

**The  
Celebrity  
Culture  
Reader**

Edited by

**P. David Marshall**

First published 2006  
by Routledge  
270 Madison Ave, New York, NY 10016

Simultaneously published  
by Routledge  
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

*Routledge is an imprint of the Taylor & Francis Group, an informa business*

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Typeset in Perpetua by  
RefineCatch Limited, Bungay, Suffolk  
Printed and bound in Great Britain by  
The Cromwell Press, Trowbridge, Wiltshire

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*Library of Congress Cataloging-in-Publication Data*  
The celebrity culture reader / edited by P. David Marshall.  
p. cm.

Includes bibliographical references and index.  
1. Civilization, Modern. 2. Popular culture. 3. Celebrities. 4. United States—  
Civilization. 5. Popular culture—United States. 6. Celebrities—United States.  
7. Fame—Social aspects—United States.

CB358.C45 2006  
909.82—dc22

2006033283

*British Library Cataloguing in Publication Data*  
A catalogue record for this book is available from the British Library

ISBN 10: 0-415-33791-7 (hbk)

ISBN 10: 0-415-33792-5 (pbk)

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in which nearly everyone has a stake. Most roads, however roundabout and bumpy, lead there.

## Notes

- 1 Lisa Gubernick, quoted in Neal Koch, "The Hollywood Treatment," *Columbia Journalism Review* (January/February 1991): p. 31.
- 2 Oscar Gandy, *Beyond Agenda Setting* (Norwood, N.J.: Ablex Publishing, 1982).
- 3 Paul Hirsch, "Processing Fads and Fashions: An Organization-Set Analysis of Cultural Industry Systems," *American Journal of Sociology* 77 (1972): 640.
- 4 Moreover, says David Israel, a newspaper columnist turned television producer, the push to maintain good relationships is underlined by the lure of eventually becoming what you're reporting on: "Covering Hollywood is the only job where reporters aren't sure whether to pitch or catch. All those people who, while they're doing journalism, would like to think that they're being objective, many, in the back of their minds think, 'These guys buy screenplays; maybe I have a shot'" (quoted in Koch, "The Hollywood Treatment," p. 31).
- 5 Philip Elliott, "Media Organizations and Occupations: An Overview," in James Curran, Michael Gurevitch, and Janet Woolcott, eds., *Mass Communication and Society* (Beverly Hills: Sage Publications, 1977), p. 149.
- 6 This is often expressed through a cynical sense of humor. Patrick Goldstein will call his friend at Associated Press and pose as the publicist who can always be counted on to call with a quote from a celebrity client. "Mickey Rooney is deeply saddened," Goldstein will tell the other writer in his mock-sincere publicist's voice, "by the death of his very good friend." Their discomfort with their dependence on publicists comes through in ridicule.
- 7 See Eliot Freidson, "The Changing Nature of Professional Control," *Annual Review of Sociology* (1984).
- 8 This is not simply an implicit interest. In numerous cases, in fact, image-ownership and celebrity-as-commodity battles have found their way into the court system. Questions of individual versus corporate ownership of an image, and celebrity as financially valuable property to be divided upon divorce, for example, have been legally disputed. For an interesting treatment of these sorts of contests, see Jane Gaines, *Contested Culture: The Image, the Voice, and the Law* (Chapel Hill: University of North Carolina Press, 1991).
- 9 See Michael Cieply, "Hollywood's High-Powered Image Machine," *Los Angeles Times Magazine*, July 10, 1988; Jonathan Alter, "The Art of the Deals," *Newsweek*, January 9, 1989.
- 10 Kathie Berlin, quoted in Aimee Lee Ball, "The Starmakers," *New Woman*, November 1988, p. 123.
- 11 Yoffe, "E! Is for Entertainment," *Newsweek*, August 12, 1991, p. 58.
- 12 Elliott, "Media Organizations and Occupations," p. 148.
- 13 To think that commercial news organizations operate according to such traditional criteria is naive; what I am describing here is not exclusive to entertainment news. The point is the distinctive degree to which criteria of "newsworthiness" and the

## Rosemary Coombe

### AUTHOR(IZ)ING THE CELEBRITY Engendering alternative identities

The white kids had the counter-culture, rock stars and mysticism. The blacks had a slogan which said they were beautiful, and a party demanding power. Middle America had what it always had: Middle America. The hawks had Vietnam, and the doves the Peace Movement. The students had campus politics, and the New Left had Cuba and the Third World. And women had a voice. I had rejection from each of them. I also had Judy Garland. — Drag Queen, a character in *As Time Goes By*, by Noel Grieg and Drew Griffiths<sup>1</sup>

Sex imposes a uniformity upon bodies for the purposes of reproductive sexuality. This is also an act of violence. — Angela McRobbie on Judith Butler, in *Postmodernism and Popular Culture*<sup>2</sup>

... new queer spaces open up (or are revealed) whenever someone moves away from using only one specific sexual identity category — gay, lesbian, bisexual or straight — to understand and to describe mass culture, and recognizes that texts and people's responses to them are more sexually transmutable than any one category could signify — excepting perhaps, that of queer. — Alexander Doty, *Making Things Perfectly Queer*<sup>3</sup>

Having categorized the right as property, some courts seem to think that they have little or no choice but to recognize its survivability. After all, an assignable interest that dies with its assignor is a very queer sort of property. — Michael Madow, "Private Ownership of Public Image: Popular Culture and Publicity Rights"<sup>4</sup>

authorized by the celebrity subject but that the celebrity is authored in a multiplicity of sites of interpretive practice. The celebrity image is a cultural lode of multiple meanings, mined for its symbolic resonances. Focusing on cultural practices that appropriate celebrity images in the service of unanticipated agendas, I suggest that in such processes, unauthorized identities are produced, both for the celebrity and for her diverse authors.

