

The last crusade: Māori cultural and intellectual property rights

Introduction

Māori are the indigenous inhabitants of New Zealand, having migrated from Eastern Polynesia approximately 800 years ago. Although many common traits, customs and kinship structures are shared with fellow Polynesian peoples (Cook Islanders, Samoans, Tongans, Niueans etc.), Māori evolved and developed over time their own distinct culture and language. In the late nineteenth century, it was feared that Māori were in danger of extinction, however this not occur and now in the early 21st century, Māori are flourishing. At the time of the last census the Māori population accounted for 15% of New Zealand's total population (643,977 individuals) and by 2021 statistical forecasters from Statistics New Zealand expect Māori to constitute 17% of the population (approximately 760,000 individuals) (Statistics New Zealand, 2005).

Māori are full participants in New Zealand society and have strongly embraced globalisation and have been recognised internationally for our entrepreneurial abilities. However, this degree of attention has not only brought benefits but distinct disadvantages and this is particularly evident in the area of cultural and intellectual property rights.

Some definitions

In most Western countries Intellectual property rights are defined as the rights that people (individuals or institutions) have over their intellectual creations (ie. the creations of their minds). In New Zealand these rights are protected under legislation including, *The Copyright Act 1994*, *The Designs Act 1953*, *The Plant Variety Rights Act 1987*, *The Patents Act 1953* and *The Trademarks Act 2002*. The New Zealand Government ensures that these statutes maintain their relevancies in contemporary times by frequently amending the core legislation to reflect the application and impact of modern technologies.

Cultural Property

Protection of cultural property is more complex as defining the scope of cultural property differs between New Zealand's two main cultures (Māori and European New Zealanders). The more common definition of cultural property relates to items that can be seen and touched and as such represents the physical evidence of that particular cultures development, such as works of arts or archaeological and historical objects. Like many indigenous peoples, Māori do not separate the concept of cultural property from that of intellectual property, as they are considered to be inextricably entwined. Therefore it should be understood that when Māori are referring to their intellectual property rights that we are also being inclusive of our cultural property rights.

Māori have a number of concerns with New Zealand's intellectual property statutes in the way they relate to our cultural and intellectual property.

These concerns include:

Ownership

Most of the concerns relate to the fact that legislative frameworks do not provide sufficient protection for their property. Intellectual property rights require that individual or joint authorship be clearly established before protection will be granted. Establishing ownership over Māori traditional knowledge or determining who created cultural works is not always possible. The traditional knowledge or cultural works are more likely to have been created over many generations and are deemed to be owned collectively by the iwi (tribe), hapu (sub-tribe) or whānau (family group). Attributing ownership of this knowledge to any one person or group of authors would be against tikanga (Māori values).

Protection

Another concern relates to the fact that most intellectual property laws offer limited periods of protection (Copyright normally exists for the life of an author plus fifty years). Limited protection allows the limitation of the scope and length of monopolies. Māori do not subscribe to this view as they believe that they are the guardians of their property for future generations. Once the protection period of intellectual property rights legislation lapsed there would be no

guarantees that the intellectual and cultural property would remain in the domain of Māori.

Self-determination

Māori wish to define the scope and nature of their intellectual and cultural property and to have their definitions recognised by our Government, industries and in association with other indigenous peoples have indigenous cultural and intellectual rights recognised by key international organisations such as the United Nations.

In New Zealand, Māori have based the exertion of their intellectual and cultural property rights on the guarantees made in the Treaty of Waitangi which was signed by Māori and representatives of the British Crown in 1840. Article Two of the Treaty guaranteed to Māori "the unqualified exercise of their chieftainship over their lands, villages and all their treasures" (see [appendix one](#)). This has been carried further through the registration of a claim to the Waitangi Tribunal (a statutory board established by the New Zealand Government in 1975 to investigate grievances resulting from breaches of the Treaty of Waitangi). The claim relates to the ownership of indigenous flora and fauna and that the Crown has denied Māori proprietary interests by granting plant variety rights in relation to indigenous flora and permitting and encouraging extensive land clearance and habitat destruction, which has detrimentally affected indigenous species. The claim was lodged 18 years ago by six different iwi (tribes), and the last evidential hearing was in 2006 and a report is expected from the

Tribunal within the next 12 months, although the Tribunal has not committed itself to a final publication deadline.

