

**Producing a Critique: Writing about Indigenous  
Knowledge, Intellectual Property  
and Cultural Heritage**

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## **CERTIFICATE OF AUTHORSHIP/ORIGINALITY**

I certify that the work in this thesis has not previously been submitted for a degree nor has it been submitted as part of requirements for any other degree except as fully acknowledged within the text.

I also certify that the thesis has been written by me. Any help that I may have received in my research work and in the preparation and writing of this thesis itself has been acknowledged.

In addition, I certify that all information sources and literature used are indicated in the thesis. I also certify that none of the published works included as part of this PhD have previously been submitted for a qualification at this or any other tertiary institution.

Signature of Candidate

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Michael Davis

# **Contents**

**Acknowledgements**

**Abstract**

**List of Published Works Submitted**

**One                      Introduction**

**Two                      Entering the Discourse (Group I Publications)**

**Three                      Towards a Critique of the Discourse (Group II Publications)**

**Four                      Crossing Boundaries and Building Bridges (Group III Publications)**

**Five                      A Conclusion: My Publications on the Borders**

**Bibliography**

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My journey through the making of this PhD has been both exhilarating and at the same time, tinged with some sadness. The exhilaration was because of the opportunity it presented for me to engage critically with the body of work I had already produced, and also with an area of thinking and scholarship with which I have been fascinated for many years. I carried out the research and writing of this PhD under rather difficult conditions, both personal and professional. As a result what should have been a relatively short project became one that took a longer time to complete. I would like to thank my supervisor Professor Alastair Pennycook for his patience and encouragement. Conversations with Alastair always helped me focus my arguments, and inspired me in the development of this Essay. Professor Larissa Behrendt, Director of Research at Jumbunna Indigenous House of Learning at UTS, was supportive, both during the period I spent employed as a Researcher with Jumbunna, and after I completed my contract there. Professor Nicky Solomon, then in the Education Faculty at UTS, was encouraging in her reading of my application for entry into this PhD program. I also thank the UTS Faculty of Arts and Social Sciences for providing me with a space to complete the PhD, and Printing Services for efficient copying and binding. Finally, I would not have been able to complete this PhD without the support and love of people close to me.

## **Abstract**

Indigenous knowledge as a subject for discussion and analysis has become more prominent in academic literature and in public policy debates in the past decade or more. In my own published works, one of my main themes has been to review and critique Western legislative regimes' attempts to define, protect, and regulate Indigenous knowledge, especially in terms of what is often called 'indigenous intellectual property'. As a consequence of this interest in critique of legislation, I have also explored questions around the intersection between Indigenous knowledge and other kinds of knowledge, particularly that sometimes termed 'Western science'. This latter interest has led me to consider the ways in which Indigenous knowledge and other forms of Indigenous heritage have been represented in 'Western' texts, language and discourses, including legislative and administrative developments and discussions, and in anthropological and historical writings.

This Essay presents a critical review of my published works, discussed within the context of the particular circumstances (political, bureaucratic/administrative and legislative) in which they were written. I explore the ways in which the sum of my writings have contributed to, and at the same time have formed a critique of, prevailing State authorised discourses relating to Indigenous knowledge that are entrenched primarily in intellectual property rights law.

In this Essay I suggest that, as a consistent body of critique, my writings taken as a whole are positioned outside, or between the borders of several discourses and bodies of knowledge. This 'cross-border' position of my writings has, I argue, created the possibility for a critique of Western discourses centred on intellectual property rights. I discuss these aspects within a theoretical framework of colonial discourse studies and postcolonial criticism.

## List of Published Works Submitted

- 1     **Davis, M. 1997.** *Indigenous Peoples and Intellectual Property Rights*. Research Paper No 20. Canberra: Department of the Parliamentary Library.
- 2     **Davis, M. 1998.** *Biological Diversity and Indigenous Knowledge*. Research Paper No. 17. Canberra: Department of the Parliamentary Library.
- 3     **Davis, M. 1999.** Indigenous Rights in Traditional Knowledge and Biological Diversity: Approaches to Protection. *Australian Indigenous Law Reporter*, 4(4), pp. 1-32.
- 4     **Davis, M. 2001.** Law, Anthropology, and the Recognition of Indigenous Cultural Systems. In René Kuppe and Richard Potz (eds). *Law and Anthropology: International Yearbook for Legal Anthropology*, 11. The Hague: Martinus Nijhoff, pp. 298-320.
- 5     **Craig, D., and Davis, M. 2006.** Ethical Relationships for Biodiversity Research and Benefit-sharing with Indigenous Peoples. *Macquarie Journal of International and Comparative Environmental Law*, 2(2), pp. 31-74.
- 6     **Davis, M. 2006.** Bridging the Gap or Crossing a Bridge? Indigenous Knowledge and the Language of Law and Policy. In Fikret Berkes, Doris Capistrano, Walter V. Reid, and Tom Wilbanks (eds). *Bridging Scales and Knowledge Systems: Concepts and Applications in Ecosystem Assessments*. Washington DC: Island Press, pp. 145-182.
- 7     **Davis, M. 2007.** *Writing Heritage: The Depiction of Indigenous Heritage in European-Australian Writings*. Melbourne: Australian Scholarly Publishing, in association with the National Museum of Australia Press.
- 8     **Davis, M. 2008.** Indigenous knowledge: Beyond Protection, Towards Dialogue. *Australian Journal of Indigenous Education*. Vol 37S, pp. 25-45.