
Rosemary Coombe

Andrew Herman

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TRADEMARKS, PROPERTY, AND PROPRIETY: THE MORAL ECONOMY OF CONSUMER POLITICS AND CORPORATE ACCOUNTABILITY ON THE WORLD WIDE WEB

Rosemary Coombe*
Andrew Herman**

INTRODUCTION

Trademark management is a perilous and increasingly politicized practice in digital environments, where determinations of property and propriety have unpredictable consequences. Trade names and brand names, trademark logos and advertising slogans are symbolic assets of immense value, whose management supports the constitution of a corporate persona. Managing this persona is especially important in postmodern conditions where maintaining a distinction within competitive markets involves huge advertising investments in the symbolism and imagery that will keep the corporation on the cutting edge of “brand recognition.” Digital environments such as the World Wide Web (Web), however, enable practices that promise to transform the nature of corporate/consumer relations by undermining the traditional capacities of companies to manage their images and control their imagery. Moreover, digital environments create conditions in which consumers have the ability to challenge the very forms of commodity fetishism (erasures of both conditions of production and the conditions under which symbolic value is produced) that have enabled the development of goodwill on which the corporate persona as an asset has historically relied.

In our own separate ethnographic studies, we have argued respectively that consumer culture is always in a dialogical relationship with legal power and its popular interpretation. Although it was devel-

* Professor, Faculty of Law, University of Toronto. B.A.Hons., L.L.B., University of Western Ontario, 1981, 1984; J.S.M., J.S.D., Stanford University, 1988, 1992. Professor Coombe would like to thank Lara Tessaro and Bram Atlin for their research assistance, and her co-author for his patience and humor.

** Associate Professor of Sociology, Director of the Center for the Humanities, Drake University. Ph.D., Boston College, 1994.

oped in analog environments, we have found this thesis perhaps even more pertinent in digital contexts. In *The Cultural Life of Intellectual Properties*, Rosemary Coombe explored mass commercial culture and popular cultural readings of billboards and brand names, logos, cartoon characters and celebrity images, as corporately owned private properties, protected by laws of intellectual property. Intellectual property laws give owners exclusive rights 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 by others. These laws confer on corporations an enormous amount of cultural power and shape tactics of popular appropriation. In a collection edited with Thom Swiss, *The World Wide Web and Contemporary Cultural Theory: Magic, Metaphor and Power*, Andrew Herman argued that the symbolic processes of corporate branding of (and in) cyberspace territorialize the Web as a channeled space of corporate sovereignty and individual consumer desire. The "friction-free capitalism" of Bill Gates' utopian understanding of the so-called new economy is a highly regulated and disciplined space for the performance of corporate and consumer moral identities.

Digital environments provide new opportunities for corporations to convey their intellectual properties and invest these with new fields of meaning. The Internet is fueled by advertising revenue. Logos are ubiquitous. Digital technology creates a new medium for corporations to insinuate their advertising images into new contexts. For example, in Image One, we see how the corporate persona can colonize

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cyberspace, and thus create billboard bytes to fill the blank space that we might otherwise encounter.

By STUART ELIOTT

A new form of advertising is rewriting an old saying to declare: Now you don’t see it, now you do.

The magic now, though, is supplied by computers, as the form of digital technology that inserts electronic images like signs, brand logos and even product packages into live and previously taped television programs. The computer-generated ads are sufficiently lifelike that viewers see them as real even though they are anything but.

"Virtual advertising," as this trickery is known, is "the Harry Houdini of the media business," said David Verdun, chief executive at Carat North America in New York, which buys commercial time and ad space for marketers. "It's the most astonishing kind of advertising technology I've ever seen."

Virtual advertising has so far been a novelty feature of live sports, where football players tackle each other in front of blank television screens, and they can now fill them in.

IMAGE ONE

This new field of cultural power is met with new forms of consumer resistance. The Web provides members of the digital public with new capacities to evade their subject position as mere consumers of corporate imagery and to become active cultural practitioners. Consumers are able to use the Web as a means to turn mass culture into popular culture. The term mass culture refers to mass produced texts, images, and sounds, cultural artifacts circulated to a mass of consumers by centrally controlled media industries. Such a culture is monologic or unidirectional, it speaks from a singular place with a singular voice, and it does not let you talk back.

