

SHARING THE BASKET: DELIVERY OPTIONS FOR TE MĀTĀPUNENGA

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I. INTRODUCTION

The work of *Te Mātāpunenga* was always envisaged to be shared with a wider audience. As stated by Dr Alex Frame, a member of the editorial Board of *Te Mātāpunenga*:¹

It is envisaged that the “end users” of *Te Mātāpunenga* will be members of Māori communities, students at all levels within New Zealand, Government at many levels of policy and decision-making, and judicial officers across the range of Courts and Tribunals. It is also envisaged that the compilation will be of interest to international scholars seeking an understanding of Māori Customary law.

This chapter explores some of the options to achieve delivery of *Te Mātāpunenga* to these end users and briefly identifies some issues to be considered. *Te Mātāpunenga* has had a long gestation and has been the topic of discussion in some form or other at nearly every Advisory Panel meeting of the Te Mātāhauariki Research Institute. Many of those discussions centred on the people who were going to use the material and how it was to be delivered.

A. Publicly available

All of the source material on which *Te Mātāpunenga* draws is publicly available, and it is presented in a manner where any potential user can go directly to the sources and draw their own conclusions. In many ways it is study reference and is not being held up as the definitive source but rather a starting point for discussion and dialogue, which was indeed one of the founding principles of Te Mātāhauariki.² The researchers were mindful of

1 Alex Frame and Paul Meredith “Performing Law: Hakari and Muru” in *Te Mātāpunenga: A compendium of References to Concepts of Māori Customary Law* Te Mātāhauariki Institute Occasional Paper series, Number 8 (Te Mātāhauariki Institute, Hamilton, 2003) 49 at 51.

2 See Rachel Parr *Te Mātāhauariki Methodology: The Creative Relationship Framework* Te Mātāhauariki Institute Occasional Paper series, Number 5 (Te Mātāhauariki Institute, Hamilton, 2002).

tension between Western concepts of public domain knowledge³ and the kaitiaki interest in respect of taonga works and mātauranga Māori.⁴ To negotiate this tension all research was undertaken by a bicultural and bilingual team,⁵ applying the “Creative Relationship Framework” as outlined by Rachel Parr in *Te Mātāhauriki Methodology: The Creative Relationship Framework*.⁶ The material was continually ‘tested’ through Te Mātāhauriki’s advisory panel meetings and the Institute’s Pū Wānanga programme of consultations and discussions with senior Māori leaders and scholars.⁷

B. Copyright

As the then Foundation for Research, Science and Technology (FRST) funding supported Te Mātāhauriki for more than 10 years, the editorial board of *Te Mātāpunenga* considered what was to become of the work beyond the FRST funding.⁸ An agreement between the editorial board of Dr Alex Frame, Professor Richard Benton and Paul Meredith, Te Mātāhauriki Institute and the University of Waikato was entered into. The agreement in short states that any intellectual property rights which may reside in “the concept, scheme, arrangement, or accompanying explanations in the work shall reside with the Institute so long as it subsists and thereafter in the University”. On assignment of such rights the editorial board will retain right of attribution.⁹ Therefore, although Te Mātāhauriki Institute no longer has a physical existence, there is ongoing wairua to see *Te Mātāpunenga* disseminated to contribute to “development in Aotearoa/New Zealand of a ‘common law’ which reflects the concepts and values of both our major founding cultures”.¹⁰ The spirit of the aforementioned allocation of rights is that the work will be publicly available to as wide an audience as possible.

3 For a general discussion on public domain see Rosemary Coombe “Fear, Hope, and Longing for the Future of Authorship and a Revitalized Public Domain in Global Regimes of Intellectual Property” (2002) 52 DePaul L Rev 1171.

4 *Ko Aotearoa tenei: a report into claims concerning New Zealand law and policy affecting Māori culture and identity* Wai 262 (Waitangi Tribunal, Wellington, 2011) at 38.