In societies characterized by mass production, consumer capitalism, and mass-media communications, the celebrity image<sup>5</sup> holds both seductive power and significant economic and cultural value. Legal regimes simultaneously create, legitimize, and enable the realization of this value through doctrines of personality or publicity rights (and, less directly, through trademark and copyright laws). Celebrity names and images, however, are not simply marks of identity or simple commodities; they are also cultural texts – floating signifiers that are continually invested with libidinal energies, social longings, and, I will argue, political aspirations. The names and likenesses of the famous are constitutive of our cultural heritage and resonate with meanings that exceed the intentions or the interests of those they identify or resemble. I will very briefly summarize the legal doctrine of publicity rights<sup>6</sup> as it has developed in North America and the trend toward increasing the scope and duration of these rights. The social and cultural value of the celebrity image will be situated in the larger historical, political, and economic context of postmodernity and cultural practices characteristic of postmodernism.

In the cultural conditions of postmodernism, the commodification of cultural forms creates both generative conditions and prohibitive obstacles for the formation of alternative subjectivities. Celebrity images provide meaningful resources for the construction of identity and community. The law commodifies the celebrity subject and provides the means through which the celebrity may attempt to fix the identity and meaning of her persona. But in so doing, the law produces the possibility of the celebrity's polysemy. Focusing on a number of cultural practices that engage, reproduce, ironize, and sometimes transform the meaning of celebrity personas in order to produce and assert alternative gender identities for those who are socially marginalized, I argue that through its prohibitions, the law provides the means by which unauthorized identities are both engendered and endangered.

Popular cultural practices that engage celebrity images in innovative fashions illustrate the vibrant role played by these cultural icons in the self-authorings of minority, subaltern, or alter/native social groups. Gay male appropriations of female stars in camp subculture, lesbian refashionings of James Dean, and middle-class women's use of the *Star Trek* characters in the creation of fanzines are practices that recode pervasive images in a subversive but politically expressive manner. Investing celebrity personas with new and often oppositional meanings, subordinate groups assert unauthorized gender identities. They thereby affirm both community solidarity and the legitimacy of social difference by empowering themselves with resources afforded by mass media, which are nearly always the authorial properties of others.

### The value of the celebrity persona

What's the difference between Vanna White and a robot? Not much according to White, that woman of letters. The longtime gameshow cubist is suing Samsung Electronics America and its ad agency because of a humorous print advertisement that she claims pirated her celebrity. Several years ago the company ran a VCR ad that depicted a robot with a blonde wig, jewelry and alluring evening gown, turning giant letters on a video board . . . White was not amused . . . she [successfully] argued they had misappropriated her "identity." – *Newsweek*, April 5, 1993

Anglo-American legal jurisdictions recognize the right of individuals to protect publicly identifiable attributes from unauthorized and unremunerated appropriation by others for commercial purposes or economic benefit. In Canada and Britain, this right developed at common law into a distinct cause of action known as the tort of appropriation of personality. Some Canadian provinces also recognize the right in privacy statutes.<sup>7</sup> In the United States, the right of publicity arose as a category of the right of privacy that protects the individual against misappropriations of her name or likeness.<sup>8</sup> Various states have also incorporated these rights in privacy statutes and state constitutional provisions.<sup>9</sup> In both Canada and the United States, federal trademark legislation provides additional protections.<sup>10</sup> The literature detailing the origins and developing scope of these rights is so voluminous that a 256-page *bibliography* of relevant American literature was published in 1987.<sup>11</sup> Today the literature is even more extensive, and I make no effort to summarize the entire field.

Originally developed primarily to deal with an unauthorized use of a person's name or picture in advertising that suggested the individual's endorsement of a product, the right of publicity has been greatly expanded in the twentieth century. It is no longer limited to the name or likeness of an individual, but now extends to a person's nickname,<sup>12</sup> signature,<sup>13</sup> physical pose,<sup>14</sup> characterizations,<sup>15</sup> singing style,<sup>16</sup> vocal characteristics,<sup>17</sup> body parts,<sup>18</sup> frequently used phrases,<sup>19</sup> car,<sup>20</sup> performance style,<sup>21</sup> and mannerisms and gestures,<sup>22</sup> provided that these are distinctive and publicly identified with the person claiming the right. Although most cases still involve the unauthorized advertising of commodities, rights of publicity have been evoked to prohibit the distribution of memorial posters, novelty souvenirs, magazine parodies, and the presentation of nostalgic musical reviews, television docudramas, and satirical theatrical performances.

