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ANGELA MEGAN FOSTER

**INDIGENOUS PEOPLES AND
INTELLECTUAL PROPERTY**

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INDIGENOUS PEOPLES AND INTELLECTUAL PROPERTY

I INTRODUCTION

This paper looks at the current debate as to the best way of protecting indigenous peoples' traditional knowledge and expressions of their culture, in particular with regard to the New Zealand legal system and Māori. It starts by looking at what traditional knowledge and cultural expressions encompass and the differing notions of property. This paper then examines the WAI 262 claim¹ and the perceived inadequacies in the current intellectual property regime, and whether these inadequacies can be met by piecemeal reform of existing legislation, or whether protection of such knowledge and expressions of culture should be dealt with through sui generis legislation.

This paper proceeds on the basis that effective protection of indigenous peoples' intellectual property rights requires a three tiered approach, that:

- (i) core intellectual property issues are updated in light of new technology and globalisation;
- (ii) to bridge the gaps for indigenous peoples in the current intellectual property regime, sui generis legislation be adopted, to protect the collective rights in perpetuity of indigenous peoples in both traditional knowledge and expressions of culture; and
- (iii) non-legal measures, such as codes of ethics, policies and education campaigns, should be pursued.

This paper focuses primarily on the second tier and briefly addresses the first. The need for the third tier is recognised, but not examined.

In addressing the second tier, sui generis legislation, this paper looks at existing international agreements, legislation and model provisions before speculating as to what form general sui generis legislation would take: its objectives, scope, appropriate uses, prohibitions, enforcement, exceptions and remedies. In particular, this paper looks at setting up a consultative group within the Intellectual Property Office of New Zealand to register Māori and other indigenous peoples' collective rights, as well as the possible

¹ The indigenous flora and fauna claim currently before the Waitangi Tribunal.

composition and function of an appropriate authority to administer the system of registration that is necessary for the protection and compensation-related aspects of traditional knowledge and cultural expressions.

II TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF CULTURE

In her "Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples" United Nation's Special Rapporteur, Erica-Irene Daes, submitted that²

'Heritage' includes all expressions of the relationship between the people, their land and the other living beings and spirits which share the land, and is the basis for maintaining social, economic and diplomatic relationships - through sharing - with other peoples. All of the aspects of heritage are interrelated and cannot be separated from the traditional territory of the people concerned. What tangible and intangible items constitute the heritage of a particular indigenous people must be decided by the people themselves.

Indigenous peoples are trying to protect their traditional knowledge and expressions of culture because they are currently being exploited and used commercially, often used without the consent of the relevant indigenous authority, used in culturally inappropriate manners, and almost certainly used without economic return to the indigenous people from whom the knowledge was appropriated. Therefore many indigenous peoples, including Māori, seek to control and preserve their own cultural heritage, as well as ensure cultural integrity (for example through recognition of its place of origin) and proper remuneration where traditional knowledge or culture has been used commercially and the appropriate consent has been obtained.

The problem is succinctly illustrated by Noel Levi, CBE, General Secretary of the Pacific Islands Forum Secretariat:³

The trends in global trade are creating a more open world economy, and traditional knowledge provides an information bank for new innovative products and methods of production.

² Erica-Irene Daes "Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples" UNESCO, E/CN.4/Sub.2/1993/28, 28 July 1993, para 164.

³ Noel Levi "Traditional Knowledge Protection" Press Statement 1601, Suva, 23 February 2001.

III THE CONFLICTING NOTIONS OF PROPERTY

Intellectual property rights have been described as “the legal rights which may be asserted in respect of the human intellect”.⁴ In New Zealand, protection for intellectual property rights is provided for in a number of Acts including, but not limited to, the Copyright Act 1994, the Patents Act 1953, the Trade Marks Act 1953, the Designs Act 1953 and the Plant Variety Rights Act 1987.

The western/libertarian rationale for intellectual property rights is two-fold. Originally, intellectual property rights were based on the creation/innovation theory, ie an author/inventor will continue to create or invent, thereby promoting science and the arts, if there are incentives by way of protection and reward. However, in the era of globalisation and commercialisation, intellectual property rights are now primarily used to protect investments in knowledge-based assets in the interests of economic growth.⁵

Coincident with the western world’s social structure, predominantly based on the nuclear family, independence and individual autonomy, intellectual property rights are generally individually (or jointly) owned. The owner of intellectual property rights can exploit them in the same manner as other property rights: ie they are exclusive and alienable.

In contrast, however, indigenous societies are usually socially structured on a kinship basis, thus giving rise to a different basis on which to lay their property rights. An individual is not an individual because of who she is, but because of how she is defined in relation to her consanguines and other members of her group. In indigenous societies, the welfare of the community is paramount, formed and defined by the relationships of individuals in a particular time and place. Thus, like western societies, indigenous societies are not static, but are constantly evolving and able to respond to new situations (for example, because of a change in membership, in technology, or in the environment).

⁴ Phillips & Firth *An Introduction to Intellectual Property Law* (Butterworths, London, 1990).

⁵ Hammond “The Legal Protection of Ideas” (1991) 29 *Osgoode Hall Law Journal* 93, 123.

However, what does remain is the communal nature of the group. The western regime of owning individual property rights to the exclusion of other members does not easily fit with the holistic view of indigenous societies. For indigenous peoples who are connected to each other, their land and their spiritual ancestors intellectual property rights are merely a subset of the broader rights of ownership that belong to a community, rather than an individual. These rights belong to the community as a whole and are exercised by traditional owners/custodians or elders, acting with the authority of the community. Neither can property rights, including intellectual property rights, be confined to a limited period, as the ownership rights pass from generation to generation, within the particular community, and in that regard they exist continually. Another difference is that these rights are part of the land and therefore part of the people. In that regard they are inalienable.

Therefore, the starting points of the two views (western and indigenous) are conflicting: one based on individual rights for economic return whilst the other based on communal rights for the collective benefit of their group, enabling them to pass on their culture to future generations.

It is no wonder that indigenous peoples worldwide are claiming that current intellectual property laws based on libertarian notions of property are inadequate in protecting their traditional knowledge and expressions of culture.

IV INADEQUACIES IN THE CURRENT REGIME

The current intellectual property regime deficiencies are two-fold. The core intellectual property issues covered in Part A are not only issues of concern for indigenous people, but for all individuals and businesses. Part B looks at the inadequacies relating to the protection of indigenous peoples' traditional knowledge and cultural expressions. Any reform will therefore need to address both areas of concern.

A *Core Intellectual Property Issues*

The Appendix to Kamal Puri's article "Protection of Expressions of Indigenous Cultures in the Pacific"⁶ provides a summary table of the intellectual property laws in the Pacific. A major problem with current schemes is that in some countries⁷ a basic intellectual property regime is virtually non-existent.⁸ Most of the others, including New Zealand, are based on intellectual property laws over 50 years old⁹ which provide poor protection, even for non-indigenous peoples, given that the digital revolution has drastically changed technology since the 1950s. For example, because of the ease of technology assisted by the digital revolution, it is now possible for a person in Peru to download a New Zealand business¹⁰ trade mark from the internet and use it for his/her own purposes locally, in the hope that the New Zealand business does not discover the Peruvian's appropriation. This affects both indigenous and non-indigenous peoples in the Pacific, whose intellectual property laws are based on outdated technologies.

