What’s in a name? If it is a brand name, potentially millions. Trademarks are intangible assets of immense value that magically bind consumers’ devotion—brand loyalty no less—with corporate personality through the force of the legal category of goodwill. Through its trademarks, the corporation synecdochically manifests a persona. Managing the corporate persona is serious business, especially in postmodern conditions where maintaining distinction in competitive markets involves huge investments in the symbolism and imagery that will keep corporate connotations on the cutting edge of “brand recognition.” Digital environments, however, enable practices that promise to transform the nature of corporate-consumer relations. These practices undermine the traditional capacities of companies to control their images and manage their imagery while creating conditions for consumers to challenge the very forms of commodity fetishism (erasures of both conditions of production and the conditions under which symbolic value is produced) on which the corporate persona as an asset has for so long relied.

Our own ethnographic studies of contempo-
rary consumer cultural practices demonstrate that these are always in a
dialogical relationship with legal power and its popular interpretation.\textsuperscript{1} Although it was developed in analog environments, we have found the thesis more pertinent still in digital contexts. In \textit{The Cultural Life of Intellectual Properties}, Rosemary Coombe considers mass media signifiers and popular cultural readings of corporately controlled commodity-signs—billboard advertisements and brand names, logos, cartoon characters, and celebrity images—that circulate as part of our public culture but are also private properties, protected by laws of intellectual property.\textsuperscript{2} Intellectual property laws give exclusive rights to owners to control the circulation of texts and to enjoin their uses by others, to levy royalties, and to threaten lawsuits when these symbols are reproduced in subaltern cultural activities. These laws confer on corporations an enormous amount of cultural power while they simultaneously shape tactics of subaltern appropriation and re-coding. In \textit{The World Wide Web and Contemporary Cultural Theory}, Andrew Herman argues that the symbolic processes of corporate branding of, and in, cyberspace territorializes the Web as a striated space of corporate sovereignty and consumer desire.\textsuperscript{3} The “friction-free capitalism” of Bill Gates’s utopian understanding of the so-called new economy is a highly regulated and disciplined space for the performance of both corporate and consumer identities.\textsuperscript{4}

Digital environments clearly provide new opportunities for corporations to put their intellectual properties into circulation and to surround these with new fields of connotation. The Internet is fueled by advertising revenue, and logos are ubiquitous. Indeed, digital technology creates new means and media for corporations to insinuate their advertising images. This new form of corporate cultural power, however, is met with new forms of consumer resistance. The World Wide Web (the Web) gives members of the digitally connected public new capacities to evade their subject positions as mere consumers of corporate imagery by providing technological means and social and cultural conditions for consumers to take the commodity signs of mass culture and transform these into popular culture and to create a popular legal culture in the process.

By mass culture we mean mass-produced texts, images, and sounds—cultural artifacts circulated to a mass of consumers by centrally controlled media industries. Such a culture is unidirectional, or in Bakhtinian terms, monologic—it speaks from a singular place with a singular voice—and it
does not let you talk back, or if you do, your voice is unlikely to be widely heard. You might strategically alter billboards with graffiti, as Ron English, the Guerrilla Girls, and the Billboard Liberation Front do. You might create art that uses and transforms advertising imagery as artists such as Ashley Bickerton, Hans Haacke, Mike Bidlo, and Barbara Kruger do. You might, like artist Paul Hanson, create “Barbie art” by taking the dolls and turning them into social satire such as the Tonya Harding Barbie and Drag Queen Barbie. (If you do, however, you are likely to incur the Mattel company’s wrath. For Hanson, this wrath was manifested in a suit for $1.2 billion in damages. Pulling his dolls from commercial sale and donating them only to art galleries did not appease the company. Faced with what he describes as a litigious “year from hell,” Hanson settled and stopped using ten-inch fashion dolls as his medium.) You might work more surreptitiously, changing the voice boxes in fashion and action toy dolls to challenge the gender stereotypes propagated by children’s toy manufacturers as the Barbie Liberation Front did. Or you could (like the anonymous Barbie Disinformation Organization) appropriate the manufacturer’s very style of packaging its goods and alter its labels on goods in retail stores to replace the corporation’s branding connotations with ones of your own. (Barbie’s Stylin’ Salon has been transformed into a Lesbian Barber Shop with instructions for Dyke Haircuts, a Barbie cheerleader becomes “Theme Hooker Barbie,” and the new “Dust Bowl Barbie and Okie Dokie Ken Migrant Farm Family” playset comes with the caution, “Just because Barbie is penniless and moving cross-country in a desperate attempt to establish a better life for her coming child, doesn’t mean she can’t accessorize properly.”) People also spread rumors about corporate brands that create unpredictable fields of interference with commercial connotations. Such interventions and interruptions of mass culture, however, are difficult to make widely visible or widely audible; people do not have the capacity to communicate with the speed and efficiency of corporate speech when they attempt to talk back.

Widespread access to digital technology, however, has fundamentally transformed the dynamics of power in this field of communications. The Web provides unprecedented opportunities for new and dynamic dialogues between producers of products and imagery and those who consume them. It enables consumers themselves to become producers of mass culture and permits corporate producers to become better consumers of alternative meanings and of customer opinion. Consumers are now talking back and
making assertions in new ways. In the process, they are making mass culture into popular culture. By popular culture we mean activities that use the resources of mass-mediated commodity forms in alternative cultural and moral economies where new understandings, values, pleasures, protocols, and proprieties are produced. We are working from a perspective that views culture as a verb, not a noun—the preeminently social practice of making and remaking meanings, the struggle to have our meanings mean something, to create communities and forge identities through the deployment of efficacious forms. We agree with John Perry Barlow that digital technology provides unique conditions that make a genuinely popular culture possible, and that power relations are shifting. A system of proprietary control, hegemonic under modern conditions of mass marketing, is being transformed into a more dynamic ethics of property and propriety in the digital public sphere. This transformation becomes clear in struggles over intellectual property—particularly in battles to control trademarks.

The function of trademark law is to discursively construct and institutionally enforce particular notions of corporate identity as a property right. As Steve Jones insightfully points out, “This function is grounded in the very etymological roots of the word ‘property’—derived from the Latin proprius, meaning ‘one’s own,’ the word property was a doublet of propriety in More’s Utopia. In current usage the former is used to make reference to ownership, the latter refers to a standard of behavior.” Intellectual property, he suggests, intertwines the two, “harkening back to the Latin proprius and its derivative proprietas, meaning proper signification with words.”

Intellectual property laws structure a field of semiotic possession—control over a sign—and thereby shape forms of symbolic practice. They create proprietary rights in a cultural commodity or commodity-sign—the trademark—and capacities to control its potential meaning and interpretation. Proper signifying activity that connects the product, the brand name, and the corporate source in the mind of the consumer in a closed circuit of meaning and affect forms the basis for the trademark holder’s legal entitlement to fully exploit and appropriate the exchange value of the commodity-sign in the marketplace. Commodity production and consumption are linked through this symbolic economy of meaning, and the corporate persona is strengthened through strategic possessive activities designed to constrain surplus meaning and prevent the dilution of symbolic value. Unauthorized appropriations of corporate trademarks and alternative forms of signification that disrupt this closed circuit must be monitored and, ideally, strictly
prohibited. The law functions as a form of governmentality by shaping the appropriate use of commodity-signs in mass-mediated commercial culture. Its capacities to do this are both provoked and challenged in digital contexts.

We examine this intertwined relationship between property and propriety in cyberspace by looking first at struggles over “domain names,” the names given to specific addresses and sites on the Web. The very phrase *domain name* evokes the symbolic processes by which property and propriety converge in the construction of the corporate persona—through the proper and exclusive naming of a specific proper space the site is constituted as the symbolic territory of the corporation. Conflicts over the meaning and use of domain names have become increasingly complex, but simple cases of “cybersquatting” (the extortionate practice of registering domain names valuable only because of the goodwill associated with famous trademarks and ransoming these back to the corporations who generated this value) do still occur. In January 2000, for instance, the World Intellectual Property Organization (WIPO) gave the domain name www.worldwrestlingfederation.com to the World Wrestling Federation (WWF) when it complained about an individual who had purchased it for one hundred dollars from an earlier registrant, only to offer it back to the WWF three days later for one thousand dollars.¹⁵

Legislation introduced in the United States and the new Internet Committee for the Assignment of Names and Numbers (ICANN) policy have made it fairly simple for corporate trademark owners to prevent the use of their trademarks when these are being used commercially and in bad faith.¹⁶ The perceived tendency of domain-name dispute-resolution arbitrators to favor corporate trademark holders regardless of the intentions or practices of those using the domains, and thus to see in any use of a trademark evidence of bad faith, is the subject of much hostile comment on the Web. There are now a proliferation of Web sites devoted simply to tracking domain-name disputes and commenting on their resolution. Domain-battles, Domainshame, and Ousted are but a few of these.¹⁷

The Web’s capacity as a communicative medium is challenged by domain-name disputes, as Web critics quickly recognized. Terri Welles, who was *Playboy* magazine’s 1981 Playmate of the Year, was sued in 1998 for trademark infringement because she referred to herself as a Playmate on the Web site where she sold pictures of herself and advertised her services as a model. Welles, a single mother, used the site as her major source of income. The company sought damages and an order for her to remove all references to
Playboy and the term Playmate, on the basis that she was “hijacking Playboy’s customers.” Despite the fact that Welles was accurately describing herself and her credentials (and not confusing anyone by so doing), the magazine would not permit her to use their trademarks on the Internet. Playboy’s request for a preliminary injunction was denied on the basis that she was simply describing herself, and the denial was upheld in the Ninth Circuit Court of Appeals (enabling her to continue to use the trademarked terms until the suit could be determined on its legal merits).

Web commentators quickly took notice of the dispute and its implications for digital culture. As an editor of Salon magazine put it, simply by describing the facts of the case, he was required to use the word Playboy, and to alert Web surfers to his article he would need to use Playboy and Playmate in the metatags for the page so that readers could find it. Thus, within the parameters of the magazine’s legal argument, Salon would be violating their trademarks and hijacking their customers. In short, the company was making absolute ownership claims to all uses of their trademark terms, even when they were used descriptively:

The real conflict here—and one that no single court decision can resolve—is between competing visions of the Web. If you think the Web is simply a “marketplace,” a big mall where companies compete for “brand identity” and “mindshare” then Playboy’s trademark protection makes sense. While many large corporations have sunk piles of money into making this vision of the Web a reality, vast numbers of individual people are busy pursuing a different vision—one in which the Web is a giant communications network in which we find one another based on a shared interest, be it bottle-top collecting, Proust, or Playboy bunnies. In the latter vision, any company that tries to clamp down on use of its name is also going to stifle any chance of building an enthusiastic following across the Web. Playboy, with its history as the granddaddy of pinup magazines, is obviously less interested in exploiting the Web’s potential for building new kinds of relationships than in simply protecting the gold mine of its existing brand. Playboy can afford lots of lawyers and appeals, and there’s no guarantee that its proprietary approach to words won’t prevail. And if the law ends up treating the Web as one big business directory, then we shouldn’t be surprised if the medium ends up becoming as scintillating as a volume of the Yellow Pages.\(^\text{18}\)
The threat to bottle-top collecting was soon realized. As a goodwill and public relations gesture, a Web design company donated a Web site to a community of senior citizens involved in trading vintage Coca-Cola bottles and cans. The site, called Vintagecoca-cola.com, was used to display their collections. On January 5, 2000, the multinational company’s lawyer sent the site’s administrator, Randy Martin, a cease-and-desist letter asking the site to discontinue use of all Coca-Cola trademarks and to assign the domain name to the company or abandon it. No merchandise was ever sold on this site and it contained a clear disclaimer: “Coca-Cola,’ Coke, ‘The Dynamic Ribbon Device,’ ‘Always,’ the ‘Always’ Logo, the distinctive contour bottle and all Coca-Cola images portrayed within this site are trademarks of the Coca-Cola Co. All logos and references to trademarked materials are used for identification purposes only and remain property of their respective owners.”

The company still took advantage of U.S. anti-cybersquatting legislation to bring the suit, although the law contains clear exceptions for legitimate noncommercial uses. Arguably, because the site contained linkages back to the site promoting Martin’s Web design services, it was not entirely noncommercial, but the trademarks themselves were not used to promote commerce. The vintage site was merely showcasing his skills as a designer. Nonetheless, as Martin put it, “neither myself nor any of these old folks are wealthy enough to get into a legal battle with a corporate behemoth such as Coca-Cola Co. with a market capitalization of $155 Billion.”

When the dispute arose, senior citizens immediately stopped sending him pictures of their memorabilia to post and ceased using the site as a forum for finding and communicating with new friends with shared interests. Martin took down the images and all logos and trademarks, posted the cease-and-desist letter, and transformed the site into a venue to protest corporate overreaching on the Internet. He invited consumer commentary on such practices, educated the Web-surfing public about their rights when threatened by trademark holders, and provided a link to the Domain Name Rights Coalition (another site created in response to an instance of corporate censorship). As a consequence of this dispute, those interested in vintage memorabilia no longer use the Internet to share their knowledge, their collections, and their fondness for Coca-Cola packaging. Those who do seek vintage cola wares on the Web find themselves in a sea of critical letters discussing the multinational corporation’s labor relations, pricing practices, and marketing strategies. In attempting to police and maintain a closed cir-
cuit of imagery and connotation, the company effectively opened it up to a wider field of critical consumer opinion.

The use of intellectual property to effect forms of online censorship is also evident in the numerous cease-and-desist letters sent by lawyers to fans holding Web sites as tributes to the very stars and mass media productions these lawyers were protecting. In many instances these were noncommercial sites that could not possibly be confused with the official venues. Many of these sites simply left the Web, removed any proprietary content, or slyly renamed themselves—the “Unofficial” Elvis home page, for instance. Fandom, as John Fiske and Henry Jenkins have shown, is one of the primary practices through which popular culture is produced. Fans actively produce cultural meanings through creative appropriations and recontextualizations of mass cultural commodities. Social allegiances and communities are formed through commentary on the meanings of mass media signifiers. As Fiske argues, these practices create a “shadow” symbolic economy through which fans stake alternative claims to property and propriety in everything from particular celebrities to television shows. Such texts are held as intellectual properties by persons and corporations who are naturally suspicious of this shadow economy. Either they seek to reincorporate fan activity within the symbolic economy of mass culture or they attempt to eliminate it altogether, fearing the dilution of the symbolic value of their marks and personas through the corruption of their proprietary meanings.

The emergence of the Web has intensified the conflict between fans and the legal owners of mass cultural properties because the Web has enabled fans to create more dispersed communities of popular cultural commentary. Highly publicized skirmishes between fan sites and large media conglomerates were common from the Web’s earliest days. In the mid-1990s, for instance, the Fox Network aggressively threatened many unofficial fan sites with cease-and-desist letters and successfully shut down several devoted to popular Fox television programs. In the case of an unofficial Simpsons site, the site master, Jeanette Foshee, was taken to task by Fox for developing her own Simpsons desktop icons, which she distributed free of charge. These became wildly popular. Fox demanded that she turn over all materials relating to the icons and provide them with the names and addresses of anyone who had ever downloaded them. The company pursued the master of an unofficial “Millennium” Web site with similar zeal, threatening the site’s Internet service provider with legal action if they did not
shut the site down. According to David Oakes, the staff counsel for Fox, the reason for the shutdown was quite simple: “We have an official Millennium website, with network-approved content, and these people don’t work for the network. We have had significant problems with the X-Files about this.” Oakes was referring to the phenomenal profusion of unofficial X-Files Web sites (there were over nine hundred of them in 1995 alone) where fans produced and circulated an elaborate alternative discourse, to the extent of offering entire episodes centered on distinctly pornographic renderings of the relationship between Agents Scully and Mulder. Oakes points to the restricted symbolic economy of intellectual property that governs the property in and propriety of consuming mass cultural commodities. Fans’ passion for the commodity must be strictly territorialized—channeled into official Web sites where content and commentary can be monitored to feed back into the financial rewards of ownership through the sale of trademarked goods that further promote the corporate brand identity and thus nurture the corporate persona.

Fan subcultures put great value on autonomous creativity. Not surprisingly, many fan communities have resisted corporate attempts to incorporate or quash their Web activities. Just as corporations have pursued Web sites for cybersquatting, fan communities have become irate about what they call cyberbullying by media corporations. A recent example involved a cease-and-desist action taken by Warner Brothers against two fifteen-year-old girls, Catherine Chang in Singapore and Claire Field in Britain, for registering homemade Harry Potter fan sites with URLs that contained the character’s name. Unlike unofficial X-phile fan sites devoted to the polymorphous promiscuity of Scully and Mulder that potentially cause some consumer confusion (would good Agent Scully really have a harem of lusty men called the “Testosterone Brigade”?), the Potter sites were wholesome labors of love by adoring fans. Indeed, Field took great pains to link her site back to the official Harry Potter Web sites. The media conglomerate’s action against the teenager and her family brought an almost instantaneous response from the Harry Potter fan community and, in short order, other sectors of the digital public. For instance, the British Internet economy magazine, the Register, issued a digital call to arms against Warner Brothers, which was answered globally. One group of British activists, devoted to fighting corporate censorship on the Web set up another site to coordinate the response to Warner Brothers that they called PotterWar. In this in-
stance, the very basis for trademark protection was evoked against Warner Brothers in the struggle over the corporation’s persona and image in the sphere of public opinion. As the PotterWar site explained, “Corporate legal departments don’t really have a clue about the real world and some corporations just don’t understand the concept of ‘good will.’” Against a barrage of angry fan e-mail messages and ensuing negative publicity, Warner Brothers initially retreated, insisting that they were interested only in “clarifying the intent” of Field’s Web site. The original cease-and-desist letter to Field asked the girl nothing about her intentions, as critics were quick to point out. The publicity office of Warner Brothers cowered, claiming this omission to be a simple “clerical error.” To contain this fan activity within its own closed circuits, however, Warner Brothers did offer to license Field’s site as an official site and waive the fee that Warner Brothers normally charges fan sites for the privilege of delivering further customers to the company.

The struggle by fan communities on the Web to resist the stratagems of media corporations to control their activities recently took an ironic twist. In 1999 a Web site named Fandom.com was founded with the ostensible purpose of providing a cooperative umbrella for independent fan domains to protect them from corporate intellectual property assaults—a shield against cyberbullying, so to speak. Although Fandom.com’s slogan is “By the fans, for the fans,” it is actually an enterprise financed by several prominent entertainment venture capital companies. Fandom.com does appear to have provided some legal protection to Web masters who affiliated themselves with the venture, but at a cultural price. Fandom.com’s greater accomplishment has been to aggressively incorporate and co-opt formerly independent fan sites under a singular corporate brand name and to control the style of fan discourse and homogenize its content as a means of maintaining brand identity. Numerous fan domains under the Fandom.com umbrella have found that postings that run afoul of the tastes of the site’s corporate sponsors are simply deleted from their message boards.

Like all media corporations seeking to establish and maintain a distinctive brand image, Fandom.com has not been reticent in invoking intellectual property laws against fan sites resisting such co-optation. In October 2000, the administrator of a Web site called Fandom.tv, Carol Burrell, was hit with a cease-and-desist letter from Fandom.com’s lawyers claiming that the word fandom was their registered trademark and thus that her domain name violated the Anti-Cybersquatting Act. This action set off a firestorm
of protest within the Web fan community, prompting a boycott of Fandom.com and the establishment of new Web site, Fandomfightsback.com. Its home page loudly proclaims, “Fandom is for Fans. Not for Sale!!!” Two issues are at stake for the fan community. The first is whether the word fandom, which had been used to describe fan community subcultures since the 1930s, should be considered the common property of the fan community rather than a term susceptible to private ownership (the company had abandoned its application for a federal trademark, no doubt because the term was simply too descriptive of the services they offered). As noted in the intellectual property claim at the bottom of the Fandom.tv Web site: “Station Identification: fandom.tv, fandomTV, and the fandom.TV logo are trademarks of fandom.tv. These phrases are trademarked in defense against efforts to prevent us from using the word Fandom. Will we ever trademark the word Fandom to prevent any other fan from using it? Not Likely.” The second issue involved the ironic recognition on the part of fans that even a site designed to protect fan activity could quickly become a cyberbully in its own right and the imperatives of protecting brand identity take precedence as a corporate persona emerges on the Web. As Burrell notes, “The Internet has made people aware that they are, in fact, part of something called fandom. It has given the individual the power to shout out loud. I hope that the Web, with its marvelous potential to give voice to individuals, won’t turn into the private playground of companies.”

Conflicts over the corporate persona as intellectual property are now commonplace on the Web. In 1994, our informant, Misha Gluberman, started a site dedicated to keeping track of Web-based “trademark wars” to document instances of intellectual property law being used as a form of censorship. He quickly found that he could not keep track of the suits and the threats of injunctions publicized on the Internet. Recording these activities, however, turned out to be an important way of building communities of interest and archiving corporate cultural power tactics. Cease-and-desist letters were routinely sent by lawyers monitoring trademarks in the past, but the Web provided an unprecedented opportunity to publicly document this behavior while assessing its range, scope, and intensity. Today, better supported sites such as the Domain Name Rights Coalition, Dmoz (the Open Directory Project), Master of Your Domain, Domainwatch, and Domain Handbook (linked together in Web rings easily accessible from the major search engines)—routinely monitor the Internet for instances of corporate censor-
ship just as corporations monitor it for unauthorized appropriations of their marks. These parties, moreover, engage in increasingly complex forms of dialogue.

In the early years of the Web, sites alluding to corporate trademarks were routinely enjoined by the courts. Toys “R” Us won an action against the publishers of an “Adults R Us” page, which most decidedly did not feature the latest playtime activities of Noddy and Big Ears. Today, similar pornographic appropriations are also swiftly shut down. One of the first lawsuits under the new cybersquatting act was launched after a friend of a new editor for the online edition of Teen magazine searched for the journal and found herself on a hardcore pornography site. The pornographic site, named Teen-magazine.com, was registered to a twenty-one-year-old, who had registered 275 domain names that he attempted to sell to more established site developers. By the time of the suit, Teen magazine had already been sold to an adult entertainment Web-site operator who held more than 3,000 domain names. When the restraining order was issued, the CEO simply shrugged: “We don’t need any hassles. Whatever happens, we got a great deal of publicity over this.” Domain disputes have publicity value for corporations whose own products are far from household names.

The Mattel Corporation is known as one of the most vociferous and energetic corporate censors in cyberspace. A recent Google search for Mattel Lawsuits and Barbie turned up over 1,250 items, including sexual appropriations, critical commentary, and creative cultural reworkings of the cultural icon. Barbie Doll Benson, former Miss Nude Canada, has used the Barbie Doll stage name for sixteen years, but only when she produced a Web page did Mattel complain. (The company’s delay in taking action, despite their opposition, has given her strong enough grounds to continue to use her stage name.) Mattel’s interests are less clear, however, with regard to the dozens of Web sites for serious Barbie doll collectors, as well as online Barbie auctions. Mattel has tried to shut down dozens of these collectors’ sites and to usurp the collector community by creating a commercial alternative that offers officially licensed “nostalgia dolls.” According to the president of the largest collector’s organization, “Barbie doll collecting is in danger of becoming what Mattel wants it to be rather than what you, the collector, choose to make it.” Mattel’s legal rights to use its trademark ownership to try to prevent collectors’ activities are actually rather limited (to the extent that the use of the Barbie name in these instances is either referential...
or laudatory). Legally, Mattel should be concerned if the Barbie name were in danger of becoming a generic term for fashion dolls. To the extent that the dolls traded on the Web are, in fact, Mattel products, there is no trademark rationale for the corporation's attempts to prevent these online uses of the Barbie name. Nor is it clear how such activities "dilute" the value of the famous mark.

The company's attempts to usurp the collectors' activities by producing "collectors' editions" provoked a new wave of outrage on the Web. One quarterly fanzine for collectors that critically reviewed the quality of the dolls Mattel produced and featured the occasional satire on the collectors' shared addiction to the ten-inch icon was confronted with a federal copyright and trademark infringement lawsuit. This action prompted a month-long protest boycott among the collecting community. In their book Transcompetition, business commentators Harvey Robbins and Michael Finley describe it as biting the hand that feeds you. Corporations like Mattel, they suggest, have a tendency to see their customers as a force to be tricked, bullied, or ignored.

Take Barbie dolls, the world's best-selling toy. There are 250,000 people around the world who collect the dolls, as an investment hobby. In recent years these collectors have begun to grumble that Mattel, the maker of the doll, has been skimping on materials, issuing inappropriate versions of Barbie, and outfits that didn't fit. The dispute stems, in part, from a series of manufacturing goofs and marketing blunders that hurt collectors. Poodle Parade Barbie, a replica of a 1965 doll, was released with hair seemingly trimmed with a chainsaw. Then came Barbie's friend, Francie, another vintage doll reissue, whose undersized shoes split when placed on her feet. Mattel also misjudged the market, underproducing some collector dolls and overproducing others, causing prices to soar, then fall. Early buyers of Star Trek Barbie who paid nearly $80 each got burned, for example, when store prices later dropped to about $30 per doll. But the final straw was when Mattel sued a family-run fanzine for trademark infringement, after the magazine satirically portrayed a Barbie with alcohol and pills. Facing the storm from faithful customers, many of whom buy 50 Barbies a year and were threatening a boycott, Mattel CEO Jill Barad vowed not to give an inch. "What I do in my job, first and foremost," Barad said, "is protect Barbie."
In 1997, “protecting Barbie” was an especially aggressive undertaking that involved a barrage of lawsuits launched against clubs, publications, and Web sites. One site hit with Mattel’s legal wrath was dedicated to the Barbie icon’s semiotics and deconstruction. The site’s creator, Mark Napier, an innovative Web artist, used texts and visuals, including alterations of the famous doll’s face, to explore the role of the doll as an icon of American life. “Barbie says a lot about the world,” Napier observed.

I can’t think of any other icon that is more widely accepted as an image of femininity. Barbie is a defining force for both women and men, for the culture in general. We have chosen this image, voted for it with our dollars, promoted it unconsciously or consciously. . . . But I think it’s about time this icon diversified a little. What about all those aspects of our society that are not represented by Barbie? Let’s open up the closet doors and let out the repressed real-world Barbies; Barbie’s extended family of disowned and inbred rejects; politically correct Barbies that celebrate the ignored and disenfranchised.”

Mattel sent a cease-and-desist letter to Napier’s Internet service provider, who put pressure on the artist. Napier stripped most of the altered images from his site but was informed by his service provider that Mattel still considered his use of the Barbie name to be a dilution of their trademark. Enterzone, an online Web arts quarterly that had celebrated Napier’s site, received a similar letter from the corporation. The journal’s editor, Christian Crumlish, saw the controversy as a free speech issue: “What’s being silenced is any reflection, any meta-conversation about Barbie,” he noted, pointing to an interactive section of Napier’s site that allowed viewers to submit their own stories about what Barbie meant to them as they were growing up. Enterzone’s site, moreover, included a selection of digitally manipulated images of “Alternative Barbies,” including Fat and Ugly Barbie and Mentally Challenged Barbie, that were no doubt even more offensive to Mattel than Napier’s morphed images.

Controversy over Mattel’s action quickly spread through interlinked Web communities. Before Napier took down his artwork, others duplicated his Barbie images and created the Distorted Barbie Meme, a Web site that could be copied or duplicated at any other location within the Web. One of these locations was www.detritus.net—a site that houses endangered art works. Detritus.net made this mirror (copy) of Napier’s Barbie artwork in response
to what it described as “Mattel’s incredible blatant censorship, and to the attempt to suppress cultural commentary and artist appropriation.”

In the accompanying “Meme Manifesto” the site administrators make clear their intent to subvert Mattel’s legal action by encouraging the proliferation of these images. And, indeed, dozens of Barbie images, satires, parodies, and commentaries are now available on multiple Web sites. These same Web sites link readers quickly to more and more domain disputes involving Mattel, and, in critical and satirical response, more and more alternative “Barbies.” Before the advent of the Internet, as Michael Strangelove argues, Mattel was accustomed to maintaining unidirectional control over its commodified signifiers and images in mass culture. Now, however, corporate capacity to maintain a monopoly over the flow of their symbols or to control the meanings given to their signs is severely compromised in digital environments. Mattel is simply “incapable of suppressing every redefined image of Barbie in cyberspace” because users of the Web can “reproduce disputed and illegal material faster than the legal system can respond to each case of reproduction.”

The Web site Trademarks.org/barbie, for instance, has a lovely pink wallpaper decorated with the registered trademark symbol of a capital R in a circle. Barbie, registered trademark, appears in a number of guises, all linked to instances of Mattel’s overbearing conduct. On the home page we find the assertion, “As a trademark or copyright, the intellectual property of a corporate entity, Barbie® enjoys better protection against legitimate criticism and inquiry than would a human being!” Here we meet Not-So-Sweet-Barbie who talks the language of corporate lawyers, Domain Hijacker Barbie who threatens domain-name holders, Image-Problem Barbie who attempts to hide her past as a German prostitute, and Can’t Take a Joke Barbie who responds petulantly to all Barbie humor with grave letters from her legal department. Links to gay Barbie appreciation sites and recollections of Barbie’s role in lesbian self-realization stories, as well as a book featuring Safe-Sex Barbie and—in honor of her fortieth birthday—Hot Flash Barbie (accessorized with tiny estrogen supplements) are all only clicks of the mouse away.

Corporations now employ trained “surfers,” the digital equivalents of a clipping service, to monitor their marks in mass culture. This activity is not optional. To maintain exclusive rights to their marks, trademark holders by law must monitor them and police any unauthorized use. If they do not,
their competitors may seek to have the mark expunged or canceled, on the basis that it no longer distinguishes the mark holder’s goods and services in the market. Web masters realize that a threatening letter from a corporate lawyer does not necessarily mean that the corporation is prepared to pursue legal action and have started to respond accordingly. Outlaw sites have become emboldened. No longer succumbing to these letters, they instead deploy them as a unique form of legitimation and some deliberately attempt to provoke legal attention. The lawyer’s cease-and-desist letter has become a mark of authentication that alerts Web surfers that the satires, parodies, and corporate muckraking they have located are indeed “the real thing.” In short, the letter of the law is engaged in a dance of mimicry that authorizes its own alterity.

The Web site YAMOO (Yet Another anti-Microsoft Oriented Oracle) keeps track of Microsoft gripe sites and Windows parody sites. It also links to about thirty rogue sites that seek to undermine Microsoft’s corporate persona by satirically altering the company’s iconography and slogans. Microstuff, for instance, offers free downloads of the “Microsoft Internet Exploder” under the slogan, “When Do You Want to Crash Today?” Each site closely resembles the look and feel of the official Microsoft Web site and some explicitly challenge the company to launch legal action on copyright and trademark infringement grounds. Many of the original links from YAMOO to such sites, however, are now dead; they lead only to the dreaded black hole of Web surfing, the “Error 404 page not found” notice. The Internet service provider for every one of these sites was an institution—such as a university or nonprofit organization—that is very likely to have been intimidated by Microsoft into shutting down the parody site it hosted. Nonetheless, some of the surviving sites remain defiant. The home page for Monkeysoft: Where do you want to crash today? for instance, lays down the gauntlet:

Welcome to Monkeysoft

Oh goody! My very own place to join the masses with the Microsoft bashing.

