

# Intangible Cultural Property, Tangible Databases, Visible Debates: *The Sawau Project*

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**Abstract:** Intellectual property claims have long been sustained in a way that is now under severe scrutiny. Pacific Island countries continue to face unauthorized uses of their traditional knowledge and practices. In response, international agencies in collaboration with Pacific Island countries are promoting sui generis forms of protection. The Institute of Fijian Language and Culture's Cultural Mapping Programme looks beyond ongoing debates about indigenous collection and digitization of intangible heritage to promote sui generis protection measures in lieu of western intellectual property law. Supported by an Institute grant, the unfolding *Sawau Project* creates an archive of sites, stories, and shared memories of the Sawau people of Beqa, an island iconic in Fiji for its firewalking practice (*vilavilairevo*). Advocating a form of social intervention in situ, *The Sawau Project* has become a collaborative tool to encourage digital documentation, linkages, and institutional collaborations among Fijian communities and their allies to negotiate and promote alternative forms of protection.

## INTRODUCTION

In the early 1990s, Pacific Island peoples began translating western legal ideas into local realities to pursue local struggles. At the same time, they started to assimilate new visual media forms to their own cultural and political concerns.<sup>1</sup> Ginsburg, Abu-Lughod, and Larkin have recently observed that debates about indigenous media reflect the “changing status of ‘culture,’ which is increasingly objectified and mediated as it becomes a source of claims for political and human rights both nationally and on the world stage.”<sup>2</sup>

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A former lawyer with an interest in sui generis regimes of protection of intangible cultural property, I arrived in Fiji in October 2004 puzzled by my recent reading of Brown's comments on the "Byzantine series of regulations" recommended by international bodies like UNESCO and World Intellectual Property Organization (WIPO)<sup>3</sup> to Pacific Island communities.<sup>4</sup> At the same time, other colleagues who had read Brown and were conducting research in Pacific Island societies were pointing out that removing indigenous peoples from the framework of international legislation may actually undermine their participation in the negotiation of an intellectual property (IP)-based sui generis system that creates new IP or IP-like rights.<sup>5</sup> My research conducted among the Sawau people on the island of Beqa in Fiji and at UNESCO in Paris demonstrated that three interconnected layers—local, national, and transnational—are dialogically engaged in establishing cultural property rights in Oceania.<sup>6</sup>

While researching on Beqa, I became involved in A Ituvatuva Ni Vakadidike E Sawau (*The Sawau Project*), which began in November 2004 as a homework project assigned by five teachers at the Sawau District School of Dakuibeqa in Beqa. The initial goal of *The Sawau Project* was to identify what the pupils saw as important elements defining their own cultural heritage. Integrating cultural heritage projects into the school's curriculum was expected to stimulate the younger generation to become more interested in Fijian culture and language. Since then, *The Sawau Project* has grown to address both the inability of current intellectual property rights law to protect communally owned indigenous forms of cultural expression and the need for indigenous peoples and their allies to negotiate and promote alternative forms of protection. In Hennessy's elegant words, "the project illustrates the complexity inherent in the mass-mediation of cultural heritage, as well as the revitalization and assertion of indigenous rights to self-representation in a post-colonial and national context."<sup>7</sup>

During my visits at the Tabana Ni Vosa kei iTovo Vakaviti (Institute of Fijian Language and Culture) in Suva, I often heard that traditional custodians frequently requested the institute to edit footage taken in their villages and collate it. In the course of my fieldwork, I had already collected many photographs, audio recordings, and action footage. I had shared these research materials with Sawau *yavusa* (tribe) members to elicit their comments. Watching those images on my camcorder screen around the kava bowl in Dakuibeqa, some of them suggested that my research material could be communally shared and collaboratively transformed into a unique representational genre.

The DVD format permits the development of a multimedia, multivocal, multi-linear tool with enormous storage capacity and a menu-driven narrative that allows the viewer to choose from among a succession of images, providing quick access to different sections of a story map connected by hyperlinks to written texts and a topographic map of the island of Beqa.<sup>8</sup> Producing *The Sawau Project* consisted of showing, discussing, and creating a montage of images according to community feedback on their appropriateness. Felix Colatanavanua, a cousin of the

Sawau paramount chief, was involved in every aspect of the creation of this montage: choosing and editing the footage, adding his own photos and animating them to convey linguistic and extralinguistic cues, editing the musical arrangements—generously facilitated by the Oceania Centre for Arts and Culture—and building the DVD's multilinear interface (Figure 1).<sup>9</sup>

The project grew out of the Sawau tribe responsibility for its cultural heritage—specifically the *vilavilairevo* (firewalking) ceremony. This responsibility is embedded in a continuing relationship between the people, their *vanua* (land), and other traditional and cultural resources. In this relationship the land, like the *vilavilairevo*, is a gift that ultimately belongs to God but has been given to the people to be held in trust for future generations.<sup>10</sup> Custodianship is associated with an enduring sense of place and relationship to the village. The Sawau people share collective responsibility toward their traditional knowledge and expressions of culture (TKEC), just as their identity is philosophically vested in communalism and intertwined with their mythological and kin relationships.

On Beqa cultural, religious, social, and economic relations have become more global over time through integration of markets and the rapid spread of technologies, which are redefining concepts of identity, branding, public domain, and the legitimacy of international institutions, reflecting a hierarchy of power at the international level and the effect of legal regulation of traditional cultural expressions on the globalized legal system itself.<sup>11</sup> The application of legal practices and concepts to traditional cultural expressions has challenged modern law to recognize new forms of property.

