'Ka Mate Ka Mate' and the Protection of Traditional Knowledge

Susy R Frankel, Victoria University of Wellington

Available at: https://works.bepress.com/susy-frankel/6/
'KA MATE KA MATE' AND THE PROTECTION OF TRADITIONAL KNOWLEDGE

SUSY FRANKEL

This paper can be downloaded without charge from the Social Science Research Network electronic library at:

Victoria University of Wellington Faculty of Law Research Papers are available by volume and issue number at:

Cite this paper as 4 VUWLRP 5/2014.
“Ka Mate Ka Mate” and the Protection of Traditional Knowledge

Susy Frankel*

Abstract

“Ka Mate Ka Mate” is an iconic haka. Haka is performance art, particularly originating from the Māori, the indigenous people of New Zealand. A haka can be ceremonial and it can be a challenge or even a welcome. Ka Mate Ka Mate is the opening line of the ngeri (chant) that is performed as part of the haka. Many New Zealanders refer to Ka Mate Ka Mate as the haka. Its fame has travelled beyond New Zealand. This is most probably because New Zealand’s national rugby team has performed it around the world. Use of the haka is not, however, confined to that rugby team. Aspects of it have been used to parody the same rugby team, to sell products around the world, including Fiat cars in Italy. The descendants of the warrior who created Ka Mate Ka Mate have, in a variety of legal fora, sought to gain some rights over its use. Ka Mate is old, it is a work of culture and it carries with it the knowledge of the descendants of the Ngāti Toa people. If it was ever protected by copyright such a right would have long since expired. Trade mark registration has mostly not been successful. Yet, the haka is commercially valuable. The government of New Zealand has acknowledged the importance of the haka to Ngāti Toa and has agreed to pass a law which will require attribution of the haka, in certain circumstances including commercial uses, to Ngāti Toa and Te Rauparaha. This chapter discusses the boundaries of the protection of traditional knowledge using the story of the haka.

* Professor of Law, Victoria University of Wellington, New Zealand, susy.frankel@vuw.ac.nz
INTRODUCTION

[The] traditional knowledge debate can also lead the intellectual property policy community to reflect deeply about the central tenets of the IP system, its core principles and cultural assumptions, indeed its very legitimacy and fundamental policy rationale. For the policy domain of IP the traditional knowledge debate has been a tonic, helping to open up a more informed, more inclusive, more broadly based discourse on the role, the principles and the legitimacy of the IP system.¹

When the debate about the relationship between intellectual property and traditional knowledge began, the stance taken, by both those in favour of some protection and those against protection, was that traditional knowledge and intellectual property are incompatible. Indeed, the intellectual property system was not designed to protect traditional knowledge, even if in some instances it has protected an aspect of a work of traditional knowledge, such as a song receiving copyright protection.²

As dialogue about the relationship between the two areas has grown, however, there is a new focus to the debate. That focus has shown ways in which those seeking to protect traditional knowledge might both obtain protection that is distinct from intellectual property and also how they might utilise the intellectual property system.³ There is also discussion, which as yet falls short of agreement, about how the intellectual property system might be adjusted to take account of traditional knowledge in appropriate circumstances.⁴ In some jurisdictions aspects of intellectual property law have been amended to interface with traditional knowledge related claims.⁵ Such initiatives have primarily arisen from local interests, but the international discussion of the protection of traditional knowledge

² For a detailed discussion of the ways in which the intellectual property system does not fit and consequently cannot protect traditional knowledge see Susy Frankel Intellectual Property in New Zealand (2nd Ed, LexisNexis, 2011) ch 2.
³ One suggestion has been the use of geographical indications. See, for example, Daniel Gervais “Traditional Innovation and the Ongoing Debate on the Protection of Geographical Indications” Drahos and Frankel above n1.
⁴ I have disputed geographical indications overall utility for protecting innovative indigenous traditional knowledge, see Susy Frankel “The Mismatch of Geographical Indications and Traditional Knowledge” (2011) 29(3) Prometheus 253.
⁵ The proposal for a requirement, in the TRIPS Agreement, of disclosure of the origin of genetic resources and associated traditional knowledge as a requirement of a patent application, is such an example.
⁶ See for example, the Trade Marks Act 2002 (NZ), s17(1)(b), which allows Māori to object to the registration of offensive trade marks. See also Susy Frankel “Third-Party Trade Marks as a Violation of Indigenous Cultural Property - A New Statutory Safeguard” (2005)8 Journal of World Intellectual Property Law 83.
has been dynamic. The TRIPS Agreement has placed intellectual property in a trade setting and accordingly the rationales for intellectual property have been exposed to new analyses and new ideas. This is so even if politics, and the effective cessation of the Doha Round of negotiations at the World Trade Organization (WTO), has prevented progress on the specific issues relating to traditional knowledge.\(^6\) An increase in trade has also resulted in an increase in opportunities for trade in products of traditional knowledge and cultural heritage.

Trade has contributed to a “more broadly based discourse” than the dead-end focus of how traditional knowledge does not fit intellectual property.\(^7\) The link between trade and intellectual property has at international level created a focus on how they can work together. That focus has resulted in the tradability of traditional knowledge as the parallel discourse, even if traditional knowledge is not recognised as having the equivalent legal status of traditional intellectual property. Although the dialogue on the nexus between trade and traditional knowledge is undeveloped and stagnant at the WTO, the same is not true at the World Intellectual Property Organization (WIPO). The WIPO discussion has, since its inception, made significant progress and the inter-governmental committee (IGC) is now charged with negotiating a treaty. Drafts exist, but there is significant opposition, most notably from the United States. This chapter addresses some specifics of that opposition.

One interesting feature of the WIPO process is that it is developing an international agreement ahead of many of its members having relevant domestic laws. This perhaps contrasts to other international intellectual property treaty-making processes where domestic norms are well embedded and the international process is a negotiation about bringing those domestic norms into greater international harmony. It is wrong, however, to conceptualise the WIPO-IGC process as a complete contrast to other treaty processes. After all, the negotiation of international agreements usually requires the parties to change their domestic laws. In the WIPO-IGC process one difficulty is the relative lack of norms at domestic law for the WIPO process to draw on. The reason, however, for an international process is precisely because it is the considerable increase

\(^6\) See generally Michael Blakeney “The Pacific Solution: The European Union’s Intellectual Property Rights IPR Activism in Australia and New Zealand’s Sphere of Influence” in Drahos and Frankel, above n 1.