Increasingly, it seems that any publicly recognizable characteristic will be legally legitimated as having a commercial value likely to be diminished by its unauthorized appropriation by others. As we saw in the case of trademarks, recognition by the public is appropriated by the celebrity as intrinsic parts of a personality over which proprietary claims are made; again, social knowledge and social significance are appropriated as private properties. Some have even recommended that "any distinctive aspect of personality that sets that individual apart from others . . . should be treated as a unique . . ."

other scholars assert, the right of publicity has grown massively in scope in the late twentieth century without clearly articulated grounds that would provide reasonable limitations for its scope and duration.<sup>24</sup> The rationales traditionally offered for recognizing and protecting rights to the celebrity persona cannot be empirically supported and certainly don't justify the extent of the protections legally afforded celebrities, their estates, or their assignees.

The right has been recognized as proprietary in nature<sup>25</sup> and may therefore be assigned and the various components of an individual's persona may be independently licensed. A celebrity could, theoretically at least, license her signature for use on fashion scarves, grant exclusive rights to reproduce her face to a perfume manufacturer, voice to a charitable organization, legs to a pantyhose company, particular publicity stunts for distribution as posters or postcards, and continue to market her services as a singer, actor, and composer. The human persona is capable of almost infinite commodification, because exclusive, nonexclusive, and temporally, spatially, and functionally limited licenses may be granted for use of any valuable aspect of the celebrity's public presence. Furthermore, the right of publicity has been extended beyond the celebrity and his or her licensees and assignees to protect the celebrity's descendants or heirs.<sup>26</sup>

Although constitutional protections under the First Amendment privilege certain uses of celebrity names and likenesses, the definition of free speech that has developed in right of publicity cases is both narrow and inconsistently applied.<sup>27</sup> Focusing almost exclusively on the newsworthiness of the alleged appropriation and its ability to disseminate truthful information, courts have failed to consider other values that underlie our commitments to freedom of speech [. . .]. Freedom of expression is generally understood as essential to democratic self-government and as integral to the self-realization and self-expression constitutive of freedom in liberal societies. The recognition of exclusive proprietary interests in celebrity personas may impose real limits to the self-realization of those with alter/native agendas.

### Celebrity authorship

Cliff and Norm, the buffoon barflies on "Cheers," may have a sense of humor, but apparently the actors playing them don't. John Ratzenberger and George Wendt are suing Host International, which operates a chain of "Cheers" airport bars . . . Each has dark wood panelling, the wood-carving of a Native American near the door — and replicas of Cliff and Norm. While the talking robots are named Bob and Hank, they have physical similarities to the television characters and their conversation is equally insipid. So Ratzenberger and Wendt say they're being ripped off. — *Newsweek*, April 5, 1993

It is impossible to deny the potential value of the celebrity persona. The aura of the celebrity is a potent force in an era in which standardization, rationalization, and the controlled programming of production characterize the creation and distribution of

indistinguishable, manufacturers increasingly promote them by symbolically associating them with the aura of the celebrity — which may be the quickest way to establish a share of the market.<sup>28</sup> It takes years to establish a brand name but only months to capitalize on celebrity. It is suggested that fame has become the most valuable (and also the most perishable) of commodities<sup>29</sup> and that celebrity will have been the greatest growth industry in the nineties.<sup>30</sup> With its "alchemical power to turn the least promising of raw materials into alluring and desirable artifacts" (designer jeans, sunglasses, deodorants, architects' teakettles and coffee mugs), "fame's economic applications are limitless."<sup>31</sup> Originally a by-product of a successful film or athletic career, we now have celebrities famous simply for being famous (Gloria Vanderbilt, Paloma Picasso, and Vanna White come to mind). The value that a famous name adds to a product may be astronomical; London outworkers knit pullovers for £6 — with a Ralph Lauren tag they sold for \$245 in New York — but Lauren had a \$17 million annual advertising budget to cover.<sup>32</sup>

Celebrities, then, have an interest in policing the use of their personas to ensure that they don't become tainted with associations that would prematurely tarnish the patina they might license to diverse enterprises. Indeed, a new breed of lawyer has emerged, one who scouts remote corners of metropolitan areas for unauthorized commercial uses of celebrity images. This postmodern ambulance chaser advises the estates of the famous of potential avenues for successful lawsuits, demanding only a portion of eventual damages for a fee. Scouring the urban landscape for signs of renegade Elvis restaurants, unlicensed Marilyn likenesses, and other profitable piracies has become a lucrative occupation made possible by the legal recognition of publicity's value.

This potential commercial value is generally offered as reason in itself to protect the star's control over his or her identity through the allocation of exclusive property rights. Most commentators have defended the recognition and enforceability of exclusive property rights on the grounds of exigent economic necessity: because such interests have market value, they deserve protection.<sup>33</sup> Indeed, until the 1990s it was virtually impossible to find any alternative perspective on the right of publicity. Others, like myself, see this as "a massive exercise in question begging."<sup>34</sup> As Wendy Gordon notes, to propose that a right follows from the existence of potential value is to propound a principle with no coherent parameters.<sup>35</sup>

Market values arise only after property rights are established and enforced; the decision to allocate particular property rights is a prior question of social policy that requires philosophical and moral deliberations<sup>36</sup> and a consideration of social costs and benefits:

It is sometimes said that the right of publicity rests on the commercial value of the interest itself, but that explanation is nonsense without something more. A claim of this sort will have commercial value only if it also has the protection of the law. In a sense, the value of this property stems from the fact that the law recognizes and protects it. Perhaps the question to be considered, then, is really two questions: first, whether there is a sensible basis upon which a claim can be made to rest beyond the value

protection ought not be granted even though there is some legitimacy in the claim.<sup>37</sup>

In determining whether there is a sensible basis for granting a property right in a celebrity's persona, we might consider traditional liberal justifications in support of private property. The idea that people are entitled to the fruits of their own labor and that property rights in one's body and its labor entail property rights in the products of that labor derives from John Locke<sup>38</sup> and is persuasive as a point of departure. It does not, however, very far advance the argument in favor of exclusive property rights. As Edwin Hettinger remarks, "assuming that labor's fruits are valuable, and that laboring gives the laborer a property right in this value, this would entitle the laborer only to the value she added, and not to the *total* value of the resulting product."<sup>39</sup>

Publicity rights are often justified on the basis of the celebrity's authorship: his or her investment of time, effort, skill, and money in the development of a persona.<sup>40</sup> Such claims, however rhetorically persuasive, are rarely supported by any empirical data. How much of a star's celebrity and its value is due to the individual's own efforts and investments? Clearly, individual labor is necessary if the persona is to have value, and we could not appreciate celebrities without their expenditure of effort — but it is not usually sufficient for the creation of publicity value. But, as Hettinger argues with regard to intellectual properties more generally, "it does not follow from this that all of their value is attributable to that labor."<sup>41</sup>

Celebrity images must be made, and, like other cultural products, their creation occurs in social contexts and draws upon other resources, institutions, and technologies. Star images are authored by studios, the mass media, public relations agencies, fan clubs, gossip columnists, photographers, hairdressers, body-building coaches, athletic trainers, teachers, screenwriters, ghostwriters, directors, lawyers, and doctors. Even if we only look at the production and dissemination of the celebrity image and see its value as solely the result of human labor, this value cannot be entirely attributed to the efforts of a single person.

Moreover, as Richard Dyer illustrates, the star image is given value by its consumers as well as its producers; the audience makes the celebrity image the unique phenomenon that it is.<sup>42</sup> Selecting from the complexities of the images and texts they encounter, they produce new meanings for the celebrity and find in stars significant values that speak to their own experiences. These new meanings and significations are freely mined by the media producers of the star's image to further enhance its market value. As Marilyn Monroe said, in what are alleged to be her last recorded words in public, "I want to say that the people — if I am a star — the people made me a star, no studio, no person, hut the people did."<sup>43</sup>

As Hettinger remarks, "simply identifying the value a laborer's labor adds to the world with the market value of the resulting product ignores the vast contributions of others."<sup>44</sup> The star image is authored by multitudes of persons engaged in diverse activities. Moreover, the star and her fame are never manufactured from whole cloth; the successful image is frequently a form of cultural bricolage that draws upon a social history of symbolic forms. Consider the Marx Brothers. Clearly, the construc-

But what we cannot know in fact, and what I suspect strongly could not be proven now if one set out to do so with the best will in the world, is how much the characters created by the Marx Brothers owe to the work of tens, scores, perhaps hundreds of other vaudeville and burlesque performers with whom they came into contact during their early years in the business. What we do not know, in short, is how much of these characters the Marx Brothers themselves appropriated from others. All that is certain is that they created themselves, individually and collectively, as a kind of living derivative work. That much Groucho himself has told us, but even without his candid admissions, it would be foolish and indeed ignorant of the history of burlesque and vaudeville to doubt that they took what they wanted from what they observed among the performers they grew up with, perhaps adding, in the process, important new material of their own. To be sure, the Marx Brothers became celebrities as most vaudevillians did not. But surely we are not rewarding them on that ground alone. Even in an age as celebrity-haunted as this, we cannot mean to establish dynasties on the memory of fame.<sup>45</sup>

The "authorship rationale" for publicity rights goes beyond the contribution of labor, however, to stress the unique singularity of the individual's efforts in creating a persona. In a recent defense of the right, Roherta Rosenthal Kwall suggests that "fostering creativity" is one of the reasons for extending publicity rights, and asserts that, "whatever the means through which an individual's persona comes to have value, that value should be attributable to the persona of the publicity plaintiff . . . Thus even if others help mold a celebrity's image, the celebrity herself is still responsible for the vast majority of the profit potential of her persona. Those who assist the plaintiff in creating a marketable persona typically are paid for their efforts. Further, when a celebrity horrows from the cultural fabric in creating her persona, it is still the unique combination of the past and the persona's original contributions that give the persona its present appeal."<sup>46</sup>

The attributes that are legally protected as an individual's "persona," however, are those that are *publicly identified* with him or her; it is the degree to which the particular attribute is socially distinctive or publicly recognizable that determines its protection against unauthorized use. It does not follow that that which is most appreciated or distinctive in the public sphere is the attribute in which the celebrity has invested his or her labors, or that the celebrity himself or herself was not paid for efforts in the activities that made him or her famous. There is no guarantee that it is the celebrity's "original" contributions that give his or her image its "appeal" or even its profit potential. It might be an image's conformity to a conventional stereotype and a particular social attachment to that stereotype that give the persona its social meaning and value. Certainly any number of individuals have attempted to achieve celebrity with diligent effort, great investment, and the utmost originality and still failed to achieve any public recognition or social distinction. The social production of meaning and the totally unpredictable generation of public distinction are here neatly attributed to the unique and singular efforts of an author who, in addi-