In the conditions of mass culture, critical commentary upon corporate texts is likely to be episodic and discrete. For instance, a consumer might place some graffiti on a billboard, as several urban art activists, also known as members of the Billboard Liberation Front,6

have done in Image Two. Artwork may be created that uses and transforms advertising imagery (such as the art of Hans Haacke; but even he has been forced to take down or modify several exhibitions under corporate pressure). People spread rumors about corporate brand names, creating a field of interference with commercial connotation. Such interventions and interruptions of mass culture, however, are difficult to make widely visible or audible; individuals do not have the capacity to communicate with the same speed or efficiency as corporate communications when they attempt to speak back. Widespread access to digital technology has fundamentally transformed these power relations.

Image Two

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 customer opinion. Consumers are now talking back to corporations and thereby affecting the corporate per-

8. See Coombe, supra note 2, at 74.
9. See Coombe, supra note 2, at 143-65 (giving examples of rumors as expressions of resistance to corporate power).
sona. In the process, consumers are transforming mass culture into popular culture. By popular culture we refer to activities in which the cultural resources provided by mass media are used to assert alternative meanings, pleasures, and values. Culture from our perspective, is a verb, not a noun. Culture is not, as Jack Balkin would have it, “software.”

Culture is a practice, the social activity of making and remaking meanings, struggles to have our meanings mean something, to create communities, and forge identities through the deployment of symbolic forms. We would agree with John Perry Barlow that digital technology provides conditions which make a genuinely popular culture possible, and that power relations are shifting.

We believe that the system of proprietary control that was hegemonic under modern conditions of mass marketing is being transformed into a more dynamic ethics of property and propriety in the digital public sphere. The best way we can demonstrate this is to examine struggles over intellectual property, particularly disputes over the use of trademarks.

It is of course, the function of trademark law to discursively construct and institutionally enforce particular notions of corporate identity as a property right. As Steve Jones insightfully illustrates, 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 operate as a moral economy, governing ownership, behavior, and norms of appropriate symbolic practice. These laws construct a proprietary right in a cultural commodity—the trademark—and demand that holders of these rights maintain domination over its interpretation and thus its potential to assume alternative meanings. Proper expression of the symbolic values of this commodity grounds the legal entitlement of the owner to fully exploit and appropriate the exchange value of the commodity in the marketplace. In order for the economy of commodity production and consumption

to work (that is, to produce profits for owners), the symbolic economy of the commodity’s meaning in particular, and the corporate persona in general, must be legally structured so as to constrain surplus meaning and prevent the dilution of symbolic value. Unauthorized appropriations and alternative significations must be monitored or ideally prohibited, thus shaping practices of governmentality in commercial culture. This field of governance is intensified, provoked and challenged in digital contexts.

Let us examine this intertwined relationship between property and propriety in cyberspace by looking at struggles over “domain names,” which are 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 dominion and property of the corporation. Conflicts over the meaning and use of domain names have significantly developed since the early days of what has been called “cybersquatting,” the extortionate practice of registering the names of famous corporations and then attempting to sell these back to the same corporations for enormous amounts.

Yahoo’s search engine will take you to descriptions of dozens of domain name disputes through its “Computers and Internet” links. For example, Barbie Doll Benson, former Miss Nude Canada, has

15. For a discussion of the concept of governmentality, as currently used in socio-legal studies, see Rosemary Coombe, Is there a Cultural Studies of Law?, in BLACKWELL COMPANION GUIDE TO CULTURAL STUDIES (T. Miller ed., forthcoming 2001).
16. In a recent development on cybersquatting, the Trademark Cyberpiracy Prevention Act passed the House of Representatives as H.R. 3028 on October 26, 1999. It was incorporated as Title III of S. 1948, the Intellectual Property and Communications Omnibus Reform Act of 1999 (by cross-reference to the enacting legislation H. 3194). The Act makes liable any person who registers, with a bad faith intent to profit, a domain name that dilutes a protected trademark. The new ICANN policy also makes it simple for trademark owners to prevent registration and use of trademarks in domain names when they are used commercially and in bad faith. For commentary critical of the Trademark Cyberpiracy Prevention Act, see the Electronic Frontier Foundation, Stop the Trademark Cyberpiracy Prevention Act, at http://www.eff.org/pub/GII_NII/DNS_control?19991025_hr3028_alert.html (last visited June 6, 2000).
17. On May 29, 2000, Julia Roberts prevented a cyber-squatter from using http://www.juliaroberts.com, with a ruling from a World Intellectual Property Organization arbitration panel that found bad-faith intent. The Internet Corporation for Assigned Names and Numbers is thus showing a willingness to extend protection to famous individuals, even though they have not formally registered their names as trademarks. See Julia Roberts wins control of namesake Website, ECON. TIMES, (June 2, 2000) http://www.economictimes.com/today/02tech04.html. (last visited June 23, 2000).
used the Barbie Doll stage name for sixteen years, but it was only when she produced a Web page that Mattel complained. In another example, Image Three, a cultural critic who dedicated his site to the Barbie icon's semiotics and deconstruction, was threatened by the corporation and removed his imagery. His "Distorted Barbie" however was widely reduplicated in mirror sites designed to subvert Mattel's legal action.