Like the Sawau tribe of Beqa Island with their *vilavilairevo* performances, the Sa speakers from the south of Pentecost Island accommodate westernization and maintain their *kastom* identity through touristic performances of *nagol* (land dive), which is a demonstration of tradition as well as a potent ethnic marker.<sup>12</sup> In the *nagol* jump case, a group of applicants from Pentecost Island tried to prevent the respondents from performing the *nagol* jump on the island of Santo, claiming that



FIGURE 1. Main menu of *The Sawau Project*.

the Santo performance was an appropriation of the Pentecost performance. In July 1992 the chief justice of Vanuatu, basing his decision on “substantial justice” and “in conformity with custom,” ordered that the *nagol* performance should be repatriated to Pentecost, from whence it came.<sup>13</sup>

When juxtaposed to the Sawau’s situation in Fiji, the *nagol* jump case in Vanuatu holds tremendous interest because questions the extent to which the rights relating to traditional cultural expressions—as granted by custom to certain members of the clan or tribe—are recognized by national legislation, and thus can be easily enforced.<sup>14</sup> In Fiji the issues of intangible cultural property, intangible cultural heritage, and commodification have recently reemerged at local, national, regional, and transnational levels with Fiji’s ongoing *Na ituvatuva ni kilaka itaukei kei na kena matanataka* (literally, National Inventory on Traditional Fijian Knowledge and Expressions of Culture Project, currently referred to as the Cultural Mapping Programme), Fiji’s pending Act to Protect the Indigenous Intellectual Property Rights in Traditional Knowledge and Expressions of Culture Bill, which adapts the Pacific Model Law (2002), and the Convention for the Safeguarding of the Intangible Cultural Heritage adopted by UNESCO in 2003. In other words, indigenous groups are drawing on the resources of a global civil society to reconstitute themselves as *traditional communities* and retain their creativity and dynamism.<sup>15</sup>

An immediate concern upon my arrival in Fiji was that despite the emerging local, regional, and transnational interest in documenting cultural expressions and saving them in databases, indigenous communities are rarely the ones responsible for compiling such databases and holding the rights. The ongoing *The Sawau Project*, discussed in this article as a case study in the participatory, collaborative production of a DVD, shows how the Sawau community of Beqa, like the Sa people from Pentecost Island in Vanuatu, fundamentally aims for “control over representation.”<sup>16</sup>



FIGURE 2. The cover jacket of the DVD.<sup>44</sup>

The project allows the community to recontextualize their traditional knowledge and expressions of culture to address present concerns like those offered by the Cultural Mapping Programme, the pending legislation reflected in revisions of the Pacific Model Law, and the Convention for the Safeguarding of the Intangible Cultural Heritage.

## LOCAL KNOWLEDGE, GLOBAL COMMONS

A central issue of intellectual property rights is delimiting the boundaries of property interest embodied in immaterial *res*. Because of the creation of innovative commons such as the Internet, there has been increased discourse on *free culture* that falls outside the realm of intellectual property. It is commonly argued that it is in the interest of the general public to lift embargoes on the free flow of information to stimulate research and creativity and increase economic growth.<sup>17</sup> These views exacerbate an imbalance of power over property rights for indigenous peoples, such as the Sawau who struggle to retain control and protect the use of their traditional cultural expressions. Sawau cultural expressions are inalienable possessions freely circulating among their custodians, but outside their society, they exemplify an enclosed domain.

Indeed, holders of traditional knowledge and cultural property are concerned by the new ways the amorphous public domain creates an incentive for free access to cultural material unprotected by intellectual property rights. Anyone may then misappropriate, copy, or perform intangible cultural expressions of which they are not the owners. The goal of self-determination includes the possibility that indigenous people are not particularly longing to be part of this global commons. The public domain may impoverish or annihilate their concept of cultural property, “because it defines traditional knowledge as a freely available resource.”<sup>18</sup> The public domain is a form of *nonproperty* that negatively affects the lives of indigenous people such as the Sawau today.

A limited term of protection, or no protection at all, means that most indigenous cultural expressions and works end up in the public domain even if their creators demonstrate that such expressions date far back in time. In most traditional communities, knowledge is acquired over time and passed on from one generation to the next. It keeps evolving and changing character. Therefore, it is difficult to establish *when* such knowledge was actually discovered or created and *when* it entered the public domain. Once it enters the public domain, however, anyone is free to reproduce it.

In *Free Culture*, Lessig argues that the Internet “has unleashed extraordinary possibilities for many to participate in the process of building and cultivating culture that reaches far beyond local boundaries.”<sup>19</sup> Boyle<sup>20</sup> argues that a few centuries ago indigenous songs, dances, performances, rituals, and ideas did not need any intellectual property protection because people maintained *physical control*

**Fiji SUN WEEKENDER**

## Magic of the isles

By LOCKERWOOD

*They are known for their age old knowledge...  
The 'Sawau Project'...  
The village of Dakuibeqa...  
The 'dauvila' (firewalker)...  
The 'dauvila' (firewalker)...*

A team visits the village of Dakuibeqa, a traditional village in the island of Viti Levu.

