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Keeping *Rong* from Wrong: The Identification and Protection of Traditional Intellectual Property in Chuuk, Federated States of Micronesia

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Abstract: This discussion reviews the differences between traditional Micronesian principles regarding traditional knowledge, or 'esoteric' knowledge, and Western copyright laws, which have been used in the expropriation and legal alienation of traditional knowledge. We consider this conflict in relation to contemporary Native American intellectual property issues and tribal responses for the protection of such knowledge and to control research activities. This is compared with the recent international and Pacific Islands governments' concerns and actions regarding commodification and misappropriation of traditional knowledge, including the new Pacific Model Law. Finally, we review the nature of traditional knowledge in Chuuk State and its current status and recommend specific steps that the Federated States of Micronesia might take legislatively to protect traditional knowledge as part of its significant cultural heritage.

INTRODUCTION

Legal systems in non-Western indigenous communities represent a complex of principles and precedents that correspond to common and civil law systems in Western developed nations. These principles and precedents provide for the or-

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derly regulation of society, including rights in real and intellectual property. Although the exact nature of a legal system may vary significantly from one society to another, it ordinarily defines property rights and protections for those rights.

This article examines the fundamental differences between American legal concepts regarding intellectual property and those in the traditional legal system of the communities of the Mortlock Islands, Chuuk State, Federated States of Micronesia. Today these differences disadvantage indigenous traditional law and permit the expropriation and alienation of traditional knowledge. Both ethical and legal remedies are required to protect traditional intellectual property rights and prevent their unauthorized use. This perspective draws on recent worldwide indigenous rights movements and examples from Native American communities in the United States and elsewhere where this has also been a significant issue.[1]

COLONIAL LEGAL HISTORY IN MICRONESIA

Historically, colonial regimes had overall control of judicial matters in Chuuk. During the German administration, the local imperial administrator dealt with all legal matters, and there was no court system. Outer island communities, such as those in the Mortlocks, continued to handle their own internal affairs.[2] This changed with the Japanese administration's "Treatment of Judicial Affairs in the South Seas Islands" ordinances in 1923. This system gave authority to local chiefs for many types of judicial proceedings at the local and district level, while also limiting their power, and established Japanese courts with Japanese judges in major island centers.[3]

After World War II, an interim American judicial system was put into effect in 1948, with local courts using military government judicial procedures. After 1951 civil administration courts were created in the new United States Trust Territory of the Pacific Islands (USTTPI). Village leaders were authorized to judge all minor offenses in outer islands, and these chiefs and magistrates primarily followed local traditional law in reaching decisions: "Local courts need not follow American legal procedures precisely, but must abide by generally recognized local custom, provided that such Local custom does not mitigate against a just determination of the issue."[4] The new civilian USTTPI administration recognized that there were conflicts between the introduced American criminal code and the unwritten body of law known as "local custom" (i.e., traditional law), which was recognized by policy and upheld by local courts.[5] On outer island communities, local judges in most cases followed traditional law. On Ettal Island in the Mortlocks, for example, a respected man selected by the community as judge continued to use the Japanese-period land tenure book and oral histories maintained by chiefs in settling land disputes, as well as other customary laws.[6]

POSTCOLONIAL LAW IN THE FEDERATED STATES OF MICRONESIA

A key Micronesian issue in the future political status discussions in the 1970s was control of laws, leading in part to a rejection of commonwealth status, because it would have meant mandatory American approval of all Micronesian laws.[7] By the 1960s, in fact, the Congress of Micronesia was acting legislatively towards a goal of self-determination, and by 1979 the former districts of Yap, Chuuk (Truk), Pohnpei (Ponape), and Kosrae (Kusaie) became the states of the Federated States of Micronesia as a constitutional government. In 1986 a compact of free association with the United States was concluded.[8]

The first Legal Code of the Federated States of Micronesia (FSM) was completed in 1982 and revised in 1997.[9] The code addresses intellectual property in Title 36—Copyrights, Patents, and Trademarks, in a largely American way, and traditional intellectual property issues are not addressed. In October 2003 the FSM also became a member to the Berne Convention, thus reinforcing the commitment to a Western legal approach to intellectual property to protect the new creative works of its citizens.[10]

