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Strategic Improprieties: Cultural Studies, the Everyday, and the Politics of Intellectual Properties

Kembrew McLeod
University of Iowa

Striphas Ted
Indiana University - Bloomington

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Ted Striphas & Kembrew McLeod

STRATEGIC IMPROPRIETIES: CULTURAL STUDIES, THE EVERYDAY, AND THE POLITICS OF INTELLECTUAL PROPERTIES

Introduction

Reflecting on his nearly-completed book manuscript, *The Origin of German Tragic Drama*, Walter Benjamin mused in a 1924 missive to his dear friend Gerhard Scholem: '[W]hat surprises me most of all at this time is that what I have written consists, as it were, almost entirely of quotations. It is the craziest mosaic technique you can imagine ...' (1994, p. 256). Indeed, Benjamin composed *The Origin of German Tragic Drama* in a baroque style befitting that of his subject matter, a style that found its most definitive expression in his magisterial, but never-finished, text, *Das Passagen-Werk (The Arcades Project)*. It, too, and even more so, consists of borrowed passages (in both French and German) juxtaposed ecstatically with Benjamin's own aphorisms and meditations, as if to mirror the felicitous unfolding of shops, sites, and spectacles that comprised the early twentieth century Parisian arcades. Together these elements yield among the most multi-vocal, multi-layered, multi-textured, and *open* works of – what? philosophy? history? critical sociology? aesthetic theory? – ever produced. Stylistically and substantively *Das Passagen-Werk* is both epic and humble, and yet it also stands as a sad testament to an era that largely has passed us by.

The truth is, we can hardly imagine a comparable work getting published in the West today. The 1999 release of *Das Passagen-Werk's* English translation by Harvard University Press was an achievement, to be sure, one facilitated in no small part by Benjamin's plundering of sources most of which, having been published between the mid-nineteenth and early twentieth centuries, had slipped into the public domain. Now imagine for a moment that Benjamin, living in the late twentieth or early twenty-first century, delivered the same 'crazy mosaic' of a manuscript to a publisher, having quoted extensively from sources copyrighted in the last 70 years or so. If his publisher had the courage to produce the book at all, one of three things probably would happen. The safest route would see his publisher secure copyright clearances for the numerous lengthy quotations that form the volume's backbone. Benjamin's magnum opus, as such, would become prohibitively expensive for most individuals and institutions to buy because of the 'license stacking' effect,

wherein a publisher would need to make royalty payments for its multiple fragmentary uses. Perhaps a limited edition would be issued and snatched up by the most elite private research libraries, whose substantial endowments are unmatched by those of their public, budgetarily-hamstrung counterparts.¹

Second, a more daring publisher might decide to let things fly, either believing – in the US, at least – that fair-use or related provisions would cover quotation of the magnitude of *Das Passagen-Werk*, or, with fingers crossed, hoping that the volume might pass below the radar of the copyright holders whom the author had sampled. In either case, Benjamin's publisher more than likely would be slapped with a cranky cease and desist letter and, if pressed, even might be compelled to pull the offending volume from library and bookstore shelves. Third, as a result of this chilling legal atmosphere, publishers might not ever agree to release such a book in the first place. Thus, *Das Passagen-Werk* would be lost, lost again, this time owing to far less tragic – but no less unnecessary and lamentable – circumstances.

So much for placing too much faith in the ability for mass reproduction to bring about radical democracy, at least in the short term (c.f. Benjamin 1968). Thus we offer this counterfactual 'what if . . .?' as a fable for our times, and like all good fables, it consists of light fiction wrapped around a tooth-chipping kernel of truth. Intellectual property (IP) considerations – by which we refer to matters related to copyrights, trademarks, patents, publicity rights, and the moral rights of authors – increasingly bear on, even constrain, the ability of scholars of culture both to carry out and to convey consequential intellectual work. If for no other reason than this, cultural studies ought to be paying even more attention than it has to the politics of intellectual properties.

We offer this introduction and this special issue as a whole, then, with four principal objectives in mind. First, we want to explore how intellectual property considerations increasingly impinge on the institutional and professional lives of cultural studies scholars. We are interested, in effect, in exploring how IP law and jurisprudence affect cultural studies in mundane yet deeply significant ways at the level of the everyday. Second, in addition to presenting compelling, cutting-edge research on the politics of intellectual properties, we want to draw attention to some groundbreaking work in the field that long ago took up the cause. Although this is the first special issue of *Cultural Studies* to address explicitly the politics of intellectual properties, we want to emphasize that it has been an emergent area of inquiry for some time now among scholars in the field.

Third, we want to dwell on what cultural studies can contribute to public conversations about the politics of IP, given, if nothing else, its outsider status relative to the legal sphere. Finally, and perhaps most importantly, our aim is to help foster a meaningful and genuinely interdisciplinary confluence of scholarly research on subject. While many areas of study valorize the idea of interdisciplinary work, in the abstract, one remarkable thing about recent

intellectual property research is the way it has produced an actual cross-pollination of scholarship and many significant topical intersections – from library science and the biological sciences to literary criticism and media studies, as well as virtually everything else in between. It is in this in-between (though not necessarily *in the center*), where we would like to position cultural studies in this interdisciplinary conversation, an exchange we hope will continue.

Why intellectual property law matters, materially

As the US government wages a seemingly interminable global ‘war on terror’, and in the wake of recent natural disasters on all sides of the planet, how can intellectual property issues not seem a little, well, indulgent right now? Mainstream journalists’ reporting on music and movie file-sharing certainly hasn’t helped the matter. To their credit, they’ve managed to move intellectual property into the realm of everyday discourse, and in doing so they’ve raised popular awareness about issues related to it. Yet, their work also has had the less desirable effect of minimizing both what’s at stake and who/what is touched by intellectual property concerns. The politics of IP are not, to appropriate and distort Judith Butler’s (1997) thoughtful argument a bit, ‘merely cultural’ – that is, insular at best, frivolous or trendy at worst, but either way lacking a certain gravity that would certify the subject’s political import. Without disputing the weightiness of *realpolitik* and catastrophe, we maintain that intellectual property constitutes one of the most pressing and broad-ranging concerns of our times.