\(^7\) I describe this as a “dead-end focus” because spotting the differences does not resolve the issues about when and why traditional knowledge should be protected. As is discussed below, because of the misfit between traditional knowledge and existing intellectual property laws sui generis protection of traditional knowledge is most appropriate, but that sui generis protection must have a substantive interface with the intellectual property system.

\(^8\) See WIPO Intergovernmental Committee at <http://www.wipo.int/tk/en/igc/>. See also Silke von Lewinski “Comments on Susy Frankel: ‘Ka Mate Ka Mate’ and the Protection of Traditional Knowledge – An International Treaty Perspective”, in this volume.
in international trade in intellectual property and cultural goods that has given rise to the call for the protection of traditional knowledge. Uses of Māori culture, for example, include uses by multi-national businesses, including Ford, Lego, Sony and Fiat. In all of those instances the companies have extracted value from Maori culture in order to sell products and in some instances to create new works of intellectual property. The issues over the protection of traditional knowledge are not, therefore, isolated to some parts of the world and they go to the heart of intellectual property law and the values that it has in encouraging anyone to make use of anything that is in the so-called public domain to create and innovate.\footnote{Different cultures have different views of what is or ought to be in the public domain see discussion below.} It is for these reasons that the protection of traditional knowledge needs to be addressed both within the intellectual property system and outside of it, where traditional knowledge protection does not fit the intellectual property system. In other words, although traditional knowledge is treated as on, or beyond, the edge of intellectual property its protection has a role both at the edge of intellectual property law and in the heart of the law.

In the early days of the debate about traditional knowledge WIPO conducted an investigation into traditional knowledge\footnote{For a discussion of that investigation see WIPO, \textit{Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge} (1998-1999) at http://www.wipo.int/tk/en/tk/ffm/report.} and subsequently created the IGC to discuss whether and how traditional knowledge should be protected. The WIPO process is divided into considering traditional knowledge and the related categories of traditional cultural expressions (TCEs) and genetic resources. Defining traditional knowledge poses some difficulties because of its wide scope,\footnote{The problem with definition can be its failure to recognise the rational boundaries and dynamics of possessing knowledge, rather than the analytical facets of the knowledge. See the “Quicksands of definition:” in Peter Drahos and Susy Frankel “Indigenous Peoples’ Innovation and Intellectual Property: The Issues” in Drahos and Frankel, above n 1 at 9-10.} but it can be defined for those who find definition necessary. One definition is that traditional knowledge is:

\begin{quote}
[I]ntellectual activity in a traditional context, and includes the know-how, skills, innovations, practices and learning that form part of traditional knowledge systems, and knowledge embodying traditional lifestyles of indigenous and local communities, or contained in codified knowledge systems passed between generations and continuously developed following any changes in the environment, geographical conditions and other factors. It is not limited to any specific technical field, and may include agricultural, environmental and medicinal knowledge, and any traditional knowledge associated with cultural expressions and genetic resources.\footnote{“The Protection of Traditional Knowledge: Revised Objectives and Principles”, WIPO Document WIPO/GRTKF/IC/18/5 (10 January 2011), see Annex at 18. For an} \end{quote}
In this chapter I refer to traditional knowledge, rather than distinguishing between traditional knowledge and TCEs. I also refer to Mātauranga Māori, which might best translate as the knowledge and the process of acquiring that knowledge.

‘Mātauranga’ derives from ‘mātau’, the verb ‘to know’. ‘Mātauranga’ can be literally translated as ‘knowing’ or ‘knowledge’. But ‘mātauranga’ encompasses not only what is known but also how it is known – that is, the way of perceiving and understanding the world, and the values or systems of thought that underpin those perceptions ‘Mātauranga Māori’ therefore refers not only to Māori knowledge, but also to the Māori way of knowing … Mātauranga Māori incorporates language, whakapapa, technology, systems of law and social control, systems of property and value exchange, forms of expression, and much more it includes, for example, traditional technology relating to food cultivation, storage, hunting and …it includes arts such as carving, weaving, tā moko (facial and body tattooing), the many performance arts such as haka (ceremonial dance), waiata (song), whaikōrero (formal speechmaking), karanga (ceremonial calling or chanting), and various rituals and ceremonies.¹³

Those who seek to protect traditional knowledge face many objections. The most often heard objection, particularly on the international stage, is that it lacks the characteristics of intellectual property. In this chapter I use the story of Ka Mate Ka Mate to explain why protection is called for. As part of that explanation I use aspects of a United States submission to the WIPO-IGC negotiations, which question how traditional knowledge can or should be protected. This chapter shows how each of those questions is answerable and that such abstract questions are a distraction from the real issue of how people, who are often in considerable need of economic development, can best utilise the resources they have to achieve that development. If an underlying rationale is needed for the protection of traditional knowledge then the need for economic and related cultural development is a key feature of such a rationale. In some instances holders of traditional knowledge derive economic benefit from applied uses of their knowledge. Many holders of traditional knowledge need economic development opportunities. The protection of their traditional knowledge may very well provide the legal tool to support such opportunities. Although legal tools alone are not enough to stimulate economic development. The need for such economic development is well recognised, yet third parties rather than traditional knowledge holders often derive

considerable economic benefit from uses of traditional knowledge. Another reason for the protection of traditional knowledge is to enable its continuous development and to support, particularly indigenous peoples’ cultural development. Consequently protecting traditional knowledge is a means of encouraging creativity and innovation. In this chapter I use the story of Ka Mate Ka Mate to illustrate these points and to show how it, and other examples of the creative outputs of traditional knowledge, should be protected.

Ka Mate Ka Mate has been the subject of two Waitangi Tribunal disputes and several trade mark related cases. This chapter describes the Waitangi Tribunal process as well as the trade mark cases. The chapter then turns to show how Ka Mate has become valued both within New Zealand and around the world. It has been used (Māori say misused) in a number of countries other than New Zealand, including Italy where it featured as part of a Fiat commercial. There the claimed offence was not only that it was commercialised without permission, but also because women performed this haka. Haka can be written for women, but that one was not. That was not, however, the only objection to how it was used. It was incorrectly performed in a variety of ways and was used to sell motor vehicles, with no acknowledgement of the culture from which it came or recompense to members of that culture in anyway.

I. Te Rauparaha and Ka Mate Ka Mate

Te Rauparaha was a chieftain and warrior of considerable mana (prestige and standing). He not only won several wars between his people, Ngāti Toa, and other Māori iwi (tribes), but he also fought the British and although the British eventually came to control New Zealand, many battles with Māori were not easily won. Te Rauparaha died in 1849 and his image is legend.

In one battle between his and another iwi (tribe) Te Rauparaha was fleeing from the East Cape of the North Island and he hid from his pursuers. The place he chose to hide was in a kumara (a type of sweet potato) pit. The Waitangi Tribunal described this story as follows:

As Ngāti Te Aho chased [Te Rauparaha] and his people through the central North Island, Te Rauparaha sought the protection of his distant relative Te Heu Heu of Ngāti Tūwharetoa. Te Heu Heu sent him to lake Rotoaira.

---

14 One image can be found at Ministry of Education, Arts Online http://artsonline2.tki.org.nz/resources/units/visual_culture/wearable_art/te_rauparaha.php. That image is a watercolour of the Ngāti Toa (tribe) chief Te Rauparaha wearing a European naval uniform. He has a moko (facial tattoo) and he is posing alongside a flowering flax bush, and there is a bay in the background.

15 Ko Aotearoa Tēnei, above n 13 at 40-41. The Tribunal cites Heni Collins, Ka Mate Ka Ors: The Spirit of Te Rauparaha (Wellington, Steele Roberts, 2010). That source also records variations on this story.
home of a chief named Wharerangi. With Ngāti Te Aho nearly upon him, Wharerangi hid Te Rauparaha in a kūmara pit, then Wharerangi had his wife, Te Rangikoaea, straddle the pit to conceal him. Te Rauparaha lay quietly in the pit beneath the kuia while Ngāti Te Aho searched the village. It must be understood that to place a woman’s genitals above the head of a chief was unthinkable, but this action saved his life. When Ngāti Te Aho passed through Rotoaira without finding him, Te Rauparaha burst from the pit and performed his now famous ngeri....

According to Collins it was the last stanza of Te Rauparaha’s chant that was combined with actions and was performed as a haka. The haka has become known “Ka Mate Ka Mate”. Its words and translation are as follows:

<table>
<thead>
<tr>
<th>Ka Mate ! Ka Mate !</th>
<th>It is death! It is death!</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ka ora ! Ka ora !</td>
<td>It is life! It is life!</td>
</tr>
<tr>
<td>Ka Mate ! Ka Mate !</td>
<td>It is death! It is death!</td>
</tr>
<tr>
<td>Ka ora ! Ka ora !</td>
<td>It is life! It is life!</td>
</tr>
<tr>
<td>Tēnei te tangata pūhuruhuru</td>
<td>Here is this hairy person</td>
</tr>
<tr>
<td>Nāna i tiki mai whakawhitit e rā</td>
<td>Who has made the sun shine upon me!</td>
</tr>
<tr>
<td>A, hūpane, kaupane</td>
<td>One step up, another step up</td>
</tr>
<tr>
<td>Hūpane, kaupane, whī te rā!</td>
<td>One step up, another step up, the sun shines!</td>
</tr>
</tbody>
</table>

After Te Rauparaha died the haka Ka Mate continued in importance to his people, Ngāti Toa. Today his descendants describe themselves the kaitiaki (guardians) of Ka Mate. It is their heritage and their taonga (treasure). They have sought attribution and ownership of the haka and consequent control of its uses. Ka Mate has also been described as the ‘most maligned, the most abused of all haka’. This is in part because of the role it, and other haka, have played in New Zealand.

A. **Haka in New Zealand**

Haka has become a significant part of New Zealand society. School children are taught haka and around the country there are competitions known as kapahaka. Māori have shared haka with Europeans, particularly on ceremonial occasions. Elsdon Best, an anthropologist who was in New Zealand in 19th century, said ‘accompanied by songs, [haka] were performed at a reception to visitors, to entertain them after a

---

16 Collins, above n 15.
17 Timoti Kāretu, *The Dance of a Noble People* (National Library New Zealand, 1993) at 68.
reception, to avenge insults, at peace-making ceremonies, during mourning rites, as a means of divination, where a good haul of fish was made, and many other occasions’. From this time haka progressively became something for tourists as well as locals. The status of haka was perhaps shown by its inclusion in the national holiday, Waitangi Day, which is the day Māori and the British signed a treaty (discussed below).

In the 1970s, Māori and Ngāti Toa in particular, objected to uses of the haka which were inappropriate, racist or in some way debasing. But, as Megan Richardson and I note in another paper, there has not only been a culture of objection, there has also been active encouragement of Māori and non-Māori to use the haka appropriately for non-commercial exploitation. Also, haka is not just a historic art form, it is developing. New hakas are created and written by both Maori and non-Maori in the 21st century.

**B. Ka Mate in New Zealand**

Without a doubt, Ka Mate, has earned the title of “the haka” because of the role it has played in New Zealand sport and, in particular, as the signature haka of the national rugby team, the All Blacks. The All Blacks started to use Ka Mate in 1905 and originally used it only when the team played overseas. In the 1987 World cup they started to use it in every game they played. Ngāti Toa have stated that they are proud that the All Blacks use this haka. An anthropological study of attitudes to Ka Mate in New Zealand concluded “for many New Zealanders as well as for many non-New Zealanders, it would appear that the haka is not primarily associated with [its origins] …; rather, it is associated with a national

---

18 *Games and Pastimes of the Māori* (Dominion Museum Bulletin, Wellington, 1925 – reprinted without textual alterations, Te Papa Press, 2005). See also Alan Armstrong *Maori Games and Haka* (Reed, Wellington, 1964) stating: "The haka is a composition played by many instruments. Hands, feet, legs, body, voice, tongue, and eyes all play their part in blending together to convey in their fullness the challenge, welcome, exultation, defiance or contempt of the words…It is disciplined, yet emotional. More than any other aspect of Māori culture, this complex dance is an expression of the passion, vigour and identity of the race. It is at its best, truly, a message of the soul expressed by words and posture."


rugby team known as the “All Blacks”.\textsuperscript{23} Although since that study Ngāti Toa’s claim to the haka has been so well publicised they may be equally, if not more so, associated with its origins today.

Ngāti Toa’s claim over Ka Mate sought control, particularly of commercial uses, over the haka. Although, Ngāti Toa have stated publicly that they do not mind respectful non-commercial uses of the haka. In 2012 the government of New Zealand have agreed, in a deed of settlement with Ngāti Toa, to recognise Ngāti Toa’s connection with the haka. This recognition will involve a law, yet to be enacted, which will require attribution of the haka to both Te Rauparaha and Ngāti Toa, in certain circumstances. The settlement is for attribution and falls short of control, which is discussed further below.\textsuperscript{24} The haka has also been used to parody the All Blacks. One example is the so-called hand bag incident. There the Australia Rugby team advertised a forthcoming test-match against the All Blacks with a video showing the All Blacks holding handbags while performing the haka. The reason for this parody was that one of the All Blacks had been injured by a handbag in a pub. One issue arising from the advertisement is who was being parodied: the All Blacks, the haka, or both?\textsuperscript{25} The free speech issues this raises are discussed further below.

The All Blacks, New Zealand’s national rugby team although they use Ka Mate have also had another haka written by a Māori author especially for them. That haka is increasingly used in preference to Ka Mate. Perhaps, most notably it was used in 2011 at the final of the Rugby World Cup. The culture of haka is alive and thriving. Māori do, however, exercise customary control over some uses of both old and where appropriate new haka. In order to reclaim greater control over Ka Mate Ka Mate Ngāti Toa have tried to register the words as a trade mark and have brought two claims to the Waitangi Tribunal.

II. REGISTERED TRADE MARKS

Because they could not claim in any court any protection to prevent others from misusing Ka Mate, Ngāti Toa filed an application to register as a trade mark ‘Ka Mate’.\textsuperscript{26} To date, IPONZ has not granted that application, although IPONZ has now registered as a trade mark a series of images of “KA MATE KA ORA”.\textsuperscript{27} Those registrations achieve the effect of

\textsuperscript{26} The Intellectual Property Office’s register shows that the application is ‘under an opposition proceeding; see Trade mark 814421.
\textsuperscript{27} Trade mark 827077, registered in relation to a variety of goods, including clothing and headgear, in classes 18, 25, 28, 35 and 41. Owned by a Māori organisation called
protecting aspects of the haka, but they do not protect the whole haka from derogatory treatment or all commercial uses, as Ngāti Toa would wish. Thus, although making the best uses of the resource available, i.e. using trademarks because no other protection exists, Ngāti Toa have not been able to protect all that they seek to protect. For this and other reasons Ngāti Toa brought claims to the Waitangi Tribunal.

III. THE WAITANGI TRIBUNAL

The Waitangi Tribunal is a tribunal of inquiry established by statute. The Tribunal investigates claims made under the Treaty of Waitangi (Te Tiriti O Waitangi). The Treaty is a founding document of New Zealand. In essence it sets out the agreement between Māori, and the Crown over the governance of New Zealand and is consequently of constitutional significance. The Treaty of Waitangi is in both Māori and English and both versions are official versions. They are not direct translations of each other. The Second Article, Ko te Tuarua, and in particular its reference to taonga is of direct relevance to mātauranga Māori and its relationship with intellectual property. The relevant article in both Māori and English, which have equal status, is set out below.

<table>
<thead>
<tr>
<th>Ko te tuarua</th>
<th>Article the second</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ko te Kuini o Ingarani ka wakarite ka wakaee ki nga RaNgātira ki nga hapu — ki nga tangata katoa o Nu Tirani te tino raNgātiratanga o ratou wenua o ratou kairanga me o ratou taonga katoa</td>
<td>Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other Preemption over such lands</td>
</tr>
</tbody>
</table>

28 Ko Aotearoa Tēnei, above n13, discusses other uses of trade marks to protect mātauranga Māori, at 38-39 and 59.
29 Treaty of Waitangi Tribunal Act 1975, s5.
30 For the Treaty’s history see Claudia Orange The Treaty of Waitangi (Bridget Williams Books, Wellington, 1992). For many years New Zealand courts doubted the legal importance of the Treaty of Waitangi, see Wi Parata v Bishop of Wellington (1877) 3 NZ Jur (NS) SC 72.
31 Treaty of Waitangi Act 1975, s 2, which defines “the Treaty” as including both the English and Māori version set out in the sch 1 of the Act.
32 This table is reproduced from Susy Frankel Intellectual Property in New Zealand (2nd ed, Lexis Nexis 2011). See chapter 3 of that text for further discussion of the Treaty of Waitangi.
As it has inquiry powers the Tribunal does not make rulings that have the force of law, but rather it makes recommendations to government.\(^{33}\) As such, it recommends policy and does not draft law. Another limitation on the role of the Tribunal is its jurisdiction is confined to making recommendations where there is a connection to the Treaty.

The descendants of Te Rauparaha, Ngāti Toa, have complained to the Waitangi Tribunal on two occasions about te tino rangitiratanga\(^ {34}\) (literally chieftainship, but perhaps more accurately self-determination and control) over Ka Mate and the treatment of it as part of the body of knowledge and understanding; that is mātauranga Māori (Māori culture). In both inquiries the Tribunal recommended to the government that Ngāti Toa have a greater degree of control over Ka Mate. One of these inquiries related to Ngāti Toa’s rights generally, including land rights. In that inquiry, based on the Tribunal’s recommendation the Crown, in the settlement letter following the recommendation, said it would ‘record the authorship and significance of the haka’ to Ngāti Toa.’\(^ {35}\) Whatever that meant it falls short of a promise of giving rights or full protection of Ngāti Toa’s interest in ‘Ka Mate’ and, as discussed above, has now resulted in a deed of settlement providing that there will be legislation requiring attribution of the haka to Ngāti Toa and Te Rauparaha. The other inquiry arose from a claim brought by Ngāti Toa and six other iwi (tribes)\(^ {36}\) relating to intellectual property. That claim addressed, among other issues, the effect of intellectual property law on Ngāti Toa’s interest in relation to Ka Mate Ka Mate and other taonga (treasures) of Māori. The analysis in the Tribunal’s report in this enquiry recommended greater measures be put in place to protect traditional knowledge.

**A. The claim as an aspect of Ngāti Toa’s culture and intellectual property**

The claim to te tino rangitiratanga over Ka Mate was part of the claim that the Crown had not protected taonga as it is obligated to do under Article 2 of the Treaty of Waitangi. One strand of the claim was that the existing intellectual property system did not recognise Māori rights and that the Crown had allowed a system of intellectual property that had, in

---

33 The government then decides how to respond to the recommendations. There are other institutions involved in the Treaty of Waitangi process. A key one is the Office of Treaty Settlements, which negotiates settlement with Māori where a settlement, such as in land claims, is the appropriate remedy.
34 Te tino rangitiratanga is guaranteed to Māori under Article 2 of the Treaty of Waitangi, see Māori version.
36 The claimants were Haana Murray of Ngāti Kurī, Hema Nui a Tawhaki Witana of Te Rarawa, Te Witi McMath of Ngāti Wai, Tama Poata of Ngāti Porou, Kataraina Rimene of Ngāti Kahungunu and John Hippolite of Ngāti Koata.
some instances, abrogated the treaty rights. In this chapter I refer to this claim by its shortened report name *Ko Aotearoa Tēnei.*

Ngāti Toa in *Ko Aotearoa Tēnei* sought the right to control the commercial exploitation of the haka and to ensure that where it is performed it is done in a culturally appropriate way. This claim was based on the Treaty of Waitangi guarantee of te tino rangitiratanga over their taonga works and related mātauranga Māori that is expressed in those works. The control Ngāti Toa sought for the haka and more broadly, included that Māori maintain and develop their relationship with their taonga works. The relationship is one of guardianship over the taonga. Kaitiaki can be both a collective and an individual role. Māori iwi (tribes) are kaitiaki (guardians) of their taonga, such as Ngāti Toa are kaitiaki of the haka. Also individual Māori may be kaitiaki of some taonga. The author of a modern haka may, for example, be the kaitiaki of that haka. The kaitiaki relationship is one that relates to the past, present and future. As kaitiaki of taonga there is an ancestral relationship (whakapapa) and consequently kaitiaki are both guardians of that heritage and of the taonga and mātauranga Māori for future generations. As well as being able to be kaitiaki of their taonga, the claimants wished to be free to develop that relationship and, where they as kaitiaki consider it appropriate, to economically exploit and benefit from that relationship.

The Waitangi Tribunal in its report was careful to recognise that there are competing interests, such as the rights of the general public to use Māori culture and of existing intellectual property owners that should be considered alongside the Māori interests in taonga works. Some people with competing interests, including New Zealand artists and designers as well as other holders of intellectual property rights, gave third party evidence at the hearings of the claim. The current position is that those competing interests usually trump the Māori interest. *Ko Aotearoa Tēnei* recommends shifting that balance so that the Māori interests can, in appropriate circumstances, be the key interest that the law protects. The

---

37 *Ko Aotearoa Tēnei,* above n 13. Translated *Ko Aotearoa Tēnei* means “This is Aotearoa/New Zealand. Aotearoa is the name for New Zealand. The claim resulted in a Report from the Waitangi Tribunal in 2011. In essence the report on the claim is about Māori culture and identity; New Zealand’s laws, government policies and practices affect that culture; and whether Māori are able to live and develop (both culturally and economically) as Māori. There are two chapters of *Ko Aotearoa Tēnei,* which directly discuss intellectual property law and the protection of Māori culture. The first is focused on cultural expressions and related traditional knowledge and the second discusses on biological and genetic resources. The first chapter, “Taonga Works and Intellectual Property” is most relevant here.

38 *Ko Aotearoa Tēnei,* above n 13 at 41.

39 See also Ngāti Toa Rangatira Letter of Agreement form the Crown, available at http://nz01.terabyte.co.nz/ots/DocumentLibrary/NgatiToaofferletter.pdf at where it is stated, at paragraph 42 that “…the expectation of Ngāti Toa that the primary objective of this redress is to prevent the misappropriation and culturally inappropriate use or performance of the haka ‘Ka Mate’.”

40 *Ko Aotearoa Tēnei,* above n 13 at 74-77.
Tribunal also, in its recommendations, wanted to make sure that the recognition of other interests was balanced and did not result in marginalising the Māori interest or making it impossible for Māori to develop their culture. Therefore, the approach of the Tribunal was to recommend a regime that will shift the balance, but will not make it impossible for all New Zealanders to use Māori culture.

The Tribunal in its deliberations also noted that protecting Māori culture is about protecting New Zealand. It said that “Taonga works are not just about Māori identity – they are about New Zealand identity, and a regime that delivers kaitiaki control of taonga works will also deliver New Zealand control of its unique identity.” In relation to Ka Mate this might arguably be particularly so. At the time of writing the government has not yet responded to the recommendations of Ko Aotearoa Tēnei.

IV. WHY PROTECT OR NOT PROTECT TRADITIONAL KNOWLEDGE AND KA MATE

The key rationale in favour of protecting traditional knowledge is the kaitiaki relationship with it and the consequential benefits that flow from protecting that relationship, which include the protection of culture and the further encouragement of creativity and innovation. Once a relationship is established with a taonga, such as the Ka Mate, the choice to exploit the economic value of Ka Mate it is said ought to be the choice of the Ngāti Toa people. Yet, there is objection to protecting taonga works, and traditional knowledge more generally, both in New Zealand and worldwide.

In the WIPO-IGC process the United States is one of the main opponents of forming a treaty to protect traditional knowledge. Some key aspects of the United States objections are set out here.  

… what objective was sought to be achieved through according intellectual property protection (economic rights, moral rights) [to traditional knowledge (TK)]? Historically, information had been freely shared, except in limited circumstances, and for periods of limited duration. Furthermore, even with the limited circumstances of Intellectual Property rights such as Copyright and Patent, such legal systems had within them a concept of fair use or research use. How should these norms be balanced with any new exclusive rights granted on TK? …

Who should benefit from any protection of TK? Who should hold the rights to protectable TK? Should holders of TK that reside within the traditional origin of the TK and those who no longer reside within the same area be treated in the same way? How would a new system to protect TK change the

---

41 Ko Aotearoa Tēnei, above n 13.
right of TK holders to continue to use their TK? ... If TK was protectable by patent, copyright or other traditional intellectual property rights, should TK also be protectable by other means, i.e., new national laws?

The following sections address these questions, although in a slightly different order, through the specific example of Ka Mate Ka Mate and its story.

A. What objective was sought to be achieved through according intellectual property protection (economic rights, moral rights)?

The objectives in the WIPO process are clearly set out in its working documents and include that the protection of traditional knowledge should aim to:\(^{44}\)

- Recognize value;
- Promote respect;
- Meet the rights and needs of holders of traditional knowledge
  Promote conservation and preservation of traditional knowledge;
- Empower holders of traditional knowledge and acknowledge the distinctive nature of traditional knowledge systems;
- Support traditional knowledge systems;
- Contribute to safeguarding traditional knowledge;
- Repress unfair and inequitable uses or misappropriation and misuse;
- Respect for and cooperation with relevant international agreements and processes;
- Promote innovation and creativity; and
- Promote community development and legitimate trading activities.

These objectives are broader than those usually framed in intellectual property law,\(^{45}\) and the list of objectives in not exhaustive of what traditional knowledge owners may seek to achieve. Where intellectual property protection is involved, however, the short answer to the question of “what objective” is sought, is both economic and moral rights. One motivation for seeking economic rights is that those seeking them need an economic return to develop as people and cultures in the 21st century. That, however, does not tell the whole story. This categorisation is an

---

\(^{43}\) The question omitted from here is “How would the international concept of non-discrimination apply?” For discussion of that question see Susy Frankel, 'Attempts to Protect Indigenous Culture Through Free Trade Agreements’ in Christoph Graber, Karolina Kuprecht and Jessica Lai (eds) *International Trade In Indigenous Cultural Heritage* (Edward Elgar, 2012).

\(^{44}\) See above n 41, Annex at 6-7.

\(^{45}\) See Silke von Lewinski “Comments on Susy Frankel: ‘Ka Mate Ka Mate’ and the Protection of Traditional Knowledge – An International Treaty Perspective”, in this volume.
intellectual property perspective, where the labels “economic” and “moral” have existing meanings that reflect different aims from those sought for the protection of traditional knowledge. That difference is precisely why existing intellectual property rights cannot protect traditional knowledge. This division into intellectual property categories, Ngāti Toa explained to the Waitangi Tribunal, causes a fundamental misunderstanding about what they seek in claiming te tino rangitiratanga over Ka Mate and other taonga. This is, in part, why a sui generis regime that interfaces with intellectual property, but is different from intellectual property is what the Tribunal recommends. Additionally, the focus on whether the purpose of protection is economic or moral may not fully address that a key goal of protecting traditional knowledge is to maintain and develop a culture and consequently promote and support creativity and innovation of that culture.

B. “Who should benefit from any protection of TK? Who should hold the rights to protectable TK?”

Simply, the kaitiaki of a taonga work should benefit. Ngāti Toa as the kaitiaki of Ka Mate would benefit from its protection. The kaitiaki of the haka is well-known. Who is a kaitiaki can be disputed and this is one of the reasons that the Waitangi Tribunal recommends that kaitiaki need to demonstrate their kaitiaki status in order to benefit from the protection. Ngāti Toa and other kaitiaki importantly, view themselves as guardians for future generations and so the benefit extends beyond the existing beneficiaries. Undoubtedly, the beneficiaries of traditional knowledge protection will not always be so readily identifiable, but frequently they are, in ways that the culture concerned recognises. In any event, it does not follow that because there is doubt, in some situations, over who is entitled to benefit from protection, that doubt should mean there is no protection overall. After all, orphan works are still copyright works.

In the area of who should benefit there is likely to be an overlap with customary law. The claimants of the traditional knowledge are those whose tradition is being protected. The beneficiaries are, therefore, the kaitiaki of traditional knowledge (or related mātauranga Māori). Such an approach is, in essence, a pluralistic approach to recognising who benefits from any rights. Also, a pluralistic approach can function to recognise that customary law is frequently not static and should not be treated as such. The recommendations of the Waitangi Tribunal effectively require those

---

46 As discussed below the Waitangi Tribunal recommends a new Commission with an adjudicative role, which would include adjudicating, if necessary, between competing claims of kaitiaki status.

47 An orphan work is a work where the author and/or owner of the copyright work cannot be identified.

48 For a discussion of pluralism in the protection of traditional knowledge in the Pacific region, see Miranda Forsyth, ‘Do you Want it Gift-Wrapped?: Protecting Traditional Knowledge in the Pacific Island Countries’, Drahos and Frankel (, above n1.
seeking protection of taonga works and associated mātauranga Māori to establish their role as kaitiaki. They can only really do so by reference to their custom.

\[a.\] **What makes something a taonga work and who are the kaitiaki?**

The Tribunal explained that what makes a work a taonga work is the relationship between Māori and the work. The relevant Māori could be an individual, a family (whānau); an extended family group (hapū) or a tribal group (iwi). In all cases, the relevant people are the kaitiaki of the taonga work and it is that relationship between the kaitiaki and the taonga work, for which the Tribunal found Article 2, of the Treaty of Waitangi, guarantees an appropriate degree of protection. In the case of Ka Mate the kaitiaki are an iwi, Ngāti Toa.

The consequence of the focus on the relationship is that there are works, which involve Māori elements, which may not be taonga works. The Tribunal described these works as taonga-derived works and concluded that such works have no kaitiaki and, therefore, protection of them is necessarily less.\(^{49}\) Ka Mate Ka Mate has a known and identifiable kaitiaki and is, therefore, a taonga work, not a taonga derived work.

The distinction between taonga-derived works and taonga works might also be seen as reflecting the reality that allowing non-Māori to use Māori culture is also a benefit for Māori, as such use contributes to the culture’s survival. It is for that reason that the Tribunal also said it did not recommend mātauranga Māori be treated as owned by Māori. The Tribunal said that “building a legal wall around mātauranga Māori would..., choke it”.\(^{50}\)

One consequence of determining who benefits on the basis of a kaitiaki relationship is that the question, “Should holders of TK that reside within the traditional origin of the TK and those who no longer reside within the same area be treated in the same way?” is answered “yes”. The test is not residence but a kaitiaki relationship.

\(^{49}\)“There is another, more amorphous category of works. These are works that have a Māori element to them, but that element is generalised or adapted, and is combined with other non-Māori influences. Works like these are inspired either by taonga works or by the mātauranga Māori underlying those works, but the connection to mātauranga Māori is far more tenuous than is the case for taonga works themselves. We call these taonga-derived works. We put them into a different category because they are so generic or derivative they have no whakapapa and no kōrero except at a generalised level. Most importantly, taonga-derived works have no kaitiaki. By this we mean there is nothing about the Māori element of the work that would lead one to conclude that the responsibilities of kaitiakitanga in respect of it belong basis upon which anybody can say, ‘I have responsibility for this and you may not use it without my consent’. To insert such authority would require the law to create a kaitiaki where one does not exist naturally. We think that would go too far.” *Ko Aotearoa Tēnei*, above n13 at 84-85.

