright and who may control works they produce when they are writing theses. The University may also embargo a student's thesis if the student has made prior agreement with an outside person or body. Such embargo may arise in order to protect information that might be of commercial value, where a student intends to make a patent application, where the applicant plans to publish his/her work and such plan will jeopardize the subsequent copyright owners, and finally, where the subject of the thesis is a person with high status who is still alive or just recently been deceased²²¹.

4.3 RESEARCH

Pasifika Education Research Guidelines 2002²²² issued by the Ministry of Education of New Zealand²²³

The Pasifika Education Research Guidelines are designed for both Pacific and non-Pacific researchers, who are focusing their work on “Pacific education issues”²²⁴. Emphases have been placed on guiding these researchers to effectively deal with the “consultation process” and the “cultural and philosophical contexts of Pacific research”²²⁵. The main purpose of these Guidelines is “to ensure that policy development and policy implementation of Pacific education is based on informed research and that it is empowering for both researchers and the Pacific communities in New Zealand”²²⁶. These Guidelines therefore provide a framework for best practices in researching with Pacific participants and information on how researchers should deal with intellectual property issues that may arise in research contexts. Intellectual property, especially in the cultural context, raises particular questions on “traditional knowledge ownership”²²⁷. These IP concerns such as the “issues of transfer”

²²⁰ www.canterbury.ac.nz/ucpolicy/GetPolicy.aspx?file=mastersguidelines.pdf%20

²²¹ This policy is due for review in October 2006. It can be accessed at this page <http://www.canterbury.ac.nz/ucpolicy/>. See p.3 of UC Policy Library for more detail.

²²² <http://www.educationcounts.edcentre.govt.nz/publications/downloads/pacrsrch--guide.pdf>

²²³ <http://www.minedu.govt.nz/index.cfm?layout=document&documentid=7653&data=1>

²²⁴ <http://www.educationcounts.edcentre.govt.nz/publications/pasifika/guidelines.html>

²²⁵ <http://www.educationcounts.edcentre.govt.nz/publications/pasifika/guidelines.html>

²²⁶ <http://www.educationcounts.edcentre.govt.nz/publications/downloads/pacrsrch--guide.pdf>, p.2

²²⁷ <http://www.educationcounts.edcentre.govt.nz/publications/downloads/pacrsrch--guide.pdf>, p.41

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and the “use of knowledge” obtained through interviews²²⁸ form an important part of the entire research process and demand particular attention. As the transfer of knowledge is a source ingredient for maintaining the cultural heritage and traditions of indigenous communities, prior consent is therefore crucial to obtain before the interview process can actually commence.

The Guidelines have generally reasoned that an incentive to transfer knowledge by the communities is usually derived from the ability “to find value” in it which is also a crucial base for building “an ongoing relationship” between the fieldworker and the persons being interviewed²²⁹. Thus, “the issue of collective ownership of knowledge places a type of check and balance system on the interviewer and interviewee, whereby the knowledge imparted is given with the understanding that ethical and other cultural concerns will be addressed and adhered to”²³⁰.

Guidelines on Pacific Health Research 2004²³¹ issued by HRC²³²

These Guidelines are specifically focused on “Pacific health research”, which include “public health and social science research” which are mainly funded by the Health Research Council²³³. Since the Pacific peoples in New Zealand are here again the focal point of research, the Guidelines aim at developing “Pacific ethical principles of research”²³⁴. These guiding principles would form the base for “forming and maintaining ethical research relationships”, which are 1) respect, 2) cultural competency, 3) meaningful engagement, 4) reciprocity, 5) utility, 6) rights, 7) balance, 8) protection, 9) capacity building and 10) participation²³⁵. Each of these principles is described and ways of how to put these principles into practice are included. Of particular interest and relevance to this project is the section on protection. It states that the “knowledge that is based on experience and expertise belongs to the research participants and should be acknowledged as such [and]

²²⁸ <http://www.educationcounts.edcentre.govt.nz/publications/downloads/pacrsrch--guide.pdf>, p.41

²²⁹ <http://www.educationcounts.edcentre.govt.nz/publications/downloads/pacrsrch--guide.pdf>, p.41

²³⁰ <http://www.educationcounts.edcentre.govt.nz/publications/downloads/pacrsrch--guide.pdf>, p.41

²³¹ <http://www.hrc.govt.nz/assets/pdfs/policy/Final%20version%20May.pdf>

²³² <http://www.hrc.govt.nz/>

²³³ <http://www.hrc.govt.nz/assets/pdfs/policy/Final%20version%20May.pdf>, p.1

²³⁴ <http://www.hrc.govt.nz/assets/pdfs/policy/Final%20version%20May.pdf>, p.1

where appropriate researchers should uptake protective measures that will safeguard indigenous Pacific knowledge and knowledge holders appropriately”²³⁶.

4.4 DECLARATIONS

The Mataatua Declaration on Cultural and Intellectual Property of Indigenous Peoples, 1993²³⁷

The Mataatua Declaration was a result of first international conference on the Cultural and Intellectual Property Rights of indigenous peoples that was held in the Bay of Plenty New Zealand in 1993. This document called for the United Nations’ members to adopt and strengthen appropriate policies and legal instruments that will protect indigenous intellectual and cultural property of indigenous peoples. The Declaration made some recommendations to indigenous peoples. The recommendations are to develop policies, best practices, code of ethics, guidelines for the use, and preservation and protection of their traditional and customary knowledge. This document makes reference to museums by stating that “museums must provide to the country concerned or indigenous peoples concerned an inventory of cultural objects in their possession”²³⁸. Museums are to also return human remains and any indigenous cultural objects held in their possession²³⁹.

4.5 CODES OF ETHICS

Code of Ethics²⁴⁰ issued by Museums Aotearoa²⁴¹

Museums Aotearoa (MA) is an independent professional organization²⁴² within the museum society of New Zealand. However, the organization’s members do not only include

²³⁵ <http://www.brc.govt.nz/assets/pdfs/policy/Final%20version%20May.pdf>, p.2

²³⁶ <http://www.brc.govt.nz>

²³⁷ WIPO Creative Heritage Database at

<http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/mataatua.pdf>

²³⁸ <http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/mataatua.pdf>, p.4

²³⁹ <http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/mataatua.pdf>, p.4

²⁴⁰ <http://www.museums-aotearoa.org.nz/Site/publications/publications.aspx#ethics>

²⁴¹ <http://www.museums-aotearoa.org.nz>

²⁴² <http://www.museums-aotearoa.org.nz/Site/about/about.aspx>

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museums, but also “public art galleries, historical societies, science centres, and individuals connected or associated with arts, culture and heritage in New Zealand”²⁴³.

Museums Aotearoa has a Code of Ethics which follows the International Council of Museums’ (ICOM) Code of Ethics but has been adapted for New Zealand circumstances, paying attention to *taonga* and bicultural issues²⁴⁴. Therefore, the Code has an appendix in which “museum workers may also refer to the ICOM Code of Ethics for Museums for general guidance on professional matters”²⁴⁵. Furthermore, the Museum Aotearoa’s Code of Ethics describes in full the responsibilities of museums, governing bodies and museum staff. Each body has responsibilities towards one another, the collections and the public.

Proposed Professional Registration Scheme for the New Zealand Library and Information Profession 2006²⁴⁶ issued by LIANZA²⁴⁷

Part of promoting best practices in the library and information fields in New Zealand is LIANZA’s work to develop a registration scheme for its members and its employers. It is aimed at professionals with a background in “library and information management studies”²⁴⁸. The main focus of this Registration Scheme is thus on “professional and technical competencies”²⁴⁹ as the professionals need to be able to show that they can actually apply their learned knowledge and “professional ethics” in their daily conduct²⁵⁰.

²⁴³ <http://www.museums-aotearoa.org.nz/Site/about/about.aspx>

²⁴⁴ Information based on personal communication with the Executive Director Phillipa Tocker of Museum Aotearoa, Sept. 2006

²⁴⁵ <http://www.museums-aotearoa.org.nz/Site/publications/publications.aspx#ethics>, Museums Aotearoa Code of Ethics, p.9

²⁴⁶ http://www.lianza.org.nz/library/files/store_013/Registration.pdf

²⁴⁷ <http://www.lianza.org.nz/>

²⁴⁸ http://www.lianza.org.nz/library/files/store_013/Registration.pdf, p.4

²⁴⁹ http://www.lianza.org.nz/library/files/store_013/Registration.pdf, p.5

²⁵⁰ http://www.lianza.org.nz/library/files/store_013/Registration.pdf, p.4

CHAPTER V: CULTURAL RESOURCES IN PALAU

5.1 THE MINISTRY OF COMMUNITY AND CULTURAL AFFAIRS

The main institutions that are responsible for the development and implementation of cultural policies are the Division of Cultural Affairs and Historic Preservation Office of the Ministry of Community and Cultural Affairs. Legislation concerning cultural heritage, intellectual property rights and copyright are addressed in Chapter 1, Title 19 of the “Palau National Code: Historical and Preservation Act of 1982”²⁵¹. There seem to be no further reference on any existing national legislation on intellectual property and copyright²⁵².

The Division of Cultural Affairs is responsible for surveying, collecting and interpreting the cultural heritage. In 2003, Palau took the initiative to conduct a national inventory of cultural and historic heritage.

National Archive²⁵³

The Palau National Archive, established in 1988, aims at “preserving and protecting the country’s file records and documents into microfilms for the present and future generations”²⁵⁴. Recordings of oral tradition are also available in an index system. The “Palau Archives Legislation” of 1990 regulates the collection and preservation of materials and is incorporated in Palau’s National Public Law²⁵⁵. An important intellectual property issue involving this Archive is that no restrictions are made available in the use of the records, since these are entirely perceived as “public information” and are therefore open to all “public and private researchers”²⁵⁶. However “a minimum fee” is bound to be paid in order to obtain a copy.

²⁵¹ http://www.spc.int/Culture/activities_palau.htm

²⁵² http://www.spc.int/Culture/activities_palau.htm

²⁵³ http://www.spc.org.nc/Culture/activities_palau.htm#top

²⁵⁴ <http://www.palau.gov.net/mincommunity/natlarch.html>

²⁵⁵ <http://www.palau.gov.net/mincommunity/natlarch.html>

²⁵⁶ <http://www.palau.gov.net/mincommunity/natlarch.html>

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Belau National Museum²⁵⁷

The Belau Museum was established in 1955 to “preserve and protect the nation’s cultural heritage through collection, identification, documentation, preservation, interpretation and exhibition of specimens, artefacts and other Palauan cultural property”²⁵⁸. It holds a collection of cultural materials²⁵⁹, which include wooden objects, contemporary art, a natural history collection, picture library, videos and films and a large inventory of postcards. The Museum has “nine sections, which are 1) Administration, 2) Ethnographic Objects/Art Collections, 3) Media Collections, 4) Research Library, 5) Art Program, 6) Ulekdubs Shop, 7) Maintenance & Facility, 8) Natural History and (9) Museum Pedagogy”²⁶⁰. The Museum is also active in conducting “research activities” and collaborates with other cultural institutions at international level²⁶¹.

Library²⁶²

The Library has a collection of books, periodicals, maps, plans, research papers, research notes, clippings and collection of cards. They have a system of cataloguing which is similar to that of the Library of Congress in the USA.

