



**Department of Land and Natural Resources  
Aha Moku Advisory Committee  
State of Hawaii  
Post Office Box 621  
Honolulu, Hawaii 96809**

Testimony of  
Aha Moku Advisory Committee

Before the House Committee on Judiciary

Wednesday, April 17, 2019  
3:00 p.m.  
State Capitol, Conference Room 325

**In SUPPORT OF SCR 204, HD 1 (HSCR 2273)**

**Urging the Establishment of a Native Hawaiian Intellectual Property Task Force to Develop a Sui Generis Legal System to recognize and protect Native Hawaiian Cultural Intellectual Property, Traditional Cultural Expressions, and Genetic Resources.**

Restored from the 9<sup>th</sup> Century by the translations of ancient oral chants by John Kaimikaua, a deeply respected kumu and historian, the Aha Moku Process (Aha Moku) was brought forward by over 200 kupuna and expert practitioners of many native Hawaiian traditional disciplines from each of the main Hawaiian Islands, in a series of public puwalu and countless community meetings from 2004 to 2012. The Aha Moku was transformed into law via Act 288, SLH 2012, §171.4-5 HRS through the efforts of the Association of Hawaiian Civic Clubs and by the Hawaii State Legislature. The Aha Moku is comprised of the archipelago of Hawaii – all the Hawaiian Islands including *Moku Manamana* (Northwest Hawaiian Islands). The traditional names used by each of the islands, prior to 1778 are: *Moku O Keawe* (Hawai'i Island), *Moku O Pi'ilani* (Maui), *Moku O Kanaloa* (Kaho'olawe), *Nana'i Kaula* (Lana'i), *Moloka'i Pule O'o* (Moloka'i), *Moku O Kakuhihewa* (Kaho'olawe), *Manokalanipo* (Kaua'i), and *Ka Aina O Kawelonakala* (Ni'ihau).

Each of the islands consist of moku and ahupua'a. Collectively, there are eight (8) *mokupuni* (islands) with their attached 46 *moku* (larger land districts) and 606 *ahupua'a* (smaller land districts) throughout the *Pae'Aina*. Each of the *moku* and *ahupua'a* have the traditional families still there, who have held on to the generational knowledge of their natural and cultural resources, their customs, and practices. And while collectively, as stated in the SCR 204 HD1, cultural expressions and art forms are expressed generally throughout the islands, it must be noted that every island is unique in their cultural expressions and dialects. These exclusive island-specific expressions and dialects must also be included in the protection of the Intellectual Property Task Force before they are forever lost, or misappropriated by researchers, authors, scientists, biotechnology corporations, universities, fashion and others.

**Aha Moku is in strong support of SCR 204 (SSCR 1746)** because a Native Hawaiian Intellectual Property Task Force that should develop ways to protect Native Hawaiian cultural property, expressions, and genetic resources is truly needed. We believe this task force will be able to protect not only the most well-known and general cultural expressions of Hawaii as a whole, but also to begin to recognize the unique differences in cultural practices and vocabularies that are exclusive and site-specific to each island.

Respectfully yours,

Leimana DaMate  
Aha Moku Advisory Committee  
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**SCR204 HD1**  
**URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY**  
**TASK FORCE TO DEVELOP A SUI GENERIS LEGAL SYSTEM TO RECOGNIZE AND**  
**PROTECT NATIVE HAWAIIAN CULTURAL INTELLECTUAL PROPERTY, TRADITIONAL**  
**CULTURAL EXPRESSIONS, AND GENETIC RESOURCES**  
House Committee on Judiciary

April 17, 2019

3:00 p.m.

Room 325

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The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SCR204 HD1, which seeks to protect Native Hawaiians' cultural intellectual property, traditional cultural expressions, and genetic resources. This subject is of great concern to many OHA beneficiaries.

Native Hawaiians continue to experience harms to their 'ike kupuna (ancestral knowledge, practices, and traditions) as a result of the implementation of the current Western legal intellectual property framework and its limitations in adequately protecting indigenous knowledge from inappropriate exploitation and other abuses. Developing a sui generis (one-of-a-kind) legal system to address these harms would be complex and intellectually challenging. Accordingly, OHA appreciates the legislature's exploration of ideas to address this complicated issue.

Mahalo for the opportunity to testify on this measure.

**LATE**

**SCR-204-HD-1**

Submitted on: 4/17/2019 11:39:38 AM  
Testimony for JUD on 4/17/2019 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	O`ahu County Democrats Legislative Priorities Committee	Support	No

Comments:

To the Honorable Chris Lee, Chair; the Honorable Joy A. San Buenaventura, Vice Chair; and members of the Committee on Judiciary:

The O`ahu County Democrats Legislative Priorities Committee submits its testimony in support of SCR204 HD1. Similar issues relating to indigenous intellectual property rights have been addressed in many international forums, such as at the World Intellectual Property Organization’s Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore; the United Nations Commission on Human Rights; the United Nations Declaration on Rights of Indigenous Peoples; in relation to the environment in Agenda 21 of the Rio de Janeiro Earth Summit; and the Convention on Biological Diversity.