5 Paul Meredith and Rachel Parr *Collaborative Cross Cultural; Research for Law and Institutions for Aotearoa/New Zealand: A Summary Paper* Te Mātāhauriki Institute Occasional Paper series, Number 1 (Te Mātāhauriki Institute, Hamilton, 2001).

6 Parr *Te Mātāhauriki Methodology: The Creative Relationship Framework*, above n 2.

7 For further discussion of Pū Wānanga see Nena Benton “Towards a More Inclusive Jurisprudence for Aotearoa: Te Pū Wānanga 1999–2003” in Richard Benton (ed) *Conversing with the Ancestors* (Te Mātāhauriki Institute, Hamilton, 2006).

8 On 1 February 2011 the Foundation for Research, Science and Technology and the Ministry for Research, Science and Technology merged into the new Ministry of Science and Innovation (MSI). See www.frst.govt.nz/ for further details.

9 In line with part 4 of the Copyright Act 1994.

10 Frame and Meredith “Performing Law: Hakari and Muru” above n 1, at 49.

C. *Methods of dealing with corrections, additions and deletions*

In the spirit of creating that discussion and dialogue already mentioned it would be ideal for a work such as *Te Mātāpunenga* to be able to respond to that discussion. The work should be viewed as a living document, which will grow and evolve over time, and this was always the vision for *Te Mātāpunenga*. Any project that deals with people's practices will be open to question regarding both the choice of material and the interpretations of (albeit contemporary) third parties. There is also a probability or perhaps certainty that further material will turn up which will add to, alter the nuance of or contradict material in *Te Mātāpunenga*.¹¹ This is especially true when knowledge is derived from an oral culture. In an oral culture abstract knowledge, such as concepts of justice and social order, are contained in a pre-existing network of knowledge, interconnected in extraordinarily complex and non-linear ways. Consequently, a practitioner of Māori customary law could have assumed that the audience would have the framework of knowledge that sits behind the practice.¹² Therefore, ideally any delivery system for *Te Mātāpunenga* would be able to deal with and respond to this legitimate feedback. A further point to note is that there can be no assumption of prior understanding of the supporting pillars of a customary practice for *Te Mātāpunenga*. Indeed, part of the aim of *Te Mātāpunenga* is to create the foundational basis in order to assist in the understanding of contemporary expressions of Māori customary law.

II. *TE MĀTĀPUNENGA – SOME DELIVERY OPTIONS*

There are a number of publishing options available; dissemination no longer relies on just hard-copy books. Each publication option presents issues and benefits and these should be considered in light of the aims of *Te Mātāpunenga* to facilitate dialogue and understanding, and it may well be that a combination of delivery methods best meets these aims.

11 For an example of contested knowledge see in the area of biodiversity Arturo Escobar "Whose Knowledge, Whose nature? Biodiversity, Conservation, and the Political Ecology of Social Movements" (1998) 5 *Journal of Political Ecology* 53.

12 Doug Brent "Oral Knowledge, Typographic Knowledge, Electronic Knowledge: Speculations on History of Ownership" (1991) 1(3) *Ejournal* <www.ucalgary.ca/ejournal/archive/rachel/v1n3/article.html>.

A. *Hard copy*

To publish in the form of a hard-copy book does have a certain amount of prestige and status. A hard copy makes citation straightforward and would facilitate its use in court and other legal situations.¹³ A hard copy also has an aesthetic that is difficult to reproduce in the other forms of publication, and recent research shows a hard copy is more likely to be shared and discussed than other digital forms.¹⁴ In some ways a hard-copy book encapsulates the knowledge in familiar form that is easy to have on a bookshelf in the office, library or classroom. Once a book has a publisher, it is relatively straightforward to distribute and recover costs and profits (presuming it sells). A book is also easy for libraries to purchase, being a one-off cost.

The difficulty with a hard-copy book is that it will be a large publication with many colour plates and is therefore relatively expensive to print. This, combined with the small print run (in a global sense), means that the cost of such a hard-copy publication would be outside the reach of many in the community and even of some small law firms.¹⁵ With a hard copy the material is static and can only respond to its audience and updates through the expensive republication of successive editions. Although a loose-leaf publication overcomes the necessity of republication in its entirety, it is best suited to materials that are updated on a regular cycle and does increase both the initial price and has ongoing subscription costs.