²⁵⁷ <http://www.belaunationalmuseum.com/>

²⁵⁸ <http://www.belaunationalmuseum.com/aboutbnm/history.html>

²⁵⁹ <http://www.belaunationalmuseum.com/collections/index.html>

²⁶⁰ <http://www.belaunationalmuseum.com/aboutbnm/index.html>

²⁶¹ http://www.spc.int/Culture/activities_palau.htm

²⁶² <http://www.belaunationalmuseum.com/library/index.html>

CHAPTER VI: CULTURAL RESOURCES IN TONGA²⁶³

The Prime Minister’s office is responsible for developing and implementing cultural policy at the governmental level. Other relevant institutions include the Ministry of Education, Culture, Youth and Sports, Ministry of Labour and Commerce, Tonga National Centre and Tonga Traditions Committee. The Tonga Traditions Committee is responsible for “surveying, collecting, interpreting and researching cultural heritage”²⁶⁴.

6.1 MUSEUMS

Tupou College Museum²⁶⁵

This Museum, which was founded as a “school museum”, has been converted into a national museum²⁶⁶. Its collections reflect “the history of Tonga, occupations of early settlers and art works”²⁶⁷, which include historical items such as “carvings, tapa designs, coconut ornaments, spears, clubs and other items used by ancient warriors in tribal conflicts and wars and items of contemporary handicrafts and art works”²⁶⁸. The Museum’s displays comprise “cultural materials such as axe handles, fishing equipment, clubs, whips and spears from pre- and post-European settlement, and cultural history items and art works”²⁶⁹.

No guidelines, protocols, code of ethics or specific policies were found to be associated with this museum.

Tonga National Museum as part of the National Centre²⁷⁰

The Museum was established in 1998 by Princess Pilolevu as a gift to her father, the late King Taufa’ahau Tupou IV²⁷¹ for his 80th birthday. Its collection includes both traditional

²⁶³ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁶⁴ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁶⁵ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁶⁶ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁶⁷ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁶⁸ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁶⁹ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁷⁰ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁷¹ http://www.nzherald.co.nz/section/2/story.cfm?c_id=2&objectid=10401056

and contemporary objects. The National Centre also displays cooking, weaving, dance and performances. The display of culture in this way fits in perfectly with the concept of museums without walls. The display is what Tongan people understand heritage to be, as part of their daily lives and not something that they have to visit a building or an institution to see. There are also no guidelines, code of ethics, protocols or policies at this Museum.

6.2 ARCHIVE AND LIBRARY

The Royal Archive and Library²⁷²

The Royal Palace Archive and Library was established in 1954 for the purpose of collecting and preserving “oral history, history, culture, and heritage”²⁷³. The Royal Palace Archive and Library’s collections consist of “correspondences, regulations, laws, parliamentary debates, land and title disputes, partial church correspondences, a small amount of maps, plans, photographs, films, microfilms and recordings of oral tradition”²⁷⁴ and has a manual filing system. In order to access the Royal Palace Archive and Library, it is obligatory to apply in advance. There are also certain requirements to comply with before research can be carried out in Tonga, which include the obligation to provide “two copies of the completed research” to the Prime Minister’s Office²⁷⁵. The central registry system of the Office keeps records of all the researches conducted according to “the name of the relevant researcher or organization”²⁷⁶. Public access to research files is available through appointment. No formal codes of ethics, condition of use, agreements or the like are in place.

Catholic Diocesan Archives²⁷⁷

The materials in this collection consist of “correspondences, reports and exchanges between church leaders in the Pacific and their religious superiors”²⁷⁸. These materials are mainly written in French. These Archives also require certain conditions to comply with before

²⁷² http://www.spc.org.nc/Culture/activities_tonga.htm

²⁷³ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁷⁴ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁷⁵ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁷⁶ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁷⁷ http://www.spc.org.nc/Culture/activities_tonga.htm

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permission for access is granted. However, the Archives are off limits to the general public. Only individuals conducting “scholarly research” are granted access provided that they do not publish without permission any documents which are less than 50 years old and not of public character²⁷⁹. Furthermore, “special authorization sought from the Oceania Marist Province Archives must be obtained in order to publish items such as diaries and whole sets of correspondence”²⁸⁰.

6.3 LIBRARY

University of the South Pacific Centre Library²⁸¹

The University of the South Pacific Centre Library is an academic library. Its collection includes “books, periodicals, meeting reports or studies, photographs and reference documents, theses, Tongan musical cassettes, textbooks and annual reports from 1985 to 1993”²⁸². Although the Library functions as a “public library” by providing access to also “high school students and the general public”, it has restricted the borrowing practices to “students of the Training College” only²⁸³. No formal guidelines, terms and condition of use, protocols or agreement forms were found.

²⁷⁸ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁷⁹ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁸⁰ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁸¹ http://www.spc.org.nc/Culture/activities_tonga.htm

²⁸² http://www.spc.org.nc/Culture/activities_tonga.htm

²⁸³ http://www.spc.org.nc/Culture/activities_tonga.htm

6.4 RESEARCH

Government of Tonga Research Conditions 2003²⁸⁴

These Research Conditions are directly issued by the Prime Minister's Office, Nuku'alofa, Tonga, which require:

- i. A detailed description of the proposed research project, endorsed by Head of Faculty of University or Institution concerned
- ii. Evidence of financial support or funding arrangements for research in Tonga
- iii. A supporting statement for research from Head of Faculty of University or Institution concerned
- iv. Proposed starting and finishing dates for the project
- v. A written and signed statement of willingness to submit two completed copies of research thesis to the Prime Minister's Office, free of charge
- vi. A deposit of USD\$1,000 to be made before the commencement of any research work. The deposit will be reimbursed on submission of two completed copies of research thesis to Prime Minister's Office
- vii. Evidence of medical fitness to carry out research work
- viii. Evidence of return ticket to one's own country at completion of research work.

²⁸⁴ This research guideline is issued by the Prime Minister's Office and can only be accessed through consultation with the Prime Minister's Office

CHAPTER VII: CULTURAL RESOURCES IN VANUATU

7.1 VANUATU CULTURAL CENTRE²⁸⁵

The Vanuatu National Cultural Council²⁸⁶ is in charge of the organization and observation of cultural research and its roles are to “define and implement national research policies, to define national research priorities, and to sponsor, regulate and carry out programs of research”²⁸⁷. The Vanuatu National Cultural Council also manages the options for foreign nationals to conduct cultural research on and in Vanuatu. “The Vanuatu National Cultural Council is the parent body and acts as the board of the Vanuatu Cultural Centre”²⁸⁸.

National Museum²⁸⁹

The National Museum’s main function is “to record and document the culture and cultural history of the different cultural groups in Vanuatu”²⁹⁰. The Museum is also involved in a diverse range of tasks from conserving objects, to organizing exhibitions and educational activities, to dealing with the export practices of artefacts²⁹¹. In the last one, the Museum is obliged to carry out certain inspections on artefacts for export and to consequently produce an “Artefact Export Permit”²⁹².

National Library²⁹³

The National Library has three main missions, which include 1) maintaining collections and preservation activities according to the Deposit of Books Act 1998²⁹⁴, 2) disseminating its

²⁸⁵ <http://www.vanuatuculture.org/>

²⁸⁶ The Vanuatu National Cultural Council was established through Act 30 of 1985, a revised version of the Act can be accessed here:

http://cow.vanuatu.usp.ac.fj/Paclawmat/Vanuatu_legislation/English/1988_Consolidation/CAP%20186%20-%20VANUATU%20NATIONAL%20CULTURAL%20COUNCIL.pdf

²⁸⁷ <http://www.vanuatuculture.org/research/index.shtml>, para. 2

²⁸⁸ Quote by Mr. Regenvanu, Director of the Vanuatu Cultural Centre

²⁸⁹ http://www.vanuatuculture.org/museum/050520_nationalmuseum.shtml

²⁹⁰ http://www.vanuatuculture.org/museum/050520_nationalmuseum.shtml

²⁹¹ http://www.vanuatuculture.org/museum/050520_nationalmuseum.shtml

²⁹² http://www.vanuatuculture.org/museum/050520_nationalmuseum.shtml

²⁹³ http://www.vanuatuculture.org/library/050517_nationallibrary.shtml

²⁹⁴ http://www.paclii.org/vu/legis/consol_act/cbova223/

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collections on “literary cultural heritage” to the public at large and 3) acting as a central provider for “specialized information and education service”²⁹⁵. The Library’s collection has materials in both English and French and contains “anthropological and archaeological materials, art and arts references, autobiographical records and biographies, a large section of works on the languages of Vanuatu, mission histories, oral traditions, cultural, historical and political records, journals, newspapers and periodicals published in or about the Pacific region and Vanuatu”²⁹⁶.

National Photo, Film and Sound Archive²⁹⁷

The National Photo, Film and Sound Archive serves as a focal point for the compilation of “custom, culture and tradition in Vanuatu in terms of audio, audiovisual, photographic and digital formats. It has the most comprehensive collection of data about custom, culture and tradition in Vanuatu in these formats than in the world”²⁹⁸. Its objectives are in the area of preserving, documenting, recording, repatriating, promoting and disseminating Vanuatu’s “audio, audiovisual and photographic heritage”²⁹⁹. Fieldwork and research are also a part of the activities conducted by the Archive. In addition, the Archive allows for the use of its collections “at local meetings, courses or workshops”³⁰⁰.

Vanuatu Cultural Research Policy³⁰¹

This Cultural Research Policy consists of policies, principles, research processes, and copyright considerations³⁰². This includes, amongst other things, understanding Vanuatu’s “kastom”³⁰³. There is also a “research agreement” attached which has to be filled in and submitted by all researchers before undertaking research. As any other cultural research, it all involves particular collaborations with communities and indigenous peoples. This Policy

²⁹⁵ http://www.vanuatuculture.org/library/050517_nationallibrary.shtml, para. 3

²⁹⁶ http://www.vanuatuculture.org/library/050517_nationallibrary.shtml, para. 2

²⁹⁷ http://www.vanuatuculture.org/film-sound/050517_nffsu.shtml

²⁹⁸ http://www.vanuatuculture.org/film-sound/050517_nffsu.shtml, para. 1

²⁹⁹ http://www.vanuatuculture.org/film-sound/050517_nffsu.shtml

³⁰⁰ http://www.vanuatuculture.org/film-sound/050517_nffsu.shtml

³⁰¹ http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/vanuatu_policy.pdf

³⁰² http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/vanuatu_policy.pdf

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has made a significant link to Vanuatu's Copyright Act³⁰⁴. It require researchers to “respect traditional copyright protocols”³⁰⁵ which are outlined in the Act. Thus in cases of breach, sections 37 and 38 of the Act will then be applied which include a fine of 1,000,000 vatu (USD9500³⁰⁶), and a possible imprisonment³⁰⁷.