Yet, some aspects of traditional culture are addressed by the FSM Code in Title 26, Historical Sites and Antiquities: "It is the policy of the Federated States of Micronesia to protect and preserve the diverse cultural heritage of the peoples of Micronesia," while also establishing the Institute for Micronesian History and Culture which has the responsibility of providing "professional guidance regarding historic and cultural affairs and recommendations to all levels of government and the agencies thereof, as well as to foreign governments and businesses operating in Micronesia."[11]

Traditional knowledge has also recently come up in several national contexts. In August, 1998, Pacific non-governmental organizations met in Pohnpei to address, among other issues, intellectual property rights. They called on the South Pacific Forum to develop a strategy to protect intellectual property rights and traditional knowledge of indigenous communities.[12] In 1999 representatives of the FSM along with those from 20 other states and territories took part in a Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands in Noumea. This produced a Final Declaration, which proposed that "a policy for regional harmonization of the protection of traditional knowledge and expressions of traditional and popular culture" be developed, along with "practical measures of technical assistance and support for the organization of a homogenous system of legal protection, identification, conservation and control of the exploitation of indigenous culture."[13] In 2001 Pacific nation members of the Pacific Islands Forum were urged to address intellectual property rights: "Pacific Islanders should take a greater leadership role in the development of their intellectual property systems. By doing so, Pacific Islanders will enjoy more of the benefits, rather than leaving it for others to decide how these valuable resources are used."[14] One response was the creation of the Model Law

for the Protection of Traditional Knowledge and Expressions of Culture in 2002, under the auspices of the Secretariat of the Pacific Community.[15] And in 2002 the FSM government completed its *National Biodiversity Strategy and Action Plan*, which also addressed the loss of traditional ethnobiological knowledge.[16] An earlier Micronesia Ethnobotany Project report stated the following:

> The traditional leaders we spoke to in Micronesia were concerned with a related, but qualitatively and quantitatively different phenomenon. Instead of their culture changing and evolving at a relatively slow "background" rate, over the last two generations a large percentage of traditions and skills specific to Micronesia have not been passed on, and will become extinct if an active program is not put into place to keep them an active part of local life.[17]

The potential loss of traditional knowledge through a lack of preservation is thus another area of concern, reflecting the speed with which culture change has occurred in the FSM. Yet another important factor is the relocation of traditional knowledge holders beyond their home islands, or beyond Micronesia. As Marshall's recent demographic data for just one Mortlockese island shows, the extent of relocation has increased significantly in just the last 10 years.[18] If this continues, fewer holders of traditional knowledge will be left to share it with younger generations on home islands, as well as fewer children there who would grow up appreciating the value of such knowledge and learning it in their turn. Regionally, discussions involving FSM representatives have focused on the need to protect traditional knowledge, a process supported by the World Intellectual Property Organization and the Pacific Islands Forum as legislation to protect traditional knowledge is considered.[19]

Beyond the legal code, the FSM Constitution also refers to traditional culture, stating that the "traditions of the people of the Federated States of Micronesia may be protected by statute. If challenged, the protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action."[20] The Chuuk State Constitution also calls for respect for existing Chuukese custom and tradition, and, under a proposed new Section 7 to Article XI, the legislature is directed to protect intellectual property rights of people by statute, ensuring that just and fair compensation is provided to the owners of intellectual property rights.[21]

These constitutional and legal code provisions can provide the basis for the protection of traditional intellectual property rights in the Federated States of Micronesia, but only with further legislative action. Recent governmental activity in the FSM and in other Pacific Islands states show a growing concern about intellectual property protection and extends this to traditional knowledge. The Culture in a Pacific Plan document states:

> Traditional knowledge and expressions of culture have been increasingly appropriated and commercialized for profit by outside interests. In many Pacific Island countries and territories, handicrafts and souvenirs

> are being replicated and imported for sale to an unknowing tourist industry. Music and songs are recorded for publication and designs and images are being reproduced on gift-wrapping, carpets, and t-shirts. Medicines and plants have been patented overseas for commercial gain. All this has been occurring without the permission of traditional owners, frequently out of cultural context and without any benefits being shared with traditional owners.[22]
>
> The value of traditional knowledge and expressions of culture as a source of revenue is immense. Pacific Islanders are vulnerable to dispossession of their traditional knowledge and expression of culture until their rights over their own intellectual property is recognized.[23]

and

> As a rich and diverse source of creativity and innovation, traditional knowledge and expressions of culture deserve the same legal protection as provided to other forms of intellectual property.[24]

The current international debate is less about whether measures to protect traditional knowledge are necessary than how best to achieve the protection and preservation goals that have been identified. These deliberations reflect an array of cultural and political concerns, including the eradication of colonial legacies; sovereignty; cultural and ethnic identities; and, vigorous new reexaminations of cultural heritage and its preservation.

CULTURAL PROPERTY AND ESOTERIC KNOWLEDGE

Most indigenous cultural property legislation over the last three decades has focused on the related issues of the looting or other misappropriation of significant archaeological, historic, and contemporary objects, and the subsequent acquisition of those objects in the international marketplace for arts and antiquities. The 1970 UNESO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, the more recent 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, and a variety of national laws implementing these conventions are all examples of such legislation. One unique and ground-breaking national law is the Native American Graves Protection and Repatriation Act (NAGPRA, 25 USC 3001 et. seq.) passed by the United States Congress in 1990. This law fundamentally changed the status of certain Native American cultural properties, and requires their repatriation from American museums, government agencies, and educational institutions to Native American tribes. NAGPRA is relevant here because it has prompted further consideration of Native American intellectual property rights for traditional knowledge.

NAGPRA emphasizes tribal sovereignty, establishes an inalienable status for certain cultural properties considered sacred or patrimonial or funereal, and requires

their return to affiliated communities. Its property aspects have affected not only Native Americans and their representative governments and agencies, but also nonnative scholars, museums, educational institutions, government agencies, and several scholarly and professional organizations, as well as the manner in which researchers and educational institutions conduct their work. The full implications of some aspects and regulations of NAGPRA continue to be assessed, but one important implication for scholars is that research interests and scholarly *rights* are secondary to tribal heritage interests.

Many Native American communities are aware of beneficial anthropological and other research but are also well aware of many cases where traditional knowledge, including sacred knowledge, was inappropriately taken, published, and essentially removed forever from their direct control. These cases are sufficiently numerous to have created a climate where outside research is suspect, often subject to tribal controls over research ethics and methods, and even involves tribal controls over or ownership of data regarding traditional knowledge.

Because this discussion centers on traditional knowledge, it is important to define what this might encompass. Micronesian communities have accumulated extensive and detailed knowledge about the world, their history in and relationships to it, and how to effectively comprehend and use physical and nonphysical environments for their benefit. Much of this knowledge is clearly mundane, but other significant elements of this corpus of information are *esoteric* knowledge.

Esoteric knowledge here, as in Native American communities, is traditional valued knowledge owned by individuals or groups in accord with traditionally established rules of property ownership. Some knowledge, such as medicine, technologies, or oral accounts, may be highly systematic as well as cumulative in nature, and would be specifically owned or held in trust by a kinship group or by an individual representing and acting on the community's behalf. Other esoteric knowledge may be specifically created by or otherwise owned by an individual and passed on in inheritance to descendants or sold.

There are several important features of this kind of traditional knowledge that command our attention. First, this is knowledge that is *traditional* in the sense that its origins are found in a period prior to extensive contact with and subjugation to foreign culture and law. Second, this knowledge is commonly understood as subject to traditional ownership laws by virtue of its specialized and valued character. This also means that such knowledge can neither be appropriated nor alienated by others without the approval of its owners or without due compensation. Third, access to or use of some esoteric knowledge may require specialized training or other special conditions, such as being in a particular kinship relationship to the current owner. Fourth, this is a growing body of knowledge that is accretive and cumulative through time. Fifth, traditional ownership rights associated with it are held in perpetuity unless otherwise assigned or transferred in a culturally appropriate manner.

TRADITIONAL INTELLECTUAL PROPERTY IN CHUUK

In Chuuk State traditional knowledge is called *rong. Rong*, information/magic, has varied applications and is traditionally a valuable form of property. The kinds of traditional knowledge making up *rong* involve sailing canoe construction, building construction, detailed clan genealogies and land tenure, navigation and sailing information, knowledge of herbal medicine and healing arts, spirit divination, love magic, and *itang*, or specialized military knowledge. Related magical knowledge and songs or chants are components of all these types of *rong*.[25]

Rong has a number of characteristics:

- It is specialized knowledge requiring expert training.
- It usually requires mature age.
- Unless obtained from a close immediate kinsman, it must be purchased.
- Its use must be compensated by payments of valued goods.
- It is a valuable resource for the family or clan.
- It is private (i.e., not shared within the public arena except when being executed).

Thus, *rong* had clearly sanctioned traditional methods for the creation and transmission of ownership rights in it and for its use. In other words, a traditional set of legal protections akin to copyright continues to exist for this intellectual property. It is difficult to state definitively how many individuals might possess such knowledge, but Caughey suggested that in the Chuuk community he studied about one-third of adults older than age 30 possessed some form of traditional knowledge.[26] The ideal specialist is described by him as a

> a person of respectfulness, bravery, and strong thought who also controls abundant valuables. He fulfills his obligations generously, cares for numerous dependents, makes grand gifts of land, outdoes his rivals in competitive projects, and, with his bravery and special knowledge, he defeats his enemies by direct attack or sorcery.[27]

Therefore, the possessor of *rong* in Chuuk and in the Mortlocks has been regarded as an exemplar of what it means to be a successful and significant person in society, someone to be admired and emulated. Traditional knowledge confers certain attributes to its possessor and is in turn made even more valuable by the admired attributes of those who possess it and who successfully use it.

Today, many forms of *rong* are deeply buried under the cloak of current religious movements in the islands. Traditional knowledge for curing and even sorcery are still used, but these uses are not always publically acknowledged in today's communities. People are concerned about making traditional knowledge public, and especially that knowledge related to medicinal plants. To what extent *rong* survives the twenty-first century may therefore depend as much on local community attitudes about it as on governmental actions taken to ensure its protection

and preservation. It is also worth noting that aspects of heritage little regarded today may be seen to be of great value in the future, making preservation against that possibility even more important.

ETHICS, COPYRIGHT, AND TRADITIONAL KNOWLEDGE

Micronesian traditional knowledge was at risk beginning in the late nineteenth century. Missionary activities undermined group ownership of property and ideas about magic and religion. Colonially introduced Japanese and American educational systems supplanted, or tried to supplant, the value of such knowledge with putatively more valuable foreign knowledge. The post-1960s boom in government employment and all that such wages brought emphasized nontraditional learning. Young people on outer islands might leave for school and thus were not in their home communities to learn it. This was compounded by the deaths of older specialists who have had no apprentices, and by the out-migration of specialists to the United States. The introduction and importance of many foreign goods (i.e., motorboats and medicines) has led to the reduction or end of the application and use of some traditional skills in various communities (i.e., canoe building and traditional healing).

Another obvious risk to traditional knowledge comes about because Western concepts of copyright do not recognize traditional legal standards. Therefore, Western copyright law can be used by outsiders who gain access to such knowledge to expropriate it. For example, where a researcher draws the line on what information is acquired or used depends on several factors, including the degree to which the researcher is aware of restricted status of such information; how it is acquired (i.e., by purchase); and the nature of the relationships between an informant and researcher, or the family (or community) and the researcher, and whether true informed consent has been obtained. These issues are rooted in the nature of professional ethics.

The discussions in American Anthropology about research ethics and related guidelines date especially from the Principles of Professional Responsibility of the American Anthropological Association in 1971. Some disagreement and uncertainty about several 1971 principles include who has access to information, who should determine what is or is not in a community's best interests, and the promotion of community interests.[28] Obviously, there is a wide range of individual discretion with regard to these ethical principles, just as there is no disciplinary mechanism when ethical guidelines boundaries are thought to have been crossed. This has contributed to the widely held impression in Native American and other indigenous communities that anthropologists and other outsiders will violate community trust, acquire inappropriate and restricted traditional knowledge, and publish and copyright such information for their own benefit without compensation to community or individuals. Unfortunately, this perspective is bolstered by sev-

eral cases where all this has occurred. There is an increasingly widespread international indigenous belief that misappropriation, expropriation, and misuse of traditional knowledge has occurred and will continue unless it is prevented by proactive steps which are either ethical, legal, or both. This is in turn driven by the fact that Western copyright law permanently alienates any traditional owner's rights to such knowledge once it has been acquired by an outsider and copyrighted.

Any researcher can publish data they have acquired through their research and receive copyright for that data as the original creator of that information, with a current duration of protection of their lifetime plus 70 years (in the United States, 17 USC §106 et. seq.). This is usually because there has been no prior recording or other tangible, fixed form of that information that has received comparable legal protection.

Copyright does not and cannot inherently protect most if not all of the esoteric knowledge that comprises traditionally recognized and protected intellectual property. Copyright does not apply because there usually is no single original creator but rather a traditional group of holders and creators who, through time, have created a particular body of knowledge, with generational *trustees* who hold the knowledge. Further, the rights of owners are not temporally limited in traditional law, nor is all such esoteric knowledge eligible by traditional standards to be recorded in some fixed format for transmission. From another perspective, Western copyright laws are ideologically intended to ensure that artistic, literary, and other innovations are, by virtue of the protection of their creators' rights, made available for the enrichment of all in society, while ultimately placing these products in the public arena. In contrast, traditional indigenous legal protections for intellectual property are designed to protect and preserve valued cultural heritage of lasting importance to the society, as well as ensuring its appropriate performance or use in society through specified group or individual ownership through time, without the possibility of such knowledge entering the public arena.

Commercial and academic research seeking traditional knowledge has increased exponentially since World War II as more and more researchers enter indigenous communities and the monetary value of especially ethnopharmaceutical knowledge increases. The absence of means to acknowledge, protect, and preserve traditional rights and requisite compensation for the acquisition of such knowledge has heightened community concerns and forms the basis for recent actions to ensure its protection.

In the United States, for example, many Native American governments have instituted a variety of measures to control access to and ownership and copyright of traditional knowledge, including their own mandatory ethical codes for researchers and legal contracts requiring various degrees of oversight of and/or involvement in research activities, as well as their ownership of research data.[29] What has not occurred yet is the development of tribally originated laws, such as tribal copyright laws that would institute broadly applied tribal legal protections for traditional knowledge, as opposed to individual contractual agreements.

CHARACTERISTICS OF AN INDIGENOUS INTELLECTUAL PROPERTY RIGHTS LAW

Indigenous communities have explored legal mechanisms that would ensure their rights of ownership for valued cultural property, including intangible cultural property. International attention on this issue has been highlighted by the work of the Commission on Human Rights in the United Nations, and the 2007 adoption of the Declaration on the Rights of Indigenous Peoples.[30] Of key interest here are two of its articles. Article 11 states the following:

> Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present, and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious, and spiritual property taken without their free, prior, and informed consent or in violation of their laws, traditions, and customs.[31]

The Third Ministerial Meeting of the World Trade Organization (WTO) in Seattle in early December 1999 also prompted the release of an Indigenous Peoples' Seattle Declaration and Recommendations, which included the following recommendation for an amendment to Article 27.3.b. of the Trade Related Aspects of Intellectual Property Rights Agreement of the WTO:

> 2.3.c.—It should ensure the exploration and development of alternative forms of protection outside of the dominant western intellectual rights regime. Such alternatives must protect the knowledge and innovations and practices in agriculture, health care, and conservation of biodiversity, and should build upon indigenous methods and customary laws protecting knowledge, heritage, and biological resources.[32]