Indeed, it would not be an exaggeration to say that the politics of intellectual properties can be a matter of life and death, one which is manifested on a planetary scale. Hoping to secure an advantage in the marketplace, major (predominately Western) pharmaceutical and biomedical firms have stalled and sometimes even scuttled potentially life-saving pharmacological and genetics research by refusing to share or license their patents with so-called competitors. Many times these companies do not have overtly sinister intentions; these conditions result from entrenched bureaucratic practices and economic necessities. The ‘stacking of licenses’ referred to earlier also is common in the pharmaceutical business, where drug companies are required to secure uses for human gene patents from numerous owners. This in turn can increase drug costs, and the extreme cost or inability to get permission from patent owners sometimes puts a stop to certain medical research before it can begin in earnest.²

The (in)actions of pharmaceutical and biomedical companies are all the more shameful since, within a liberal democratic tradition, patent law typically is meant to foster – not to hamper – innovation by conferring limited

monopolies on those willing to invest precious research and development capital. It is also well documented that patent protections have empowered many of these companies to keep the prices of the drugs and therapies they produce artificially high (see e.g. Erni 1994, pp. 25–28). This situation imperils further the wellbeing of those living – and dying – in poorer nations (and those with limited means doing so in wealthier countries, too), while exacerbating already existing political and economic imbalances on a global scale. In an ironic twist of fate, the very legal precepts to which some individuals and groups might turn to help them to alleviate human suffering are precisely those to which others now turn, intentionally or not, to sustain it.³

Furthermore, as both an ever-expanding array of objects/ideas and as a specific set of legal categories, intellectual property performs vigorous work on the many overlapping ‘diagrams’ that, together, organize space, time, everyday life – even life itself (Deleuze 1988, pp. 23–44).⁴ Another way of putting this would be to say that intellectual property disturbs material and epistemological boundaries, recodes existing significations and patterns of information flow, and helps to actualize nascent modes of thought, conduct, affect, expression, and embodiment. This work is especially apparent in the patenting of transgenic seeds and of other such organisms, such as DuPont corporations’ much-discussed, cancer-inclined lab rat, OncoMouse[®]. Both examples evidence how IP law empowers human beings to invest in, invent, mass produce, and claim limited legal monopolies over specific life forms – much as we can with nonliving things like a pair of scissors, a microprocessor, or some other useful contraption.

John Frow argues that, within legal discourse (or what Jane Gaines suggestively calls ‘the legal real’ (1991, p. 90)), these developments turn on and to a significant degree reinforce the modernist fantasy of humans’ separation from, and dominance over, nature (Frow 1997, pp. 196–197). True enough, but as the patenting of transgenic organisms also suggests, there may be a critical moment of *emergence* happening here as well. The legal protections given to these organisms signal an increasingly intensive, practical synthesis of cultural and *agricultural* production, or a blurring of sorts that simultaneously resuscitates and transmogrifies an almost pre-modern understanding of culture as ‘the tending of something, basically crops or animals’ (Williams 1983, p. 87, emphasis in original).

These changes, in turn, promise to enlarge both the scope and practice of empirical cultural studies research – or at least they ought to. Cultural studies has long demonstrated an interest in mundane artifacts, artifacts which scholars have classified under contested rubrics such as ‘popular culture’, ‘the everyday’, ‘the banal’, etc. (see e.g. Hall 1981/1998, Certeau 1984, Morris 1990, Seigworth 2000). At the risk of over-generalizing, these artifacts have tended to take the form of media institutions, apparatuses, and/or texts, given the prevalence with which, in the preceding two centuries, and especially since

the Second World War, various ‘mediascapes’ have come to traverse and define the contours of daily life in modern societies (Appadurai 1996).⁵

It is clear that intellectual property issues often land us squarely back at the junction point of media and everyday life, as in, for example, the issue of music and movie file-sharing. However, they also should compel us to explore with a renewed vigilance both the density and the materiality of the everyday. Andrew Herman, Rosemary J. Coombe and Lewis Kaye accomplish this in their contribution to this special issue on online gaming and corporate goodwill, or the affective bond consumers share with specific corporations and their commodities. The patenting of transgenic seeds, to use a different example, ought to make us take a good, long look at something *really* banal – the food we eat – and to begin to see in it problems no less vexing than, say, the effects of media on society. Indeed, genetically modified, patented food arguably is more invasive than are the effects posited by the most extreme hypodermic needle models of media influence. Paying attention to the materiality of the everyday also means doing the sometimes very dirty work of exploring the ‘conditions’ (a category we take to include everything from legal frameworks to soil conditions and landform to pesticide use and packaging to . . .) under which food is produced, distributed, exchanged, and consumed in large-scale societies – that is, the conditions whereby these societies literally sustain themselves.⁶

Academic freedom, popular culture research and copyright

What are the material conditions that enable and sustain free speech in a North American culture that is substantially supported and sustained by an information economy? In the US, the ‘fair use’ doctrine ostensibly protects academic freedom of expression, just as the ‘fair dealing’ body of law does in Canada. The US’s deeply rooted fair use legal tradition is somewhat unique in the world, however, which means that its effectiveness is quite limited by geography. After all, Rosemary Coombe reminds us that fair use is ‘a local ordinance in a global information economy’. This caveat is something we take seriously, even as we now address fair use and fair dealing in North America. The fair use statute was written into the 1976 US Copyright Act to allow fragmentary, unauthorized uses of a copyrighted work for the purposes of education, criticism, and parody, among many other things.

Despite the fact that scholarly publishing is exactly the sort of thing that fair use enables and protects – or ought to – many academics, and many academic publishers, unfortunately have rather poor records when it comes to fair use. Rather than face a lawsuit, or even the threat of one, it is not uncommon for academic publishers to insist that uses of copyrighted material that are clearly fair still should be authorized by a copyright holder. Speaking

to this, the fifteenth edition of the *Chicago Manual of Style* states: ‘many publishers tend to seek permission if they have the slightest doubt whether a particular use is fair. This is unfortunate. The right of fair use is valuable to scholarship, and it should not be allowed to decay because scholars fail to employ it boldly’ (2003, p. 137). However, academic publishers too often construct arbitrary and conservative guidelines regarding fair use. The smothering climate that blankets copyright won’t lift until university presses and the publishers of scholarly journals begin loosening their often restrictive internal policies – policies that don’t reflect the possibilities that the fair use statute grants.

Indeed universities, of all institutions, should be the ones to confidently invoke fair use, but their lawyers often are of a different mind. Quite simply, many schools don’t want to risk a costly lawsuit, even if it’s clear the university will prevail – especially in times of budget cuts. This inaction doubtless results in innumerable private acts of self-censorship by authors and sometimes even outright censorship by presses when they cave in to legal threats. For instance, in 2004, Indiana University Press withdrew from circulation advance copies of a book about a relatively obscure, deceased composer, Rebecca Clarke, because the copyright holders of Clarke’s compositions intimidated them. For Liane Curtis, the editor of *A Rebecca Clarke Reader*, the quoting of this unpublished work in a scholarly context constituted a fair use. As Curtis told the *Chronicle of Higher Education*, the alleged infringements added up to 94 lines in a 241-page book, or far less than one percent of the volume’s total length. Had the reader seen the light of day, it would have been one of a disproportionately small number of scholarly works dedicated to female composers, a group whose work historically has been eclipsed by that of their male counterparts. Unfortunately, the press conceded to the copyright holder’s demands and chose not to risk a potentially lengthy and costly court battle (Byrne 2004, n.p.).

Some US-based academic presses, on the other hand, have resisted the erosion of fair use. ‘Duke University Press has been a strong supporter of fair use’, editor-in-chief Ken Wissoker told Kembrew McLeod for his book *Freedom of Expression*[®]. ‘We are lucky to have intellectual property legal advisers through our University Counsel’s office who are strong supporters themselves’. Susan Olive is Duke University’s external legal council on intellectual property issues, and she has well over a quarter-century of legal experience. ‘I think it’s important for academic publishers to inform the nation and not hide behind a cover of fear’, said Olive. ‘People who think academic publishers should be scared first and publish second are flatly wrong’ (McLeod 2005, p. 256).