Dynasties established on the memory of fame have also provided sinecures for many who have merely inherited this authority. In *Groucho Marx Productions, Inc. v. Day and Night Co., Inc.*, the successors to rights in the names and likenesses of the Marx Brothers made a successful publicity rights claim against the production company, producers, and authors of the Broadway play *A Day in Hollywood, a Night in the Ukraine*.<sup>47</sup> The authors of that play intended to satirize the excesses of Hollywood in the thirties and evoked the Marx Brothers as characters playfully imagined as interpreting a Chekhov play. The defendants were found liable for appropriating the Marx Brothers' personalities or violating their publicity rights, and their First Amendment privilege was dismissed on the ground that the play was an imitative work.<sup>48</sup>

The Marx Brothers *themselves* might be seen as imitative or derivative works, whose creation and success as popular cultural icons derives from their own creative reworkings of the signifying repertoire of the vaudeville community. Contemporary stars are authored in a similar fashion. How much does Elvis Costello owe to Buddy Holly, Prince to Jimi Hendrix, or Michael Jackson to Diana Ross? Take the image of Madonna, an icon whose meaning and value lie partially in her evocation and ironic reconfiguration of several twentieth-century sex goddesses and ice queens (Marilyn Monroe, obviously, but also Jean Harlow, Greta Garbo, Marlene Dietrich, Gina Lollobrigida, and perhaps a touch of Grace Kelly) that speaks with multiple tongues to diverse audiences. Academic descriptions of Madonna as semiotic montage abound,<sup>49</sup> but the following somewhat hyperbolic extract from a *Village Voice* article appeals to me: "What Madonna served up in the name of sexuality was not liberation as I'd known it, but a strange brew of fetishism and femininity. Only later would I understand that the source of her power is precisely this ambiguity. It's a mistake to think of any pop icon as an individual . . . Madonna is a cluster of signs, and what they add up to is precisely the state of sex in the culture now: torn between need and rage and unable to express one without the other . . . Madonna raids the image bank of American femininity, melding every fantasy ever thrown onto the silver screen and implanting them in the body and voice of every-babe."<sup>50</sup>

In an era characterized by nostalgia for the golden age of the silver screen and an aging baby boom generation's fascination with the television culture of its youth, successful texts and images are often those that mine media history for evocative signifiers from our past. This is not to deny that such appropriations and reconstructions are creative productions; it is to stress emphatically that they *are* and to assert that such creative processes ought not to be frozen, limited, or circumscribed by the whims of celebrities or the commercial caprice of their estates or assignees.

The Marx Brothers scenario illustrates the danger well. The producers of *A Day in Hollywood* used the Marx Brothers characters to speak to our relation to Hollywood in its heyday, much as the Marx Brothers brought the spirit and forms of vaudeville to speak to Depression America. As Lange sees it:

What they sought to do, by their own account, "was to work a satiric comment on Hollywood movies using a parody of the Marx Brothers movies as one of the literary devices." The work they produced earned substantial public acceptance, and despite the court's opinion, has at least

accommodating the plaintiffs in some fashion. In a case like this, then, what society loses is a right of access amounting to an easement. In at least a preliminary sense, this is always the result of upholding a claim to a right of publicity.<sup>51</sup>

Lange argues forcefully that the proliferation of successful publicity rights claims has occurred at the expense of individual rights in the public domain. The public domain is inadequately considered and rarely conceptually developed in juridical contexts; no one represents the public domain in intellectual property litigation or acts as its guardian, and rules of civil procedure currently prohibit the participation of third parties who will ultimately be affected (other artists, writers, and performers of current and future generations). As a consequence, access to the public domain is choked or closed off, and the public "loses the rich heritage of its culture, the rich presence of new works derived from that culture, and the rich promise of works to come."<sup>52</sup>

If the Madonna image appropriates the likenesses of earlier screen goddesses, religious symbolism, feminist rhetoric, and sadomasochistic fantasy to speak to sexual aspirations and anxieties in the 1980s and 1990s, then the value of her image derives as much, perhaps, from the collective cultural heritage on which she draws as from her individual efforts. But if we grant Madonna exclusive property rights in her image, we simultaneously make it difficult for others to appropriate those same resources for new ends, and we freeze the Madonna constellation itself. Future artists, writers, and performers will be unable to creatively draw upon the cultural and historical significance of the Madonna montage without seeking the consent of the celebrity, her estate, her descendants or their assignees, who may well deny such consent or demand exorbitant royalties.

