



# Samoa Law Reform Commission

Komisi o le Toefuataiga o Tulafono a Samoa

## Law Reform on the Protection of Samoa's Traditional Knowledge

Indigenous Knowledge Forum (IKF2)  
University of technology, Sydney  
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# Protection of Samoa's Traditional Knowledge Project

- ◎ Review the extent of legislative protection of traditional knowledge under intellectual property laws of Samoa
- ◎ Make recommendations for improvements to legislative protection of traditional knowledge

# Objectives to be achieved

- Protection of Samoa's traditional knowledge from misuse and misappropriation
- Entitlement to benefits from the use of traditional knowledge by third parties for commercial purposes

# What is Traditional Knowledge

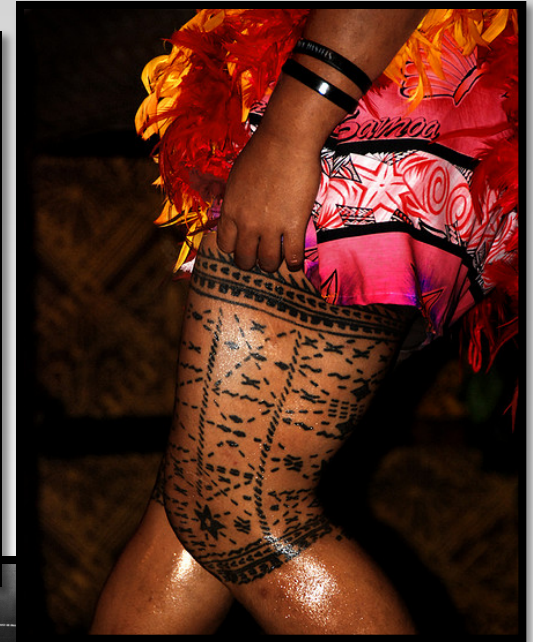
- ◉ Knowledge, knowhow, skills and practices of Samoan communities
- ◉ In a traditional context
- ◉ Communally owned by traditional communities
- ◉ Passed from generation to generation
  - > eg: Traditional building techniques, agricultural knowledge, healing techniques, medicine, tatooing techniques
- ◉ Includes traditional cultural expressions
  - > eg: traditional music, stories, handicrafts, tatoos

# Importance of Traditional Knowledge to Samoans

- Strong emphasis on upholding Samoan culture & traditions
- Traditional knowledge is an essential component of Samoan culture and tradition
- Intertwined with the *faaSamoa* (Samoan way of life)



# Traditional knowledge





# Traditional cultural expressions



# Protection – expectations of the Samoan community

- ◉ Collective or communal ownership of traditional knowledge
- ◉ Provision of Rights:
  - > Moral rights
  - > Economic rights
  - > Customary and traditional use continuing unaffected
- ◉ Indefinite protection



# Samoa's Intellectual Property Laws

- ◎ Copyright Act 1998
- ◎ Intellectual Property Act 2011

# Copyright law

- ◎ Copyright Act 1998
  - > Protection of 'original' literary and artistic works
  - > Traditional cultural expressions
- ◎ Impediments:
  - > originality requirement
  - > need for tangible form

# Patent law (Intellectual Property Act 2011)

## ◎ Protection of Patents

- Invention must be new + inventive step + industrially applicable
- Specific disclosure requirement relating to traditional knowledge

## ◎ Impediments:

- Strict requirements for registration



# Designs(Intellectual Property Act 2011)

## ◎ Protection of designs:

- > Design must be 'original' \_ not common place in field of design at time of creation
- > 15 year protection period

## ◎ Impediments:

- > Strict requirements for registration

# Hard questions. . .

- ⦿ What traditional knowledge can effectively be protected?
- ⦿ Which traditional knowledge should be protected?
- ⦿ What level of protection?

# Hard questions. . . .

- ◎ Who owns the traditional Knowledge?
  - Collectively/ communally owned through the *Matai* and *Village Fono* systems under the practice of customary law
  - Does not belong to a single individual within the community
  - Traditional custodians of traditional knowledge



# Hard questions. . .

- ◎ Who should benefit from protection?
  - Traditional custodians on behalf of Samoan traditional communities – but which community?
    - individual in the community?
    - traditional family community?
    - traditional village community?
    - some other traditional community?
    - more than one community?
    - Samoa as a whole?

# Conclusion

- ◎ To achieve objective of project
  - Sui generis legislation to protect Samoa's traditional knowledge
  - Consistent with expectations of traditional communities

# Contact us

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