Despite these pockets of freedom in the publishing world, the chilling atmosphere forces academic authors and publishers into a corner where even fragmentary appropriations are forced to comply with market norms that do

not recognize fair use, and instead treats each quotation of a cultural text as a commodity exchange that must adopt the form of licensing agreements. As Jane Gaines observed more than a decade ago: 'It is an odd twist that the commercial availability of artifacts might make them unavailable to scholars' (1992, p. 235). Even if we were to accept this fundamental shift toward neoliberalism as something that is inevitable, it's important to point out to those who waive the free market flag that the history of IP licensing is littered with stunning examples of 'market failure'.

Although not nearly as dramatic (or relevant) for the majority of the world's population, it is important that academics protect many of our scholarly practices from the clawing grasp of markets. In the US, this means preserving fair use from the erosion of a system of licensing and rights clearances. Our universities (and we who inhabit them) have often done a poor job in this area. In some instances, it is not the university that is to blame, but rather the law itself, particularly new laws that define certain kinds of fair use behaviors as criminal. This is especially true with the US Digital Millennium Copyright Act (DMCA) of 1998 and the 2001 European Union Copyright Directive. These laws – which make illegal the circumvention of copy protection or Digital Rights Management (DRM) schemes – were passed to bring US and Western European laws in line with the mandates of international intellectual property treaties. These treaties were drafted with a strong editorial hand from interested Western parties, ensuring that DMCA-like laws will continue to spread around the globe.

In the US, the DMCA makes it a criminal offense to bypass copy protection on digitally stored works, such as when you use software to disable the DRM that prevents you from copying a DVD or a PDF-version of a scholarly journal article. Even if one's *intent* clearly falls under the domain of fair use, the *act* of circumventing the copy protection on a DVD or PDF is quite illegal under the DMCA.

It's entirely likely that many readers of *Cultural Studies* use clips in classroom settings from television, motion pictures, or other media. Many teachers compile clips on a single videotape, because it's far more efficient than bringing a stack of videos and DVDs to class and cueing them up on the spot. Under US copyright law, we do not need to seek the permission of a copyright holder for this kind of activity, because the duplication of clips for educational purposes is absolutely a fair use. However, in the case of DVDs, as opposed to analog VHS tapes, we will likely have to circumvent the encryption on the disc – which is illegal under the DMCA. One way of jumping over that fence is to acquire a banned software program – something the DMCA prohibits, too, as if to erect still another barrier around the cultural text. As the media we consume increasingly move into the digital sphere, these kinds of situations will become all the more common, and we believe that it is our job to resist these currents by engaging in a pedagogically informed mode of praxis.

In other words, we advocate a form of digital civil disobedience in which we find ways (and share with our colleagues how) to continue doing our jobs as teachers, even if it means violating a federal statute.

Another troubling trend is occurring in the domain of scholarly journals, whose production (and ownership) is increasingly being outsourced to profit-minded companies. Ironically, our copyrights, which we ritually give away in exchange for publication (and thus tenure and promotion), are expropriated by journal publishers who turn around and charge our university libraries to license access to the expression of that labor on a month-to-month or year-to-year basis. Although the number of scholarly journal subscriptions declined by five percent, US research library spending *rose by 210 percent* (over three times the rate of inflation) between the years of 1986 and 2001 – precisely when this outsourcing trend gained momentum – and library spending has continued to rise ('Libraries Take a Stand'). A more ingenious formula for boosting surplus value can't even be found in the thousands of pages of Karl Marx's *Das Kapital*. And once we sign away our copyrights, journal publishers can essentially place whatever restrictions to access they want on our scholarly articles, including DRM copy protection schemes.

In the realm of traditional copyright law, authors are required to secure permission from (and sometimes hand over money to) a journal publisher in order to incorporate the contents of their own articles into a book they have authored. This results in many ironic examples of alienation, where, for instance, scholars engaged in Marxist critique literally are legally alienated from their own work. Michael Denning notes that we have witnessed the turn to business and accounting courses as the 'empirical core curriculum' in the neoliberal university, as well as the privatization and enclosure of the knowledge commons that had begun to be created by the mass public university. The vital infrastructure of scholarly journals and publications which had developed as the public knowledge of the academic community over a century is rapidly becoming the digital property of a handful of giant media corporations posing as 'scholarly publishers' (2005, p. 10).

Cultural studies confronts the law

All this raises a very practical question: other than advocating for acts of civil disobedience, what can cultural studies meaningfully contribute to discussions about the politics of intellectual properties? At stake in this question, certainly, are matters of credibility, disciplinarity, and, in a manner of speaking, propriety. Few people in cultural studies hold law degrees, we suspect, much less work regularly in or with legislative assemblies, the courts, or other legal institutions.⁷ Now compare the distance we perceive with the number of cultural studies practitioners who got their start in, or whose work connects

tangibly with, advertising, the arts, book publishing, broadcasting, fashion, film-making, journalism, museums, music, or some other wing of the culture industry.⁸

It would be naïve to over-estimate the extent to which scholarship in cultural studies has influenced the shape and direction of these fields, and, besides, generalizing about these effects would be an exercise in reductionism. What is reasonably clear, in any case, is that a kind of circuitry exists, one that provides for an often haphazard but still steady flow of ideas, insights, people, and practices between academic cultural studies and other institutions of cultural production. As comparative outsiders to the legal sphere, however, cultural studies practitioners find themselves at a relative disadvantage with respect to being heard by those who purport to direct (create, review, enact, contest) legal discourse. Whatever wiring connects cultural studies and the law often barely seems to close the circuit. Cultural studies may burn brightly with cultural capital, but its legal capital often seems to yield only a dull flicker.

Despite these circumstances, as Steve Jones argues in his essay that follows, it would be foolish for cultural studies to abrogate responsibility for talking about IP-related issues specifically, and about the law more broadly, to a cadre of already credentialed legal insiders. A task that lies before us – a task that partly inspires this issue – thus consists of claiming the authority to speak *about*, and perhaps more importantly *on behalf of*, the law without being *of* the law per se. One way in which this claim has been staked, and should continue to be staked ever more vigilantly, is through the deliberate use of performative utterances. These are speech acts which constitute the field's own authoritative ground through a persistent, insistent, but not necessarily explicit reiteration of its capacity to speak intelligently about IP and IP-related concerns.

