

# **The Limitations of Colonial Intellectual Property Law in Protecting Indigenous Knowledge**

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A podcast by Sam Yee

EAS4103: Seminar in Indigenous Studies - Settler Colonialism & Law

Professor: Dr. Daniel Rück

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Link to podcast:

<https://anchor.fm/sam-yee/episodes/The-Limitations-of-Colonial-Intellectual-Property-Law-in-Protecting-Indigenous-Knowledge-e1aulkl>

# Intellectual property (IP)

“creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce” (WIPO)

**copyright, patents, trademarks**

# Indigenous knowledge/IP (IK)

1. learning from observation of cyclical patterns in ecosystems and other natural law;
2. learning from animals;
3. spiritual knowledge acquired through ceremonies;
4. learning through teachings in indigenous stories and prophecies;
5. trial and error;
6. indigenous empirical-like knowledge;
7. oral tradition;
8. learning from Elders' interpretations and intuition;
9. ancient ancestral knowledge;
10. learning through indigenous theories and methodologies; and
11. learning through unique aspects of the contemporary indigenous condition. (Gregory Younging, Opaskwayak Cree Nation)

# Argument

Decolonization of IP law is required to adequately protect IK, and that this must entail a paradigm shift in how people in settler-colonial states understand and approach ideas of property, ownership, and governance. Part of this must entail the recognition of Indigenous nationhood through engagement with each nation individually in creating new knowledge protection laws.

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# Settler views of property

“In the settler mind, land was property, real estate, capital, or natural resources. But to our people, it was everything: identity, the connection to our ancestors, the home of our nonhuman kinfolk, our pharmacy, our library, the source of all that sustained us. Our lands were where our responsibility to the world was enacted, sacred ground. It belonged to itself; it was a gift, not a commodity, so it could never be bought or sold. These are the meanings people took with them when they were forced from their ancient homelands to new places. Whether it was their homeland or the new land forced upon them, land held in common gave people strength; it gave them something to fight for. And so—in the eyes of the federal government—that belief was a threat.” - Kimmerer

“Intellectual property law is largely European in derivation and promotes particular cultural interpretations of knowledge, ownership, authorship, private property, and monopoly privilege. Indigenous peoples do not necessarily interpret or conceptualize their knowledge systems and knowledge practices in the same way or only through these concepts.” - Younging

## 3 main issues

#1– that IK is owned “collectively” by indigenous groups for cultural claims and not by individuals or corporations for economic claims, which we’ve already discussed.

#2– that the “author” of the material is often not identifiable and there is thus no “rights holder” in the usual sense of the term;

#3– that expressions of IK often cannot qualify for protection because they are too old and are, therefore, supposedly in the public domain;

**Gnaritas nullius**  
**“nobody’s knowledge”**

# What should be done?

Defensive vs Positive protection - South Africa case study

Implement UNDRIP - put it into practice

**The laws best suited to protect knowledge must be the laws that originated from the same knowledge system and worldview as the knowledge itself.**

**Decolonizing intellectual property law is going to require not only land back, but also the restoration of Indigenous law as a respected and practiced legal tradition on this land.**



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Adam Lakusta (University of Manitoba – Faculty of Law)

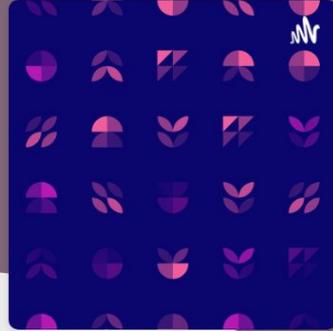
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"We need to get to a place where Indigenous peoples in Canada are in control of their own destiny, making... n Trudeau, 14 February 2018

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# Special guest: Adam Lakusta





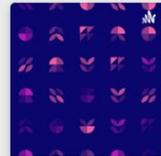
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