We might consider whether certain celebrity images are so deeply embedded in the North American psyche and cultural subconscious that they constitute parts of a collective cultural heritage that should not be subject to control by the parochial interests of the celebrity's estate and assigns. Elvis Presley provides an apt example. In the film *Mystery Train*, Jim Jarmusch explored the cultural and psychological significance of Presley in the depressed economy of Memphis, Tennessee, and in the consciousness of those who live on its social margins. The film also addresses his charisma for those in other countries whose fascination with American media images manifests itself in pilgrimages that have turned Memphis into a late-twentieth-century mecca. Even the possibility that Elvis Presley's estate *might* seek to prohibit the production and/or distribution of a film such as this<sup>53</sup> while simultaneously arranging to market cologne designed "for all the King's men"<sup>54</sup> alludes to the parameters of the problem. The opportunity for the celebrity's heirs or assignees to behave in such a manner has, in fact, been seized in similar circumstances. When the city of Memphis decided to erect a bronze statue to memorialize Elvis as part of a city redevelopment scheme, and a nonprofit city corporation offered pewter replicas of the King in return for donations to finance the monument, owners of rights to commercially exploit the Presley likeness were quick to seek and obtain an injunction.<sup>55</sup> Neither Elvis Presley's manager's corporation, Factors, Inc., nor his family can completely control the uses to

Elvis from which his estate and their official licensees continue to profit. Others author Elvis and forge their own norms of propriety about the use of his image.

A Lockean labor theory justifying property rights in the celebrity image is inadequate to establish a right to receive the full market value of the star persona or to establish exclusive rights to control its circulation and reproduction in society. Although a moral right to the fruits of one's labor must encompass a right to possess and personally use what one develops for one's own benefit and, perhaps, to exchange it on the market, this right need not necessarily be exclusive nor yield the full market value of such exclusivity.<sup>56</sup> Liberal values protecting individual freedom guarantee the possession and personal use of the product of one's labors only insofar as the exercise of this right does not harm the rights of others. As Wendy Gordon argues, deprivation of public domain and loss of access to cultural heritage are forms of harm that might be contemplated.<sup>57</sup> Moreover, rights to possess and personally use the fruits of one's labor do not necessarily entail the imposition of full property rights or rights to perpetually garner the full profits that such a product would yield in the market: "This liberty is a socially created phenomenon; the 'right' to receive what the market will bear is a socially created privilege, and not a natural right at all."<sup>58</sup>

If traditional liberal philosophy appears inadequate to encompass the range of social and cultural considerations that need to be addressed when defining the scope of publicity rights, other fields of intellectual property protection might seem to afford more guidance. However, if we examine traditional rationales for extending property rights to other forms of intellectual property, it becomes clear that the extension of property rights in cultural works is recognized as a socially bestowed privilege granted in exchange for social contributions and the bestowal of public benefits. (To spare the nonlegal reader, I have confined my comparison of the scope of publicity rights with other forms of intellectual property to an extended footnote.)<sup>59</sup> Publicity rights may be loosely analogized to rights granted by copyright, patent, and trademark laws, but none of these doctrines provides a degree of protection against unauthorized appropriation equal to that afforded celebrities. Moreover, all of these other areas of law contain limitations, exemptions, and defenses that recognize competing social and cultural interests.<sup>60</sup> Intellectual property protections were designed to provide limited rights in order to serve community goals and purposes; they make the exercise of individual property rights contingent upon the fulfillment of social responsibilities. Neither traditional liberal theory nor our rationales for recognizing limited property rights in artistic, literary, commercial, and scientific expressions justify the extent of contemporary publicity rights. Moreover, enabling celebrities, their estates, and their assigns to exercise absolute rights to control the celebrity image may have adverse consequences, both for the preservation of our collective cultural heritage and for our future cultural development. Judicial authority (albeit in dissent) is now available to support this claim: "Millions of people toil in the shadow of the law we make, and much of their livelihood is made possible by the existence of intellectual property rights. But much of their livelihood — and much of the vibrancy of our culture — also depends upon the existence of other intangible rights: The right to draw ideas from a rich and varied public domain, and the right to mock, for profit as well as fun, the

## The celebrity form and the politics of postmodernism

The fact that celebrities haul so much semiotic freight in our culture has a number of important consequences. — Michael Madow, "Private Ownership of Public Image"<sup>62</sup>

Systems of mass production and mass-media communications have afforded opportunities for talented, beautiful, and/or charismatic individuals to achieve renown across unprecedented distances and to have their fame survive for generations. These opportunities have been seized by individuals who seek to maximize their economic return. By recognizing the ability to exploit one's persona as an exclusive property right, the law has created a significant new source of economic value. In the process of developing individual economic rights, the law deprives us of collective cultural resources. The social value and cultural meaning of the celebrity image have their genesis in the same historical conditions that created the possibility of its economic value. In this section, I address the cultural significance of the celebrity image generally, and then explore the specific significance that particular celebrities have to select social groups. As it proceeds, this section becomes more ethnographic as I submerge the reader in unfamiliar realms of "subculture" (although I might prefer to simply call them queer spaces)<sup>63</sup> before returning to the legal dilemma.

In his illuminating essay "The Work of Art in the Age of Mechanical Reproduction,"<sup>64</sup> Walter Benjamin suggested that technologies of mechanical reproduction and systems of mass production changed modes of human perception and evaluation, fundamentally altering our aesthetic responses. These changes, I would suggest, are integrally related to the cultural value of the celebrity image in contemporary social life. Benjamin argued that our experience of cultural imagery changed dramatically with lithography and photography. The work of art traditionally had a tangible individuated presence in time and space, a singular history, and a situation in a cultural tradition. This notion of the original, necessary to the idea of authenticity and to the work's authority, was maintained during the era of manual reproduction, but increasingly became irrelevant in an age of technical reproduction. Mass reproduction creates copies that possess an independence from the original; they can transcend the spatial and visual limitations of the original's physical tangibility and susceptibility to temporal and material processes of age and deterioration. As the artwork's substantive duration ceased to matter, the art object lost its authority or its *aura* — "the unique phenomenon of distance however close it may be."<sup>65</sup> The aura embodied the work's value by engaging the beholder's affective, reflexive relationship to the cultural tradition in which the work was situated. The artwork was unapproachable; both in its physically unique embodiment and in its tangible history in a cultural tradition, it resisted too intimate an appropriation by the beholder into his or her own physical and cultural lifeworlds.

