

# Tangata Whenua, the Treaty and the New Zealand Digital Strategy

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**With the release of New Zealand's Digital Strategy in 2005 and its Draft Content Strategy in 2006, came the opportunity to identify their potential impact on the Indigenous Peoples of Aotearoa, Tangata Whenua.**

Coinciding with New Zealand's Digital Strategy's release in 2005, were a series of heated public and political 'race-based' arguments that had been triggered by the infamous 'Orewa speech'<sup>1</sup> in 2004 by the then-leader of the National Party, Don Brash.

The "fuelling of racist sentiments" dominated the media and appeared to be working against the recognition of the Treaty of Waitangi<sup>2</sup>, the Treaty of Waitangi Principles<sup>3</sup> that appeared in Government documents, and Tangata Whenua<sup>4</sup> as distinct Indigenous peoples of Aotearoa.

Many consider that the Te Reo Rangatira<sup>5</sup> and signed version of Te Tiriti O Waitangi (1840) is our country's founding document. Versions aside, the legal status of the Treaty is not enforceable as there is an absence of statutory incorporation<sup>6</sup>. Any Government strategies that mention the Treaty or the Principles are dependent on the application of

moral obligations of the Crown<sup>7</sup>.

While debate is ongoing regarding the status and implementation of any Treaty version, Government (and the Courts) moves towards recognition of its Treaty of Waitangi principles<sup>8</sup>.

Following Brash's speech, the New Zealand First party introduced a bill for the deletion of the Treaty principles. While many Tangata Whenua did not support the Government-imposed Treaty principles, it was believed that any hasty removal following Brash's speech, was a "knee-jerk" reaction that would result in a potentially destructive force against progress for Tangata Whenua. Some believed that if successful, Tangata Whenua would be relegated the same status as a 'minority group' amongst a range of other 'ethnic' groups and communities. It was not believed that the removal of the Treaty principles would result in the raised status of the Treaty but rather that it would leave an 'empty space' that rendered Tangata Whenua, the history of colonisation and its impacts invisible.

1 [en.wikipedia.org/wiki/Orewa\\_speech](http://en.wikipedia.org/wiki/Orewa_speech)

2 "Treaty" is used generically in this paper in reference to multiple perspectives and versions.

3 "Treaty principles" refers to the Treaty of Waitangi principles.

4 Tangata whenua is used here to broadly describe the descendants of the Indigenous people(s) of Aotearoa—it includes groupings such as Whanau, Hapu, Iwi, Māori, etc.

5 The Indigenous language—also often referred to as te reo or Māori language.

6 Te Puni Kokiri, 2001, p.16.

7 It is not the purpose of this paper to provide a full analysis of the Treaty as this is well documented elsewhere.

8 The Treaty principles were established by the Labour Government in 1989 and not by Tangata Whenua.

While the bill was not successful, the idea of removing the Treaty principles was later toyed with by some Government Ministries that instructed their bureaucrats to remove all references to the Treaty principles from their documents.

The 1961 Hunn Report had exposed the socio-economic status of Tangata Whenua and the four-plus decades that followed had shown that time had improved the low status, performance and capacity in almost all measureable areas including health, education, housing, employment, crime, abuse and more (Kamira, 2002). The Government, some believed, was about to abandon both the rights through the Treaty of Waitangi, and the needs of Tangata Whenua despite the well-recorded far-reaching and negative impacts of colonisation.

This was important when considering the impacts of a national strategy that would address Tangata Whenua knowledge and information and how it would be developed, stored, accessed, used and manipulated.

The issue of how to protect and use this content, and importantly, how to ensure it benefits Tangata Whenua, is cause for ongoing tension between the Government and Tangata Whenua. This is because the colonial process of acquiring ‘trophies’ has not been resolved. The ownership of content held by Government institutes is not agreed and legislation does not recognise collective ownership<sup>9</sup> or the kaitiakitanga<sup>10</sup> roles and processes of Tangata Whenua.