However in 2006, the following factors were identified as the claimants' statement of claim, although they have not indicated when this process will be completed.

- **Mātauranga Māori (traditional knowledge)** - concerning the retention and protection of knowledge concerning ngā toi Māori (arts), whakairo (carving), history, oral tradition, waiata, te reo Māori, and rongoā Māori (Māori medicine and healing). The claimants' concern is about the protection and retention of such knowledge. They note that traditional knowledge systems are being increasingly targeted internationally.
- **Māori cultural property (tangible manifestation of mātauranga Māori)** - as affected by the failure of legislation and policies to protect existing Māori collective ownership of cultural taonga and to protect against exploitation and misappropriation of cultural taonga, for example traditional artefacts, carvings, mokomokai (preserved heads).
- **Māori intellectual and cultural property rights** - as affected by New Zealand's intellectual property legislation, international obligations and proposed law reforms. Issues include the patenting of life form inventions, the inappropriate registration of trade marks based on Māori text and imagery, and the unsuitable nature of intellectual property rights for the protection of both Māori traditional knowledge and cultural property.
- **Environmental, resource and conservation management** - including concerns about bio-prospecting and access to indigenous flora and fauna, biotechnological developments involving indigenous genetic material, ownership claims to

resources and species, and iwi-Māori participation in decision making on these matters

Mataatua Declaration

The concept of self-determination on the world stage was reinforced by the Mataatua Declaration on Cultural and Intellectual Property of Indigenous Peoples that was issued in June 1993 by delegates from fourteen countries that attended a conference on indigenous cultural and intellectual property rights in Whakatane, New Zealand. The declaration made recommendations to all nation states, the United Nations and indigenous peoples worldwide (see [appendix two](#))

The key themes in the declaration are:

- Indigenous peoples are the exclusive owners of their customary knowledge, cultural and intellectual property rights and are entitled to protect and direct the dissemination of that knowledge
- Existing international protection mechanisms are woefully inadequate of indigenous peoples cultural and intellectual property rights
- Indigenous peoples should define for themselves their own intellectual and cultural property
- Commercialisation of any traditional plants and medicines of indigenous peoples should be directed only by those who have inherited such knowledge
- Museums and other institutions provide an inventory of any indigenous cultural objects held in their possession and these objects should be offered back to their traditional owners.

The Mataatua Declaration and annual sessions of the United Nations Working Group on Indigenous Populations (WGIP) have helped to establish an international forum for indigenous intellectual property rights. The Working Group on Indigenous Populations has been involved in drafting a Universal Declaration on the Rights of Indigenous Peoples. The draft declaration contains references to cultural and intellectual property rights in at least four articles. References to indigenous intellectual property rights were also made at the United Nations Conference on Environment and Development (aka Earth Summit).

Over two decades effort was put into the development of the United Nations Declaration on the Rights of Indigenous Peoples. This was finally adopted by the United Nations in September 2007. Seventeen of the 45 articles in this Declaration relate to the protection and promotion of indigenous cultural properties and the direct input of indigenous peoples into decisions about these issues. Although the Declaration was passed with a majority of 144 to 4, the four countries that did not vote for the Declaration were Australia, New Zealand, Canada and the United States of America. New Zealand's failure to vote for the Declaration has been widely criticised by Māori.

Infringements of cultural & intellectual property rights

Māori cultural and intellectual property rights have been exposed to exploitation ever since the first settlers reached Aotearoa in the early 19th Century. Although Māori were willing to trade items with the settlers, whalers, sealers and other visitors, the acquisition of cultural

property was not always 'fair'. Many carvings, traditional weapons, mokomokai (tattooed heads), burial chests and other valued items were 'collected' and sold to private collectors in Europe, with some ending up in museums or other cultural institutions where many still remain to this day.

Intellectual property rights were also infringed upon from very early times. The missionaries sent by the Church Missionary Society were determined to civilise Māori minds, with their principal tools being the bible and the written word. With the bible came Christian principles which challenged the very root of Māori beliefs and worldview.