The work of art's aura was lost in the age of mechanical reproduction because "the technique of reproduction detaches the reproduced object from the domain of tradition."<sup>66</sup> By substituting a plurality of copies for a unique existence it enabled the consumer to position the reproduction in his or her own domestic, social, and historical milieu without any necessary cognizance of an original or its historical situation.



negative, for example, one can make any number of prints; to ask for the 'authentic' print makes no sense.<sup>67</sup> The criterion of authenticity ceased to be applicable to artistic reproduction. The uniqueness of a work of art was due to the work's situation in a traditional ritual context, whether that context was magical, religious, or secular. The "contextual integration of art in tradition found its expression in the cult"<sup>68</sup> that defined its use value. Technologies of mass reproduction enabled copies to transcend the work's historical use value in social cults of ritual and to become pure objects of exchange value or commodities.

Benjamin's reflections on the historical development of the work of art and the decline of its aura may help us to understand the cultural significance and seductive powers of the celebrity image. Here I want to go beyond Benjamin's own disjointed observations on the topic. He saw the screen actor as one whose performance was fragmented by the camera, alienated from the audience, deprived of his corporeality, and dissolved into flickering images and disembodied sounds.<sup>69</sup> The effect of film was to engage the whole living person but to replace the actor's aura with an artificially produced "personality" that was only the "phony spell of the commodity."<sup>70</sup> Benjamin alludes to the possibility of another, alternative understanding of the celebrity when he refers to "the cult of the movie star,"<sup>71</sup> however, an allusion that provokes one to ask whether celebrities might represent residual vestiges of the "auratic" in contemporary mass culture.

If the work of art's aura derives from its unique, embodied, or tangible presence in time and space, an individual history, and a situation in a cultural tradition, then it is difficult to deny the aura of the celebrity. However often a celebrity's likeness is reproduced, there remains a social knowledge of the celebrity as an individual human being with an unapproachable or distant existence elsewhere, a life history, and a mortal susceptibility to the processes of heartache, injury, illness, aging, and, ultimately, death. For example, it is difficult to envisage Elvis Presley without conjuring up images of health, vibrancy, and sexual energy followed by self-inflicted injury, gluttony, corpulence, and decay. Arguably, celebrities evoke the fascination they do because however endlessly their images are reproduced, their substantive duration – that is, their life – never becomes wholly irrelevant. They never lose their autonomy from the objects that circulate in their likeness.

Moreover, the star is historically situated and lives his or her life in social conditions that give his or her image meaning, resonance, and authority. Part of the celebrity image's value might reside in its exemplifying a particular human embodiment of a connection to a social history that provokes its beholder to reflect upon his or her own relationship to the cultural tradition in which the star's popularity is embedded. We all consider celebrities from different social positions; as a feminist and social democrat, for example, I cannot perceive Marilyn Monroe without reflecting upon my own troubled relationship to male definitions of female sexuality, the femininity of sexual innocence, the Playboy tradition, the cold war, and Monroe's own left populist politics.<sup>72</sup> Celebrity images, I would contend, always maintain their aura because they bind subjects in affective and historically mediated relationships that preclude their appropriation as pure objects.

by material reality and still lay claim to that reality. At the same time that the image appeals to transcendent desires, it locates those desires within a visual grammar which is palpable, which *looks real*, which invites identification by the spectator, and which people tend to trust. According to John Everard, one of the pioneers of commercial photography, it is this trust that makes photography so forceful as an advertising medium.<sup>73</sup>

The personal lives of celebrities, closely monitored and continually represented in the mass media, perform a function similar to that of commercial photography and similarly emerged with the image-making machinery stoked to maintain the perpetuation of contemporary consumer culture.<sup>74</sup> Ewen also sees the celebrity as a cultural response to modern social experiences of alienation and anomie – an icon of the significance of the personal and the individual in a world of standardization and conformity and the embodiment of the possibility of upward mobility from the mass: "Celebrity forms a symbolic pathway, connecting each aspiring individual to a universal image of fulfillment: to be someone, when 'being no one' is the norm."<sup>75</sup> The social potency of celebrity auras and the ubiquity of their presence in contemporary North American society make the celebrity persona a compelling and powerful set of signifiers in our cultural fields of representation. Simultaneously embodying the fantastic and the real, utopian ideals and quotidian practices, and the realization of popular aspirations for recognition and legitimacy, the celebrity form attracts the authorial energies of those for whom identity is a salient issue and community an ongoing dilemma.