In addition, other indigenous people have developed strategies and sui generis legal frameworks or systems to protect their collective intellectual property rights and knowledge, including the Indian Arts and Crafts Board federally funded through the United States Department of the Interior, the Toi Iho registered trademark for the Maori art and artists funded through a charitable trust, and the Alaska State Council on the Arts Silver Hand Program for Alaska Native artists funded through the state.

Hawai`i State laws recognize traditional customary rights of Native Hawaiians but they do not recognize and protect the collective intellectual property rights of the Native Hawaiian peoples, as such, SCR204 HD1 calls for the establishment of a Native Hawaiian intellectual property task force to convene and address this issue and present its findings to the Legislature, Regular Session of 2022.

Thank you for this opportunity to submit testimony in support of SCR204 HD1.

Mahalo nui loa.

Melodie Aduja

Chair, O`ahu County Democrats Legislative Priorities Committee



1288 Kapiolani Blvd, Apt 1905  
Honolulu, Hawaii 96814  
April 16, 2019

Rep. Chris Lee, Chair  
Rep. Joy A. San Buenaventura, Vice Chair  
Members, Committee on Judiciary  
Hearing: April 17, 3:00 p.m., Conf Rm 325

Testimony in Support with Comments and Amendments of  
SCR204, HD1, Urging the Establishment of a Native Hawaiian Intellectual Property Task Force  
to Develop a Sui Generis Legal System to Recognize and Protect Native Hawaiian Cultural  
Intellectual Property, Traditional Cultural Expressions, and Genetic Resources.

Aloha, Chair Lee, Vice Chair San Buenaventura, and members of the Committee on Judiciary,

I am writing to urge passage of SCR204 HD1 with amendment and comments. The first BE IT RESOLVED clause calls upon several state Departments to collaborate with each other and with several named Hawaiian organizations to establish the Native Hawaiian intellectual property task force. Two recommendations for amendment: 1) Name the state Dept to lead this effort, otherwise, I fear no one will take the lead to get the task force established; 2) Include in the named Hawaiian organizations the Hawaii Academy of Recording Arts, recognizing the need to protect Native Hawaiian music and lyrics.

The Federal Bar Association published an article titled “Who Owns Culture? Indigenous Cultural Intellectual Property Rights.” The article noted that Indigenous interests in intellectual property law can affect approximately 370 million indigenous people located in nearly 100 countries. **Yet a legal framework for the protection of indigenous knowledge, culture, folklore, science, and music remains elusive.** Thus, the task force proposed by SCR204 is forward thinking in addressing this vital issue.

Indigenous peoples’ heritage includes objects, scientific discoveries, moveable and immovable cultural property, photographs, videos, songs, and dances. The nature of indigenous heritage material is such that it is transmitted from generation to generation. Globalization has provided new avenues and incentives for the commercial use of indigenous peoples’ artistic expressions, which haven’t always been protected and compensated for appropriately. From eco-tourism to souvenir artifacts, culture is being transformed and sometimes misappropriated into merchandise. The need for protection of indigenous works increases each day.

Locally, I wish to share with you concerns expressed by my friend, Chelle Pahinui. This initiative will be complex, challenged with questions, such as, how many businesses from gas stations to cleaning companies use the word Aloha...would their use of Aloha be considered a violation of intellectual property rights?

What about “Hawaiian Jewelry” that uses Hawaiian words and names but was originally a European gift to Hawaiians and is produced by many and worn by all. Is the percentage of something a consideration, i.e. % of Hawaiian. How would ownership of Hawaiian music by non-Hawaiians be handled? Many if not most were composed by non-Hawaiians in the past. How about hotels with Hawaiian names, many owned by non-Hawaiians. How about property such as aloha shirt and designs (originally created by and mostly designed by non-Hawaiians) be handled?

Are western laws for protecting intellectual property rights , such as patents and copyrights, sufficient to protect Native Hawaiian Cultural Intellectual Property?

In spite of these challenges, recommend passage of SCR 204 HD1 consistent with other measures passed by this legislature, i.e., HCR 155, HR 142, and SR164, except for the amendments offered above. Hopefully, collaboration of the astute minds of all those involved will evolve some clear policy for protecting Native Hawaiian intellectual property rights.

Respectfully, Leimomi Khan

**SCR-204-HD-1**

Submitted on: 4/16/2019 2:32:41 PM

Testimony for JUD on 4/17/2019 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nikos Leverenz	Individual	Support	No

Comments: