

# NGĀ TOKI WHAKARURURANGA

## #5. ARTIFICIAL INTELLIGENCE, FREE TRADE RULES AND SURVEILLANCE OF MĀORI (July 2024)

*Ngā Toki Whakarururanga's commitment to a Tiriti-based Kaupapa aims to ensure that international free trade agreements preserve the rangatiratanga of Māori within a digital world.*

Digitisation has brought a new era of colonialism that threatens to deprive Māori of rangatiratanga and kaitiakitanga over mātauranga and imposes a Western capitalist model that displaces tikanga Māori. Its tools are getting more sophisticated and far-reaching every year. [Artificial intelligence](#) is the latest and most invasive threat to mātauranga and to the wellbeing of individual Māori, whānau and hāpori.

### **What is AI and how does it work?**

AI is an advanced form of computing that performs tasks usually done by human beings. It relies on masses of data that are trawled from many possible sources and raises the many issues of control, consent, collective rights and responsibilities, and accountability discussed in other briefing papers.

### **Why is AI a threat to Māori?**

An obvious example of artificial intelligence is “facial recognition”. Lots of companies do surveillance of your everyday life: cameras are collecting your image when you fill up your car at a gas station, shop in a supermarket or even walk down a main street. The data from all those images is pooled and analysed using “algorithms”, the instructions that computers apply to solve problems or produce outcomes. These instructions reflect the assumptions fed into them by programmers, including predictions about what different categories of people are likely to do, buy, think and behave. These algorithms inform what is called AI.

### **Why is that a problem for Māori?**

Algorithms are trained on data-sets and related [assumptions](#) that are developed by human beings. They have been proven to be biased because of the analysts' own biases and the uneven sample size of different categories of people, which tend to be [white and male](#). There are particularly high levels of error for Indigenous people and for women, including Māori. That increases the likelihood of racist profiling and errors, especially as the use of AI spreads, for example if “facial recognition” software tags people who fit the pre-set profile as potential trouble makers or shop-lifters.

### **AI and its algorithms are notoriously racist**

AI tools are being used in both public and private sectors, which gives them a lot of power over Māori that is hard to challenge. In November 2023 [Radio NZ](#) exposed the government's investment in an Irish-owned “Identity Check” system to verify people online for public and private services, from benefits to banks. The facial recognition system failed almost half the time in tests, and even more on Māori, where there was a recognised “difference in relation to skin tone”. But the government admitted it had yet to “seek and consider the views of Māori”, its Tiriti partner.

## **AI targeting is now reality for Māori in everyday life**

Foodstuff's supermarkets are trialling AI to identify shoplifters. The technology scans customers' faces and compares these images to those on the store's databases of "known" offenders or suspects. In April 2024, [a wāhine Māori](#) was publicly humiliated (on her birthday) and told to leave New World in Rotorua after she was wrongly identified as a trespasser thief; the staff insisted the AI was right, despite her showing ID. False identification is an issue [even for Pākehā](#); but [Māori](#) are much more likely to be targeted. NZ has no rules on biometric data such as fingerprints, face, voice, irises and palms.

## **Who controls how Māori data can be used?**

The software that drives AI systems (made up of source codes and algorithms that give the computer step-by-step instructions) is invisible to most of us. We don't know what data has been used to train it to make connections between people and things. We don't know anything about the algorithm or the set of instructions the AI has been given to analyse the data. We do know that the data plugged into the AI and the algorithm is likely to mirror the sorts of racial bias that has contributed to overrepresentation of Māori in the [crime statistics](#) and elsewhere.

## **How do you hold tech companies to account?**

If you can't access the source codes and algorithms that drive everything digital today, you can't tell examine the assumptions that underpin them and whether they are biased, what information they are collecting (eg through your [smart tv](#), phone or [car](#)) and even if they are giving fraudulent information (eg [Tesla lying](#) about how many kilometers its e-v batteries would last for). Often governments don't have the capacity to identify these abuses, so it's important that independent experts can do so. Without access to the codes and algorithms, the tech companies can do anything with no consequences.

## **How is this a "trade" issue?**

The e-commerce/digital trade rules in most free trade agreements say governments can't require those who "own" the source codes, and often the algorithms, to disclose them as a condition of selling digital products, services or technologies that contain them. That includes computer software itself. This largely protects them from scrutiny. Some recent agreements have tried to remedy that by allowing governments to access codes when they believe there is a problem, but this is limited and still prevent clever geeks from getting inside them to see their instructions and expose their biases, frauds, or human rights abuses.

## **What to do?**

The Waitangi Tribunal in the [Wai 2522 report on the TPPA](#) found the secrecy of source codes was potentially prejudicial to Māori and the TPPA's exceptions did not ensure that Māori were effectively protected. Some later agreements have slowly extended those exceptions, but they are still problematic and the rule in the TPPA (and its successor the CPTPP) that breaches Te Tiriti is unchanged.

Ngā Toki Whakarururanga is committed to continue exposing and preventing these breaches, and to fight for a Tiriti-based regime of Māori digital governance. The more people who understand the issues and risks to Māori from free trade agreements, the more effective we will be.

**Find out more on [ngatoki.nz/kaupapa/digital/](https://ngatoki.nz/kaupapa/digital/)**