

Permanent Forum on Indigenous Issues

Joint Intervention: Aotearoa

(Comprising the Te Rūnanga o Te Rarawa, the Ngāti Kuri Trust Board and Te Rūnanga-a-Iwi o Ngāti Kahu)

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Item 5:

Comprehensive dialogue with United Nations agencies and funds - World Intellectual Property Organization.

Delivered by Rachel Witana (representing Te Rūnanga o Te Rarawa)

Mr Chair,

Honorable Indigenous brothers and sisters - in particular, the Indigenous Youth Caucus, and our hosts the Haudenosaunee, and other Delegates to the Permanent Forum,

1. This joint statement is made on behalf of the Māori Iwi (or first nations peoples') Authorities of Te Rūnanga o Te Rarawa, the Ngāti Kuri Trust Board and Te Rūnanga-a-Iwi o Ngāti Kahu.

Mr Chair,

2. The Māori Caucus has been particularly keen to make an intervention on the United Nations Agencies and Funds, in particularly WIPO, for a number of reasons.
3. Firstly, in keeping with the special theme for this Session, it is our considered view that WIPO's ongoing attempts to commodify both Indigenous knowledge and its products is a direct and deliberate extension of the **doctrine of discovery**. Indeed, the doctrine of discovery has always involved taking control, commodifying, and seeking to profit from the treasures of the Indigenous peoples being invaded and dispossessed. Whether it was the actions of the British naturalist Joseph Banks, stealing flora and fauna to establish the Kew Gardens in London, or the explorations of Humbolt capturing flora

and fauna from the Americas, the aim was always a perceived colonizing right to take and control something that was not theirs.

4. The current western construct of intellectual and cultural property is based on the same idea of commodification for profit, and a belief that what Indigenous peoples possess can rightly be taken by somebody else. Indeed, as the representation of WIPO stated earlier, there is a fundamental conflict between the WIPO philosophy and that of Indigenous peoples because, whereas WIPO suggests nature is not protectable, our law places a fundamental responsibility on us to protect “Mother Earth”. Similarly, we found it objectionable that the WIPO representative presumed property rights to be an absolute, when in fact the very idea of western style property is completely contrary to our notions of relationships with all tangible and intangible things.
5. WIPO was established to facilitate that process. It was never established for, nor has it since given any firm indication of, any other purpose. Of all United Nations Agencies, it has been one of the most exclusionary and co-optive of Indigenous interests. WIPO has in fact been obstructive of any Indigenous attempts to properly engage or even to consider any Indigenous philosophy of the nature and protection of those treasures that rightfully belong to those Indigenous peoples. The recent efforts of Indigenous peoples to engage in the IGC, which eventually led to their withdrawal, is an indication of its ongoing unwillingness to recognize the rights of Indigenous peoples to control and protect their own knowledge treasures and everything associated with it.
6. The Māori Caucus therefore supports the actions of Indigenous peoples at the last meeting on the 20th of February 2012 to withdraw from active participation. The Māori Caucus also declares our unwillingness to participate further in WIPO’s deliberations unless WIPO is prepared to change its processes, and more importantly give meaningful consideration to Māori and indeed all Indigenous perceptions of knowledge.
7. It is disheartening to report that on issues of intellectual property, the New Zealand Government continues to dishonor Te Tiriti o Waitangi (the constitutionally founding document of Aotearoa /New Zealand). In its ardent pursuit of new right economic ideologies, the State Party assumes that anything is commodifiable, a point of view

completely at odds with our understanding that everything on Mother Earth is interrelated and part of us.

8. Equally importantly, the New Zealand Government continues to assume that the only interests we might have in those matters are necessarily subordinate to the overarching authority the Government believes was granted to it as a result of the doctrine of discovery.
9. That is illustrated most clearly in the matter of a claim laid by our people to the Waitangi Tribunal known as the **WAI 262 Flora and Fauna Claim** which has been reported on before to a number of UN Agencies. The purpose of that claim was to seek recognition that everything in our world was part of who we are and ultimately for which we were responsible. The claim hearings process took over 20 years to complete, often because of deliberately obstructive tactics by the Crown. These included the passage of legislation which effectively took away many of those things which our people hoped the findings of the Tribunal might help us protect. Most tragically, of the original six claimants, only one was still alive when the report was finally issued last year. The report itself was detailed and wide-ranging, but sadly it failed to recognize in a comprehensive way the rights and responsibilities which our people claimed and still claim as Kaitiaki or Guardians of everything in our world.
10. The opposition to WIPO which we stated earlier is in many ways an extension of the difficult battle that we continue to wage at home in protecting our knowledge. As part of this intervention we wish to submit to the Permanent Forum a proposal which all descendents of the original WAI262 claimants are developing as a way to protect and exercise authority in relation to.
11. In brief, this proposal acknowledges that the ultimate right of kaitiakitanga or protection and authority in relation to all Māori Intellectual property rests with Māori. This planned proposal also seeks to find ways in which the benefits of our knowledge can be appropriately shared with others both at home and overseas, especially with our Indigenous brothers and sisters. The claimants remain committed to the underlying philosophy that we are part of everything in our world and everything in our world is

part of us, and that we therefore have responsibilities that no State or organization such as WIPO can usurp.

Recommendations

12. We recommend that:

- a. WIPO engage in meaningful dialogue with Indigenous peoples consistent with the United Nations Declaration on the Rights of Indigenous Peoples, on the substantive topic of defining our nature and therefore the interest in traditional and contemporary Indigenous Knowledge, and the consequent need to resile from the essentially racist ideology that ‘everything is commodifiable and ownable as property’;
- b. any changes in the WIPO processes aimed at ensuring more practicable and respectful participation be based upon the substantive shift outlined above; and
- c. the Permanent Forum encourages the New Zealand Government to engage more honestly with the WAI 262 Flora and Fauna claimants in a way that acknowledges the authority and commitment of those claimants to protect their traditional and contemporary knowledge.

Thank you Mr Chair.