

Understanding the basics of **Traditional Knowledge and Intellectual Property (Rights) in the Pacific**

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Basic ideas

- Intellectual property (rights):
 - Protection of ideas for making money;
 - Copyright protection;
 - Industrial property protection:
 - Trademarks, industrial design, patents, geographical indications.
 - How to *sell it* to others.
- Traditional Knowledge (protection):
 - protection of traditional knowledge to make money;
 - How to sell it to others.

What is TK?

TK (or IK/PIKS) = Traditional or Indigenous Knowledge specific to a cultural community/ group of people

- Information on use of biological & other materials for medical treatment and agriculture, production processes
- designs,
- literature,
- music,
- rituals,
- and other techniques and arts

<http://plausibledeniability.tumblr.com>

IPR

- Intellectual property rights (IPRs) - legal protections given to person(s) over their creative endeavors (productions)
- Usually give the creator an exclusive right over the use of his/her creation or discovery *for a certain period of time*.
(Kiribati elder – protecting our culture forever)
- Intellectual property protections *may* include patents, copyrights, trademarks, and trade secrets.

Why protect traditional knowledge?

- Simply “the experience of exploitation”
- the main arguments for granting protection to TK include:
- *Equity;*
- *Conservation;*
- *preservation of traditional/cultural practices and culture,*
- *Prevent misuse of TK, and*
- *Promote use of TK and its importance in development.*

Regional Framework for the protection of TK and Expressions of Culture

- **Meaning of traditional cultural rights**
 - (1) Traditional cultural rights are the rights set out in subsections (2) and (3).
 - (2) The following uses of traditional knowledge or expressions of culture require the prior and informed consent of the traditional owners in accordance with section 23(1) or 25(5):
 - (a) to reproduce the traditional knowledge or expressions of culture;
 - (b) to publish the traditional knowledge or expressions of culture;
 - (c) to perform or display the traditional knowledge or expressions of culture in public;
 - (d) to broadcast the traditional knowledge or expressions of culture to the public by radio, television, satellite, cable or any other means of communication;
 - (e) to translate, adapt, arrange, transform or modify the traditional knowledge or expressions of culture;
 - (f) to fixate the traditional knowledge or expressions of culture through any process such as making a photograph, film or sound recording;
 - (g) to make available online or electronically transmit to the public (whether over a path or a combination of paths, or both) traditional knowledge or expressions of culture;
 - (h) to create derivative works;
 - (i) to make, use, offer for sale, sell, import or export traditional knowledge or expressions of culture or products derived therefrom;
 - (j) to use the traditional knowledge or expressions of culture in any other material form;
 - if such use is a non-customary use (whether or not of a commercial nature).
- (Regional Framework: 2002, page 5)

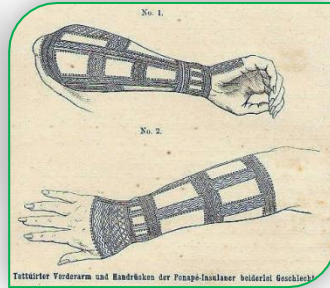
What do we mean by “expressions of culture?”

- **expressions of culture** mean any way in which traditional knowledge appears or is manifested, irrespective of content, quality or purpose, whether tangible or intangible, and, without limiting the preceding words, includes:
 - (a) names, stories, chants, riddles, histories and songs in oral narratives; and*
 - (b) art and craft, musical instruments, sculpture, painting, carving, pottery, terra-cotta mosaic, woodwork, metalware, painting, jewellery, weaving, needlework, shell work, rugs, costumes and textiles; and*
 - (c) music, dances, theatre, literature, ceremonies, ritual performances and cultural practices; and*
 - (d) the delineated forms, parts and details of designs and visual compositions; and*
 - (e) architectural forms (Ibid: 2002, page 3 – 4).*

Traditional vs. contemporary tattooing – is it ‘ethical’ issue or is it an IPR issue?