B. *Digitisation*

If *Te Mātāpunenga* is digitised and access is delivered online, *Te Mātāpunenga* would contribute to the rapidly increasing process of digitisation as a means of preservation and/or improving access and knowledge of cultural heritage collections.¹⁶ While the source material used in *Te Mātāpunenga* is publically available, not all of it is digitally available and therefore digitisation would

13 Although the use of digital legal materials is increasing and becoming widely accepted in our courts and for legal research, much of this is digital copies of existing hard-copy material. See, for example, the online resources/databases of LexisNexis <www.lexisnexis.co.nz/>, Brookers <www.thomsonreuters.co.nz/> and Westlaw <www.westlawinternational.com/>.

14 Steven Chen and Neil Granitz “Adoption, Rejection, or Convergence: Consumer Attitudes toward Book Digitization” (2011; July) *J Bus Res*.

15 See Nick Holmes “Legal Publishing at the Crossroads” (2009) 9 *Legal Information Management*, 172 at 173 for a general discussion about the rising costs of legal publishing and increasingly the cost being prohibitive for small law firms wanting to purchase these titles.

16 Kirsten Francis and Chern Liew “Digitised Indigenous Knowledge in Cultural Heritage Organisations in Australia and New Zealand: An Examination of Policy and Protocols” (2010) 46(1) *Proceedings of the American Society for Information Science and Technology* <<http://onlinelibrary.wiley.com/doi/10.1002/meet.2009.145046025/pdf>>.

significantly alter the accessibility to some of its source material. A further consideration is that what is public domain for one culture may be sacred or restricted for another.

As Francis and Liew point out:¹⁷

The digitisation of Indigenous cultural information presents an interesting dichotomy of cross-cultural relationships between an ideology from a liberal Western ideology which developed from the 19th century, and an Indigenous point of view; this intersection has been called by a leading researcher in the field, Martin Nakata, as the “cultural interface”.

While this cultural interface does present opportunities for preservation, dissemination and understanding of knowledge and history for both indigenous and non-indigenous peoples, we need to be mindful of the words of the Joint Statement from the Indigenous World Association and Indigenous Media Network of the UN Commission on Human Rights in 2005:¹⁸

Our collective traditional knowledge is the very foundation of our cultures. It is indivisible from our identities and our laws, institutions, value systems and cosmo visions.¹⁹ It derives and develops from our daily interaction with our ancestral territories. Thus, the protection, preservation and development of our knowledge cannot be separated from our right to maintain and strengthen our distinctive spiritual and material relationship with our lands, territories, inland waters and coastal seas.²⁰

Indigenous cultures provide for rules and regulations on communicating, sharing, using and applying traditional knowledge. These rules and regulations are cultural obligations we have to comply with and are part of our own customary laws. Our distinctive spiritual and material relationship with our ancestral territories and their environments contains similar duties and responsibilities that we need to attend to when using plants, animals or other living beings for our own needs.

17 Ibid.

18 Joint Statement from the Indigenous World Association and Indigenous Media Network “Review of Developments Pertaining to the Promotion and Protection of the Rights of Indigenous Peoples, including their Human Rights and Fundamental Freedoms: Principal theme: “Indigenous peoples and the international and domestic protection of traditional knowledge” E/CN.4/Sub.2/AC.4/2005/CRP.3 (2005).

19 See: Statement of the International Indigenous Forum on Biodiversity at the Ad Hoc Open-Ended Working Group on Access and Benefit Sharing (Bonn, Germany, 22–25 October 2001) para. 6.

20 See also: The Kimberly Declaration; International Indigenous Peoples Summit on Sustainable Development (Khoi-San Territory, Kimberley, South Africa, 20–23 August 2002) para. 3.