As seen in Image Four, Barbie doll collectors have dozens of Websites as well as on-line Barbie auctions. Mattel has tried to shut down dozens of these sites and attempted to usurp the collectors' community by creating a commercial alternative that offers officially licensed "nostalgia dolls" and other paraphernalia. According to the president of the largest collector's organization, "Barbie doll collect-

ing 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 prevent collector's 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 only be concerned were the Barbie name 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 mark.

The use of intellectual property to effect forms of online censorship is evident in the numerous cease and desist letters sent by lawyers to fans holding Websites as tributes to the very stars and mass media productions (television shows and characters) these lawyers were protecting. In many cases 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, such as the "Unofficial" Elvis home page in Image Five.

Conflicts over the corporate persona as intellectual property are commonplace on the Web. One of the first individuals to catalog and archive such conflicts was Misha Glouberman, who was also one of the first to draw public attention to the issue of intellectual property censorship on the Net and emphasized the importance of developing a Web commenting system that would enable users to engage in dialogue about the contents of the site they were visiting.\(^\text{25}\) He anticipated Third Voice and its Web commentary system by several years.\(^\text{26}\)

In 1994, Glouberman started a site dedicated to keeping track of "trademark wars" on the Web.\(^\text{27}\) It quickly became apparent that he could not keep track of the numerous suits and the threats of injunctions now being publicized on the Internet.\(^\text{28}\) Nevertheless, recording these activities turned out to be an important way of building communities of interest and archiving corporate cultural power tactics. Cease


\(^{28}\) Interview with Misha Glouberman, in Toronto, Can. (Sept. 24, 1999).
and desist letters were routinely sent by lawyers monitoring trademarks in the past, but the Web now provided an unprecedented opportunity to publicly document this behavior while assessing its range, scope, and intensity. Today there are dozens of interlinked sites that routinely monitor the Internet for instances of corporate censorship, just as corporations monitor it for unauthorized appropriations of their marks. These activities, moreover, are increasingly dialogic.

In the early years of the Web, sites deploying to corporate trademarks were routinely enjoined. Toys 'R' Us won an action against the publishers of an "Adults R Us" page, which most decidedly did not feature the latest play time activities of Noddy and Big Ears. Corporations now employ trained "surfers" to serve as digital equivalents for the "clipping services" they historically used to monitor their marks in mass culture. It is important to realize that this activity is not optional. Corporations must engage in monitoring activities, if they are to maintain exclusive rights to their trademarks. They must continually monitor their trademarks and police their unauthorized use. If they do not take such steps, their competitors may take the trademark away from them, on the basis that the mark no longer distinguishes their goods and services in the market. Webmasters have begun to realize that a threatening letter does not necessarily mean that a company is prepared to pursue legal action, and, as Glouberman suggests, they have started to slyly exploit this. Image Six illustrates this phenomena.

31. Interview with Glouberman, supra note 28.
In response to a threatened corporate crackdown, a site called Road Kills ‘R’ Us, offered Toys “R” Us free Web publicity, a link to the Toys “R” Us official site, sponsored a contest to rename its site, and collected electronic responses to the corporate cease and desist letter (which they reproduced on the site) and forwarded these to the company. Alternative shopping venues for the company’s products were listed, along with links to competitors’ sites where one could purchase the same goods without thereby supporting the antics of this “pencil-necked giraffe.” We reproduce the home page in Image Seven.33

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Toys "R" Us appears to have backed down, but has neither apologized nor formally withdrawn its threat of legal action. Until Toys "R" Us stops what the site’s administrators clearly regard as harassment, the site may continue to solicit information about other "R" Us sites. This conflict may well serve as evidence that could be used to challenge the validity of the mark because it produces a record of the mark’s unauthorized use, and possibly even a history of the corporation’s failure to monitor its public persona.