In the Pacific, these concerns were earlier expressed in the 1993 Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, which set forth basic principles that were submitted to the United Nations group considering indigenous rights. Among these basic principles are the fundamental rights of indigenous people to define, control, manage, and benefit from their own traditional knowledge. These principles reflect continuing concerns with the expropriation of traditional knowledge, especially with the commercialization of such knowledge. Haira, who worked with the South Pacific Forum on the development of the Model Law, has discussed the possibility of sui generis law, contracts, and other mechanisms to protect indigenous traditional knowledge.[33] Reviewing the issues she suggests that it will be necessary to use a *package* of measures, including contracts, trademarks of motifs, codes of ethics, databases of traditional knowledge, certification registers for authenticity, benefit-sharing legislation, informed consent, legal applications of such principles as breach of confidence and unfair

competition, standard Western copyright law protections for new works derived from a traditional knowledge context, and new intellectual property laws containing unique components related to traditional knowledge.[34]

These suggestions mirror the recommendations made at the 1999 Pacific Regional Seminar on initiatives to safeguard and preserve traditional culture and its possessors. Proposals included documentation as well as promotion of relevant cultural agencies and also new approaches to monitor and insure accountability of foreign researchers. This also led to resolutions to develop copyright laws with sui generis protections for traditional knowledge and create government policies to protect cultural heritage and its owners.[35]

Finally, a Model Law emerged from the partnership of the Cultural Affairs Programme of the South Pacific Community with the Pacific Islands Forums Secretariat and UNESCO. This was, as noted earlier, the result of interests expressed by Pacific Island nations to create ways to keep control over and profit from any commercial activity in their traditional knowledge. The Model Law for the Protection of Traditional Ecological Knowledge, Innovations, and Practices, also known as The Pacific Model Law, has several key features.[36] It would retroactively return to traditional control knowledge that was misappropriated and is now in the public domain and create a criminal offence for any unauthorized use of such knowledge. It provides mechanisms to establish ownership to traditional knowledge; provides for perpetual ownership; establishes a register for such knowledge; provides for appropriate commercial use of such knowledge; and suggests amendments to existing copyright, patent, and other intellectual property laws to protect traditional knowledge.[37] Since 2002 the Model Law has been finalized and a toolkit created to alert governments to key policy issues that should be considered when instituting the law.[38]

Five features of the Pacific Model Law deserve close attention, including its proposed application to knowledge in the public domain if: (1) the owner did not intend to share it, or understand the purposes of the sharing; (2) no permission was given to disseminate it; (3) the owner did not know that it might be used for commercial purposes; (4) the owner did not understand that sharing would result in a loss of ownership rights; and, (5) the extent to which unauthorized use might undermine the spiritual and cultural integrity of the owner(s).[39] For data collected in the past, any of these conditions might be exceptionally difficult for a researcher to later disprove. The Model Law also stipulates that it would be retroactive (i.e., not applicable only to knowledge created subsequent to the law's passage), provides for ownership conflict resolution, and also establishes criminal penalties for violations.

Attempts like this to create unique versions of Western copyright law must be adapted to each specific cultural context in which it is to be applied. As a result, considerable attention should be paid to consultations with relevant groups and individuals to ensure that the law is appropriate for the protection and/or preservation goals of that community. An additional question is whether or not such

a law and its penalties can be applied to individuals beyond the jurisdictional control of the country.

MICRONESIAN TRADITIONAL PROPERTY LAW

The question of whether or not an indigenous copyright law to protect traditional knowledge is either desirable or necessary, beyond whatever other governmental policies might be put into effect, will require serious consultation and consideration within several Micronesian contexts at every level from the local community to state and national governments. In broad outline, a new form of indigenous copyright law in Micronesia might have several key features, as we have seen in the Model Law. First, it would start with the basic premise that there are existing traditional legal (i.e., customary) protections for esoteric knowledge, and that traditionally defined owners (whether community, kin group, or individual) are acknowledged. Second, a legal definition of traditional intellectual property would recognize all the various categories that exist in all their various forms and ownership types. Third, it would recognize that traditional knowledge might be cumulatively created by more than one individual in a family line or by a group of individuals in a kin group through time as owners who traditionally held ownership rights to such property such that the property could not be used, modified, or otherwise alienated without appropriate informed consent and approval and/or payments associated with use rights or the transfer of such property. Fourth, to be effective, it must grapple with the difficult issues surrounding the retroactive assigning of ownership rights to the products of such knowledge, including sound or film recordings, and applicable manuscripts and publications. For example, would the Model Law's conditions regarding public domain issues be incorporated? And, finally, what agency or agencies would implement, supervise, and enforce such a law, with what penalties for violation? Would there be one national law, assigning certain jurisdictional rights to each of the culturally diverse states in the FSM, or state laws which were specific to each? And what role would local communities play in these matters?