Also, future generations are strong rights-holders in our cultures and our responsibility for their rights and well-being requires us to meet specific obligations on their behalf.

Our cultural obligations towards communicating, sharing, disseminating, using and applying our knowledge should be legally recognized and respected by the non-Indigenous actors of the Information Society.

While the compilers of *Te Mātāpunenga* were aware of this sentiment in the production of the material, it is also hoped that *Te Mātāpunenga* will contribute to understanding and recognition of customary law within the legal arena.

All forms of digitisation carry the risk that the material will be copied and even if copy protection methodologies are implemented these are likely to be able to be circumvented within a relatively short period.²¹ However, this point should not be overstated as even with hard-copy publication all illicit copying cannot be successfully restricted, especially in light of most scanners being able to scan direct to pdf format ready for digital delivery.

For most digital delivery systems the end user does not own or possess the material but rather has access to the material.²² It is the point of access which provides opportunities for cost recovery, either as pay per view or a subscription model.²³ Digitisation can occur with a number of technologies.

1. *Compact disc*

A compact disc (CD) is in many ways like a book in digital form. Unlike a book, a CD would require access to a computer but not necessarily the internet. The production of a data CD is relatively cheap, although in practice a CD of printed material is as expensive as, or even more expensive than, hard-copy printed material because of pre-production costs. A CD can easily be created in a manner which provides hyperlinks throughout the material connecting related terms, allowing a reader to instantly navigate to associated material. A CD could also be linked to external sites and online material; for example,

21 Casey Chisick and Mark Perry "Copyright and Anti-Circumvention: Growing Pains in a Digital Millennium" (9 June 2000) NZIPJ 261 at 262.

22 This is not the case for CD delivery which in this respect is more like a hard-copy book but may also be covered by a licence.

23 Viktors Berstis and Maria Himmel (2001) "Royalty Collection Method and System for use of Copyrighted Digital Material on the Internet" United States patent US 6,282,653 B.

direct links to some of the sources.²⁴ This type of hyperlinked navigation encourages deeper understanding of the material and exploration beyond the linear.²⁵

However, like a hard-copy book the material is static and like books can only respond to its audience through a new edition.²⁶ A CD is cheaper and faster to produce but still requires distribution to subscribers.

2. *Webpage – static*

Material could be hosted on a static (non-interactive) website. If access to the material is to be free, once set up a website like this can be left with very little management. In many ways this is very similar to the CD and can provide hyperlinks inside the document in order to follow links and connections, as well as links to outside sources. This type of archiving of the material could be hosted on our own website (www.lianz.waikato.ac.nz) or by some third party such as the University of Waikato Research Commons (<http://researchcommons.waikato.ac.nz/>).

When a new edition is ready it could be quickly and easily updated. However, unlike the CD and hard copy, by using a static website the material could be incrementally updated. That is, one section or entry could be updated at a time.

Even with a relatively static website, there are ongoing costs involved with hosting and maintaining the site. Therefore, it is necessary to have a continuing commitment to the publication from an institution or publisher.

3. *Webpage – interactive*

A model which is becoming more prevalent on the internet for dissemination of material is the interactive website. The interactivity can be at the level of the material with a higher level of linkages within and external to the material such as the National Library Digital Collections (www.natlib.govt.nz/collections/digital-collections) and the Encyclopedia of New Zealand (www.teara.govt.nz/en).

24 For example, a link could be made to the Maori Newspapers <www.nzdl.org/cgi-bin/librar y?a=p&p=about&c=niupepa&l=mi&nw=utf-8> allowing users to instantly refer to sources where they have an active internet connection.

25 Isabelle De Ridder “Visible and Invisible Links” (2002) 6(1) *Language Learning and Technology* 123.

26 It is true that some publications such as Encyclopaedia Britannica and World Book use online updates to update the original material.

Alternatively, the interactivity can be between the material/institute/university/publisher and the audience, where the audience or end users can comment and even perhaps contribute to the content. This option does require a further level of commitment, because no matter what the level of public involvement there is a requirement of some sort of moderation to avoid possible liability arising from comments posted by what can be anonymous contributors.

