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# Consumption and Intellectual Property

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market and promote socially and/or environmentally beneficial consumption practices to consumers.

#### UNDERSTANDING GREEN/ SUSTAINABLE CONSUMPTION

Despite the obstacles posed by the individualistic orientation of consumerism, evidence of participation in green/sustainable consumption comes from an assortment of movements at the margins of consumer societies, including downshifters, voluntary simplifiers, anti-globalization groups, local producer cooperatives, consumer banks, “enviropreneurs,” and indigenous groups seeking a more direct voice in the governance and control of nearby natural resources. At present there exists a need for more – and more systematic – studies of such movements and the social conditions and personal motivations that give rise to them.

In general, whether the purview of economists, environmental scientists, sociologists, or marketers, there is clearly a lack of applied studies concerning ways to develop, assess, gauge, and modify policies designed to encourage green/sustainable consumption practices. In the future, the need to identify and better understand ways in which such practices can best be implemented is one that must be addressed in greater detail from a variety of disciplinary and empirical angles.

SEE ALSO: Consumer Movements; Ecology and Economy; Economy, Culture and; Environmental Movements; Hyperconsumption/Overconsumption; Lifestyle Consumption; New Urbanism; Waste, Excess, and Second-Hand Consumption

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## consumption and intellectual property

*Kembrew McLeod*

The rise of capitalism, the invention of the printing press, and the commodification of literary and artistic domains helped lay the economic, technological, and legal-philosophical groundwork that led to the development of intellectual property laws. There are three major categories of intellectual property law – copyright, trademark, and patent law – though it was copyright law that was the first piece of legislation to arise from the collision of those above-mentioned concepts. In 1710, Britain passed the Statute of Anne, which was akin to modern copyright law, and in 1790 the US

Congress passed a copyright law similar to this British statute.

Copyright law secures protection for all types of original expression, including art, literature, music, songs, choreography, flow charts, software, photography, movies, video games, and videos. Copyright only protects original expression fixed in a medium, and not the underlying concepts and ideas comprising that expression (i.e., you cannot copyright an idea). The differentiation between an idea and the protected *expression* of that idea highlights the way Enlightenment and Romantic notions of originality and authorship are deeply embedded in contemporary copyright law. Trademark law developed from a body of common law that was concerned with protecting commercial marks from being misused and misrepresented by competing companies. Lastly, patent law protects from unauthorized commercial use certain types of inventions.

Intellectual property owners are quite powerful and have at times flexed significant lobbying muscle. For instance, until 1998 the period of copyright protection lasted for the life of the author plus 50 years – unless the creator was a business, in which case the period of protection lasted for 75 years. But, to use one well-known example, many of Disney's copyrights that protected its most lucrative characters were due to lapse near the turn of the century, with Mickey Mouse passing into the public domain in 2003, and Pluto, Goofy, and Donald Duck following in 2009. Disney, along with the Motion Picture Association of America (MPAA) and other content owners, heavily lobbied Congress to pass legislation to extend copyright coverage for an extra 20 years, which Congress did. Named after the late singer-congressman, this piece of legislation was titled the Sonny Bono Copyright Term Extension Act, and it had the effect of preventing any new works from entering the public domain for 20 years after the bill was signed into law.

The intellectual properties sold by lifestyle companies contribute significantly to western economies and consumer culture. By their very nature, these properties – and the copyright, trademark, and patent laws that govern them – exert a powerful influence over social interactions in a consumer society. For instance, Nike is less a shoe company than a conceptual house

of cards built around the strength of its trademarks. It is a remarkably sturdy house of cards that is supported by the policing powers of the state. The corporation's marketing philosophy makes it clear that the company is not in the business of manufacturing shoes but in the business of branding – connecting lifestyles to cheap pieces of plastic, leather, and rubber. The growing centrality of corporate identity and corporate "image" requires Nike and others to invest a large percentage of capital on advertising and promotion in order to keep the brand at the center of the popular cultural imagination.

The massive profits generated by Nike and other companies stem not only from outsourcing its factory labor, argues legal and cultural studies scholar Rosemary Coombe, but also from its ability to successfully herd the migration of its trademarked brands into everyday life. Coombe argued in *The Cultural Life of Intellectual Properties* (1998) that companies need to have it both ways, because if they are to remain profitable and relevant, they need to saturate consumers with their logos, brands, and services. Naomi Klein, author of *No Logo* (2000), notes that logos have become the lingua franca of the global village, and these trademarked properties are often used by anti-globalization activists as a site for their protests. Because public spaces, public squares, are disappearing – being replaced by branded environments – activists have come to see logos as a new kind of public square they can occupy.

Popular culture provides social actors with a kind of verbal shorthand. Appropriating words and phrases from mass media, consumer-citizens can convey a wide range of meanings and emotions, sometimes with only one monosyllabic utterance. Religious rites and iconography, many argue, once provided a common reference point for big and little questions, but today mediated, privatized images and meanings have embedded themselves into everyday talk. The average American college student is more likely to recognize a line from the television cartoon *The Simpsons*, for instance, than an allusion to a story from the Old Testament. Referencing pop culture helps shape and define the identity and cultural preferences of social actors, providing a kind of grammar and syntax that structures everyday talk. In face-to-face

interactions many ordinary people can still legally refer to these intellectual properties, and we will continue to do so without inhibition. Increasingly, however, personal expression carried out over the World Wide Web, as scholars Siva Vaidhyanathan and Lawrence Lessig have argued, has come under the surveillance and regulation of intellectual property laws which are being enforced by owners through such means as cease-and-desist emails.

