



Submission to the Standing Committee on the Environment, Communications, Information technology and the Arts Inquiry into Indigenous Visual Arts and Crafts

Introduction

1. The Ministry for Culture and Heritage is pleased to provide the following information on the New Zealand context, which may assist the Committee with its inquiry. The information focuses mainly on undertakings made or supported by the New Zealand Government to safeguard and protect the cultural property and the intellectual property of Māori artists. It also provides information on recent initiatives in training and development for Māori artists and arts organizations.

2. The submission comprises information in the following sections:

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A TOI IHO MĀORI MADE MARK



3. The Toi Iho Māori Made Mark is a registered trade mark used to promote authentic, quality Māori arts and crafts created by Māori artists. It guarantees that an artwork to which it is attached was created by a person of Māori descent, and provides an assurance of quality. The Mark can also be used to authenticate exhibitions, performances and publications by Māori artists.
4. Toi Iho was launched in February 2002 by the Associate Minister for Arts, Culture and Heritage, Hon Judith Tizard. This was in response to several decades of Māori calls for a way of identifying authentic quality Māori arts.
5. Toi Iho was developed by Te Waka Toi, the Māori arts board of Creative New Zealand¹, in consultation with Māori artists.
6. The Toi Iho Māori Made Mark was set up with five objectives in mind:
 - to assist in the protection of the intellectual and cultural property rights of Māori artists
 - to protect the integrity of Māori culture
 - to create a premium for Māori artworks
 - to provide direct economic benefits for the artists who are registered to use the brand through increased consumer demand for branded products; and
 - to add value to the promotion of the nation's cultural tourism strategy.
7. Toi Iho is the primary Māori Made Mark, for which applicants are required to provide proof of Māori descent. There are two companion Marks for artists:
 - **Toi Iho Mainly Māori Mark** - for groups of artists, the majority of whom will be of Māori descent, who work together to produce single works, for example in contemporary dance, theatre or music.
 - **Toi Iho Co-production Mark** - for Māori artists who work with non-Māori artists or business partners to produce, present or perform works.

¹ Creative New Zealand is the trading name for the Government's arts funding agency, the Arts Council of New Zealand Toi Aotearoa, a Crown entity funded through the Ministry for Culture and Heritage.

This might include a Māori artist working with a manufacturer to incorporate Māori design as part of a product.

8. A third Mark, **Toi Iho licenced Stockist Mark**, is for art and craft retailers and galleries who sell the works of at least six Toi Iho licensed artists and are willing to adopt culturally sensitive sales practices, which include:

- not knowingly stocking products that are demeaning to Māori culture and people
- being aware of the cultural value embodied in the Māori arts and crafts they stock
- being willing to follow the advice of artists whose works they stock on what constitutes culturally sensitive display practices appropriate to the works.

9. There are currently around 135 Toi Iho artists across a range of arts disciplines, and 15 licensed Toi Iho stockists. To become licensed users of any of the Marks artists/retailers must apply to Te Waka Toi. There are two licensing rounds a year. A panel of Māori artform specialists assesses applications on:

- the Māori component of the work
- the design of the work and the materials used
- the process followed
- the techniques employed
- the level of skill and expertise required
- the aesthetics of the work.

10. As it is five years since Toi Iho was established, Creative New Zealand is undertaking a review of its investment in the programme to ascertain how it has met its original objectives and what its future may look like.

11. Further information on Toi Iho is available at <http://www.toiiho.com/>.

B POLICY IN INTELLECTUAL AND CULTURAL PROPERTY RIGHTS IN RESPECT TO INDIGENOUS ART

12. The Ministry of Economic Development (MED) is the lead agency on the development and implementation of Intellectual Property policy in New Zealand. MED has provided the following information and comment which may be of interest to the Committee.

Protection against offensive use of Māori cultural taonga²

13. The review of the Trade Marks Act 1953 in 2002 introduced a series of measures to address concerns of Māori over inappropriate registration of Māori text and imagery as Trade Marks. These took the form of provisions to prevent individuals and enterprises from registering Trade Marks that are likely to be offensive to Māori.