The amount of public participation can range from:

- simply supplying an email address for comments such as we do on the Te Mātauhauariki site (www.lianz.waikato.ac.nz);
- a Q&A page such as Chicago Manual of Style Online (www.chicagomanualofstyle.org/CMS_FAQ/new/new_questions01.html);
- online forums and discussions such as the Traditional Knowledge portal (www.cbd.int/tk/forum/);
- specific discussions/comments linked to entries (www.ip-watch.org/weblog/index.php?p=479&res=1024_ff&print=0).

4. *Wiki*

Wikis are perhaps the most interactive options of all, where the public are able to edit and add material directly to the site. The most famous of this type of site is Wikipedia (<http://en.wikipedia.org>), where members of the public can contribute to the collective knowledge of the community. While a wiki can be a very open system, it can also have any level of editorial filter before public publication on the web, but any level of editorial function requires constant commitment.²⁷ While wikis are being used within disciplines in the academy or institutions only a few external academic-focused wikis exist.²⁸ For example, Citizendium (<http://en.citizendium.org>) was developed as a more rigorously fact-checked alternative to Wikipedia. However, as of 2011 it has only passed 156 expert-approved articles through the vetting process since it was created in 2006.²⁹ Another example is Scholarpedia (<http://www.scholarpedia.org>), which only accepts articles from experts in their field and all articles are peer-reviewed prior to publication, making it more like a traditional journal or encyclopaedia than a true wiki. Although there have been a number of

27 See, for example, the LexisNexis Academic Product Wiki <wiki.lexisnexus.com/academic/index.php?title=Main_Page>.

28 Steve Kolowich “Whither the Wikis?” (14 July 2010) *Inside Higher Ed* <www.insidehighered.com/news/2010/07/14/wikis>.

29 Date accessed 16 November 2011. There is a backlog of 15,893 articles in various stages of development.

articles professing the credibility of Wikipedia and the like, the fact remains that wikis have a credibility problem. This perception is especially true in the academy and I would suggest this also permeates the legal profession.³⁰

III. CONCLUSION

While these options are still to be navigated, if a work such as this is to achieve its greatest audience and utility, in my opinion it requires a level of interactivity that balances both the integrity of the material with ease of access and connection to its audience. It may be that to achieve this some form of hybrid delivery system is adopted, something like *Adams on Criminal Law (Adams)*.³¹ *Adams* is delivered in hard copy (albeit periodically updated in loose-leaf form), and parts of the larger work are reproduced for specific purposes.³² In addition or in conjunction with the hard-copy form, *Adams* is also published online (which is constantly updated) and on CD. While such an extensive multi-delivery platform may not be necessary, in my opinion the ideal delivery for *Te Mātāpunenga* would be some form of complete³³ or condensed hard-copy book in conjunction with some form of moderated interactive online delivery.

30 See, for example, Aniket Kittur, Bongwon Suh and Ed Chi “Can you ever trust a wiki?: impacting perceived trustworthiness in Wikipedia” *CSCW '08 Proceedings of the 2008 ACM conference on Computer supported cooperative Work* (ACM, New York, 2008) 477, “An Empirical Examination of Wikipedia’s Credibility” (2006) 11(6) *First Monday* <<http://frodo.lib.uic.edu/ojsjournals/index.php/fm/article/view/1413>>; and Andrew George “Avoiding Tragedy in the Wiki-Commons” (19 March 2007) Available at SSRN: <<http://ssrn.com/abstract=975096>>.

31 See Brookers <www.thomsonreuters.co.nz/catalogue/>. As I teach Criminal Law I am most familiar with this product. There are other examples of multiple format delivery systems for content.

32 For example, Jeremy Finn *Adams on Criminal Law 2011 Student Edition* (Thomson Reuters, Wellington, 2010).

33 At the time of writing, it appeared likely that a complete hard-copy edition of *Te Matapunenga* would be prepared for publication in 2012.