Ko Aotearoa Tēnei – Factsheet 2

Intellectual Property in Taonga Works

"If those relationships [with taonga] are strong, then Māori culture and identity are strong; and if Māori culture and identity are strong, then New Zealand culture and identity are strong."

– *Ko Aotearoa Tēnei: Taumata Tuarua*, Chapter 1

Ko Aotearoa Tēnei is the Waitangi Tribunal's report into the claim known as Wai 262, which concerns the place of Māori culture, identity and traditional knowledge in contemporary New Zealand law, and government policy and practice.

Chapter 1 relates to intellectual property (IP) in taonga works (defined below). This factsheet provides a brief overview of that chapter.

Key points

Māori are obliged to act as kaitiaki (cultural guardians) towards taonga works and related knowledge.

Current laws do not recognise or support these kaitiaki relationships. In particular, current laws do not protect against offensive or derogatory uses of taonga works, nor against unauthorised public and commercial uses of taonga works or related knowledge.

Reform will not only strengthen Māori culture and identity but also strengthen core aspects of New Zealand identity.

What are taonga works and why are they important to Māori?

'Taonga works' is a term the Tribunal has used to refer to artistic and cultural works that are significant to the culture or identity of Māori iwi or hapū – because there is a body of inherited knowledge relating to them, they invoke ancestors, and the iwi or hapū is obliged to act as their kaitiaki.

Haka (ritual dance), tā moko (tattoo), mōteatea (song-poetry), korowai (feather cloaks), whakairo (carving), stories, or any other artistic or cultural work may be taonga if they are significant to the culture or identity of an iwi or hapū. As examples, *Ka Mate* has great significance for descendants of Te Rauparaha and so is a taonga work. Similarly, the art and design in Te Hau ki Tūranga, the meeting house at Te Papa, are taonga of Rongowhakaata. And the designs of tā moko worn by tribal ancestors are taonga to the iwi concerned.

Artistic or cultural works that are not significant to the culture or identity of particular iwi or hapū but nonetheless have a recognisably Māori element to them are not 'taonga works'. Rather, the Tribunal defines these as 'taonga-derived works'. Examples include the stylised koru symbol used by Air New Zealand, and contemporary artworks using generic koru, tiki, and other Māori symbols.

What the Treaty requires

The Treaty gives the Crown the right to govern, but in return requires the Crown to protect the tino rangatiratanga (full authority) of iwi and hapū in relation to their 'taonga katoa' (all that they treasure). The courts have characterised this

exchange of rights and obligations as a partnership.

In this context, the Treaty allows the Crown to put in place laws and policies relating to IP in and use of artistic and cultural works (for example, copyright and trade mark laws). But in doing so the Crown must to the greatest extent practicable protect the authority of iwi and hapū in relation to their taonga works and related knowledge, so that they can fulfil their obligations as kaitiaki.

Even if the Treaty did not protect kaitiaki relationships with taonga works, protecting those works would be in the national interest anyway because many taonga works – such as *Ka Mate* – are important to national identity.

What the Tribunal has found

Current laws and policies were not designed to recognise and support the relationships of kaitiaki with their taonga works or related traditional knowledge. Others can acquire IP rights over taonga works and related knowledge – for example, through trade mark or copyright laws – with little or no consideration for kaitiaki interests. Others can also use and control taonga works or related knowledge, sometimes in offensive or derogatory ways, without informing or seeking the consent of iwi or hapū whose identities those works reflect.

For example:

- Italian car maker Fiat developed a television advertisement showing women performing a mock version of *Ka Mate*.
- The world's longest place name, Te Taumatawhakatangihangakoauauatamatea-urehaeaturipukakapikimaungahoronukupo-kaiwhenuakitanatahu, has been used in advertising and on wine bottle labels without the consent of Ngāti Kere, who regard it not just as a place name but as a story about their ancestors.

The interests of kaitiaki in their taonga are entitled to protection, but that does not mean that kaitiaki are entitled to a veto over uses of IP in taonga works in all cases. Rather, kaitiaki interests must be fairly and transparently balanced alongside other interests, such as (a) the interests of those who own IP rights, such as authors or film-makers whose work may depict taonga works or related knowledge, or business owners whose trade marks are based on taonga works, and (b) the interests of the wider community in the information and artistic and cultural works available in the public domain.

The Tribunal has recommended the Crown establish a system allowing those interests to be balanced case by case. That system should allow:

- anyone to object to derogatory or offensive public uses of taonga works, taonga-derived works, and related knowledge
- kaitiaki to object to commercial uses or proposed commercial uses of taonga works and related knowledge that do not have their consent.

The Tribunal has recommended the establishment of a commission to:

- consider and make decisions about these objections
- provide information and guidance to those (such as artists and designers) who may wish to use or draw on taonga works, taonga-derived works, and related traditional knowledge
- maintain a register of specific cultural works such as haka, mōteatea, and so on, so that the kaitiaki of those works can be identified.

Except when the uses are derogatory or offensive, the Tribunal's recommendations will not affect existing intellectual property rights, and nor will they create new restrictions on private and non-commercial uses of taonga works.

The Tribunal also noted that indigenous rights in cultural works were being debated internationally as part of global trade and IP processes. It found that international laws relating to IP do not constrain New Zealand from providing that protection. Reforms will allow New Zealand to become a global leader in indigenous rights, rather than a reluctant follower.

See *Ko Aotearoa Tēnei* chapter 1 for full details of the Tribunal's findings and recommendations.