### The digital and draft content strategies

The digital strategy enabled the development of sub-strategies and the first of these was released in 2006. This draft content strategy clearly attempted to align with its overarching digital strategy and therefore was potentially constrained by the same limitations. This is important because the digital strategy failed to recognise the Tiriti and its relevance.

The release of the digital strategies should provide opportunities to address a number of outstanding ownership and kaitiakitanga issues between Tangata Whenua and the

*both digital strategies reduced tangata whenua to ‘community’ alongside pony clubs and other interest groups.*

### A digital perspective

‘Content’ in the digital strategies refers to data, information and knowledge that is produced as digital material on digital media and includes electronic books, images, audio, video and more. It includes historical and traditional material, and new and created material.

For the purposes of this paper, ‘Tangata Whenua content’ refers broadly to content that is sourced from, or is about Tangata Whenua.

The digital world permeates our daily activities to the extent that many Tangata Whenua commonly use digital tools and media to record, store and manipulate ‘content’. The Government also has digital repositories of ‘content’ that is sourced from, or created by Tangata Whenua. These repositories are held within its museums, libraries, archives, courts and numerous Government agencies. It could be argued that these combined repositories represent the largest collection of Tangata Whenua content in the world.

Crown. However, the current politics meant that the Treaty principles and the Treaty could not be used to leverage progress towards a resolution.

In essence, both strategies reduced ‘Tangata Whenua to ‘community’ alongside pony clubs and other interest groups. In doing so, it failed to recognise the historic and spiritual body of knowledge and the inter-generational and unique nature of Tangata Whenua.

Also, the draft content strategy potentially reduced Tangata Whenua ‘content’ that is not held by Government institutes (the trophy holders) to ‘informal’ knowledge. The implication was that the strategy would provide the bulk of resources to ‘formal’ knowledge held by various Government institutes

9 Collective ‘ownership’ of content is the combined knowledge that is held and passed down to generations by whanau and hapu groups for example. There is usually no legal title or copyright to the knowledge making it particularly vulnerable to misappropriation or exploitation by the commercial sector both in Aotearoa and overseas.

10 Kaitiakitanga can be loosely defined as inter-generational guardianship.

but not necessarily to knowledge held outside those institutions. Therefore, the so-called informal knowledge of Tangata Whenua including that which is held in perpetuity by traditional oral and arts, and contemporary methods such as writing and new arts, did not appear to be legitimised and appeared to have no more value than content that is produced by pony clubs. This was inconsistent with the draft content strategy's statement that "Māori language, knowledge and culture [is] a vital part of New Zealand's identity"<sup>11</sup>. If the strategy was serious then this was not reflected in its draft.

It was also observed that there were no references listed in the 'Research Reports & Relevant Publications' section that relate to Tangata Whenua content. This was a serious shortfall as the draft did not appear to be balanced or well-informed.

The draft approached Tangata Whenua aspects in an ad-hoc, piecemeal manner and so missed some key strategic opportunities. This risked the protection and longevity of Tangata Whenua content. Given the Draft's acknowledgement that Tangata Whenua content is a vital part of New Zealand's identity, the lack of explicit sections that address Tangata Whenua content revealed some inconsistencies.

In both digital strategies, references to Tangata Whenua, the Treaty and the Treaty principles were glaringly absent.

What would the specific inclusion of Tangata Whenua, the Treaty or the Treaty principles in the digital strategies contribute to the futures of Tangata Whenua?

Would their absence force a new and possibly better approach—given that in the last four decades the attention given to Tangata Whenua and the Treaty principles through various Government strategies and policies, had not appeared to significantly improve the socio-economic factors for Tangata Whenua?

In what way could Tangata Whenua glean benefits from the digital strategies and whose responsibility was it to ensure those benefits were forthcoming?

The lack of attention in the digital strategies could fast-track the elimination of 'memory' and invalidate the existence of Tangata Whenua and the Treaty—and therefore any advantage that could be gained from both strategies.