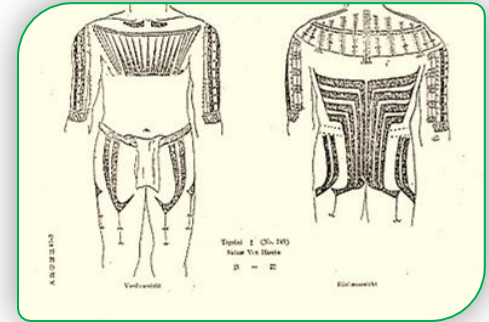
Tonga



Pohnpei



Tahiti



Palau



Samoa



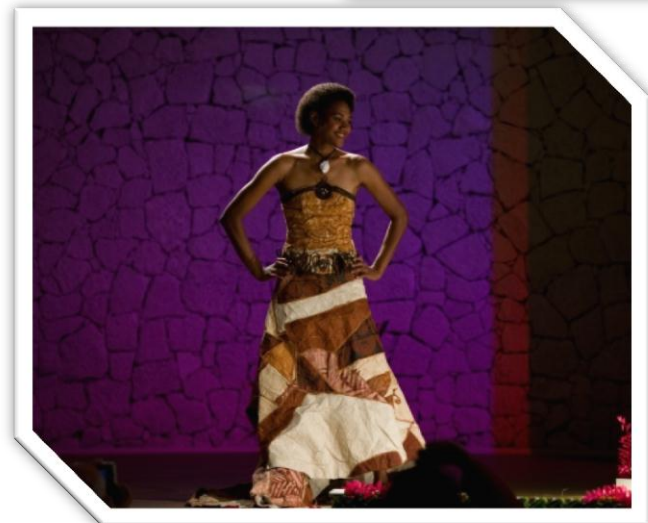
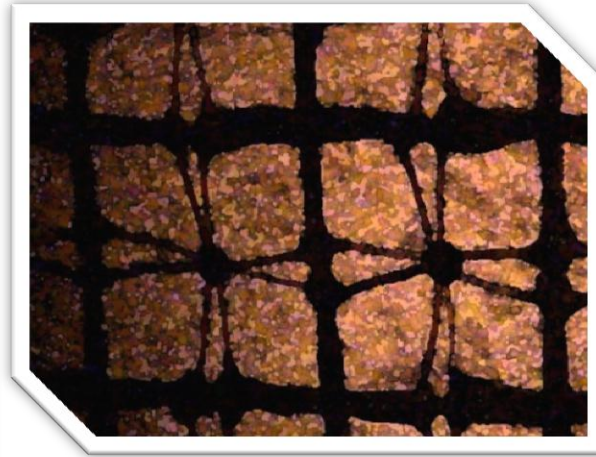
Solomon Islands



Maori

Ref list on additional sheets provided

Tapa Cloth* Ngatu/Hiapo/Siapo/Masi



Music

<http://www.youtube.com/watch?v=PyZU9XkB1IU>

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(Baegu) Sasi sasi ae ko taro taro amu Ko agi agi boroi
tika oli oe lau Tika gwao oe lau koro inomaena I dai ...

Amazing song of grief and strength
The Solomon Islands

(Baegu)

Sasi sasi ae ko taro taro amu
Ko agi agi boroi tika oli oe lau
Tika gwao oe lau koro inomaena
I dai tabesau I tebetai nau mouri
Tabe ta wane initoa te ai rofia

Sasi sasi ae kwa dao mata ole
Rowelae e lea kwa dao mata biru
I dai tabesau I tebetai nau mouri

Sasi sasi ae ko taro taro amu
Ko agi agi boroi tika oli oe lau
Tika gwao oe lau koro inomaena
I dai tabesau I tebetai nau mouri

Little brother, little brother, stop crying, stop crying
Though you are crying and crying, who else will carry
you
Who else will groom you, both of us are now orphans
From the island of the dead, their spirit will continue to
look after us
Just like royalty, taken care of with all the wisdom of
such a place

Little brother, little brother even in the gardens
This lullaby continues to the different divisions of the
garden,
From the island of the dead, their spirit will continue to
look after us

Little brother, little brother, stop crying, stop crying
Though you are crying and crying, who else will carry
you
Who else will groom you, both of us are now orphans
From the island of the dead, their spirit will continue to
look after us

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history

- This Baegu lullabye is from Northern Malaita (Solomon Islands) recorded by ethnomusicologist Hugo Zemp. The song is called Rorogwela and is sung by Afunakwa.

