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## Left Out on the Information Highway

AS a law professor with a background in anthropology—or an intellectual property specialist with an ethnographic sensibility—I confess a certain discomfort as a traveller on the “information highway.” Anthropologists are rather notorious for wandering off the beaten track, taking the roads less travelled, providing perspectives on peripheries and arguing for their centrality in understanding any regime of power. Following this tradition, I shall ask some questions about what gets left out on the information highway—to argue that to occupy a left political position, out on the information highway, we need critical perspectives on the representations that shape the realities we recognize in an era of technological transformation. The concept of an “information age” or an “information society” occludes more than it reveals; it leaves behind social traces to which we must attend. Who and what gets left out on the information highway are issues that must be addressed.

I am, as usual, impressed by James Boyle’s characteristically elegant dissection of the dominant liberal legal discourse that has achieved a certain hegemony in discussions of the global informational environment.<sup>1</sup> However, in my own characteristic fashion<sup>2</sup> I want to move beyond the internal logic of the structure of the discourse and its indeterminacy and ask some questions about its cultural content and its deployment. Unless we do so,

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<sup>1</sup> See, e.g., JAMES BOYLE, SHAMANS, SPLEENS AND SOFTWARE: LAW AND THE CONSTRUCTION OF THE INFORMATION SOCIETY (forthcoming 1996) [hereinafter BOYLE, SHAMANS, SPLEENS AND SOFTWARE]. For an earlier example, see James Boyle, *The Politics of Reason, Critical Legal Theory and Local Social Thought*, 133 U. PA. L. REV. 685 (1985) [hereinafter Boyle, *The Politics of Reason*].

<sup>2</sup> See Rosemary J. Coombe, *Room for Maneuver: Toward a Theory of Practice in Critical Legal Studies*, 14 LAW & SOC. INQUIRY 69 (1989).

we risk reproducing the ideologies of this discourse in our critiques of it, and entrenching concepts which are still contested, contingent, and permeable—open to more progressive imaginings of the world we seek to occupy.

First, we might note the dominance of Anglo-American legal concepts in his debate and the underlying Enlightenment ideology that structures it. How quickly public/private distinctions were deployed and distinctions between property and speech instantiated in this something less-than-brave new world. A marketplace of ideas is taken for granted, a linear notion of progress prevails and the transparency of language is once again assumed in this cosmos of such infinite potential possibility. Once again, the commensurability of world views and the perfect translatability of concepts is taken for granted, this time in a digital universe. Despite the resounding criticisms that have been leveled against it,<sup>3</sup> and the obvious anachronisms it effects,<sup>4</sup> the tired ideals of the European bourgeois public sphere are brought to bear upon a space that has, in other circles, generated radical utopian thought.<sup>5</sup> We already have a great body of evidence of the elitism, exclusionary practices, patriarchal assumptions, and ethnocentric premises of the public sphere forged in eighteenth century Europe.<sup>6</sup> Why are we reproducing it here?

Like its modern forebears, the discourse of digitality presupposes the dominance of a particular world view as a universal horizon of thought. Why does the discourse of the information never even entertain the possibility that resources for governance might be found within other cultural life-worlds—that perhaps the principles of administration might be forged in dialogue with those who have other traditions? Why, for that matter, have so few of our own juridical resources been brought to bear upon

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<sup>3</sup> See DEVELOPMENTAL APPROACHES TO THE SELF (Benjamin Lee et al. eds., 1983); HABERMAS AND THE PUBLIC SPHERE (Craig Calhoun ed., 1992); THE PHANTOM PUBLIC SPHERE (Bruce Robbins ed., 1993); Pheng Cheah, *Violent Light: The Idea of Publicness in Modern Philosophy and in Global Neocolonialism*, 43 SOC. TEXT 163 (1995).

<sup>4</sup> See my discussion of intellectual property and freedom of expression in ROSEMARY J. COOMBE, *CULTURAL APPROPRIATIONS: AUTHORSHIP, ALTEREITY AND THE LAW* (forthcoming 1996).

<sup>5</sup> See, e.g., John P. Barlow, *The Economy of Ideas: A Framework for Rethinking Patents and Copyrights in the Digital Age (Everything You Know About Intellectual Property is Wrong)*, WIRED, Mar. 1994, at 84; see also THE PHANTOM PUBLIC SPHERE, *supra* note 3.

