

2011-2012 IP Survey Report

**Field Survey on
Intellectual Property Issues
in the Process of
ICH Information Building and Sharing**

**International Information and Networking Centre for
Intangible Cultural Heritage in the Asia-Pacific Region
under the auspices of UNESCO**

In collaboration with the Department of National Heritage, Culture & Arts
Ministry of Education, National Heritage, Culture & Arts, Fiji

Preface

ICHCAP, a UNESCO Category 2 Centre, has carried out activities for safeguarding intangible cultural heritage (ICH) in the Asia-Pacific region with a centralised function in ICH information and networking. In this role, the Centre has worked towards protecting intellectual property rights related to ICH information. The Centre held expert meetings on ICH safeguarding and intellectual property rights in 2009 and 2010, and in 2011, the Centre proposed a project for protecting ICH intellectual property (IP) rights in the process of ICH information building and sharing.

In 2011 and 2012, as part of the new project, field surveys were conducted with the cooperation of ICH information-related institutes in the Asia-Pacific region to examine IP issues that could arise in the process of ICH information building and sharing. The survey was conducted in eleven countries—Cook Islands, Fiji, India, Kazakhstan, Korea, Kyrgyzstan, Mongolia, Pakistan, Philippines, Sri Lanka, and Viet Nam. The purpose of the surveys was to highlight the IP-related problems that ICH-related organisations may encounter while conducting ICH information-related activities, such as identification, documentation, digitisation, etc., and promoting the groundwork for a guide to protect IP-related aspects of ICH in the process of information building and sharing.

For the field surveys, a questionnaire developed by ICHCAP was provided to key organisations, and surveys were carried out by each organisation according to the questionnaire. A research team based in each organisation lead the surveys. Upon completing the surveys, the organisations involved compiled a report. ICHCAP collected the submitted reports and is now making them available in this publication, *Field Survey on IP Issues in the Process of ICH Information Building and Sharing*.

The survey reports from each country are being provided as a resource to exchange experiences related to the IP aspects of ICH information. Also, it is expected that publishing reports can foster an environment to understand and resolve problems related to IP aspects of ICH information in the Asia-Pacific region.



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IP Survey Report

I . Introduction

The Fijian government congratulates ICHCAP for its formation as a category 2 centre and is happy to take part in the regional survey related to intellectual property issues in the process of building and sharing ICH information. Working towards a form of legal protection has been discussed repeatedly in many cultural heritage forums.

Western contextualisation of intellectual property rights are newly developed legal concepts compared to traditional methodology of property rights. However, it is the application of the latter in modern day society that proves difficult to facilitate. Furthermore, it has been the subject of on-going negotiation and its recognition as part of the modern legal systems.. Nevertheless, European cultures have allowed their theories of intellectual property rights to evolve over time, and thus the rest of the world has benchmarked European intellectual property laws without developing their own legal theories based on their own customary laws. Most intellectual property rights are governed by statutes that allow minimal room for customary laws to settle.¹

This report is Fiji's coordinated approach to researching the current status of intellectual property issues in the field of ICH in Fiji as part of the larger Asia-Pacific region; to highlight the intellectual property problems that ICH-related organisations may encounter during ICH information building and sharing activities, such as identification, documentation, and digitisation; to promote the groundwork in the region to establish a guideline for protecting intellectual property-related aspects of ICH in the process of information building and sharing.

The Fiji survey was carried out by an interim secretariat for intellectual property rights, comprising the Department of National Heritage, Culture and Arts, the Fiji Arts Council, and the Cultural Youth Ambassadors. The intellectual property

¹ Park, Protection of Intellectual Property Rights for the ICH Practitioners

rights questionnaire was administered to six institutions involved in carrying out work concerning ICH in Fiji. The questionnaires were dispatched to respondents via e-mail and in hard copy.

1. Fiji's Context

Fiji is a group of volcanic islands in the South Pacific, lying about 4,450 km southwest of Honolulu and 1,700 km north of New Zealand. The archipelago is made up of 322 small islands and 522 small islets, Viti Levu being the largest island, covering 57 per cent of the land area, and Vanua Levu, which is 64 km to the north of Viti Levu, covering just over 30 per cent of the land area. Fiji has over 300 languages and an ancient traditional indigenous culture and belief system that is rich in ICH but also threatened by modernised practices. For many years, Fiji has traded with neighbouring islands throughout the Pacific, and this has had a profound influence on its cultural heritage and language.

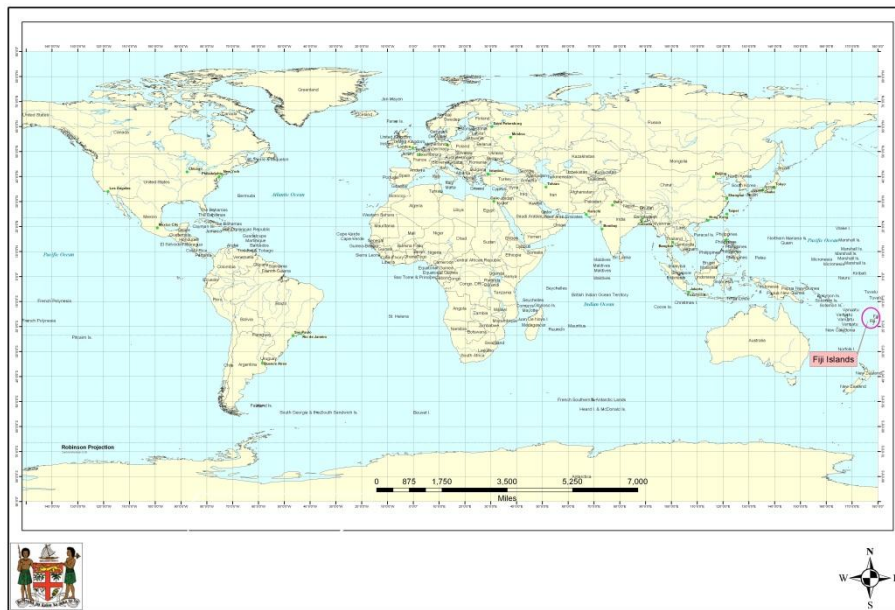


Figure 1: Fiji in relation to the world

2. International Initiatives

Fiji, like many other Pacific islands, is rich in ICH, and it is one of six Pacific Member States of UNESCO to have signed and ratified the UNESCO 2003 Convention by 2012. The April 2010 ratification, which was approved by cabinet and deposited by the Minister for Foreign Affairs on behalf of state, came following a national stakeholder consultation..

The 2003 Convention is important for Fiji as it features prominently the safeguarding of the living, intangible, and knowledge-based aspects of indigenous culture. While most of these intangible elements have historically passed from generation to generation, in recent years, the elements' value and manifestations have lessened because of westernization and because there are few venues through which traditional knowledge can be cross-generationally transferred.

ICH consists of practices, expressions, knowledge, and skills that communities recognise as part of their heritage. Thus, international societies that have worked in tandem with UNESCO garnered enough public attention to ICH safeguarding, and so the Convention for the Safeguarding of the Intangible Cultural Heritage was able to be adopted in 2003.

Article 13, d.iii. of the 2003 Convention clearly states that parties should establish documentation institutions for ICH and facilitate access to them to ensure the safeguarding, development, and promotion of ICH present in each State Party's territory, and this report will highlight the institutions in Fiji that carry out these tasks.

The process of ICH information building and sharing could be the stepping stone into safeguarding ICH. However, with major work being carried out concerning ICH information building and sharing, there is the possibility of intellectual property (IP) issues arising.

Though the Convention does not elaborate on its legal measures for safeguarding ICH, its IP rights to protect ICH and holders are implied throughout the Convention's provisions.²

Since Fiji ratified the 2003 ICH Convention, an interim Fiji interagency committee was established. The committee comprises representatives of the

² Techera, Case Study: Safeguarding Cultural Heritage: Law and policy in Fiji.

Ministry iTaukei Affairs, Fiji Arts Council, Department National Heritage, Culture and Arts and representatives from the Rotuman community who have met to forward proposals to UNESCO for ICH in need of urgent safeguarding, to work on projects to implement the 2003 Convention, and to improve communication and networking among the Departments involved in implementing activities.

Traditional Fijian culture is still rich despite the nation's troubled history, and this culture has been transmitted orally from one generation to another. In the 1800s, the foundation of Fijian culture was shaken by western settlers who came in with their own beliefs. Over time, these foreign cultural elements penetrated Fijian cultural values and changes became visible in the people. In light of Fiji's obligation to its heritage, Fiji has advanced in the area of inventory making for the iTaukei³ ICH since 2003 when the Department of National Heritage was with the Ministry of Fijian Affairs, Culture and Heritage. It is proposed that InventoryinventoryInventory making for the Rotuman Community, followed by other ethnic communities in Fiji will be undertaken soon followsoonfollow suit.

3. Pacific Regional Participation

The inventory-making process for the iTaukei Community ICH was pursued in response to a call from the twenty-two Pacific Member States who identified a priority issue to protect or safeguard traditional knowledge. With Pacific legal experts and endorsements by Ministers of Culture, a Pacific Regional Model Law on protecting traditional knowledge and cultural expressions (TKEC) was endorsed in 2002 at the SPC⁴ Pacific Cultural Minister's Meeting in Noumea, New Caledonia.Caledonia. The Cultural Mapping Programme was an initiative to document aspects of TKEC with the primary aim of identifying the owners of cultural knowledge and resources in 2004. This documentation process is unique in that:

- (a) it captures the principle of Intellectual Property (IP) through the identification of owners/custodians of knowledge;
- (b) documents living and endangered elements of culture;
- (c) substantiates on one of the key requirements of the 2003 ICH Convention pertinent to the inventorying of ICH;
- (d) promotes the revitalisation of endangered and those ICH in urgent need of safeguarding.

³ iTaukei refers to the indigenous people of Fiji, the indigenous Fijians.

⁴ SPC – Secretariat of the Pacific Community: a regional Pacific organization;

Since this development, Fiji has also been a beneficiary of the TradeCom, funded Pacific Regional Action Plan (PRAP), for traditional knowledge development through promoting tradition-based innovation, creativity, and sustainability. This foresees the drafting of an appropriate legislative measure and policy to implement the Regional Model Law on the Protection of Traditional Knowledge and Expressions of Culture in the country.

4. Respondents to the ICHCAP Fiji IPR Field Survey Questionnaire

Six institutions and departments in Fiji were identified to take part in the questionnaire. The institutions involved were:

- Department National Heritage, Culture and Arts
- Fiji Arts Council
- iTaukei Institute of Language and Culture
- Fiji Museum
- Fiji Intellectual Property Office
- CreatiVITI Nadi

Four of the six invited institutions responded as fully as possible despite the time constraints and busy Christmas and New Year public holiday period.

A brief summary of the roles of the participatory agencies is given below.

- A. The Department of National Heritage Culture and Arts (DNHCA) provides advice on policy matters concerning heritage culture and arts. The department undertakes community consultations, workshops, and training and provides funds and support to implementing agencies and local groups within the sector. The department also provides technical advice on the conservation and management of built and landscape architecture. The Department also dispenses legal advice and opinions concerning heritage, culture, and arts besides the heritage education and awareness it conducts in communities and schools.
- B. The Fiji Arts Council coordinates national programmes and activities across all art forms including traditional and contemporary. This includes the development of a professional art sector to ensure recognition, and that a high moral and economic value is placed on the arts.

- C. The Ministry iTaukei Affaires is charged with developing policies and implementing and monitoring programmes for the good governance and well-being of the iTaukei (indigenous population). The Ministry's expertise lies in all matters of indigenous interest and knowledge and in dispute resolution. The iTaukei Institute of Language and Culture's foremost role is the research and documentation of the iTaukei culture. Also embedded in this function is the revitalisation, promotion and protection of indigenous culture and heritage.
- D. The Fiji Museum's expertise lies in archaeological investigation and archaeological impact assessments as well as in researching, collating, presenting, and storing historical artefacts. The museum facilitates foreign researchers and offers training in the area of preserving artefacts. The storage facilities of the museum and the skills of the staff are on par with current international practices and standards.
- E. The Fiji Intellectual Property Office of the Attorney General's expertise lies in establishing an office to cater for all IPR registrations, including patent, trademarks, copyright, and traditional knowledge. This is a newly established office. CreatiVITI Nadi is a membership organisation representing artists from across Fiji and is home to Fiji's only pottery production studio and the second largest art gallery in the country. The organisation's expertise lies in developing arts and crafts in Fiji through offering arts training and promoting expressional creative arts.