In "Innovators hindered as politicians put knowledge protection on the backburner"¹¹ Michael Hawkins, a partner at Baldwin Shelson Waters, noted that strong intellectual property laws are essential for building a knowledge economy and economic growth. However, the Patents Act 1953 hinders this development by using a "local" novelty standard for a patent to be granted. Currently, in New Zealand, a person can patent as their own an invention based on kava which he/she saw when in Fiji. The current intellectual property regime in New Zealand is not able to provide a secure and competitive business environment. However, that is being remedied as the Ministry of Economic Development has given policy approval for a three stage review of the Patents Act. One non-controversial reform is to change the current "local" novelty standard to an "international" novelty standard.

It is therefore essential for countries to update their core intellectual property laws to provide confidence to businesses and individuals. Thus, in New Zealand, any forms of

⁶ (1999) XXXIII UNESCO's Copyright Bulletin, 6.

⁷ For example American Samoa, Federated States of Micronesia, Marshall Islands, Palau and Wallis and Futuna.

⁸ Although most countries do have some form of copyright protection.

⁹ For example, the New Zealand Designs Act 1953 is based on the 1949 United Kingdom Act.

¹⁰ Whether it be a Māori business or not.

¹¹ *The Independent* <<http://www.bswip.co.nz/articles/innovators.html>> (last accessed: 30 June 2001).

Māori traditional knowledge or cultural expressions that can fit within the existing regime (for example Māori business trade marks) are in danger of having their exclusive rights infringed simply through the ease of technology and globalisation.

By updating these rights, both indigenous and non-indigenous peoples can gain commercially, as well as creating a supportive environment for private sector expansion and economic growth. An effective intellectual property regime will therefore secure the business environment and encourage foreign investment, while also providing the base upon which sui generis legislation, protecting indigenous peoples' intellectual property rights, will be developed from.

B Traditional Knowledge and Cultural Expressions

The main problem for indigenous peoples is the protection of traditional knowledge and cultural expressions that have been misappropriated or exploited for commercial benefit. This is because it is hard to fit such knowledge and expressions into the current intellectual property regime. The following analysis will look at the difficulties for traditional knowledge under the Patents Act 1953 and cultural expressions under the Copyright Act 1994.

1 Traditional Knowledge and the Patents Act 1953

As indicated by Daes¹² traditional knowledge covers all kinds of scientific, agricultural, technical and ecological knowledge, including medicinal knowledge and the rational use of flora and fauna.

The rationale behind patent protection is that it gives a monopoly to the inventor of an invention, for a limited period of time,¹³ for the inventor to recoup their expenses in researching and developing the invention and as a stimulus to continue inventing. In exchange for this monopoly the inventor must then specifically detail the new manner of

¹² Erica-Irene Daes "Protection of the Heritage of Indigenous People", Final Report, UNESCO, E/CN.4/Sub.2/1995/26, 21 June 1995, para 12.

¹³ 20 years in New Zealand.

manufacture, which is then made available for public use at the end of the term of protection.

Māori, however, cannot patent their traditional medicines because they fall foul of the invention and novelty requirements of the Patents Act 1953.

(a) Invention

To be patentable an invention must involve “any manner of new manufacture”.¹⁴ Thus flora and fauna that occur naturally are unable to be patented, because they do not involve any manner of new manufacture. However, as noted in “Māori and the Patenting of Life Form Inventions”,¹⁵ patents can be granted over traditional remedies from iwi Māori where the “active ingredient” (such as enzymes and genes) can be isolated. This results in an individual or company being “directed” to the healing qualities of particular flora/fauna, patenting either processes or parts of it, and reaping the rewards that come with patent protection, without recognising the traditional knowledge base that the information was derived from or compensating Māori from whom the knowledge was appropriated.

(b) Novelty

A traditional medicine will not be patentable because it is not novel: it has been used over generations and is part of the public domain. If traditional knowledge is in the public domain, it is available for the general public to use.

2 *Expressions of Culture and the Copyright Act 1994*

Section 14 of the Copyright Act 1994 provides that copyright is a property right that exists in, amongst others, original literary, dramatic, musical or artistic works. Thus

¹⁴ Section 2(1) Patents Act 1953.

¹⁵ Patenting of Life Forms Focus Group, February 1999

<http://www.med.govt.nz/buslt/int_prop/maoripatent/index.html> (last accessed 30 June 2001).

indigenous expressions of culture include music, dance, waiata, haka, tales, designs, ceremonies and motifs. If the statutory criteria are met, the owner of the property rights has the exclusive right to do any of the restricted acts specified in section 16. Copyright expires 50 years after the death of the author.¹⁶ Notably, sections 94-107 detail the moral rights available to the author including the right to be identified as author¹⁷ and the right to object to derogatory treatment of the work.¹⁸

*Bulun Bulun v R & T Textiles Pty Ltd*¹⁹ is illustrative of the problems faced by indigenous peoples.²⁰ Bulun Bulun successfully sued as legal owner for breach of copyright. However, Milpurrurru²¹ also sued, as representative of the Ganalbingu People, seeking recognition of their communal title. The artistic work contained ritual knowledge which, under customary law, the traditional owners could control. Under the intellectual property regime, traditional owners have no rights to sue as the law does not allow communal title to be asserted. While Bulun Bulun was awarded damages and injunctions against future infringement, the Ganalbingu People wanted the Court to recognise the injury caused to them by using such sacred and ritual knowledge in an inappropriate manner. Reproduction, without strict observance of the customary law governing its production, threatened the whole system and ways that underpin the stability and continuance of Yolngu society.²²

While not recognising an equitable interest in Milpurrurru as representative on the facts of this particular case, von Doussa J did open the door for recognition of communal title:²³

[I]n other circumstances if the copyright owner of an artistic work which embodies ritual knowledge of an Aboriginal clan is being used inappropriately, and the copyright owner fails or refuses to take appropriate action to enforce the copyright, *the Australian legal system will permit remedial action through the courts by the clan.*

¹⁶ Section 22 Copyright Act 1994.

¹⁷ Section 94 Copyright Act 1994.

¹⁸ Section 98 Copyright Act 1994.

¹⁹ 157 ALR 193.

²⁰ See also *Milpurrurru v Indofurn Pty Ltd* 130 ALR 659.

²¹ An artist and senior member of the traditional Aboriginal owners of Ganalbingu country, Northern Territory, Australia.

²² Above n 19, 199.

²³ Above n 19, 212 (my emphasis added).

In New Zealand, the current regime is inadequate in meeting the needs of Māori for the following reasons:

(a) Originality

For a work to be original it must have the requisite level of skill, labour or judgment. Many Māori tales, waiata or designs may not satisfy the requirement of originality because they are often based on themes that have been handed down from their ancestors.

(b) Identifiable author and ownership

There must be an identifiable author or joint authors for copyright to exist in a work. However, given the nature of traditional Māori works, which are passed down and developed over generations, it may be impossible to identify a particular author. The western notion of property does not accommodate the communal notions of property held by indigenous societies.