<sup>6</sup> See Boyle, *The Politics of Reason*, *supra* note 1; Coombe, *supra* note 2.

determinations of its internal boundaries? Why, on the information highway, do we have no easements or rights of way, no licenses, no fiduciary obligations, no babies on board, duties of care, relations of guardianship or trust, no one acting *in loco parentis*? How did property and speech become the almost exclusive terms with which to imagine this potentially unlimited space for creative governance? How did so many fundamental legal concepts get left out on the information highway?

Despite the overwhelming and obfuscating rhetoric of “information,” the dominant practices in this digital world are those of communication. The flows of “information” it supports are largely *cultural* forms—representational means of conveying significance. What difference does this make? First, we have an unprecedented opportunity to disseminate cultural texts—literary works, art, images, films, music videos, and, it might be added, advertising. As the so-called entertainment industries have so vociferously asserted, these are properties protected by regimes of intellectual property, and the media conglomerates have wasted no time sounding alarms that—heaven forbid—intellectual properties will be available to people in a fashion that is historically unprecedented. I am not the first to note that public use of copyright-protected works and the wide dissemination of them for social purposes was precisely the end sought by granting copyright protections.<sup>7</sup>

To read a book, listen to a song, scan an encyclopedia, pass along a newspaper article to a friend, exchange recipes and furniture-finishing instructions with a neighbor—these were communicational activities encouraged within liberal democracies with an Enlightenment faith in the progress of arts and sciences. The same activities may well be deemed forms of theft—illegal trespassing upon private property—in the digital environment. Despite its limitations and prejudices, the bourgeois public sphere may appear to be a very open and dialogical space to industry forces eager to impose a private police state upon cyberspace.<sup>8</sup>

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<sup>7</sup> I am not the only intellectual property scholar to wearily reiterate this point. See, e.g., Jessica Litman, *The Exclusive Right to Read*, 13 *CARDOZO ARTS & ENT. L.J.* 29 (1994); Francis M. Nevins, Jr., *Availability: The Hidden Value in Copyright Law*, 15 *COLUM.-VLA J.L. & ARTS* 285 (1991); L. Ray Patterson, *Copyright and “the Exclusive Right” of Authors*, 1 *J. INTELL. PROP. L.* 1 (1993).

<sup>8</sup> See Communications Decency Act of 1995, sec. 501, 110 Stat. 56 (to be codified at 47 U.S.C. §§ 501-509 (1996) (CDA)). Groups such as the Electronic Frontier

The cultural flows of this web of electrons are likely to be predominantly those of the United States' most significant export industry.<sup>9</sup> Someone once said that postmodernity was simply the way the world imagines itself American. It certainly is not difficult to imagine that Mickey, Madonna, and the Marlboro Man will achieve hegemony in such spaces—however enticingly “morphable” their digital images may be. A few cautions are in order here, however. Theses of media imperialism invariably ignore the creative work people do in reception of media work, and the transformation of meaning effected in practices of interpretive recoding and reworking of commodified texts.<sup>10</sup>

To the extent that the enforcement of intellectual property laws will prohibitively price, prevent, or render criminal such transformative uses, they will indeed reinforce tendencies toward American cultural hegemony. Such a prognosis, however, may prove to have been made from a situated and partial perspective. In many parts of the world, the dominant forms of popular culture are not American, but Indian and Japanese. In West Africa, for example, imagery, dialogue, and tropes borrowed from Hindi motion pictures provide a *lingua franca* for communication and affiliation of a youthful population otherwise divided by ethnic and linguistic affiliations.<sup>11</sup> Indian film producers do little, it seems, to police the reproduction of these films, their public performance, or their constituent characters, imagery, and dialogic sequences. A certain cultural dominance may be accomplished

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Foundation, Center for Democracy and Technology, Electronic Privacy Information Center and the American Civil Liberties Union have expressed opposition to the CDA. See Center for Democracy and Technology, available online <http://www.cdt.org/cda.html>; see also Carl M. Kadie, Sex, Censorship, and the Internet, available online <http://www.eff.org/CAF/cafiuc.html>.

<sup>9</sup> J. Thomas McCarthy, *Intellectual Property: America's Overlooked Export*, 20 U. DAYTON L. REV. 809 (1995) (asserting intellectual property is the United States' most significant but often overlooked export).

