After colonization, indigenous people faced an extractive property rights regime for both their land and knowledge. This book outlines that regime, and how the symbolic function of international intellectual property continues today to assist states to enclose indigenous people’s knowledge. Drawing on more than 200 interviews, Peter Drahos examines the response of indigenous people to the colonizer's non-developmental property rights. The case studies reveal how they have adapted to the state's extractive order through a process of regulatory bricolage. In order to create a new developmental future for themselves, indigenous developmental networks have been forged – high-trust networks that include partnerships with science. *Intellectual Property, Indigenous People and their Knowledge* argues for a developmental intellectual property order for indigenous people based on a combination of simple rules, principles and a process of regulatory convening.

**Peter Drahos** is a professor at the Australian National University and holds a Chair in Intellectual Property at Queen Mary, University of London. He is a member of the Australian Academy of Social Sciences.
As its economic potential has rapidly expanded, intellectual property has become a subject of front-rank legal importance. *Cambridge Intellectual Property and Information Law* is a series of monograph studies of major current issues in intellectual property. Each volume contains a mix of international, European, comparative and national law, making this a highly significant series for practitioners, judges and academic researchers in many countries.

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A list of books in the series can be found at the end of this volume.
Intellectual Property,
Indigenous People and
their Knowledge

Peter Drahos
For My Children,
Nikolai and Madeleine
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We were sitting outside of a pub in Cooktown. Located in Queensland’s far north, it is one of those places where a river meets the sea, offering the calmness of refuge from ocean storms. The place was named after Captain Cook, the explorer who filled in the bits of the Australian continent still missing from the maps drawn by European cartographers. Cook spent seven weeks there repairing his damaged ship. We had spent the day speaking to indigenous people about the possibilities for them in the bush food business. Tropical heat makes market gardening seem like too much hard work, but it does make the beer taste good. Squawking seagulls drifted in, keeping a sharp eye for the chance to steal a chip. ‘Do you know what indigenous people around here call whitefellas?’ asked one of the people who had arranged the meetings for us. Knowing I didn’t know, he went on to answer the question. ‘Seagulls.’ ‘Why?’ I asked. ‘Well,’ he said, ‘they fly in, create a lot of noise, make a mess and then fly out.’ We flew out of Cooktown the next day.

After the visit to Cooktown I tried to make sure we didn’t hire white four-wheel-drive vehicles. It proved surprisingly difficult. Flying in Qantas’ white planes took on a different meaning.

We were in Cooktown as part of a project funded by the Australian Research Council. I was doing the project with my then colleague at RegNet, Luigi Palombi. We had become interested in examining the economic uses that indigenous people might make of their knowledge using intellectual property rights. Initially, establishing contact with indigenous groups proved difficult. Our first real break came when a member of a group we had been trying to see for weeks drove into Broome and got a flat tyre. We received a phone call asking if we wanted to meet with him. Tumbling out of our caravan we rushed to see him and that led to an invitation to visit his community. Over the course of the three years of the project we became smarter about finding ways to make contact with indigenous groups and things got progressively easier. Luigi and I have more than fifty years of experience in intellectual property issues between us. Perhaps word got about that we were useful seagulls. My lasting...
impression of the many indigenous people we met was their basic kindness and gentleness, something remarkable given the horrors of colonization.

My thanks go to Luigi for his company on the road, as well as for the discussions we had about this project. There is not the space to thank everyone by name but, for conversations which acted as lightning strikes to illuminate my way, I thank David Claudie, Nick Smith, Miranda Forsyth, Jen Cleary and Richard Jefferson. I owe special thanks to Susy Frankel. Together we co-edited in 2011 a special issue of the journal Prometheus, as well as a book published by ANU E Press in 2012 on the topic of indigenous knowledge and intellectual property. She has made a huge contribution to this field of research both through her publications and her work with New Zealand’s Waitangi Tribunal. Despite her many commitments, she found the time to read and comment on all the chapters, helping me to rethink my ideas and arguments. Finally, I thank my wife Julie Ayling who, amidst her own research in the fields of organized crime and transnational environmental crime, found the time to extend the patient support I needed to finish the book.
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>Berne Convention</td>
<td>Berne Convention for the Protection of Literary and Artistic Works (1886, as revised)</td>
</tr>
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<td>FLO</td>
<td>Fairtrade Labelling Organizations International</td>
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<td>GI</td>
<td>Geographical Indications</td>
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<td>IGC</td>
<td>Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>IPC</td>
<td>International Patent Classification</td>
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<tr>
<td>Jarlmadangah Community</td>
<td>Jarlmadangah Burru Aboriginal Community</td>
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<td>MA</td>
<td>Millennium Ecosystem Assessment</td>
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<td>NCI</td>
<td>National Cancer Institute</td>
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<td>NGOs</td>
<td>Non-governmental organizations</td>
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<td>NIAAA</td>
<td>National Indigenous Arts Advocacy Association</td>
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<td>NRSC</td>
<td>Natural Resources Stewardship Circle</td>
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<tr>
<td>PGR Treaty</td>
<td>International Treaty on Plant Genetic Resources for Food and Agriculture (2001)</td>
</tr>
<tr>
<td>The Code</td>
<td>Queensland Biotechnology Code of Ethics</td>
</tr>
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<td>TK</td>
<td>Traditional Knowledge</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>TKDL</td>
<td>Traditional Knowledge Digital Library</td>
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<td>TRIPS</td>
<td>Agreement on Trade-Related Aspects of Intellectual Property Rights (1994)</td>
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<td>UNDRIP</td>
<td>UN Declaration on the Rights of Indigenous Peoples</td>
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<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
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<tr>
<td>WHC</td>
<td>World Heritage Convention (1972)</td>
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<td>WIPO</td>
<td>World Intellectual Property Organization</td>
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<td>WTO</td>
<td>World Trade Organization</td>
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