(c) Duration

The Copyright Act limits the protection to the author's life plus 50 years. After that, it falls into the public domain and is freely available for use and reproduction without the need to obtain permission from the owner. This is inadequate for indigenous peoples as the works may be inappropriately used, thus denigrating their culturally significant works, and causing offence to the particular indigenous group.

(d) Material form

Protection will only be granted an original work if it has been recorded.²⁴ This excludes a lot of original works from oral traditions (tales, stories) because

²⁴ Section 15 Copyright Act 1994.

they may not have been reduced to writing. Dances, waiata, haka would also need to be recorded to be afforded protection.

(e) Moral rights

While the Copyright Act 1994 does have provision for moral rights, these are inadequate because they can only be enforced by individual or joint authors and the duration of the moral rights expires when the copyright in the work expires.²⁵ Thus, if an author was dead or did not want to pursue her moral rights, the law provides no basis for iwi or hapu to object to a derogatory or offensive treatment of the work.

Thus, neither the Patents Act nor the Copyright Act adequately meet the needs of Māori in New Zealand as, while it does offer some protection, the intellectual property regime²⁶ leaves gaps and puts tino rangatiratanga in respect of Māori knowledge and tāonga at risk of exploitation by others.²⁷ As identified at III above, this stems from the different social structures and notions of property between western and indigenous societies.

V WAI 262: INDIGENOUS FLORA AND FAUNA

The Waitangi Tribunal is currently hearing the WAI 262 claim in relation to Māori and their rights in respect of indigenous flora and fauna: "me o ratou tāonga katoa".²⁸ The claimants seek to uphold tino rangatiratanga over native flora and fauna and including "all rights (including intellectual and property rights) past, present and future in relation to tāonga."²⁹

²⁵ Section 106 Copyright Act 1994.

²⁶ Including the Trade Marks Act, Plant Variety Act and Designs Act, which have not been covered in this analysis.

²⁷ Martin Dawson, Russell Karu and Louise Taylor "Intellectual Property Rights" presented at the Inaugural Māori Business Symposium, Auckland, 28-29 July 1999.

²⁸ "[A]nd all their treasures" Article II, Treaty of Waitangi 1840.

²⁹ Aroha Te Pareake Mead "Country Statement, Aotearoa, New Zealand" at the Regional Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Culture in the Pacific Islands, Noumea, 15-19 February 1999.

The claimants argue that the Crown has breached its obligations under Article II of the Treaty of Waitangi by failing to give effect to tino rangatiratanga, guaranteed under the Treaty. For example, the koromiko plant was highly prized for its medicinal qualities however, due to Crown policies such as land clearance and alienation, as well as the Tohunga Suppression Act 1909 it³⁰

... made it more difficult for te iwi Māori to justify and apply specific protection and kaitiakitanga³¹ through the exercise of te tino rangatiratanga in relation to koromiko.

Further, the Crown, and not Māori, has benefited from plant breeding and the sale of hebe, while its genetic material has been transferred overseas without Māori knowledge or consent. This illustrates the concerns that indigenous peoples have towards their traditional knowledge: Māori were neither recognised economically nor as the source of the knowledge, nor was the informed consent of Māori sought before the hebe was genetically altered, to see whether such practice was culturally appropriate.

By way of remedies, the claimants seek control of indigenous flora and fauna and knowledge systems in a manner which recognises tino rangatiratanga o te iwi Māori. Other remedies sought include compensation and a formal apology.

The WAI 262 claim has impacted on the reform of intellectual property legislation in New Zealand. An Intellectual Property Rights Law Reform Bill was introduced in 1995 to reform all of New Zealand's industrial property rights' statutes, however this was not continued as the Ministry of Commerce had not adequately consulted with Māori and the proposed reforms did not go far enough in solving issues of concern to Māori. Thus, reform in the area of intellectual property has been slow. However, the Ministry of Commerce established two "Focus Groups" to consider Māori trade marks and the patenting of life forms. While this paper does not address the issues that faced those Focus Groups it is encouraging to note that the government is consulting Māori so that reform of the existing intellectual property laws will accommodate, where possible, Māori concerns.

³⁰ Clause 8.2(a)(ii) of the claim.

³¹ Guardianship.

VI OPTIONS FOR REFORM

The *Our Culture: Our Future* report³² identified five possible strategies for redressing the shortfalls in the current intellectual property regime:

1. Changing existing legislation.
2. Enacting specific legislation (*sui generis*).
3. Administrative responses.
4. Developing policies, protocols and codes of ethics.
5. Education and awareness strategies.

Peter Dengate Thrush, in his report commissioned by the Waitangi Tribunal, concluded that:³³

There is clearly a deal of work to do yet in both the theoretical and the practical areas of law for the protection of indigenous peoples' heritage. My own view currently is that the need for a new form of intellectual property right is not made out. Certainly, the form of such a right is not presently clear to me. In the meantime, 'expansion' of some of the definitions in existing legislation could provide considerable relief. ... Much can be done by way of further exploring the application of the current intellectual property law paradigm to the needs of New Zealand's first settlers.

Whilst it is true that much can be done by amending the current intellectual property regime to better protect Māori³⁴ it would still involve spasmodic protection, with several sources to be checked³⁵ before discovering that the law allowed the appropriation to occur. Further, concepts such as perpetual duration would not lie easily within the current intellectual property regime without compromising its objectives and causing confusion. Piecemeal reform, therefore, would not be the optimal solution as it is both time consuming and would fall short of the needs of Māori.

³² Written and researched by Terri Janke, Michael Frankel & Company for the Australian Institute of Aboriginal and Torres Strait Islander Studies and the Aboriginal and Torres Strait Islander Commission (ATSIC) <<http://www.icip.lawnet.com.au>> (last accessed: 30 June 2001).

³³ Peter Dengate Thrush *Indigenous Flora and Fauna of New Zealand* (Brookers, Wellington, 1995) 61.

³⁴ See, generally, IV above.

³⁵ Including the common law actions of breach of confidence and passing off, the Fair Trading Act 1986, claims under the Treaty of Waitangi 1840, trade secrets, as well as intellectual property and heritage legislation (eg Historic Places Act 1993 and Antiquities Act 1975).

The emerging line of thought, which this paper pursues, is that sui generis legislation is needed for the protection of traditional knowledge and expressions of culture. This paper acknowledges that options 3 – 5 above should be combined with the option to enact specific legislation and encourages that development. As recognised in *Our Future: Our Culture* this could involve policies for the repatriation of indigenous ancestral remains and sacred objects as well as developing codes of ethics relating to media and research institutions. Education and awareness strategies would help the general population to understand why it is necessary, and not necessarily discriminatory, to protect traditional knowledge and expressions of culture.³⁶ Additionally, these measures should be combined with updating the core intellectual property laws, as identified at IV.A above.

Reform of the intellectual property regime would therefore involve all five options: that is, updating existing legislation to take New Zealand into the 21st century, developing sui generis legislation to protect traditional knowledge and expressions of culture where contemporary intellectual property laws are inadequate, and developing policies, codes of ethics and education strategies.

The problem, however, with opting for sui generis legislation is predicting what form that legislation would take and what it would cover. To inform this process, it is helpful to look at international agreements, other countries' legislation and model provisions.