\(^{50}\) *Ko Aotearoa Tēnei*, above n 13 at 92.
Another consequence is that the question “How would a new system to protect TK change the right of TK holders to continue to use their TK?” is also answered with reference to the kaitiaki relationship. The role of being a guardian of a taonga work, includes developing it for uses for current and future generations.

C. If TK was protectable by patent, copyright or other traditional intellectual property rights, should TK also be protectable by other means, i.e., new national laws?

For the most part traditional knowledge is not protectable by traditional intellectual property rights and it is because of this that other means of protection for traditional knowledge is necessary.

The broad recommendations that the Waitangi Tribunal made in order to achieve the protection of taonga works and mātauranga Māori are:

1. New standards of legal protection governing the use of taonga works, taonga-derived works, and mātauranga Māori…
   (a) A general objection mechanism to prohibit the derogatory or offensive public use of taonga works, taonga-derived works, or mātauranga Māori…
   (b) A mechanism by which kaitiaki can prevent any commercial exploitation of taonga works or mātauranga Māori (but not taonga derived works) unless and until there has been consultation and, where found appropriate, kaitiaki consent…

2. An expert commission to have wider functions in relation to taonga works, taonga-derived works, and mātauranga Māori.

Ko Aotearoa Tēnei sets out how the proposed expert commission should have adjudicative, facilitative and administrative functions. The adjudicative functions would involve hearing complaints about 1 (a) and

---

51 The Tribunal recommended that anybody should be entitled to object to the derogatory or offensive public use of taonga works, taonga-derived works, or mātauranga Māori.
52 The Tribunal recommended that only kaitiaki should be entitled to object to any non-derogatory or non-offensive commercial use of taonga works or mātauranga Māori.
53 The Tribunal recommended that the government establish a commission. The commission should have multi-disciplinary expertise (encompassing mātauranga Māori, IP law, commerce, science, and stewardship of taonga works and documents at both commissioner and secretariat levels.
54 The facilitative function of the Commission includes producing guidelines and best-practice information for both kaitiaki and other users of Māori culture.
55 The recommended administrative function relates to maintaining a register of kaitiaki in respect of particular taonga works. The register is voluntary because kaitiaki must be free to keep their taonga and mātauranga Māori secret if they wish.
(b) above and deciding what steps must be taken to remedy the situation.\footnote{This will also involve determining whether any particular work is a taonga work, or a taonga-derived work or otherwise, and who is kaitiaki of any taonga work. Ko Aotearoa Tēnei, above n 13 at 92.} This adjunctive function is not only for fully-fledged disputes, but the Tribunal also recommended that the Commission has the power to give rulings where parties are uncertain if they should proceed or otherwise. The Tribunal suggested such a mechanism, with the aim that it should ameliorate any chilling effect from uses of Māori culture.

If the Commission finds that a work is a taonga work,\footnote{Such a finding is dependent on there being a proven kaitiaki. Ko Aotearoa Tēnei, above n 13 at 92.} the Tribunal recommendations are that kaitiaki must be involved in any decision about the taonga work’s future, if any, commercial use. Ko Aotearoa Tēnei does not predetermine the exact scope of any kaitiaki rights. It says that should depend on the degree of the kaitiaki relationship. Thus, the nature of the relationship, that kaitiaki has with the taonga work or mātauranga Māori, and the balancing of competing interests, will lead to a determination of an appropriate level of kaitiaki control.

The Tribunal recommends laws other than intellectual property laws as well as changes to intellectual property laws. It said:\footnote{In New Zealand some of this interface already exists. New Zealand trade mark law includes a system where Māori can object to the registration of trade marks on the grounds that the trade mark applied for is culturally offensive or is likely to cause offence; Trade Marks Act 2002, s17 (1). See also Susy Frankel "Third-Party Trade Marks as a Violation of Indigenous Cultural Property- A New Statutory Safeguard" (2005)8 Journal of World Intellectual Property Law 83; Susy Frankel, ‘Trade Marks, Traditional Knowledge and Cultural Intellectual Property’ in Graeme B Dinwoodie and Mark D Janis (eds) Trade Mark Law and Theory: A Handbook of Contemporary Research (Edward Elgar Press, USA, 2007).}

This approach is not intended to create a new category of proprietary right, but is rather a way of recognising the relationship of kaitiaki with taonga works and some aspects of mātauranga Māori where it is proposed to exploit those things commercially. It is important to understand that our recommendations do not represent a wholesale change to the current system of IP protection, particularly copyright and trade mark protection. Nor would they grant perpetual copyright to kaitiaki. These recommendations are sui generis in that they would operate outside the Copyright Act 1994, the Trade Marks Act 2002, the Designs Act 1953, the internet registration system, and any other relevant Acts which protect IP or related rights. They would have independent legal enforceability in their own right. However, as we noted above, this sui generis system must effectively interface with the IP system so that no irresolvable conflict arises between them. The commission should provide that point of interface.

The last part of this passage emphasises the needs of any sui generis system and the intellectual property system to work together so that when there is conflict there is a mechanism for that conflict to be resolved.\footnote{This is important because for a sui generis system to be effective it needs}
to be made to work simultaneously with existing law. There are two alternatives. First, intellectual property law will dominate and defeat the purpose of the sui generis law. The second is that the sui generis system, as the later in time, might in some jurisdictions be deemed to overrule any prior conflicting laws. Neither of these alternatives is the intention either of the Waitangi Tribunal or I suggest of those engaged in to WIPO-IGC process. Thus, it is important that protection of traditional knowledge not only be sui generis, or as might be described in this volume “at the edge of intellectual property”, but also be recognised by the regimes in the core of intellectual property law.

D. Intellectual Property rights ...had within them a concept of fair use or research use. How should these norms be balanced with any new exclusive rights granted on TK?

