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Creator's Rights Alliance

Canada

Greg Young-Ing is a Member of Opsakwayak Cree Nation in Northern Manitoba. He has a Masters of Arts Degree The Institute of Canadian Studies at Carleton University and a Masters of Publishing Degree from the Canadian Centre for Studies in Writing & Publishing at Simon Fraser University, and is currently doing a Ph.D. candidate in The Department of Educational Studies at University Of British Columbia. He has worked for The Royal Commission On Aboriginal Peoples, Assembly Of First Nations, Committee Of Inquiry Into Indian Education, Native Women's Association Of Canada, and from 1990-2003 was the Managing Editor of Theytus Books. Some of his published works include: an essay entitled "Perspective on the Indigenous Tradition/New Technology Interface" in Indigenous Affairs Journal, Copenhagen, 2003, an essay entitled "Talking Terminology: What's in a Word and What's Not" in Prairie Fire Literary Journal - Fall 2001, and essay entitled "Aboriginal Text in Context" in "(Ad)Dressing Our Words: Aboriginal Perspectives on Aboriginal Literature and Art", 2001, and an essay entitled "An Overview of Aboriginal Literature and Publishing in Canada" published in Australian Journal of Canadian Studies, 1996. He is a former Member of the Canada Council Aboriginal Peoples Committee on the Arts (June 1997-June 2001) and the British Columbia Arts Council (July 1999-July 2001) and is currently Chair of the Indigenous Peoples Caucus of Creator's Rights Alliance (appointed May 2002).

Ethical and Legal Issues in the Transformation of Traditional Knowledge through Indigenous Cultural Expression

The primary purposes of this presentation are: 1) to outline and establish principles in the use of Traditional Knowledge (TK) in cultural practice, artworks and other tangible and intangible cultural expressions; 2) to establish theoretical frameworks on Indigenous peoples transformation of TK through their cultural practice; and, 3) to develop useful models and concepts to regulate the use of TK in the contemporary context. This will be achieved by first outlining the development of systems of regulating creative works in Indigenous Nations and European Nations, including various Indigenous Customary Law systems, and various European concepts such as moral rights, authors rights copyright and conventions such as the Statute of Anne, The Paris Convention and the Berne Convention.

The presentation will further examine: 1) the development of TK and Intellectual Property Rights (IPR) systems: and, 2) case studies of interaction between the two systems. The case studies will be analyzed in terms of the insights they provide about the functionality of the IPR system and it's ability to incorporate TK. It will highlight concerns that existing regimes of protection (i.e. copyright, patent, trademark, trade secrets, commercial law, and international regulation and convents) are not able to protect certain forms of TK; and that, therefore, new systems of protection need to be developed and implemented. The background of the discourse over the establishment of *Sui Generis* protection vs. adapting the IPR system will also be discussed and analyzed. This part also will focus on how Indigenous Intellectual Property and TK should best be ethically treated and regulated in it's use by Indigenous peoples, non-Indigenous peoples and in the public domain - and what mechanisms are required to protect it.

Related concepts and principles developed through Common Law in Canada and Australia will also be discussed with regard to their relevance to the establishment of TK regulation, and the legal recognition of concepts such as: Moral Rights, Authors Rights, and Collective Copyright. This will include outlining of issues and summaries of judgments of the landmark Snow and Teberge Cases in Canada, and the Bulan Bulan and Carpets Cases in Australia. An analysis of the practices and works of one particular Indigenous artist, Bill Reid, will also be analyzed to illustrate how concepts from Indigenous and European Laws can be fused in concepts regulating the use and transformation of TK though contemporary practice.

Finally, the impact on TK of various national frameworks in Canada, U.S., Australia, New Zealand, Panama and Thailand will be discussed, along with a brief outline of TK related discourses taking place in various international forums such as The World Intellectual Property Organization, The Convention on Bio-Diversity, The World Trade Organization and UNESCO.