A *International Agreements*

1 *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)*³⁷

The objective of TRIPs is to harmonise and set minimum intellectual property rights at the global level. Article 27(2) of TRIPs states:

³⁶ Kamal Puri "Preservation and conservation of expressions of folklore" (1998) XXXII UNESCO's Copyright Bulletin 5, 25.

³⁷ Annex 1C, Marrakech Agreement, ratified by New Zealand on 7 December 1994, with effect from 1 January 1995.

Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health to avoid serious prejudice to the environment...

Daes³⁸ notes that Member States would be able to exclude the traditional ecological and medical knowledge of indigenous peoples from patentability, which would allow States to implement, consistently with their obligations under the TRIPs agreement, the Principles and Guidelines for Protection of the Heritage of Indigenous Peoples.³⁹ Whilst this would protect the integrity of traditional knowledge from inappropriate use, it would also prevent indigenous peoples from making an economic claim on the traditional knowledge base on which the patent was based.

2 *Convention on Biological Diversity*⁴⁰

The Convention aims to reconcile the needs for conservation of biological diversity and development, based on considerations of equity and shared responsibility. Article 8(j) of the Convention obliges States, as far as possible and appropriate:

Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of benefits arising from the utilization of such knowledge, innovations and practices.

Thus, there is already an obligation for New Zealand to preserve Māori knowledge, innovations and practices, that these be promoted and that Māori, as the holders and guardians of such knowledge, actively participate in plans relating to biodiversity. Article 8(j) also notes that any benefits from utilisation should be shared with Māori. However, one problem with article 8(j) is that it is subject to national legislation. This means that a State need not comply with these obligations if national

³⁸ Erica-Irene Daes "Protection of the Heritage of Indigenous People", Supplementary Report, UNESCO, E/CN.4/Sub.2/1996/22, 24 June 1996, para 49.

³⁹ Erica-Irene Daes, above n 12, Annex.

⁴⁰ Ratified by New Zealand on 16 September 1993, with effect from 29 December 1993.

legislation provides otherwise, thus allowing States to exclude indigenous communities from participation as well as retaining all benefits.

B Legislation in Other Countries⁴¹

1 Copyright Act 1998, Samoa

Protection of "expressions of folklore" is provided for in Part IV of the Samoan Copyright Act 1998 against (a) reproduction, (b) communication to the public and (c) adaptation, translation and other transformation, when such expressions are made either for commercial purposes or outside their traditional or customary context.⁴² "Expression of folklore" is defined in section 2 and means:

[A] group-oriented and tradition-based creation of groups or individuals reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means, including -

- (a) Folktales, folk poetry, and folk riddles;
- (b) Folk songs and instrumental folk music;
- (c) Folk dances and folk plays;
- (d) Production of folk arts...

Section 29(3) provides that the source must be indicated, in all printed publications, by mentioning the community or place from where the expression has been derived.

The right to authorise acts in section 29(1) vests in a competent authority.⁴³ Where consent has not been obtained then a person who uses an expression of folklore shall be liable for damages, injunctions and any other remedies as the court may deem fit.⁴⁴ Section 29(5) provides that all monies collected shall be used for purposes of cultural development, although there is no indication in the Act of how this will be

⁴¹ The Tongan Copyright Act 1985 and the Philippines' Indigenous Peoples' Rights Act 1997 also provide limited protection to indigenous peoples.

⁴² Section 29(1) Copyright Act 1998.

⁴³ Section 29(4) Copyright Act 1998.

⁴⁴ Section 30 Copyright Act 1998.

allocated, to whom or on what basis. Section 7 provides for moral rights, which may be waived and which survive the death of the author.

While these measures would alleviate some of the present problems that New Zealand and other countries face in their copyright legislation, it still does not address the issues of traditional knowledge, communal ownership or perpetual duration of rights.

2 *Act No 20, 2000, Republic of Panama*⁴⁵

The Long Title to the Act is:

Concerning the special system for registering the collective rights of indigenous peoples, for the protection and defense of their cultural identity and traditional knowledge, and setting out other provisions.

The purpose, as outlined in articles 1 and 2 covers:

- the protection of *collective* intellectual property rights *and* traditional knowledge, which are susceptible to commercial use;
- provision of a special system to register, promote and market their rights in order to highlight the sociocultural values of indigenous cultures and render social justice unto them; and
- third parties cannot have exclusive rights in traditional knowledge or cultural heritage, unless requested by the indigenous peoples.

It also recognises the role of traditional indigenous authorities.⁴⁶ Article 7 provides that copyright shall neither lapse nor have fixed duration. Article 9 provides for an investigator to protect the intellectual property and other traditional rights of indigenous peoples. Chapter IV details the promotion of indigenous art and cultural expressions, including a certification on the authenticity of the work of art.⁴⁷ Use and

⁴⁵ <<http://www.ichrdd.ca/111/english/commdoc/publications/indigenous/lawPanama.html>> (last accessed: 2 July 2001).

⁴⁶ Articles 4, 5 and 20.

⁴⁷ Article 10.

marketing rights are to be governed by each people's rules for use under Chapter V. Chapter VI sets out prohibitions and sanctions. There are exemptions to the Act allowing small-scale non-indigenous craftspeople to continue to earn their living, subject to conditions.⁴⁸ Finally, article 25 enables indigenous peoples from other countries to enjoy the same benefits of their collective intellectual property rights, provided those countries have reciprocal international agreements.

This is perhaps the most comprehensive and wide ranging of all the attempts so far in that it addresses the major failings of the western intellectual property regime, that is, it provides protection of collective rights in perpetuity over both artistic expressions and traditional knowledge. The right to use the intellectual property is subject to approval by the relevant indigenous people (thereby ensuring it is a culturally appropriate use) and the Act also provides for economic recognition. Its key to protection is the register, which is discussed at VII.D below.

C Model Provisions and International Developments

1 Model Provisions for National Laws for the Protection of Folklore Against Illicit Exploitation and Other Prejudicial Actions 1985

Developed by UNESCO/WIPO the Model Provisions extended usual copyright by providing for the protection of both tangible and intangible expressions of "folklore" against illicit exploitation, unauthorised uses, misrepresentation of source and wilful distortion. Unfortunately the Model Provisions did not expressly define "folklore". It would be open, therefore, for countries basing legislation on these Model Provisions to include traditional knowledge in any definition. The Model Provisions provide protection for a community, with no time limit imposed for the protection of expressions of folklore. A competent authority (regulated by government choice of members, not the choice of indigenous people themselves) could issue prior authorisation for commercial uses of folklore or uses other than in the traditional and customary context. Remuneration, by way of fees for authorisation, would be used for promoting or safeguarding national culture or folklore, and may be shared with the community from

⁴⁸ Articles 23 and 24.

where the folklore originated. Fines, imprisonment and seizure may be imposed as punishment. Some African countries⁴⁹ have based legislation on the Model Provisions.