Through the mission schools education was introduced to Māori with a heavy focus on reading and writing (predominantly in te reo Māori (language)). The principal book of instruction was the bible, although it took some time for the missionaries to get traction in the way of converts, the Christian influence over Māori beliefs, customs and ceremony remains evident to this day.

The invasion of intellectual property is even more apparent when towards the end of the 19th Century, ethnographers, anthropologists and historians started to publish monographs and papers on aspects of Māori society. These writers collected and in some cases paid Māori informants for information about their tribal stories, practices and beliefs; not being content with the information that they gathered they then proceeded to impose their own worldview on these stories and then publish them in their 'learned' journals. The main individuals involved were Edward Tregear, John White, Stephenson Percy Smith and Elsdon Best. All four were obsessed with identifying the origin of the Māori and used Māori traditions to support their theory. Where

Māori information did not match up with their view of the world, they altered the evidence. A principal example of this was Stephenson Percy Smith who used information supplied by Te Whatahoro a Māori scholar to demonstrate that Māori colonised Aotearoa in a fleet of canoes. Where whakapapa (genealogical) sequences failed to support his theory, Smith inserted extra generations by leaving a blank space in the sequence (to represent a missing generation). Sorrenson (1990: 47) notes that when Smith was faced with inconsistencies in dates for Kupe the discoverer, he claimed that "there were two Kupes: the discoverer, who came in 925; and a second Kupe who came about 50 years before the fleet". Other inconsistencies in the genealogical charts were left unexplained.

Manipulations of the Māori traditions published as theories by these learned men from the late-nineteenth century and early twentieth century continues to have a profound influence on Māori beliefs and practices. This is most evident in the continued reinforcement of the Great Fleet theory, through the school curriculum, national psyche and names of the different waka (canoes) in the pepeha (identity chants) of individual Māori.

Bio-prospecting

Another area that has emerged prominently on the Māori intellectual property agenda is that of commercial development of biological resources such as plants, animals and micro-organisms that may have properties of value to medicine.

New Zealand's bio-prospecting industry is relatively small by world standards; however the international pharmaceutical industry is very interested in exploring the properties of New Zealand's native plants and knowledge of Māori use of these properties for healing.

Two examples of native plants being used in herbal/natural pharmaceutical applications are koromiko (has properties that treat dysentery) and horopito (anti-fungal properties).

In a partnership model that will hopefully serve as an example to other companies, Phytomed Medicinal Herbs are working with iwi (tribes) in the Ureweras and on the East Coast of New Zealand to harvest the healing properties of native plants grown in their areas, and to ensure that the methods used to harvest these properties are sustainably and ethically sound.

Cultural property

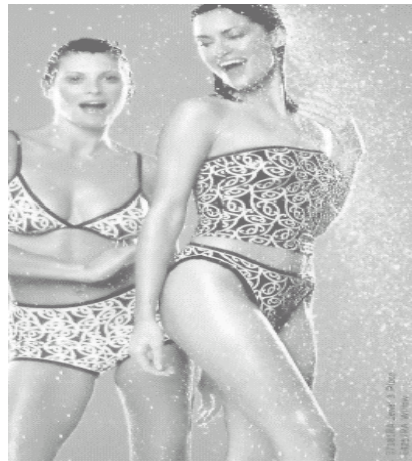
In New Zealand before the 1980s it was quite common to see Māori images used in inappropriate contexts including the use of Māori heads on tea towels (the head being the most tapu (sacred) part of the body being mixed with drying dishes which is noa (profane) which is strongly offensive, similarly the use of wax Māori heads as candles, with the wick coming from the top of the head, Māori images were also used as icons on food item packaging such as butter wrappings and edible chocolate Māori dolls . Many of these practices were phased out but they have been replaced in the 21st century by new concerns.

These new transgressions include the mass production of 'authentic' Māori souvenirs made in South East Asian countries, the use of Māori design, Māori language and Māori performing art forms in non-Māori contexts. Failure to be able to legally protect Māori cultural property without compromising Māori principles of ownership creates difficulties when Māori wish to ward off cultural poachers.



