

Intellectual Property Issues in the day-to-day Activities of Cultural Institutions: Promoting Creativity and Safeguarding Cultural Heritage



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Order of Presentation

- Introduction
- Acknowledgements
- WIPO Creative Heritage Project
- What can cultural institutions and researchers do to safeguard and protect cultural heritage?
- Concluding remarks



Introduction

- In late 2005, I was appointed one of the consultants for WIPO Creative Heritage Project aimed at developing IP guidelines for digitizing cultural heritage
- This presentation will report on this project, focusing on the work I conducted in the Pacific region
- This presentation reflect the views of the author and not those of the WIPO Secretariat or any of its Member States



Acknowledgements

- Ndadjuri people
- Peoples and organizations in the seven countries from the South Pacific who participated in the WIPO Creative Heritage Project
- World Intellectual Property Organization
- Wenner Gren Foundation
- Claire Smith and the organizing committee



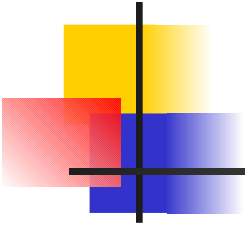
WIPO Project

- Research based
- Covering 1) Americas 2) Pacific Region 3) African Region 4) South East Asian Region 5) Latin America 6) Western and Eastern Europe



Main Objectives

- Collect and compile examples of existing guidelines, codes of conduct, standard agreements and protocols currently used by museums, archives, libraries and cultural specialists
- Gather information on IP issues, questions and claims that institutions and specialists come across



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- Gather information on current initiatives and projects relating to the recording, digitizing and public presentation of traditional cultural expressions
 - Gather information on IP related questions, needs and experiences in these areas



Project's Aim

- This project aims at distilling and developing, from existing practices, intellectual property-related guidelines and “best practices” for the documentation, recording and digitization of intangible cultural heritage



Research Methods

- Online search
- Site visit (little)
- Questionnaire
 - Face to face interviews
 - Telephone interviews
 - Responses



Countries selected for Pacific Region

- Australia
- New Zealand
- Fiji
- Palau
- Tonga
- Vanuatu
- PNG



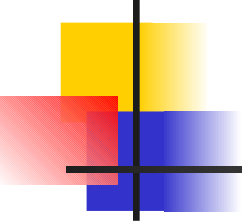
Analysis of findings

- Australia and New Zealand
- Tonga
- PNG



Australia

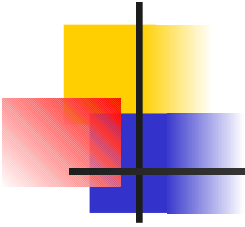
- Overwhelming amount of experience and materials
- Indigenous people are both reactive and proactive when it comes to IP
- Example: Aboriginal and Torres Strait Islander Arts Council Protocols on Producing Indigenous New Media, Producing Visual Cultures, Performing Cultures, and Song Cultures

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- Institutions believe in inadequacies of the current copyright law so they have identified best ways to deal with the current inadequacies both practically and by way of policy
 - Use of good practice such as consultation and prior informed consent as appropriate measures to deal with the inadequacies of IP law



New Zealand

- Te Papa museum has practical guides on how to deal with Mataranga Maori
- Mana Taonga principle has been adopted by Te Papa to recognize the spiritual and cultural connection of taonga



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- Reference is made to copyright or intellectual property law where appropriate
 - Recommendations for indigenous people to develop policies, best practices, code of ethics, guidelines for the use, preservation and protection of their traditional cultural expressions and customary knowledge



Tonga

- 2003, had in place research conditions
- No reference to intellectual property except for a set of general conditions
- Tonga has a copyright law, industrial design law and Tupuitonga Trademark



PNG

- Both common law and customary law are used in PNG
- Customary law are not codified
- Use of written permission and letters of request
- Has research guidelines which refer to IP issues



Regional frameworks

- PIMA (Pacific Islands Museum Association) Code of Ethics 2006
- Pacific Model Law 2002
- Guidelines for developing national legislation for the protection of traditional knowledge and expressions of culture 2006



What can cultural institutions and researchers do to safeguard cultural heritage?

- Revise their guidelines, protocols and code of ethics to encompass IP issues (see Skydstrup & Wendland 2006 and Papuga 2005)
- The use of guidelines, protocols and codes of ethics in cultural institutions and by cultural specialists can complement the limitations of IP laws



Closing remarks

- IP laws are complex and specialized
- And in most cases would require the assistance of a lawyer which can be costly
- IP is now regulated globally as we see in the trade related aspects of intellectual property (TRIPS Agreement)