In 1999, trademark-owning corporations won a major lobbying victory when the US Congress passed the Anti-Cyber Squatting Consumer Protection Act. Since then, companies have aggressively pursued legal action against those who incorporate their trademarks into domain names. The Act imposes stiff criminal penalties against offenders, though companies can also use an arbitration process to control a domain name they don't like. When so much of culture and language is privately owned, it becomes all the more difficult to play with language, even in non-confrontational ways. For instance, Mike Rowe, a 17-year-old Canadian high school student, discovered the new legalities of personal expression when he registered the domain name MikeRoweSoft.com and soon found himself in legal troubles with Microsoft. Using a now common tactic, the software company offered \$10 in order to provoke the teen into a higher counterbid, which then allowed Microsoft to claim that Rowe had filed a "bad faith" registration (i.e., registering a name only for the sake of getting companies to pay him for the rights), and started proceedings to strip him of the domain name. Microsoft backed off its suit slightly after much bad PR, but it still insisted on controlling the domain name.

Regarded by many as vapid and a form of escapism, popular culture does impact the consciousness of consumer-citizens powerfully, which is why it is necessary for social actors to manipulate and transform the language of popular culture that surrounds them. But in recent years, it has been difficult and/or impossible to do so because federal law protects trademarks from being portrayed in an "unwholesome or unsavory context." This provision allows courts to suppress unauthorized uses of famous cultural icons, even when there is no reasonable possibility of confusion in the marketplace. In many ways, the problem is as much with the

way trademark law is interpreted by "brand bullies" as it is with the way it is written.

The interpretation of the law by corporate lawyers requires that these companies go after any and all unauthorized uses, even if they are obviously meant to be "parodic" social commentary – a longstanding exception to the use of copyrighted material. The law is written in such a way that companies are required to zealously police the public, unauthorized uses of their trademark. Failing to do so may result in a "dilution" of the trademark and thus their exclusive right to it. In an era where brand images and icons are virtually equated with a company and its products, it would be almost negligent not to protect the value already invested. This is why lawyers for the Xerox Corporation constantly remind newspapers that its branded name isn't a generic term for photocopying. When a trademarked good loses its specific meaning, its economic value dies, suffering from what is called, fittingly, "genericide."

Another area of culture where intellectual property law and consumption are deeply interconnected is in the practice of product placement in movies, television shows, and more recently video games. Because society is saturated with commodities, advertisers argue, product placements in movies and television shows add "realism" to the production, despite the fact that there's nothing realistic about the way directors place products in the frame or the way products are spoken about in the context of the dramatic narrative.

Video games occupy the imagination of millions of teens and twenty-somethings. These games are important because they seamlessly integrate leisure activity, consumption, everyday life, and branded intellectual properties. Unlike most movies, people play video games multiple times and, by definition, they require the close attention of the viewer. The trademarked and copyrighted goods that appear in the media world typically do so with the explicit permission (and often payment) of the intellectual property owners. This works to shape both the consciousness of social actors and the rules by which they can communicate and interact with each other in media that are regulated by intellectual property laws.

Increasingly, these highly regulated media are becoming the primary ways many people

communicate – something that quite literally, under the law, positions branded cultural texts as objects that can only be consumed, not (re) produced or redefined or critiqued. Interestingly, the kind of aggressive tactics employed by intellectual property owners have succeeded in generating a backlash movement against what have been called the “cultural land grabs” of “brand bullies,” to use a phrase deployed by author David Bollier. Law professor James Boyle refers to the recent changes in intellectual property law as “the second enclosure movement,” referring to the increasing erosion of the “cultural commons” and the privatization of cultural resources.

These laws and the favorable litigious climate they have spawned, together with some high-profile and aggressively pursued suits against alleged violators, threaten to preclude public expression. Few companies or organizations, and fewer individuals, can afford to withstand the kind of legal onslaught that, for instance, Disney can unleash. The sum effect has been a concentration of ownership of public expression, and thus a potential deadening effect on playfulness and creativity at the very moment when new technologies and new modes of communication offer the promise of new horizons.

SEE ALSO: Brands and Branding; Consumption and the Internet; Consumption, Spectacles of; Consumption, Visual; Culture Jamming; Intellectual Property

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## consumption and the Internet

*Sonia Livingstone*

The study of consumption within the social sciences has a history stretching over a century or more, and has only recently been extended to the study of consumption of and on the Internet. The arrival of the Internet as a mass market technology in the early to mid-1990s throughout western countries and beyond has posed new questions for the multidisciplinary study of consumption and consumer culture, particularly as the Internet seems to facilitate the shift from mass consumption to increasingly specialized, flexible, and geographically dispersed forms of consumption.

Some familiar intellectual debates are now being replayed in this new arena between social researchers who question the power relations inherent in consumption (and its relation to production) and market researchers who approach the study of consumption uncritically as a means of increasing its presence in everyday life. The study of consumption and the Internet has sought to critique the way in which online consumers (and therefore processes of online consumption) are researched within business and marketing schools, whether focusing narrowly on e-commerce or more broadly on the circulation of information in a liberalized market. Studies of consumption and the Internet are particularly concerned to