The Web is certainly used for corporate bashing. Unhappy customers and former employees have created dozens of interlinked “suck sites,” such as “Walmart Sucks” shown in Image Eight.34 Of particular concern to many corporations is the increasing use of the corporate name in the metatags of such pages. These metatags function so that people using search engines to find the corporate Web site will likely encounter its detractors (along with dozens of stories of consumer and employee dissatisfaction) on their way to the official site. For this rea-

son, ironically, corporations are actually buying up domain names that insult them.35

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 it even launched its official site.36 Chase Manhattan owns “Ihatechase.com,” “Chasestinks.com,” “Chasesucks.com” and even “Chaseblows.com.”37 The question remains, how many variants can one corporation cover, and at what cost? Less than one year after registering these names, Chase Manhattan started legal action38 against chasebanksucks.com, whose homepage is illustrated in Image Nine.39 However, corporations have discovered that

36. Id.
37. Id.
the courts are no longer fully on their side. Some judges have not only
denied corporate motions to shut down these sites, but have advised
defendants to file their own motions for harassment and the infliction
of mental distress.40

More prescient companies have appropriated the information pro-
vided by these “gripe-sites” to assist their own public relations ef-
forts.41 When David Felton could not find a decent low-fat muffin,
bagel, or low-fat milk at his local Dunkin Donuts he started a Website,
“dunkindonuts.org,” and invited others to vent along with him on the
site.42 Rather than call out its hired guns, Dunkin Donuts started
stocking stores with low-fat milk, and mailed coupons along with apol-
ogies to complaining customers. In another example, Dutton Books,
the trademark owner of Winnie the Pooh, threatened to enjoin unli-
censed “Winnie the Pooh” sites, and closed a number of them down.43

Eventually, the publisher realized that rather than clamping down on

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40. See Marlatt, supra note 39.
41. See e.g., Michael Brush, Got a gripe? There are plenty of places to vent on the ‘Net, at http://
www.enviroweb.org/mcs Spotlight-na/media/press/money online_13jul96.html (last visited June 21,
2000).
42. See Ian Brodie, Surfers Seek Vengeance on Corporate Enemies, The TIMES (London), May
10, 1999 46. See also Segal and Meyer, supra note 39.
43. See Mazza, supra note 24.
fan web activity, it might actually use its own trademarks to create “Officially Authorized Pooh Corners,” licensing these fan sites if they provided a link back to the official site as did the fan site in Image Ten. As a consequence, these fan sites would deliver potential customers back to the corporation and its gallery of licensed Pooh products, thereby keeping intact the closed circuit of money and desire that links the corporation, the commodity and the individual consumer that intellectual property law is ideally designed to protect.

Sometimes, however, this cycle is disrupted and the law is turned against the corporation. One of the more interesting domain name controversies involves Colgate-Palmolive. Accused of “pirating” intellectual property, Ajax.org’s Webmaster playfully assumed the role of the “pirate” and challenged the corporation by publicizing the legal dispute:

My pirate hardies and I thought, ‘It should not be that easy, should it? A little sabre rattling and fare-thee-well AJAX.ORG?’

We didn’t think so. Just because we can’t afford attorneys in

44. Winnie the Pooh’s Page, Penguin Books USA, at http://www.penguinputnam.com/yreaders/pooh/winnie.htm (last visited Sept. 25, 2000). (The page requests that its viewers “Please do not capture, alter, or redistribute any text or images,” copyright of which is owned by the Trustees of the Pooh Properties & Dutton Children’s Books).
Brooks Brothers' suits and Armani underwear doesn't mean we shouldn't be able to defend our legal rights. In fact, based on the legal advice we'd received from more than ten different attorneys, there was basically no way in hell that Colgate-Palmolive could claim that the 'Ajax' trademark was a defensible one.45

In September 1998, the Webmaster posted the cease and desist letter sent by Colgate's lawyer asserting the company's proprietary rights in the trademark “Ajax” and its considerable and valuable goodwill.46 “Goodwill” represents a complex relationship between the corporation as the authentic source of the product, the symbolic values associated with the brand name, the positive feelings these evoke in consumers, and the corporation's interests as the guardian and trustee of these values. In the Webmaster's response, he condescends to educate the company’s in-house counsel about the Internet’s structure and intellectual property principles:

Ahoy to Ye My Dearest Swabbie Bret,

As an attorney, I'm sure you don't understand anything of the INTERNIC hierarchical structure. The top-level domain “org” was created for the establishment of free and non-profit organizations, of which the AJAX organization is one. The “com” domain is reserved for commercial ventures such as your corporation. Furthermore, I hope you understand that the word “Ajax” is the name of a historical/mythological figure, and as such is not a unique trademark such as “Cheerios” or “Pepsi.”

I also suggest that you examine the website and note well that no remark in regard to your firm is made, no logo of your firm is used, and no claim of relation between myself or any of my hardy maties and your firm or any of its products has been drawn.