<sup>10</sup> See, e.g., THE CONSTRUCTION OF AUTHORSHIP: TEXTUAL APPROPRIATION IN LAW AND LITERATURE (Martha Woodmansee & Peter Jaszi eds., 1994); Dana Polan, *The Public's Fear: Or, Media As Monster in Habermas, Negt, and Kluge*, in THE PHANTOM PUBLIC SPHERE, *supra* note 3, at 33; JOHN TOMLINSON, CULTURAL IMPERIALISM: A CRITICAL INTRODUCTION (1991); Rosemary J. Coombe, *Publicity Rights and Political Aspiration: Mass Culture, Gender Identity and Democracy*, 26 NEW ENG. L. REV. 1221 (1992); Nicholas Garnham, *The Mass Media, Cultural Identity and the Public Sphere in the Modern World*, 5 PUB. CULTURE 251 (1993).

<sup>11</sup> Mamadou Diouf, *Urban Youth and Senegalese Politics: Dakar 1988-1994*, in PUBLIC CULTURE (forthcoming 1996) (Japanese scholars' work on Japanese popular culture in Southeast Asia).

by a failure to view cultural forms as commodities and by their subsequent appropriations into a living public domain.

To put the issue in such terms, however, is already to abandon significant terrain on which to effect social transformation. I wish to admit to—own up to—a growing uneasiness with the tendency to reduce questions about access to information to simple dichotomies of private and public, commodity or commons. Such characterization too easily fits within dominant ideologies and reproduces the myopias of free market imaginaries. More significantly, this characterization ignores the way “information” is actually generated and used in the world: in social contexts in which it has meaning, value, and significance—affect as well as effect. As Boyle has pointed out elsewhere,<sup>12</sup> one predominant, if not constitutively central tendency in the so-called information age is to rip texts from contexts and strip them from the media in which they are embodied. Instead of indigenous ecocultures in Brazilian rainforests we are to believe that genetic codes of geneplasm are equivalents, and their storage serves to protect “our” biodiversity. Computerized lab annotation replaces the ritual dances that accompany cycles of the rice harvest in Indonesia, but we are to have faith in their commensurability.

We do nothing, I suggest, to protest such tendencies merely by championing a commons free for all, over and against a proliferation of privatized estates. Both positions reproduce and legitimize the vision of a world of things, available or not available for appropriation, but ignore the significance of the social relationships within which such things have meaning, value, and consequence. Another way of putting it is this: What have we done with or to “culture” by insisting that all signifying forms be treated merely as “information,” by operating on the assumption that everything can be encountered and apprehended in the form of equivalent sign-bytes which are infinitely substitutable? Whether or not we decide (or are even granted any role in the decision-making process) that we want these life-worlds governed by the logic of exchange value, we are still destroying entire systems of use-value or sustaining life-worlds in the process. I want to make it clear that I am not here appealing to a Romantic organic, holistic idea of “culture,” or tradition for that matter—against which I have argued at great length elsewhere<sup>13</sup>—I

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<sup>12</sup> BOYLE, SHAMANS, SPLEENS AND SOFTWARE, *supra* note 1.

<sup>13</sup> Rosemary J. Coombe, *Beyond Modernity's Meanings: Encountering the*

am suggesting that a sensitivity to the political and historical trajectories in which forms have particular meanings is incumbent upon those left, out on the information highway.<sup>14</sup>

Similar cautions have been issued by others with regard to forms of "information" transmission traditionally deemed undesirable or harmful in Western societies, as debates about monitoring pornography on the "net" suggest.<sup>15</sup> When images of women in bondage and the sexual torture of children can be conjured up with the same push of the button that brings the latest stock market figures to one's screen, we face a phenomenon of proportions that neither the public/private nor the commodity/commons dichotomy even begins to engage. Given socioeconomic differentials of access and the cultural barriers to entry that are intrinsic to cyberspace as we know it, those of us who are left, out on the information highway might consider our obligations to those left out of this communicational space and their relation to what circulates there.

First, we might keep in mind the materialities of the so-called information era. This is a world which, utopian babble notwithstanding, is linked by more than modems and laptops, electrons and airwaves. Elsewhere I have cautioned against the breezy assumption that "we" live in a postindustrial society; suggesting rather that the realities of economic exploitation have simply moved to spaces in which their grim costs are less evident and less easily measured. From export processing zones to immigrant enclaves, prisons, homework, and proliferating informal econo-

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*Postmodern*, 11 *CULTURE* 111 (1991); Rosemary J. Coombe, *The Properties of Culture and the Politics of Identity: Native Claims in the Cultural Appropriation Controversy*, 6 *CAN. J.L. & JURIS.* 249 (1993); Rosemary J. Coombe, *Contingent Articulations: A Critical Cultural Studies of Law*, in *LAW AND THE DOMAINS OF CULTURE* (Austin Sarat & Thomas R. Kearns eds., forthcoming 1997).