## Recommendations

At this time, it is obvious that the Government will not accept

many, or perhaps any, of the following points. However, they are listed to highlight the degree to which the Government's risk-averse and entrenched position can limit the progress of Tangata Whenua and potentially exclude Tangata Whenua from fully participating in partnership with the Government in a digitally strategic future. Yet, the following points are considerations for future iterations of the digital strategies and its sub-strategies.

Tangata Whenua and the Treaty need to be reinserted into the strategies and explicitly drawn out and discussed.

Intellectual and cultural property rights need to be positioned alongside the Treaty. In particular, the Treaty implies rights—a basic parallel with intellectual and cultural property rights exist. In contrast to the draft content strategy which states that "New Zealand has strong intellectual and cultural property law"<sup>12</sup>, the experience of Tangata Whenua regarding collective content<sup>13</sup> is contrary. Intellectual and cultural property needs to be defined from the perspective of Tangata Whenua as well as from a legal perspective so that the disparities can be identified and resolved. Definitions need to include the concept of collective ownership, ownership versus kaitiakitanga, and should identify strategic areas for legally unprotected content by exploring both legal and non-legal mechanisms.

Kaitiakitanga, its concepts and processes for the protection and use of Tangata Whenua content, and the adoption of kaitiakitanga by Government sector in full partnership with Tangata Whenua where Government institutes still hold content, should be developed as a critical strategic outcome of the strategies. Government agencies now commonly use the term 'kaitiakitanga' to describe forms of governance. However, it falls short of kaitiakitanga which for Tangata Whenua, encompasses inter-generational care and responsibility through whakapapa (genealogy and specific responsibility passed down)—a role that a Government cannot perform.

To eliminate the high risk of loss of content, the digital strategies need to identify tensions between Government and Tangata Whenua with the aim of resolving tensions of ownership and kaitiakitanga to reduce lost content, or content that is out of context because it is dislocated from the source.

Repatriation of content from Government to Tangata Whenua should be a strategic activity of the digital strategies. Content that is sourced from Tangata Whenua as a result of conquest or colonisation should be considered

<sup>12</sup> Page 16

<sup>13</sup> Page 6 states the vulnerability of Māori knowledge being "drowned out" or appropriated unless adequately protected.

as being 'on loan' to Government institutions. It needs to be recognised that the dislocation of content from the source –and therefore from the context–presents a serious risk of lost or incomplete content.

The commitment to first beneficiaries should be included in the digital strategies to support Tangata Whenua as the first to benefit from Tangata Whenua content–this shifts content as 'trophies of colonisation' to mechanisms that will benefit the longevity of the culture, its evolution, its activities and its people.

Authenticity as a mechanism to promote and protect Tangata Whenua content should be developed as a critical strategic outcome of the digital strategies.

Metadata that captures the essence of content in "te reo rangatira me ona tikanga"<sup>14</sup> needs to be developed. While some work has occurred in this area it is not well-supported nor applied. English language metadata descriptions are inadequate and often do not result in good access to Tangata Whenua content. Given the focus of the digital strategies on the unique content provided by Tangata Whenua, the development of a "te reo rangatira me ona tikanga" based metadata standard or approach should be a strategic activity so that content (especially that which is held by Government institutions) can be properly described and accessed.

## Conclusion

In writing this paper, it would be wrong to assume that the issues raised are only linked to the digital strategies. Similar issues have been raised in other contexts and will continue to be raised. They move beyond the digital strategies and align with the work being done by others especially in areas of intellectual and cultural property rights. They apply whether or not the material is digital or 'hard copy' and whether or not it is institutionalised by conquest, on loan, or given as a gift.

The future of the body of knowledge that is uniquely associated with Tangata Whenua–both ancient and contemporary–will continue to be lost or undermined if a proactive stance for protection is not taken by those with the power and resources to reverse or halt the process of colonisation. History has shown that colonialist methods, that are still the default and are still in practice by the Government, will not result in a satisfactory outcome for Tangata Whenua or indeed the people of Aotearoa/New Zealand.

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14 The language, its protocols, processes and contexts.