As for the layout of the page, current US Copyright Laws allow me to use the layout and format I swiped from Microsoft.com as long as its purpose is for reviews, criticisms, or news reporting.

With that in mind, here is my review of Microsoft.com. See those pictures just to the left? The one with the confused guys? Those are sure
pretty pictures aren’t they? They are just a few of the pretty pictures you will find at Microsoft.com. Which by the way is a crappy, confusing site. As for criticism, see the dorky guy in the top left? That’s Bill Gates. That picture is also on the Microsoft website. He sure is a little goof. I don’t like him.

Now that that’s out of the way, I can continue to use this format seeing as the rest of the site could be considered news reporting. Heh heh.

The home-page disclaimer flippantly acknowledges that the fair use provisions of U.S. copyright law do not extend to symbols protected by trademark, such as Microsoft iconography: “Some stuff © 1998 Microsoft Corporation. Layout stolen by Monkey without permission. So sue me.” Microsoft does not appear to have done so and, legally, might be seen to be failing to monitor its marks. Web sites such as YAMOO enter the discussion by commenting on corporate censorship and at the same time providing a record of alternative usages that may eventually be cited in a court challenge to the legal validity of the mark itself.

KMart has also been targeted. Multiple Web sites were created to track the company’s overbearing corporate public relations. One site, bastard.html, satirizes the behavior of Kmart’s public relations firm, Middleberg and Associates. Its Web master, Glen Roberts, even created his own certification mark—the Rogue Seal of Approval—and invited outlaw sites to display the logo. The Rogue Seal of Approval, however, is not actually a logo; it is the Internet Explorer icon for a “broken” image that will not load, nicely connoting a rupture of the symbolic link between property and propriety. Roberts can take credit for coining the term by which parodic sites would thereafter be referred. Lists of “rogue sites” now abound in the mainstream press, and consulting companies advertise their expertise in managing corporate reputations in the “dangerous web of rogue sites.” Dick Middleburg himself soon became the press’s favorite pundit on rogue sites—not, it would appear, by virtue of his record in shutting them down but because he inspired his own gripe site. In digital contexts, one person’s rogue site may quickly morph into another person’s trademark.

As these gripe sites illustrate, the Web is a powerful medium for criticism; unhappy customers and former employees of particular corporations have created dozens of interlinked “suck” sites. Those targeting Intel have home pages titled IntelSucks, Anti-Intel, Big Brother Inside, FACEIntel
(Former and Current Employees of Intel), Boycott Intel, and Intel Secrets. These sites document the company's alleged price inflation, exploitation of workers, anticompetitive practices, intimidation of competitors, invasion of consumer privacy, fraudulent benefits to employees, discrimination on the basis of work-related disabilities, labor unrest due to arbitrary shift changes and threats to job security, and the potentially lethal use of hazardous and toxic materials and condoning of industrial fire hazards. These sites also publish letters from former employees attesting to misrepresentations in hiring practices and describing a culture of fear that characterizes the workplace. They complain about technical inferiority of Intel products and cite alleged statistics of employee suicides from job-related stress and the sweatshop conditions in Intel's Malaysian factories. In addition to this information, readers find specifications for alternative computer chips that are more efficient, less expensive, and less energy-hungry than those manufactured by Intel.

Many of these gripe sites contain parodies of the corporation logos in addition to constant evocation of company brand names—grist for further legal action. For many corporations, however, a greater concern involves the use of the corporate name in the metatags of these pages, which means that people using search engines to find the company will likely encounter its detractors (along with dozens of stories of consumer and employee dissatisfaction) on their way to the official site. To minimize the damage, corporations are actually buying up domain names that insult them. These purchases are a form of preemptive strike against those who might use such sites to provide an alternative perspective on the corporate persona. The discount travel e-firm Priceline registered “Pricelinesucks.com” before they even launched their official site. Chase Manhattan owns ihateChase.com, Chasestinks.com, Chasesucks.com, and even Chaseblows.com. But how many variants can they cover, and at what cost? Less than a year after registering these names, Chase Manhattan started legal action against Chasebanksucks.com. In June 2000, disgruntled employees of Chase Business Solutions took the actual shirts off their backs and delivered them in coffins to the bank’s London offices to protest the larger corporation’s insistence that they change their longstanding domain name, Chase.co.uk. Bell Atlantic, after its merger with GTE, became Verizon Communications and quickly registered Verizonsucks.com. Nonetheless, they quickly encountered a Web publisher who registered Verizonreallysucks.com. When or-
dered by the company to hand the name over to it, the Web publisher relinquished it and proceeded to register yet another new domain name: VerizonShouldSpendMoreTimeFixingItsNetworkAndLessMoneyOnLawyers.com. Verizon appears to have dropped the dispute at this point.62

More prescient companies have appropriated the information provided by these gripe sites to assist their own public relations efforts.63 The horror stories posted on a proliferation of anti-Iomega sites helped the Utah-based corporation in a period of rapid growth to pinpoint problems and to identify those customers they could assist.64 This corporation sensibly used these appropriations of its trademarks to develop, maintain, and improve goodwill among its customers. Goodwill is a legal concept that represents a complex relationship between a company as the authentic source of the product, the symbolic values associated with a brand name, the positive feelings these evoke in consumers, and the company’s interests as the guardian and trustee of both. Iomega, by focusing on their consumers and the actual social meanings being generated around their commodities, properly kept intact the closed circuit of money and desire linking the corporation, the commodity, and the individual consumer that intellectual property law is ideally designed to protect.