Admittedly, this strategy of 'speaking into the air' often demands excruciating quantities of patience, humility, and goodwill, for who can predict when, or even if, someone actually might start listening to us, let alone responding? But here we take heart in one of cultural studies' earliest forays into the politics of intellectual properties, Jennifer Daryl Slack's (1984) *Communication Technologies and Society*. More than two decades after its publication, the book's full significance has only begun to be appreciated. The subtlety of Slack's analysis, which takes Althusser and Balibar's articulations of 'overdetermination' and 'relative autonomy' as heuristics by which to critique the concomitant development of information technologies and patent laws, is both remarkable and, for cultural studies, untimely. Indeed, those who operate today as though cultural studies' credibility gap is shrinking in relationship to the law owe their ability to do so at least indirectly to Slack and to a small handful of others who, early on, abducted the law and began making it cultural studies' own.

Even earlier, before legal scholars focused their attention to critical theory and cultural studies (and much earlier than cultural studies scholars found their

way to legal studies), Jacques Derrida turned his analytical eye towards copyright. His essay 'Limited Inc., Abc', originally published in 1977, and later included in the book *Limited, Inc.*, focused on imploding conventional assumptions about authorship. He had previously written a widely cited essay, 'Signature Event Context', to which the scholar John R. Searle penned his very critical 'Reply to Derrida'. Responding to Searle, Derrida begins by picking apart a brief passage from 'Reply' – 'Copyright © 1977 by John R. Searle' – progressively reinterpreting and interrupting the author's intended meaning. In Searle's essay, he acknowledges 'H. Dreyfus and D. Searle for discussion of these matters' (1988, p. 31). Rather than being a lone author, Derrida suggests that this is 'a Searle who is divided, multiplied, conjugated, shared. What a complicated signature!' The signature becomes ever more complex when Derrida points out that Dreyfus is an old friend with whom he has exchanged ideas as well.

Derrida says that he, too, should control a share of Searle's essay, what he sardonically calls 'the stocks and bonds' of 'this holding company, the Copyright Trust'. He goes on to refer to this corporation as 'three + n authors', then dumps this ponderous expression, giving the 'collective author' the French name '*Société à Responsabilité Limitée*' – literally 'Society with Limited Responsibility'. This is normally abbreviated as SARL, so for the rest of the book, Derrida mischievously refers to Searle as 'Sarl', deadpanning, 'I therefore feel obliged to claim my share of the copyright of the 'Reply'.' With his linguistic gymnastics, he complicates the simple division of 'author' and 'nonauthor' and other false binaries, suggesting that this terrain 'is slippery and shifting, mined and undermined' (1988, p. 34).

In these brief passages, Derrida satirically imagines a world where every idea or nuanced turn of phrase is private property, where ownership of a cultural text is divided up and assigned to various stockholders. In doing so, he anticipates a world where many academic books contain a copyright page that lists multiple permissions that needed to be acquired before the book could be published... courtesy of Searle, courtesy of Sarl, courtesy of Dreyfus, courtesy of Derrida, courtesy of...

Nevertheless, one of the law's most magisterial accomplishments has obtained in its performative insistence on itself as the principal authority on, and arbiter of, the disposition of intellectual properties. What results is a trap of sorts, one which springs every time seemingly better, more supple laws – but laws nonetheless – get put forth as the only reasonable answer to an increasingly restrictive and exclusive intellectual property régime.⁹ This is not a suggestion to give up on the law per se, but it is a caution against reifying the law through critical practice. Indeed, as Adrian Johns demonstrates in this volume, we cannot fully appreciate how best to politicize intellectual property law or how to struggle with/against it absent a rigorous historical imagination. And indeed, a vital lesson we should take from the discipline of history

(and anthropology, too) is a recognition of the creative ways in which human societies have managed the disposition of what the law terms ‘intellectual property’ *without intellectual property or intellectual property laws*. Jane Goodman, for example, has discussed a ‘performance economy’ among Algerian Berbers in which

[s]ongs in village contexts are indexically linked to discrete performance events and are governed by particular participation frameworks. One song might be sung at a specific moment in every wedding, and only then; another might be pulled out once a year, in a particular saint’s tomb, to commemorate only that saint. Furthermore, not just anyone can sing. The women who participate in wedding songs, for instance, must have both a genealogical connection to and a good relationship with the family hosting the event. Women’s wedding songs also participate in an economy of matrimonial exchange, marking key moments in which food, money, and of course, the bride herself, move from one patrilineage to another (2005, p. 155).

Similarly, Carlo Marco Belfanti has explored how guilds in Northern Italy controlled the circulation of craft secrets – what he calls ‘know-how’ rather than ‘intellectual property’ (2004, p. 571) – in the early-modern period through combinations of apprenticeship relations, secrecy oaths, and codes governing where and in what ways itinerant craftspeople could practice their trade.¹⁰ Finally, William Alford (1995) has explained how pre-twentieth century Chinese ‘intellectual property’ laws tended to protect neither the sanctity nor the originality of ideas or their expressions, which in most cases could be duplicated freely, but guarded against the reproduction of ideas contrary to imperial orthodoxy. One of the greatest tricks the law ever pulled, in other words, was obscuring these and other alternatives by which to conceive of and manage idea production, distribution, exchange, and consumption.

Thus, in addition to advocating for specific legal remedies and forms of redress, cultural studies must affirm how groups of people have turned, and perhaps might turn in even more robust ways, to local customs, professional codes, and other more or less formal systems for governing the disposition of ideas.¹¹ Jane Gaines’ contribution to this issue maps this very terrain. Her exploration of the widespread and at times almost bewildering practice of motion picture ‘duping’ in cinema’s early years demonstrates clearly how custom and practice can eclipse codified regulatory norms. Elsewhere, Patricia Aufderheide and Peter Jaszi similarly point out that a Society for Cinema Studies¹² report on the fair usage of movie frame enlargements was a key factor in persuading publishers to relax their stringent rights clearance policies. It is now common for major cinema journals to allow scholars to reprint film stills without requiring the author to get written permission from a copyright

owner. And a 2003 report by the Association of Research Libraries helped pave the way for many university libraries in the US to allow professors to make electronic copies of readings available for their students (Aufderheide and Jazsi 2004). These progressive changes were not instituted from the top down through legislation – authorized by the law – but rather from the ground up by professional societies acting on behalf of their constituents.

Relativizing legal authority in this way is, we believe, a crucial component of challenging specific IP laws and ultimately of transforming the law as such into a more open, equitable, and sustainable system of governance. Put differently, the process of contesting IP law must consist of challenges not only to unreasonable statutes, but perhaps more importantly, to the institutional foundations upon which the law itself stands (or claims to stand). These institutional foundations take the form of regulatory structures that often arise from arbitrary interpretations of the law, rather than from what the law actually limits. What we're advocating for, in effect, is a more democratic system of 'checks and balances'. In our imagination this principle no longer would be confined to managing the relations among formal spheres of government but would be generalized across the whole social field, investing individuals and groups with an even greater authority to engage in an ongoing – and with any luck more effective – extra-judicial review and policy-making practice.