In addition to this, I suggest that you dig up Sophocles and Ovid and sue them, since they have written poems and plays bearing the same name. I also suggest you take a look at your local phone book and harrass the owners of Ajax Roofing, Ajax Air Filter and Supply, Ajax Air Freight, Ajax Chemical Toilets, Ajax Private Investigations, Ajax Technical Authoring, Ajax Grocery, and the Ajax Hotel in Limassol, Cypress as well as EMI International (the producers of the film “Flash Gordon” in which a character named AJAX GENERAL and a spaceship called AJAX WARSHIP are used), the pop/techno musical group “Ajax,” and the US Army and McDonnell Douglas (for their missile designation “AJAX”). I also think there's a Cheech and Chong movie where a woman snorts a nose full of Ajax . . . that might be a great defamation suit for you.

Universal Pictures and C&C Brown Productions have a lot more money than I do. \textsuperscript{47}

Colgate’s lawyer continued to insist that confusion was likely to occur, the site was “diluting” the company’s famous mark, and demanded abandonment of the mark. \textsuperscript{48} The Webmaster replied: “Total US spending 1996 for Colgate Palmolive Co., New York, $328 million. 57\textsuperscript{th} largest US ad spender. You’re killing me.” \textsuperscript{49} In other words, how could Colgate-Palmolive seriously make a claim that this small site was diluting the impact of such a large advertising investment.

Eventually, the corporation did back down, but not until Ajax.org enlisted the power of mass publicity. Another group of self-acknowledged geeks at Slashdot.org wrote an article on yet another Website, linking readers to a petition accumulating names of those who disagreed with Colgate-Palmolive’s policy. Of the 1,300 names that were collected, many also sent emails of support to the Ajax site and provided copies of the emails they were sending to Colgate, as shown in Image Eleven. \textsuperscript{50} All these activities that would have been less than feasible without digital technology.

\textbf{IMAGE ELEVEN}


\textsuperscript{50} A sample of these letters can be found at http://www.ajax.org/colpal/net5.html (last visited Sept. 25, 2000).
What is particularly interesting about this letter, and others like it, is that the writer assumes the role of an amateur trademark lawyer, making arguments with the corporation about the validity of the rights it asserts. He asserts that the company’s rights only extend to cleaning products. The Ajax.org site contains no material relating to cleaning products or to any commercial venture that could be confused with the company as a source of cleaning products. The aggregation of letters such as this one does more than simply create a mass of negative opinion (although that would be enough of a public relations nightmare); it may actually constitute a body of legal evidence. Documentation of consumer knowledge and perception is precisely the kind of evidence that a competitor could use to challenge the validity of the mark: such documentation can be used to show the state of consumer knowledge, the history of instances in which the company had not protected the trademark in the past, and evidence of public sophistication with respect to the Web’s organization. Consequentially, in threatening to enforce the trademark, the company inadvertently created the means by which its rights could be legally challenged.

In this dispute, the tide turned when a friend of the Webmaster, a member of a band named Transcenden, used the band’s digitally linked fanbase to notify them of the dispute. In Image Twelve, we see how virtual communities may be called into collective action. Facing over a thousand letters and a boycott that could potentially involve another thousand consumers, the company backed down. Colgate-Palmolive eventually conceded that confusion was unlikely and allowed the site to continue to use the name. Graciously, the Webmaster complimented the company on its new Colgate Total toothpaste, which, he admitted, “decrassifies even my stubborn pirate breath.” After their successful battle with Colgate-Palmolive to retain their domain name, Ajax.org started a virtual web-activist initiative called the “Domain Defense Advocate,” which organized net protests against corporations seeking to deprive organizations and individuals of registered domain names.

Realizing that they are not alone, outlaw sites have become emboldened. No longer succumbing to lawyer’s letters, sites instead deploy these letters as a unique form of legitimization. The lawyer’s cease and desist letter has become a mark of authentication, serving as a form of certification that alerts websurfers that the parodies, satires, and corporate mudraking 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.

In one of the various “Kmart Sucks” disputes, an entire series of related sites were created to track overbearing corporate public relations. As shown in Image Thirteen,55 “Bastard.Html” satirized the behavior of Kmart’s public relations firm, Middleburg and Associates. The Webmaster of Bastard.html, Glen Roberts, even created his own certification mark, the Rogue Seal of Approval, and invited outlaw sites to proudly display the logo. As you can see, the Rogue Seal of Approval is actually not a logo at all. In fact, 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

55. Glen L. Roberts, Middleburg and Associates—We are the Bastard..., at http://www.glr.com/bastard.html (last visited Sept. 25, 2000) This page has now been closed; the site bastard.html currently appears to have dropped all specific references to Kmart and Middleburg and Associates, while still offering a general critique of corporate attacks on personal expression.
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 have been established for managing corporate reputations in “the dangerous web of rogue sites.” Middleburg soon became the press’s favorite pundit on “rogue sites,” not by virtue of his record in shutting down such sites, but because he inspired his own gripe-site. In digital contexts, one person’s rogue-site may quickly morph into another person’s trademark.