5. Background and Justification

The need to preserve Fijian cultural heritage whether it be human crafted or natural has been long recognised as an important task. Cultural heritage has been recognised to be economically, intrinsically, and environmentally valuable, yet it is under threat from a range of processes and effects, triggering action, including the expansion of international heritage law in the past few years. As mentioned, Fiji is has a rich history and abundant cultural heritage, but it is facing a number of challenges as are many other island states.⁵

Fiji is home to coexisting cultures; amongst these are thriving arts, tradition, heritage, and expressions of the indigenous peoples, more specifically the iTaukei and Rotumans. Historically, the indigenous people have depicted their

⁵ The Establishment "National Living Human Treasures" Systems in Fiji

history, stories, songs, lullabies, traditions, and cultural elements through visual art, expressive art, and heritage art. However, some creative and innovative works are being exploited and misappropriated by individuals who tend to gain greater economic returns than the originators themselves.⁶

As mentioned, various projects have been carried out by the DNHCA and other agencies involved with ICH safeguarding. Thus, in carrying out this survey, we hope to raise more awareness on the significance of IP and matters concerning ICH, and we hope to initiate networking among the relevant organisations involved in protecting IP-related aspects and to share the information collected from the survey as a guideline for countries in the Asia-Pacific region.

6. Status of Indigenous Intellectual Property Protection in Fiji

Fiji's intellectual property protection system followed closely the United Kingdom model of copyright protection simply because of its long association with the British Crown during the Fiji's colonial era (1870 – 1970). While attempts were made to review this regime in the 1980s, a revised Copyright Law for Fiji was passed in 1999 and came into effect on 1st July 2000. The Copyright Act of 1999 was based on UK, Australian and New Zealand legislation and introduces a comprehensive scheme for protecting copyright and related rights. While the act is an improvement on the current copyright regime, albeit minimal in giving protection to traditional knowledge and cultural property rights. Hence, moves at consolidating and facilitating the set-up of a sui-generis or special protective laws for communal copyright begun.⁷

In 2003 cabinet endorsed in principle Fiji's adoption of the Regional Model Law on the Protection of Traditional Knowledge and Expressions of Culture (TKEC) that had been developed by regional legal experts. This provided the platform for recognition of intellectual property sustained and owned by communities as a group and not as individuals. The then Ministry of Fijian Affairs thought it appropriate that to facilitate the protection of knowledge, the actual knowledge and expressions must first be identified and its "keepers" recognised. This can only be managed through a databank or database to enhance electronic storage of the cultural information collected.

⁶ The Establishment "National Living Human Treasures" Systems in Fiji

⁷ Asenaca Uluiviti, Fiji Copyright Report, 1999, Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands, Noumea, New Caledonia.

Thus, commenced the Cultural Mapping Programme to inventorise ICH which in the Pacific is synonymous with knowledge systems and how cultural practices are manifested physically. The project was initiated by the Department of National Heritage, Culture & Arts and the iTaukei Institute of Language and Culture map the 14 provinces of Fiji focusing only on the indigenous Fijian population – *itaukei*.

The split of the Department of National Heritage from the Ministry of iTaukei Affairs in 2008 changed the priorities of the former altogether to look at the needs of other ethnic communities in Fiji. The iTaukei Institute of Language and Culture remained with the iTaukei Affairs and remained the primary section in the Ministry focusing on cultural mapping. To date, eight provinces out of the 14 in Fiji have been fully mapped (Namosi, Serua, Rewa, Tailevu, Ra, Lomaiviti, Bua, and Naitasiri) through its inventory process which requires prior community consent and consultation.

In September 2009, a new amendment to the Copyright Act (1999) introduced which allowed for certain presumptions to have effect in the prosecution of offences under certain section of the Copyright Act. Again this was modelled on the Australian legislation. Nevertheless, the culture sector in Fiji awaits with optimism the endorsement of the draft Traditional Knowledge and Expressions of Culture Decree which is currently being scrutinised by relevant authorities.

In 2011, cabinet had approved the establishment of a Fiji Intellectual Property Office (FIPO) under the Attorney General's Office which pursued to cover important areas such as traditional knowledge. This is an important step with appropriate institutional measures in place to accommodate for TKEC issues highlighted.

7. Proposed Activities for the Survey

A. Week one and two (December 2011)

- Confirm the lead institution to coordinate and conduct the questionnaire—DNHCA
- Establish contract for TOR, DNHCA, and ICHCAP for IPR project and the Fiji Arts Council account details for administration support
- Establish secretariat administration costing—Engage Fiji Craft Society Secretariat

Three Part-time Researches:

- 1) Ms Tuliana C. Druava (Principal data collection and meetings assisted by Ms Violet Marama and Keleni Buli for meetings and logistics)
- 2) Ms Vilma Isireli (Drafting of final report)
- 3) Ms Adi Meretui Ratanabuabua (Principal Cultural Development Officer [PCDO])— Coordination

- Identify, contact, and confirm stakeholders taking part in the questionnaire
- Confirm names and involvement proposed from relevant organisations and ministries
- Desktop research, reference contributors, and seek permission to use personal resources and equipment as the project is conducted over the public holidays, evenings, and after hours
- TOR agreed along with Fiji Crafts Society and Fiji Arts Council to promote IPR and undertake secretariat tasks for the project
- Research methodology agreed upon consultation with the Fiji Arts Council implementing agency
- Send out questionnaires and conduct interviews with individual participants.
- Conduct field survey and hold meetings and consultations with key stakeholders

B. Week three (January 2012)

- Conduct interviews with individual participants and collate responses
- Conduct field survey and hold meetings and consultations with key stakeholders

- Submit status report to ICHCAP

C. Week four

- Submit interim report for the field survey on intellectual property issues to ICHCAP
- Hold a consultative meeting with stakeholders to finalise the project

D. Week five and six (January–February 2012)

- Compile and submit the final report to ICHCAP

II. Department of National Heritage, Culture and Arts

1. Institutional Overview

The DNHCA is located on level four, Takayawa Building, Augustus Street, Toorak, Suva, Fiji. The Department was established in 2000 via a cabinet decision in 1999 to advise the government on all aspects of heritage, arts and cultural development in Fiji. Since its formation, the Department of National Heritage has moved through various Ministries of government with changing priorities manifested as a result of lead Ministry functions:

- In 2000, it was formed under the Ministry of Women
- Moved to the Department of Tourism in 2002-2003
- Placed under the Ministry of Fijian Affairs between 2003-2007
- And currently under the auspices of the Ministry of Education since 2008.

The mission of the Department are as follows.

- To preserve, conserve, protect, and develop Fiji's rich indigenous and diverse cultural traditions, which are fundamental to Fiji's identity and development as a nation.
- To explore culture and heritage sectors as having enormous potential for employment and income generation.

The Department has four main units whose function inculcate:

Unit 1: Conventions, Legislative, Projects Implementation and Technical Advisory;

Unit 2: Policy Development, Planning and Training;

Unit 3: Grant Disbursement, Cultural Industries and Cultural Statistics;

Unit 4: Administration, Management and Finance.

As a government Department, the DNHCA's activities for each unit are funded from the national budget.

In as far as ICH Promotion is concerned, DNHCA is the focal point for promotion of the 2003 Convention and also acts as Secretariat for implementation works undertaken by various ICH institutions in Fiji. These include amongst others working in partnership with its flagship agencies such as the Fiji Arts Council, Fiji Museum, the National Trust of Fiji and the 6 Multi-Cultural Centres whose main objectives are to protect and promote culture and heritage and to implement artistic cultural programmes. DNHCA also consults with other cultural organisations and institutions to coordinate and develop cultural activities in Fiji.

The role of these flagship agencies is outlined below:

Fiji Arts Council

- Coordinates national programmes and activities across all art forms as well traditional and contemporary crafts. It was established in 1964 as a coordinating body for presenting overseas artists in Fiji. Expanding from its original role, the FAC is playing an important role in preserving, revitalising, and promoting living heritage and arts. It receives a small grant from the DNHCA for its administration costs. Its activities and projects are funded by external donors.
- The FAC also provides support in organising cultural components of national events. The organisation also coordinates Fiji's participation at the Festival of Pacific Arts and the Melanesian Arts Festival, which are both held every four years.

Fiji Museum

- The Fiji Museum is responsible for implementing two Acts of Parliament that mandates, protect, and safeguard the Museum's collection and the archaeological and paleontological heritage of the Fiji Islands. In the past, the Museum has been the focal point for cultural and heritage policy development. Now this responsibility is with the DNHCA. Archaeological sites, however, are managed by the Museum. In general, the Museum has continued to maintain and care for its valuable and irreplaceable collections over the past ten years whilst focusing on the following
 - 1) Building the professional expertise of personnel so that the staff members can perform their work effectively and efficiently
 - 2) Expanding and upgrading infrastructure and services to support the Museum's role as a custodian of movable cultural property of the country

- 3) Building greater 'community ownership' of the institution through public programmes and services.
- The role of the Museum as a national museum needs to be extended beyond archaeological sites.

National Trust of Fiji

- This organisation is actively involved in the conservation, protection, and management of Fiji's cultural and natural heritage, including fauna and flora. Since designating the Sigatoka Sand Dunes as Fiji's first national park in 1989, the Trust's legal and professional framework for its mandate and cooperation with national and international conservation organisations has been boosted. The Trust deals with site management and, when necessary, closely works with housing, local government, and environmental departments.

2. Information Building and Sharing

In terms of information building and sharing for the intangible cultural heritage, DNHCA is involved in identification, documentation, inventory making, database/archive building, publication, distribution, and using digital contents. For most of these activities, the Department acts as an advisory for ICH safeguarding, for others it tries to spearhead using the limited resources and with potential funding from regional and international donors pursue promotional activities at the national level.

Currently, the Department's main focus is:

- (a) Identification – not that it is involved directly in the mapping of communities and their ICH elements but basically as the designated Secretariat to the ICH Convention in Fiji, it tries to map institutions and systems and identify their functions for the purpose of implementation of requirements of the ICH Convention at the national level;
- (b) In as far as documentation of ICH, it assists implementation agencies financially for the comprehensive collection of data. DNHCA funds requests to document revitalisation activities pertinent to ICH carried out by the iTaukei Institute of Language and Culture, Fiji Arts Council, Fiji Museum and others. This is captured through a small grant that the Department disburses for cultural activities.
- (c) Publication – through the small grant disbursed, the Department encourages funding for proposals pertaining to research and publications. The publications have to be cultural-related inclusive of ICH.
- (d) Awareness Raising on ICH -Since 2000, the DNHCA has conducted

awareness-raising activities on the importance of ICH in the fourteen provinces of Fiji. Awareness raising takes many forms such as distribution of materials at consultative sessions, presentations at provincial forums, proactively participating in community-organised or institutional organised workshops/seminars, and through the media. Awareness is pivotal as it derives a community the need to identify an ICH that they see in need of urgent safeguarding and that which requires immediate action should apply in the form of revitalisation. The resulting activities are published on DNHCA's website in corporation with the implementing institution.

Please also refer to Cultural Mapping Programme detailed with the Institute of Language and Culture.

Label of Authenticity Project

The project was funded by the former Fijian Trust Fund to facilitate the identification of a label that master/skilful artists (art and craft) can use to identify and sell their unique works. With the increasing counterfeit products imported and sold in Fiji, the art and craft industry in Fiji had suffered greatly and part of this important exercise is to provide nominations for possible elite and practicing artists to be recognised and promoted. The Project involved consultations and surveys organised to identify artists in this regard. The project paved the way for the introduction of a Made in Fiji label that enhances the sale of authentic art and craft in local and overseas markets.

Rotuman Mat-Weaving Project

Also implemented through a funding from the then Fijian Trust Fund, the project tries to revive one of the ancient art of the Rotuman community whose culture and language is considered endangered. These fine woven mats are earmarked for exhibition at various museums showcasing the diversity and intricacy of the Rotuman cultural web. The main objective of the exercise was to revitalise this important skill which has yet to be undertaken for decades. The project not only fulfils the need for the revitalisation of a dying art but also allowed for the transmission of this unique and valuable form of expression to the next generation of Rotuman women.