In their discussion of NAGPRA, Sherry Hutt and C. Timothy McKeown eloquently state: "The preservation of cultural property rights is essential to give meaning to human existence and as a bond against enslaving a people by diminishing the definition of their existence."[40] This perspective clearly applies to traditional intellectual property, and particularly to what we have described as esoteric or traditional knowledge. Modern governments have taken legal steps to protect their citizens' intellectual property, but only in Western legal terms that do not encompass indigenous traditional property on its own terms. As sovereign entities, Micronesian governments have the authority to implement whatever is deemed necessary to protect traditional knowledge. What is needed is a serious consider-

ation of what best serves the long-term heritage interests of Micronesian communities with respect to traditional knowledge.

NEXT STEPS

As national or state governments in Micronesia consider the implementation of legislation to protect traditional intellectual property, a number of prior steps can be taken. Using the Protocols for Native American Archival Materials as a model, these steps would seek knowledge repatriation and restoration of community/family rights to intellectual property.[41] This approach would include the following steps:

1. Locate authors of works that include *rong* using bibliographic references, a general note to the Association for Social Anthropology in Oceania email net (ASAONET), and FSM college student searches of their institution's libraries and archives as independent research projects. Contact authors about voluntary transfers of copyright for such materials or the transfer or rights to or copies of unpublished data concerning *rong*.
2. Concurrently, identify or establish a repository in Chuuk where materials can be stored, and clarify the ownership role of local communities or families in such materials. Where informants or their descendants or communities have ownership according to traditional law, the repository could house materials as an in-trust holding on their behalf.
3. Select a repository oversight board of specialists to contact libraries and archives known to have significant Pacific Islands holdings to seek reviews of collections and consultations regarding access and use of collections containing *rong*. Clarify that the library or archive has copies of original research agreements, informed consent informant documents, or other community agreements from the researcher. The board, repository staff, or their designees should seek evaluation of such collections and request temporary access and use restrictions pending a determination of whether or not repatriation of such materials is warranted. If not, seek requests for copies of materials with a memorandum of agreement concerning any future acquisitions.

In the meantime, legal protections for existing and future traditional intellectual property should be expanded through both national and state constitutional authority (e.g. by enabling, in Chuuk, passage of the formerly proposed section 7 of article XI of the state constitution), which would provide statutory protection for intellectual property rights and just compensation for any use of such knowledge. The possible adoption of a Micronesian version of the Pacific Model law should also be seriously considered. Whatever legislative action is taken, it's implementa-

tion should include a number of features. Based on what has been developed within Native American tribal and other communities thus far, consideration should be given to at least the following 10 issues:

1. Clarification of the role of the government in establishing research permits and agreements, ethical policies for researchers, contracts and enforcement bonds, and other mechanisms and procedures related to research requests.
2. Clarification of the rights of community members as research participants, and the role of government in enforcing those rights as well as ensuring the limitation of researcher access to certain types of information without special permission or other controls.
3. The clarification of national, state, community, or individual rights in controlling access to and the copying of defined and protected intellectual property data, and its copyright, with specific regard for traditional owner copyright of any such data.
4. Legal requirements for community members to be involved in research as research collaborators and community representatives to ensure that traditional intellectual property guidelines are followed.
5. Clarification of the ultimate rights of the government or community or individual owner(s) over the disposition and ownership of information obtained during research, including restrictions on use.
6. Outlining specific agreements regarding copyrights to research data and the publication of any research findings.
7. The identification by community representatives or other specialists of categories of culturally sensitive data and the development of guidelines, differential or otherwise, specifically related to access and/or use.
8. Stipulation of community or individual rights to prior review and concurrence or the incorporation of dissenting community comment in research reports or publications that uses traditional knowledge.
9. Stipulation of community or individual interests in and rights to any patents or other commercial products that might emerge from research activity.
10. The creation of government or community guidelines for compliance and the enactment of governmental mechanisms to carry out oversight and intervention in approved research.