14. Subsection 17(c) of the Trade Marks Act 2002 prescribes that the Commissioner of Trade Marks “must not register as a Trade Mark or part of a Trade Mark any matter, the use or registration of which would, in the opinion of the Commissioner, be likely to offend a significant section of the community, including Māori.”

15. In relation to any Trade Marks registered under the former Act, which might today be considered offensive, the 2002 Act provides that any person (including a person who is culturally aggrieved) may seek a declaration of invalidity under the Act. This means that the Commissioner of Trade Marks or the Courts have the ability to declare a Trade Mark invalid if it would not have been registrable under Part 2 of the current 2002 Act.

Māori Trade Marks Advisory Committee

16. The Trade Marks Act 2002 provided for the establishment of an Advisory Committee to the Commissioner of Trade Marks. Its function is to advise the Commissioner whether the proposed use or registration of a Trade Mark that is, or appears to be, derivative of Māori sign, including text and imagery, is, or is likely to be offensive to Māori.

17. The establishment of an Advisory Committee sought to address concerns raised by Māori in relation to misappropriation and misuse of their traditional cultural expressions. It also sought to reduce the risk of Māori text and imagery being inadvertently registered as Trade Marks, where the registration or use of that Trade Mark is likely to cause offence to Māori. The establishment of the Committee has ensured that the Commissioner of Trade Marks has access to expert advice and continued assurance that the Commissioner’s decisions in respect of the registration of Trade Marks containing Māori text or imagery are appropriate.

18. MED considers that the establishment and subsequent operation of the Committee has provided an effective balance between the needs and expectations of other users of the Trade Marks system, and those of Māori stakeholders. This has been achieved in a manner which has taken account of, and indeed sought to reduce the costs, potential delays and inefficiencies the processing of Māori Trade Marks for

² Cultural property or treasure

all users of the system. The Intellectual Property Office has prepared a set of Trade Mark Practice Guidelines in relation to Māori Trade Marks and the Māori Trade Marks Advisory Committee.

MED Domestic Traditional Knowledge Work Programme

19. MED has developed a three staged intellectual property and traditional knowledge work programme. This responds to concerns raised by Māori and by indigenous people internationally, about the impact of intellectual property systems on traditional knowledge both in terms of cultural preservation and economic development opportunities.

20. Concerns about traditional knowledge extend beyond intellectual property, which is only part of the problem and can only provide part of the solution. MED has conceived the programme with the multidisciplinary and interconnected nature of traditional knowledge issues in mind, and with scope to involve other interested agencies, including Te Puni Kokiri³ and the Ministry for Culture and Heritage.

The Programme

- Stage One - capacity building, engagement and information sharing;
- Stage Two - problem definition (what problems exist in New Zealand surrounding the relationship between intellectual property and traditional knowledge?); and
- Stage Three - development of options and consultation (to be followed by the standard policy process).

Stage One of the Programme

21. MED is currently in the middle of Stage One. The objective has been to build the capacity of Māori communities or organisations to understand the opportunities and risks associated with the intellectual property system for traditional knowledge and traditional knowledge holders.

22. MED has developed and is undertaking a number of projects to achieve these objectives. The following key projects have been completed or are nearing completion:

- **International fact sheets** : a series outlining work being undertaken in a range of international fora on the issue of intellectual property and traditional knowledge. Feedback from domestic and international users of the fact sheets suggests that these have been a very useful resource. The fact sheets are available on MED's website at:
http://www.med.govt.nz/templates/MultipageDocumentTOC____1939.aspx
- **Informal seminars and discussion groups**: these sessions for interested persons (government and non-government) were very useful in building understanding of the issues relating to the interface between intellectual property rights and traditional knowledge. They also provided an opportunity for building effective relationships with people and organisations interested in