*At the after...  
One of the beautiful scenes...  
The 'dauvila' (firewalker)...*

2 - FIJI SUN - SATURDAY, JULY 23, 2005

FIGURE 3. A story published by the Fiji Sun (July 23, 2005, p.2) while *The Sawau Project* was still in montage. A *dauvila* (firewalker) from the Sawau tribe during a performance for the tourists at the Naviti Resort. Bottom left, Felix Colatanavanua; center, the author; and on the right an image of the chiefly village of Dakuibeqa.

over their heritage. However, after the Internet was invented, indigenous people needed to apply the Digital Millennium Copyright Act, the No Electronic Theft Act, The Sonny Bono Term Extension Act, and even the Collections of Information Antipiracy Act to protect their cultural property.<sup>21</sup>

The Internet has made it easier to obtain unauthorized reproductions of traditional knowledge and cultural expressions, provide unofficial fixations of live performances, and adapt and commercialize TKEC without sharing economic benefits

with their cultural custodians; also, it has made it easier to misappropriate traditional words, stories, symbols, and distinctive signs and use TKEC in culturally and spiritually offensive and degrading ways, often without acknowledging the traditional source of these creations or innovations. The Internet may be touted as the greatest example of democracy ever invented by humankind, but as Lessig<sup>22</sup> notes, it has no capacity to punish those who steal cultural property from others.

Coombe suggests that a *cultural* public domain requires us to “consider a wider range of activities and practices than those that copyright law traditionally recognized as acts of authorship and those most characteristic of Western creators.”<sup>23</sup> More recently, she observes that the cultural survival of peoples demands that we formulate new principles governing the use of “cultural heritage” to ensure the conditions necessary to foster diverse forms of cultural creativity.<sup>24</sup> Although western laws represent a system of perpetual creativity in which people own for a period of time whatever they create, customary practices suggest a system of perpetual ownership where people create what they own.<sup>25</sup> Creativity functions to perpetuate the transfer of ownership of TKEC.<sup>26</sup>

Economies such as that of the Sawau require a constant investment in physical and abstract labor (creativity) as people strive to add value to their cultural product.<sup>27</sup> Therefore, commodification is not perforce the enemy of authenticity and cultural heritage. Sawau performers dialogically negotiate and interpret novel situations in traditional terms, while perceiving a continuity of cultural meaning. Elsewhere,<sup>28</sup> I have pointed out that tourism’s literature is replete with examples of local people interpreting novel situations in traditional terms and thus perceiving a continuity of cultural meaning that may escape the tourist-observer.

## A SUI GENERIS PROPOSAL

The western copyright doctrine presents myriad obstacles to the full protection of indigenous expressions of culture. Geographic Indications, Trademarks, Certification and Authentication Marks such as the Māori *Toi-Iho*, and indigenous Labels of Authenticity are certainly signs of progress and generate pride in local communities, but remain mere *add-ons*.<sup>29</sup> They can be used to educate the public about indigenous art and culture, but they cannot stop imitations from being made. Conversely, like other Pacific Islanders, Fijians have had their own concepts of *identity*, *branding*, and *intellectual property* for centuries. Close to the pan-Fijian concept of respect for the land and customs, *vakavanua* (literally, the way of the land), are the Western geographical indications entailing a form of branding.<sup>30</sup> Several landmark cases in the Pacific region recognize a preexisting system of law among indigenous peoples inseparable from the concept of *identity*.<sup>31</sup>

These cases also suggest that neglected non-Western epistemologies may provide new concepts and modes of organizing and protecting TKEC. Fiji’s prospective Act to Protect the Indigenous Intellectual Property Rights in Traditional

Knowledge and Expressions of Culture Bill, currently under its nineteenth revision, is an IP-based *sui generis* system that creates new IP-like rights for cultural heritage. The bill will protect TKEC against illicit use normally protected by copyright law. It will give exclusive rights to traditional owners and custodians who can then authorize or prevent others from undertaking certain acts in relation to their TKEC. It will also establish a Code of Ethics in relation to use of TKEC. That is, traditional owners and custodians, such as the Sawau, will hold moral rights to their TKEC.

The Traditional Knowledge and Expressions of Culture Bill is reflected in revisions of the Model Law on Traditional Knowledge and Expressions of Culture (hereafter Pacific Model Law), initiated by the Secretariat of the Pacific Community and developed under the aegis of UNESCO and WIPO. It is derived from the Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture conceived in February 1999 in Noumea at the Symposium on the Protection of Traditional Knowledge and Expressions of Traditional and Popular Indigenous Cultures in the Pacific Islands, which brought together representatives from 21 states and territories of the South Pacific region. On that occasion Māori scholar Aroha Te Pareake Mead emphasized the need to develop a specific, *sui generis*, regional legal framework for the Pacific. Unlike Western intellectual property rights legislation, it should be designed to incorporate ancestral customs and rules in protecting all aspects of traditional knowledge and culture.<sup>32</sup> This instrument would establish for the first time in the Pacific region new communal, perpetual, inalienable, and exclusive traditional and moral cultural rights, related to but distinct from intellectual property rights.<sup>33</sup>

The Pacific Model Law approach legislates traditional and moral rights over traditional knowledge and expressions of culture that previously might have been regarded as part of the public domain. Once the state classifies TKEC as a segment of its own public domain, it controls its usage.<sup>34</sup> From the beginning Pacific Islanders interested in protecting TKEC debated whether to follow western legal models or establish a new system based on how traditional cultural custodians conceive ownership and protection. Stakeholders increasingly called for indigenous models of protection of their TKEC, as exemplified in the Mataatua Declaration in New Zealand, the Julayinbul Statement on Indigenous Intellectual Property Rights in Australia, and the Paoakalani Declaration in Hawai'i. Such indigenous declarations of cultural rights, like intellectual property rights conventions, are often nonbinding, unenforceable "soft laws."<sup>35</sup>

