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Copyrighting traditional Tolai knowledge?

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In 1978 the Papua New Guinea Parliament passed the Copyright and Neighbouring Rights Act. However, because of the absence of related depository legislation the Act was never gazetted and so it did not become law. The legislation remained in abeyance for the next twenty years until the subject of copyright re-emerged in 1997 and new legislation began to be discussed. The National Executive Council approved a revised Copyright and Neighbouring Rights Bill in 1999 for presentation to Parliament. At the same time, in anticipation that legislation would be passed in the not too distant future, the PNG government established a National Intellectual Property Rights Committee to administer the new legislation. The Committee is under the auspices of the Investment Promotion Authority. However, by May of 2000 the bill had still not been passed by Parliament.

In the lead-up to the passage of the first Act in 1978, debate was mainly concerned with the economic impact of the legislation and its effect on creativity. Economic concerns included Papua New Guinea's ability to afford copyright fees on imported intellectual property such as books, films and music. Arguments in favour of copyright pointed to the revenue that Papua New Guinea's intellectual property owners were losing because of the lack of copyright protection. In relation to creativity it was argued that Papua New Guinea as a cultural entity was young, so there was a need for a relaxed cultural environment allowing for borrowing and sharing of the products of creative effort. Copyright

was seen as a stumbling block that would stifle creativity. In the end, the arguments in favour of copyright and neighbouring rights were stronger, and so the legislation was passed.

During debates in 1978 the topic of traditional intellectual cultural property was also discussed. It was suggested that the new legislation should also cover indigenous peoples' knowledge. It was argued that since this new legislation was intended to protect the intellectual cultural property of Papua New Guineans and to provide them with economic advantages, the legislation should be wide enough to cover 'indigenous knowledge'. However, this proposal was considered impractical for a number of reasons. One was that some of the characteristics of indigenous knowledge were incompatible with the basic requirements of copyright protection; in particular those relating to authorship, ownership, originality fixation requirements and duration provisions. A common argument was that all traditional knowledge is communally created and consequently communally owned and so belongs in the public domain. The absence of protection for other forms of public knowledge in the public domain in copyright laws of other countries was used as an argument for the ineligibility of indigenous knowledge for protection in drafting the Copyright and Neighbouring Rights Act 1978.

The proposition that all traditional knowledge is communally owned has arisen in discussions about copyright in many other parts of the world. For example, in his presentation to the Pacific sub-regional seminar on 'traditional knowledge', the Chief of UNESCO's Division of Creativity, Cultural Industries and Copyright, Professor Solab Abada, stated that

The specific issue here as compared to works of art protected by copyright, is that the expressions of folklore¹ have no known author. Generally speaking, they are the product of collective people's creativity, which is never complete but constantly evolving, as the social life of the local community itself evolves (UNESCO 1999:126).

This idea originates from UNESCO's definition of traditional knowledge, as expressed by another UNESCO official, Noriko Aikawa²

Folklore (or traditional and popular culture) is the totality of tradition-based creation of a cultural community, expressed by a group or individuals and recognised as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by invitation or by other means. Its forms are among others, language, literature, music, dance, games, mythology rituals, customs, handicraft architecture and other arts (UNESCO 1999:113).

This chapter uses examples drawn from the knowledge owning system of one Papua New Guinea group, the Tolai, to refute the assumption that all traditional knowledge is communally owned in Papua New Guinea. The chapter demonstrates the complexity of issues in Tolai practices of ownership of traditional knowledge. Tolai ownership systems clearly recognise three different levels of ownership—the individual, the *vunatari* (clan) and a strictly delimited or ‘defined’ public. Over time knowledge may pass from the individual to the group and then to the public while remaining the property of the person who originally possessed it. Ownership at these different layers is protected by supernatural powers and secrecy (*pidik*). The level of ownership is determined by the manner in which knowledge is acquired. The Tolai acknowledge five ways of acquiring knowledge: *barawon* (dream), *buai* (school), *tinbar* (gift), *pinapa* (purchase) and *waki* (inheritance).

This exposition of the Tolai system of ownership of knowledge is in no way an argument that Tolai and the wider Papua New Guinea traditional knowledge³ can be protected under a standard copyright regime. Rather, its purpose is draw attention to some of the difficulties in developing mechanisms to apply copyright to the protection of traditional knowledge. The premise is that mechanisms can only be developed from a clear understanding of indigenous systems of knowledge.

Tolai systems for maintaining and safeguarding knowledge

The Tolai are Melanesians who live on the Gazelle Peninsula at the northern tip of the Papua New Guinean island of New Britain. Before sustained contact with the outside world began in the 1870s, the Tolai lived in hamlets comprising several clans or sub-clans. Not all members of a sub-clan or clan lived in the same hamlet. Usually they were spread out over a number of hamlets.