Living Human Treasures

The Fiji Arts Council, in partnership with the Department of iTaukei Affairs, collaborated with UNESCO to establish a national Living Human Treasures System in Fiji. In the framework of the project, a national working group developed detail procedures for identifying target ICH domains, defining

Living Human Treasures, and outlining the criteria for selection. A commission of experts was proposed to examine information collected through field research in the fourteen provinces and then to provide recommendations to the Minister responsible. Since the project will cover all ethnic communities, it has been pursued separately by the institutions that deal with the various ethnic communities. The Ministry of iTaukei Affairs purports to adopt the LHT system for the iTaukei community while the Fiji Arts Council is proposing to pursue something similar for other ethnic groups. Ground work by the Fiji Arts Council had been pursued in this area with the assistance of intern students from Australia coming to Fiji for exchange in the last two years. The Ministry of iTaukei Affairs is also working towards formally establishing the LHT system with the prior approval of the iTaukei Affairs Board.

The DNHCA obtains its ICH-related data or archives through fieldwork, documentation, purchases, and donation.

3. IP in the Department

The DNHCA's experience with projects regarding IP aspects of ICH includes the Model Law for Traditional Knowledge & Cultural Expression, its first project, and the Label of Authenticity (LOA), its second project. For the former, the DNHCA worked with the Ministry of iTaukei Affairs and the Solicitor General's Office in drafting a protection mechanism that would help protect and recognise the communal rights of indigenous community in as far as commercialisation of their knowledge and cultural expressions is concerned. The LOA Project however looked at IP in the context of artistic recognition and authenticating their work. The Cultural Mapping which involved the identification of owners of knowledge is best covered through activities highlighted under the iTaukei Institute of Language & Culture. It was developed through an initial collaboration between the DNHCA and the latter.

The DNHCA is a government agency and the person responsible for overall IP is the DNHCA Director. There is no specific unit specialising in IP promotion and protection at the Department, however, it is embedded in working procedures of government officials that all intellectual property pertinent to work performed in an official capacity belongs to the state and nothing is to be publicized or promulgated without the direct consent of the Permanent Secretary to the Public Service or the Permanent Secretary of designated Ministries.

The DNHCA envisage the following principles when protecting the IP aspects of ICH:

- Respect the culture, arts and heritage of the indigenous community and other ethnicities in Fiji
- Respect the iTaukei cosmos and how they relate their oral traditions with the ecosystem and surrounding environment
- Maintain that the traditional knowledge and cultural expressions depicted are the intellectual property of the iTaukei or the ethnic groups with which they originate or is continuously practiced
- Recognise, value, and respect the traditional custodians of the land and any decisions made regarding land use
- Promote creativity and innovation in the pursuance of excellence in culture, art, and heritage in Fiji
- Acknowledge that the iTaukei community has the right to accrue benefits from any activities that use their cultural heritage, art, and expressions
- Envisage youth participation in revitalisation and cultural entrepreneurship
- Make equal opportunities available for all genres of culture and heritage and the art, knowledge, and heritage traits

4. IP Issues in Information Building and Sharing

Problems with IP ownership were raised by an entrepreneur who sponsored navigation skills revival. For anything filmed, he wanted the rights.

Masi reproduction books produced and published prior to community ownership need to be checked whether royalties are going back to the community.

Enforcing and prosecuting copyright issues related to music are a problem. Pirating issues are rife, particularly with Internet downloading, video piracy, and CDs on the black market. As far as the USP library collection of traditional chants, UNESCO wanted to digitise the analogue collection and place it on the website. They were advised not to without prior informed consent from custodians because the chants were for a different purpose.

The policies and guidelines for IP rights of ICH in the process of information building are not well organised in the DNHCA, and its context still needs

improvement. There is a high staff turnover, and rising new staff members awareness is necessary within the department and a guideline needs to be developed for the DNHCA.

III. Fiji Arts Council

1. Institutional Overview

The Fiji Arts Council (FAC) is located in Suva, Fiji, and was established under the Charitable Trust Act of 1964. It is a national body solely responsible for the safeguarding of the Art. Although this function has changed considerably, because of the evolving characteristics of Art, FAC continues to function and strive in achieving excellence in the promotion of the art at all levels for all communities in Fiji's Multi-Cultural Society.

FAC is one of the four agencies of the Department of National Heritage, Culture & Arts which implements the policy and legislative coordination functions of the latter.

Vision:

A Dynamic, Interactive and Progressive Arts Sector

Mission:

The Fiji Arts Council will strive to create a dynamic, interactive and celebrated Arts Sector through the:

- Preservation, revival, protection and promotion of art forms and knowledge unique to Fiji;
- Promote good governance and accountability within the art sector
- Provide opportunities and support for professional development of the arts sector;
- Encourage investment and develop infrastructure to achieve artistic excellence;
- Advocacy (awareness), education for formal recognition, and valuing of art and artists.
- Setting guidelines and standards for the art;
- Promoting culture and arts through touristic initiatives;
- Enhancing exchange and appreciation for all arts, all levels of abilities and all communities

Most of the activities are carried out in Fiji, but others, such as the Pacific Arts Festival and the Melanesian Arts Festival, World Craft Council, IFCCA, New Zealand Trade Aid, Atea Oceania, New Zealand , etc are carried out at the regional and international level.

As far as ICH is concerned, the FAC specialises the promotion of the arts. The arts cuts across the 5 domains of UNESCO.

Organisations affiliated with the Fiji Arts Council are listed below.

- CreatiVITI, established in 1993, is a membership-based organisation representing artists from across Fiji. It is home to Fiji's only pottery production studio and second-largest art gallery. Its mission is to develop arts and crafts in Fiji through training in the arts and promoting the enjoyment of creative expression in a setting accessible to the whole community. Their products are pottery objects, custom ceramic commissions, paintings, drawings, sculpture, handicrafts, pottery classes, kids craft activities, bi-monthly exhibitions, seasonal craft markets, annual art competition.
- Fiji Craft Society's objectives are to promote and sustain crafts to the highest level of proficiency as well as to seek expertise in different crafts forms. The Society also develops and improves skills in various fields and crafts and works in collaboration with the FAC and other associations involved in promoting heritage arts in Fiji and overseas. The Society selects the best craft artist to represent Fiji in regional, national, and interantional exhibitions. Lastly, the Society capitalises on existing markets and purses opportunities for the organisation's infrastructure and marketing.
- Fiji Voyage, also known as Fiji Islands Voyaging Society, seeks to lead the rebirth of Fiji and Rotuma's proud maritime heritage—in particular to preserve and develop traditions of ocean voyaging by double-hulled canoe, which is commonly known as the magnificent Drua. The Society is a member of Pacific Voyagers, a pan-Pacific network of voyaging societies with country representation from American Samoa, the Cook Islands, New Zealand, Tahiti, Tonga, Western Samoa, and Fiji. The Society's mission is to revive and sustain traditional Fijian canoe building, sailing, and navigational knowledge, skills, and customs as well as to revive canoe building and voyaging to re-establish cultural links and traditional sailing routes in ancient canoe art, skills, and knowledge. To establish sailing schools in strategic locations throughout Fiji as the centers for revival and

education programmes and to contribute to sustainable development and the preservation of the Fiji Islands marine and land environment through resource renewal and public education programmes are also part of the Society's mission. The Society also undertakes open-ocean voyages along ancient Pacific migratory routes to contribute to reviving and strengthening Pacific regional links and forms alliances with other voyaging societies on projects to contribute to the Pacific movement of ocean voyaging revival and cultural and environmental sustainability. The Society works alongside government organisations and other public and private organisations with similar aims and objectives to assemble a group of experts who will assist the Society in regulating the use and care of traditional sailing canoes, and to ensure the cultural integrity of its programmes. Lastly, the Society advocates for the national protection of the IP rights of Fiji canoe designs and associated sailing and navigation knowledge and skills.

- Fiji Visual Arts Society established in 2007
- Performing Arts Society focuses on the teaching of the traditional dances, choral music and the use of musical instruments.
- Design Arts Society established in 2008 after the Festival of Pacific Arts from American Samoa.

The FAC receives its main budget from the government, but FAC also receives supporting funds from local and international sponsors and donors to run workshops and exhibitions.

2. Information Building and Sharing

The FAC has done and is doing activities in identification, documentation, inventory making, and using digital contents for information building and sharing activities of the institute. The organisation also focuses on craft fair exhibitions, art exhibition, and most of the latter's work on database/archive building is carried out through field work and documentation.

3. IP in the Institute

The FAC is working with FIPO in addressing the issue of IP protection for the art. It undertakes tasks related to intellectual property and the contact people are:

- FAC Contact: Laisiasa Veikoso
(veikoso_l@hotmail.com, Tel. 3311754)

- Duty Person: Venasio Komai
(fijiartscouncil@connect.com.fj, Tel. 3311754, Mob. 9494451)

The FAC has a principle for protecting IP aspects of ICH and its visions are to be a Fiji art organisation that is vibrant, innovative, and distinctive, and that contributes with integrity to a heritage that is protected and valued. The organisation's mission is to preserve, revive, and protect art forms and knowledge unique to Fiji and to provide platforms for communities to generate income and sustainable careers through the arts and provide opportunities for professional development of the sector. Also the organisation encourages investment and infrastructure development to achieve artistic excellence, and it influences and advocates for the recognition and the value of the artist. The organisation also encourages difference and innovation as well as enhances exchange and appreciation of all arts at all level of abilities for all communities.

IV. Fiji Museum

1. Organisation Overview

The Fiji Museum is located in Suva, Fiji. The idea for a museum was to display and preserve traditional Fijian culture as discussed in 1904. Later that year, Sir William Allardyce presented his collection to the Suva Town Board and it was put on display. In 1908, the Fijian Society was formed with a specific aim to research and preserve the country's history and culture, and the formation of a museum was included in this aim. In 1910, the government approved an annual grant of A£25 to appoint a collection caretaker. With the passing of the Fiji Museum Ordinance in 1929, the museum was formally inaugurated as a Government Statutory Body with a Board of Trustees.

Local residents presented pieces and collections to the town board and artefacts were purchased by the Trustees. These contributed towards a growing collection which filled the Town Hall. The collection remained on display in the town hall until 1919 when substantial part of the hall was destroyed by fire. The collection was moved to a variety of venues until the government was persuaded by the Trustees to build a national museum.

The current museum was opened in 1955 by the Governor Sir Ronald Garvey of Fiji. This building was used to house the display, reserve collection, and provide storage. Today, the building has two adjoining sections; the first of these was constructed in 1972 and the second in 1978. Together these buildings provide a history gallery, masi gallery, art gallery, temporary exhibition space, storerooms, and gift shop. The archives, photographic studio editing suite, library, and administration office are located in what was the Nawela Hostel for women, adjacent to the main museum building.

The recent employment of key professional staff has enabled the Museum not only to effectively discharge its responsibilities according to professional museum standards, but also to develop educational programmes aimed at generating greater support from the community.

The Museum, in terms of ICH, is specialised in performing arts, dance, music, rituals, and ceremonies mostly associated with historical sites and building and cultural objects and artefacts. Other ICH elements include some music collected from the 1970s and some rituals and oral traditions of all groups in Fiji.

The Museum is classed as a statutory body that has memorandums of understanding (MOU) with other museums, such as the Museum of Anthropology, museum for the University of British Columbia, Canada, the Museum of Victoria, Australia and the Museum of New Caledonia. These MOUs are done to aid the museum in training staff, exchanging ideas, to help in purchase of equipments, and working in partnerships for exhibits (for artefact loans). Also the Museum's source of funds come from admission (into museum), sales from the gift shop, sale of soft drinks and snacks and a small grant from the government. Embassies and private companies also make donations for special projects.

The Museum has a minimum of 5 Department which gathers information via research and field and conservation work on artefacts, archaeological and photographic collection and also identifies historical buildings, and records oral traditions of both indigenous and other races who have made Fiji their home. The Museum also documents and makes inventories of collections as well as builds databases and archives. Other activities include publishing and distributing materials, such as *Domodomo*, a scholarly journal that reports on the work of the Museum and research in archaeology, anthropology and other related fields. The Museum also uses digital content on facebook/tweeter to market and publicise the events happening at the Museum.