³ Ministry of Māori Development

traditional knowledge issues. Information is available at http://www.med.govt.nz/templates/ContentTopicSummary____26475.aspx

- **Trialling the WIPO toolkit for the documentation of traditional knowledge:** this provides practical information on the intellectual property aspects of documentation of traditional knowledge. This includes the role that documentation can play in the creation or definition of intellectual property rights, and the preservation of traditional knowledge and its wider dissemination to members of traditional or indigenous communities to which it belongs. It also draws attention to the risks of documentation.
- **Consideration of Voluntary Disclosure of Origin in Patent Applications:** MED has been looking into the issue of voluntary disclosure of the origin of genetic resources and associated traditional knowledge in patent applications. This is also being discussed internationally both in the WTO TRIPS and WIPO IGC fora. Further domestic work on this issue has been halted pending future developments in bio-prospecting policy.
- **Study on the economic development potential of traditional knowledge for Māori:** Policy research shows that the use of Māori traditional knowledge by New Zealand businesses appears significant to the Māori economy and to the New Zealand economy as a whole. Examples of areas of commercial use include media, entertainment, tourism, food products and health.

MED considers it important to assess a range of policy measures such as capacity building, knowledge and skills transfer, to assist with realising the economic potential of Māori traditional knowledge. Changes to the intellectual property rights regime on their own are unlikely to have a significant bearing on further Māori economic development utilising traditional knowledge. Other objectives, such as those around cultural preservation, transmission, and promotion, will also need to be taken into consideration when designing effective policy responses to these issues.

MED has commissioned a study on the economic development potential of traditional knowledge for Māori. A draft of the report has been received and is currently being peer reviewed. Once finalised, a copy of this report will be made available on the Ministry's website. The study provides an initial, qualitative assessment of the economic significance of Māori traditional knowledge using six case study businesses to underpin the research.

- **National Symposium:** MED hosted a workshop in April 2006 on the protection of traditional knowledge and the interface with intellectual property rights. The workshop brought together over 100 participants, including Māori and non-Māori stakeholders from the community, private and public sectors.
- **Intellectual Property Rights Guide for Māori:** MED is in the process of developing an Intellectual Property Guide covering the basics of intellectual property law and practice for Māori organisations, businesses and traditional knowledge holders. The Intellectual Property Rights Guide will comprise an interactive CD-ROM and a workbook.

- **Proposed Regional Workshops:** MED is planning to hold a series of regional intellectual property rights /traditional knowledge workshops which will be the culmination of stage one of the work programme. The Intellectual Property Rights Guide will provide a key resource for the workshops and for ongoing use by Māori communities and organisations.

Technical Assistance to the Secretariat of the Pacific Community

23. In 2005 NZAID⁴ agreed to provide a package of assistance to the Secretariat of the Pacific Community to assist the further development of national legislation in Pacific Island countries and territories for the protection of traditional knowledge and expressions of culture.

24. The Pacific Model Law is intended to provide the basis for a harmonised legal framework in the Pacific region. It is based on a sui generis IP approach and creates new intellectual property rights, or intellectual property-like, rights. It deals with the protection of traditional knowledge and expressions of culture in a legal sense, that is, protection against the illicit uses and misappropriations that intellectual property rights protection usually addresses. At the same time it takes into account the particular nature and characteristics of traditional creativity and cultural expressions, including their communal nature.

25. MED worked with the Secretariat of the Pacific Community to develop detailed guidelines for developing national legislation for the protection of traditional knowledge and expressions of culture based on the Pacific Model Law. These guidelines are targeted at policy-makers and cover the development of policy objectives, guiding principles and the legal elements of protection such as the subject matter of protection, the scope of protection and the management of rights. A “policy map” was also developed which will take policy-makers in Pacific Island countries through the various stages of developing a legal and policy framework for the protection of traditional knowledge. The guidelines are published on the website of the Secretariat of the Pacific Community, <http://www.spc.int/culture/>.