National Policy on Filming in Vanuatu³⁰⁸

This Policy provides conditions in relation to filming in Vanuatu. The National Film Policy acknowledges the “National Film and Sound Unit of the Vanuatu Cultural Centre” as a policy and notification centre for all film making activities within Vanuatu³⁰⁹. Prior consent from the Cultural Centre must be obtained by all “foreign film makers” who are interested in filming a documentary on culture. Furthermore, certain conditions must be fulfilled before filming can take place. These include the submission of a “formal application with a confirmed itinerary” for filming, the payment of a “minimum authorization fee of 50 000 vatu (USD475) for a travel program or 100 000 vatu (USD950) for a documentary program”, the submission of a “deposit comprising of 100 000 vatu (USD950) and copies of the actual filmings” and, the film maker's consent to be “accompanied by a representative from the Centre”³¹⁰. The last one is simply to guarantee that the filming activity complies with “culturally sensitive” issues or to help the film maker in the filming process. One must note, however, that the Centre is in full control and that any violation will result in a “confiscation action of both equipments and filmings” by the Centre³¹¹.

³⁰³ In the policy, this is defined as indigenous knowledge and practices, see

http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/vanuatu_policy.pdf

³⁰⁴ http://www.wipo.int/tk/en/laws/pdf/vanuatu_copyright.pdf

³⁰⁵ See point 6 of the Research Policy,

http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/vanuatu_policy.pdf

³⁰⁶ 100 vatu = (roughly) USD 0.95, see for daily currency rates

<http://finance.yahoo.com/currency/convert?amt=100&from=VUV&to=USD&submit=Convert>

³⁰⁷ http://www.wipo.int/tk/en/laws/pdf/vanuatu_copyright.pdf, p.29-30

³⁰⁸ http://www.vanuatuculture.org/research/050627_nationalfilmpolicy.shtml

³⁰⁹ http://www.vanuatuculture.org/research/050627_nationalfilmpolicy.shtml

³¹⁰ http://www.vanuatuculture.org/research/050627_nationalfilmpolicy.shtml

³¹¹ http://www.vanuatuculture.org/research/050627_nationalfilmpolicy.shtml

Moratorium on Commercial Filming of Nagol 2006³¹²

Another measure developed by the Centre followed the intensification of the commercialization of the Nagol or Pentecost land dive ceremony³¹³. This ceremony had attracted the attention of many third parties, including commercial film crews, groups of singers and dancers and tour operators. The tradition therefore risked to becoming a sole “commercial attraction” as it was practically no longer perceived as being culturally significant. The immense attraction also caused the ceremony to be performed every Saturdays in May and June of each year instead of the original once or twice a year. The local communities had consequently argued that the “commercial attraction and activities” such as filming distorted the traditional ceremony and that there was a lack of transparency and fairness in the remuneration paid by the third parties to these communities.

In order to prevent such cases, the Centre has therefore started developing policies and legal measures, which includes a “moratorium” on the filming of the ceremonies, based on section 6.2.i of Chapter 186 of the Vanuatu National Cultural Council Act, 1988³¹⁴. This moratorium is thus an initiative of the Centre to persuade all parties involved to engage in the long-term process for the development of a coordinated Management Plan of the tradition. The objectives are to preserve the cultural meaning of traditions, to secure the transmission of traditional knowledge to future generations, and to promote the acknowledgement of customary owners through a distinct entity. In other words, besides safeguarding and preserving traditional knowledge and expressions, the intellectual property rights of customary owners would be made known and respected.

³¹² http://www.vanuatuculture.org/film-sound/20051122_pentecost_land_dive.shtml

³¹³ See http://www.vanuatuculture.org/film-sound/20051122_pentecost_land_dive.shtml

³¹⁴ This Section indicates the right to “acquire copyright” by the Vanuatu National Cultural Council, see WIPO Heritage Database for the Vanuatu National Cultural Council Act, 1988.

CHAPTER VIII: CULTURAL RESOURCES IN PAPUA NEW GUINEA

8.1 RESEARCH

Conditions and Guidelines for Researchers/Film-Makers³¹⁵ in PNG³¹⁶

The Conditions and Guidelines are intended for researchers who wish to carry out research and fieldwork in Papua New Guinea. For most instances, research visas are issued for periods of two months and those who want to stay longer can apply for extension of their visa. The granting of a visa to enter Papua New Guinea for research is dependent on the feasibility judgment of the research proposal by the Research Institute to the Department of Foreign Affairs in Port Moresby³¹⁷.

The proposal must be accompanied by “details of the academic institution the researcher is affiliated to, sponsorship and funding, and a signed copy of this ‘Conditions and Guidelines for Researchers/Film-Makers in Papua New Guinea’ agreement form”³¹⁸. The conditions also set out that two copies of all publications, containing results from such studies are to be sent to the Institute. Two copies of CD-ROMs, films, tapes are to also be forwarded to the National Research Institute³¹⁹.

In relation to cultural property, the Conditions and Guidelines state that the “National Cultural Property (Preservation) Ordinance (amended 1967)³²⁰ of Papua New Guinea is designed to preserve the cultural heritage of the country for the future generations”³²¹. “Caves or places of ancient human remains, carving, painting, representation on rock or

³¹⁵ http://www.nri.org.pg/pages/research_in_PNG_files/Researchconditions&guide.pdf

³¹⁶ http://www.nri.org.pg/pages/research_in_PNG.htm

³¹⁷ http://www.nri.org.pg/pages/research_in_PNG_files/Researchconditions&guide.pdf, general information section.

³¹⁸ For more requirements on conditions to accompany research proposal, please see National Research Institute’s conditions and guides at, http://www.nri.org.pg/pages/research_in_PNG.htm

³¹⁹ http://www.nri.org.pg/pages/research_in_PNG_files/Researchconditions&guide.pdf, research findings section.

³²⁰ <http://www.ru.nl/cps/keys/nat.html>, for full text see http://www.pacii.org/pg/legis/consol_act/ncpa1965474.rtf

³²¹ http://www.nri.org.pg/pages/research_in_PNG_files/Researchconditions&guide.pdf

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cave, deposit of ancient pottery or historic remains, ceremonial sites or burial sites”³²² are places of cultural significance which are granted protection by the Ordinance.

In reference to intellectual property rights, the Condition and Guidelines document does not specifically deal with issues of ownership relating to outcome of research or knowledge obtained for the product of such research. However, it makes reference to intellectual property rights by stating that, researchers should make clear in their research proposals “all work to be carried out on specimens of flora and fauna and marine biota”³²³. Information on the intended use of any specimens collected should be provided, as well as on any applications for intellectual property titles (such as patents) that may be made in relation to such collection. Finally, copies of Memoranda of Understanding or Agreements with Papua New Guinea organizations, in respect of such activities and any patent rights or gains, shall be included as part of the application for research³²⁴.

8.2 MUSEUMS

Written Permission and Letters of Request³²⁵

This written permission is required as part of the Conditions and Guidelines to researchers already discussed above who are also interested in conducting research in physical locations protected by Papua New Guinea National Museum and Art Gallery Act³²⁶, 1992. It is of importance in this context to refer to it as a separate process as this is a process which is not only used in Papua New Guinea, but is also practiced in other Pacific countries and especially significant when there are no formal code, guidelines, or forms used in cultural institutions in some of the Pacific Islands. Therefore, a person who wishes to work or conduct research on any sites referred to above must obtain written permission from the

³²² http://www.nri.org.pg/pages/research_in_PNG_files/Researchconditions&guide.pdf, cultural property section

³²³ http://www.nri.org.pg/pages/research_in_PNG_files/Researchconditions&guide.pdf, p.9

³²⁴ http://www.nri.org.pg/pages/research_in_PNG_files/Researchconditions&guide.pdf

³²⁵ http://www.nri.org.pg/pages/research_in_PNG_files/Researchconditions&guide.pdf

Researcher’s can make written permissions and letter of request as part of the process.

³²⁶ For the Papua New Guinea National Museum and Art Gallery Act 1992, see http://www.paclii.org/pg/legis/consol_act/nmaaga1992310.rtf

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Trustee of the PNG National Museum and Art Gallery prior to commencement of the research or work.

Permits also allow for the export of materials out of Papua New Guinea. The exports of materials are protected by the Ordinance and permits are only issued by the National Museum³²⁷. In cases where materials are to be exported, a letter of request should be addressed to the Museum Director, indicating the nature of the material sought³²⁸.

National Museum and Art Gallery Act 1992³²⁹

One significant point to make about Papua New Guinea in terms of its legal system is the fact that makers of its constitution had put in place an instrument that enabled the underlying law of Papua New Guinea to be both English Common Law and Customary Law³³⁰. However, Customary Law is not codified in Papua New Guinea but is rather left open and un-codified.

The National Museum and Art Gallery Act 1992 provides for the continued establishment, maintenance and control of National Museum and Art Gallery. They are “to be incorporated and read as one with the National Cultural Property (Preservation) Act 1965 and the War Surplus Material Act 1952”³³¹. This is an important piece of legislation for Papua New Guinea because it sets out the role and responsibilities of museums and art galleries in Papua New Guinea and it facilitates the dual nature of its legal system.

³²⁷ http://www.nri.org.pg/pages/research_in_PNG_files/Researchconditions&guide.pdf, p.8

³²⁸ http://www.nri.org.pg/pages/research_in_PNG_files/Researchconditions&guide.pdf, p.8

³²⁹ http://www.paclii.org/pg/legis/consol_act/nmaaga1992310

³³⁰ Kalinoe, L. & Leach, J. 2004. Rationales of Ownership: Transactions and Claims to Ownership in Contemporary Papua New Guinea. UK, Sean Kingston Publishing

³³¹ http://www.paclii.org/pg/legis/consol_act/nmaaga1992310

CHAPTER IX: PACIFIC REGIONAL MECHANISMS AND STRATEGIES

PIMA Code of Ethics for Pacific Museums and Cultural Centres 2006³³²

The Pacific Islands Museums Association (PIMA)³³³ is a “regional, multilingual, multicultural, non-profit organization which brings together people to preserve, celebrate and nurture the heritage of the peoples of the Pacific Islands”³³⁴. Its mission is 1) to support Pacific museums and cultural centres to preserve the heritage of the Pacific Islands, 2) to involve local communities in heritage management, and 3) to develop regional cultural resource management policies and practices³³⁵. The PIMA Secretariat³³⁶ has relocated in June 2006 from the Fiji Museum³³⁷ to the Vanuatu Cultural Centre³³⁸. PIMA became an affiliated member of the International Council of Museums (ICOM)³³⁹ in 1998 and its members fully endorse the ICOM Code of Ethics³⁴⁰.

The PIMA Code of Ethics is a region-specialized³⁴¹ Code of Ethics designed for the use of museums and cultural centres in Pacific Member States. The guiding principles states that Pacific museums and cultural centres are, i) “custodians of cultural resources held in trust for the original creators and for the benefit of people and communities elsewhere, ii) assist communities to maintain and safeguard their intangible and tangible cultural heritage, iii) build and maintain relations with communities they serve, iv) support reconnections with institutions both locally and internationally who hold cultural materials and resources, v) advocate for cultural diversity, sustainability and culture centred development, vi) encourage museums from outside the Pacific to support repatriation and encourage governments to implement national legislations and international conventions on the protection and

³³² http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/pima_code_ethics.pdf

³³³ <http://www.culturepacific.org/>

³³⁴ http://www.vanuatuculture.org/organisation/20060627_pima_move.shtml

³³⁵ http://www.vanuatuculture.org/organisation/20060627_pima_move.shtml

³³⁶ http://www.icom.org.au/01_cms/details.asp?k_id=118

³³⁷ <http://www.fijimuseum.org.fj/>

³³⁸ Chapter VII of this Survey comprises an overview on the Vanuatu Cultural Centre

³³⁹ <http://icom.museum/>

³⁴⁰ See WIPO Creative Heritage Database at <http://www.wipo.int/tk/en/folklore/culturalheritage/index.html>

³⁴¹ http://www.icom.org.au/01_cms/details.asp?k_id=117#794

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conservation of cultural resources”³⁴². These guiding principles facilitate the work of museums and cultural centres to relate with communities, provide access, monitor research and assess significance of material in relation to process, creators/owners and monetary value.

Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture, 2002³⁴³

This Framework, also referred to as the Pacific Model Law, is “an IP-based *sui generis* system and it creates new IP, or IP-like, rights. Wide experiences have shown that the IP protection of traditional cultural expressions involves legal doctrines closest to those underpinning the copyright and related rights systems. Accordingly, the Pacific Model Law addresses the protection of traditional knowledge and expression of culture (TKEC) against the illicit uses and misappropriations that IP protection (primarily copyright) usually addresses, while taking into account the particular nature and characteristics of traditional creativity and cultural expressions, including the communal nature. Customary laws and traditional protocols have also been incorporated into the Pacific Model Law but this occurs within an IP framework”³⁴⁴.

The Secretariat of the Pacific Community (SPC) has developed “Guidelines for Developing National Legislation for the Protection of Traditional Knowledge and Expressions of Culture based on the Pacific Model Law 2002, 2006”, which are intended to provide technical assistance to policy-makers in Pacific Island countries in developing national laws for the protection of traditional knowledge and expressions of culture. The Guidelines are designed to respond to areas in which member countries have indicated they require assistance with, namely i) guidance on an effective policy process that could be followed when using the Pacific Model Law as the basis for developing national legislation, ii) guidance on the policy questions that need to be considered when developing the legal

³⁴² http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/pima_code_ethics.pdf, p.1

³⁴³ The Pacific Model Law 2002 can be accessed through WIPO Laws and Legislative Measures database at http://www.wipo.int/tk/en/laws/pdf/spc_framework.pdf

³⁴⁴ See “Guidelines for Developing National Legislation for the Protection of Traditional Knowledge and Expressions of Culture based on the Pacific Model Law 2002”, 2006 at http://www.wipo.int/tk/en/laws/pdf/spc_guidelines.pdf, p.8

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elements of protection in the legislation, and iii) guidance on implementation options when using the Pacific Model Law as the basis for developing national legislation.

PART 2: INTELLECTUAL PROPERTY-RELATED ACTIVITIES, NEEDS AND
EXPERIENCES OF CULTURAL INSTITUTIONS

CHAPTER X: INTELLECTUAL PROPERTY AND CULTURAL INSTITUTIONS

10.1 INTRODUCTION

This Part II of the Survey is based on cultural institutions' responses to a questionnaire on their intellectual property-related activities, needs and experiences. Research was conducted through face-to-face interviews, telephone interviews and some institutions responded directly to the questionnaire in writing. Three main areas were addressed in the questionnaire, which were general information about the institution, specific questions on ownership of, access to and control over their collections and, finally, specific questions relating to intellectual property. The Questionnaire is reproduced in Annex I.

10.2 ANALYSES OF CODES, PROTOCOLS, POLICIES AND BEST PRACTICES

Cultural institutions and cultural specialists play an important role in collecting and interpreting culture and cultural heritage materials. The tasks of collecting and interpreting culture and cultural materials have been undertaken for decades. However, as our societies are changing, cultural institutions and specialists are facing new challenges in their work, not only in their day-to-day practices but also in terms of the laws and policies which affect their work and their relationships with the people and communities whose cultural heritage they are collecting, interpreting and disseminating.

The roles of institutions responsible for the collecting of cultural heritage are to gather, bring together at present diverse sources of text, sound, images, and artifacts. Such materials and information will be useful in the interpretation of these cultures. They also provide a means to understand cultures and communities and make them accessible to future generations. The roles of cultural institutions have experienced many changes as a result of new challenges and new technologies.

These challenges include the use of new technologies such as digitization. For instance, the digital world is influencing information formats and they have certainly changed the way information is collected, stored, displayed and distributed. This presents collecting

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institutions with challenges as to what information in the old format will be taken forward to the future in the new format. It also poses challenges in terms of their relationships with the communities they are involved with.

However, it is the very nature of cultural heritage collection, interpretation and public dissemination by cultural institutions that has become the cause of concern for owners or holders of indigenous cultural heritage. Concerns relating to intellectual property issues involve the inability of current intellectual property laws to protect cultural heritage from being commercialized, exploited and used inappropriately by others who are not from the community³⁴⁵ regarded by customary laws as the custodians of the heritage. In Australia, Janke (1998) in her report "Our Culture: Our Future"³⁴⁶, recommends that archives legislation should be amended to address issues which relate to access, identification, preservation, use, control and copying of indigenous cultural material by archives.

Widespread concerns and complaints by indigenous groups and individuals about the roles of cultural institutions and cultural experts have also made institutions and experts more aware of these issues. Therefore, institutions and experts who are involved with collecting, interpreting, storing, disseminating indigenous cultural heritage are also working to change their practices and policies to address these issues and challenges.

³⁴⁵ See WIPO report on Intellectual Property Needs and Expectations of Traditional Knowledge Holders. WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998-1999). about issues identified from different regions on the issues of commercialisation, exploitation and inappropriate use of traditional cultural expressions.

³⁴⁶ Janke, Terri (1998) "Our Culture, Our Future: Report on Australian Indigenous Cultural & Intellectual Property Rights", see http://www.wipo.int/export/sites/www/tk/en/folklore/creative_heritage/docs/terry_janke_culture_future.pdf

CHAPTER XI: NEW ZEALAND

To assist in the reading of this Chapter, Annex VII comprises a “Glossary of Maori Terms and Concepts”

Te Papa Museum

a) General information about the institution

Te Papa’s main collections³⁴⁷ consist of five main areas, which are Arts, History, Pacific, *Taonga* Maori and Natural Environment. Arts include photographs from New Zealand and abroad. The History collections are primarily of New Zealand history and some international collections. The Pacific collections consist of collections from countries throughout the Pacific. *Taonga* Maori consist of Maori cultural treasures. Te Papa’s main source of funding is the New Zealand government and its collections come from both New Zealand and abroad. Te Papa collects in all formats including digital. It hopes to transfer its format from analogue to digital but this is occurring on an on-going basis. Te Papa has two projects currently underway which are 1) the upgrading of information on the collection information system, KE Emu, and 2) making collection information and images of collections available online through a new service, Collection Online³⁴⁸. Te Papa uses a specific object-oriented database, KE Emu. Objects are described using international classification systems such as Art and Architecture Thesaurus, Library of Congress Thesaurus for Graphic Materials (LC TGM), nationally developed authorities such as *imi*³⁴⁹ lists, as well as internally developed classifications. A *Taonga* classification system is currently under development. Collections of objects are described at object level and not collection level. The database provides the ability to describe objects, persons and organizations, and media, to a detailed level. However, the actual level of data records of each item varies. Te Papa’s implementation of KE Emu has considerable functionality to manage, describe, preserve and associate many forms of media, such as digital and analogue, with collection objects, people, organizations, and narratives.

³⁴⁷ See <http://www.tepapa.govt.nz/TePapa/English/CollectionsAndResearch/Collections/>

³⁴⁸ Collection online can be viewed at <http://www.collections.tepapa.govt.nz/>

³⁴⁹ This Maori term means “Maori tribes”, see Annex VII for the complete list of Maori terms and Concepts.

b) Access, Ownership and Control

Te Papa deals with research students, research fellows and leading specialists from national and international institutions, whether they are tertiary institutions, other museums professionals and researchers or research institutes. In the area of cultural material, items with physical/spiritual value like *taonga tuturu*, in depth information, are not to be given out, for instance, information that relates to provenance, tribal information or related research. On occasion, anthropologists and ethnologists working in the Pacific Islands will act as contacts for local artists, if this knowledge or access is not available through Te Papa staff.

Te Papa has a rigorous acquisition policy, including an overarching Collection Development Policy, which is undergoing major review, and an annually reviewed Acquisition Strategy. In relation to researchers, there are copyright, privacy and access requirements. The Director and Senior Curator *Matauranga* Maori are currently finalizing ethical research guidelines for external researchers.

Te Papa deals with *ivi* and *hapu*³⁵⁰, *whanau*³⁵¹ members in association with *Taonga* Maori in the collection, through Te Papa's *Mana Taonga* principle. Staff networks in New Zealand-based Pacific communities are extensive and other networks are accessed through the Museum's Pacific Advisory Groups. The Maori curatorial team has a strong network with Maori and the Pacific team also has strong contacts with the Pacific communities. Communities participate on a project-by-project basis, depending on the subject, nature of the project and the groups involved. In exhibition development, they provide guidance on cultural procedures, protocols and history³⁵². In relation to protocols, guidelines and best practices, Maori relationships are guided by the Museum's *Iwi* Relationships Strategy and *Mana Taonga* Principles. This document also influences Te Papa's approach to relationships with Pacific Island communities, exhibitions, loans, collections online, making appointments with curators to view collections, organized Back of House tours with tertiary groups, elder groups and other indigenous visitors. The public may also reconnect with tribal cultural

³⁵⁰ This Maori term means "sub tribes", see Annex VII for the complete list of Maori terms and Concepts.

³⁵¹ This Maori term means "families", see Annex VII for the complete list of Maori terms and Concepts.

³⁵² More information on Pacific Communities Activities can be accessed through [http://www.tepapa.govt.TePapa/English/About TePapa/CommunityRelationships/PacificCommunities/](http://www.tepapa.govt.TePapa/English/About%20TePapa/CommunityRelationships/PacificCommunities/)

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materials for research, teaching, and copying. However, Te Papa has protocols known as *tikanga*, a set of guiding behaviors on how to deal respectfully and carefully with *Taonga* Maori. In particular, the *Mana Taonga* principle and Loans Policy facilitate public access to the collections.

c) Specific questions about intellectual property

Te Papa aims to recognize and value, promote, respect and ensure prior and informed consent in respect of its activities and collections and to ensure that exchanges are based on mutually agreed terms with all parties concerned. Intellectual property questions are addressed during a number of processes in the daily activity of the institution. During the collecting phase, copyright ownership is investigated and, if applicable, licensing is negotiated. Te Papa also has a policy of establishing, to the best of its ability, cultural links to *taonga* collected. Cultural clearances for use and reproduction are negotiated on a case-by-case basis, especially if *taonga* are included in any project. Where projects are intended for use in an exhibition, a loan, a publication or an event where there is plan to use or reproduce *taonga*, copyright and cultural clearances for the reproduction and use are required and these permissions will guide the final project's selection process. Te Papa has a Rights Manual that is currently in the process of being reviewed. The Manual explains the Museum's responsibilities with regards to the Copyright Act and also the expectations of staff for cultural clearances.

Te Papa's Photographic Policy clearly states that photographs within the museum are permitted so long as they are for personal use only. However, direct photographing or videoing of museum objects is prohibited. This Policy, in part, aims to reduce the risk of the unauthorized and possible commercial use of images of exhibited items, which also includes *taonga*. Pamphlets and notice boards in the museum inform visitors of this Policy and hosts raise the Policy with visitors where appropriate.