The basic social unit of Tolai society the *vunatari* (clan). Descent in the *vunatari* is through the maternal line. The *vunatari* is the socio-political unit and to some extent economic unit, although the sub-clan (*apik tarai*) is the property owning unit. The kinds of properties owned by the clan range from immovable property such as land, to movable property such as canoes to intangible properties such as healing knowledge.

Ownership of knowledge among the Tolai is highly regulated, and the ways of acquiring it are clearly defined. Knowledge is owned either by

an individual, a group or the wider public and may be protected by means of *pidik* (secrecy).⁴ A particular class of spirits known as *turangan* are present in the creation, transfer and use of knowledge.

Turangan—supernatural forces

Different spirits are associated with different ways in which knowledge is imparted. If a person acquires knowledge in their sleep through *barawon*, it is the *turangan* (spirit), which brings the knowledge—whether it is a song, dance or *tubuan* design. The same is true of acquiring knowledge through *buai* (school). In going through the school, the person merely acquires the ability to be associated with spirits that later begin to deliver knowledge to him. After receiving knowledge, the individual has a responsibility to divulge it. The spirit does not only deliver the knowledge to a person, but continues to be a part of that knowledge and becomes its performance or activating power. Knowledge is rendered useless or ineffective without the presence of the spirit.

The presence of supernatural forces is also important in the transfer of knowledge from one person or group to another, such as through *pinapa*, *tinbar* or *waki*. Both parties to the ex-change of knowledge have a duty to ensure the transference of the spirit.

The supernatural or force component of knowledge is normally referred to as *warwul* (literally meaning ‘swear words’, but which can be translated as ‘chant’). Holders of knowledge explain that the *warwul* is the *wuwu na nilaun* (breath of life). The agent which activates knowledge and brings it to life. This same phrase is used in the Kuanua (Tolai) Bible to refer to the breath of life given by God to Adam and Eve.

Anyone may know which plant materials are used for healing or other kind of knowledge and may observe the various ritual actions and procedures involved in the performance of healing, knowledge, magic or dance. But they cannot claim ownership of the knowledge these plants and rituals are associated with nor can they practice this knowledge. Rights to knowledge are determined by possession of the *warwul*. At all times the owner of the knowledge keeps this *warwul* as *pidik* (secret) from everyone including family, clan members and close friends.

Although *warwul* is what activates knowledge to come to life, knowledge itself has a supernatural force. This makes it dangerous to use the knowledge without proper authority which may result in illness and even death. The spirit of knowledge referred to here is known as the *tabaranira*.

The association between knowledge and supernatural power is even stronger in the case of *tubuan* mask designs. Although *tubuan* are understood to be spirits in themselves, a distinction is maintained between the mask as material inanimate object and the spirit that it represents. When materials such as cane and cane leaves are gathered for the mask, these are still just inanimate objects that are known as *nilip* (gathered elements). They remain non-sacred objects while the mask is constructed. Only when the *mata* (eye) designs have been painted on the conical tops do they cease to be mere objects and become 'alive'. Once it becomes alive, the mask can perform the functions expected of a *tubuan* and with the powers accorded to it. It is able to protect itself from misuse and abuse by anyone. Anyone who tries to mistreat the *tubuan* or misuses or abuses any of its properties such as *tabu* faces instant death. This includes trying to make a *tubuan* mask itself without proper authority.⁵

The consequences for misuse of other kinds of knowledge, such as healing knowledge, dances, songs or magic, are not as severe. The offender may get severely ill—ill enough for him to let everyone know that the cause of his illness relates to tampering with knowledge without proper authority. The offender himself must reveal his offence through confession. If the person does not confess then he will become more ill and die. If the person does confess, then an antidote of the knowledge itself, known as *dokadoko*, is used to remove the illness.

As described above, supernatural spirits activate knowledge but they are also its source and protector. A healer may know the different kinds of herbs and the rituals of a particular medicine but he has to harness the powers of the spirits to successfully practice the knowledge. In dance, talent, skill and even experience are not as important as knowledge of how to harness the power of the spirits through the ritual known as *wapapa* (to shed weights). This is performed to invite the spirit to *puak* (carry) a person during dance, in order for him to perform with elegance.