Moreover, if we no longer assume that IP law is, in all circumstances, the régime best capable of overseeing how ideas propagate and flow, then perhaps we should pursue with an even greater resolve extra-legal means by which to mitigate IP's worst excesses. This might consist, for example, of ad-busting and other instances of 'culture jamming'; acts of parody, as David Sanjek's contribution to this issue clearly demonstrates; absurd/ironic uses of the law such as trademarking shibboleths like 'freedom of expression[®]' (McLeod 2001, 2005); 'genericide', or the use of a specific trade name to refer to a product regardless of brand, an action which can result in the loss of a coveted corporate trademark;¹³ and other forms of critical praxis that engage the legal but that cannot be reduced to it (Striphas, in press).

Incidentally, this strategy for intervention is consonant with cultural studies' own intellectual and political history. Almost 50 years ago E.P. Thompson observed that '[a]ny theory of culture' must account for the 'interaction between culture and something that is *not* culture' (1961, p. 33). To twist his insight around a bit, we might say that any theory of law must account for its interaction with something that is *not* law or with that which exceeds it. Better yet, any strategy for contesting the law should proceed through more than just legal channels, lest we inadvertently reinforce the legal realm's claims to power, authority, and exclusivity in the process. The more we make good on this strategy, the more likely we are to reveal a charming little secret: cultural studies, and the humanities more generally, possess a great deal more legal capital than we might realize.

The medium mutates the message: a case study

We hope to unpack our previous assertion in the following pages by carefully examining how media and law interact, and why extralegal interventions are so important.

The arbitrary rights clearance systems that have taken shape – in both academic publishing and the much larger culture industries – generate many contradictory common practices across domains of cultural production. For example, it is still fairly common for book publishers to allow sizable quotations to be lifted from other books. Derrida's *Dissemination*, for instance, borrows large chunks from the prose writings of others. On the other hand, countless authors have had trouble with their publishers (or third parties) when quoting more than two lines from a song in a book, even if those two lines comprise an infinitesimal portion of the new book. Singing a phrase from an old song and placing it in a new song probably won't trigger a lawsuit, as long as it's brief. And referring to a trademarked good in everyday conversation creates no problem, but movie directors often have to get permission from an intellectual property owner to show it or even mention it in movie dialogue.

A vocalist who sings the name of a trademarked brand probably will not draw the wrath of an IP lawyer (he or she may even get a free pair of NIKE sneakers), but creating a satirical website that uses a company logo will greatly increase your chances of being sued. ('Use' is an anagram of 'sue'. Coincidence? Discuss . . .) The medium of the web requires you to duplicate exactly a privately owned image, leaving you more vulnerable to a lawsuit. But moving from the medium of written text to the spoken word – saying the word NIKE instead of reproducing its logo – involves an act that apparently alters the sign enough to lessen the legal liability. And so on.

What odd historical and ideological conditions shaped legal norms that allow for a person to quote freely small fragments from books, but don't allow relatively free quoting from the aural and visual? When does a cultural text lie within the realm of an informal public domain or exist in the regulated domain of property law? Is the hierarchy of legal regulation connected to the use or exchange value of the appropriated text? Does the public the cultural text addresses make a difference? Looking across media, is there any sort of internal logic regarding appropriation that has developed in legal statutes, formal bureaucratic policies, and informal rules of thumb? Perhaps it would be fruitful to pay attention briefly to *medium* as a key variable that may answer these questions (or more definitively to admit that there are no answers).

'Literary criticism – unlike, say, music criticism or art criticism – enjoys the advantage of existing in the same medium (language) as the art that it explores and esteems', writes noted literary critic Christopher Ricks in his stab at music criticism, *Dylan's Visions of Sin* (2003, p. 7). 'Writing about music is like dancing about architecture – it's a really stupid thing to want to do', said

Elvis Costello, pointedly (White 1983, p. 52). While Costello was also performing his role as a cranky musician lambasting music critics, he nevertheless got at a particularly perplexing fact of communication, as does Ricks. How do we, with high fidelity, transcribe or translate in one medium a description of a cultural text that exists in another medium?

How *does* one use language to describe music? How much representational fidelity is there between the written review typed by *New Yorker* pop music critic Sasha Frere-Jones and the sound waves emitted from one's stereo speakers? A speech communication scholar might experience a similar (epistemological) quandary when struggling to accurately represent a particular glottlestop that occurred during a spoken conversation. A television studies professor might feel similar pangs of uncertainty when crafting a journal article on representations of race within the frame (particularly if that journal does not allow frame enlargements to be reprinted without permission of the copyright owner).

In a previous paragraph, we waffled between the terms 'transcribe' and 'translate' in our description of *transposing* information across differing media. Transcription, upon closer reflection, is a more useful concept that goes to the heart of our present concerns (not because *translation* comes up short as a useful concept in the study of communication; quite the contrary, see Striplas 2005). The usefulness of *transcription* as a framing concept comes from the fact that it refers not simply to copying or cut-and-pasting a text (a book, TV show, song, DNA molecule, etc.), but to the process of copying and fixing it *within another medium*.

A few examples: musical transcription refers to the conversion of a performed melody into a written system of musical notation. In linguistics, *transcription* generally refers to the conversion of spoken sounds to a system of written language. In genetics, RNA is *transcribed* from the DNA, creating a messenger RNA, or mRNA (much like how information is sent via email). The mRNA is known as a transcript because it carries from the DNA the instructions on how to create proteins, and it is in this way that the gene is said to be 'expressed'. Genetic expression occurs when molecules obey physical forces, in a way similar to how a live musical performance is transcribed by a microphone into electrical signals, and fixed on a sound recording (McLeod 2005).

This problem of transcription – where the medium mutates the message, in varying degrees – is often resolved when a communicative act takes place in the same medium. It is simply easier to convey to an audience exactly how a DJ 'scratches' out sounds on a turntable by filming that performance than by typing 'wiki wiki' on the keyboard. The structural characteristics of a particular medium limit the way we can express our ideas; writing, for instance, creates certain limitations (and, of course, opens up other possibilities). In the documentary *The Celluloid Closet*, which analyzes the representation of homosexuality in film history, the directors were able to show clips from

Hollywood films to clearly make their point. Contrast this with Vito Russo's book of the same name (on which the documentary is based), where Russo uses words to describe image, sound, motion, and other such things.

This is not to say that writing about film, oral communication, or radio is a pointless task. Nor are we arguing that there can be perfect fidelity when working within the same medium, because the act of editing creates obvious discontinuities and deletions from the analyzed text. For instance, a one hour documentary about a night's sleep would miss many of the details of Andy Warhol's film, *Sleep*, a roughly eight hour film of a man sleeping. However, even that representational film comes up short, because it succumbs to editorial tricks. Nevertheless, by showing a provocative clip from *Ben-Hur* (1959), the makers of *The Celluloid Closet*, the film about films, easily were able to demonstrate how Charlton Heston was tricked into a homoerotic gaze throughout the motion picture epic.

The Celluloid Closet – both the film and the book – are regularly used in film and media studies classes, and is notable for a number of reasons. It also is interesting as case study about what happens when one attempts to move an argument from the medium of print to the audio-visual medium of film. For now, we will set aside these inquiries into how the structural characteristics of the medium mutate the message – and also aside the many rich and complicated questions about the rhetorical power of images – and instead focus on how legal-bureaucratic mechanisms shape the transcription of media content.