Such legislation would ideally come about with a consensus regarding not only the definition of what constitutes traditional intellectual property, but also its traditional characteristics, ownership, uses, and continuing value to the cultural heritage of the people. Such a consensus should emerge through the active participation of community representatives in broader state or national forums. We believe that it is time to recognize that new steps, including new legislation, must be taken to protect Micronesian rights in their traditional intellectual property in the Federated States of Micronesia.

In concert with any legislative discussions and action, it is also important to consider other measures related to the preservation of traditional knowledge. The continuing and understandable reliance on Western educational content and associated values places traditional knowledge in a potentially secondary position, as does the loss of specialists through the expanding out-migration that continues. Other related factors must be taken into account, including the intermarriage of islanders with foreigners and even the ultimate draconian risks of global warming, with loss of lands and forced relocations. New heritage education programs comparable to those already in place in Native American communities might be one answer, in company with a contemporary survey and assessment of existing traditional knowledge and specialists, community by community, with the related discussion as to what is still regarded to be of lasting significance. By using a diverse approach to the assessment, preservation, and protection of traditional knowledge, future generations in the communities of the Federated States of Micronesia will continue to have access to and benefit from the knowledge that their ancestors have accumulated over thousands of years.

ENDNOTES

1. See, for example: Greaves, *Intellectual Property Rights*, or Nason, "Traditional Property and Modern."
2. See, for example, Nason, *Clan and Copra*, 188–90.
3. US Navy, *Civil Affairs Handbook*, 77–83.
4. US Navy, *Handbook on the Trust*, 108.
5. Richard, *US Naval Administration*, 433–37.
6. Nason, *Clan and Copra*, 254.
7. McHenry, *Micronesia, Trust Betrayed*, 106, 116.
8. Kiste, "United States," 229–39.
9. FSM, Code of the Federated.
10. The FSM does not have World Trade Organization status, see United Nations, Programme Planning and Evaluation.
11. FSM, Code of the Federated.
12. Anonymous, "American NGOs Held Parallel."
13. UNESCO, Symposium on the Protection.
14. Pacific Islands Forum, Intellectual Property Reform.
15. Haira, *Using Intellectual Property Rights*.
16. FSM, *National Biodiversity Strategy*.
17. Lee and colleagues, "Cultural Dynamics and Change," 287.
18. Marshall, *Namoluk beyond the Reef*, 74–76.
19. WIPO, *Intergovernmental Committee on Intellectual*.
20. FSM, Constitution of the Federated.
21. FSM, Constitution of the State.
22. Pacific Islands Forum, "Culture," 167–68.
23. Pacific Islands Forum, "Culture," 169.
24. Pacific Islands Forum, "Culture," 171.
25. See, for example, Burrows and Spiro, *An Atoll Culture*, 154; Caughey, *Fa'a'nakkar: Culture Values*, 60–61; Fischer, *The Eastern Carolines*, 141; Mahony, *A Trukese Theory*; and Nason, *Clan and Copra*, 108–9.

26. Caughey, *Fa'a'nakkar: Culture Values*, 61.
27. Caughey, *Fa'a'nakkar: Culture Values*, 61.
28. American Anthropological Association, *Commission to Review*.
29. See, for example, Nason, "Tribal Methods for Controlling."
30. United Nations, *United Nations Declaration*.
31. United Nations, *United Nations Declaration*, 5.
32. Center for World Indigenous Studies, *A Treaty between Indigenous*.
33. Haira, *Using Intellectual Property Rights*.
34. Haira, *Using Intellectual Property Rights*.
35. Tora, *Report on the Pacific*.
36. Pacific Islands Forum, Model Law for the Protection.
37. Pacific Islands Forum, Model Law for the Protection.
38. SPC, *Cultural Affairs Programme*.
39. Pacific Islands Forum, Intellectual Property Reform.
40. Hutt and McKeown, "Control of Cultural Property," 364.
41. First Archivists Circle, *Protocols for Native American*.

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