Pidik—secrecy of knowledge

Pidik relates to the maintenance of secret knowledge by the men away from the uninitiated young boys and women of the village. In most ethnographies of Tolai, the concept of *pidik* is associated with the religious domain, in particular *tubuan* society⁶ (Epstein 1969; Salisbury 1970; Errington 1974; Neumann 1992). The maintenance of secrecy by the members of the society is important to the continuity of the

tubuan. In the *tubuan* society, *pidik* is to be maintained especially in relation to the belief that the mask is actually a spirit. Within the society, secrecy is also maintained between groups, in particular clans, who protect knowledge about each other's *tubuan*s. Individuals who possess particular kinds of magic and ritual processes associated with the *tubuan* also maintain *pidik* about them from their own clansmen and the wider *tubuan* society.

In his discussion on 'affect' among the Tolai, Epstein discusses *pidik* in relation to control of information

'Secrecy is about the control of information'; it is in this regard a matter of power. Among the *Tolai*, this is readily seen in a number of institutionalised contexts. In the case of the *tubuan* for example, acquiring the *pidik*, the secret is central to the process by which the initiation moves from one stage to the next. Again, secrecy seems to have been essential in the performance of many magical rites. In some forms of garden magic, for example, while one man performed the rite on behalf of a group, more might draw near the magician while he uttered his incantation lest they overhear his spell; later each individual would cast his own spell (Epstein 1992:109)

He continues

Thus one's preparation for a *balaguan* or some similar event were a closely guarded secret, *u vaninar kauku pidik* (preparing a persons *pidik*)—the nature of one's ornamentation, the design of one's *kangal* or headgear, one's *matatar*, the daubing of the body with lime powder, and so on, all needed to be kept hidden from the knowledge of others (*ibid*:109).

An example of the presence of *pidik* in the secular domain relates to the clan, the land-owning unit. Each *vunatari* has a history that is known by some of the senior members of the group. This history includes information about the clan's ancestors, their names, where they lived, the battles they fought, where some of them were buried, the lands they cleared and planted and what human remains they left along the way. Such knowledge is very important to the identity of the group and the determination of land ownership. Tolai land holdings stretch over a number of different areas, consistent with the movement of the group in ancestral times. The clan's history tells of the places its members settled as theirs, the events that took place and the evidence they left behind—such as fruit trees and human remains—which supports their claim to that land.

The history of the clan is a matter of great *pidik*. It is carefully guarded by the senior members of the *vunatari*. Only parts of the

history are made public when absolutely necessary. Otherwise it is a body of knowledge which is kept as *pidik* most of the time. In his writings about the Matupit, Epstein discusses the way in which clan histories are used in land disputes.⁷ In these disputes, a clan that cannot present its history has very little chance of successfully establishing its claim to land. At the same time, a clan whose history has become common knowledge to everyone also has less chance of making a successful claim to land. This is all the more important reason to maintain *pidik* in relation to clan history.

In addition to the *tubuan* and the *vunatari*, *pidik* is also found in everyday life and in the ritual domain. In everyday life, matters such as a person's wealth and his skills are matters of *pidik*. It is said that public knowledge of this wealth can endanger a person's life. *Pidik* is kept in relation to skills such as canoe making, gardening, fishing or hunting to ensure that this skill is kept within the *vunatari* or passed on to a selected person. In the realm of ritual, the observance of *pidik* is found in the preparation and performance of music, dances and making of head-dresses, ritual costumes and healing magic and practice.

When songs are composed, they usually have a story-line and background to composition. While the music may be heard by the public, the story-line and background information to composition are kept as *pidik*. These two pieces of information are important to the understanding and appreciation of the song. It is often quite difficult to ascertain the story-line from the lyrics, which are often written in an archaic language. Dances similarly depict story-lines and events that are not readily deciphered from a performance. Dances are covered by *pidik* and rehearsals, known as *kunubak*, are done in secret in the bush. Rehearsals may take days in the case of male dance. Preparation for women's dances involves *kunubak* but takes place on the periphery of a village rather than the bush.

In the pursuit of magic and healing rituals, people may see a person performing the actions of ritual but an important part of this process is the chants, which are known as *warwul*. *Warwul* is also the subject of great *pidik*.

There are specific situations in which *pidik* may be lifted for designated persons under strict conditions. Where clan information is kept under *pidik* particular members may be granted access as in the cases of *tubuan* and clan histories. The release of the *pidik* knowledge of an individual is at the individual's discretion.

Acquiring knowledge

The Tolai acquire knowledge in one of five ways: *barawon* (dream), *buai* (school), *tinbar* (gift), *pinapa* (purchase) and *waki* (inheritance). Other than by theft, knowledge may be acquired for use for a limited period. Temporary use is known as *totokum* (hire) and involves payment of *tabu* for specific uses and set periods.