Directors Rob Epstein and Jeffrey Friedman, who 'transcribed' Russo's argument from the medium of print to the screen, secured permission for every clip that they used in *The Celluloid Closet*. In fact, they sought hundreds of permissions from over 40 different rights holders to use these 'properties'. In the DVD commentary track, Epstein and Friedman implicitly make it clear that this film could not have been made by anyone but privileged Hollywood insiders. They began the rights clearance process by writing letters to the studios, but after these business did not respond they grew increasingly 'frustrated' and 'angry'. Normally, this would spell the end of a production before it got off the ground, but one of the filmmakers grew up 'in the business' and knew many of the studio heads. So, with a few phone calls to some key executives, the directors cleared the rights to many of the clips that Russo describes in his book. Many, but not all. In the same commentary track, the directors openly discuss numerous examples of parts of the book that were self-censored out of the film, because they could not obtain the rights.

For instance, the filmmakers edited a montage that demonstrated how Hollywood films have frequently transformed gay historical figures into heterosexuals. 'Films such as *The Agony and the Ecstasy* (1965) and *Khartoum* (1966) reflected the care with which their sources masked or denied the homosexuality of Michelangelo and General Charles Gordon', Russo wrote in

his book, 'just as . . . *Alexander the Great* (1956) bypassed history for the safe illusions held tightly by the majority' (Russo 1987, p. 66). This sentence obviously lacks the persuasive punch that could be delivered by showing a brief clip from *Agony* or *Alexander* – which is a key reason why members of the media education movement argue for the need to appropriate mass media imagery. But Epstein and Friedman could not secure permission to use those two clips, not to mention many other segments in the montage.

'We tried to get the rights to *The Agony and the Ecstasy*', but, alas, 'one by one the clip rights situations fell apart, until the whole sequence fell apart and we had to lose it'. As many documentary filmmakers can attest, the process of clearing the rights – which include the film copyright owned by a studio, the music copyright owned by a composer, and the publicity rights owned by an actor or the actor's estate – can be a tedious, time-consuming, and sometimes impossible task. In the case of *Alexander the Great*, Richard Burton's estate refused to license any footage, most likely for ideological reasons. 'Right of publicity' laws allow celebrities or their estates to control the context in which their images are used. When the New York state legislature held hearings on a bill (which passed into law) that would make the right of publicity something that can be passed on to one's descendants, John Wayne's children cited a greeting card sold primarily in gay bookstores that featured a picture of the late actor with the caption, 'It's such a bitch being butch'. More important than the potential licensing fees that could have gone to the estate was the fact that Wayne's children saw the card as 'tasteless' and believed it worked against their father's conservative image (Madow 1993).

These examples imply that one can be an active audience member, but not *too* active. Henry Jenkins and John Fiske likely would agree with a quotation from *The Celluloid Closet* DVD commentary track, where one of the directors discusses how the gay subtext in *Red River* 'gives you freedom to appropriate images and use them to your own ends, instead of being used by them'. Fiske admits that active audiences do not necessarily lay the foundation for societal change, and instead argues that in the mere act of watching fans engage in constant symbolic meaning formation (such as the way some can read *Red River* as a queer-affirming text, for example). Fans engage in productive behavior, Fiske points out, when they share within their community self-produced fanzines, videos, songs, and other remixed texts. One such example Fiske provides is a fan video that appropriates cleverly edited clips from the television show *Starsky and Hutch*, which places the buddy cops in an implicitly gay relationship – all set to the tune of Jimmy Buffet's 'Leaving the Straight Life Behind' (Fiske 1987, 1992).

Jenkins forwarded the well-known 'textual poachers' thesis, maintaining that fandom is 'a vehicle for marginalized subcultural groups (women, the young, gays, etc.) to pry open space for their cultural concerns within dominant representations' (1988, p. 87). Resistance comes from the *practice* of

writing new texts, distributing the fanzines, and community building. It is true that audiences can be productive, but it is increasingly difficult to use these texts, in Jenkins' words, to 'challenge the power of the culture industry' when intellectual property laws suppress the uses of certain texts (1988, p. 104). And in this vein, perhaps cultural studies might reread, rerun, and rewrite its theories of audience activity/agency/creativity in light of the constraints that IP and IP laws increasingly pose.¹⁴

Yes, it is true that we recognize the political possibilities that online 'remix culture' affords. However, we should also note that a (potentially, but not actually) radical film like *The Celluloid Closet* circulates more widely than the hermetically sealed world of, for instance, forwarded emails that contain links to US President George W. Bush and British Prime Minister Tony Blair singing 'Endless Love' to each other, a kind of political update to the *Starsky & Hutch* clip that Fiske describes. The comment made by the directors of *The Celluloid Closet* – 'it gives you freedom to appropriate images and use them to your own ends, instead of being used by them' – becomes quite ironic when, in reality, they *did not* have the freedom to appropriate those images in certain key cases.

Fair use, in the American context, ought to open up the possibility for filmmakers and other cultural producers to comment critically on copyrighted texts, but many documentarians are rightfully afraid of being sued. Many, but not all. Take for example *Off the Straight & Narrow: Lesbians, Gays, Bisexuals, and Television*, which was produced, directed, and edited by Katherine Sender, a scholar and filmmaker at the University of Pennsylvania Annenberg School for Communication. Like McLeod's *Money for Nothing: Behind the Business of Pop Music*, Sender's documentary was executive produced by Sut Jhally and the Media Education Foundation, which has a longstanding philosophy of recognizing that fair use exists in practice, not just in theory.¹⁵ *Off the Straight and Narrow* contains dozens of fairly used clips that tell a parallel story about the representations of lesbians, gays, and bisexuals on television, in much the same way *The Celluloid Closet* told its story. The key difference is that no permission was sought to use clips from the many television shows included in the documentary. Unlike Epstein and Friedman, Sender asserted the freedom to make the arguments she (and the noted academics interviewed in the film, such as Larry Gross, Richard Dyer, Sasha Torres, Lisa Henderson, John Erni, and others) wanted to make.

Hopefully, Patricia Aufderheide's and Peter Jaszsi's ambitious 'Untold Stories' project will embolden more filmmakers to follow the lead of Sender and others like her, who are engaged in social criticism in media beyond print. 'Untold Stories' and its follow up projects very well may clear the way for the development of a 'best practices' policy for documentary filmmakers. Such a policy will hopefully have a similar effect that the Society for Cinema Studies report did when it created space for more fair uses of film stills in academic journals, though we acknowledge that the fair use of film stills is a much

simpler issue than the making of documentary film. Of course, we again need to emphasize that fair use, as a solution to the stifling of a 'semiotic democracy', is quite limited by geography. In a paper written for a 2005 program presented by Columbia University, '©orrecting Course', Peter Jaszi provides a sweeping comparative overview of 'public interest exceptions' in international copyright laws. Rather than celebrating fair use as an example of US exceptionalism, Jaszi takes seriously an international approach to copyright reform, concluding:

The nations of the world, including those of the common law and civil law systems, have much to learn from one another's copyright systems generally, and contrasting approaches to achieving recognition for the public interest in particular. At the same time, balance in copyright is threatened everywhere in the world, from the least developed countries to the major copyright exporting nations. Those who care about its preservation have much work to do, and among the first projects should be the development of model provisions on limitations and exceptions that mix and match provisions from all the laws of the world.