The judicial treatment of “sucks” site disputes in the United States has been mixed. In the early years, these sites were enjoined, but later the courts began taking a dimmer view of lawsuits against them. Some judges not only denied corporate motions to shut these sites down but advised defendants to file their own motions for harassment and the infliction of mental distress.65 For most individuals and small businesses, however, this advice was small solace. Even a good potential of winning and receiving the legal costs of the action was insufficient incentive to enable most small companies or disgruntled employees to invest hundreds of thousands of dollars in litigation.66 Now, however, these disputes no longer go to courts but are referred to arbitration. Since January 1, 2000, trademark holders can go directly to one of four recognized dispute resolution arbitrator panels under ICANN’s Uniform Domain Name Dispute Resolution Policy, foregoing any dialogue with the Web-site administrator and demanding a transfer of the name. Arbitrators’ obligations under this policy do not include any respect for U.S. First Amendment concerns. Nonetheless, in a recent case involving several “Walmart sucks” sites, arbitrators emphasized that their decision to order the respondent to transfer the domains was based on his bad faith in the
registration process. They explicitly said that they were not taking any position on “legitimate freedom of expression sites established by parties critical of trademark holders.” Nonetheless, there are many arbitration decisions that foreclose such activity and none that clearly supports this type of criticism.

Generally, courts in domain-name disputes have been granting more and more power to trademark holders in digital contexts, who “have been able to claim property rights in Internet domain names that go far beyond the rights they have under existing legislation and case law governing trademarks,” according to Martin Mueller, director of Syracuse University’s Graduate Program in Telecommunications and Network Management. As several commentators and academic studies maintain, this method of resolving disputes favors trademark holders over those who have registered a site with a trademarked term in the name, regardless of how they are using it. Even weak and more or less generic names are being protected. In response to these decisions, some panels, notably arbitrators appointed by WIPO, have been accused of an alarming alacrity in finding bad faith on the part of domain-name holders so as to protect corporate trademark interests. Indeed, some arbitrators have gone so far as to suggest that all uses of trademarks, even on entirely different top-level domains, might confuse users. Should this suggestion ever become a policy it would render the existence of more than one top-level domain useless, because it would imply that anyone with trademark rights in one domain should have preemptive rights over the term in all other domains. It would have the effect of treating trademark rights as absolute properties, rather than temporary privileges dependent upon the state of contemporary consumer knowledge and public meaning. And it would help to render the Web a more monologic space of corporate connotations, precluding in important ways its capacity to serve as a dialogic space for debates about property and propriety and the actual measure of goodwill toward a corporation.

Contemporary rogue sites are far more ambitious than gripe sites. Some deliberately court Web user’s potential confusion to deliver the surfer into a field of connotations directly contrary to those propounded by corporations and those institutions which uphold the intellectual property laws that are seen to limit expressive and communicative uses of the Web. Some of these sites are nearly identical versions of a “real” site that are subtly altered to make a political point. One of the most frequently visited rogue sites is
McSpotlight.org, run by the two Londoners who lost to McDonald’s Corporation in the now infamous British lawsuit known as McLibel. Arguably, the outcome was only a minor victory for the corporation; the public relations losses were enormous. The site welcomes visitors with the statement, “McDonald’s spends over $2 billion a year broadcasting their glossy image to the world. This is a small space for alternatives to be heard.” Because the site owners hold the twenty-one thousand files on servers in five different countries, they avoid the problem of libel. A documentary on the libel trial is streamed live over the Web around the clock. The protestors reiterate over the net the same allegations that provoked the libel suit; the leaflet for which they were sued for libel (which they once handed out in London streets) is now available to over one million visitors a month. These visitors can easily take a virtual tour of the official McDonald’s site and read there the couple’s damning commentary about the company’s role in deforestation and the creation of waste, the pay and conditions of their workers, the nutritional value of the foods they serve, their impact on local communities, and how they target their advertising to children.

Increasingly, consumers and anticorporate activists are using the Web not simply to articulate a counterdiscourse but more explicitly to subvert the symbolic economy of the corporate persona as intellectual property through the practice of “culture jamming.” Abrupt.org is one of many sites that post jamming manifestos. Culture jamming (CJ) is extremely effective. It “sticks,” Michael Brush points out, “where rational discourse slides off. It is, simply, the viral introduction of radical ideas. It is viral in that it uses the enemy’s own resources to replicate itself—copy machines, defaced billboards, Web pages. It is radical because—ideally—the message, once deciphered, causes damage to blind belief. Fake ads, fake newspaper articles, parodies, pastiche. The best CJ is totally unexpected, surprising, shocking in its implications.”

The widespread circulation of satirical advertisements, of various degrees of seriousness, that attempt to undermine the trademarked persona of specific commodities is a typical tactic. One of the most well-known and proficient practitioners of such satirical culture jamming is Adbusters, a global network of media activists whose magazine promotes what Kalle Lasn calls in a discussion of the effects of culture jamming the “uncooling” of brands, the subversion of advertising, and the leveraging of brand recognition for anticommercial purposes: “Corporations advertise. Culture jammers sub-
Vertise. A well-produced subvertisement mimics the look and feel of the target ad, prompting the classic doubletake as viewers realize that what they are seeing is in fact the very opposite of what they expected. Subvertising is potent mustard. It cuts through the hype and glitz of our mediated reality and momentarily, tantalizingly, reveals the hollow spectacle within.”

Most subvertisements target corporations that market mass consumer goods using mass media imagery that culture jammers believe contributes to obesity, eating disorders, and poor self-esteem among potential consumers, as well as to environmental damage. Other culture jammers move beyond the tactics of satire and irony to develop counterhegemonic practices that challenge and reconfigure the relationship between property and propriety in digital environments. Specifically, debates about intellectual property and new copyright philosophies are ubiquitous on these sites. They constitute an emerging popular legal culture. Ironically, through their links to legitimate legal sites and articles by lawyers and law professors, the culture jammers may be doing more to promote popular knowledge of intellectual property than those who own and control most of it.

Moreover, new forms of managing and sharing intellectual property are devised and promoted on these sites. For instance, the copyright sign with a slash through it is promoted as an “Anti-Copyright” sign that indicates to the reader that the material is posted with the intent that it be used freely for whatever purposes the user wants. A backward-facing copyright symbol with a slash through it indicates “Copyleft,” which preserves copyright in the texts so marked except when the material is used by non-profit-making initiatives for the same purposes for which the author posted it.

One organization has the domain name Greyday.org registered for a Web site appealing for stricter copyright laws on the Web. An alternative site run by software programmers and graphic designers has established itself at Grayday.org to mobilize for an Internet free from copyright protections for “the millions of people who have benefited from and will continue to benefit from the free exchange of ideas, the hallmark of the Internet.” The site asserts that the Web was initially made possible by the absence of copyright protection for the first browsers and the necessary software. Another rogue site has established itself as the World Intellectual Piracy Organization, putting a skull and crossbones into WIPO’s august laureled log—using the address www.wipo.org.uk to show readers how the international organization has misused its power over trademarks for anticompetitive purposes.
and to muzzle freedom of expression. Another rogue site impersonates the World Trade Organization. These culture jammers provide new spaces and new resources for the creation of alternative moral economies of property and propriety in information environments.