Te Papa is following and contributing to discussions regarding intellectual property internationally through submissions to the New Zealand Ministry of Economic Development. It has developed its own policy framework surrounding the treatment of traditional knowledge and *taonga* and continues to work to refine processes to ensure strong

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lines of communication with indigenous communities and appropriately facilitate the capture of and reasonable access to *taonga* and traditional knowledge.

The *Mana Taonga* principle³⁵³ is Te Papa's endeavor to address concerns of indigenous peoples in its practices and policies. Intellectual property and copyright law do not accurately describe or comprehensively apply to *Taonga* or traditional Maori knowledge in a manner that protects these items from unrestricted use. Therefore, Te Papa has developed the *Mana Taonga* Principle and other policies to encourage the development of relationships with *imi*, to ensure their inclusion in appropriate management of *taonga* and protection of traditional knowledge. Some of those relationships result in the development of an explicit agreement with the *imi* detailing a process for the ongoing management of *taonga* and related knowledge. Management agreements with *imi* can detail when approval will be sought from *imi* for various activities, such as the use of images of *taonga*, loan of *taonga*, collection of *taonga*, storage and use of traditional knowledge relating to *taonga*. The aims of these agreements are for the inclusion of *imi* and, in part, provide clear processes around collections and use of intellectual property. The agreements frequently acknowledge that specific information provided by the *imi* remains the property of *imi* and will not be used without appropriate permission. Te Papa has also a *Matauranga Maori* Strategy, which explicitly identifies the importance of *Matauranga Maori*³⁵⁴ and that Te Papa has a responsibility to actively work with *imi* and Maori communities to ensure that knowledge and *taonga* are preserved, protected and managed with high standards.

Auckland Museum / Ethnology Department

a) General information about the institution

Auckland Museum's collections include both tangible and intangible material. It is a conventional museum with collections on natural, historic and ethnological material. It contains artifacts and photographs that relates to the collections, information as to where

³⁵³ For more information on mana taonga principle, see http://www.med.govt.nz/templates/MultipageDocumentPage_26176.aspx

³⁵⁴ This Maori term refers to traditional Maori knowledge, see Annex VII for the glossary of Maori Terms

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items were collected from, documentary, and fieldwork notes³⁵⁵. The museum also has a research library, which contains manuscripts of all sorts, and includes diaries of people who have lived in the Pacific Islands. Auckland Museum provides education and entertainment for the people of Auckland.

Auckland Museum uses the Vernon System, a programme that was developed in New Zealand for museum cataloguing, indexing and registry of material and information. It has digitized some of its collections such as photographs of jewelry, and *tapa*. Digitizing is to enable wider access and efficiency. The Museum still uses some of the old museum ways but it also has adopted some new technology. The old ways include old acquisition processes where the register of material and recordings of them is compiled as they come in. Materials are also given ethnology numbers for each object and a card system is used, which records the donor and where each object comes from. The Museum has deposit forms, which state that objects are owned by the depositor but the items are loaned to the Museum. An agreement form is also available between the donor and the Museum and access can be limited if it is requested by the donor.

b) Access, ownership and control

The Auckland Museum deals with private researchers, students, tertiary institutions and schools. The Museum has a specific research policy for research on any of its manuscripts or collections. For instance, it has a Memorandum of Understanding with the University of Auckland in relation to students who are doing research at the Museum. The Museum also deals with Maori and Pacific communities especially if an exhibition involves material that concerns them. Communication between members of the communities and the Advisory groups of both Maori and Pacific are often consulted. *Taumata-a-Iwi*³⁵⁶ or Maori Advisory group is represented on the Museum Board of Trustees and it creates a strong possibility for input from Maori. The Museum is currently working on formalizing the same input for Pacific Peoples so that they can have a voice at the Board of Trustee level. The role of the *Taumata-a-Iwi* is also influential when it comes to determining issues relating to loaning of

³⁵⁵ For more on collection, see the Auckland Museum web page <http://www.aucklandmuseum.com/>

³⁵⁶ See <http://www.aucklandmuseum.com/?t=288>

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Maori material. Requests and permission to use will be made to the *Taumata-a-Iwi*. The Museum collections are accessible to the public but are controlled in certain ways and some materials are quite old so they are only displayed once or very rarely. Some materials are restricted and come from the donors with specific restrictions. Photographs can be taken at Auckland Museum for personal use. However, when photographs are to be used in publication, users will have to get permission to reproduce images. A form is used for such requests and reproduction of images will also be charged for. The Museum also faces contentious issues relating to ownership and whether holders have the right to sell materials or objects. Dispute over ownership issues were more a problem of the past than it is now because there are better policies, guidelines and protocols in place now to deal with these issues. Therefore, on rare occasions, families also use the Museum as a safekeeping place.

c) Specific questions about intellectual property

Intellectual property issues arise in several activities of the Museum. For instance, they arise during collection, displaying and storing of information about certain objects. Limitations are also imposed on them in relation to lender information, sensitive materials and what to do when photographs are to be used in publication. Several materials in the collection have specific limitations on their use. The Auckland Museum is careful when it comes to intellectual property issues because it is a public museum, and therefore, it should be careful as to what is open to the public and what is restricted. The Museum also operates according to certain cultural protocols of the communities involved, for example, the use of the *Toubunga ritual*³⁵⁷ for Maori and Pacific blessing or prayer to open exhibitions. Cultural heritage is a common part of any exhibition and the communities take part in running them. Communities are incorporated into the process and part of the museums' best practice is ensuring that local communities are brought into the museum structure.

³⁵⁷ *Tubunga* ritual includes the blessing of objects

Archive of Maori and Pacific Music, University of Auckland

a) General Information about Institution

The Archive of Maori and Pacific Music has collections which consist of audio and video recordings of performances of Pacific music. They are collections from the greater Pacific region. The objective of this Archive is to preserve, conserve and make these materials available for dissemination. The main source of funding of this archive is the University of Auckland and the Archive does not undertake fundraising or commercial activities. The Archive still uses the old system of cataloguing, indexing and registry but it is currently undergoing a process of getting its collections digitized and it hopes to digitize all its collection. The Archive uses its own system of cataloguing, based on resources and use descriptors. All relevant materials will be digitized as time and funding permit. Geographical regions and sub-regions where materials come from are identified, as are village locations, performers' names, and performance categories. The Archive believes that a cataloguing system does provide adequate information.

b) Access, ownership and control

The Archive deals with researchers and fieldworkers. They use formal collection and deposit agreements and it operates under guidelines and terms of use³⁵⁸. Occasionally, the Archive deals with the source community and communities are identified at their own initiatives. There is no community involvement in its management. The collections in the Archive are made accessible to the public in accordance with the terms of the deposit option selected in the archive's contract.

c) Specific questions on intellectual property

Intellectual property questions feature in the Archives' daily activities during processing of all requests for copies of materials in its holdings, such as contract option³⁵⁹ which is included in documentation and is consulted prior to any copying. The Archive does not claim to own

³⁵⁸ For list of services see <http://www.arts.auckland.ac.nz/research/index.cfm?P=1980>. Agreements and guidelines are available at the Archive.

³⁵⁹ Contract options are available at the Archive

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the materials in its collections, but acts as guardian on behalf of the depositors and the performers whose materials are deposited. Accordingly, “collections institutions should make the distinction between ownership and custodianship and this should be specified in official documentation”³⁶⁰.

MacMillan Brown Library, University of Canterbury

a) General Information about the Institution

The Library’s main domain of intangible cultural heritage is the arts collections which relate to traditional craftsmanship. The Macmillan Brown Library also retains material relating to domains of oral traditions and expressions of performing arts and social practices, rituals and festive events. The Institution specializes in collecting materials relating to New Zealand and the Pacific, including Polynesia and Melanesia. The University of Canterbury Act 1961 describes the purpose of the University as existing “for the advancement of knowledge and the dissemination and maintenance thereof by teaching and research”³⁶¹. It is also informed by the Education Act 1989³⁶². Its purpose within the international community of scholars is to advance knowledge by research, to maintain and disseminate this knowledge through teaching, publications and critical debate, confirm outcomes through awarding of degrees and act as critics and conscience of society. Its purpose within the New Zealand tertiary sector is to contribute to a tertiary education system that is characterized by excellence, relevance, academic freedom and improved access for all and to work with others to enrich intellectual discourse. It acknowledges the Treaty of Waitangi³⁶³ in all its activities and is responsive to contributing to the education of *tangata whenua*, research and aspirational needs of Maori. The Macmillan Brown Library is the University of Canterbury’s research collection of New Zealand and Pacific Islands materials.

The main source of funding is the New Zealand government in forms of grants and from student fees. The Library does not undertake any fundraising although it charges for the

³⁶⁰ Personal Communication with Associate Professor Richard Moyle

³⁶¹ www.canterbury.ac.nz/ucpolicy/GetPolicy.aspx?file=officialinformationpolicy.pdf

³⁶² <http://rangi.knowledge-basket.co.nz/gpacts/public/text/1989/an/080.html>

³⁶³ For the Treaty of Waitangi principles, see <http://www.waitangi-tribunal.govt.nz/treaty/principles.asp>

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provision of photocopies and digital copies of research materials, on cost recovery basis. A production fee is also charged to external clients for commercial projects. The Library has a small digital collection, comprising copies of research materials in its collections, including photographs and artworks. The Library plans to digitize its archive and is currently working through a number of issues related to this process, including preservation and storage of digital materials, access, copyright and intellectual property issues. The Library uses Library of Congress³⁶⁴ cataloguing for all books, journals and published materials. Archives and other unpublished materials are catalogued according to National Register of Archives and Manuscripts (NRAM) guidelines³⁶⁵.

b) Access, ownership and control

The Library has no formal relationship with researchers and fieldworkers in terms of collecting the results of their research. However, the Library has a formal deposit agreement for all donated material. The Library does not deal directly with source communities. The materials are freely available to staff and students of the University and external researchers. These may be used for reading, research, teaching, commercial and copying purposes, within the limitations set by law. Donors of materials set the access policies and conditions³⁶⁶.

c) Specific questions about intellectual property

Copyright is the main issue to be discussed and debated in the Library on a regular basis. The Library does not have a specific intellectual property policy although there is the university guide in relation to research by staff and students. Intellectual property is considered within the context of all policy development relating to collection, care and access. The Library does not have a great deal of experience in this area and suggested that consultation with local communities would be highly beneficial. It also stated that it wished to tap into intellectual property initiatives developed nationally and from abroad.

³⁶⁴ For more information on Library of Congress see <http://www.loc.gov/index.html>

³⁶⁵ www.nram.org.nz/howtocontribute/guidelines.pdf

³⁶⁶ See Macmillan Brown pamphlet accessible through the University of Canterbury web <http://library.canterbury.ac.nz/>

CHAPTER XII: FIJI

Fiji Museum

a) General Information about the institution

The Fiji Museum collects oral history/traditions from the different 14 provinces of Fiji and from the different ethnic groups that make up Fiji's population. The Fiji Museum has been collecting indigenous oral history since the 1970s on tape, and recently they have also been collecting the oral histories of other ethnic groups such as the Solomon Islanders, Papua New Guineans, ni-Vanuatu who were all brought into Fiji for the slave trade (known as "black-birding") in the early 1800s. The other group is the Indo-Fijian, looking primarily at the Girmitiyas, or those who were brought in to work on the sugar cane and other plantations in the late 1800s. The Museum has recordings on audio-visual and audio tape. The Museum also works together with the University of the South Pacific on material relating to the Chinese population. The artifacts, photographs and documents/paintings and natural history collection are mainly from Fiji, with a small percentage coming from the Pacific region and other countries of the World.