More recent examples of cultural misuse of Māori art forms are evident in the world of fashion, where designers such as Paco Rabonne who incorporated Māori koru (spiral) patterns into his *haute couture* range (**as pictured on the left**) in 1998 and Jean Paul Gaultier's use of Māori moko (**below left**) to promote his fashion range in 2007. It is not only on the international stage that Māori patterns have been

used in the fashion industry, a New Zealand swimwear company Moontide negotiated with a marae in Papatua (Bay of Plenty district) to use one of their kowhaiwhai (visual art) rafter patterns for the design of their swimwear (**below right**)



To guard against the inappropriate manufacture of Māori arts and crafts, Toi Iho (Māori Arts Council) developed an authenticity programme, which specifies whether the artist/carver/craftsperson is registered with Toi Iho. Artists that have been judged to be authentic are entitled to label their work with a Toi Iho mark. Retail outlets are also able to register with Toi Iho to become recognised as a retailer that offers authentic Māori items for sale. Although this system has led to major improvements for Māori artists, it has not totally stemmed the flow of items that lack authenticity.

The implications for library and cultural heritage institutions

Libraries and cultural heritage institutions worldwide contain a variety of items that can be considered to be classified as cultural and intellectual property of interest to Māori.

These items include manuscripts, diaries, oral history recordings, video recordings, photographs, artworks, archaeological artefacts, human remains, and examples of material culture (eg. weapons, clothing, cooking utensils, etc.) These items were acquired by a variety of methods including purchase or donation. The major issues that indigenous peoples wish to address to knowledge centres and museums are ownership and access.

Ownership

Who owns Māori property held in library and cultural heritage institutions?

Although institutions may have paid for cultural or intellectual artefacts or had them bequeathed by a donor, Māori believe that the knowledge within these items belongs to them collectively. It must also be recognised that most indigenous societies are tribal in their nature. Basically speaking this means that in indigenous people's eyes, different items will belong to different groups. For example in New Zealand, Māori is the generic name given to the indigenous peoples. However the concept of the Māori race is a post-European discovery concept. Māori before this and to this day identify themselves to their individual iwi (tribe) and hapu (sub-tribe). Although all tribes share common traits they are each unique in their own way, for example each tribal area has a distinctive carving and artistic style, its own dialect of Te reo Māori (Māori language), different stories of their origins and historic feats, unique waiata (sung poetry) and kapa haka (action songs), and a distinctive whakapapa (genealogy) line. Each iwi considers this to be their property which they are obliged to protect and to pass onto the next generations. The knowledge contained within these items is on the whole vital to the identity of their iwi and should in some circumstances not be shared with those outside the group.

Access

Libraries and cultural heritage institutions are full of the resources ripe for exploitation by individuals or organisations wishing to use Māori information to their own advantage.

The Mataatua Declaration insisted that the first beneficiaries of indigenous knowledge (cultural and intellectual property rights) must be the direct indigenous descendants of such knowledge.

Māori however have witnessed the exploitation of their knowledge by others wishing to profit from it. Profiteers range from individuals building their own academic careers by using and interpreting Māori knowledge in their research to pharmaceutical companies searching for indigenous remedies as the basis for their commercial drugs or fashion designers using indigenous art forms as a template for their designs.

Limiting access to knowledge is a foreign concept to many of those in the library and information industry, although those that work in the special library arena are aware that there are times that commercially sensitive information must not be shared beyond the organisation or even with other parts of the organisation.

Māori ask that their ownership over these resources be recognised and that their requests to have access to some or all of these resources be respected.

Advancing the relationship between the knowledge profession and indigenous peoples

Australia and New Zealand have become more conscious in the last two decades of the rights of their respective indigenous peoples. In

both countries indigenous peoples have become more active in their political aspirations and in the assertion of ownership rights over land and natural resources. Success in these activities has given indigenous peoples the confidence to flex their muscles in other areas such as cultural and intellectual property rights. Although knowledge centres are yet to become a specific target it is a matter of 'when it happens' rather than 'if' it will happen.

It is therefore important for institutions that have items that can be classified as cultural and intellectual property to become aware of the issues surrounding these materials. It is essential that these centres be pro-active in developing a harmonious working relationship with the relevant indigenous group they belong to.