Some culture jamming sites have even greater ambitions. Rtmark.com, for instance, is a dot-com rather than a dot-org, a reflection of the fact that they are registered as a corporation, sell shares, and offer various mutual funds for those who would like to invest in their anticorporate activities and their subversions of the moral and symbolic economy of the corporate persona. Rtmark goes further than spoofing corporate imagery and attempts to undo the commodity fetishism that defines contemporary mass culture. It cleverly and sometimes poignantly reintroduces the real material conditions in which virtual realities are produced. Digital products do have real conditions of production and consequences in people's daily lives. From a spoof of Taco Bell’s crass appropriation of Mexican revolutionary iconography—the corporate creation of a liberation army seeking the People’s Republic of Gorditas—Rtmark links to a real Mexican village, Popotla, in Baja, twenty minutes south of San Diego. The villagers' struggles for livelihood and liberation have been gravely undermined by the creation of one of digital technology’s latest and greatest works in contemporary mass culture. And Rtmark presents the story.

The people of Popotla lived from the sea for decades, engaged in small-scale fishing for subsistence and local restaurant use. They drew their catch from a unique underwater garden three hundred yards from the village in the Pacific Ocean where giant kelp plants each provided a home to over 2.5 million creatures and distinctive species that cannot survive in any other environment. Under prevailing federal laws, the villagers' ongoing fishing off the shore should have legally entitled them to shoreline property rights, but the government repeatedly stalled in affirming these rights. Now they have lost the source of their livelihood and way of life and the world has lost an irreplaceable underwater habitat because of the actions of outsiders who arrived in the village one day, just a few years ago, accompanied by official government cars. The newcomers set off underwater explosives that sank local fishing boats and destroyed life forms for miles. They built a wall that cut off the villagers' access to the sea and constructed a huge pool and filled it with sea water treated with massive amounts of chlorine. Every week for months they dumped the pool water into the Pacific Ocean, on top of
the kelp beds. Laboratory tests later revealed chlorine, toxic chemical solvents, and untreated human waste in these dumping areas. Where the water was dumped sea urchins disappeared, fish populations dropped, and species vanished. Not a single local person was employed in this monumental enterprise. But the copyright industry now possesses a grand new digital product—a film called Titanic—and a powerful trademark to link to a variety of merchandising rights.

The promotional tagline for the film was “Nothing on Earth Could Come Between Them” (referring to the characters portrayed by Kate Winslet and Leonardo DiCaprio), yet the very existence of this romantic union as a celluloid mythic narrative and cultural commodity required, as Rtmrk revealed, a very real and impenetrable boundary between the production of the film and the surrounding environment. Paramount Pictures, Twentieth Century Fox, and James Cameron did everything possible to come between the people of Popotla and their way of life, with devastating results. The wall of Popotla is a literal wall and boundary that protects the capitalist culture industry from the consequences of its actions as well as from the needs and lives of the marginalized who most definitely do not possess the socioeconomic characteristics of the target market. It is also, and no less significantly, a figural boundary that represents the restricted symbolic and moral economy of property and propriety in the digital era. On one side of the wall is the strategic logic of mass-media commodity fetishism, embodied in trademark and copyright law, which guarantees goodwill toward the corporate persona and its products but shelters it from critical considerations of corporate practice. On the other side is the guerrilla logic of the populace, embodied in transformations of cultural meaning that subvert the coherent identity of the corporate persona and comment on the conditions of its production.

Villagers in Popotla sought to remake the symbolic meaning of the wall that separated them from their way of life. They transformed the wall from blank and mute space that marked a no-trespassing zone into a brilliant mural that tells the story of their subjugation to corporate capital and their will to survive the disaster that the film Titanic visited upon them. One of their murals cries “Free Fish,” extending the language of liberation to appeal to our interconnectedness with natural ecosystems and the need to break down walls that divide the natural world into zones of private resources for corporate exploitation. Similarly, Rtmrk attempted to rupture the wall between the strategic logic of mass culture and the tactical logic of popular
culture by using the Web as a medium and form for the subversion of the corporate persona. They did so by putting the story of Titanic’s production and thus the story of the people of Popotla into circulation in the very realm of publicity where goodwill is generated.

Few forms of freedom exist without other forms of control; all cultural relations are also relations of power and this is no less so in digital environments. As John Perry Barlow has suggested, we do have some leverage as the first ancestors in a digital era. We are indeed seeing a field of power shifting in digital terrain. As systems of univocal proprietary control give way to an interactive ethics that interrogates the claims of property with questions of propriety we have a unique opportunity to challenge the impositions of privilege and insist upon new forms of responsibility and social accountability.

Notes

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2 Herman and Sloop, “Negativland.”

3 Herman, *World Wide Web.*

4 Herman and Sloop, “‘Red Alert!’”


7 http://www.mse.berkeley.edu/staff/eve/barbie.html.


See the discussion of trademark dilution in Coombe, *Cultural Life of Intellectual Properties*, 68–73.


The Trademark Cyberpiracy Prevention Act, incorporated as the Intellectual Property and Communications Omnibus Reform Act of 1999, was signed into law on November 29, 1999 (*U.S. Statutes at Large* 113 [1999]: 1536). It makes liable any person who registers, with bad faith intent to profit, a domain name that dilutes a protected trademark. For criticism of the act, see the Electronic Frontier Foundation, "Stop the Trademark Cyberpiracy Prevention Act," http://www.eff.org/pub/GIL—NII/DNS—control/19991025—hr3028—alert.html.


Ibid.


Ibid.


http://www.potterwar.org.uk.


Ibid.

Ibid.
50 Ibid.
63 Brush, Got a Gripe?
68 “Study Finds Bias in Internet Domain Name Resolution” (November 9, 2000), http://dcc.syr.edu/udrnpwes.htm.
69 Linda Harrison, “The Insane Domain Name Game,” Register, December 26, 2000, http://www.theregister.co.uk/content/6/15692.html.
73 Brush, Got a Gripe?


82 Barlow, “Who Can or Should Control Popular Culture?”