2 *Mataatua Declaration*⁵⁰ 1993

The Mataatua Declaration was adopted by over 150 delegates at the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples.⁵¹ It declared 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 cultural and intellectual property."⁵² It then makes Recommendations to indigenous peoples, including that indigenous peoples should define for themselves their own intellectual and cultural property and that they should develop a code of ethics when external users record their traditional and customary knowledge.⁵³ It would also establish an appropriate body to, amongst other things, preserve and monitor the commercialism of indigenous cultural properties in the public domain.⁵⁴

At 2.5 it proposes that States (and other agencies) develop, in full co-operation with indigenous peoples, sui generis legislation which would cover:

- collective (as well as individual) ownership and origin;
- retroactive coverage of historical as well as contemporary works;
- protection against debasement of culturally significant items;
- cooperative rather than competitive framework;
- first beneficiaries to be the direct descendants of the traditional guardians of that knowledge;
- multi-generational coverage span.

⁴⁹ For example, Nigeria.

⁵⁰ *Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples* 1993.

⁵¹ Whakatane, New Zealand, 12-18 June 1993.

⁵² The right to self-determination is provided for in both the International Covenant on Civil and Political Rights 1966 and the International Covenant on Economic, Social and Cultural Rights 1966. New Zealand has ratified, and is therefore bound, by both these treaties.

⁵³ Above n 50, ss 1.1 and 1.3.

⁵⁴ Above n 50, s 1.8(a).

In relation to biodiversity it noted that any property right claims to indigenous flora and fauna must recognise indigenous communities' traditional guardianship⁵⁵ and that a moratorium should be placed on the commercialisation of human genetic materials until appropriate protection mechanisms have been developed.⁵⁶

These recommendations are vital in recognising the role of indigenous peoples and ensuring that their expressions of culture and traditional knowledge are preserved, enabling them to be transmitted to future generations, therefore ensuring the community's continuity. It also provides a possible framework on which to base sui generis legislation for indigenous peoples' cultural and intellectual property rights.

3 *Draft Declaration on the Rights of Indigenous Peoples 1993*

This was developed by the United Nations to bring about dialogue between governments and indigenous peoples and to develop international standards on the rights of indigenous peoples.

Although article 12 deals with the restitution of cultural and intellectual property, article 29 states that:

Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property. They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.

In considering sui generis legislation the Draft Declaration is a comprehensive document protecting the rights of indigenous peoples. However, there is still a considerable way to go as UN Member States debate the meaning of "indigenous peoples" and "self-determination".⁵⁷

⁵⁵ Above n 50, 2.6.

⁵⁶ Above n 50, 2.8.

⁵⁷ Te Puni Kokiri *Mana Tangata: Draft Declaration on the Rights of Indigenous Peoples 1993 – Background and Discussion on Key Issues* (Wellington, 1994).

When adopted, although it will not be legally binding, countries will be expected to comply with it. Article 29 would therefore impose a moral obligation on UN Member States, including New Zealand, to ensure special measures are conferred on indigenous peoples to control, develop and protect their intellectual property.

VII PROPOSED CONTENT OF SUI GENERIS LEGISLATION

In accepting the statement in the Mataatua Declaration that “existing protection mechanisms are insufficient for the protection of Indigenous Peoples’ Intellectual Property Rights”⁵⁸ the focus now is on developing legislation which meets the needs of indigenous peoples. As recommended by Daes:⁵⁹

The effective protection of the heritage of the indigenous peoples of the world benefits all humanity. Cultural diversity is essential to the adaptability and creativity of the human species as a whole.

On 16 May 2001 the Director-General submitted to the UNESCO Executive Board a “Report on the Preliminary Study on the Advisability of Regulating Internationally, Through a New Standard-Setting Instrument, the Protection of Traditional Culture and Folklore”.⁶⁰ Similarly, the Secretariat of the Pacific Community, the Forum Secretariat and UNESCO are in the final stages of drafting a legal framework to cover the Pacific region. This was presented to the Forum Economic Ministers and the Forum Trade Ministers in June 2001.⁶¹

In working out the content of sui generis legislation for the protection of traditional knowledge and expressions of culture, the approach adopted in the Mataatua Declaration, ie a broad platform on which to base specific legislation, should be favoured.

⁵⁸ *Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples* 1993.

⁵⁹ Erica-Irene Daes, above n 12, Annex, Principle 1.

⁶⁰ 161 EX/5, Paris, 16 May 2001.

⁶¹ As at 16 August 2001 the framework had been submitted to WIPO for comments in relation to member countries’ obligations under existing intellectual property treaties, including TRIPs.

A Objectives of the Legislation⁶²

- To preserve, protect and control traditional knowledge and cultural expressions of indigenous peoples.
- To conserve cultural expressions so that they can continue to be passed down to future generations and ensure continuity of their culture.
- To allow communal and perpetual intellectual property rights.
- To allow indigenous peoples to manage and control their traditional knowledge.
- To protect the integrity of indigenous cultural expressions.
- To recognise/acknowledge the community from where the traditional knowledge or cultural expression originated (source).
- To provide compensation to indigenous peoples for unauthorised uses.
- To allow indigenous peoples to commercialise their intellectual property and thus derive economic benefit.
- To encourage acceptable and authorised use.
- To set up a body, defined by and comprised of indigenous people, to carry out administration (such as administering a certificate of authenticity), investigate infringements, collect fees, and promote awareness of the necessity for safeguarding traditional knowledge and expressions of culture, as well as educating indigenous people on their rights.

B Scope

1 Definition of Traditional Knowledge and Expressions of Culture

One problem is the definition of traditional knowledge and expressions of culture. As noted at II above Daes used the term "heritage". Others have used the

⁶² These objectives are based on those identified in *Our Culture: Our Future*, above n 32; and the "Preliminary Study on the Advisability of Regulating Internationally, Through a New Standard-Setting Instrument, the Protection of Traditional Culture and Folklore", above n 60.

term "folklore".⁶³ However, as recognised in *Our Culture: Our Future*⁶⁴ words such as "heritage" and "folklore" imply preservation and maintenance issues, whereas "property" denotes protection of commercial rights, and both meanings are relevant to indigenous peoples.

At the Symposium on the Protection of Traditional Knowledge and Expressions of Traditional and Popular Indigenous Cultures in the Pacific Islands⁶⁵ a Final Declaration was adopted which encompassed a wide ranging inclusive definition. It defined traditional knowledge and expressions of indigenous culture as:⁶⁶

... the ways in which indigenous cultures are expressed and which are manifestations of worldviews of the indigenous peoples of the Pacific. Traditional knowledge and cultural expressions are any knowledge or expressions created, acquired and inspired (applied, inherent or abstract) for the physical and well-being of the indigenous peoples of the Pacific. The nature and use of such knowledge and expressions are transmitted from one generation to the next to enhance, safeguard and perpetuate the identity, well-being and rights of the indigenous peoples of the Pacific.

It then bullet points 17 examples of what such knowledge and expressions include.

It purports to be a comprehensive definition, yet also leaves the door open⁶⁷ for further knowledge and expressions to be included, presumably to allow for additions based on future circumstances or to allow the indigenous peoples themselves to define their own traditional knowledge and expressions of culture.

Finally, as culture is socially based and defined by the indigenous people themselves, no two clans' or tribes' traditional knowledge and expressions of

⁶³ For example the UNESCO/WIPO "Model Provisions for National Laws for the Protection of Folklore Against Illicit Exploitation and Other Prejudicial Actions" 1985. "Expressions of folklore" is also used in the Tongan Copyright Act 1985 and the Samoan Copyright Act 1998.