Vision

The Fiji Museum will become known as a world-class museum. It will enhance this reputation by working locally, nationally and internationally to maintain and strengthen its focus on the diverse cultures of Fiji. It will be a place where the tangible and intangible heritage of these cultures is safeguarded and made accessible to community members and researchers. Its innovative and imaginative exhibitions and programmes will serve local communities and be a significant draw for all visitors. It will make a difference in people's lives.

Mission

The Fiji Museum inspires and promotes respect for all the diverse cultures of Fiji.

2. IP Issues in Information Building and Sharing

The Museum works mainly with international and domestic researchers in the field of archaeology and palaeontology and is responsible for issuing permits for archaeology and palaeontology work. It also keeps a journal on the latest progress of this particular field in Fiji. (Domodomo Scholarly Journal) The Museum also deals with anthropologists and ethnologists, and most researchers and research are covered under the Fijian legislation, specifically the Preservation of Archaeology and Palaeontology Interest Act.

The Museum works closely with grassroots communities; for example, the Museum staff and researchers go out to the villages in order to carry out their work (Archaeological field work or Archaeological General Survey and Impact Assessments as part of the Environmental Impact Assessment done in any area in which the museum is called in to help with, usually under the Mineral Resources Department, Mining companies, Environmental Consultancy companies and so on.

The Fiji Museum has set up its work to closely work with the general public and invites the public to participate in museum activities and exhibitions – for example – asking Artists to exhibit and sell their art in their temporary exhibit space for a month for a minimal fee, in this way, the museum hopes to encourage artists, and encourage the public to support a growing art movement in Suva and Fiji as a whole. However, there is no code or guideline that governs the relationship between the Museum and the community. The public may make use of the research library for copying and enjoyment. If the public wants to buy photos, then they are required pay and they are advised to acknowledge the museum when using the images.

IP questions are raised for the Museum in matters related to research; this is when researchers are keen to listen to tribal information. Thus, if this is what they need, then they would follow the same procedures used when accessing photos. For information on genealogy and family, researchers would need to get approval from the families concerned. However the Museum does not have IP-related protocols nor do IP options or issues form part of its visions or objectives. Overall, the Fiji Museum believes that IP issues should be taken into account by institutions and that there is a need to train museum staff on intellectual property matters and to compile IP best practice guidelines and protocol.

Fiji has had many collaborative projects that have involved domestic and foreign cultural experts with the helpful support by the DNHCA, and the iTaukei Institute of Language and Culture. This collaborative effort by these institutions led to the establishment of a training manual.⁸ This training manual was designed for field officers who are conducting cultural mapping. The manual acknowledges Fiji's legislation—Copyright Act, Performers Protection Act, Patent Act, and Trademarks Act—but it also notes that the current legislation is inadequate to protect Fijian cultural heritage. Thus, to address the limitations of current IP laws, Fiji has worked on other initiatives. Currently Fiji is working on the Traditional Model Law to include all multicultural groups and has established a national database to collect Fijian cultural heritage.

⁸ This collaborative effort also included both local and foreign researchers and anthropologists. The role of anthropologists in training and in the formulation of the training manual was instrumental.

V. iTaukei Institute of Language and Culture

1. Institutional Overview

The iTaukei Institute of Language and Culture (“Institute”) is located at 87 Queen Elizabeth Drive, iTaukei Trust Fund Complex, Suva, Fiji Islands. The Institute has evolved from the Fijian Dictionary Project, established in 1974 with the main aim of compiling a dictionary of standard Fijian with Fijian definitions. The project was attached to the Office of the Prime Minister until January 1985 when it was transferred to the Ministry of Fijian Affairs. Funding for the project originally came from the American-Fijian Foundation, chaired by the late famous actor Mr Raymond Burr, the Australian Government’s Fund for the South Pacific Cultures, and the Fiji government. In 1986, the Fijian Great Council of Chiefs approved that the Fijian Dictionary Project changed its name to the Institute of Fijian Language and Culture.

In 2003, Cabinet endorsed the adoption of the Model Law on Traditional Knowledge and Expression of Culture framework for drafting a national legislation to protect Indigenous (“iTaukei”) intellectual property (“IP”) rights. The *National Inventory for Traditional Knowledge and Expressions of Culture* project was then established. An electronic data registry was established to store traditional knowledge and cultural expressions collected from the Cultural Mapping Programme (“CMP”). The CMP was to be undertaken in the fourteen provinces of Fiji. It was piloted in Colo-i-Suva (Naitasiri) and Nakavu (Namosi) in 2004. The CMP commenced in June 2005, and the eight provinces mapped thus far are Namosi, Serua, Rewa, Tailevu, Lomaiviti, Ra, Bua, and Naitasiri. The remaining provinces are Nadroga, Ba, Kadavu, Cakaudrove, Macuata, and Lau.

The Institute’s main objectives are as follows.

- To compile a monolingual iTaukei dictionary
- To encourage and facilitate the use and study of iTaukei and Rotuma languages and cultures
- To preserve and safeguard iTaukei language & culture

The Institute undertakes archival and field research.. The range of topics covered is enormous, including traditional religious beliefs, knowledge of the environment, natural history, social structure, kinship, music, dance, games, and traditional technologies such as agriculture, fishing, house building, pottery, canoe construction, and sailing. Currently, the major media through which the results of this research are disseminated are the popular half-hour weekly radio programme *Na Noda Vosa* on Radio Fiji One. Through a thirty minutes programme, it disseminates to its audience information of historical significance, customs, natural History, herbal medicine, handicrafts, legends, and languages of Fiji.

Another important research activity undertaken by the Institute includes the filming or video shooting of iTaukei ceremonies associated with the installation of chiefs, solemnity and funeral proceedings of the death of a chief, presentation of the first born, and other customary rituals. Sometimes, the Institute is not fully aware of occurrences and instances as such, thus the general public is advised to inform the Institute prior to any traditional undertakings.

The Institute has been preparing to initiate a publication programme, and a large number of works are in the final stages of editing, including books on legends, local history, traditional medicine, translation techniques, and translations from English to valuable historical material. These will be available for purchase once published and will be publicised widely.

The Institute plays an important role as a resource centre for local and overseas researchers. The Institute's services are used by government departments, private organisations, and researchers at all levels, ranging from primary school children to representatives of the *vanua* to university professors. The Institute has played an important role in the production of a number of documentary and promotional films, most notably the BBC Natural History Units, *Nomads of the Wind* series on the history of man and the environment in the Pacific, which has been enjoyed by millions in Europe and North America. The Institute constantly liaises with local broadcasters and publishers to improve translations and the coining of new words that are needed for the indigenous Fijian language to function in today's world. It has also been involved with the University of the South Pacific through the iTaukei Trust Fund Board in developing courses in iTaukei language studies.

The Institute is also committed to demonstrating that iTaukei language and culture are compatible with the modern world through the observance of

traditional customs of respect within the office. As far as practicable, all communications, oral and written, is in the iTaukei language.

The Institute also attends to invitations and requests received from church institutions, schools and the general public for lectures pertaining to iTaukei language and culture. However, requests or invitation received are first assessed to ascertain if it is aligned to the objective and role of the Institute, and the geographical proximity of the lecture venue.

In 2003, the Cabinet endorsed the then Ministry of Fijian Affairs Culture and Heritage to draft legislation specifically to protect traditional knowledge and expressions that are manifested through the local customs and traditions of iTaukei. The initiative emanated from increasing concerns regarding the misuse, misinterpretation, and misappropriation of aspects of iTaukei culture without due acknowledgement according to the custodians. The draft law is termed Legislation on Indigenous Intellectual Property Rights and it will assist in the protection against exploitation of traditional knowledge and expression of culture abundant in local settings. The draft legislation has been completed and is before the Attorney General's Office.

The Institute's the Culture Mapping Programme covers the fourteen (14) provinces in Fiji, and radio programmes are broadcasted locally and internationally as the radio station that broadcasts the programme has programmes online.

Video filming and shooting are done locally, whereas productions are distributed both internationally and locally.

The Institute also facilitates the publications of the 'Lialiaci' highlighting the activities of the Institute and is distributed to primary and secondary schools, Provincial Council offices, iTaukei institutions, educational institutions, stakeholders and respective individuals.

Invitations and requests are normally received locally.

The Institute also engages in information exchange with some of the countries in the Pacific. Once, a delegate from Papua New Guinea spent three months at the institute studying the implementation procedures of Culture Mapping Programme with the intention to introduce the CMP in Papua New Guinea. The Institute also receives invitations to present at conferences and workshops in Korea, Japan, China, and countries Europe.

The kind of ICH the Institute of iTaukei Language and Culture specialises in is identifying and documenting the different types of traditional data and cultural expressions from mapped villages. These include art and crafts, dances, chants, music, dialects, ceremonies, cooking, fishing, medicine, hair dressing, midwifery, agriculture, canoe and house building, games, engagements and weddings, myths, and legends.

The Institute is a government Department associated with the DNHCA, the Fiji Museum, and the Fijian Affairs Board. The Institute also collaborates with Fiji museums for the mapping and gazettement of heritage sites identified through culture mapping exercise. The Fijian Affairs Board, the Provincial Council Offices, the Fiji Arts Club, and the Department of Environment are some of the other affiliated organisations.

The CMP and the operational cost of the Institute are fully funded by the government.

2. Information Building and Sharing

The Institute's on-going activities are in identification, documentation, inventory making, database/archive building, and publication and distribution. The Institute is also heavily involved in identifying, documenting, inventory making and database /archive building of the iTaukei traditional knowledge and cultural expressions. They have researchers assigned every week to conduct village research. These officers spend four days in the villages to capture traditional data through audio and video recordings and still images. Informants are also required to sign consent forms before participating in the interviews.

After collecting traditional data, the next stage is to process the captured data. This is where the CMP secretary receives and records the audio and video tapes, still images, village reports, signed consent forms, TK & EC summaries, heritage sites, and identified living human treasures. Audio and video tapes and still images are labelled and distributed for transcribing and editing before being entered into the TK & EC database.

The TK & EC database is the first ever in the iTaukei language, and all traditional information is verified before being entered into the database. Accessing information in the database is only done with the consent of the custodians.

The identification of heritage sites and living human treasures is also part of the programme. All identified heritage sites are scrutinized before recommended to the Fiji Museums for mapping and gazetting. The Institute only identifies and documents heritage sites as these link traditional ties with the early migration of ancestors. There is also a separate database for heritage sites.

The CMP has also identified unique traditional crafts skills and other aspects of iTaukei culture in danger of being lost. The special revival unit conducts revival workshops aimed at reviving the dying tradition and crafts. The unit is also responsible for the proper recognition of those who have unique traditional knowledge and skills under the Living Human Treasure (“LHT”) programme. There is also a separate database for LHT.

The Institute has been preparing to initiate a publication programme, and a large number of works are in the final stages of editing, including books on legends, local history, traditional medicine, translation techniques, and translations from English to valuable historical material. These will be available for purchase once published and will be publicised online.

As mentioned, the Institute carried out and supervised the CMP. The Pacific region developed a Pacific Regional Framework in close consultation with the SPC, UNESCO, the Forum of Pacific Island Member Countries and Territories, and the Council of Pacific Arts in 2002. This is reflective of developments taking place at WIPO and UNESCO. The framework was developed in response to calls from the region, in the face of increasing exploitation and inappropriate commercialisation of traditional knowledge and expressions of culture. The challenges facing Fiji today in its quest to safeguard traditional knowledge and prevent its dissipation for the benefit of future generations are common to many developing countries. They include the pressures of urbanisation and the promises of modern urban living that have produced an apathetic youthful population that is increasingly losing connectedness with their cultural roots.

Conducting the CMP exercise has positively affected the lives of the iTaukei communities.

- It has revived various aspects of iTaukei tradition and culture
- It increases the level of appreciation and value to traditional and cultural aspects
- It increases the sense of realising the significance of traditional structures and lifestyles.

- Discussions of traditional knowledge and cultural expressions held during interviews are a form of knowledge transmission to the current and younger generations.
- Requests have been received from the public requesting revitalisation workshops to educate and transfer traditional knowledge to the current and future generations.

The Institute has also attracted the attention of other countries intending to implement cultural mapping. Establishing a traditional inventory through culture mapping and drafting national legislation to protect the iTaukei IP rights have attracted the attention of all the iTaukei communities, NGOs, universities, businesses, media organisations, and others interested in the traditional knowledge and cultural expressions data available in the Institute.

The database/archive was an activity that the Institute was involved in and ICH-related data were achieved through fieldwork and documentation. Data archiving at the institute is arranged in the foregoing format:

Data No: IPR09391

Type: Audio Recording

Form: Analogue Cassette

Researcher: Simione Tuimalega (Field Researcher)

Interview Site: Naveicovatu Village, District of Naloto, Tailevu Province.

Date of Interview: 16 – 19/06/2009.

Information: The cassette records detailed information of the informants and the history of the vanua of Naloto and its traditional ties, early migration, and the meaning of the village name.

The Institute only keeps information for the Naveicovatu villages, and accessibility to the information can be done with the consent of the Naveicovatu tribal and clan leaders.

3. IP in the Institute

The main objective of the CMP is to collect and document aspects of iTaukei culture, such as ceremonies, dialects, and heritage sites and stories that are well and alive in local villages. With the continual loss of one's fervent grasp of local cultural ideals and values, a team of researchers is tasked with the important responsibility of documenting, editing, and inputting information into a database for future generations. The programme foresees the timely research of all the various *vanua* around Fiji before knowledgeable elders pass away.

Traditional data collected from the field are captured through audio, video, and still images. After processing these data by transcribing and editing, the information copyrights belong to the Institute whereas those who intend to access this information have to seek the consent of the *vanua*. This is mainly to protect against the exploitation of traditional knowledge and expressions of cultures. There is only certain amount of information authorised by the custodians for publications and broadcastings like myths and legends.

Contact Information:

- iTaukei Institute of Language and Culture
(Tel. 3100909 ext. 1039)

Contact of Duty person:

- Director: Pita Tagicakirewa
(ptagicakirewa@finance.gov.fj Tel. 3100909 ext 1036)

The Institute has a principle for protecting IP aspects of ICH. The only principle is that all information collected from the field belongs to the institute and accessibility is granted only with the consent of the custodians as a way to protect against the exploitation of traditional knowledge and expression of culture of the suppliers of the information. (Annex 1. MOU for Ovalau)

4. IP Issues in Information Building and Sharing

Issues similar to those already mentioned have also surfaced in the CMP. These issues have surfaced in the identification, documentation, inventory making, and database building activities to preserve the iTaukei language and culture and also to protect against the misappropriation of traditional knowledge and cultural expressions.

Some of the problems that surfaced are listed below:

- compliance with the country's laws and regulations or customs concerning ICH information building and sharing activities
- identifying the nature of rights existing on ICH that will be used in information building and sharing activities
- identifying the nature of rights existing in ICH
- ownership of ICH
- prior informed consent or approval
- maintenance of collected information
- adaptations

- secret, sacred, or confidential ICH
- bearers' moral rights
- sharing of benefits
- unfair use or misuse of ICH material
- portraits, filming, and reproduction
- use of ICH as a trademark, geographical indication, or domain

The stages in which most of the issues surfaced were the following.

- preparation
- collecting and creating information
- maintaining information
- processing and producing information

Problem regarding ownership of ICH—this involves owners whose gifts and skills are from maternal links. Sometimes there is confusion whether inherited gifts and skills belong to the village of marriage or only to the maternal side of the family. Sometimes it was difficult to determine who the rightful ICH owner was. These were specified in the reports.

The Institute does not have any guidelines, policy, or protocol regarding legal issues that would surface in the various stages. The draft legislation can be considered for this. The Institute has a two-way symmetrical relationship with ICH subjects.

Also the Institute has included IP matters in the institute's vision and mission.

Vision

An Enlightened Vanua for a Progressive Fiji.

The Ministry of iTaukei Affairs will continue to ensure that the government will develop, maintain, and promote policies that will provide for continued good governance and welfare of the iTaukei into the future.

Mission

We will strive to create an enlightened Vanua for a progressive Fiji.

- The development of relevant policies, programmes and legislation
- The arrangement and nurturing of smart partnerships with our stakeholders

- The conduct of focused capacity-building initiatives
- The empowerment of the iTaukei people through an appropriate institutional framework of governance

As mentioned, the Institute works to preserve iTaukei cultural aspects and creates an inventory specifically to protect iTaukei traditional knowledge and expressions of cultures against misappropriation.

Bearers, practitioners or communities are the Institute's major sources of traditional information. Without their participation, the Institute cannot capture the authentic and accurate information needed. The importance of choosing an informant who is well informed has always been emphasised. All informants who give data during mapping exercises sign a consent form prior to interviews and recordings.

VI. CreatiVITI

CreatiVITI is a registered charity formed in 1993 to promote the development of the arts in Fiji and to assist those making a living from their creative talents. The CreatiVITI Arts Centre is located in Martintar, Nadi, Fiji.

Vision and Mission

The organisation's vision is empowering *mana* in the arts and developing arts and crafts in Fiji through training, promotion and the enjoyment of original creative expression in a setting accessible to the community.

Values

We are a people of integrity, respecting each other and learning, sharing, and caring in a diverse culture.

Objectives

- To encourage, develop, and coordinate artistic expression in Fiji on a multicultural level, with particular emphasis on the needs of the local community
- To contribute to the preservation, promotion, and understanding of indigenous cultural traditions unique to Fiji while simultaneously encouraging the development of contemporary arts and crafts forms
- To foster the role that arts and crafts play in nation building through reducing poverty, enriching educational and social development, fostering self-expression, and strengthening cultural identity.
- To endeavour to make opportunities in the arts and crafts sector accessible to everyone, especially those who are economically disadvantaged. To support artists and crafts people in obtaining a fair return on their creative work.
- To encourage Fijis' children to develop and make use of their creative talents.
- To act as a support network for those involved with creative arts, and to promote membership in CreatiVITI, which is open to anyone who

enjoys creativity or makes a living from arts and crafts because CreatiVITI is a colourful collection of people from many walks of life involved in a wide range of art forms both traditional and contemporary

- To promote excellence in the arts by providing incentives for artists and recognising the work done and artistic achievement
- To further cultural and artistic exchanges between the people of Fiji and other nations
- To encourage the support of the arts by international bodies, the government of Fiji, local statutory bodies, the educational sector, corporate organisations, and individuals

**Notes on a New Case of Illegal Commercial Use Of Original Artwork
Created by Fiji Artist Maria Rova of Sigavou Studios Ltd, Nadi**



Pirated designs

One of my local artist colleagues alerted me early in September to the fact that a shop in Sigatoka was selling sulus with my designs on them. The shop in question is Dev Chand Boutique, located near to MH"s on the street that runs parralel to the Sigatoka River. Here is their business card:



When we visited the shop, we found that they are selling sulus featuring two of my original barkcloth art designs, each design appearing in several different colour schemes. The sulus are made from a silky, synthetic material, and the printing appears to be commercially done, not screen-printed. Borders have been added around my design, along with the words „Bula Fiji“. A man who said he was Dev Chand the shop owner told us that they make the sulus themselves, in their factory in Sigatoka. Whether this is true, or another dubious “made in Fiji” story told to people they thought were tourists (I was with a family guest from overseas when I visited the shop) is yet to be established.

Here are photos of my original barkcloth artwork that was copied by the person who designed the sulu material:



“Ocean Stars I” by Maria Rova
The original design for this numbered edition of 250 was created in 2005.
The edition is now sold out.



“Pacific Starfish I” by Maria Rova
The original design for this numbered edition of 450 was created in 2010.

These paintings are part of a series of small, hand-stencilled Limited Edition Originals, each one individually numbered, that are made in our home-based studio in Nadi. They belong to a range of unique, Fijian-Made art products created and sold by our family-owned company, Sigavou Studios Ltd. We sell these through a number of retailers in various local resorts and gift shops.

Here are photos of the sulus featuring this design, taken at the Dev Chand Boutique on September 10th. As can be seen, the fabric designer has digitally converted my design, (the original is a multi-media piece featuring fabric paint, metallic gold and silver acrylic paint and beach sand) in order to print it commercially on thin, synthetic fabric. The only difference between the front and back of the sulu is that on one side, the starfish are outlined in a shiny gold pigment (mechanically printed).



Below is an image of another of my original barkcloth paintings which is featured on a further set of sulus in this shop:



I created this barkcloth painting, called "Vonuu Ni Cakau II" for the rooms of the Outrigger on the Lagoon resort when it was redeveloped in 1999. There are still originals in this hand-painted Limited Edition in circulation. In the meantime, in response to requests from clients, I have painted two variations of this design: "Turtles of Tavueni" (in shades of brown and bronze) and "Turtles of Rainbow Reef" (below) with brighter colours. Anyone who knows our family and the story of my art, will know that the turtle is of special significance to us, being the „ika" of my husband"s people and playing a special role in our family life. It is therefore especially upsetting to find a painting such as this splashed about in the commercial arena without any regard for the artist or the traditional significance it bears.



Here are photos of the sulus featuring this painting, on sale at Dev Chand Boutique in Sigatoka, Sept. 10th, 2012: Again, the artwork has been digitally manipulated to get various versions of the base design, which have been commercially printed on to synthetic cloth.



We found four versions of the same turtle print, each in a different colour scheme. As with the sulus bearing my starfish design, my signature was removed from the artwork before it went to print. These sulus were being sold for \$14.95 each. I bought two samples from Dev Chand Boutique, so that I would have concrete evidence to help resolve this case.

Since taking photos of these sulus in Sigatoka, we have now come across two shops in Nadi which are selling exactly the same product! They are:

Kwality Store PO Box 288 Main Street, Nadi Tel 6700 615	Bula Mate Ltd Main Street Nadi Mob 9692780
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We have not had a chance to check other shops yet. Those attending these shops are vague about the source of the sulus, saying they were “Made in Fiji”. One shop assistant explained that they bought the material from somewhere else and sewed it into sulus at the back of their shop. The sulus were being flogged for upwards of \$20 each.

CONCLUSION

The exploitation of Fiji's visual artists through theft of our images by others for the purpose of commercial gain has been an ongoing problem over the years, experienced here and there by a range of local artists. However, the public conversation about copyright issues in Fiji has been dominated almost entirely by the music and entertainment sector to date, with very little awareness existing as to how visual artists can protect the images and concepts which are our livelihoods, in a practical and affordable way.

To date, this is the most blatant and unscrupulous of all breaches of copyright that I have personally experienced – all the more worrying as it appears that the images shown above were stolen, then reproduced commercially overseas before being sold back into the country by a yet-to-be identified wholesaler (all without my knowledge or consent). I understand that significant quantities would need to be involved for this to happen.

Ours is a small, family-run company, completely reliant on my own creative designs as a practicing visual artist. This enterprise feeds not only our family, but half a dozen other households as well. We have worked hard over the last fifteen years to build up a reputation as a producer of quality, original, Fiji-made artwork. (We were recently accredited with “Fijian Made” certification.)

Ironically, part of our growth plan for the near future actually includes an exploration into licensing a range of my artwork for use on commercial products, clothing, soft furnishing etc. Looks like someone beat us to it!

When my original works are splashed around on other cheap, sub-standard products, and modified distastefully by someone who has no rights to those images, then sold for a profit of which the artist has no part, it undermines the value of my own art, and the way my customers feel when they see cheap replicas of a work of art they have invested in or are considering investing in, freely available all over the place!

Fiji’s creative industries have much potential, yet anyone out there making his or her mark as an artist, be it in fashion, visual arts, product design, performance, or other creative pursuits, is fair game to pirates, it seems.

My family and I would greatly appreciate advice in working out what options we have to address this particular situation, and how we might do so affectively so that a clear message to these and other would-be culprits may be publicly proclaimed. (We do however request that in regards to any action that may be taken by any authorities involving this specific case, we are informed /consulted ahead of time).

Many thanks for your consideration.



