Creative Commons Aotearoa New Zealand
Royal Society of New Zealand

Creative Commons and Indigenous Knowledge

Friday 1 November 2013
09:00 – 10:15

Present

- Aroha Mead – Victoria University of Wellington
- Karaitiana Taiuru (via teleconference); Matt McGregor; Susy Frankel (via Skype) – Creative Commons Aotearoa New Zealand
- Nicholas Brocklehurst; Katarina Gray-Sharp (via teleconference) – Massey University
- Paul Diamond; Mark Crookston – National Library of New Zealand
- Lisa Rahanui – Te Puni Kokiri
- Sarah Davy – New Zealand Film Archive
- Philothea Flynn; Emily Tutaki – Te Ara
- Victoria Leachman – Te Papa

1. Introduction – Susy Frankel

Attribution and Recognition

In 2007, a working group discussed potential connections between Creative Commons (CC) licensing and Māori works. The group noted that the need to provide attribution and recognition is common to both CC licensing and mātauranga Māori works. Susy noted that, for licensors of Māori works, CC could provide clear notice to members of the public that proper attribution and appropriate use is necessary.

Norms and Rights

Susy pointed out that full legal recognition of mātauranga Māori and taonga works does not yet exist. A CC licence for these works would therefore be based on rights that are not legally recognised.

While one could wait for recognition of the legal rights, Susy and other members of the group felt that this would take far too long. Moreover, the need for a clear statement providing notice on the appropriate use of mātauranga Māori and taonga works remains. Susy noted that an additional complication is that some mātauranga Māori and taonga works may attract copyright.

2. National Library of New Zealand's Reuse Policy – Mark Crookston.

Protection and Reuse

Mark pointed out that collecting institutions rely on generous donations in order to build their collections. This process involves a great deal of trust. NLNZ must work closely with donors on the rights that are ascribed to its collections. As a result, memory institutions face competing demands from those who want their works protected and those who want more content to reuse.

Reuse Policy

Mark spoke to the reuse policy under development at the National Library of New Zealand. Its objective is to enable the reuse of the collections of the NLNZ and ATL to create new knowledge within a clear, consistent and transparent rights framework.

Cultural and Ethical Decision Making

NLNZ staff will still need to determine whether it is culturally or ethically appropriate to release works that have no copyright restrictions. Mark noted that it was necessary to document the process by which these decisions are made, to ensure consistency across the organisation. NLNZ is working to articulate criteria for staff to use to make cultural and ethical decisions.

3. National Library of New Zealand's Kaitiakitanga Policy – Paul Diamond

Kaitiakitanga Policy

Paul noted that NLNZ has a kaitiakitanga policy dating from 2003, and that this is currently under review. The document seeks to acknowledge the spiritual and cultural authority of the collections and create opportunities to meet with groups associated with the collections. Paul outlined how the document fits within other policies relating to the NLNZ.

Triggers

Paul introduced the concept of triggers, when the policy would come into practice, such as digitisation, exhibitions, loans and publication, and spoke to issues around the policy's implementation.

4. Te Papa's Kaitiakitanga and Reuse Policy and Practice – Victoria Leachman

Mana Taonga Principle

Victoria pointed out that Te Papa has had an overarching Mana Taonga principle since 1993, which guides the institution's engagement with iwi. Victoria outlined her

'low hanging fruit' approach to allowing reuse of Te Papa's collections. Māori taonga and other works relating to Māori have been actively ring-fenced to prevent unauthorised reuse. When reuse is requested, Te Papa staff engage directly with the appropriate iwi, hapū, whānau or individual.

Whakapapa

Victoria noted that knowledge of the whakapapa of collection items is highly variable, and that part of Te Papa's consultation process is to build this whakapapa, where possible. Their process is one of talking and negotiation; these relationships, however, mean that securing permission for reuse can be difficult.