⁶⁴ ATSC, above n 32.

⁶⁵ Held in Noumea, 15-19 February 1999.

⁶⁶ <http://www.unesco.org/culture/copyright/folklore/html_eng/declaration.shtml> (last accessed 30 June 2001).

⁶⁷ The text states that the definition is not limited to the 17 bullet-pointed examples.

culture could be expected to cover precisely the same ground. In recognising that the definition could change for any number of reasons, a statement similar to the one in Daes' definition of "heritage"⁶⁸ should be added, ie that what constitutes the traditional knowledge and expressions of culture of a particular indigenous people must be decided *by the people themselves*. To that end the broad and open-ended definition in the Mataatua Declaration⁶⁹ is also attractive because it is flexible enough to cover all aspects of indigenous traditional knowledge and expressions of culture *and* evolve with new forms that indigenous peoples may develop in the future (for example, new forms of art that may be possible because of the digital revolution; or new knowledge that is developed to meet a change in the environment).

2 Which Act Applies?

The aim of the legislation is not to preserve and protect cultural expressions at the expense of indigenous artists', authors' and inventors' rights in their creations/innovations. Clearly these innovators, whilst they may have cultural motivations, may equally have the same economic motivations that non-indigenous peoples have, ie to be rewarded for their creations. The new legislation would not be able to limit existing rights or prevent innovators from seeking rewards under the current intellectual property regime, but clearance may be required from the appropriate authority⁷⁰ to ensure that the use is culturally appropriate.

The proposed sui generis legislation would allow communities to seek protection where the current intellectual property regime is deficient or where the innovator does not take action herself, for example where the protection afforded by copyright/patent law had expired or the work was used for commercial gain or in a culturally inappropriate way.

⁶⁸ Erica-Irene Daes, above n 2.

⁶⁹ *Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples* 1993, s 1.1.

⁷⁰ Discussed at VII.E below.

C Use and Prohibitions

As well as provisions covering the objectives in A above, the legislation should cover:

- acceptable commercial uses or uses other than in their traditional context that have been or can be authorised by an appropriate body.⁷¹ This would ensure that the use was culturally appropriate and obtained with the informed consent of the appropriate authority, and would cover situations where patents were obtained that were based on traditional knowledge. Indigenous peoples should decide whether prior or subsequent authorisation best meets their needs.
- moral rights provisions which extend to indigenous communities, rather than solely the individual:
 - acknowledgement of the source of the traditional knowledge or expressions of culture;
 - prohibition on the wilful distortion, debasement or derogatory treatment of expressions of culture in a way that is prejudicial to the interests of the relevant indigenous people;
 - prohibition on the misrepresentation of the meaning of the expressions of culture.

D Registration

The proposed interface between the respective bodies in the registration system is set out at Appendix One. The key to the Republic of Panama's protection of traditional knowledge and cultural expressions lies in its system of registration. The general assemblies or traditional indigenous authorities can request the Industrial Property Office of the Ministry of Commerce and Industry to protect their collective copyrights through registration. The equivalent in New Zealand would be iwi, through an appropriate authority, requesting the Intellectual Property Office of New Zealand (IPONZ) to register

⁷¹ Discussed at VII.E below.

their collective rights, although there is no reason for limiting it to copyright, as the register could also accommodate traditional knowledge and designs.

The Republic of Panama's Act sets up, within the Industrial Property Department, a "folk" department which grants the collective copyright to the indigenous peoples. A similar department has been looked at in relation to trade marks in New Zealand. The Māori Trade Marks Focus Group⁷² proposed that a Consultative Committee comprised of Māori people who have expertise in the trade mark registration process and in Māori Arts and/or language could give advice to the Commissioner of Trade Marks. A consultative group such as that proposed by the Māori Trade Marks Focus Group could also grant the collective intellectual property rights of Māori in New Zealand. Thus the register would be set up and maintained by the State, within an intellectual property office, but administered or staffed by indigenous peoples themselves.

This would provide a system of registration through IPONZ which would give intellectual property rights to iwi. This would clearly have benefits for both Māori and non-Māori. First, it would allow Māori, through an appropriate authority, to decide what they consider should come within the Act, that is, they define the cultural expression or traditional knowledge and use that is culturally appropriate. The consultative group within IPONZ would have the final decision as to whether to register the traditional knowledge or expression of culture to ensure the system is not being abused. If the use is defined in the register, then the potential user can pay the appropriate authority the relevant fee. If the use is not defined in the register, then the potential user can seek the appropriate authority's consent. If the traditional knowledge or expression of culture (including any indigenous peoples worldwide) is not registered, then it falls outside the Act and, unless covered by the western intellectual property regime, is free for the general public to use. Thus, the register would determine what objects/knowledge are covered and how access and use is determined. A flow diagram of the proposed decision-making process is set out at Appendix Two.

Secondly, however, it provides certainty in the law that is necessary if non-Māori are going to recognise it as a valid system, which will not be used against them as a

⁷² Ministry of Commerce *Māori and Trade Marks: A Discussion Paper* (Wellington, 1997) 28.

licence to extract money or stifle freedom of expression. If the law is unclear and allows protection over a loosely defined area, then it may discourage innovators because there will be a risk that their creation may or may not come within the Act and, if the law is unclear, it could cost the innovator considerably in litigation. In that event innovators may choose not to innovate, which is not beneficial to any country, or may force innovators to make a settlement to avoid objections to registration by indigenous peoples that may not be well-founded. A register would provide the transparency and certainty needed for non-indigenous people and businesses.

While the register will allow Māori⁷³ to define their own traditional knowledge and cultural expressions,⁷⁴ these would have to be defined in advance. This would not restrict future knowledge and expressions coming within the scope of the Act, as these could be registered as they become recognised by Māori.

The Republic of Panama allows use of the traditional knowledge or cultural expressions to be governed by each peoples' rules. In the Republic of Panama the Chief, Governor or General Assembly of the reserve would therefore define and register the use. This would not be as easy for New Zealand, as there is no general assembly or chief over demarcated reserves or each iwi. Instead, in New Zealand, a more practical solution would be to have an appropriate authority, which could then fulfil the role undertaken by traditional authorities in the Republic of Panama.

E Appropriate Authority

An appropriate authority should be established to pursue the objectives set out in A above and to request protection for, and define the use of, traditional knowledge and expressions of culture that fall within the ambit of the Act, as discussed at D above. However, the main problem is the composition of such a body, as there is no single Māori entity that represents all iwi. This body could be structured along the lines of the Cook Islands' House of Ariki,⁷⁵ ie the authority in New Zealand could comprise one representative from each iwi, thus allowing each iwi a voice. This would also ensure that

⁷³ And other indigenous peoples, from reciprocating countries.

⁷⁴ Subject to final approval by the consultative group within IPONZ.

⁷⁵ Section 8 Cook Islands Constitution 1964.

the authority did not become an interest group that favoured some users over others, ie that the focus remains on cultural and appropriate uses, rather than a censorship body to suppress freedom of speech. By its Constitution⁷⁶ the Cook Islands' House of Ariki acts as an advisor⁷⁷ on the customs, traditions and welfare of the Cook Islands people and a similar role could be fulfilled by the authority in New Zealand. This representative body would allow indigenous communities to actively participate in the protection and maintenance of their cultures. The appropriate authority should be recognised by statute and could consist of either just that body, or a centralised body could be used to co-ordinate regional bodies.