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Remember, the American of today is corporate person and grand! Don’t let the technology of the internet change that! The little guy with an opinion needs to have the clout to wash his face of him. Some of these little punks think they have big balls. They think the Internet and the web means their opinions will be heard!

IMAGE THIRTEEN

One of the most frequently visited rogue sites is McSpotlight.org, (shown in Image Fourteen), run by the two environmentalists who lost the infamous McLibel suit in the United Kingdom. Arguably, the suit was only a minor victory for the corporation, because the public relations losses were enormous. The site welcomes you with the statement that “McDonald’s spends over $2 billion a year broadcasting their glossy image to the world. This is a small space for alternatives

57. See Brush, supra note 41.
to be heard.” McSpotlight.org holds its 21,000 files on servers in five different countries, thereby avoiding the problem of libel.59 A documentary on the libel trial is streamed live over the Web around the clock. The protestors make precisely the same allegations over the net that provoked the libel suit. The very leaflet for which they were sued for libel (which they once handed out in London streets), is now available to over one million visitors per month. These visitors, unlike those to whom leaflets were thrust, are also easily taken on a virtual tour of the official McDonald’s site, complete with the couple’s damning commentary about the company’s role in deforestation, the creation of waste, the pay and conditions of workers, targeting of advertising to children, (Image Fifteen)60 the nutritional value of the foods they serve, and their impact on local communities.

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59. See Brush, supra note 41. Brush makes a correction at the end of the article, stating that McSpotlight.org is not facing legal action from McDonald’s and noting that its server is located in the Netherlands.

Increasingly, consumers and anti-corporate activists are using the Web not simply to articulate a counter-discourse, but more explicitly to subvert the symbolic economy of the corporate persona as intellectual property through the practice of “culture jamming.” A list of some of these is publicized on the web page shown in Image Sixteen.61

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A few months ago NetEffects debuted its first-ever top 10 list, beginning with a selective list of Web sites the mainstream media doesn’t want you to see. This is the second in that occasional series. In this installment, we look at sites that come in handy for recreational culture jamming—that is, subverting the dominant consumerist paradigm in your copious free time.

• Abrupt.org

(A good way to get yourself revved up and irony-enriched for a culture jamming escapade online is to search on the term “anti-consumesm” in Yahoo! You’ll notice that the first link offered is “Shop online.”)

IMAGE SIXTEEN

Abrupt.org is one of a number of sites posting their jamming manifestos (reproduced in Image Seventeen). Culture jamming can be thought of as promoting a subversive form of postmodern graffiti as illustrated in some of the “Subvertising” webpages (reproduced in Images Eighteen and Nineteen). The late sociologist Michel de Certeau terms these tactical practices “spatial stories.” Spatial stories are narratives, symbolic renderings, and mappings of space, either material or virtual, that render the story more meaningful to its inhabitants. De Certeau distinguishes between two kinds of spatial stories: those which comprise the strategies of the “powerful,” and those which comprise the tactics of the “weak.” Strategic spatial stories and practices seek to construct and order space as a network of proper places and proprietary zones with appropriate meanings, purposes,
and interrelationship. Tactical spatial practices, on the other hand, improperly occupy the place that power so often simply assumes.65

Culture Jamming

Once upon a tone, the "Evils of the Establishment" were subject to rational critique by academics and revolutionaries. Most people still function under this rationalist model: "Change will come if enough people understand the problem rationally and intellectually." Without at all denying the importance of rationality and intellect, I would argue that these tools are no longer themselves adequate. Specifically, in the struggle to debrief people on the poisonous symbiotic system called "The Media", the rules have been changed.

Advertising imagery has long been post- or pre-rational. Only in its infancy was promotion about informing people about the product. Now its task is to weave stories, sing songs, to portray not the product but the people who use the product. Promises, threats, training. How can a rational critique even begin to address a worldview whose fundamental claims are not TRUE/FALSE but PLEASURE/PAIN, SEX/GE, QUALITY/RIP-OFF?

"Culture jamming" works where rational discourse stops off. It is, simply, the visual introduction of radical ideas. It is vital 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. False info, fake newspaper articles, parody, pastiche. The best CL is totally unexpected, surprising, shocking in its implications.