It's about a young child crying because his parents are dead. In response his older brother sings this song to comfort, as well as tell him the reality of them being orphans, with an appeal for his deceased parents to protect this child in the land of the living

A great thanks goes to Celsus Eloga Talifilu, and his relatives, who helped transcribe and translate. Celsus is son of Saverio Talifilu who was the Baegu headman that organized the recording session with Hugo Zemp which took place in 1969 in their village called Fulinui

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Example

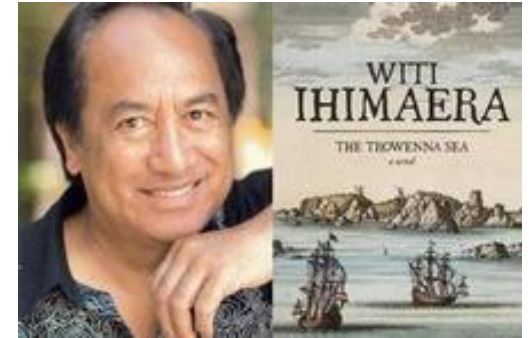
<http://www.youtube.com/watch?v=RE2OxLd9f6w>

<http://www.youtube.com/watch?v=tPPsS4-Dsxg&feature=related> (original?)

<http://www.youtube.com/watch?v=5RKuAP4jVrk>
(indigenous original without music – recording from UNESCO site) –see what the site now says....

STING <http://www.youtube.com/watch?v=MmS-FR7fAaY>

Plagiarism in creative writing



Witi Ihimaera admits plagiarism 9:44 AM Friday Nov 6, 2009

Witi Ihimaera said he took full responsibility for the 'oversight'. Photo / Herald on Sunday

Iconic New Zealand writer Witi Ihimaera has admitted that his latest novel includes plagiarised material.

Ihimaera's new novel, [The Trowenna Sea](#), is set in Tasmania during the 1840s and details the lives of Maori transported to the island off Australia as convicts.

But the novel contains passages re-printed without acknowledgement from a number of writers.

The author of the *Whale Rider* said he has tried to track down all the authors through his publisher Penguin New Zealand.

Penguin publishing director Geoff Walker refused to say what parts of the novel had not been attributed.

"You'll have to read the *Listener*. You do your research and read the *Listener*. With all due respect what I have said is our stated position," Mr Walker said.

He also declined to ask questions about how the plagiarism was identified.

"I don't have a great deal to say," Mr Walker said.

Mr Walker said the book would not be withdrawn from sale and the publisher was standing by the novel.

In a written statement, Ihimaera has apologised for not attributing the material.

"I am deeply sorry and take full responsibility for this oversight," Mr Ihimaera said.

He said of the 528 page novel, less than 0.4 per cent had been published without acknowledgement.

"The authors I have managed to contact understand how it occurred and have accepted my apologies. The passages in question will be fully acknowledged in a future edition of the book," Ihimaera said.

Ihimaera is also a Professor of English and is a Distinguished Creative Fellow in Maori Literature at the University of Auckland.

Dean of Arts, Associate Professor Jan Crosthwaite, said the plagiarism has been investigated by the university and said there was no deliberate wrong-doing.

"Though the amount of non-attributed material may seem insignificant, any failure to acknowledge the work of others is most regrettable and is of concern to the University," Dr Crosthwaite said.

"I have been assured by Professor Ihimaera that he has taken speedy steps to remedy his unfortunate oversight," she said.

- NZHERALD STAFF http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10607651

What about contemporary art forms is “copying” o.k?