The authority would be able to give informed consent to commercial and non-traditional uses, as well as collect fees for such uses. The revenue could then be used to support and protect national indigenous culture⁷⁸ or used to train and educate indigenous peoples in their own traditional knowledge or expressions of culture, thereby ensuring continuity of their culture. It would also be able to resolve disputes where two or more iwi both claim that they have rights in the traditional knowledge or cultural expression (for example, the haka is not unique to any one iwi). Thus potential users need only check with one centralised body, and be guided by the certainty of advice given by that body, rather than innovators risking delays by competing Māori claims against each other and against the innovator.

The authority would also be able to investigate infringements and bring actions against infringers, and could, like the Republic of Panama, set up a special investigator, although this position could work equally well within the consultative group in IPONZ instead.

The authority could set up and administer a Certificate of Authenticity in conjunction with the moral rights to have the source acknowledged, and prevent false attributions of origins of products and passing off. This would provide indigenous peoples with another means of protecting their expressions of culture. This is currently

⁷⁶ Section 9 Functions of House of Ariki, Cook Islands Constitution 1964.

⁷⁷ The House of Ariki has no legislative function.

⁷⁸ Section 10(2) *Model Provisions for National Laws for the Protection of Folklore Against Illicit Exploitation and Other Prejudicial Actions* 1985.

being developed by the Māori Arts Board of Creative NZ and is hoped to be launched in November this year. As well as verifying the authenticity and quality of all forms of Māori art its aim is for Māori to retain control over their tino rangatiratanga as it relates to tāonga. When developed, the mark will be registered to protect its commercial use.

F Exceptions

Authorisation for the use of traditional knowledge and expressions of culture would not be required if it was for educational purposes or the reporting of news or current events.

G Remedies

As recognised in the *Model Provisions*⁷⁹ and Act No 20, 2000, Republic of Panama remedies would include damages, account of profits, injunctions and seizure. Fines and imprisonment may also be appropriate for wilful destruction of culturally significant objects. Another possible remedy could be the Romanist law enforcement device of *astreinte*. If an infringer refuses to comply with a court order (for example, by not removing the infringing work from the market) the court can compel the infringer to pay the innocent party⁸⁰ a sum of money, usually calculated by the day, until the order is complied with.

H International Protection

Amendment of the current intellectual property regime, developing *sui generis* legislation plus developing codes of ethics and education strategies are only effective within the borders of any given country. Protection, however, is needed from international infringers as well. International protection has primarily been achieved by reciprocity clauses⁸¹ which extend protection to the traditional knowledge and expressions of cultures of indigenous peoples of other countries, as long as those other

⁷⁹ Above n 78.

⁸⁰ For example, the appropriate authority, see VIII above.

⁸¹ For example, the 1985 Model Provisions and Act No 20, 2000, Republic of Panama.

countries provide like protection. Thus, each country could insert its own reciprocity clause and therefore enjoy protection with other like-minded countries. If a register was to be implemented, then indigenous peoples around the world could submit their own register,⁸² and these could be held in a central register in IPONZ, thus complying with article 3 of TRIPs by providing nationals of other countries the same level of protection.

Another emerging method for international protection is to have an international standard-setting instrument⁸³ or a policy for regional harmonisation⁸⁴ which would allow international or regional mechanisms for the protection of the traditional knowledge and expressions of culture of other countries.

As there is currently no international agreement for the protection of traditional knowledge or cultural expressions countries should, in the interim, use a reciprocity clause in national legislation until an international standard has been developed and adopted.

VIII CONCLUSION

The current intellectual property regime is based on the western notion of property rights: ie that property is individually owned to the exclusion of others and is alienable. This does not fit with the holistic view that indigenous peoples have of their cultural and intellectual property. The differences in the two world views have created gaps which need to be overcome to provide protection for indigenous peoples to ensure these groups maintain their identity. In particular, any resolution for indigenous peoples would need to reflect their communal nature and the continuity of their culture.

In recognising that the two views are both valid, striking a balance in existing intellectual property laws may compromise one world view at the expense of the other. A more acceptable approach for both views is *sui generis* legislation covering the collective rights of indigenous peoples in perpetuity in their traditional knowledge and expressions of culture. However, core intellectual property issues also need to be

⁸² For example, the Republic of Panama could send its register to IPONZ that it currently uses to enforce its legislation.

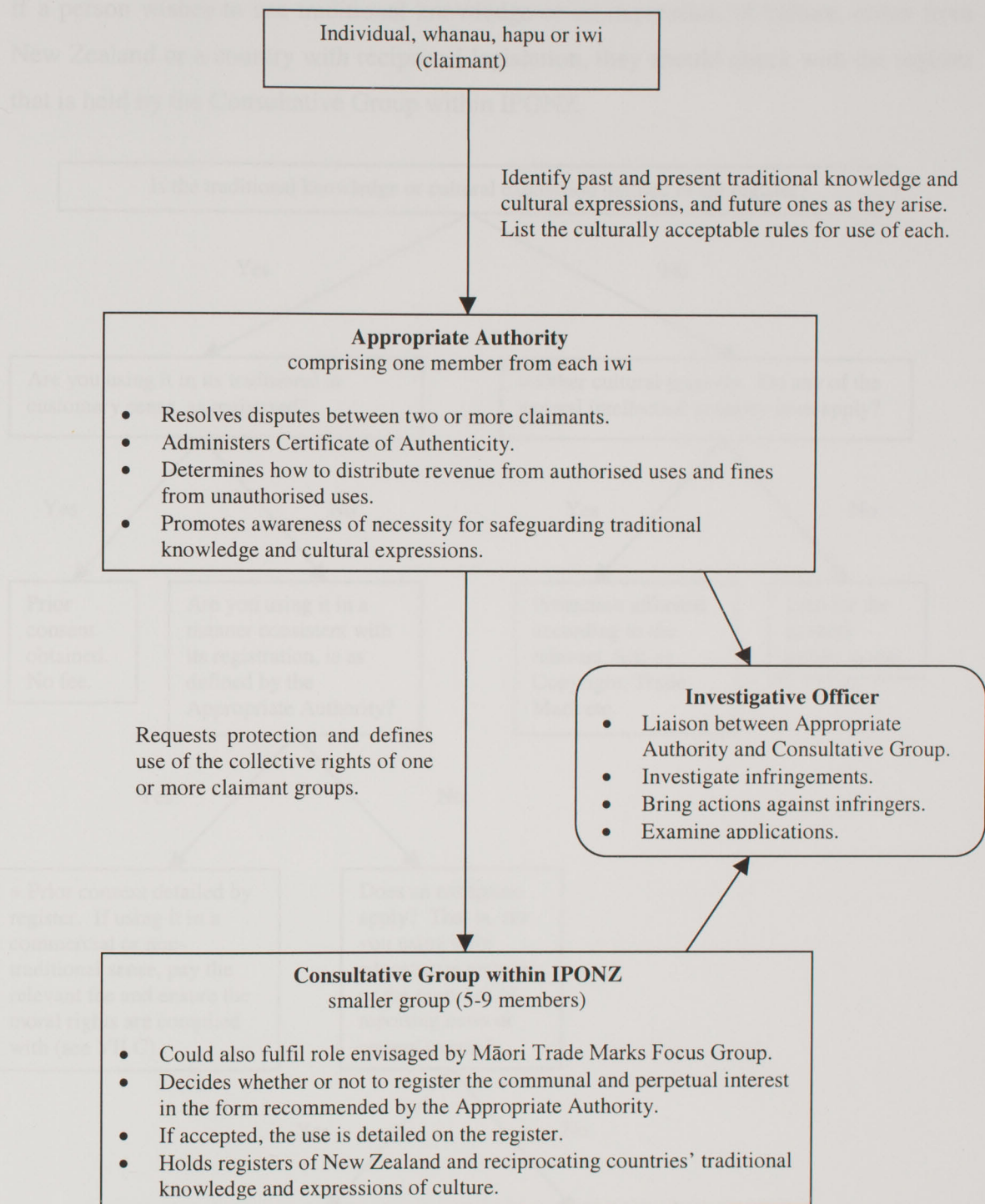
⁸³ Currently being looked into by UNESCO, above n 60.