Barawon—dream

A person can come by a new song, *tubuan* design, dance, magic or healing magic, through a dream. A dream indicates that a person has been visited by a spirit. People do not know why the spirit, or *turangan*, comes and the occurrence is always surprise. The spirits and knowledge first come to a person suddenly. The people most likely to be approached by spirits are persons who spend a lot of time by themselves, such as those who are lonely and, in many cases intellectually and/or physically disabled.

Buai—school

Among the Tolai certain artistic skills, such as composing dances or music and design or painting, are transferred through *buai*. While the literal translation of *buai* is actually betel-nut, its closest meaning in English is 'school'. There are *buai na pepe* (schools) of music, dance and artistic design, which come under the name of the leading 'masters' of these arts. Neumann (1992) discusses the practice of *buai*.

Buai is the most common carrier of all kinds of magic; love magic, black magic (*taring*), magic to enhance one's knowledge and others. *Buai* can become a synonym for the magic itself. Through the *buai na pepe*, men can communicate with spirits who advise them on the choreography of a dance, the text of a *tapialai*, or the recipe for *taring* (Neumann 1992:90).

Traditionally *buai* was a very involved matter, both for the *tena buai* (sponsor)⁸ and the 'candidates'. The sponsor, often a man with an established reputation of having a particular kinds of knowledge, would announce and then organise an occasion when candidates could come to receive *buai* from him. On the occasion he proposed, a *loga* (platform) would be placed at a designated location somewhere in the bush. On this *loga* different *buai* would be displayed for sale to interested candidates. The candidates come with an amount of *tabu* to inspect the

loga. After inspection of the *loga*, they pay pieces of *tabu* for the items of their choice. These items are sold to *dok* (pay) for the *buai*.

The item sold is a small parcel about the size of a strawberry which contains a mixture of herbs and perhaps a little bit of betel-nut. This is eaten by the candidate. During the eating of the parcel the candidate is also given the *warwul* (chant) of the *buai*. He now possesses both the physical and chant components of the *buai*. After the 'eating' of the *buai*, the candidate has to go through the process of *nilip* (accessing) the herbal ingredients of the *buai*, which requires the mastering of certain skills and knowledge of additional chants. This involves the candidates staying in seclusion for a few days to a week.⁹ What has been described here is the traditional process of *buai*, which was practiced in almost the same format even up until the 1970s. It is still practiced today, but not strictly in the same format.

Today *tena buai* still hold such occasions, but they are not open to the public. *Buai* are done on request or invitation, and are often smaller affairs involving only a handful of candidates. However, the rules are still basically the same; the *tena buai* prepares the 'parcels', the candidates come and pay with *tabu* and then 'eat' the *buai* and also receive the *warwul* and then go through the *nilip*. These rules are still very strictly followed.

Having gone through a *buai* does not mean that the person now depends entirely on his newly acquired skills to perform. Instead, the school only conditions him to be more accessible to the supernatural world, which is the main source of all new knowledge. The agents of the supernatural world in this scheme are the *turangan*.

Knowledge acquired in the first instance in this way belongs to the individual.

Tinbar—gift

Some kinds of traditional knowledge, such as rituals and healing knowledge are acquired through *tinbar*. A person in possession of ritual or healing knowledge may decide to give this knowledge to a friend, relative, associate or assistant.

A gift recognises a special relationship between the two persons and/or recognises the support of one party for the other. *Tinbar* goes to a person who has demonstrated interest in that knowledge over the years and has the skills to use it. In some cases the hopeful receiver's expectations are fulfilled, but in others he may be disappointed. In some ways the knowledge being given as *tinbar* is not actually a gift, because the

receiver does have to pay in other ways, such as in kind. It is the lack of transfer of *tabu* which classifies the transfer as a gift.

The transfer of knowledge by *tinbar* is a formal affair. The actual transfer of the knowledge is done privately between two persons. Later it is formalised by a small feast, attended by a few people, mainly for the purpose of witnessing the transfer and also to endorse it.

The knowledge acquired as such initially becomes the property of the individual.

Pinapa—purchase

Among the pre-contact Tolai trade was facilitated by *tabu*, a medium of exchange with similar characteristics to those of a currency. *Tabu* (shell money) was largely a ritual object but it was and is still used in many day-to-day transactions. As long as someone is willing to sell, a person wanting to acquire knowledge of any kind can purchase it with *tabu*.