26. The guidelines and policy map were peer reviewed by the Secretariat of the Pacific Community and WIPO and were subsequently released at a meeting of Representatives of Governments and Administrations of the Pacific Community on 13 November 2006.

Stage Two

27. Stage Two of the work programme will involve identifying problems associated with the intellectual property rights / traditional knowledge interface in the New Zealand context. This stage will begin with the development and release of a discussion document providing background to intellectual property rights and traditional knowledge issues and seeking submissions on potential problems and preliminary views on a problem definition.

⁴ New Zealand Government’s international aid and development agency

28. Feedback will also be sought on the appropriate policy process to address issues identified and the direction New Zealand should be taking in international processes concerning intellectual property rights and traditional knowledge.

29. The discussion document will also highlight related non-intellectual property issues and any processes currently in place to deal with them. A consultation strategy, which may involve community based consultations as appropriate, and a timeline for this process will be drafted and, once Ministers have approved the approach proposed, this will be made publicly available.

30. Given the extent of Māori interest in the intersect between intellectual property rights and traditional knowledge, it is likely that officials will recommend at this time an extended consultation process to allow Māori communities and organisations, and other interested stakeholders, adequate time to provide comment.

Stage Three

31. Stage Three of the work programme will involve the confirmation of a problem definition and the development of a menu of options to address traditional knowledge issues, based on submissions and information obtained to date. The issues raised in submissions are very likely to straddle a range of policy areas including intellectual property, cultural heritage policy, conservation and environmental concerns, access to genetic resources and benefit sharing and international standards on these matters.

32. As well as input from Māori stakeholders, MED will encourage an interdepartmental and across-government response. Consultation on the draft problem definition and options would follow in the form of further discussion materials or community based engagement where this would be useful. Policy recommendations would conclude this process.

C WORK WITH WIPO, (WORLD INTELLECTUAL PROPERTY ORGANISATION)

33. WIPO, in consultation UNESCO has undertaken work in the area of traditional cultural expressions (often referred to as "folklore" - a subset of traditional knowledge) since the 1970s.

34. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was established in 2000 as an international forum for dialogue on the interplay of intellectual property and traditional knowledge, genetic resources, and traditional cultural expressions.

New Zealand Position

35. New Zealand participates in this forum in order to both highlight concerns expressed by Māori about intellectual property and Māori traditional knowledge in an international forum; and to obtain information about the experiences of other members and jurisdictions which can in turn be discussed domestically.

36. As the work of WIPO in this area is still at a preliminary or scoping stage, New Zealand has not yet been called upon to take any position that would require it to alter domestic policy or legislation. It has expressed support for a bottom up approach involving the development of a menu of options for the protection of traditional knowledge which can be tested and adapted to national circumstances. New Zealand has also been supportive of discussions in other working groups about patenting of biotechnological inventions and the identification of the origin of genetic resources and traditional knowledge.

Consultation with Māori

37. A strategy for engagement with Māori on the WIPO draft policy objectives and principles for the protection of traditional knowledge and traditional cultural expressions was confirmed in 2004. It was agreed that calls for comments by WIPO on the suggested policy objectives and principles would be disseminated to interested stakeholders; and that workshops on the IGC process (including the suggested policy objectives and principles) would be held to assist parties with the preparation of comments. Since that time MED has continued to consult regularly with Māori on developments in the IGC.

38. A document entitled "*Have your say: World Intellectual Property Organisation –Principles and Policy Objectives for Protection of Traditional Knowledge*" was created in 2004 and published on the MED website at http://www.med.govt.nz/templates/MultipageDocumentTOC____17545.aspx. This is regularly updated, in order to keep interested persons or groups informed of the recent developments in the WIPO IGC forum and to provide an opportunity for interested stakeholders to submit comments before each session of the IGC.

39. MED has maintained a practice of having Māori technical experts on the protection of traditional knowledge and traditional cultural expressions attend the WIPO IGC meetings in Geneva as part of the NZ delegation. This is consistent with the position of WIPO to encourage States to include members of indigenous and local communities on the government delegations.