The name “traditional knowledge” is in some ways regrettable because it is apt to misinterpretation. The ability to extract and use knowledge is the cornerstone of much intellectual property and the protection of traditional knowledge suggests, to some, an incursion on that claim. However, that is not what was really is claimed. The Waitangi Tribunal did not recommend absolute rights over Ka Mate or other taonga works. Its recommendations are tailored to that which Māori can, in the Tribunal’s words, reasonably expect. The Tribunal’s recommendations for protection of Ka Mate, and other taonga works, is to give kaitiaki control over the commercial exploitation which without such protection gives the kaitiaki no return. The second element of protection is a right to object to offensive treatment of taonga. Neither recommendation, if brought into law should stop others learning about the haka or using the knowledge it conveys. Nor indeed does it limit all fair use of the haka. The rights recommended are not absolute. However, the types of fair use are differently circumscribed than that found under copyright.

Parodying Ka Mate raises complex issues, which are worthy of a separate paper. As a cultural icon the haka is almost certainly likely to be the subject of parody or social comment. However, under New Zealand

---

60 This would also create problems with existing international intellectual property treaty compliance.
61 For a further discussion of the importance that traditional knowledge interfaces with existing intellectual property law see Susy Frankel, ‘A New Zealand Perspective on the protection of mātauranga Māori’ in Christoph Graber, Karolina Kuprecht and Jessica Lai (eds) International Trade In Indigenous Cultural Heritage (Edward Elgar, 2012) 439 at 450-454.
62 In New Zealand there is no statutory permitted act or fair use of copyright for parody.
Copyright law there is no fair use or permitted act for parody. Also, one might say that that parody is a cultural construct. One person’s parody is another’s offence. There is no international view of whether protection of traditional knowledge from offensive or derogatory treatment is a reasonable limitation in any given facts. Several uses of Ka Mate remain in the public domain and have not been complained about.

One that caused complaint was Fiat’s use of Ka Mate, or an imitation of it, in a commercial for a car. In New Zealand, the advertisements were widely thought to be culturally offensive. The Government intervened to ask the producers to change the advertisement to be “either performed by a Māori group or to have a haka composed for women to perform”. Fiat declined both options and continued to air its advertisement. No further action was taken.

The association between the All Blacks and Ka Mate places the haka as something aggressively masculine. So much so, that even in the United States one sports team uses the haka to build some macho feeling.

As to this use Ngāti Toa said “[we] no problem with the team using the haka – but they could do it with a bit of discipline and technique”. “You can't fault their enthusiasm” said Teariki Wi Neera, who is on Ngāti Toa’s Ka Mate sub-committee. But he said their rendition was a bit like “a bad Coke ad”. “We're incredibly proud of Ka Mate and we prefer to see it done properly.” Wi Neera said Ngāti Toa would be happy to provide some instruction, an offer Bulldogs assistant coach Tim Tulloch said his players would be “ecstatic” to receive.

deceit. Beneath the charade of caricature is a colonial world view that sanitises the other with a historical stereotypes of homogeneity and nationalism.” And for a similar discussion outside of the New Zealand context see, Susan Scafidi, ‘Intellectual Property and Cultural Products’ (2001) Boston University Law Review 81 at 842.

Lisa Ramsey advocates, therefore, that domestic law should define its “speech-friendly” parameters before agreeing to international law limitations, see Lisa Ramsey, ‘Free Speech and International Obligations to Protect Trademarks’ (2010) 35 Yale Journal of International Law 405.

A video of the advertisement can be found at http://stuffcanuse.com/italian_haka/fiat_haka.htm

For some discussions in the media, see Peter Lewis, ‘Australia and New Zealand Take Rivalry to the Rugby Pitch’ http://www.abc.net.au/am/content/2006/s1681115.htm; ‘When Haka is Not Okay’ http://www.mixedmediawatch.com/2006/07/31/when-haka-is-not-okay.


The San Mateo Bulldogs American Football team has posted footage of its pre-match haka on its Facebook page and it is clearly based on Ka Mate, see Ian Steward “Stamp of Approval to go to American haka” at http://www.stuff.co.nz/national/5717467/Stamp-of-approval-to-go-on-American-haka. The team claims using the haka has propelled it into winning the Northern California championship!
The balance of norms that Ngāti Toa seems to advocate in the above scenario is exactly that which the Waitangi Tribunal recommended; an ability to object to offensive and derogatory use, but to allow other uses where they are not directly commercial. The Tribunal does not answer what amounts to offensive or derogatory treatment. It makes clear that it leaves this for future determination. That is hardly surprising, after all fair use is not always narrowly prescribed rather it depends on the facts. The Tribunal makes it clear, however, that use of Māori imagery is not per se offensive. Kaitiaki have rights that flow from the kaitiaki relationship. That relationship must be shown and the rights that flow are proportionate to that relationship.

V. CONCLUDING THOUGHTS- BEYOND KA MATE KA MATE AND BEYOND NZ

All over the world, indigenous people seek greater control of their culture. In part this has occurred because many indigenous peoples are in need of economic development in a world where there has been increasing trade in indigenous culture and trade that utilises indigenous culture, without always a corresponding benefit for the peoples from whom that culture originates. The uniqueness of New Zealand is perhaps that the indigenous peoples are in a position to bring such a claim, as that brought to the Waitangi Tribunal, both because they have rights to their land and because the Waitangi Tribunal procedure provides a forum for such a claim. That is a political uniqueness. The normative basis for protecting traditional knowledge is strong and is well-defined. It includes the WIPO objectives and principles, domestic obligations such as those in New Zealand and what might be described as recognition of fair play in the international trade of knowledge assets.

Those normative underpinnings for the protection of traditional knowledge flow well beyond the shores of New Zealand. The WIPO-IGC process may not yet be complete, but its existence is implicit recognition that calls for protection of traditional knowledge will not evaporate and as the quote

---

69 Rebecca Tushnet (in this volume)
70 In Peter Drahos and Susy Frankel “Indigenous Peoples’ Innovation and Intellectual Property: The Issues” Drahos and Frankel above n 1 we state. “In the case of Aboriginal people in Australia the place-time nature of their system means that land rights justice is the primary necessary first step. Land rights justice, although not completely resolved, is considerably closer to having been achieved in the New Zealand through the Waitangi Tribunal and Treaty Settlement Process. That is perhaps why Māori were able to bring the WAI 262 claim about the protection of their knowledge, culture and identity to the Waitangi Tribunal. This claim shows how progress on land rights justice opens the way to progress on the protection of indigenous knowledge and culture more broadly.”
71 If compared to publicity rights, for example, the normative basis of traditional knowledge protection is comparatively much more solid, see Stacey Doogan in this volume.
at the beginning of this chapter says a more inclusive discourse about why we have an intellectual property system.