- **No!**
- Intellectual property law means that if someone can prove that their work (or parts of it) have been “misappropriated” or “copied” by someone else, they have a legal case (nationally or internationally)
- What is the difference between being “inspired” by something and “copying” it?
- If there is no National Law/ International Laws provide the legal background/base

Plagiarism in Visual Art?

Bob Dylan paintings ignite plagiarism row (<http://abc.net.au/>)

Updated October 03, 2011 08:44:29

Singer-songwriter Bob Dylan has faced uncomfortable questions over several of his paintings in a New York exhibition that appear to have been copied directly from other artists' photographs.

The paintings are part of a show at the Gagosian Gallery titled The Asia Series, billed as "a visual reflection on his travels in Japan, China, Vietnam and Korea."

According to the Gagosian, the artwork, which went on display earlier this month, shows how Dylan "is inspired by everyday phenomena in such a way that they appear fresh, new, and mysterious".

But Dylan watchers and an article in The New York Times highlight another mystery behind the exhibition - that several paintings supposedly reflecting Dylan's globe-trotting artistic career are nearly identical to already published photographs.

For example, the Times says a painting titled Trade, showing two elderly men bent over while talking, and one of them holding a banknote, is the same as a black and white photograph by famed photographer Henri Cartier-Bresson taken in 1948.

Even the lines on the foreheads of the men are similar, as is the short flight of steps in the background, the newspaper pointed out.

Another apparently copied painting is titled Opium and depicts a dark-haired woman in red lying down alongside opium paraphernalia.

The same scene - in the same colours - appears in Leon Busy's photo Woman Smoking Opium.

A third painting, The Game, depicting three men playing a board game, is the same as a 1950 photograph by Dmitri Kessel.

The gallery shrugged off any possibility of controversy, saying in a statement that "the composition of some of Bob Dylan's paintings are based on a variety of sources".

These include "archival, historic images, the paintings' vibrancy and freshness come from the colours and textures found in everyday scenes he observed".

Some Bob Dylan fans concurred.

"Everybody does that. In painting, music, literature. Everyone is always riffing on what someone did before them," one person going by the online name the_revelator posted on the fan site expectingrain.com.