⁸⁴ Currently being looked into by UNESCO and SPC, above n 65.

addressed, as inadequacies can only be met if there is a basis from which to identify those inadequacies. Thus, a good, working intellectual property regime which co-exists with the proposed sui generis legislation will protect both business and indigenous peoples alike, as well as encourage foreign investment. It is important, therefore, to develop patent, copyright, design and trade mark legislation in developing countries, which seems to be either noticeably lacking or based on outdated technology. In countries that already have copyright laws in place, amendments could be made along the lines of the Samoan Copyright Act 1998 which, without compromising the western world view, accommodates some of the concerns of indigenous peoples.

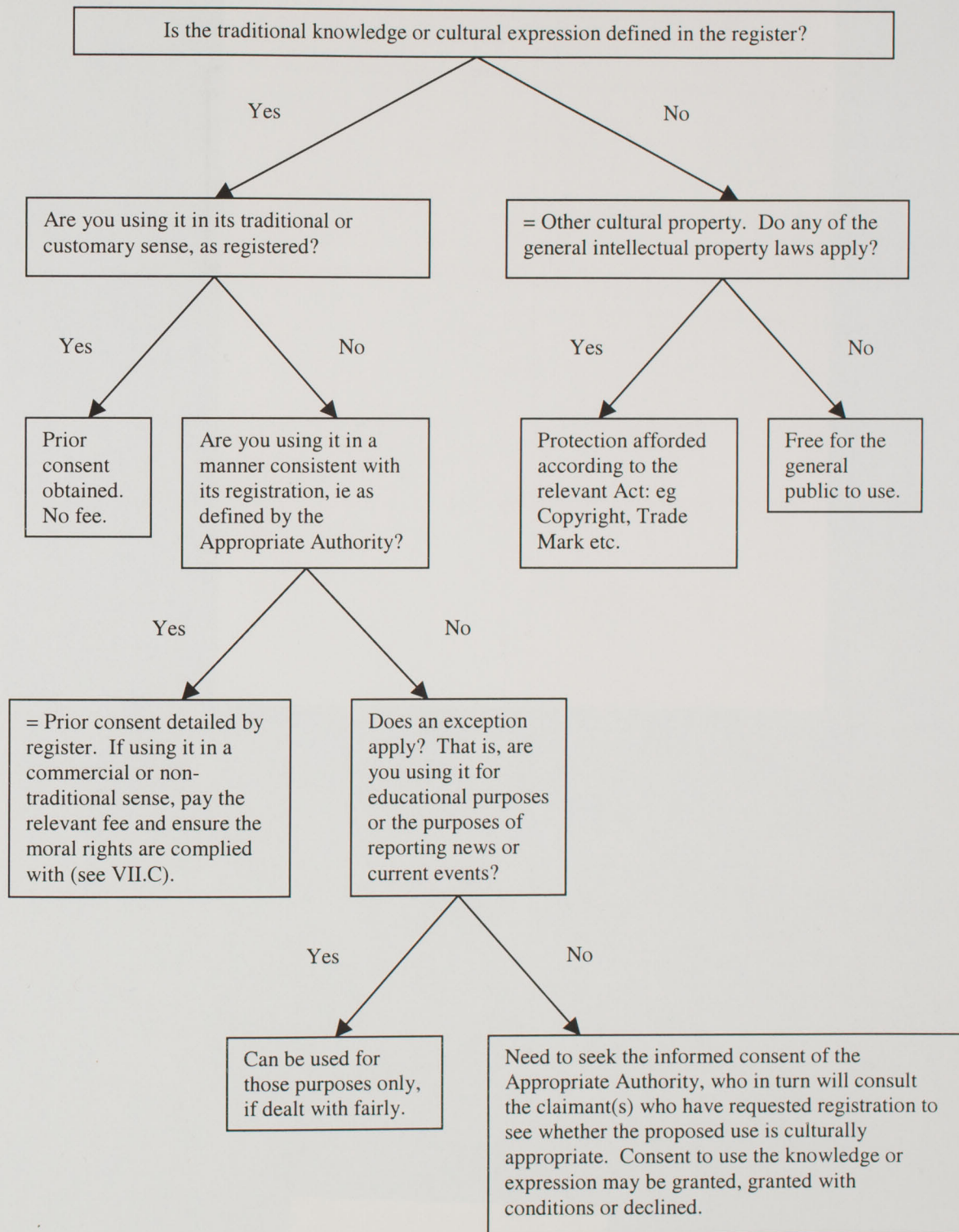
Sui generis legislation should be used in conjunction with non-legal measures, such as developing policies, codes of ethics and education campaigns, to help indigenous peoples preserve and protect their culture, while benefiting financially where it is appropriate. This should be done in consultation with, and the active participation of, the indigenous peoples, as it relates to their identity and continuity. Based on legislation similar to the Republic of Panama's Act No 20 of 2000 and the Mataatua Declaration it would allow for the collective rights of indigenous peoples by setting up a consultative group on cultural issues within each country's national Intellectual Property Office, provide a system of registration, would not be of fixed duration (ie will exist in perpetuity) and would set up an appropriate authority to administer and police the system. A separate "Indigenous Rights Act" would therefore help to protect and preserve traditional knowledge and expressions of culture, return control to the indigenous peoples themselves, ensure cultural integrity through acceptable, culturally appropriate uses and allow a more equitable system for indigenous peoples to share the benefits and profits of their cultures.

APPENDIX ONE – INTERFACE BETWEEN RESPECTIVE BODIES IN THE REGISTRATION SYSTEM



APPENDIX TWO – DECISION-MAKING PROCESS: FOR THE USE OF TRADITIONAL KNOWLEDGE OR EXPRESSION OF CULTURE

If a person wishes to use traditional knowledge or an expression of culture, either from New Zealand or a country with reciprocal legislation, they should check with the register that is held by the Consultative Group within IPONZ.



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APPENDIX TWO - DECISION-MAKING PROCESS FOR THE USE OF
TRADITIONAL KNOWLEDGE OR EXPRESSION OF CULTURE

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