The development of this relationship will in most cases be a slow process. Both parties will need to become familiar with the cultural practices of the other. Trust is an important element. Indigenous peoples are conscious of the process of consultation. In New Zealand, Māori have been "consulted" on a range of issues by successive governments but with the Government having an agenda that has been pre-set. Institutions should avoid falling into this trap.

To Māori it is important that the person/group that is being consulted with has the mandate to negotiate or consult from the people they represent. This at times can be a difficult process as like any society conflicts are just as likely to exist in Māori society

Institutions must learn to be flexible and respectful of the cultural practices of the indigenous group. It is normal in the New Zealand sector for Māori cultural practices to precede and close formal proceedings such as meetings, conferences, business deals. Such occasions will normally include karakia (prayers), Whaikorero (formal speeches) and waiata (sung poetry). It is also possible for there to be cultural restrictions as to how cultural and intellectual property items can be stored or held by centres in order to protect their tapu (sacredness) nature.

Some iwi and hapu have chosen to allow their tāonga (treasures) to be retained by appropriate institutions, although they may wish to retain the rights of ownership and the right to restrict the access to these materials. Such restrictions may include only making their property available to members of their group, or to not allow the copying and distribution of the material to other knowledge centres without the permission of the owners.

Repatriation

As mentioned earlier, Māori tāonga (treasures) feature in the collections of libraries, museums and galleries worldwide. Over the past two decades Māori have advocated and lobbied for many of these treasures to be repatriated to New Zealand and wherever possible to the iwi from where they originated. The more prominent instances of repatriation occurring relate to the return of Māori skeletal remains and mokamokai (tattooed & preserved heads) from overseas institutions. In New Zealand this has extended to museums publishing

repatriation principles within their strategic plans and appointing Māori to repatriation liaison positions.

A number of iwi (tribes) and hapu (sub-tribes) are investigating the feasibility of developing cultural centres designed to store their tribal taonga for future generations. These cultural centres would include items repatriated from museums, other items contained in the collections of whānau (families) of the hapu/iwi and new materials (oral histories etc) developed by the cultural centre.

As many libraries in New Zealand hold printed Māori materials in the form of manuscripts, photographs, paintings, letters, diaries, notebooks, etc., the issue of repatriation of these materials has been raised as an issue. In 2007, the University of Auckland Library returned copies of the Whatahoro Jury (a noted Māori scholar) manuscripts to Ngati Kahungunu in the Wairarapa. This gesture has also provided opportunities for the Library to collaborate with Ngati Kahungunu on future projects.

Digitisation

Digital technology has presented new opportunities as well as new challenges for libraries. The digitisation of materials makes the digital repatriation of Māori tāonga a distinct possibility, as well as being able to make these items more widely available. However questions still remain over the ownership of these materials and whose decision is it that these materials should be digitised.

In 2007, New Zealand released its *Digital Strategy 2.0*, the strategy recognises the need for Māori involvement in the creation of mātauranga Māori (Māori knowledge) content and participation in the digital world. However the lack of any national guidelines is a limiting factor to ensuring that Māori participation becomes a reality. Collaboration, partnership and consultation are the keys to developing an amicable relationship between Māori and those wishing to undertake digitisation projects. These relationships will be successful if they involve co-operation and collaboration on a long term basis and that the value of reciprocity is built into partnership.

An example of the difficulties encountered in the decision whether to digitise existing printed Māori materials is illustrated by the New Zealand Electronic Text Centre's consultation on whether it would be permissible to digitise an item on Māori tattooing that was written in the late nineteenth century. The item in question was H.G.Robley's *Moko: or Māori Tattooing*. The book contains images of mokamakai (preserved heads) and the New Zealand Electronic Text Centre realised that there was some sensitivity about making these items available in the digital format. The Text Centre consulted with a wide range of Māori academics, librarians and community groups. The responses they received varied from the strongly encouraging to the extremely cautious. After the consultation they decided that they would digitise the book but would not display images of the mokamokai or human remains. Concerns about compromising the integrity of the book were outweighed by concerns that displaying the mokamokai without express permission of the descendent whānau of those tupuna (ancestors) whose remains appeared in those images

would be disrespectful. In place of the images, a description of the image is included, a reason for the image being suppressed and a link to their policy on suppression and the paper on the consultation process. Furthermore, in order to contextualise the book, other items were digitised and form a corpus of material that provide readers with an understanding of the art of moko (tattooing).