Currently under revision in Fiji, Vanuatu, Palau, and Papua New Guinea, the Pacific Model Law represents a major advance in contributing to the international rights discussion without incurring a procedural uniformity that threatens cultural diversity.<sup>36</sup> The Pacific Model Law provides a hybrid national and regional approach. It establishes a regional legislative framework, but leaves matters of implementation to policy-makers in accordance with their national laws and systems. The Pacific Model Law encourages the inclusion of customary law and



traditional governance systems in national legislation over cultural property rights. It recognizes that the traditional custodians of TKEC should remain the primary decision-makers regarding the use of TKEC, following their customary forms of protection. It thus ensures that the creativity and innovation found in traditional cultures will continue to benefit local communities. Although the content of Fiji's nineteenth revision of the Traditional Knowledge and Expressions of Culture Bill remains confidential, there is an indication that the legislature has been evaluating the establishment of a Traditional Knowledge and Cultural Expressions Authority. This would consist of a Traditional Knowledge and Cultural Expressions Council and a Resource and Clearance Centre for TKEC composed of a chairman and four or five recognized holders of TKEC that may meet at least four times a year. The members would be appointed by the minister, in consultation with the Bose Levu Vakaturaga (Great Council of Chiefs) for a term of 3 years, and would be eligible for reappointment for only one other term.

### FIJI'S TANGIBLE TEMPLATE

The Cultural Mapping Programme was started in May 2005 by the Institute of Fijian Language and Culture "to effectively police the Traditional Knowledge and Expressions of Culture Bill, at whose root is the preservation and maintenance of traditional knowledge and expressions of culture, with its requirements of consent from the traditional owners of traditional knowledge and expressions of culture for non-customary purposes."<sup>37</sup> The Cultural Mapping Programme takes the form of a database system, using a computer application in Fijian language that was specifically designed for the project by a local software company. The database contains text, images, and video and audio recordings, representing "the first indigenous knowledge database ever compiled in the country."<sup>38</sup> Given the issue of confidentiality in both the cultural mapping process and the resulting database, the inventory has not been put online or made accessible to persons outside the indigenous Fijian community. Database viewing is restricted to the institute's senior officers. However, to make the information available for general public viewing and use, custodians must be informed and their consent sought. Information will only be available to custodians of traditional knowledge and expressions of culture, their tribe, clan, and family members, upon the initial approval of informants (traditional owners).<sup>39</sup>

In Fiji's database, the people are still the traditional owners, and are still the creators and makers. The Institute [Institute of Fijian Language and Culture] is acting only as a facilitator. Fiji's Cultural Mapping Programme offers *sui generis* protection measures in lieu of western intellectual property law and treats TKEC as communal property.<sup>40</sup>

Moreover, once the Traditional Knowledge and Expressions of Culture Bill becomes law, "collections and databases of traditional cultural expressions will re-

ceive *sui generis* protection not only over how traditional cultural expressions are expressed, but also over the content and ideas represented by those expressions.”<sup>41</sup>

Although the institute’s recommended guidelines for cultural research policy in Fiji were recently adopted as a “template” by all the Pacific Island nations involved in cultural mapping processes,<sup>42</sup> Director Misiwaini Qereqeretabua points out the enormous challenges of mapping the 1179 villages scattered in the 15 provinces that compose Fiji and the island of Rotuma, each one with its own distinct local knowledge and cultural system. On top of government funding constraints, the Cultural Mapping Programme is encountering a series of difficulties:

Disputes between members of the local communities regarding ownership . . . The mentality of most Fijian villagers is focused more on monetary gains rather than cultural safeguarding and revitalization. Hence it is often difficult to convince them to take up the initiative themselves, considering an apathetic youthful population in local communities . . . Often villages are less enthusiastic about the initiative . . . More than often there were signs of non-interest shown by communities of traditional holders for they see no economic benefit.<sup>43</sup>

## THE SAWAU PROJECT

Free from the obstacles of the Cultural Mapping Programme, such as “miscommunication within the Fijian administration, delays in approval of requests from Finance, and slow processes for release of quarterly grants,”<sup>45</sup> the initial goal of *The Sawau Project* has been to record and protect important elements of the Sawau’s cultural heritage in ways that the community has decided upon.

*The Sawau Project* is a *story map* that grounds its navigational architecture in the geography of Beqa itself, allowing viewers to scroll and select their paths through the cultural data assembled. Indigenous knowledge and culture is scattered in the minds of many members of a community, but rarely collected in the form of a map, hence they are quite difficult to envision. The story map becomes a locus where Sawau villages, cultural sites, and memories are reclaimed and safeguarded.

With the consent of the Tui Sawau (Paramount Chief of the Sawau tribe) and the Sawau clan members, the goal of *The Sawau Project* became to prevent misuse, misinterpretation, and misconception of the Sawau’s cultural heritage (mainly the *vilavilavevo* firewalking ceremony).<sup>46</sup> The audiovisual documents of *The Sawau Project* remain in Fijian language and are open only to Sawau community members and researchers who have obtained joint permission from the head of the Naivilaqata priestly clan and the Tabana Ni Vosa kei iTovo Vakaviti (Institute of Fijian Language and Culture). This creative work of digital media was intentionally designed for minimal circulation and shown in limited academic contexts.

A growing number of indigenous groups are using the Internet to archive their written and visual records, vanquishing the old stereotype of the “lost tribe” standing passively in the face of the overwhelming forces of modernity.<sup>47</sup> *The Sawau*



FIGURE 4. Dakuibeqa, January 2005. Marika Tivitivi helps reconstructing the genealogical chart for the Naivilaqata clan, the traditional custodians of the *vilavilairevo* ceremony. The chart lists 275 individuals, going back eight generations.