Maria Rova
Artist / Managing Director
Sigavou Studios Ltd
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www.art-sigavou.com

VIII. Related Legislation

Fiji's legislation or legal systems organised for the protection of cultural heritage:

- Proposed Fiji World Heritage Decree 2011 (in draft form)
- National Trust Act 1970 (Cap.23)
- National Trust of Fiji Amendment Act 1999
- Fiji Museum Act (Cap 263) Preservation of Objects of Archaeological and Paleontological Interest Act (Cap.264) Town Planning Act (Cap139), General Provisions 1980
- Environment Management Act, 2005
- Fiji Copyright Act 1999
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SPC

1. The Model Law on Traditional Knowledge and Expressions of Culture;
2. Traditional Biological Knowledge Model Law
3. Guidelines Developing Legislation, for the protection of Traditional Biological knowledge, Innovations and Practices on the Traditional Biological knowledge, Innovations and Practices Model Law
http://www.spc.int/hdp/index.php?option=com_docman&task=catview&gid=37&Itemid=44

4. Integrating the TBKIP Model Law and the Pacific Model Law
http://www.spc.int/hdp/index.php?option=com_docman&task=cat_view&gid=37&Itemid=44

Ministry of iTaukei

1. Ministry of iTaukei Affairs committed to safeguarding and promoting iTaukei Language and Culture
http://www.fiji.gov.fj/index.php?option=com_content&view=article&id=5143:ministry-of-iTaukei-affairs-committed-to-safeguarding-and-promoting-iTaukei-language-and-culture&catid=71:press-release&itemid=155
2. iTaukei intellectual Property Rights and Cultural Mapping Project
<http://www.iTaukeiaffairs.gov.fj/IILC%29IPR.html>
3. Article on Living Human Treasure
<http://www.iTaukeiaffairs.gov.fj/docs/Lialiaci%20edition.pdf>

WIPO

1. Intellectual Property and Traditional Cultural Expressions/Folklore
http://www.wipo.int/freepublications/en/tk/913/wipo_pub_913.pdf
2. Geographical Indicators
http://www.wipo.int/geo_indications/en/about.html

Summary

1. Fiji's context in respect to ICH

Fiji is dotted with many international initiatives; firstly the ratification of UNESCO 2003 Convention in 2010, and secondly, the creation of an interim interagency committee for ICH safeguarding. Also, Fiji participated at the regional level to the Pacific regional model law on the protection of traditional knowledge and cultural expressions.

2. Participatory agencies in the survey.

- The Department of National Heritage, Culture, and Arts focal point on government for the promotion of heritage, arts and culture. The Department is the unit in charge with other stakeholders such as Fiji Museum, National Trust, Fiji Arts Council, and six cultural centers.
- The Fiji Arts Council, coordinates national programmes and activities across all forms of art
- The iTaukei Institute of Language and Culture is charged with the research and documentation of cultural elements of , charged with the development and implementation of policies, promoting good governance and the monitoring of the iTaukei community. The Living Human Treasures is an example of an itaukei programme endeavoured to promote and recognise ICH bearers in communities. .
- The Fiji Museum, responsible for the storage and exhibition of heritage artefacts, are also experts in archaeological impact assessments, research, and collation of cultural data.
- CreatiVITI is a membership organisation representing artists across Fiji.

3. Background and justification

ICH is a prominent feature in the Pacific, and is recognised as an important task in the country. The country has a rich multitude of cultures co-existing.

4. IP Status in Fiji

Initial IP Protection for Fiji was based on the British System. This was revised in 1999 when the Copyright Act was introduced. This was later revised in 2009. However, the latter still gives minimal protection to traditional knowledge and cultural property rights. In 2003 cabinet endorsed that Fiji adopts the Regional Model Law on the Protection of Traditional Knowledge

and Cultural Expressions. This has led to the implementation of a mapping programme to identify owners of cultural knowledge with the development of a database to store appropriate data.

5. Institutional Activities.

The Department of National Heritage, Culture & Arts is the coordinating arm of government for matters relevant to the promotion, protection and preservation of heritage, culture and arts. Its implementation arms include the Fiji Arts Council involved in workshops, expositions of performing arts, craft and other forms of the art.. Fiji Arts Council activities are also focused on social events such as Festival of Pacific Arts, proposal to draft an IPPolicy in protecting exposed arts.. Fiji Museum works in the field of artefacts storage. The iTaukei Institute of Language and Culture is responsible for the research and documentation of indigenous cultural elements. CreatiVITI is home for Fiji's pottery production studio and second largest art gallery.

6. IP issues in the Various Institutions.

The Fiji National Inventory project works on mechanisms for implementation of the Regional model law on traditional knowledge and Expressions of Culture in Fiji. Fiji's main concern is what needs to be protected and who the owners are. - Fiji's National Inventory is devised to meet the requirements predetermined in its model legislation. In terms of IP issues, the institutes encountered several such as:

- IP Ownership of information that appeared on the website.
- Entrepreneur sponsor and IP ownership on the films.
- Payment of royalties to communities for book reproduction.
- Enforcement of music and copyright issues.
- Piracy related to internet downloading, video, and CDs on the market.
- Prior informed consent from custodians.

7. Information Building and Sharing

Cultural Mapping Program

This is an important activity undertaken by Fiji in the context of data collection. The mapping programme is an initiative of the Ministry of iTaukei Affairs which has become a permanent program fully funded by Government. The CMP targets the gathering of data from communities (villages) in the 14

provinces of Fiji and demarcating the unique elements that exist in the various tribes and clans that make up the villages. An intensive exercise which involves sending teams of field officers into the field to collect data from various parts of Fiji. Data collected is properly transcribed and digitized and entered into a database provided.

Human Treasure program

There is recognition of those who have unique traditional knowledge and skills under the Living Human Treasure programme in Fiji.

Institutional IP Principle

The various institutions have different approaches towards the protection of IP aspects of ICH. The only principle is that all information collected from the field belongs to the institutions and accessibility is granted through the consent of the information providers (custodians) to protect against misuse of traditional knowledge and expressions of culture.

Future Plans

The institutions have plans for the organising guidelines or regulations to protect ICH intellectual property related rights in the process of information building and sharing. It also has plans to draft a Traditional Knowledge & Cultural Expression legislation that will take into account the said issues.

8. Related Legislation.

Fiji's legislation or legal systems organised for the protection of cultural heritage:

- Proposed Fiji World Heritage Decree 2011 (in draft form)
- National Trust Act 1970 (Cap.23)
- National Trust of Fiji Amendment Act 1999
- Fiji Museum Act (Cap 263) Preservation of Objects of Archaeological and Paleontological Interest Act (Cap.264) Town Planning Act (Cap139), General Provisions 1980
- Environment Management Act, 2005
- Fiji Copyright Act 1999
- Fiji Copyright Amendment 2009

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Annex 1 | *Questionnaire*

1. Introduction

Intangible cultural heritage (ICH), which is the source of human creativity and cultural diversity, has been diminishing since the onset of globalisation and urbanisation. In this regard, international society, working in tandem with UNESCO, has garnered public attention on ICH safeguarding, and the Convention for the Safeguarding of the Intangible Cultural Heritage was adopted in 2003.

According to Article 13, d.iii of the 2003 Convention, States Parties should establish documentation institutions for ICH and facilitate access to them to ensure the safeguarding, development, and promotion of ICH present in each State Party's territory. This is to say, the Convention encourages managing an institute related to information building and sharing—one that collects, produces, and disseminates ICH information.

The process of ICH information building and sharing could be the cornerstone to safeguarding ICH. However, as with most kinds of information activities in other fields, the process of ICH information building and sharing includes many intellectual property (IP) issues.

Many problems could arise while collecting and creating ICH information, while processing and producing ICH information, and while disseminating and utilising ICH information. Additional, diverse problems could also develop from the communities, institutes, or individuals involved in the process.

In particular, with the development of technology and the appearance of new media, ICH intellectual property issues can manifest themselves in many ways, and these problems have expanded into much more complicated arenas.

The International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO (ICHCAP) has been concerned with IP issues related to ICH information building and sharing. To cope with these concerns, ICHCAP has endeavoured to develop a guideline for protecting IP in the process of ICH information building and sharing.

ICHCAP has proposed a project for a field survey to examine IP issues, focusing on activities of ICH information-related institutes in the Asia-Pacific region and on cases about how to deal with problems that arise in the process of ICH information building and sharing.

The survey is expected to contribute by allowing an exchange of experiences and know-how in the Asia-Pacific region to foster an environment to understand and resolve problems related to IP aspects of ICH. Furthermore, the survey results could be the foundation for developing a guideline for protecting IP rights during ICH information building and sharing.

2. Glossary

For the current survey, the terms below will have the given meanings.

- 1) Bearer
A member of a community who recognises, reproduces, transmits, transforms, creates, and forms a certain culture in and for a community. A bearer can, in addition, play one or more of the following roles: practitioner, creator, and custodian.⁹
- 2) Community
People who share a self-ascribed sense of connectedness. This may be manifested, for example, in a feeling of identity or in common behaviour, as well as in activities and territories. Individuals can belong to more than one community.¹⁰
- 3) Custodian
A practitioner who has been entrusted by the community with the responsibility of safeguarding their intangible cultural heritage.¹¹
- 4) Documentation
The recording of ICH in tangible forms.¹²
- 5) Identification
Technical description of a specific element constitutive of the ICH, often done in the context of a systematic inventory.¹³
- 6) Information Building and Sharing
A series of activities that build and utilise ICH information, such as identification, inventory making, documentation, and digitisation. The process of ICH information building and sharing consists of several stages: a stage for preparation, a stage for collecting and creating information, a stage for maintaining information, a stage for processing and producing information, and a stage for utilising and disseminating information.
- 7) Informants
Local experts from whom information about particular cultural practices is obtained, in the context of cultural field research.¹⁴

⁹ UNESCO Glossary Intangible Cultural Heritage. Prepared by International Meeting of Experts on Intangible Cultural Heritage. The Hague, August 2002, p.4

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.* p.5

¹³ *Ibid.* p.5

¹⁴ Peter Seitel, *Proposed Terminology for Intangible Cultural Heritage: Towards Anthropological and Folkloristic Common Sense in a Global Era*. UNESCO International Round Table 'Intangible Cultural Heritage', 2001 p.9

- 8) Intangible Cultural Heritage (ICH)
Practices, representations, expressions, knowledge, and skills—as well as the instruments, objects, artefacts, and cultural spaces associated therewith—that communities, groups, and in some cases, individuals recognise as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature, and their history, and it provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.¹⁵
- 9) Intellectual Property (IP)
Legal rights that result from intellectual activity in the industrial, scientific, literary, or artistic fields.¹⁶ Common types of intellectual property rights include copyrights, trademarks, patents, industrial design rights, and trade secrets.
- 10) Inventory Making
Drawing up one or more inventories of the intangible cultural heritage present in territories to ensure identification with a view to safeguarding.¹⁷
- 11) Moral Rights
Owner's right to claim authorship of the work and to object to any distortion, mutilation, or other modification or derogatory action in relation to the said work that would be prejudicial to the owner's honour or reputation.¹⁸
- 12) Practitioner
A member of a community who actively reproduces, transmits, transforms, creates, and forms culture in and for the community by performing and otherwise maintaining social practices based on specialised knowledge and skills.¹⁹
- 13) Stakeholder
Various levels of agency in ICH information building and sharing activities, including public and private institutions, and more specifically artists and creators of the cultural communities concerned.²⁰
- 14) Subjects of ICH
Bearers, practitioners, and communities.

¹⁵ Art.2 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, 2003

¹⁶ World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Law, Policy and Use*, WIPO Publication No. 489(E). p.3

¹⁷ Art.12.1. UNESCO Convention for the Safeguarding. *opcit*

¹⁸ Art.6Bis Berne Convention for the Protection of literary and Artistic Works, Paris Text 1971

¹⁹ UNESCO Glossary Intangible Cultural Heritage. *opcit* p.5

²⁰ Noriko Aikawa, *State of Intangible Heritage Development in the Lead Up to the 2003 Convention*. UNESCO Shanghai meeting in the lead up to the adoption of ICH Convention. Training of the trainers. Asia and Pacific. Module 1. p.21

3. Specific Questionnaire

A. Institute Overview

- 1) Profile of the institute
 - a) What is the name of institute?
 - b) Where is the institute located? (City/Country)
 - c) Please introduce the history of institute.
 - d) What are objectives and functions of the institute?
 - e) In what country/region have your institute's activities been carried out?
 - f) What kind of ICH is your institute specialised in?
Ex) performing arts, dance, music, rituals, ceremonies, etc.