The objective of the Museum is specifically to "preserve, maintain and develop facilities which protect the collections in a controlled environment, free of congestion, with regulated light, temperature and humidity levels, and safe from damage by pests, create an environment which presents the nation's history and culture in an effective and inviting atmosphere"³⁶⁷. It is also to educate the community through educational programmes and assist in heritage management by liaising with "Fiji's land-owners to assist in the identification, research and interpretation of sites in order to protect valuable heritage sites and generate revenue for landowners"³⁶⁸. The Museum's main source of funding comes from the Fijian Government and from overseas organizations, and it participates in fund raising. The Museum is currently digitizing its collection especially those from the 1970s. The library has a book catalogue and uses a book for its registry as well as a database. The artifact,

³⁶⁷ <http://www.fijimuseum.org.fj/fijimuseum.htm>

³⁶⁸ <http://www.fijimuseum.org.fj/fijimuseum.htm>

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archival and photographic collections are also catalogued, registered and entered into a database using MsAccess system. The database contains general information such as name, type of object, province where it came from and the origin of material. Therefore, the register contains the complete information. The Museum also has a film/photography unit that takes care of documentaries, and the photograph collection.

b) Access, ownership and control

The museum deals with researchers in the field of archaeology and palaeontology, who come from the US, UK, Australia, New Zealand, Canada and France. The Museum is responsible for issuing permits for archaeology and palaeontology and for keeping a bi-annual journal on the latest progress of this particular field in Fiji. They also deal with anthropologists and ethnologists. Research and researchers are covered under the Fijian legislation, specifically, the Preservation of Archaeology and Palaeontology Interest Act. The Museum also deals directly with communities. For instance, museum staff and researchers go out to the villages and communities and vice versa. The communities participate in the museum activities especially in exhibitions. Communities make monetary contributions and provide information for the exhibitions. However, there is no code or guidelines that govern the relationship between the Museum and the community. The public may make use of the research library for copying and enjoyment. If they are buying photos then they pay for them and they are asked to state that it is from the Fiji Museum and is under copyright. This process is explained to all visitors and those who use the museum photos, documents and other materials in its collection.

c) Specific questions about intellectual property

Intellectual property questions only arise in the Fiji Museum when it comes to research, especially when researchers wish to listen to tribal information. If researchers wish to access such materials, then they follow the same procedure used when accessing photos. For information on genealogy and family, researchers are asked to get the approval from the families concerned. However, the Museum does not have intellectual property-related protocols nor do intellectual property options or issues form part of its visions or objectives. The Fiji Museum believes, however, that intellectual property issues should be taken into

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account by institutions and, to be able to do this in practice, that there should be more training offered to museum staff on intellectual property matters and a compilation of intellectual property best practice guidelines and protocols would be useful.

CHAPTER XIII: TONGA

National Museum

a) General Information about the institution

As mentioned above, Princess Pilolevu, as a gift for her father, the late King Tupou IV, established the Tonga National Museum (TNM)³⁶⁹ in 1998. Although it has been nine years since it was established, the TNM is still in the very early stages of museum development. The collections in the Museum are mostly material culture with some manuscripts and photographs of unknown people, which are saved on CD-ROM. Its collections are mainly of Tongan origin with some material that is occasionally loaned from the other Pacific Islands such as Fiji and Samoa. The other aspects of intangible culture are the actual performances and displays of culture that takes place at the Museum. Most of the items in the TNM are loaned from the collection of the Tupou College Museum (TCM), a museum established by missionary of the Methodist mission. Therefore, the main objective of establishing the TNM was to be a gift to the late king of Tonga and to be a storehouse to promote and preserve Tongan material culture, which they were hoping to have returned from foreign museums. This proved to be a problem for Tonga because the TNM did not have the right facilities that would house these materials. Princess Pilolevu funds the TNM. The Museum has no digital collections, except for some materials which have been scanned and put onto a CD-ROM. There are no formal or established systems used in the Museum except for bits and pieces of information on the displays, which says something about the name of the object, and information about the donor and where it came from.

b) Access, ownership and control

The TNM deals with researchers in a very limited capacity. It does not operate with any formal protocols, guidelines or code of ethics. On very rare occasions, will the Museum deal directly with the community to identify the origin of objects or to identify owners of objects, mainly because the Princess owns the Museum and much of the collection belonged to her

³⁶⁹ Personal Communication with Kolokesa Uafa Mahina

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either directly or indirectly through loans. The Museum is only accessible to a very small part of the population. This relates to the concept of a museum being new to Tongan people. Frequent visitors to the TNM are tourists, researchers, teachers and students. There are no strict rules for visitors visiting the museum. Visitors can take photographs and they are free to use images for whatever purpose. There are no agreement forms and no clear messages informing visitors about conditions and limitations for use.

c) Specific questions about intellectual property

There are several IP issues but these are perhaps not fully addressed. The tension between the TNM and Tupou College Museum³⁷⁰ (TCM) highlights issues which relate to intellectual property. For instance, there are issues in relation to ownership over some of Tupou College's photographic materials that the TNM has in its collection. The process relating to photographic images on display at the TNM is that permission for reproduction must come from Tupou College Museum instead of the TNM. It is not clear whether intellectual property options and issues form part of the TNM's visions, future plans and objectives but an IP guide will certainly help the TNM and other cultural institutions in Tonga. The Museum staff indicated that Tonga is at an early stage in so far as museums go and a lot of basic foundational structures need to be in place to be able to clearly address intellectual property issues which arise out of every day activities of museums. The intellectual property concerns of communities, villages, and families over policies are not yet fully dealt with. Conversations with several people highlighted this point and the need for Tonga to develop clear IP guidelines for the Museum.

³⁷⁰ Please also refer to Chapter VI, Part I.

CHAPTER XIV: AUSTRALIA

The Pacific and Regional Archive for Digital Sources in Endangered Cultures (PARADISEC)

a) General Information about the institution

PARADISEC is a cross-institutional collaborative facility established in 2003 to preserve and make accessible Australian researchers' field recordings of endangered languages and cultures of the Asia-Pacific region. PARADISEC deals mainly linguistic and musicological, often including oral, traditions. It houses both media and text files, such as transcripts and dictionaries. It accepts material from anywhere, but its focus is strongly on the Pacific, Papua New Guinea and South-East Asia. It is mainly concerned to safeguard data collected by Australian researchers, but as there are few repositories for this kind of data it is being approached by researchers outside of their target group. This obviously puts a strain on its ability to cope with all of the work, especially if they have to clean and digitize old tapes.

Its main source of funding comes from the Australian federal government grants. The institution is also involved in commercial and fund-raising activities. It recently became an incorporated body and is planning to promote sponsorship of particular collections. It will also digitize materials at commercial rates and run training workshops on creating archival materials, metadata standards and other similar practices. Its collections are exclusively digital. It uses an online MySQL/PHP catalogue, which conforms to Dublin Core through the Open Language Archives metadata set, and to the Open Archives Initiative. They have a number of controlled vocabularies including country names/codes, language names/codes, access conditions and roles of contributors. It uses a geographic descriptor as well as naming the source village for an item if it is known. A cataloguing system is also used and geographic descriptors (min/max lat/long), and village names. Photographs and sound recordings are included and the Archive includes over 14,000 images, and around 1,400 hours of recordings have been digitized to date.

b) Access, ownership and control

PARADISEC is a group of linguists and musicologists who have established and run this collection. They are heavily involved in training researchers in techniques for recording and data management so that their material is in a good archival form.

It uses and requires deposit forms to be filled out before material can be accessioned, and access forms must be signed before anyone can have access to material in the collection. It operates within the Human Research Ethics guidelines of respective universities. In general they do not deal with source communities, but with researchers. The Archive encourages the use of agreements between researchers and the people they record. It has extremely limited resources and is unable to negotiate with the source communities. It trusts that researchers have established appropriate protocols for their work and for depositing it with an archive. Source communities are identified from the researcher's metadata. If "community" means the village-level then there is no contact with them. There are no protocols, guidelines or codes that govern the institution's relationship with "communities". The main focus of the institution is on preservation of endangered tapes, and access is secondary at the moment. All data is available online via password-protected access. It has sent CD copies of all relevant material to the Vanuatu Cultural Centre, the University of New Caledonia and the Institute of Papua New Guinea Studies. PARADISEC has its own access conditions and it can be accessed online through their website³⁷¹.

c) Specific questions about intellectual property

Every item in the collection has access rights specified. Deposit and access forms govern the use of all material in the collection. It is integral to PARADISEC that they are protecting the cultural information recorded by researchers and entrusted to them by the people recorded. It is their responsibility as researchers to ensure that they make this material safe for the future. It could be useful, but there is a danger that some institutions only see the risk in keeping recordings and not the benefits. In discussions with the Archive, staff indicated that if the approach to intellectual property results in closing down access to materials or to

³⁷¹ <http://paradisec.org.au/>

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preventing archiving of recordings then it will not be a good outcome. A guide to IP that explored alternatives to copyright and creative commons licenses, for example, would be welcome³⁷², the staff indicated.

³⁷² See also, Story, Alan, Colin Darch and Debora Halbert. 2006. *The copy/South Dossier*. Canterbury: University of Kent. Personal Communication with Nicholas Thierberg.

CHAPTER XV: PRELIMINARY CONCLUSIONS

In the seven Pacific countries surveyed, cultural institutions in New Zealand and Australia are in my view at the forefront in terms of being aware and taking action in relation to these issues and challenges. For instance, there is great awareness among cultural institutions in these two countries about intellectual property issues that relate to Aboriginal and Torres Strait Islander peoples in Australia and Maori in New Zealand. In Australia and New Zealand, best practices in the form of guidelines, code of ethics, policies and protocols are formulated by the institutions with support from the government, local bodies, local communities and indigenous groups. Australian museums, archives and libraries have highly commendable practices in dealing with Aboriginal material. For instance, the Australian National Museum's "Ethics Statement" expresses its commitment to Aboriginal peoples through the repatriation of human remains, and secret and sacred materials, and to the ethical use of all Aboriginal material held by the Museum. The Statement has no explicit reference to issues of intellectual property but it deals indirectly with IP issues in dealing with indigenous materials. Additionally, the National Film and Sound Archives' Collection Policy acknowledges and respects the legal and moral rights of Indigenous owners of tradition in relation to cultural materials. In providing access to the indigenous collections it currently holds, the Archive is sensitive to the cultural and social contexts of these materials.