*Project* could have been made broadly available on the Internet from the very beginning. However, Sawau members felt they would be unable to control how other people might appropriate their images, resulting in negative consequences for the community. Although funding, connectivity, and digital access are definitely also issues to consider, it seems like any determination of the group's specific needs with regard to the Internet approach to the project should wait at least until Fiji's Traditional Knowledge and Expressions of Culture Bill becomes an enforceable law.

### IMPLICATIONS OF THE SAWAU PROJECT

Over the last two decades, indigenous uses of new technologies have grown out of the emergence of a global politics of indigeneity, a boom in cultural tourism, and debates over what constitutes and who owns intellectual property and cultural knowledge.<sup>48</sup> Formerly, indigenous peoples relied on oral transmission to communicate and conserve their ideals, morals, and stories. Indigenous media producer, Jeremy Torrie, argues that “kept among blood relations, such a mechanism for maintaining traditional knowledge is ingenious, portable, and indestructible, unless the community that holds the knowledge is wiped out.”<sup>49</sup> Folklore and performance studies scholars argue that new measures intended to conserve, safeguard, and sustain non-Western cultural practices actually objectify and isolate them. They risk freezing practices that were formerly mutable.<sup>50</sup> However, *The Sawau Project's* use of new media—paralleled by recent digital archiving projects in Australia and North and South America—shows that people can reach selectively into their pasts to open paths to a dynamic future.<sup>51</sup>

*The Sawau Project* is an ever unfolding, open-ended project. In Ginsburg's words, the beauty and value of these media are *extratextual*, "created by the cultural and social processes they mediate, embody, create, and extend."<sup>52</sup> It encourages further research and offers the opportunity for the entire Sawau community to participate by adding more photographs and information about their heritage. Thus, it does not freeze culture in a historic moment, as in a fixed medium such as a book or a film. *Cultural mapping* becomes a way for displaying spatial human cognition and a fundamental tool for communicating awareness on managing indigenous resources and the protection of both tangible and intangible indigenous cultural heritage. Such cultural heritage projects allow control over the creative process and distribution of TKEC.

Although I cannot disagree with Hennessy that the use of a tripod would have certainly "elevated the DVD viewing experience,"<sup>53</sup> *The Sawau Project* shows that new methodologies can be created to meet the demand for social intervention in situ to preserve traditional forms and symbols. *The Sawau Project* is not a *disappearing world* documentary where the anthropologist is a consultant to a television crew and the social intervention lies in educating foreigners about an exotic culture or evoking empathy through glamorous ethnographic filmmaking.<sup>54</sup> The project aims to telescope Sawau's heritage, encouraging a sui generis protection. Not a documentary, but merely a montage of documents, the project creates an inventory of sites, stories, and shared memories of the Sawau people. *The Sawau Project* listens to the native agenda, allows local control, and allows for the dynamic and metacultural nature of the intangible cultural heritage it records. *The Sawau Project* represents a *crossover* between applied visual and legal anthropology, a form of social intervention in situ; a sui generis approach to intangible cultural property strategies for positive protection; and a reflexive tool to encourage research capability, pedagogical visual methodologies, and linkages and institutional collaborations among Fijian communities.<sup>55</sup>

My experience assisting and observing the team of native researchers involved in the Cultural Mapping Programme suggests that they face quite a challenging task in creating enough intellectual and emotional distance between themselves and their own culture.<sup>56</sup> The "insider" researcher has to be just as ethical and respectful, reflexive, and critical as the "outsider" researcher. The insider may receive even less pardon for any faux pas than the outsider.<sup>57</sup> "Collaboration in its various forms is now a necessity."<sup>58</sup> Despite the fact that I and two *Westernized* members of the chiefly family had been behind the project, and that it was endorsed by the Sawau paramount chief and sponsored by the Institute of Fijian Language and Culture, watching the Sawau members' enthusiastic responses led me to believe that the project was not informed by the *hegemonic* ruling elite. *The Sawau Project* is not an apotheosis of chieftdom, but a celebration of traditional customs using digital technology.

To the Sawau people, the images contained in *The Sawau Project* represent something more than just a legal tool. They brought to life the awareness of the passage

of time, the weight of their grandfathers, and a new self-consciousness. Participants became spectators of their own social narratives and aesthetic dramas. Most of them had never been behind the camera “Navajo style” and had not taken part in the cultural mapping process. However, while viewing the DVD, these social actors became agents as they raised concerns about fundamental ideas and codes of their culture.<sup>59</sup> The project is not part of a social revolution, either, because Fijian villagers are not plagued by any form of *social oppression*. Instead, the project is a response to external pressures: dominant hegemonic forces and agents of change and distortion, such as the Methodist and Pentecostal churches and the tourism industry. Only time will provide a conclusive answer regarding the effect of *The Sawau Project*, because it was designed to be continued.

What I believe is the real challenge, however, is to follow the agency, architecture, and effects of the three-layered flow of legal ideas *associated* with traditional knowledge and cultural expressions in light of Fiji’s troubled present and past. The recent developments of December 5, 2006, show that the rule of law along with customary laws and the centrality of chiefly authority in Fiji are at stake, or collapsed. The burden on chiefs and on the stakeholders in the digital era and modern day Fiji is greater than ever before. The December coup d’état, the fourth in Fiji, is not just a single event about political or economic power. Rather, like other conflicts elsewhere in the Pacific and in the world, it is a transformative process rooted in contested views of the past, critically forcing the local actors toward compromises and renegotiations in their conceptions of their tradition, identity, and heritage in the light of new democratic and constitutional needs.