- 2) Characteristics of the institute
 - a) Your institute can be classified as
 - Government department
 - Public institution
 - Public enterprise
 - Private enterprise
 - NGO
 - Other (Please explain the classification)
 - b) Is your institute affiliated with other organisations? If yes, please describe the parent or affiliated organisations—name, classification, objectives and functions, specialisation, etc. (over 200 words in English)
 - c) What are the institution's sources of budget?
Ex) a national budget, fund-raising activities, etc.

B. Information Building and Sharing Activities of Institute

- 3) Information building and sharing activities of the institute
 - a) Please indicate the kinds of activities your institute has done or is doing.
 - Identification
 - Documentation
 - Inventory making
 - Database/Archive building
 - Publication and distribution
 - Utilising digital contents
 - Other (Please explain other activities your institute has done)

- b) Among your answers in [B-3-a], which activity does your institute mainly focus on? (multiple answers allowed)
- (1) Please explain the activity (over 250 words in English)
 - (2) If any, please also provide guidelines, internal regulations, or other principles regarding the activity.
- c) Regarding your answers in [B-3-b], please describe specific projects related to the activity by giving a set of answers below. If you have more than one project, please provide a set of answers for each one (One to three examples are recommended, but you can also give more than three examples)
- (1) Name of project
 - (2) Duty department
 - (3) Background of project (over 150 words in English)
 - (4) Context of project (over 250 words in English)
 - (5) Procedures of project
 - (6) Outcomes/Effects
- d) If you indicated in [B-3-a] that your institute did activities related to database/archive building, please provide an additional explanation about the activities.
- (1) How did/does your institute obtain ICH-related data or archives?
 - Field work and documentation
 - Purchase
 - Donation
 - Other (Please explain how your institute obtains(ed) ICH-related data or archives)

If you checked more than one answer, what is the primary way your institute obtains(ed) ICH-related data or archives? Please arrange your answer according to the order of priority.
 - (2) Please provide an index of data or archives of your institute by giving a set of answers below.
 - (a) Name of data
 - (b) Online/Offline data
 - (c) Type of data
 - Ex) text, photograph, recording, video, etc.
 - (d) Source of data
 - (Where did the data originate?)
 - (e) Context of data
 - (f) Person/Organisation who has rights on the data
 - (g) Principle/Guideline of data management, if any.

C. Intellectual Property Issues in Institute

4) Does your institute have experience with a project regarding IP aspects of ICH?

- Yes
- No

If yes, please describe the project by answering the questions below. If you have more than one project, please provide a set of answers for each one.

- a) Name of project
- b) Duty department
- c) Background of project (over 150 words in English)
- d) Context of project (over 250 words in English)
- e) Procedures of project
- f) Outcomes/Effects

5) Is there a department, a unit, or an individual undertaking tasks related to intellectual property?

- Yes
- No

If yes, please provide information below.

- a) Name of department (which covers the unit or the individual)
- b) Name of duty person (in the department, the unit)
- c) Tasks of department
 - (a) Main task
(What is the main task of the department? [over 100 words in English])
 - (b) Tasks relating to intellectual property
(Please describe the tasks that are related to intellectual property [over 100 words in English])
- d) Contact information
 - (a) Contact number and e-mail of department
 - (b) Contact number and e-mail of duty person

6) Does your institute have a principle for protecting IP aspects of ICH?

- Yes
- No

If yes,

- a) Please describe the principle (over 150 words in English)
- b) If any, please attach documents related to answers in [C-6-a].

D. Intellectual Property Issues in the Process of Information Building and Sharing

ICH information building and sharing constitutes a series of activities that build and utilise ICH information, such as identification, inventory making, documentation, and digitisation. The process of ICH information building and sharing consists of several stages: a stage for preparation, a stage for collecting and creating information, a stage for maintaining information, a stage for processing and producing information, and a stage for utilising and disseminating information. Each stage is detailed below.

- The stage for preparation: conducting preliminary investigations, planning activities, selecting ICH objects to be investigated, undergoing prior consultation on an activity, etc.
- The stage for collecting and creating information: conducting field surveys (interviews, recording, filming, etc.), purchasing data, receiving donations, etc.
- The stage for maintaining information: building a database, keeping the data in its original form, classifying the data, constructing a security system for the data, etc.
- The stage for processing and producing information: editing, modifying, and upgrading information collected and maintained in the previous stages towards forms of documents, videos, web pages, etc.
- The stage for utilising and disseminating information: disclosing and disseminating information produced, distributing commercially, and utilising existing information for broadcasting, advertising, publicity, etc.

The management of ICH information raises equally different intellectual property issues from one category to another, be it in the phase of preparation, collection, production, or dissemination.

In **the stage for preparation**, intellectual property issues that could arise are below.

- Problems regarding identifying the nature of rights existing in ICH that will be targeted in information building and sharing activities
 - Identifying copyrighted works
 - Identifying unpublished or unknown authors' works
- Problems regarding compliance with a country's laws and regulations or customs concerning ICH information building and sharing activities

- Identifying a country's laws and regulations or customs that could affect information building and sharing activities
- Examining the range of protection under national statutes of IP rights of ICH practitioners and creators
- Others
 - Other intellectual property issues that could arise during the preparation stage

In the stage for collecting and creating information, the stage for maintaining information, the stage for processing and producing information, and the stage for utilising and disseminating information, intellectual property issues that could arise are below, grouped into categories of IP rights.

Ownership

- Identification of the owner of the copyright and related rights in the recordings, films, or manuscripts embodying ICH
- Determination of ownership of both the database itself and its contents
- Issue of bearers' ownership rights in adaptations such as lawful inspiration or the borrowing of work based on one or several pre-existing ICH work(s)
- Custodians', owners', and/or managers' rights of ownership of secondary materials embodying ICH (secondary materials include items such as films, sound recordings, photographs, and written documents.)
- Bearers' ownership of ICH-derived materials that are legally owned by the creator of the document, recording, and/or database embodying ICH
- Issue of joint ownership in work involving ICH material

Prior Informed Consent or Approval

- Issue of an approval or an agreement related to collecting ICH information
 - Identifying the authority who has been granted power to approve (permission or agreement from bearers, practitioners, communities, or other stakeholders)
 - Determining the terms and scope of the approval or agreement from bearers, practitioners, communities, or other stakeholders

- Prior informed consent to the reproduction, use, and display of ICH material
- Bearer's, practitioner's, or community's objections to utilising and disseminating information
- Determination of the format of agreements: consent forms to access and use ICH materials, licenses, undertakings, etc.

Maintenance of Collected Information

- Determination of data classification in an area of protection under IP related law
- Determination of the database to be built according to its uniqueness in IP related law

Adaptations

- The issue of unauthorised adaptations
- Issue of legal rights that could arise during secondary utilisation of information
 - Permission from stakeholders about secondary utilisation, such as broadcasting, advertising, publicity, etc.
 - Intellectual property of the secondarily used information

Secret, Sacred, or Confidential ICH

- Issue of secrecy, sacredness, or confidentiality under customary laws and practices of ICH material collected
- Problems regarding disclosure of secret information

Access, Control, and Use

Communities' Involvement

- Determination of communities' participation in the recording, digitisation, and dissemination of ICH for safeguarding, promotional, and income-generating purposes
- Communities' involvement in the decision-making processes related to the management of ICH elements held by institutes
- Authority of ICH subjects and their capacity to manage information once produced
- Bearers' agreement on modification or transformation of ICH materials

- Determination of communities' legitimate rights holders
- Management of access and use of ICH information by communities
- General public's interests to benefit from and enjoy the information building and sharing activities of ICH

Relationships

- Issue of database users' interaction with bearers for use of ICH
- Issue of relationships between an institution that holds the material, and a bearer, be it the owner, custodian, or manager.

Terms of Use of ICH Material

- Code on management, access, and use of ICH information
- Compliance with restricted ICH use under customary laws and practices
- Establishment of IP-related protocols, policies, and practices

Infringement of Rights and Responsibilities

- Infringement of intellectual property rights existing in the ICH information
 - Copyrights in literary, musical, and artistic expressions
 - Related rights (performers', phonograms', producers', and broadcasting organisations' rights) in performances, rituals, recordings, etc.
 - Trademark in cultural names, signs, indications, marks, symbols, etc.
 - Indigenous know-how and knowledge protected under trade secrets, patent law, etc.
 - Design rights in cultural textiles, poetry, etc.
- Legal responsibilities of institutes leading the activities
 - Vis-à-vis communities from which the ICH was collected
 - Vis-à-vis users to whom ICH is delivered
 - Vis-à-vis website viewers of digitised ICH collections

Licensing

- Licensing by institutions of ICH material in a recording, database, or collection
- Terms of licensing
- Content of ICH material to be licensed
- Identification of the exact licensee and licensor

Bearers' Moral Rights

- Disclosure of ICH ownership information on any related use
- Problems regarding the determination of the range of disclosure
- Case of derogatory work related to ICH
- Respect of bearers' right to integrity

Sharing of Benefits

- Issue of respect of bearers' economic rights
 - Right to translation
 - Right to reproduction
 - Right to communication to the public
 - Others
- Problems regarding the distribution of profit that comes from utilising and disseminating information
 - Economic compensation for bearers, practitioners, or communities
 - Economic compensation for other affiliated organisations or individuals, such as collectors, researchers, agencies, or collective management organisations

Unfair Use or Misuse of ICH

- Misappropriation of ICH material by an institute
- Misappropriation of ICH material by a third party

Portraits, Filming, or Reproduction of ICH Material

- Right to use for commercial purposes
- Respect of motion pictures right in ICH digitisation
- Moral rights of bearers in portraits or films
- Respect of the sacredness, secret, or sanctity of portraits or films
- Right to reproduction in digitising a photograph
- Exception to copyright in cases of promotional or educational purposes

Use of ICH as Trademark, Geographical Indication, or Domain Name

- Bearers' approval in using ICH material as logos or product identifiers
- Misuse of cultural words as trade name, domain name, or geographical indication

7) Have any of the above issues arisen in any of the stages at your institute?

- Yes
- No

If yes, please describe the issue by answering the questions below. If you have more than one issue, please provide a set of answers for each one.

a) Please explain the activity your institute did.

(a) Name of project

(b) Sort of activity

(What kind of information building and sharing activities did your institute do in the project?)

Ex) identification, documentation, inventory making, database building, etc.

(c) Objective of project

b) What kinds of issues have arisen?

- Problems regarding compliance with a country's laws and regulations or customs concerning ICH information building and sharing activities
- Problems regarding identifying the nature of rights existing on ICH that will be used in information building and sharing activities
- Problems regarding identifying the nature of rights existing in ICH
- Problems regarding ownership of ICH
- Problems regarding prior informed consent or approval
- Problems regarding maintenance of collected Information
- Problems regarding adaptations
- Problems regarding secret, sacred, or confidential ICH
- Problems regarding bearers' moral rights
- Problems regarding sharing of benefits
- Problems regarding unfair use or misuse of ICH material
- Problems regarding portraits, filming, and reproduction
- Problems regarding the use of ICH as a trademark, geographical indication, or domain
- Other (Please indicate the issue)

c) Please indicate all stages in which the issue has arisen.

- The stage for preparation
- The stage for collecting and creating information
- The stage for maintaining information
- The stage for processing and producing information
- The stage utilising and disseminating information

- d) What was the cause and content of the issue? (over 500 words in English)
 - e) Who were the stakeholders involved with the issue?
 - f) What did the institute do to resolve the issue? Please describe the process and the results of the resolution. (over 500 words in English)
 - g) What was the institute's principle in the process of dealing with the issue?
 - h) Does your institute have a guideline, policy, or protocol regarding legal issues that could arise during the stage?
 - Yes
 - No
 If yes, please attach the copy of the guidelines, policies, or protocols.
 - i) Please attach any other forms (ex. form of agreement) that were used during the stage.
- 8) Through your institute's experience, what kind of legal issues regarding IP aspects of ICH do you think could arise in each stage? (over 400 words in English)
- 9) In relation to [D-7] and [D-8], what kind of alternatives, guidelines, policies, or protocols do you think should be prepared? (over 400 words in English)

E. Institute's Activities

Here are questions on issues that could arise in the entire process of the institute's activities.

