

# Intellectual Property and Safeguarding Cultural Heritage

*A Survey of Practices and Protocols in the South Pacific*

Prepared for the

World Intellectual Property Organization (WIPO)

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## **EXECUTIVE SUMMARY**

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

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

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

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

The practices and experiences of cultural institutions in the seven Pacific countries in relation to intellectual property issues differ widely, the survey finds. Institutions in Australia and New Zealand, such as the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), the Aboriginal and Torres Strait Islander Arts Board, Te Papa Museum in New Zealand and the National Library of New Zealand, are at the forefront of grappling

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

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

The survey shows, therefore, that despite differences between the countries, questions around access to, ownership over and control of elements of intangible cultural heritage are under engaged and ongoing consideration throughout the region. The experiences and

practices of Pacific countries contribute valuably to a wider international survey of experiences and practices, towards the eventual distillation and development of “best practices” and guidelines for managing intellectual property while safeguarding intangible cultural heritage.

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

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