Indigenous groups and individuals in both Australia and New Zealand are contributing to finding best ways that will protect their cultural heritage. For instance, in Australia, the Aboriginal and Torres Strait Islander Arts Board has formulated five guides. These guides are to provide information and advice on cultural heritage in relation to New Media, Visual Cultures, Performing Cultures, Song Cultures and Writing Cultures. All five guides deal with different art forms but they are shaped by similar principles which are significant for Aboriginal people. All five guides also recognizes the intellectual property rights of Aboriginal people by stating that indigenous people have the right to the protection of their cultural and intellectual property. Moreover, all five guides state that Australian laws and policies should be developed and implemented to respect and protect indigenous rights to cultural and intellectual property. Finally, as a further example, a recent project between the

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Australia Institute of Aboriginal and Torres Strait Islander Studies and the Intellectual Property Research Institute of Australia (IPRIA) has developed a “Legal Primer on the Management of Australian Indigenous Collections”³⁷³ which aims at assisting collecting institutions in implementing guidelines and policies which relate to acquisition, access, use and reproduction of collection materials.

Like Australia, in New Zealand, the government, cultural institutions, local governmental bodies, businesses and local communities are increasingly aware of the significance of intellectual property for Maori people and for the people of New Zealand. Te Papa Museum in Wellington is one good example of a collecting institution in New Zealand which sees the government, Maori and local bodies, businesses and other groups all playing a part. Te Papa is a government-funded museum and Te Papa’s Collection Policy, 2001 includes guiding principles which relate to the guardianship of Maori treasures, repatriation, management of human remains, acquisition and de-accessioning. Moreover, Te Papa also has a Guide to Guardians of *Imi* Treasures, where it recognizes that *Imis* must be involved in the interpretation, exhibition and care of treasures. New Zealand not only seeks to address the rights of its indigenous people but it also recognizes the existence in New Zealand of other peoples who also call New Zealand their home. For instance, the Ministry of Education was instrumental in the formulation of the Pasifika Research Guidelines 2002. These guidelines are for researchers involved in carrying on research on Pasifika education issues. These guidelines also provide the framework for best practices in dealing with intellectual property issues which may arise in the research context.

Fiji has many collaborative projects which involve cultural experts (both of Fijian decent and foreigners). The Fijian Institute of Fijian Language & Culture within the Ministry of Fijian Affairs, Culture & Heritage plays a leading role. In 2005, these collaborative efforts were responsible for the establishment of the “Training Manual”³⁷⁴ referred to. This Training Manual was designed for field officers who are conducting cultural mapping. This Manual acknowledges that Fiji has a Copyright Act, Performers Protection Act, Patent Act and a

³⁷³ http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/aiatsis_ipria.pdf

³⁷⁴ This collaborative effort also included both local and foreign researchers and anthropologists. The role of anthropologists in training and in the formulation of the training manual was instrumental.

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Trademarks Act but also states that they are inadequate to protect Fijian cultural heritage. To address these limitations of current intellectual property laws as stated in the Manual, Fiji is also working on other initiatives. It is currently working to adapt and adopt the Pacific Model Law, 2002 and create a national database³⁷⁵ to record and collect Fijian cultural heritage. These initiatives are beginning at the government level with collaborative efforts from other bodies. No examples of protocols, guidelines or codes of ethics were found to be used in the Fiji, Tonga museum and Palau museums.

In Palau, the Cultural Affairs and Historic Preservations Office of the Ministry of Community and Cultural Affairs is responsible for the implementation of cultural policies. The main legislation, which deals with cultural heritage, intellectual property rights and copyright, is the Historic Preservation Act, 1982. Palau has a museum, archive and a library. The museum has an inventory of postcards. It is currently working on its copyright law to be used as part of the museum system. The archive in Palau has an index system where it records oral tradition. Public access is open and there is no restriction on any records. There were no guidelines, protocols or and codes of ethics found.

Similar to Palau in some aspects, the Prime Minister's Office in Tonga is responsible for the development and implementation of cultural policies at the government level. The Tonga Traditions Committee³⁷⁶ is also responsible for surveying, collecting, researching and interpreting cultural heritage. Tonga's cultural institutions include two museums, one government archive, two church archives, a Royal Archive and Library and a university library. Tonga has a manual filing system in the Royal archive and public access is available through appointments. Access to the church archive is restricted. There were no protocols, policies or codes of ethics found and the museum is still in its early stages with much work that still needs to be done. However, the Prime Minister's Office developed the "Research Conditions" document in 2003. This is to guide researchers who wish to conduct research in Tonga but there is no reference to intellectual property in this document.

³⁷⁵ This database is called the National Inventory Project for Traditional Knowledge, Expressions of Culture and their Traditional Owners from within the 14 regions of Fiji.

³⁷⁶ Tonga Traditions Committee is part of the Palace Office.

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Vanuatu is rather an interesting case. Its Cultural Center comprises the National Museum, National Library, National Film and Sound Archive and a National Cultural and Historic Sites Register. Vanuatu also has an Inventory Project, which involves local experts who are conducting research on Vanuatu cultural heritage. At the National Museum, an "Issuing of Artifacts Export Permit" is used for any export of artifacts outside of the center or of Vanuatu. The National Film and Sound Archive's current project involves the documenting of traditional rituals and cultural activities. Two cultural policies were found in Vanuatu which are the Cultural Research Policy and the National Film Policy. Both policies deal directly with conditions to observe when one wishes to conduct research in Vanuatu or wants to film in Vanuatu, but they do not explicitly refer to intellectual property. What is also interesting about Vanuatu is its attempt to deal with a ceremonial practice which is already in the public domain. In 2006, the Cultural Center declared a moratorium banning all commercial filming by foreign companies of the Nagol or Pentecost land dive ceremony, which has been adopted and adapted internationally as the "bungee jump".

Finally, Papua New Guinea has "Conditions and Guidelines for research in Papua New Guinea. The Research Conditions and Guidelines refer to the National Cultural Property Ordinance of Papua New Guinea as an ordinance designed to preserve the cultural heritage of the country for future generations. Copies of a Memorandum of Understanding with Papua New Guinea organizations involved in any research are required. This relates to any activities where any patent rights or gains may arise as the result of any research. Moreover, the museum in Papua New Guinea has uses a "Permission and Letters of Request". This written permission is for the request to export material out of Papua New Guinea. The written request and permission used by Papua New Guinea is also something that is used in other Pacific countries.

Countries in the Pacific region have also worked collaboratively to formulate regional mechanisms and initiatives. The Pacific Model Law addresses the protection of traditional knowledge and traditional cultural expression against illicit uses, taking into account the particular nature and characteristics of traditional creativity. A complementary tool is the "Guidelines for Developing National Legislation for the Protection of Traditional Knowledge and Expressions of Culture", 2006, which were developed by the South Pacific

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Community Secretariat. This is intended to provide technical assistance in Pacific Island countries in developing national laws. Furthermore, the Pacific Island Museum Association (PIMA) developed a “Code of Ethics in 2006. The code of ethics is designed for the use of museums and cultural centers in relation to communities, in the provision of access, regards research and to assess the significance of material to its creators/owners.

ANALYSES OF EXPERIENCES OF INSTITUTIONS

Four institutions in New Zealand were able to respond to the questionnaire in writing. They are well funded and well structured in their day-to-day activities with clear visions and purposes. It is clear that all four institutions have their own system of collecting and maintaining records of what is in their collections. Intellectual property issues arise during collecting, displaying and storing. They also occur in relation to access over information which has limitations imposed on it, and sensitive information, materials and photographs. Institutions may consider that intellectual property laws are inadequate to protect indigenous materials and traditional expressions of culture and are continuing to implement ways that will assist them in their day-to-day activities. In the two museums interviewed, the Auckland War Memorial and Te Papa Museum, they collect in different formats including analogue and digital systems. Digital systems will enable information and images to be available online. They both use specific object-oriented databases and objects are classified by the use of both an international classification system and a local system. Both institutions are fully aware of intellectual property issues and have in place rigorous processes and policies that deal with such issues which may arise in their day-to-day activities. Local Maori *imwis* and communities are involved where appropriate and cultural clearances are used in conjunction with institutional manuals and policies on copyright. For instance, in Te Papa, they have developed the *Mana Taonga* Principle in order to address the intellectual property concerns of indigenous peoples in its practices and policies. The Auckland Museum has a Maori Advisory group, which is represented at the Board of Trustee level. The Advisory Group is to deal with any intellectual property issues that will arise in their activities in relation to Maori information and material. Additionally, the Archive of Maori and Pacific Music at the University of Auckland uses formal collection and deposit agreements. It also uses Contract

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Options to deal with intellectual property issues. The Archive does not own materials in its care but acts as guardians on behalf of depositors and the performers whose materials are deposited. Collecting institutions in New Zealand are keeping up with the debates both nationally and internationally and are continuing to develop and formulate initiatives.

Most institutions in Palau, Papua New Guinea, Vanuatu, Fiji and Tonga, however, still have in place less contemporary systems of storing and displaying of information. No formal institutional guidelines, protocols or codes of ethics were found to assist the museums in these two countries on how they would deal with issues of access, ownership, control or intellectual property. Information kept in the Fiji and Tonga museums are easily accessible by the public and do not have rigorous processes and procedures such as those of New Zealand and Australian institutions. It is clear from the responses obtained from the Fiji and Tonga museums that assistance with the formulation of guidelines, protocols, codes of ethics or policies that deal with issues of access, ownership, control and specific issues of intellectual property are needed. Additionally, according to the interviews I conducted, technical assistance by way of training of museum staff on intellectual property matters and a compilation of best practices would be useful for both, Fiji and Tonga, as well as Palau, Papua New Guinea and Vanuatu.

CHAPTER XVI: CONCLUDING REMARKS AND RECOMMENDATIONS

16.1 REMARKS

The practices and experiences of cultural institutions in the seven Pacific countries differ widely. Scarce resources, unskilled staff and limited funding are the points of difference between countries such as Australia and New Zealand in contrast to countries like Fiji and Tonga. Funding is crucial for the work of institutions in countries such as Tonga, Fiji, Vanuatu and Papua New Guinea. The availability of funding for institutions is very important and this is something that disadvantages institutions in countries in most developing countries. Funding is also important for the day-to-day running of these institutions but it is also important because it enables the training of workers and the setting up of guidelines, protocols, codes of ethics and policies. Funding also plays a role in setting up institutional mechanisms such as digitizing and inventorying of both tangible and intangible materials. Finally, institutions' staff in countries such as Fiji, Tonga and Papua New Guinea, also need training on the significant place of intellectual property in the work of collecting institutions.

11.2 RECOMMENDATIONS

The consolidated recommendations were originally suggested by the author's contacts who were interviewed on their experiences in working for cultural institutions in their country. A list of contacts can be found in Annex III of this survey report.

The consolidated recommendations are, the need for:

- Assistance in setting up clear institutional infrastructures and systems for collecting, recording, storing and interpreting cultural heritage material;
- Assistance in the training of staff in more up-to-date systems of collecting, storing, and recording of cultural heritage material;

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- Assistance in the training of staff on intellectual property issues, generally and specifically in relation to museums and archives³⁷⁷;
- Assistance in developing and formulating good practices that will guide staff in collecting institutions about how to deal with intellectual property issues; and,
- Availability of funding for inventory projects.