Riles observes that one immediate concern of Fiji’s first governor, Sir Arthur Gordon, was “the degree and measure in which native laws and customs should be preserved in force, and how far English law should be at once generally introduced.”<sup>60</sup> In Gordon’s words, the danger is that the common law “would degrade the chiefs and render them idle.”<sup>61</sup> Fiji’s proposed *dual* IP system, composed of a *sui generis* legislation side by side with a Copyright Act may vaguely remind us of the Native Code based on Fijian customary law, in addition to the common law envisioned by Gordon more than 130 years ago; however, there is hope that safeguarding heritage policies in Fiji and in Oceania not only reinforces the idea that cultural property is a human right, but reveals that self-development and self-determination, in a different way than in the past, are central to issues of cultural representation.

## ENDNOTES

1. See Ginsburg, “Native Intelligence.”
2. “Introduction,” 9.
3. Brown, “Can Culture Be Copyrighted?” 203; see also *Who Owns Native Culture?*
4. Preliminary surveys in Fiji were conducted for 2 months in 1999 and 2002.
5. See Geismar, “Copyright in Context,” *Recht*, this volume.
6. Pigliasco, *The Custodians of the Gift*.
7. “A Ituva Ni Vakadidike,” 91.

8. A one-minute prototype was created with help from the Media Centre of the University of the South Pacific. On behalf of the Sawau chiefly family, I took it to the Fiji Museum, the Media Centre of the Secretariat of the Pacific Community Office in Suva, and the Ministry of Information, Communications and Media Relations. The Institute of Fijian Language and Culture expressed interest in the project; it was then promptly endorsed by the Ministry of Fijian Affairs, Culture and Heritage in conjunction with the Cultural Mapping Programme. Felix Colatanavanua and I were given access to the institute's equipment and software to edit the DVD. The editing started in May 2005 and continued until October 2005.

9. Felix Colatanavanua envisioned how to visually represent the Sawau heritage. He had returned from living in Canada, where he had been working in film production, about the same time I arrived in Beqa. *The Sawau Project* intersected with his desire, and that of his mother, the Tui Sawau's sister Ro Mereani Tuimatanisiga (also recently returned from England), to take up responsibility for their people and the land. Ro Mereani Tuimatanisiga's speech in Fijian language opens the 5-minute video introduction.

10. Pigliasio, *The Custodians of the Gift* and "Sorry, We Branded Ourselves."

11. Pigliasio, "Sorry, We Branded Ourselves." The Fijian firewalking ceremony (*vilavilaivo*) traditionally performed only by members of the Naivilaqata priestly clan (*bete*) of the Sawau tribe on the island of Beqa, is a prime example of a propitiation ritual that has become commodified to suit the requirements of tourism. Currently, the reproduction of tradition on Beqa is shaped by social processes such as globalization and commodification. Simulated and spurious *vilavilaivo* performances along with new forms of misappropriation and misrepresentation are accompanying the tourism industry's rapid developments in Fiji (see Pigliasio, "Voyaging through Epistemological Boundaries").

12. De Burlo, "Cultural Resistance and Ethnic."

13. Lindstrom, "Traditional Cultural Policy," 69–70; *In re the Nagol Jump, Assal and Vatu v. Council of Chiefs of Santo* (1980–1994) Van LR 545.

14. See Lucas-Schloetter, "Folklore."

15. Geismar, "Copyright in Context," Kurin, "Safeguarding Intangible Cultural Heritage," Robins, "Comment to Adam Kuper," Sahlins, "What Is Anthropological Enlightenment?" and Silverman, "Cannibalizing, Commodifying or Creating."

16. Hennessy, "A *Ituva Ni Vakadidika*," 91; see the recent online multivocal ethnographic project initiated by anthropologists Thorolf Lipp and Martina Kleinert in collaboration with the Sa people from Bunlap, Pentecost Island, Vanuatu, <http://www.ursprung-in-der-suedsee.de> (accessed June 19, 2009).

17. Lessig, *Free Culture: How Big*.

18. *Who Owns Native Culture?* 237.

19. *Free Culture: How Big*, 9.

20. "Foreword: The Opposite."

21. Boyle, "Foreword: The Opposite," 42.

22. *Free Culture: How Big*.

23. "Fear, Hope, and Longing," 1181.

24. Coombe, "Cultural Rights and Intellectual," 35.

25. See also Moutu; this issue.

26. Strathern, "Introduction: Rationales of Ownership."

27. Leach, "Modes of Creativity," 154, 162.

28. Pigliasio, *The Custodians of the Gift* and "Sorry, We Branded Ourselves."

29. The *Toi-Iho* certification mark has been registered by Creative NZ, a New Zealand government agency that intends to eventually transfer it to a Maori-run body (Maui Solomon, personal communication).

30. Pigliasio, "Sorry, We Branded Ourselves."

31. Compare *Mabo and Others v. Queensland* ([No 2] (1992) 175 CLR 1); *Wik Peoples v. Queensland* (1996 187 CLR 1).

32. Aroha Mead, personal communication, "Dialogue on Pacific Experiences and Perspectives on the Use and Ownership of Genes" (Call of The Earth Llamado de la Tierra, June 6, 2005, Suva).

33. Defined by the Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture at part 3(13).

34. This is similar to the imposition of *domaine public payant*, the French concept requiring a payment of royalties for the use of literary and musical works in the public domain, advocated in the 1976 Tunis Model Law.

35. "Soft laws" often do not establish the terms of protection or provide any protection against unauthorized performance or fixation, reproduction, or broadcasting and other communication to the public of traditional cultural forms (i.e., Rome Convention, 1961). They may be vague in referring to unspecified "works of folklore" (i.e., Art. 15(4) of the Berne Convention, 1967) and fail to protect the moral rights of the authors while contributing to commodification of cultural property (i.e., TRIPS, Art. 2.1; 14.1; 39.3).