(2005, p. 23)

We began this case study of what happens when cultural criticism moves from the medium of print to multimedia with a few questions. First, a more general question about the nature of communication: Do differing media structure the content of communication texts? Clearly, yes, that is the case whether or not we are discussing the constraining or structuring effects of copyright law. Another question: Is there an internal logic that guides the way bureaucratic norms and informal 'common sense' copyright guidelines are applied in different media? That is a more difficult question to answer, but we believe that the correct response is 'no' – there is no consistent internal logic that we can trace across media or institutional contexts. Instead, it appears that the decisions of publishers, movie studios, university legal advisors, and others are guided by a haphazard amalgam of policies that were often hammered out without an adequate understanding of copyright law. This suggests that the problems we document can – and perhaps should – be dealt with primarily through extralegal means, given that many of these institutional rules have been set out in an arbitrary fashion and don't necessarily conform to what the law stipulates. Therefore, projects like the 1993 Society for Cinema Studies report, the 'Untold Stories' project, and pedagogically motivated acts of civil disobedience we advocate are necessary for an uninhibited mode of multimedia scholarship and pedagogy to proceed in earnest. And it's not much of a stretch to argue that such tactics are more productive than waiting for our elected officials to change the law in favor of the public interest.

Interrogating and interrupting the law

Siva Vaidhyanathan's afterword – which anchors this issue – does nothing less than gather together a burgeoning field that he calls 'Critical Information Studies'. (This issue might be thought of as one of the field's first published manifestations.) Though encompassing a diverse group of researchers, writers, artists, and activists, two main factors bind this field together as such: an interest in the politics of intellectual properties and a commitment to critique. But what does it mean, exactly, to approach intellectual property *critically*? One thing is for sure: facile 'ideological critique' or attempts to 'deconstruct' specific laws more often than not evidence obliviousness to the subtleties of legal reasoning and process, and as such neither mode of critical practice is likely to receive much of a hearing beyond the most immediately sympathetic circles. Indeed, what may appear to legal outsiders as aporias that threaten to 'rupture' a given statute or judicial decision's legal force often embodies the very discursive substance that legal process, and thus legal change-making, are made of. John Frow underscores this point in his astute discussion of publicity rights, in which he insists that the legal concept of 'person' that grounds these rights

is not a piece of ideology that can be demystified and then discarded [I]t designates not an inherent set of attributes, but a historical project and a site of intense social struggle. At the same time, however, this category is an evolving one, and its status is capable of substantial modification in the process by which new legal and political rights are formed (1997, p. 187).

Socially relevant critical studies of intellectual properties will account, then, not only for specific legal *outcomes*, but perhaps more importantly for the densely historical, contested *process* by which specific legal outcomes unfold – and especially for the apparent vagaries of legal reasoning contained therein.¹⁶ Indeed, just as one would completely misunderstand Marxism absent an appreciation for the particular logic of dialectical reasoning, so too would one misunderstand the genesis of specific laws or legal categories absent an appreciation for the particular logic(s) that guide the reasoning of jurists. Though in some instances the law may be a sliding signifier, or perhaps dominant ideology writ large, in every instance it is much, much more.

The critical study of information must consist, then, of a commitment to theory – and not just of an obliging 'detour' through theory, but rather of a deliberate and sustained confrontation with even our most sacrosanct theoretical precepts. Eva Hemmungs Wirtén makes this point forcefully in the polemic she's penned for this volume. She contends that some critically-inclined scholars have appealed, more or less unreflexively, and with potentially detrimental consequences, to the notions 'creativity' and 'freedom'. We agree in principle, and would add that these terms belong to a

larger inventory of tropes and dichotomies which, though they have helped to advance knowledge about the politics of intellectual properties, nevertheless deserve to be scrutinized even more vigorously. This list includes: culture and nature; individual and collective; corporate and indigenous; the West and the rest; rights and responsibilities, original and copy; difference and repetition; commodity and gift; enclosure and commons; property and propriety; appropriation and piracy; and certainly more.

These terms should sound familiar to most critical IP scholars; no doubt their constant reiteration assures us that we *think* we know how the world works. Gift exchange embodies munificence and goodwill – doesn't it? – while commodity exchange manifests avarice and exploitation. Maybe.¹⁷ But for us, and as McKenzie Wark shows in his contribution that follows, the familiarity of these terms just as well might index intellectual and political complacency, an inability (or unwillingness) to see beyond the terms that have been handed to us. Apropos, Karl Marx once complained about the tendency among scholars studying nineteenth century capitalism to let specific theoretical precepts or investments direct their research, instead of material conditions. It is '[a]s if this rupture had made its way not from reality into the textbooks', he wrote, 'but rather from the textbooks into reality' (1857–8/1973, p. 90). Similarly, to the extent that the commons are defined as private property's constitutive other, does it make sense always to couch our appeals for universally shared resources in exactly that language?

A less defensive posture indeed might allow us to affirm alternative theoretical categories, categories which might energize nascent understandings, arguments, and pathways for action. Consider for example concepts such as 'social brain' or 'general intellect', and how they seem to capture something of the spirit of 'the commons' as it pertains to intellectual property but without all the baggage (Marx 1857–8/1973, pp. 694, 706; see also Virno 2004). In any case, a commitment to theory implies an abiding skepticism of existing theoretical categories, or better yet the eclipse of *pre*conception by conception. 'Concepts are not descriptors', write Gregory J. Seigworth and J. Macgregor Wise. 'A concept emerges *not* as [a] separable or external thing, but rather as that which is intagliated or extruded' from one's object of study (2000, p. 141).

Conclusion: another 'crazy mosaic'

We began this introduction by turning to the work of Walter Benjamin, whose prose style at times embodied his guardedly optimistic insights about the politics and potentiality of mass reproduction. This is the 'crazy mosaic' about which he effused, and indeed that phrase aptly describes this special issue as a whole. Gathered here is an array of scholars working collectively on a common theme, namely, the politics of intellectual properties. Overall, this issue

possesses a definite form, shape, or contour, but upon closer inspection its integrity, like that of any mosaic, might seem more fragmented. The contributors to this volume represent an impressive range of disciplinary and professional backgrounds, including: history; media studies; legal studies; cultural studies; communication; literary studies; the music industry; and library and information science. This is, in other words, a genuinely interdisciplinary, and to some degree inter-professional, collection of writings on IP, which we have gathered together under the banner of cultural studies. Some of the contributors to this volume identify here and elsewhere very strongly with the project of cultural studies. Others maintain a more tentative link, and one or two make no particular claims to ‘doing’ cultural studies at all.