What follows are examples of our work, ranging from more or less rational discourse to true culture jamming fun. Obviously, they are powerless here, since you already know what to expect. But imagine such things on the street, on telephone poles, in stacks of other people's literature. ("Tract No. 6", in its paper form, looked just like a Christian pamphlet—so much so that some people refused to read it.) These are examples. Explore them.

IMAGE SEVENTEEN

Billboard subadvertisement with the words 'Animals Die' and 'Ronald Kills' added to a advertisement aimed at kids. Advert shows 'Happy Meal' with picture of Ronald McDonald.

IMAGE EIGHTEEN

The widespread circulation of satirical advertisements, of various degrees of seriousness, which attempt to undermine the trademarked persona of specific commodities, is a typical tactic as shown in Image Twenty.66

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One of the most well-known and proficient practitioners of such satirical culture jamming is Adbusters, whose homepage is reproduced in Image Twenty-one. Adbusters and other culture jammers on the Web, have, however, moved beyond the tactics of satire and irony to develop counter-hegemonic practices that reconfigure the relationship between property and propriety. Specifically, debates about intellectual property and new copyright philosophies, are ubiquitous on these sites and 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

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popular knowledge of intellectual property than those who own and control these assets (as illustrated in Image Twenty-two).  

New forms of managing and sharing intellectual property are devised and promoted on these sites, as the pages reproduced in Images Twenty-three and Twenty-four illustrate. Culture jamming, we would suggest, provides new resources for the creation of alternative moral economies of property and propriety in information environments.


DEPAUL LAW REVIEW

Gtsomething that needs to be added?
Write to...

Negativland Articles
Changing Copyright
Essay by Negativland

Negativland and the Recording Industry
Association of America

Anti-Copyright Graphics

IMAGE TWENTY-TWO

SUBVERTINTERNET.ORG

Top: Subverting & Miscellaneous
Anti-Copyright Graphics

Anti Copyright means use freely for whatever you want, and comes from the perspective that copyright should not exist at all or that there is no need to copyright the information/image as you wish it to be distributed freely and without there being a better definition of this somewhere and if someone has one please let me know.

IMAGE TWENTY-THREE
Some culture jamming sites have even greater ambitions. Rtmark.com, for example, is a dot.com rather than a dot.org. It is registered as a corporation, sells its shares, and offers various mutual funds for those who would like to invest in its anti-corporate activities and its subversions of the moral and symbolic economy of the corporate persona. We reproduce one of its recent homepages in Image Twenty-five.\footnote{Rtmark Home, \textit{Corporate Consulting for the 21st Century}, available at http://www.rtmark.com/ (last visited June 21, 2000).}
In its Microsoft.edu project, (illustrated in Image Twenty-six), the virtual corporate spokesperson informs us of the basis of Microsoft.edu’s “online learning philosophy:”

Let’s say that you could bottle and sell air . . . . That, in essence, is what MicrosoftEdu’s all about. First we bottle education, so to speak, and then we control it. Up until about fifteen years ago the bottled water industry was thought to be absurd. Think of the power you could wield over a population were you to possess a monopoly on water. This is our online learning philosophy; first control the media in which education is exclusively contained, and then change what consists of education to support our media, which in return feeds back into our bottom line.

Nine out of ten professionals polled agree that any counter ideology to our system of education should be excluded, if not cracked down on. This counter ideology includes artists, in particular artists whose mediums consist of html elements. We are in control (or soon will be), and they (still referring to the counter idealists: poets and radical environmentalists) must learn proper respect, a sense of subserviency and lowered eyes. For only when we are in control will there be the proper scope of education and moral conduct. The

only thing to really remember is, “control the media, control the
content.” It’s brilliant, don’t you agree?\textsuperscript{73}

Not surprisingly, Rtmark.com received a cease and desist letter
from Microsoft.\textsuperscript{74} More surprising perhaps, is the widespread support
for the site and the online promise that “[i]f any specific action were
to be taken against the website . . . named lawyers, including those
acting for the ACLU, will be filing amicus briefs in the site’s
defense.”\textsuperscript{75}

Rtmark.com goes farther than spoofing corporate imagery. It at-
tempts to undo the commodity fetishism that defines contemporary
mass culture. Rtmark.com cleverly and sometimes poignantly rein-
introduces the real material conditions in which virtual realities are pro-
duced. Digital products do have real conditions of production and

\textsuperscript{73} MicrosoftEdu, Online Learning Philosophy, available at http://www.microsoftedu.com/tar-
ro-2.htm (last visited June 7, 2000).