36. Pigliasco, "Local Voices, Transnational Echoes."

37. Sipiriano Nemani, personal communication.

38. Sipiriano Nemani, personal communication.

39. Sipiriano Nemani, personal communication.

40. Sipiriano Nemani, personal communication.

41. Sipiriano Nemani, personal communication.

42. Ralph Regenvanu, personal communication.

43. Qereqeretabua, "Cultural Mapping: An Approach," 6.

44. Illustration by David R.W. Hamilton-Jones.

45. Sipiriano Nemani, personal communication.

46. In addition to the *vilavilairevo*, a visual document of the legendary fish drive (*qoli kubu*) performed by the fishermen clan (*gonedau*) of the Sawau tribe on special occasions, is temporarily inserted in the video introduction. In May 2009 additional footage was taken in Dakuibeqa to document the process of making of the new fishing net (*lawa*).

47. Wilson and Stewart, "Indigeneity and Indigenous Media," 21, 30; see also Christen, "Gone Digital: Aboriginal Remix."

48. Christen, "Gone Digital: Aboriginal Remix;" Gregory, "Transnational Storytelling: Human Rights."

49. Torrie, "An Epic Battle," 16.

50. Brown, *Who Owns Native Culture?* and "Heritage Trouble: Recent Work;" Kirshenblatt-Gimblett, "Intangible Heritage as a Metacultural."

51. Christen, "Gone Digital: Aboriginal Remix," 318; Clifford, "Looking Several Ways," 23; Graham, "Image and Instrumentality," 625.

52. Ginsburg, "Embedded Aesthetics: Creating," 370; quoted in Hennessy, "A *Ituva Ni Vakadidike*," 91.

53. Hennessy, "A *Ituva Ni Vakadidike*," 91.

54. Banks and Morphy, *Rethinking Visual Anthropology*.

55. See Pigliasco, "Visual Anthropology and Jurisprudence."

56. See Clifford, "Spatial Practices: Fieldwork, Travel"; and Ohnuki-Tierney, "Critical Commentary: Native Anthropologists."

57. See Tuhiwai-Smith, *Decolonizing Methodologies: Research*.

58. Lassiter, *The Chicago Guide*, 74.

59. Geertz, *The Interpretation of Cultures*.

60. Gordon quoted in Riles, "Law as Object," 193.

61. Gordon quoted in Riles, "Law as Object," 194.

## BIBLIOGRAPHY

Banks, Marcus, and Howard Morphy, eds. *Rethinking Visual Anthropology*. New Haven, CT: Yale University Press, 1997.

- Boyle, James. "Foreword: The Opposite of Property?" *Law and Contemporary Problems* 66, no. 1–2 (2003): 1–74.
- Brown, Michael F. "Can Culture Be Copyrighted?" *Current Anthropology* 39, no. 2 (1998): 193–206.
- . "Heritage Trouble: Recent Work on the Protection of Intangible Cultural Property." *International Journal of Cultural Property* 12 (2005): 40–61.
- . *Who Owns Native Culture?* Cambridge: Harvard University Press, 2003.
- Christen, Kimberly. "Gone Digital: Aboriginal Remix and the Cultural Commons." *International Journal of Cultural Property* 12 (2005): 315–45.
- Clifford, James. "Looking Several Ways: Anthropology and Native Heritage in Alaska." *Current Anthropology* 45, no. 1 (2004): 5–30.
- . "Spatial Practices: Fieldwork, Travel, and the Disciplining of Anthropology." In *Anthropological Locations: Boundaries and Grounds of a Field Science*, edited by A. Gupta and J. Ferguson, 185–222. Berkeley: University of California Press, 1997.
- Coombe, Rosemary. "Cultural Rights and Intellectual Property Debates." *Human Rights Dialogue (Carnegie Council on Ethics and International Affairs)* (Spring 2005): 34–36.
- . "Fear, Hope, and Longing for the Future of Authorship and Revitalized Public Domain in Global Regimes of Intellectual Property." *DePaul Law Review* 52 (2003): 1171–91.
- De Burlo, Chuck. "Cultural Resistance and Ethnic Tourism on South Pentecost, Vanuatu." In *Tourism and Indigenous People*, edited by R. Butler and T. Hinch, 257–76. London: International Thomson Business, 1996.
- Geismar, Haidy. "Copyright in Context: Carvings, Carvers, and Commodities in Vanuatu." *American Ethnologist* 32, no. 3 (2005): 437–59.
- Geertz, Clifford. *The Interpretation of Cultures: Selected Essays*. New York: Basic Books, 1973.
- Ginsburg, Faye. "Embedded Aesthetics: Creating a Discursive Space for Indigenous Media." *Cultural Anthropology* 9, no. 3 (1994): 365–82.
- . "Native Intelligence." In *Visions of Culture: A History of Visual Anthropology*, edited by J. Ruby and M. Banks. Chicago: University of Chicago Press, f.c.
- Ginsburg, Faye, Lila Abu-Lughod, and Brian Larkin. "Introduction." In *Media Worlds: Anthropology on New Terrain*, edited by F. Ginsburg, L. Abu-Lughod, and B. Larkin, 1–36. Berkeley: University of California Press, 2002.
- Graham, Laura. "Image and Instrumentality in a Xavante Politics of Existential Recognition: The Public Outreach Work of Eténhiritipa Pimentel Barbosa." *American Ethnologist* 32, no. 4 (2005): 622–41.
- Gregory, Sam. "Transnational Storytelling: Human Rights, WITNESS, and Video Advocacy." *Visual Anthropology Review* 108, no. 1 (2006): 195–204.
- Hennessy, Kate. "A Ituva Ni Vakadidike E Sawau: The Sawau Project DVD." *Visual Anthropology Review* 25, no. 1 (2009): 90–2.
- Kirshenblatt-Gimblett, Barbara. "Intangible Heritage as a Metacultural Production." *Museum International* 56, no. 1 (2004): 45–65.