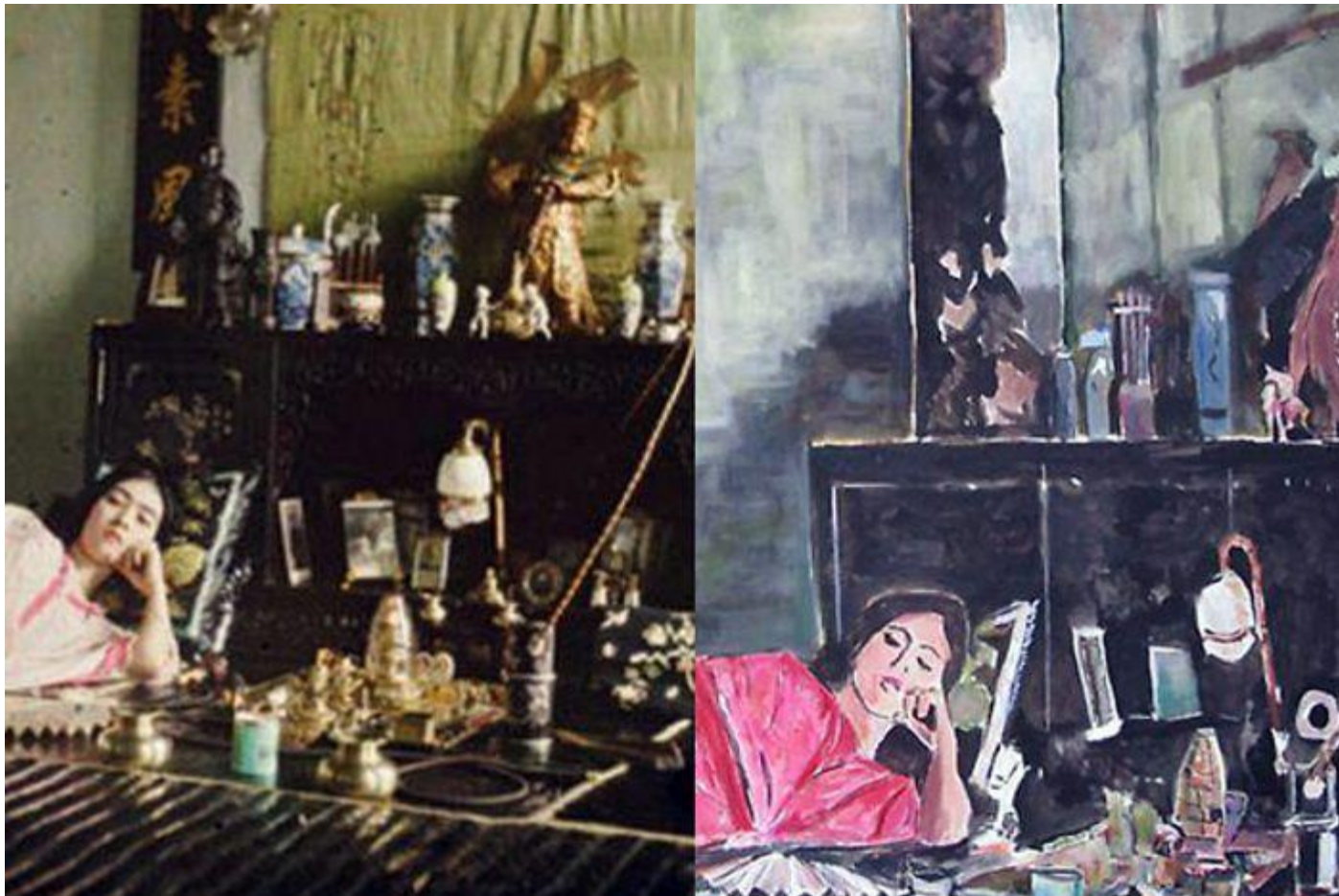
"People who are completely original are extremely rare. Almost all art is derivative. I don't like Bob's work any less because of all the influences and the appropriation."

But the revelation was more disturbing for others in the world of Dylan followers.

"I guess it's because he gets away with it when others don't as much ... maybe that is what aggravates me the most," one commentator called Milkcow wrote.

AFP

Photo: A photograph called Vietnam by photographer Leon Busy contrasts with Bob Dylan's Opium painting. ([Gagosian Gallery/Fotoactualidad.com](http://GagosianGallery/Fotoactualidad.com))



<http://www.abc.net.au/news/2011-09-29/plagiarism-row-ignites-over-dylan-painting/3050638>



Jeff Koons, *String of Puppies*,
1988. Polychrome on wood;
62 x 37 ins.

Photograph: Art Rogers, *Puppies*,
1985. Offset lithograph on coated
paper; 4 5/8 x 5 3/4 ins.
© Art Rogers



Some issues yet to be resolved in the Pacific

1. How much ‘influence’ or ‘appropriation’ is within the ‘acceptable standards’ margin? Who decides on these standards?
2. How are these standards enforced?
3. What are the quality checks in place to ensure that these standards are maintained?
4. What role do existing institutions place in setting these standards?
5. Which institutions are responsible for such benchmarking?
6. Who is accountable?
7. How do we hold people accountable?
8. How do we engage the artists?
9. How does heavy ‘influence’ impact on authentication?
10. Is this relevant to the creative industries?
11. How do we go about setting a standards/arts ethics committee or process?
12. Are we interested in setting such standards?
13. Is this a regional level discussion in art practice in general?
14. How does this link to copyright, intellectual property, fair use and the ongoing discussion with say WIPO, and regional frameworks?
15. What does this mean for ‘ART EDUCATION’? In school and in non-formal education?

"Copy from one, it's plagiarism; copy from two, it's research"
American Playwright Wilson Mizner

Too much appropriation and you have visual art plagiarism
Canadian Visual Artist Chris Tyrell