\textsuperscript{74} Microsoft cease-and-desist letter from Scott Behm to Andy Mingo, Webmaster,
visited June 7, 2000).

\textsuperscript{75} “[A]nd if any specific action were to be taken against Mr. Mingo, I & several others,
including Mr. Kaplan of the Wash. ACLU will be filing amicus briefs in defense of Mr. Mingo.
As a lapdog for the Microsoft Corp., you can appreciate the snake pit you’re looking into.”
MicrosoftEdu Home, supra note 72.
DePaul Law Review

consequences in people's daily lives. From a spoof on Taco Bell's
crass appropriation of Mexican revolutionary iconography, (shown in
Image Twenty-seven,\(^\text{76}\) as the corporate creation of a liberation army
seeking the People's Republic of Gorditas), RTMark.com links us to
photographic images from a real Mexican village, Popotla, a small
fishing town in Baja, just twenty minutes south of San Diego. The
villagers' struggles for livelihood and liberation have been gravely un-
dermined by the creation of one of digital technology's latest and
greatest works in contemporary popular culture.

Image Twenty-seven

People in Popotla have lived off the sea for decades, and have en-
gaged in small scale fishing for personal subsistence and local restau-
rant use. Three hundred meters from the village, in the Pacific ocean,
lies a unique underwater garden with giant kelp plants that exist in
only two places on the globe. Each plant is home to over two and a
half million creatures and distinctive species that cannot survive in any
other environment. Under prevailing federal laws, the citizens' ongo-
ing fishing off the shore should have entitled them to shoreline prop-
erty rights, but the Mexican government repeatedly stalled in granting
these rights. One day, just a few years ago, official government cars

\(^{76}\) See RTMARK, T.B.L.A., available at http://www.rtmark.com/tbla.html (visited June 20,
2000).
accompanied armed strangers into the fishing grounds. Local residents’ boats were sunk and thunderous underwater explosives were set off, destroying life-forms for miles. A huge wall was built locking out the local citizens and cutting off their access to the sea. Large warehouse-like buildings were erected (Image Twenty-eight) and a huge pool was constructed and filled with chlorine infected sea water. The pool water was dumped directly into the Pacific Ocean and the underlying kelp beds every week for months on end. Laboratory tests done on behalf of the indigenous peoples with the help of sympathetic NGOs revealed chlorine, toxic chemical solvents, and untreated human waste. Sea urchins disappeared, fish populations declined, and species vanished. Not a single local person was employed in this great new enterprise. As a consequence, the copyright industry possessed a grand new digital product, a film called Titanic, and a powerful trademark to link to a variety of merchandising opportunities. The people of Popotla, meanwhile, have lost their livelihood, rare natural resources and an entire way of life. We have all lost an irreplaceable ecological landscape of forever unknown value.

IMAGE TWENTY-EIGHT

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.com revealed, a very real and impenetrable boundary, a firewall so to speak 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 that protects the capitalist culture industry from the consequences of its actions, as well as from the needs and lives of the marginalized who do not possess the socio-economic characteristics of the target market. It is also a figural boundary which 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 commodity fetishism, embodied in trademark and copyright law, which produces goodwill towards the corporate persona and its products, but shelters it from critical considerations of corporate practice. On the other side of the wall, we see the guerilla logic of the popular, embodied in symbolic appropriations of cultural meaning that subvert the coherent identity of the corporate persona, and comment on the conditions of its production.

Villagers in Popotla engaged in their own tactical spatial narratives when they sought to remake the symbolic meaning of the wall that separated them from their way of life. As we see in Image Twenty-nine they transformed the wall from a blank and mute space that marked a no trespassing zone into a brilliant mural that told the story of their subjugation to corporate capital and proclaimed their will to survive the disaster that the film Titanic visited upon them (as shown in Image Thirty). This mural makes an appeal—"Mariscos Libre"—extends the enlightenment language of liberation to human interconnections with ecosystems and thus remarks upon the artificiality of walls that divide natural worlds into zones of private resources for corporate exploitation. Similarly, Rtmrk.com attempted to rupture the firewall between the strategic logic of mass culture and the tactical logic of popular culture by using the Web as a medium and forum for the subversion of the corporate persona. The story of Popotla was put


into circulation in one of the most important realms of publicity where goodwill is generated to enhance the value of the corporate persona.
CONCLUSION

Few forms of freedom exist without other forms of control. All cultural relations are also relations of power. This is no less true in digital environments. As John Perry Barlow has suggested, we do have some leverage as the first ancestors in a digital era. We are 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 in digital environments.

80. See Barlow, supra note 12.