As with *tinbar*, the transfer of knowledge pre-supposes an existing relationship. The only difference is that the relationship need not be as long standing as it must be for *tinbar*. The vendor requires a reasonable period of familiarity with the purchaser in order to meet certain considerations. One of these important considerations is the vendor's satisfaction that the purchaser will not misuse the knowledge, considering that some knowledge may have both malevolent and benevolent powers. The vendor also has to be satisfied that the purchaser will protect the knowledge from abuse and misuse by others. When the vendor is satisfied that these matters are in order, a transfer is made between the two persons in private. This is followed by a small feast in which the transfer is made public.

Knowledge acquired by *pinapa* initially becomes individual property.

Waki—inheritance

Some kinds of Tolai knowledge are clearly the property of clans but can only pass from person to person through inheritance. This is the case for ritual property such as songs, *tubuan* designs and dances. Knowledge acquired in this way can pass to an individual but it remains the property of the clan. The underlying rule is that all property belonging to the *vunatari* can only be passed onto the clan. If an individual member of the clan owns property which he has not disposed of to another person during his lifetime; at his death the property

immediately belongs to the clan. On some occasions the clan may agree to transfer some of its property to others but this has to be agreed on by all members. Transfers of this kind are very limited—they can be made to either members of allied clans or children of the owing clan.

Individual ownership

Individual persons own both tangible and intangible property. Tangible property that can be owned by individuals includes canoes, gardens, fruit trees and houses. Intangible property includes songs and dances, designs for dance costumes, *tubuan* designs and healing practices.

Some songs and dances are the property of individuals. If another person wants to use the songs and dances during the lifetime of the owner, a performance fee must be paid to the owner. A person may also dispose of the ownership of a song or dance to another person for payment in *tabu*.

The knowledge of healing practices can also be owned by a person. This knowledge is obtained either through *barawon*, *buai*, *tinbar* or *pinapa*. The story of Joseph ToBavul illustrates this. ToBavul is a healer from Vunapaka village in the north-coast hinterland of the Gazelle Peninsula.¹⁰

Originally, I started working as a healer as an assistant to my father who was then a healer. When my father was a healer he used to send me to collect the ingredient plants from his medicinal mixtures, but at that time I did not know the chants that went with the mixtures.

Although I knew the various types of plants and how to mix them, I could not practice the art of healing because I did not know the accompanying chants.

Knowing the different herbs and how to mix them, I felt that I could almost practice healing but I knew that without the chants this knowledge was useless. When my father was very old I asked him for the chants. I was very pleased when he, without hesitation, gave it all to me.

In the beginning I tried out some of the healing—firstly on my wife. I did not want to try it out on other people, just my wife. There were a number of times when my wife had come close to death, but with the aid of my newly acquired knowledge I managed to bring her back to good health.

Twice my wife had two dead foetuses inside her. I tried the prescribed cure obtained from my father and I managed to get them out. I continued trying out my

knowledge on my wife for a while. Gradually I tried it on other people. It was successful and very gradually I developed confidence in my ability.

After some time people began to hear about me as a healer and began to come to see me with their illness. In the beginning it was mainly people from my village and nearby villages who came to see me. Later people from distant villages also heard about me and came to see me. Now I have people from all over the Gazelle Peninsula coming to see me. Later, after I had been practicing for some time, I began to want to acquire other healing medicines from other people (ToBavul, personal communication).

ToBavul then acquired a number of different kinds of medicine to add to his knowledge.

A *kutu* (the vomiting of blood). I acquired this medicine from a man called ToRarong from Tavuilu village. I paid only five fathoms of *tabu* for this, as this man was a distant uncle of mine.

Waliklikum (antidotal magic). I acquired this from a matrilineal uncle of mine, ToNgale. He had acquired this medicine from Tolagat of Nodup Village. ToNgale had bought this for fifteen fathoms of *tabu*. I prepared some food and ten fathoms of *tabu*, brought it to ToNgale's house and acquired this medicine.

In acquiring this particular medicine I seemed to have been lucky. The time that I came to ToNgale's house he was dying. Thus, as he had no one to give his other healing knowledge to he decided to give them to me. So I was able to acquire other healing knowledge including the *kilang* (clairvoyance) (ToBavul, personal communication).

Joseph ToBavul acquired knowledge for about 20 healing practices from his father, for whom he had acted as assistant. He had also purchased or acquired in other ways about 15 other different medicines. In 1982, at the end of my interviews with him, Joseph ToBavul was considering what would happen to this knowledge. He told me

At the present time both the people of my own matriline and my own children are squabbling over who should acquire this healing knowledge from me.

At present I think my own son ToMitil will get these things because he has acted as assistant to me for some time now. My son now already knows the plants that I use and how to mix them, but he still does not know the chants.