<sup>14</sup> I make a similar argument with respect to the conceits of certain varieties of postmodern theory in Rosemary J. Coombe, *Finding and Losing One's Self in the Topoi: Placing and Displacing the Postmodern Subject in Law*, 29 *LAW & SOC. REV.* 599 (1995).

<sup>15</sup> See, e.g., Anne W. Branscomb, *Internet Babylon? Does the Carnegie Mellon Study of Pornography on the Information Superhighway Reveal a Threat to the Stability of Society*, 83 *GEO. L.J.* 1935 (1995); Catherine A. MacKinnon, *Vindication and Resistance: A Response to the Carnegie Mellon Study of Pornography in Cyberspace*, 83 *GEO. L.J.* 1959 (1995); Carlin Meyer, *Reclaiming Sex From the Pornographers: Cybersexual Possibilities*, 83 *GEO. L.J.* 1969 (1995); Marty Rimm, *Marketing Pornography on the Information Superhighway: A Survey of 917,410 Images, Descriptions, Short Stories, and Animations Downloaded 8.5 Million Times in Over 2,000 Cities in Forty Countries, Provinces and Territories*, 83 *GEO. L.J.* 1849 (1995).

mies, the practices of subcontracting so characteristic of the regime of flexible accumulation have multiplied and greatly complicated relations of industrial labor<sup>16</sup> (not to mention the industries of those who toil at the bottom of such postindustrial practices of wealth creation as global sex-tourism, mail-order bride services, and corporate hostessing).<sup>17</sup> The so-called value of the cartoon character on the T-shirt that retails for twenty-five dollars in North America is realized not only through the enforcement and extension of United States copyright and trademark laws, import controls that prohibit “counterfeits,” and the circulation of “gray-market goods,” but also from the forces of a political economy that enables the women that produce them to be paid pennies per hour, guaranteeing the value of those merchandising rights through which the Disney property will circulate to accrue ever greater goodwill.

Second, we need to recognize new mappings of power—geographies of concentration that have been created through the global restructuring of capital that is so heavily reliant upon flows of information. The means to manage, and the access to a global economy dependent upon information flows are incredibly centralized. Empirical studies of this political economy of global flows suggest that the necessary infrastructure for global control capacities—to monitor the financial transactions, delivery of goods and services, movement of material and technology, status of market preferences and labor availabilities, and the state of local political conditions and regulatory regimes—exists in very few places. Those places—global cities,<sup>18</sup> world cities,<sup>19</sup> or informational cities<sup>20</sup>—then tend to attract disproportionate numbers of producer services which have pronounced social consequences for the areas in which they congregate.

Rather than a planet evenly comforted by a blanket of warm

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<sup>16</sup> SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, TOKYO* (1991); SASKIA SASSEN, *CITIES IN A WORLD ECONOMY* (1994); PETER DICKEN, *GLOBAL SHIFT: THE INTERNATIONALIZATION OF ECONOMIC ACTIVITY* (1982).

<sup>17</sup> CYNTHIA ENLOE, *BANANAS, BEACHES & BASES: MAKING FEMINIST SENSE OUT OF INTERNATIONAL POLITICS* (1989); ANNE ALLISON, *NIGHTWORK: SEXUALITY, PLEASURE AND CORPORATE MASCULINITY IN A TOKYO HOSTESS CLUB* (1994) (addressing the “sex work” of hostesses in Japanese nightclubs).

<sup>18</sup> See Sassen’s works cited *supra* note 16.

<sup>19</sup> *WORLD CITIES IN A WORLD ECONOMY* (Paul L. Knox and Peter J. Taylor eds., 1995).