Kurin, Richard. "Safeguarding Intangible Cultural Heritage in the 2003 UNESCO Convention: A Critical Appraisal." *Museum International* 56, no. 2 (2004): 66–77.

Lassiter, Luke E. *The Chicago Guide to Collaborative Ethnography*. Chicago: University of Chicago Press, 2005.

Leach, James. "Modes of Creativity." In *Transactions and Creations: Property Debates and the Stimulus of Melanesia*, edited by E. Hirsch and M. Strathern, 151–75. New York: Berghahn, 2004.

Lessig, Lawrence. *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. New York: Penguin, 2004.

Lindstrom, Lamont. "Traditional Cultural Policy in Melanesia (Kastom Polisi long Kastom)." In *Culture, Kastom, Tradition: Developing Cultural Policy in Melanesia*, edited by L. Lindstrom and G. White, 67–81. Institute of Pacific Studies, University of the South Pacific, Suva, 1994.

Lucas-Schloetter, Agnès. "Folklore." In *Indigenous Heritage and Intellectual Property: Genetic Resources, Traditional Knowledge and Folklore*, edited by S. von Lewinski, 257–377. The Hague: Kluwer Law International, 2004.

Mead, Aroha. Personal communication, Call of the Earth Llamada de la Tierra, June 6, 2005, Suva.

Nemani, Sipiriano. Personal communication to the author May 10, 2005, Suva.

Ohnuki-Tierney, Emiko. "Critical Commentary: Native Anthropologists." *American Ethnologist* 11, no. 3 (1984): 584–86.

Pigliasco, Guido Carlo. *The Custodians of the Gift: Intangible Cultural Property and Commodification of the Fijian Firewalking Ceremony*. PhD thesis, University of Hawai'i at Mānoa, 2007.

———. "Local Voices, Transnational Echoes: Protecting Intangible Cultural Heritage in Oceania." In *Sharing Cultures 2009: International Conference on Intangible Heritage*, edited by S. Lira, R. Amoêda, C. Pinheiro, J. Pinheiro and F. Oliveira, 121–27. Barcelos, Portugal: Green Lines Institute, 2009.

———. "Sorry, We Branded Ourselves Long Ago: Cultural Property and Commodification of Fijian Firewalking." Submitted to *American Anthropologist* on May 17, 2009 f.c.

———. "Visual Anthropology and Jurisprudence: The Sawau Project." *Anthropology News* 48, no. 1 (2007): 65.

———. "Voyaging through Epistemological Boundaries: Intangible Cultural Heritage Protection in Fiji and Oceania." In *Social Movements Between Cultural Heritage and the State*, edited by K. Rio and E. Hviding. Oxford: Sean Kingston, in press.

Pigliasco, Guido Carlo, and Felix Colatanavanua. *A Ituvatuva Ni Vakadidike E Sawau (The Sawau Project)*, DVD. Suva, Fiji: Institute of Fijian Language and Culture, 2005.

Qereqeretabua, Misiwaini. "Cultural Mapping: An Approach to Safeguarding Indigenous Fijians' Intangible Cultural Heritage." Paper presented at the Asia/Pacific Cultural Centre for UNESCO Training Course for Safeguarding of Intangible Cultural Heritage, Tokyo, Osaka, and Kyoto, Japan, January 21–26, 2008.

Regenvanu, Ralph. Personal communication to the author March 26, 2009, Honolulu.

Riles, Annelise. "Law as Object." In *Law and Empire in the Pacific: Fiji and Hawai'i*, edited by S. E. Merry and D. Brenneis, 187–212. Santa Fe, NM: School of American Research Press, 2003.

Robins, Steven. "Comment to Adam Kuper 'The Return of the Native.'" *Current Anthropology* 44, no. 3 (2003): 398–99.

Sahlins, Marshall. "What Is Anthropological Enlightenment? Some Lessons of the Twentieth Century." *Annual Review of Anthropology* 28 (1999): i–xxiii.

Silverman, Erik Kline. "Cannibalizing, Commodifying or Creating Culture? Power and Art in Sepik River Tourism." In *Globalization and Culture Change in the Pacific Islands*, edited by V. Lockwood, 339–57. New York: Prentice-Hall, 2004.

Solomon, Maui. Personal communication to the author July 29, 2006, Honolulu.

Strathern, Marilyn. "Introduction: Rationales of Ownership." In *Rationales of Ownership: Ethnographic Studies of Transactions and Claims to Ownership in Contemporary Papua New Guinea*, edited by L. K. Kalinoe and J. Leach, 1–12. Wantage, UK: Sean Kingston Publishing, 2001.

Torrie, Jeremy. "An Epic Battle of Whales, Rabbits and Warriors." *Cultural Survival Quarterly* 29, no. 2 (2005): 16–17.

Tuhiwai-Smith, Linda. *Decolonizing Methodologies: Research and Indigenous Peoples*. London: Zed Books, 1999.

Wilson, Pamela, and Michelle Stewart. "Indigeneity and Indigenous Media on the Global Stage." In *Global Indigenous Media: Cultures, Poetics, and Politics*, edited by P. Wilson and M. Stewart, 1–35. Durham, NC: Duke University Press, 2008.