There is also a grandson of mine (a son of ToMitil) who has also worked with me and knows the plants. But like his father, he also does not know the chants. This grandson might also share some of the knowledge with his father.

By and by I will give them the chants (ToBavul, personal communication).

Group knowledge

The Tolai clan, or *vunatari*, is the basic social unit. It is comprised of members of a matriline who recognise a common female ancestor. The clan owns tangible property including land and fishing grounds, fish nets and traps and canoes. A clan also owns intangible property including *tubuan* designs and magic, songs, dance head-dress and necklace designs and the oral history of the clan.

All *tubuan* are owned by clans. Some clans may have more than one *tubuan*, but most clans have one. One man, usually an elder member of the *tubuan* society, manages each *tubuan*. A *tubuan* represents a spirit, sometimes the spirit of ancestors. The *tubuan* are passed down from generation to generation. Each *tubuan* is of a particular design, has a particular kind of magic, observes particular taboos and is said to consume only particular kinds of foods. This knowledge is passed down from one generation to the next, usually through male members of the matriline who are members of the *tubuan* society. It is very jealously guarded from the members of other clans.

In some cases the design and knowledge of a particular *tubuan* does not get passed down through the matriline. It may be transferred by a father to his son because the father did not have any descendants of his matriline who were old enough to receive it. In this case, at a later stage a descendant member of the matriline will 'buy back' the design and magic knowledge from the father's son. The price in *tabu* for this purchase is small, representing only a fee to the person who has looked after it. In other cases a clan may lose the design and magic of its *tubuan* forever. The clan then has to buy a new *tubuan*. In this case the purchase amount is quite substantial.

Dance head-dress designs are very important to Tolai cultural life. These designs embody and represent the spirits of ancestors and have been passed down from generation to generation. All members of the clan guard these very closely. On some occasions the designs may be borrowed by the members of other clans for use in particular rituals. Permission has to be obtained from the owning clan and a fixed payment of *tabu* is made.

As described above, each clan has an oral history that contains the names of its ancestors, how they migrated, where they settled, with whom they interacted and how they came to own property. All members of the clan must have this information. The importance of this kind of knowledge becomes apparent during disputes over property,

particularly land and ritual designs. This knowledge is closely guarded as it can sometimes be 'stolen' by other groups who may graft it onto their own history to support an opposing argument.

Songs, which can be for either dancing or singing, are the property of an individual. When the individual dies, the songs become the property of the clan. In the custody of the clan, the songs can be used by its members and are hired out for a fee to members of other clans.

Public knowledge

Public knowledge is knowledge that everyone in society knows or has a right to access, including marriage procedures and gardening or fishing techniques. Knowledge of some songs, rhymes and most children's songs, rhymes and games is also public knowledge. Songs, dances and other knowledge which have originated from other groups are also included. For instance, for some time now the Tolai have been performing a number of songs and dances which belong to Solomon Island groups and also some from New Ireland. They are known as *limilibur* (entertainment) songs and dances. Generally public knowledge either has no significant ritual value or has origins elsewhere. However, as is discussed below, some public knowledge has significant ritual value.

The public sphere is usually defined by the social boundaries of the village, but for some kinds of knowledge this sphere extends beyond the village. For the purpose of describing these rules, the members of a village with public knowledge can be called Group A. Beyond the village are two categories. First, those from nearby villages or communities who cannot help but pick up some of the knowledge from their neighbours, Group B. The second category are those who live in distant villages, but are related to Group A. These people constitute Group C.

While knowledge might be said to be public and accessible to or for use by anyone, this is only completely true of the members of Group A. A member of that group may utilise public knowledge of the group within the group's territory and no one will complain. Members of Group B also have access to the knowledge, but acknowledge that it belongs to Group A. On occasion the members of Group A will remind Group B of this fact. The knowledge of Group A is also accessible to members of Group C. Persons in this group utilise the knowledge, perhaps out of habit like members of Group A. These persons and the people among whom they may be living know that this knowledge belongs to Group A.

Tolai society recognises a 'defined public' beyond which there are 'others'. Others may choose not to use this knowledge for fear of offending the 'defined public' or simply have no desire for it. In a situation where persons outside of the defined public use knowledge belonging to the group, the worst that can happen to them is that they will be ridiculed and made fun of. The normal rules of ownership, rights and claims are not applied here.

Most of the knowledge in the public domain has no significant ritual value. Knowledge which does have ritual value in the public domain usually arrives there by accident. Once in the public domain, knowledge cannot be retrieved. The use of this knowledge is often a matter of contention between villages and groups, and its use is closely scrutinised for abuse or misuse.