- 10) What kind of relationship does your institute have with ICH subjects, such as informants, collectors, researchers?
- Ex) one-way asymmetrical relationship, one-way symmetrical relationship, two-way asymmetrical relationship, two-way symmetrical relationship, owner vs. custodian, etc.
- 11) Does your institute include intellectual property issues in the institute's vision, purpose, function, policies, etc.? If yes, please indicate your institute's vision, purpose, function, policies, etc. that addresses intellectual property issues.
- 12) Does your institute have a representative legal dispute regarding the institute's information building and sharing activities?
- Yes
 - No

If yes, please describe the case. If you have had more than one case, please provide a set of answers for each one.

- a) Name of project
- b) Sort of activity
- c) Purpose of project
- d) Procedures and context (over 200 words in English)
- e) Issue activated (over 200 words in English)
- f) Response to the issue

(Who or what department was in charge of the issue? How did the department cope with the issue? Were the principles or guidelines adjusted to the case? [over 300 words in English])

- 13) Does your institute have a case of guaranteeing the rights and the participation of ICH subjects (bearers, practitioners, or communities) in the institute's information building and sharing activities?

- Yes
- No

If yes, please describe the case below. If you have more than one case, please provide a set of answers for each one.

- a) Name of project
- b) Sort of activity
- c) Purpose of project
- d) Participation of subject in the procedure (over 300 words in English)
- e) Rights of subject guaranteed
- f) Please attach related documents.

- 14) Have policies or guidelines for protecting intellectual property rights of ICH in the process of information building and sharing been well organised in your institute?

- Yes
- No

If yes, please provide information on the policy or the guideline, including

- a) Context of the policy or the guideline
- b) Please attach related forms. (ex. form of agreement)

F. Related Legislation

- 15) In your institute's country, is legislation or the legal system for the protection of cultural heritage organised?

- Yes
- No

If yes, please describe the legislation or the legal system below.

- a) Full title
- b) The relevant sections or paragraphs
- c) Date of coming into force
- d) Details of the office responsible for administering the laws
- e) Copies of laws and regulations
- f) What are issues or problems regarding IP aspects of ICH that cannot be covered by the legislation or the legal system described above?
- g) What kind of legal systems or devices need to be added for the protection of IP aspects of ICH?

If no, please provide additional information below.

- h) Legal systems or regulations expected to be issued
- i) Status of processing

G. Future Plans

In case your institute has not been equipped with policies or guidelines for protecting intellectual property related aspects of ICH, please answer the following questions.

- 16) Does your institute have plans for organising guidelines or regulations for protecting ICH intellectual property related rights in the process of information building and sharing?
 - Yes
 - No
 - a) If yes, please describe your institute's future plans (manner and context) for organising guidelines or regulations. (over 250 words in English)
 - b) If a future plan is in the process of being organised, please provide additional information below.
 - (1) Guidelines or regulations expected to be organised
 - (2) Status of processing
- 17) Does your institute have plans for projects regarding the protection of intellectual property related rights in the process of information building and sharing?
 - Yes
 - NoIf yes, please describe the project below.
 - a) Purpose of project
 - b) Term and duration
 - c) Context
 - d) Anticipated procedures

H. Other Opinions

18) Please provide any kind of information related to the purpose of this survey.

4. Contacts

Please provide contact information of the person who is in charge of this survey report.

Name	
Position	
Department	
Address	
E-mail	
Telephone	
Mobile	
Fax	

5. Reference materials

Please provide all attached materials with information below.

Distinction (relevant question)	
Form of material	
Name	
Source	
Context	

6. Results

Replies to this questionnaire should kindly be sent no later than the prearranged date to the following address.

Ms Saymin Lee (Information & Research Section)
Intangible Cultural Heritage Centre for Asia and the Pacific (ICHCAP)
National Research Institute of Cultural Heritage Bldg (4F)
132 Munji-ro, Yuseong-gu, Deajeon 305-380
Republic of Korea
Tel. +82 42 820 3513 / Fax. +82 42 820 3500

The survey may also be e-mailed to the address below, but in addition to the e-mailed materials, please kindly send the requested references materials to the above address.

E-mail: ichcap@gmail.com
smlee@ichcap.org

Reference materials can be submitted using Webhard.

Address: www.webhard.net
Id: ICHCAP
Password: ichcap

Thank you for your valuable contribution to the survey.

Annex 2|*MOU for Ovalau*

MOU for Ovalau

MINISTRY OF EDUCATION, CULTURE, HERITAGE AND ARTS **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding is made
on _____ of _____ 2008

BETWEEN the Ministry of Education, Culture, Heritage and Arts through the
Department of Culture and Heritage on the one part
AND the Ministry of Indigenous Affairs through the Institute of Fijian
Language and Culture on the other part

PART I COMMON TERMS

It is hereby agreed as follow:

1. Purpose of the Agreement

This Agreement is made to facilitate the exchange of information between the parties for the purpose of protecting the cultural heritage of Ovalau

2. Source of Information

The information shared will emanate from the Cultural Mapping Exercise for the island of Ovalau undertaken by the IFLC.

3. Type of Information

The information, stored in any medium, that is agreed to be exchanged will as follows:

- Pre-European history of Ovalau, its four (4) tikinas and all the villages under each tikina;

- Information about European and other foreign settlers;
- Migration information of local groups and persons;
- Objects having cultural value and significance including cultural handicrafts
- Sites of cultural significance;
- Oral history collected from the people of Ovalau
- And any other such relevant information

4. Consent of Information Owner(s) or Traditional Custodians

The DCH will only access information from the IFLC provided original owners of information consent in writing

5. Use of the Information for the World Heritage Listing

The DCH will use the information exchanged for the Nomination documents for the World Heritage Listing

6. Restriction on the Use of the Information by the DCH

Information exchanged under this Agreement will only be used for the purpose of the **protection of the heritage of Ovalau**, and no other use outside of this ambit.

PART II RESPONSIBILITIES OF THE INSTITUTE OF FIJIAN LANGUAGE AND CULTURE

The Institute of Fijian Language and Culture (IFLC) is responsible for the following:

1. Information Sharing

The IFLC will share its information gathered under the Cultural Mapping Exercise for Ovalau.

2. Facilitate information exchange

The IFLC is responsible to provide information requested by the DCH in a timely manner

3. Provision of copies

The IFLC will provide copies of its information to the DCH upon request

PART III RESPOSIBILITIES OF THE DEPARTMENT OF CULTURE AND HERITAGE

The Department of Cultural Heritage (DCH) is responsible for the following:

1. Use of Information

Information accessed from the IFLC will only be used for the purpose of the protection of the heritage of Ovalau.

2. Copies not Allowed

The DCH will not make copies of the information accessed from the IFLC under this Agreement.

3. Acknowledgement

The DCH will acknowledge the IFLC in any instance where information under this Agreement is used for public purpose such as the Nomination document for World Heritage Listing

4. Return of Information

Once the DCH has completed use of the information provided by IFLC, the DCH will return, in a timely matter, that information to IFLC.

5. Restricted Access

The DCH will not allow any access of information provided by IFLC for public consumption or otherwise except for the purpose of this Agreement.

PART IV GENERAL TERMS OF THE AGREEMENT

1. Adherence to the Agreement

Both parties agree to adhere to the terms of this Agreement.

2. Amendments to this Agreement

Both parties will agree to any amendments to this Agreement.

3. Interpretation

This Agreement will be interpreted according to the Purpose specified in this Agreement.

4. Dispute Resolution

Both parties will agree on the method of resolution of disputes if any may arise in connexion with this Agreement.

5. Termination

This Agreement shall terminate when the purpose of this Agreement has been achieved or any such time agreed by both parties.

SIGNATURE

Signed for and on behalf of
the Department of Culture
and Heritage, Ministry of
Education, Culture,
Heritage and Arts

Signed for and on behalf of
the Institute of Fijian
Language and Culture,
Ministry of Indigenous
Affairs

Witness

Director DCH

Date:

Director IFLC

Date:

Name

Date:

Annex 3 | *Photographs*



Fiji Arts Council Board discussing on IP issues



Discussions with FAC Board on IP Project status



Discussions with iTaukei Affairs on IP Project



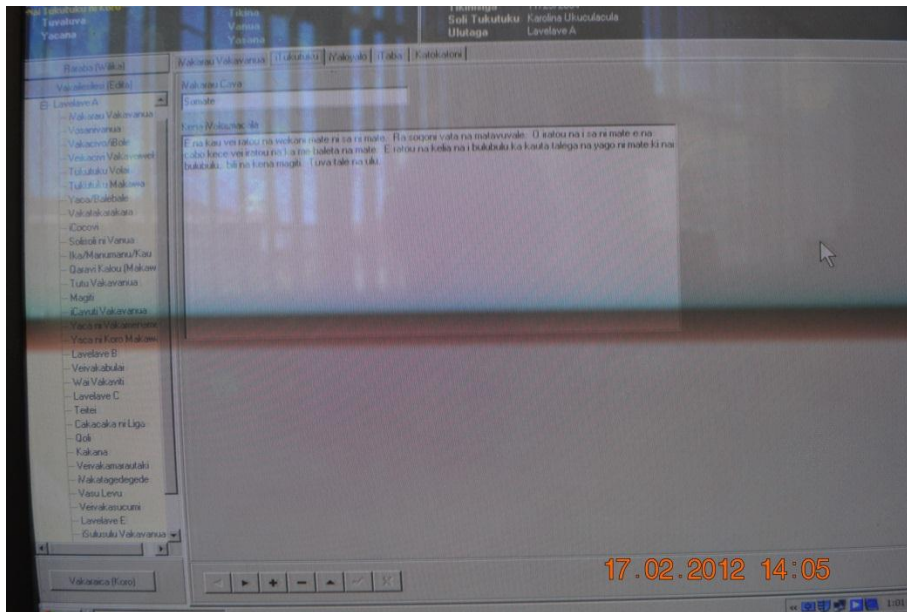
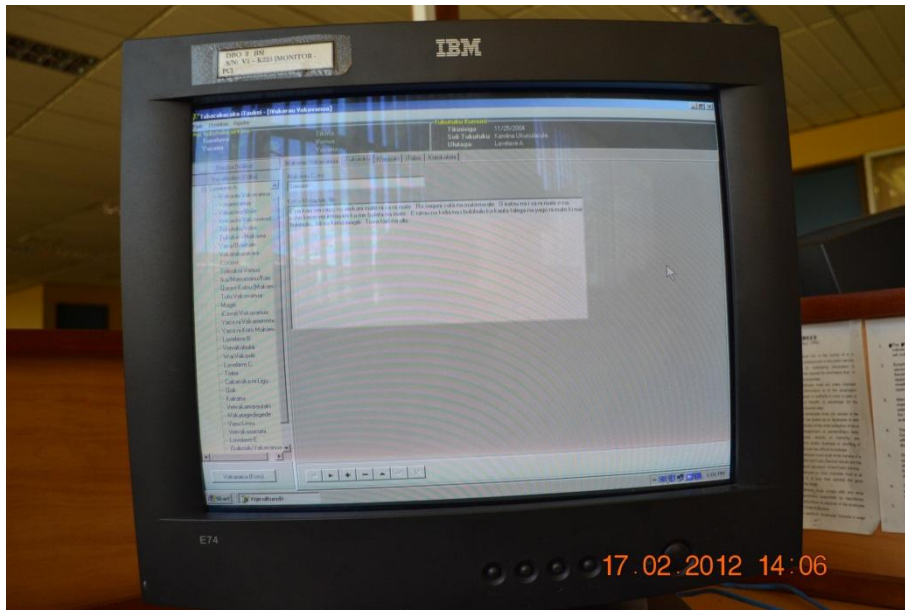
ICH Inter-agency meeting at the Institute of ITaukei Language & Culture



Discussions on IPR and Best Practices Nomination in Progress



Officers from the Department of National Heritage Culture & Arts
in discussion with Officers from the Institute of iTaukei Language & Culture



The Ministry of iTaukei's Monitor for the Database Inventory where most of the CMP work is stored



17.02.2012 13:59



17.02

The Institute of iTaukei Language & Cultures server at the Ministry of iTaukei Affairs.



Part of the Server at the Ministry of iTaukei Affairs

The Ministry of iTaukei Affairs Institute of iTaukei Language and Culture experiences database problems with old obsolete equipment and software for the Inventory for Cultural Mapping. Above are pictures of the Server Room equipment taken at the Ministry of iTaukei Affairs.

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