<sup>20</sup> MANUEL CASTELLS, *THE INFORMATIONAL CITY: INFORMATION TECHNOLOGY, ECONOMIC RESTRUCTURING, AND THE URBAN REGIONAL PROCESS* (1989).



information flows, we have instead a loosely-woven net that is attached at very few points—from which many are left out in the cold. Even in those cities where facilities are conducive to the management of flows, the evidence indicates a massive increase in socioeconomic polarization between classes of technologically-trained elites and ever-greater numbers of deskilled and unskilled low-wage workers who are not active subjects in a global economy although their labor enables it to function. Such dual cities<sup>21</sup> also evidence heightened spatial differentiation between areas of investment and social disinvestment and the increased costs of social control that this invariably occasions.<sup>22</sup> Increases in homelessness, legal and illegal immigration, the growth of informal economies, black markets in labor, services and goods, and sweatshop conditions of production have all been ascertained to be the byproducts of orienting an urban economy toward attracting foreign investment and global management opportunities.

Growing disparities of access and opportunity within global cities is mirrored in the global economy. The global is hardly planetary; some areas are simply spanned, others escape the net entirely. Major parts of Africa, for example, face increasing marginalization and impoverishment. Niger, for example, is on the planet, but it is not on the globe to the extent that the globe is a place constructed by flows of information, capital, and goods. There is, however, one way in which Niger, like other disadvantaged nation-states, participates in the global economy. People from remote villages in the Sahel now make their way to the global cities and make their living in the burgeoning informal economies these cities provide, eking out remittances for cash-starved families in rural villages. For states suffering the devastation of International Monetary Fund (IMF) structural adjustment policies, the entrepreneurial activities of foreign nationals are crucial sources of foreign exchange. My own ethnographic work amongst Songhay-speaking vendors in New York City's informal economy illustrates some of the ironies and inequities of the so-called information era.<sup>23</sup> I will return to these migrants, but first

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<sup>21</sup> DUAL CITY: RESTRUCTURING NEW YORK 3-16 (John Mollenkopf et al. eds., 1991).

<sup>22</sup> MIKE DAVIS, CITY OF QUARTZ: EXCAVATING THE FUTURE IN L.A. (1990); Mike Davis, *Beyond Blade Runner: Urban Control, The Ecology of Fear* (1992) (Open Magazine Pamphlet Series).

<sup>23</sup> I am engaged in a long-term project with anthropologist Paul Stoller for which

it is necessary to say something about the international intricacies within which they are enmeshed.

The incorporation of intellectual property under the purview of international trade has been a major coup for the United States generally, and the entertainment industries particularly. Now that it seems to have been agreed that what's good for Disney is good for America, the enforcement of American intellectual property protections has assumed high priority in trade negotiations. Under the TRIPS Agreement,<sup>24</sup> for example, so-called less developed countries are given the privilege of barrier-free exports of goods in exchange for enacting and enforcing intellectual property laws<sup>25</sup> that privilege United States intellectual property holders. Agricultural goods and textiles are specifically mentioned.<sup>26</sup> Others have drawn attention to the distributional consequences of effecting Western intellectual property provisions and their adverse effect upon third world peoples, their creative efforts, and their economic well-being.<sup>27</sup> Boyle himself characterizes this as an "intellectual landgrab."<sup>28</sup>

From small licensed spaces in a parking lot in Harlem, Songhay-speaking vendors join migrants from dozens of African countries, indigenous peoples from Central America, and African-Americans to vend assorted and sundry goods to local resi-

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funding has been generously provided by the National Sciences Foundation under its Global Social and Legal Studies Program. See Rosemary J. Coombe, *The Cultural Life of Things: Anthropological Approaches to Law and Society in Conditions of Globalization*, 10 AM. U. J. INT'L L. & POL'Y 791 (1995); see also Rosemary J. Coombe & Paul Stoller, *X marks the Spot: The Ambiguities of African Trading in the Commerce of the Black Public Sphere*, PUB. CULTURE, 1994, at 249.

<sup>24</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS), General Agreement on Tariffs and Trade (GATT), Doc. MTN/FA II-AIC (Dec. 13, 1993).

<sup>25</sup> General Agreement on Tariffs and Trade, art. 16, § 1:

The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services, which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion.

<sup>26</sup> See *supra* note 24.

<sup>27</sup> See BOYLE, SHAMANS, SPLEENS AND SOFTWARE, *supra* note 1; Shelley Wright, *Economic Rights and Social Justice: A Feminist Analysis of Some International Human Rights Conventions*, 12 AUSTRALIAN Y.B. INT'L L. 241 (1993); Shelley Wright, *A Feminist Exploration of the Legal Protection of Art*, 7 CAN. J. WOMEN & L. 59-96 (1994).