The case of *Kabakavir* music, a category of *tubuan* songs, can be used to illustrate this. Kabakavir was a man who lived about 150–200 years before the first white man arrived on the Gazelle Peninsula in East New Britain Province. He was a little man in size and had the skin disease grille.¹¹ He lived at the village of Raluana on the other side of Blanche Bay from Matupit Island, very close to where the township of Rabaul is now located.

Because of his small size and his skin disease, Kabakavir was ostracised. He sat alone on beaches, up in trees or in the bush. Being away from everyone else, he found comfort and company in composing and singing songs. He started singing songs that were similar to those of the *tubuan* society. As he was not a member of the *tubuan* society at Raluana, Kabakavir did not know any proper *tubuan* songs. When the *tubuan* men of Raluana heard him singing his songs they recognised them as being related to the *tubuan* songs and were angry that a non-member would compose them. Non-members are not allowed to sing these songs. They were offended, thinking that Kabakavir was making a mockery of their society. They chased him into the bush and banned him from entering the village again.

Some time later Kabakavir managed to get a canoe and travel to Matupit Island on the other side of Blanche Bay where he had relatives. On Matupit the men of the local *tubuan* society did not question his membership in the *tubuan* society at Raluana. They allowed him into the *taraiu* (*tubuan* sanctuary). While at the *tubuan* sanctuary on Matupit Island, this little man sang his songs. The men of the *tubuan* society at Matupit liked his music. They encouraged him to teach them and to

compose more songs. He did this and by the time of his death he had left a legacy of between 80 to 100 major pieces of *tubuan* music, later known as *Kabakavir* music.

On his death, the body of Kabakavir was taken back to Raluana village for burial. There are conflicting stories about his burial. The Matupit version says that the body was in fact not sent back to Raluana. Instead, a banana trunk wrapped in pandanus leaves was sent while the body was actually buried at Matupit Island. The Raluana version says that the body was buried at Raluana. Another version is given by a member of the clan of Kabakavir. According to this version, when the body was received from Matupit it was not buried in the place where everyone thought it was buried. Instead, a substitute banana trunk was buried there. The actual body was buried in a secret place only known to some members of Kabakavir's clan.

Kabakavir music is now an established category of *tubuan* songs within the genre known as *tapialai*, which includes *liu*, *alalu*, *buai* and *Kabakavir*. *Liu*, *alalu* and *buai* categories of *tubuan* music are sung in all parts of the Gazelle Peninsula and the Duke of York Islands where *tubuan* are found. Kabakavir, on the other hand, is restricted to Matupit Island, two nearby villages (Talwat and Baai), Raluana village and Vunapaka village in the north-coast hinterland. Matupit Island members of the *tubuan* society lay claim to the largest number of *Kabakavir* songs. On the basis of this and the assumption that most of these songs were composed on the island, Matupit islanders claim ownership of the variety of music. The fact that Kabakavir lived on the island until his death adds weight to their claim.

At Talwat and Baai villages, a small number of *Kabakavir* pieces of music are played. The *tubuan* men of these two villages do this with full knowledge and acknowledgment of this variety of music as having its origins in Matupit Island. The *tubuan* men of Vunapaka village in the north-coast hinterland also know a few pieces of the *Kabakavir* music. Someone there had even begun to compose music along *Kabakavir* lines. A member of *Kabakavir's* clan of Matupit Island brought it to this part of the Gazelle Peninsula. *Kabakavir* music lives on and is developing in this area, with the clear understanding that it belongs to Matupit Island. The person who is now composing *Kabakavir* songs at Vunapaka is a descendant of the person who originally introduced the music there.

At Raluana village the men of the *tubuan* also know only a portion of the *Kabakavir* music that is found on Matupit Island. They do not agree

that this music belongs to Matupit Island. They say the music belongs to Raluana, because *Kabakavir* came from there originally and that on his death he was buried there and so his spirit is there. Further, the descendants of Kabakavir's clan claim that they have possession of his bones, which they use for *buai na pinpit* (music composition magic).

Conclusion

Increasing globalisation threatens the ability of communities in Papua New Guinea to control access to and use of their traditional knowledge. There are a number of ways in which traditional knowledge could be protected, including by patent, *sui-generis* systems, or a modified version of copyright. In developing any mechanism, there must be a clear understanding about how indigenous systems work, rather than broad-based assumptions.

One idea which might easily form part of the development of a mechanism for protection of traditional knowledge is the assumption that all traditional knowledge is communally owned. This discussion of the Tolai system of knowledge shows that people were very particular about acquisition, ownership, transfer, protection and use of knowledge. Only some kinds of Tolai knowledge belonged to the public domain, while the rest belonged to individuals and social groups. If an appropriate system of protection is to be developed for Papua New Guinea which is sensitive to systems like those of the Tolai, it is important that these nuances be properly understood.