5. Discussion

Individual and Institutional Uses

Susy noted the need to distinguish between institutional uses and individual uses. A licence produced for general use may look quite different to one that is produced for institutional use. The utility of a new CC licence or tool would be to give notice to individuals who do not have institutional processes or obligations, such as those that were outlined by Mark, Paul and Victoria.

Victoria noted that each taonga work had its own specific requirements, and that is was the role of the kaitiaki of the work – the iwi, hapū, whānau or individual – to decide what those requirements would be. It would be up to those representatives, rather than Te Papa, to apply whatever legal tool might be developed.

Susy agreed, noting that a licence for indigenous works would be a device to assist those people who want to use it. There are complications – including the use of the licence when there is no legitimate ability to do so – but such complications exist with all Creative Commons licences.

Online Collections as Representative of Aotearoa/New Zealand

Mark noted that the current online collections might not be seen as an adequate representation of New Zealand culture and history, because most Māori content is not available online. Victoria agreed, noting that this was also true of Te Papa's online collections.

A Legal Tool for Māori

Aroha Mead emphasised the importance of mātauranga Māori for Māori cultural and spiritual wellbeing. Pointing to chapter entitled "When the Crown Controls Mātauranga Māori" from Ko Aotearoa Tēnei, Aroha noted that many mātauranga Māori works held by crown institutions were acquired by illegitimate means. The

primary goal of any new legal tool, therefore, should be to connect Māori with their own cultural and historical works.[1]

Susy agreed, suggesting that one of the utilities of such a legal tool would be to encapsulate restrictions on access and usage. Paul added that existing policies and practices can make it difficult for individuals within iwi, hapū and whānau groups to access their own material – especially Māori living overseas.

Trust

Aroha noted that greater public access can only be built on strong relationships of trust, which develop over time. Mark asked Susy what would happen when open content was used in a way that violated the requirements of the licence. Susy suggested that the legal tool need not be a licence, but act as a 'notice' articulating the restrictions on the use of a work. For the tool to constitute a licence, it would need to be based on legal rights to restrict access to mātauranga Māori – rights that do not yet exist. It could be a tool that would allow a relationship of trust to develop, especially for members of the public who do not understand the necessary processes of consultation.

Paul agreed, suggesting that the notice could be a useful way of educating people about the appropriate uses of indigenous works. He wondered how the notice might work for works that will be taonga in the future. Aroha added that a licence or legal tool would have to address the authenticity of the author.

Consultation

Emily spoke to the experience of Te Ara the Encyclopedia of New Zealand's working with iwi and hapū. Due to lack of resources CC licensing is not part of Te Ara's permission agreements, as it was felt that this would add an extra complication to the consultation process.[2]

Emily and Victoria noted that members of the public still inquire about reuse of CC licensed material. Philothea noted that as CC licences could only apply to material that was still in copyright, many Taonga may be out of copyright, so a CCL could not be applied. She agreed that that a notice could be useful as a way to educate people about the appropriate uses of indigenous works and flagged the issue of some overseas institutions that hold mātauranga Māori and Taonga works supplying material without acknowledging moral rights.

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[1] *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* by the Waitangi Tribunal can be accessed here: http://bit.ly/17mhJ9k

[2] All Te Ara text uses Creative Commons licensing. It was noted after the meeting that a deliberate effort has been made to put CCL on Te Ara/MCH owned images. Guidelines have been developed to determine when to add or not add CCL

Traditional Knowledge Licences

Paul referred to the Traditional Knowledge licences. Matt agreed to share further information about the these licences with the group.[3]

Susy left the meeting at 10:13

6. Next Steps

Matt noted that CCANZ was an affiliate of an international project, and that consultation with both it and CCANZ's host organisation, RSNZ, would be necessary. Matt proposed a series of smaller conversations within the group and CCANZ to determine the broad contours of what an additional legal tool might look like.

Meeting Ends 10:17

ENDS

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[3] The Traditional Knowledge licences are hosted by 'Local Contexts' and may be viewed online here: http://www.localcontexts.org/