The consultation process undertaken by the Text Centre serves as a useful model for other institutions to learn from. However like most models it should be noted that 'one size will not fit all'.

Conclusions

This paper has addressed the major differences in interpretation of cultural and intellectual property rights by Māori and other New Zealand cultures. Western-style, legislation is not robust enough to afford Māori the protection that is needed to protect property in a culturally effective style. The development of new technologies has created a range of new issues to be considered and libraries and other cultural institutions need to work through these with the appropriately mandated representatives from Māori communities.

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Appendix 1

Treaty of Waitangi 1840

[Translation of the Māori text of the Treaty, by Prof. Sir Hugh Kawharu] ¹

Victoria, the Queen of England, in her concern to protect the chiefs and the subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it just to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that no evil will come to

¹ More information on the Treaty of Waitangi can be obtained at <http://www.nzhistory.net.nz/category/tid/133>

Māori and European living in a state of lawlessness. So the Queen has appointed "me, William Hobson a Captain" in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.

The first The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.

The second The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The third For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

[signed] William Hobson Consul and Lieut. Governor

So we, the Chiefs of the Confederation of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and our marks thus.

Was done at Waitangi on the sixth of February in the year of our Lord 1840.

Appendix 2

The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples

First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples, Whakatane 12-18 June 1993 Aotearoa New Zealand. In recognition that 1993 is the United Nations International Year for the World's Indigenous Peoples: The Nine Tribes of Mataatua in the Bay of Plenty region of Aotearoa New Zealand convened the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples, (12-18 June 1993, Whakatane). Over 150 delegates from fourteen countries attended, including indigenous representatives from Ainu (Japan), Australia, Cook Islands, Fiji, India, Panama, Peru, Philippines, Surinam, USA and Aotearoa. The Conference met over six days to consider a range of significant issues, including; the value of indigenous knowledge, biodiversity and biotechnology, customary environmental management, arts, music, language and other physical and spiritual cultural forms. On the final day, the following Declaration was passed by the Plenary.

Preamble

Recognising that 1993 is the United Nations International Year for the World's Indigenous Peoples: Reaffirming the undertaking of United Nations Member States to: "Adopt or strengthen appropriate policies and/or legal instruments that will protect indigenous intellectual and

cultural property and the right to preserve customary and administrative systems and practices." - United Nations Conference on Environmental Development: UNCED Agenda 21 (26.4b) Noting the Working Principles that emerged from the United Nations Technical Conference on Indigenous Peoples and the Environment in Santiago, Chile from 18-22 May 1992 (E/CN.4/Sub.2/1992/31) Endorsing the recommendations on Culture and Science from the World Conference on Indigenous Peoples on Territory, Environment and Development, Kari-Oca, Brazil, 25-30 May 1992.

We:

Declare that Indigenous Peoples of the world have the right to self determination, and in exercising that right must be recognised as the exclusive owners of their culture and intellectual property;
Acknowledge that Indigenous Peoples have a commonality of experiences relating to the exploitation of their cultural and intellectual property; Affirm that the knowledge of the Indigenous Peoples of the world is of benefit to all humanity; Recognise that Indigenous Peoples are capable of managing their traditional knowledge themselves, but are willing to offer it to all humanity provided their fundamental rights to define and control this knowledge are protected by the international community; Insist that the first beneficiaries of indigenous knowledge (culture and intellectual property rights) must be the direct indigenous descendants of such knowledge;

Declare that all forms of discrimination and exploitation of Indigenous Peoples, indigenous knowledge and indigenous cultural and intellectual property rights must cease.

1. Recommendations to Indigenous Peoples

In the development of policies and practices, Indigenous Peoples should:

1.1 Define for themselves their own intellectual and cultural property.

1.2 Note that existing protection mechanisms are insufficient for the protection of Indigenous Peoples' Intellectual and Cultural Property Rights.

1.3 Develop a code of ethics which external users must observe when recording (visual, audio, written) their traditional and customary knowledge.

1.4 Prioritise the establishment of indigenous education, research and training centres to promote their knowledge of customary environmental and cultural practices.