Kuanua glossary

<i>apik tarai</i>	sub-clan
<i>balaguan</i>	mortuary feast
<i>barawon</i>	dream
<i>buai na pepe (buai)</i>	school for transmission of knowledge
<i>buai na pinpit</i>	music composition magic
<i>dodoko</i>	antidote used to remove illness caused by unauthorised acquisition of knowledge
<i>dok</i>	pay
<i>dokadoko</i>	protective magic
<i>Kabakavir</i>	a category of <i>tubuan</i> music

<i>kangal</i>	headgear
<i>kilang</i>	clairvoyance
<i>Kuanua</i>	Tolai language
<i>kunubak</i>	preparations for dancing, conducted in secret
<i>kutu</i>	healing practice involving vomiting of blood
<i>limilibur</i>	entertainment songs and dances that are publicly owned
<i>loga</i>	platform
<i>mata</i>	eye designs on a <i>tubuan</i> mask
<i>matatar</i>	preparation of a person's body with lime powder
<i>nidok</i>	period of seclusion associated with transfer of knowledge during <i>buai</i>
<i>nilip</i>	gathered elements for construction of a sacred object; also 'to access'
<i>pidik</i>	secrecy
<i>pinapa</i>	purchase
<i>puak</i>	literally 'carry' (possession of a person by spirits during a dance)
<i>tabaranira</i>	spirit of something
<i>tabu</i>	traditional shell money
<i>tapialai</i>	genre of <i>tubuan</i> music including <i>kabakavir</i> , <i>liu</i> , <i>alalu</i> and <i>buai</i>
<i>taraiu</i>	<i>tubuan</i> sanctuary
<i>taring</i>	sorcery
<i>tena buai</i>	sponsors of a <i>buai</i> or 'school'
<i>tinbar</i>	gift
<i>totokum</i>	hire
<i>tubuan</i> society	society of initiated men
<i>tubuan</i>	spirit belonging to a clan (sometimes the spirit of ancestors)
<i>turangan</i>	spirit
<i>u vaninar kauku pidik</i>	preparing a person's <i>pidik</i>
<i>vunatari</i>	clan
<i>waki</i>	inheritance
<i>walikikum</i>	antidotal magic medicine
<i>wapapa</i>	to shed weights (a ritual used to harness spirits)
<i>warwul</i>	chant
<i>wuwu na nilum</i>	breath of life

Notes

- 1 'Folklore' is the term used by UNESCO to mean 'traditional knowledge'. This particular terminology has had difficulties being accepted by many member states of UNESCO. France does not accept this because the French translation is derogatory. A number of African countries also want this term to be phased out of usage. At the 1999 UNESCO sponsored Symposium on 'The Protection of Traditional Knowledge' in Noumea, there was strong opposition to using the term by most Pacific Island countries except for Australia.
- 2 Ms Noriko Aikawa is the Chief on the Intangible Heritage List, UNESCO. The definition she gives here is actually the one used in the 1989 'UNESCO Recommendation on the Protection of Folklore and Cultural Expressions' and appears in Chapter 1 of the document.
- 3 The term 'rights' has to be used here with reservation, as there seems to be difficulty in the translation of this term into Tolai. This has implications for possible inappropriateness of the concept itself.
- 4 The concept of ownership also has to be used with caution, as its usage also has implications on the concept of 'rights'.
- 5 Only the applications of *dokadoko* (protective magic) can stop this. Each knowledge has its own protective magic, so the right one has to be used. Any other protective magic would not have any effect.
- 6 The *tubuan* society is a fraternity, also commonly known as a secret society. It is represented by a mask known as *tubuan*. Membership is restricted to adult males and older boys, but involved the payment of an amount of *tabu* (shell money).
- 7 Epstein's work among the Tolai in the late 1960s was mainly centered on 'land tenure'. A great deal of his time was spent on land disputes, which took place between different clans.
- 8 The 'sponsor' is the person who prepares the occasion. He meets all the costs of putting the *loga* together. It is like a commercial investment, which took place between different clans.
- 9 Today the seclusion in the bush is not always observed, although it is still very strictly observed on occasions of acquiring knowledge relating to *tubuan*. In this case the seclusion period is known as *nidok*, involving a period of two weeks and still practiced on the Gazelle Peninsula.
- 10 This account was recorded in 1981 during my doctoral fieldwork.
- 11 Grille is a fungal disease causing patches of discolouration on the skin.