D INITIATIVES AND MODELS FOR TRAINING AND DEVELOPMENT OF INDIGENOUS ARTS

1. Toi Ake

40. Toi Ake is a Creative New Zealand programme aimed at the development and preservation of Māori arts. It is a resource and funding programme that has a long term focus on nurturing and strengthening arts within Māori communities. One of the key foci of the programme is 'participation in the arts as a part of everyday life'.

41. Toi Ake has been tailored by iwi (tribes) and arts practitioners into a model that focuses on development and retention of Māori arts, both traditional and contemporary. Many of the key objectives are positioned to look at the long term strength of Māori arts.

42. There are four strands of Toi Ake funding:

- *arts strategy planning* - support to develop a 3 - 5 year plan for arts strategy within an area. Up to \$5000 is available, along with people to assist in this development ;
- *priority project funding* - following the development of an arts plan, the priority need is identified, one off funding is able to be applied for that will be directed at this priority need;
- *consultancy resource* - assistance in strategic planning, arts management, tutoring (wananga) and project management; and
- *toi ake information resource* - a 'where to' guide.

43. Further information on Toi Ake funding is available at:
<http://www.creativenz.govt.nz/funding/other/toi-ake.html>

2. Toi Māori Aotearoa

44. Toi Māori Aotearoa is a Charitable Trust established in 1996. It is composed of a national network of contemporary Māori artists organised around ten artform committees. It was created from the need for a collective artists' forum to foster the development of Māori arts and is supported by Creative New Zealand⁵

45. A governing board is nominated by the ten national artform committees. The General Manager and representatives of the ten committees form the Management Team which implements the overall programme of activities. The ten committees (in alphabetical order) are as follows:

- He Awhi Tikanga , Protocol within the Arts
- Nga Waka Federation, Traditional Canoe Skills
- Puatatangi, Māori Music

⁵ For the 2007 calendar year it received NZ\$730,000 from Te Waka Toi, the Māori Arts Board of Creative New Zealand.

- Runanga Whakairo, Carving
- Te Atinga , Contemporary Visual Arts
- Te Ha, Contemporary Māori Writers
- Te Hunga Taunaki Kaituhi Māori , Literature in Te Reo
- Te Ope o Rehua, Contemporary Performing Arts
- Te Roopu Raranga Whatu o Aotearoa, Weavers
- Te Uhi A Mataora , Ta Moko (Tattoo) Arts

46. Further information in each committee is available at <http://www.Māori art.org.nz/about/committees>

47. Toi Māori 's Strategic Goals are to:
- develop the Artist: to promote and support the long term development of contemporary Māori artists.
 - develop the Artforms: to encourage innovation, creativity and new directions for contemporary Māori art.
 - preserve our Unique Cultural Identity and Heritage: to maintain and protect our unique cultural identity and the heritage of Māori arts.
 - present and promote the Artforms: to promote and present contemporary Māori art to audiences.
 - to stretch the boundaries of the organisational infrastructure and the operational procedures through improvement and new opportunities.

48. Toi Māori annually produces a wide range of events and activities that include festivals, exhibitions, performances, publications, and workshops that relate to a wide spectrum of Māori artforms..

49. Examples of significant Toi Māori initiatives include:

Māori Art Meets America event, San Francisco, USA August 2005

50. 'Māori Art Meets America' was a joint venture between Toi Māori Aotearoa and Tourism New Zealand⁶. The ten day event was an unprecedented opportunity to promote and celebrate Māori art and New Zealand. Over fifty Māori artists and dignitaries travelled together to San Francisco to participate in the opening ceremonies and dynamic, interactive exhibition.

51. The event included traditional Māori performing arts and an exhibition, 'Toi Māori - Art from the Māori People of New Zealand'. The exhibition itself comprised three components: an exhibition of weaving; demonstrations by weavers and ta moko (tattoo) artists; and an exhibition of contemporary Māori art featuring ceramics, jewellery and carving.