1.5 Reacquire traditional indigenous lands for the purpose of promoting customary agricultural production.

1.6 Develop and maintain their traditional practices and sanctions for the protection, preservation and revitalisation of their traditional intellectual and cultural properties.

1.7 Assess existing legislation with respect to the protection of antiquities.

1.8 Establish an appropriate body with appropriate mechanisms to:

1. preserve and monitor the commercialism or otherwise of indigenous cultural properties in the public domain
2. generally advise and encourage indigenous peoples to take steps to protect their cultural heritage

3. allow a mandatory consultative process with respect to any new legislation affecting Indigenous Peoples Cultural and Intellectual Property Rights.

1.9 Establish international indigenous information centres and networks.

1.10 Convene a Second International Conference (Hui) on the Cultural and Intellectual Property Rights of Indigenous Peoples to be hosted by the Co-ordinating Body for the Indigenous Peoples Organisations of the Amazon Basin (COICA).

2. Recommendations to States, National and International Agencies

In the development of policies and practices, States, National and International Agencies must:

2.1 Recognise that indigenous peoples are the guardians of their customary knowledge and have the right to protect and control dissemination of that knowledge.

2.2 Recognise that indigenous peoples also have the right to create new knowledge based on cultural traditions.

2.3 Note that existing protection mechanisms are insufficient for the protection of Indigenous Peoples Cultural and Intellectual Property Rights.

2.4 Accept that the cultural and intellectual property rights of Indigenous Peoples are vested with those who created them.

2.5 Develop in full co-operation with Indigenous Peoples an additional cultural and

intellectual property rights regime incorporating the following:
collective (as well as individual) ownership and origin retroactive
coverage of historical as well as contemporary works protection
against debasement of culturally significant items co-operative rather
than competitive framework first beneficiaries to be the direct
descendants of the traditional guardians of that knowledge multi-
generational coverage span.

Biodiversity and customary environmental management 2.6

Indigenous flora and fauna is inextricably bound to the territories of indigenous communities and any property right claims must recognise their traditional guardianship.

2.7 Commercialisation of any traditional plants and medicines of Indigenous Peoples, must be managed by the Indigenous Peoples who have inherited such knowledge.

2.8 A moratorium on any further commercialisation of indigenous medicinal plants and human genetic materials must be declared until indigenous communities have developed appropriate protection mechanisms.

2.9 Companies, institutions both governmental and private must not undertake experiments or commercialisation of any biogenetic resources without the consent of the appropriate indigenous peoples.

2.10 Prioritise settlement of any outstanding land and natural resources claims of indigenous peoples for the purpose of promoting customary, agricultural and marine production.

2.11 Ensure current scientific environmental research is strengthened by increasing the involvement of indigenous communities and of customary environmental knowledge.

Cultural Objects

2.12 All human remains and burial objects of Indigenous Peoples held by museums and other institutions must be returned to their traditional areas in a culturally appropriate manner.

2.13 Museums and other institutions must provide, to the country and Indigenous Peoples concerned, an inventory of any indigenous cultural objects still held in their possession.

2.14 Indigenous cultural objects held in museums and other institutions must be offered back to their traditional owners.

3. Recommendations to the United Nations

In respect for the rights of Indigenous Peoples, the United Nations should:

3.1 Ensure the process of participation of Indigenous Peoples in United Nations fora is strengthened so their views are fairly represented.

3.2 Incorporate the Mataatua Declaration in its entirety in the United Nations Study on Cultural and Intellectual Property of Indigenous Peoples.

3.3 Monitor and take action against any States whose persistent policies and activities damage the cultural and intellectual property rights of Indigenous Peoples.

3.4 Ensure that indigenous peoples actively contribute to the way in which indigenous cultures are incorporated into the 1995 United Nations International Year of Culture.

3.5 Call for an immediate halt to the on-going 'Human Genome Diversity Project' (HUGO) until its moral, ethical, socio-economic, physical and political implications have been thoroughly discussed, understood and approved by Indigenous Peoples.

4. Conclusion

4.1 The United Nations, International and National Agencies and States must provide additional funding to indigenous communities in order to implement these recommendations.