What this ‘crazy mosaic’ of an issue represents, then, is a deliberate and strategic effort at alliance-building. Readers should not expect anything like a unified position or definitive theoretical orientation on IP to emerge from these pages, much less a concrete agreement about how best to proceed politically in light of past or recent developments in the domain of IP law/jurisprudence/thinking. Given the contributors’ range of backgrounds and their varying investments in cultural studies, moreover, the essays that follow may not in all cases ‘sound’ exactly like cultural studies, if indeed we can speak of such a thing. This sometimes uneasy fit is, however, one of the hallmarks – and challenges – associated with meaningfully engaged interdisciplinary scholarship; it also embodies one of cultural studies’ most fundamental principals, that is, the notion of a ‘unity-in-difference’ – the contentious obverse of facile consensus building.

With all that said, we’re tempted to say that this ‘crazy mosaic’ still isn’t sufficiently crazy. The contributions that fill these pages all have been penned by humanities scholars, and as such it’s probably fair to say that as interdisciplinary as this issue may be, it’s still not interdisciplinary enough. Because IP concerns clearly exceed the relatively narrow confines of the humanities, this issue of *Cultural Studies* represents a humble beginning rather than a conclusive end. Absent are contributions from scholars and researchers in the natural sciences, the legal profession, and, yes, even business if we care to go there. This conversation must broaden if it is to continue. Thus, this special issue on the politics of intellectual properties resembles Benjamin’s *Das Passagen-Werk* in one more way. It is open . . . plural . . . multivocal . . . a living document . . . finished, but necessarily work in progress . . .

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An Interdisciplinary Conversation,” which brought together many of the contributors to this special issue.

Notes

- 1 The paperback edition published by Harvard/Belknap retails for US\$23.95, which is a steal for an academic book exceeding 1000 pages.
- 2 It also is true of the African-American musical form of hip-hop, whose musical appropriation traditions were interrupted and, in many cases, ended by copyright infringement lawsuits (see Vaidhyanathan 2001, McLeod 2001, 2005).
- 3 For an extended discussion of this issue, see McLeod 2005, pp. 52–60.
- 4 ‘[E]very diagram’, writes Gilles Deleuze, ‘is intersocial and constantly evolving. It never functions in order to represent a persisting world but produces a new kind of reality, a new model of truth. It is neither the subject of history, nor does it survey history. It makes history by unmaking preceding realities and significations, constituting hundreds of points of emergence or creativity, unexpected conjunctions or improbable continuums. It doubles history with a sense of continual evolution’ (1988, p. 35).
- 5 Lawrence Grossberg has written: ‘When the early work of British Cultural Studies was appropriated’ by US scholars, ‘it was inevitably read as an alternative approach to the study of communication and media. There is in fact a certain historical rationale for this identification. Writing about the reception of Richard Hoggart’s foundational book, *The Uses of Literacy*, Stuart Hall acknowledged that it was read, ‘ – such were the imperatives of the moment, essentially as a text about the mass media’. Consequently, cultural studies was framed, both within and outside of the [Birmingham] Centre, as a literary-based alternative to the existing work on mass communication’ (1996, pp. 138–139).
- 6 See, for example, from a cultural studies/critical theory vantage point, Elspeth Probyn’s (2000) *Carnal Appetites* and Jane Adams’ (1999) *The Sexual Politics of Meat*. For a more sociological account, see George Ritzer’s (2004) *The McDonaldization of Society*, and, from a more journalistic perspective, Eric Schlosser’s (2002) *Fast Food Nation* and Morgan Spurlock’s (2005) *Don’t Eat This Book: Fast Food and the Supersizing of America*.
- 7 Rosemary J. Coombe, John Nguyet Erni, and Peter Jaszi are notable exceptions. We’d add, too, that those cultural studies practitioners who work in the area of queer theory often are among the most engaged (in both practice and in their scholarly publishing) with the law and legal concerns.
- 8 For work that speaks to the connections between academic cultural studies and the culture industries, see Sean Nixon’s (1996) *Hard Looks*; Tony Bennett’s (1998) *Culture: A Reformer’s Science*; Angela McRobbie’s (1998) *British Fashion Design*; and Ted Striphas’ (2002) ‘Banality, Book Publishing, and the Everyday Life of Cultural Studies’. Thomas Streeeter’s (1996) *Selling the Air* is an exemplary work showing how cultural studies’ interest in the

- cultural (in this case, commercial and public television) also connects tangibly with legal concerns.
- 9 Consider in this regard the work of Lawrence Lessig (2001) and Siva Vaidhyanathan (2001), who argue respectively for a return to 'thin' and 'leaky' IP protections as the best strategy for combating more restrictive IP laws. For a critique of their positions, see Striphas (in press).
 - 10 An analogous story is told by Johns (1998) about the stationers' guilds of early-modern England.
 - 11 The conflicts between formal, legal modes of governing the production, distribution, exchange, and consumption of ideas in the West and the methods Indigenous groups have used to do so have been documented by scholars working both in and outside of cultural studies. See, among many others: Coombe (1998); McLeod (2001, 2005); Brown (2004); and Goodman (2005).
 - 12 The organization was known as the Society for Cinema Studies when the report was written.
 - 13 This happened in the case of 'aspirin', a term which, between 1899 and 1921, referred to a specific brand name of the drug, acetylsalicylic acid. The public's overuse of 'aspirin' to refer to competing brands resulted in a US Federal Court decision, in which the Court ruled that 'aspirin' no longer deserved trademark protection ('Aspirin' 2005, n.p.). Clearly the threat of genericide is real, and it is precisely why some companies actively promote their brands as just that – *brand* names and not general terms for competing products (think 'Xerox' for photocopies, 'Kleenex' for facial tissues, 'Band-Aid' for bandages, and 'Jacuzzi' for whirlpool baths).
 - 14 To be fair, since Jenkins wrote *Textual Poachers*, he has acknowledged the censoring uses of copyright that make it harder for texts to be appropriated.
 - 15 One implicit goal in making McLeod's documentary *Copyright Criminals: This is a Sampling Sport*, which is based on chapter two of his book *Freedom of Expression*[®], is to demonstrate that fair use does exist in practice, not just in theory. In that chapter he tells the story, in the medium of print, of how hip-hop and sound collage practices were impacted by copyright law and rights clearance policies. However, it becomes more complicated – practically and legally – when the documentary version of that story necessitates that McLeod and his co-producer use brief quotations of sound and image, rather than a blank screen or silence.
 - 16 Mark Rose's (1995) *Authors and Owners* and Martha Woodmansee's (1996) *The Author, Art, and the Market* are exemplary of this kind of work.
 - 17 John Frow notes, for instance: '[T]here is no single form of 'the gift' and no pure type either of the gift economy or of the commodity economy. . . . The gift. . . cannot and should not be conceived as an ethical category: it embodies no general principle of creativity, of generosity, of gratuitous reciprocity, or of sacrifice or loss. At best it is an ambivalent category, oscillating between the poles of generosity and calculation' (1997, p. 124).

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