<sup>28</sup> BOYLE, SHAMANS, SPLEENS AND SOFTWARE, *supra* note 1 at 129; see also Shelley Wright, *Women and the Global Economic Order: A Feminist Perspective*, 10 AM. U. J. INT'L L. & POL'Y 861 (1995).

dents, travellers, and bussed-in tourists. One cold winter day they are busy at work arranging and rearranging a table full of counterfeit Gucci bags or hats made in Bangladesh that illegally bear unlicensed NBA logos. They know the difference between the "originals" and those which command a lower price, but the nature of the harm done is less than clear. Their customers want the allure of the symbol but cannot afford the artificially inflated prices which the "real thing" commands. Nearby stalls are piled high with colorful African cloth. From the same sources in Chinatown that Songhay vendors obtain their gray market or counterfeit merchandise, the vendors can obtain cheap baseball caps sewn from African fabrics and decorated with traditional Malian mudcloth designs. The caps naturally command ten times the price of the fabric that goes into them. The same West African designs now appear woven into fabrics marked with a copyright symbol claimed by an American textile company. The freedom to market West African textiles is meaningful only when the traditional designs which make them attractive to an African-American market may be freely appropriated. In such circumstances, it is difficult to assert the moral claim that American intellectual property industries should have upon them.

Whatever one might think about the wisdom of putting scarce resources into tracking down, prosecuting, fining, and imprisoning those who "steal" Looney Tunes® characters in countries battling malnutrition, illiteracy, infant mortality, and child prostitution, it is important to remember that the so-called harmonization of global intellectual property laws backed by trade sanctions has not created a level playing field. Even if the creative works of peoples elsewhere were accorded the same level of protection, and they had the same access to legal resources to have their rights affirmed and enforced, the situation would still be inequitable. Although industry interests have voiced claims to equality and harmonization of laws to facilitate the global flow of intellectual properties, they have managed to export their own property rights without any of the countervailing jurisprudence of wider public interests. Quick to denounce Thai piracy, those interests have been less concerned about ensuring that Thais enjoy the fair use exemptions from copyright infringement, or that parody defenses to trademark infringement cases will be recognized. Nor does it seem that the left, out on the information highway, is particularly interested in protecting the expressive in-

terests of others. Exercises of trademark rights often seen as overreaching in the United States, such as the antidilution provisions of state legislation, have been blithely exported as parts of a “universally recognized” package of intellectual property rights<sup>29</sup> despite the consternation such rights engender domestically and the continuing controversy over their constitutionality.<sup>30</sup> Such political questions will not trouble zealous trademark owners in the new world order—they will be able to freely prevent nonconfusing usages of their trademarks, especially when such usages are critical of corporate conduct. There may be no constitutional safeguards to prevent the deployment of copyright and trademark rights to enforce regimes of corporate censorship in such circumstances. Mickey, Madonna, and the Marlboro Man are not only signs of United States cultural hegemony that will circulate with greater protection, but they also are indicia of American dominance insulated from the parodic uses, satirical commentary, and politically expressive reproductions in which they may figure at home. Obviously, to return to some of my initial points, this illustrates the absurdity of the public/private distinction within international law, the imbrication of speech with questions of property, and the growing anachronism of legally separating issues of trade from issues of human rights. To the extent that postmodernity is at least partially about how the world dreams itself American, those of us left, out on the information highway, might ask how we can create and protect spaces for political dissent in an information era, and how we might work to encourage the creative cultural work that must invariably accompany any progressive social transformation.

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<sup>29</sup> See RESTATEMENT (THIRD) OF UNFAIR COMPETITION, ch. 3, The Law of Trademarks § 12 (1995) (state antidilution statutes involve “a theory of liability that does not require proof of a likelihood of confusion . . . by prohibiting uses [of the mark] that tarnish the associations evoked by the mark”).

<sup>30</sup> See, e.g., Rosemary J. Coombe, *Objects of Property and Subjects of Politics: Intellectual Property Laws and Democratic Dialogue*, 69 TEX. L. REV. 1853 (1991); Keith Aoki, *Authors, Inventors and Trademark Owners: Private Intellectual Property and the Public Domain, Part II*, 18 COLUM.-VLA J.L. & ARTS 191 (1994); Rochelle Cooper Dreyfuss, *Expressive Genericity: Trademarks as Language in the Pepsi Generation*, 65 NOTRE DAME L. REV. 397 (1990).