³⁷⁷ A WIPO Guide on Managing Intellectual Property for Museums is online available at http://www.wipo.int/export/sites/www/copyright/en/museums_ip/guide.pdf

PART 3: ANNEXES

ANNEX I: DRAFT QUESTIONNAIRE USED TO GUIDE RESEARCH

GENERAL INFORMATION ABOUT THE INSTITUTION

1. Which domain of intangible cultural heritage does the institution specialize in?
2. From which regions, countries, areas or communities do the institution's collections come from?
3. What are the institution's main objectives?
4. What are the institution's main sources of funding?
5. Does the institution undertake commercial/fund-raising activities?
 - How?
6. Does the institution have digital collection?
 - Is it going to digitize its collections?
7. What cataloguing, indexing, registry or other information systems does the institution use?
 - Under which principles?
 - What information about a particular element of ICH is included in the system used?
 - What criteria are being used to inscribe "distinctiveness", "representativity", "vulnerability" (if these categories are used)?
 - Does the cataloguing system used provide adequate information?
 - What information links ICH to source community, origin?

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- Are recordings, copies, documentations included (e.g. photographs and sound recordings)?

SPECIFIC QUESTIONS ABOUT ACCESS, OWNERSHIP AND CONTROL

1. Does the institution work or deal with researchers/fieldworkers (such as anthropologists, ethnologists, folklorists) and other collectors of ethnographic materials?
 - If so, does the institution use formal collection/deposit agreements?
 - Does it operate under any protocols, guidelines or codes governing its relationships with collectors and researchers?
2. Does the institution deal directly or indirectly with source communities?
 - How are source communities identified?
 - To what extent do communities participate in the institutions' management, activities, policy settings etc?
 - Are there any protocols, guidelines or codes that govern the institution's relationship with communities?
 - Under what conditions are the institution's collections accessible to the public?
3. What uses may the public make of the collections (e.g. pure enjoyment, copying, research, teaching, commercial)
 - Does the institution have codes, protocols or guidelines dealing with access by the public or any other user?

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SPECIFIC QUESTIONS ABOUT INTELLECTUAL PROPERTY

1. To what extent do intellectual property questions feature in the daily activities of the institution?
 - Such as?
 - What examples are there?
2. Does the institution have intellectual property related policies, protocols or codes?
 - Examples?
3. To what extent do intellectual property options and issues form part of the institution's strategies, vision, future plans and objectives?
 - Examples?
4. What practical suggestions are there for how institutions could address and manage intellectual property issues?
 - Do you think an intellectual property guide will be useful?
5. To what extent do the intellectual property-related concerns of indigenous and other source communities feature in the institution's policies and practices?
 - Examples?
6. Should collection holding institutions take into account such concerns?
 - If so, how could this be done in practice?
 - Would institutions find a compilation of best practice and intellectual property guidelines useful in helping to address the intellectual property issues?

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ANNEX III: CONTACTS

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Qwen Tu'ihalamaka

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Regional Organizations and Associations

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ANNEX IV: THE BURRA CONFERENCE

Report on the World Archaeological Congress Symposium on Cultural Heritage

Indigenous Cultural & Intellectual Property Rights
Burra South Australia
3-5 December 2006

This conference was a cross disciplinary international conference that addressed the intersection between cultural heritage and intellectual property rights of indigenous peoples. The key issues that this conference hoped to address were: how people are using concepts of cultural and intellectual property to lay claims to the past, present and future; examples of any successful uses and application of intellectual property systems and, conversely, has the system been successful in cross cultural contexts; what forms of legal and cultural heritage protection exists and how do they apply to academic research; in which areas do problems arise and how can such problems be avoided; and finally, what are key elements of successful resolutions and what examples exist of such resolutions³⁷⁸.

All presentations were in a panel discussion format where each presenter had 10 minutes to talk about the main ideas³⁷⁹. The symposium was hosted collaboratively by Ngadjuri People of South Australia. It was also open to the public and free of charge for the local people. The Ngadjuri people and the regional council of Goyder sponsored the public programmes and it was great to see the local indigenous people and the local community working together. The programme included an art exhibition by Aboriginal artists from Arnhem Land. It also included cultural workshops that were run by Aboriginal people on Indigenous dance, painting, basket making and kinship systems. What is interesting about Burra is that the ICOMOS Burra Charter originated in Burra in 1994 and the township of Burra was declared a State Heritage town.

³⁷⁸ Information from conference programme.

³⁷⁹ For the author's full presentation, see

http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/talakai_burra.pdf

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The symposium started on the 3rd of December with an address by Julie Hollowell of the University of British Columbia (Canada) and George Nicholas of Simon Fraser University (Canada). Their lecture was on “Intellectual Property Issues in Archaeology: Addressing the Needs of a Changing World through Negotiated Practice”. Both Hollowell and Nicholas are involved with a new project called ‘Intellectual Property Issues in Cultural Heritage: Theory, Practice, Policy, and Ethics’. This is an international project and a collaboration of archaeologists, indigenous organisations, lawyers, anthropologists, policy makers, and others. This project’s vision statement is to “provide a foundation of research, knowledge and resources to assist archaeologists, academic institutions, descendant communities, scholars, policymakers, and other stakeholders in negotiating more equitable and successful terms of research and policies through an agenda of community-based research and topical exploration of IP issues. Our focus is on Archaeology as a primary component of cultural heritage, however, this project is ultimately concerned with larger issues of the nature of knowledge and rights based on culture- how these are defined and used, who has control and access, and especially how fair and appropriate use and access can be achieved to the benefit of all stakeholders in the past”³⁸⁰. On the 4th of December, an address was given by Steve Ouzman from the University of Pretoria. Ouzman talked about examining the archaeology of heritage and its care within Western world in order to understand how these sets of beliefs and practices meet with those of indigenous worlds. He also used rock art as a point of reference and drew examples from his work on rock art. On the 5th of December, Daryle Rigney and Steve Hemming of Flinders University gave an address. They gave examples on how indigenous peoples, mainly the Ngarrindjeri people, have negotiated research relationships with non-indigenous organisations and institutions.

The other sessions included topics such as “Barney Warria and Ronald Berndt: Their Relationship and Shared Intellectual Property”. In this session, the participants were talking about Barney Warria, an Ngarrindjerian and Ronald Berndt, an anthropologist, who were good friends. They worked together to record the culture of Ngadjuri people for many years but when Berndt died in May 1990, he left behind a thirty-year embargo on his field notes including notes on his conversations with Warria. Warria’s descendants wished to access the

³⁸⁰ www.sfu.ca/IpinCulturalHeritage/

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material as part of the process of coming back to country but because of the embargo, they could not. At this session, an intellectual property lawyer gave some legal advice to the descendants. Additionally, in the session on “Managing Cultural Values, Biodiversity: Research, Cultural Knowledge and Intellectual Property”, participants were people who have worked with or are currently working with the Ngarrindjeri people. They gave examples on how Ngarrindjeri people are able to negotiate approaches to conducting research on or with Ngarrindjeri issues, topics and people. On a similar note, the session on “Indigenous Peoples, Archaeologists and the Research Process” focused on the cultural and intellectual property issues that indigenous peoples and archaeologists face in the course of research and how they are resolved.

The session on “Indigenous People and Film: Getting your Story out there”, focused on how the Australian Film Commission is trying to address issues of intellectual property, particularly on their draft Guide to Filmmakers Working with Indigenous Contents and Indigenous Communities. “The Rights of Rock Art” session looked at how rock art is commodified, exploited by advertisers, authors, filmmakers and others and the intellectual property implications for indigenous peoples. The session on “One Law? Two Laws? Many Laws?” addressed the intersections of customary laws and practices, national and international protections of indigenous cultural and intellectual property. Finally, the session on “Publishing: Negotiating clashing worldviews” addressed publishing and its implications for indigenous peoples and heritage, especially when publishing becomes a big part of academic life and of our societies generally.

The symposium attracted many people from many parts of the world. There were participants from South Africa, Australia, New Zealand, Tonga, Canada, USA, Germany and others. Participants were not only archaeologists but also lawyers, anthropologists, curators, policy-makers, Australian government officials and both indigenous peoples and non-indigenous peoples of the area.

At the end of the conference, some resolutions were put forward. Of particular interests were the recommendation that a group consisting of interested lawyers set up a group to provide some advice for both indigenous peoples and researchers on any issues of

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intellectual property that may arise in their work. This group will work on a pro bono basis and will also include a sharing of information and experiences among lawyers from other parts of the world.

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ANNEX V: THE ASSOCIATION OF SOCIAL ANTHROPOLOGY IN OCEANIA
CONFERENCE (ASAO)

Session on Interpreting the Discourse of Intellectual Property Rights in the Pacific³⁸¹

Virginia USA February 2007

The participants in this session consisted of anthropologists, lawyers, researchers, archivists and other cultural workers who worked in the Pacific or are currently working in the Pacific. The aim of this session was to address the debate about the protection and use of Pacific knowledge systems within the context of globalization. The people who contributed to this session approached the subject of cultural and intellectual property rights as a discourse, with specific attention to the concepts of property and ownership. Participants also addressed the potential benefits of property, appropriate protection mechanisms, especially property rights, and the appropriation of property or its misappropriation.

The author of this report also participated in this session and reported to the session on the project. In her paper, the author addressed how this WIPO project can be of use to the work of indigenous communities and anthropologists and researchers.

³⁸¹ See <http://www.asao.org/pacific/2008sessions/02intellectualproperty.htm> for a full report.

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ANNEX VI: THE TONGA RESEARCH ASSOCIATION CONFERENCE (TRA)

Theme on Tonga: its land, sea and people:

July 11-14 2007, Nuku'alofa Tonga

The author of this report also attended the Tonga Research Association (TRA) Conference³⁸² and presented her Tonga findings from this WIPO Creative Heritage Project³⁸³.

³⁸² <http://www.latrobe.edu.au/anthropology/tonga/index>

³⁸³ For the author's full presentation, see
http://www.wipo.int/tk/en/folklore/culturalheritage/pdf/talakai_tra_tonga.pdf

ANNEX VII: GLOSSARY OF MAORI TERMS AND CONCEPTS

| | |
|---|---|
| <i>Taonga</i> | Maori treasures, including both tangible and non-tangible treasures |
| <i>Kaitiakitanga</i> | Guardianship of treasures |
| <i>Kōiwi tangata</i> | Management of human remains |
| <i>Hapu</i> | Section of a larger tribe |
| <i>Iwi</i> | Tribe, grouping of people with the same ancestry |
| <i>Whanau</i> | Whanau is a wider concept than just an immediate family, it also it links people of one family to a common ancestor |
| <i>Kaitiaki</i> | Guardian |
| <i>Matauranga Maori</i> | Maori knowledge systems |
| <i>He Tohu ki nga kaitiaki o nga taonga a iwi</i> | Guardians of iwi treasures |
| <i>Tikanga</i> | Customary protocols or the correct ways of doing things |
| <i>Mana taonga</i> | Sacredness associated with the treasures |
| <i>Taumata a iwi Maori</i> | Maori Advisory Group |
| <i>Toubunga ritual</i> | Blessing of the treasures to acknowledge its spiritual connections and its sacredness |

This informal glossary was prepared using various resources, including a submission by New Zealand³⁸⁴ to WIPO's Intergovernmental Committee (IGC), to facilitate reading of this survey. It does not seek formally to ascribe meanings to the terms and concepts included, and corrections may be sent to heritage@wipo.int.

³⁸⁴ http://www.wipo.int/tk/en/igc/pdf/new_zealand_tk-tce.pdf#glossary