52. Tourism New Zealand hosted an evening of hospitality and entertainment for over 300 business people and officials. Air New Zealand, which was a significant contributor to the overall success of the project, also hosted a special night at the Yerba Buena Center for the Arts.

⁶ A Crown entity responsible for marketing destination New Zealand offshore.

53. Media coverage of the 'Māori Art Meets America' event was extensive throughout America, reaching an audience of nearly nine million people. The media coverage spanned from print to television, and included major publications such as the Wall Street Journal (circulation 1, 820, 600), New York Times (circ. 1,130,740), LA Times (circ. 1,014,044).

54. The outcomes of attracting high visitor numbers and promoting Māori art on the world stage and in New Zealand were achieved and exceeded expectations. It is understood that direct sales revenue for artefacts was around NZ\$100,000.

55. The event also provided a forum for the remarkable cultural exchange which took place between Māori and the Native American tribes of San Francisco. This marked another step in our journey to connect with other indigenous peoples of the world, to share our art forms and cultural perspectives.

MĀORI MARKet

56. MĀORI MARKet was a three-day exhibition and sale of contemporary Māori painting, weaving, sculpture, jewellery, clay work, and jewellery in bone, jade, silver and gold, staged in Wellington in April 2007.

57. A million dollars worth of contemporary Māori artwork was sold at the event which attracted 7000 people including international collectors from North America. Over 100 leading and emerging artists had work on display. A press release on the event can be downloaded at:

http://www.Māori art.org.nz/noticeboard/Māori _market _buyers _spend

3. Te Puia: Māori Cultural Centre

58. Te Puia is New Zealand's premier cultural tourism organisation. The name is an umbrella for three major attractions for visitors to Te Puia:

- the geothermal valley in which it is sited, in Rotorua, in the central North Island of New Zealand;
- the variety of Māori cultural experiences it provides; and
- the New Zealand Māori Arts and Crafts Institute which it hosts.

59. Facilities to support the creation of Māori taonga and promote knowledge and appreciation of these works to non-Māori have existed in Rotorua since the 1880s.

60. In 1963 an act of Parliament established the Rotorua Māori Arts and Crafts Institute at Whakarewarewa Village, Rotorua. It was charged with 'supporting Māori culture, across all art forms, throughout New Zealand by fostering, promoting, training, exhibiting, performing and preserving'. The Institute co-existed with Whakarewarewa Village which provided a guided tourist experience.

61. The act was amended to replace 'Rotorua' with 'New Zealand' in 1967 and a carving school began at the Institute in the same year. Traditional weaving was introduced in 1969 and performing arts and oral storytelling were also part of the visitor experience provided. Over the years training in the carving of greenstone

(Pounamu), the creation of traditional Māori musical instruments (taonga puoro) and in traditional performing arts (kapa haka) became embedded in the curriculum provided at the Institute.

62. In 2005 the Māori Arts and Crafts Institute was renamed Te Puia. Along with the rebranding, the organisation has undertaken a redevelopment of the Rotorua site and as part of that process, has reviewed its statutory purpose – to foster Māori Arts and Crafts.

63. Te Puia is in the process of finalising a cultural strategy that will realign the organisation to achieve objectives that reflect current Māori cultural needs. This includes expanding its goals and activities to:

- diversify their arts and crafts from traditional carving and weaving to all Māori arts and crafts, including fostering contemporary Māori arts;
- increase the type of training offered to include waiata (song), tikanga (protocol) and weaponry;
- include funding activities and partnerships supporting Māori culture throughout New Zealand (such as art exhibitions and marae restoration).

64. Te Puia is currently developing a programme of strategic activities which include:

- sponsoring major promotional and education events;
- hosting workshops and educational events for local and international participants;
- forging international indigenous links.

65. More information about Te Puia and its strategy and activities to support and promote Māori culture can be obtained at <http://www.tepuia.com/>.

Ministry for Culture and Heritage
May 2007