But what meaning do particular celebrities have in the cultural lives of specific social groups in North American society? Focusing on a range of practices, engaged in by marginal social groups in nascent constructions of alternative identities, I attempt to make socially concrete the philosophical arguments I asserted earlier about the cultural losses contingent upon the commodification of the celebrity image. Moreover, I shall suggest that this foreclosure on the use of cultural resources has political dimensions. The practices I examine are those of gay male camp subculture in the preliberation era, lesbian refashionings of pop icons, and finally, middle-class women's engagement in the reading, writing, and circulation of *Star Trek* fan magazines ("fanzines"). These practices involve the redeployment of celebrity images, an aspect of that rearticulation of commodified media texts that has been defined as the essence of popular culture. Many of the people I'll describe here are "fans," and fandom is often "a vehicle for marginalized subcultural groups to pry open space for their own cultural concerns within dominant representations . . . a way of appropriating media texts and rereading them in a fashion that serves different interests".<sup>76</sup>

fans enthusiastically embrace favored texts and attempt to integrate media representations into their own social experience. Unimpressed by institutional authority and expertise, the fans assert their own right to form interpretations, to offer evaluations, and to construct cultural canons. Undaunted by traditional conceptions of literary and intellectual property, fans raid mass culture, claiming its materials for their own use,

speaking of characters as if they had an existence apart from their textual manifestations, entering into the realm of fiction as if it were a tangible place they can inhabit and explore. Fan culture stands as an open challenge to the "naturalness" and desirability of dominant cultural hierarchies, a refusal of authorial authority and a violation of intellectual property.<sup>77</sup>

In conditions of postmodernity, cultural consumption is increasingly understood as an active use rather than a passive dependence upon dominant forms of signification. As Michel de Certeau<sup>78</sup> and Paul Willis<sup>79</sup> argue, consumption is always a form of production and people continually engage in cultural practices of bricolage — resignifying media meanings, consumer objects, urban spaces, and cultural texts in order to adapt them to their own interests and make them fulfill their own purposes. The consumer is seen as actively reworking everything from the design of the shopping mall<sup>80</sup> and the rhetoric of the romance<sup>81</sup> to mass-marketed toy culture<sup>82</sup> in the articulation of alternative meanings and identities. Commodified signs become cultural resources with which new social and political realities are forged.

Hal Foster,<sup>83</sup> for example, views these practices of appropriating or "recording" contemporary cultural forms as the essence of popular culture, central to the political practices of those in marginal or subordinated social groups, who construct subcultures with resources forged from the mediascape.<sup>84</sup> Steven Connor sees postmodernism as (among other things) manifestations of "the central paradox of contemporary mass culture."<sup>85</sup> On the one hand, mass culture has enormous influence due to its global reach and penetration into the daily lives of millions of people, thus posing the possibility (or specter) of cultural unification and homogeneity. On the other hand, it provides resources for and contains the "capacity to tolerate, encourage, and engender a plurality of styles and identities."<sup>86</sup>

Cultural studies theorists defined subcultural practices to involve practices of appropriation and innovation of existing cultural forms in improvisations that provide opportunities for the affirmation of emergent cultural identities.<sup>87</sup> Dick Hebdige, for example, described the manner in which music styles like rap and hip hop deployed available symbolic and material forms using principles of parody, pastiche, and irony to articulate mixed, plural, or transitional identities for social groups at the margins of national or dominant cultures.<sup>88</sup> Angela McRobbie makes a similar case for optimism about the penetration of media imagery and communications into our psychic and social lives, arguing that the frenzied expansion of mass media enables new alliances and solidarities across traditional spatial, racial, and cultural boundaries as well as resources for producing new meanings and new identities.<sup>89</sup>

The constitution of provisional identities through the invocation of mass-media images, texts, and symbols is made possible when an audience is simultaneously absorbed and capable of ironic detachment. Lynda Hutcheon feels that this attitude defines postmodernism, "the name given to cultural practices which acknowledge their inevitable implication in capitalism without relinquishing the power or will to intervene critically in it."<sup>90</sup> This was an attitude Susan Sontag earlier described as the

Sontag's linking pastiche with its favoured audience, gay men, is instructive because she shows how a relationship evolved around a social minority making a bid for a cultural form in which they felt they could stake some of their fragmented and sexually deviant identity. The insistence, on the way, on both style and pleasure made the product attractive to those outside as well as inside . . . Sontag's approach is useful because she is talking not so much about pure or original "artistic" invention. Rather she is describing how forms can be taken over, and re-assembled so as to suit the requirements of the group in question. This often means outstripping their ostensible meaning and ostensible function . . . And if media forms are so inescapable . . . then there is no reason to assume that consumption of pastiche, parody or high camp is, by definition, without subversive or critical potential. Glamour, glitter, and gloss should not so easily be relegated to the sphere of the insistently apolitical.<sup>91</sup>

Ours is a world in which spatial and temporary distances can be quickly bridged through instantaneous communications. Ethnic, racial, class, and cultural boundaries are becoming less easily defined as a consequence of mass migration, immigration, transnational flows of labor and capital, and the expansion of mass markets. In this context, allegiances and identities are reconstructed. The breakdown of traditional communities has not resulted in social homogenization, however, but in a proliferation of differences organized along nontraditional lines. As Willis suggests, organic communities and organic communications are breaking down in the late twentieth century, and "proto-communities" are emergent.<sup>92</sup> Proto-communities "start and form not from intentioned purposes, political or other, but from contingency, from fun, from shared desires . . . they form from and out of the unplanned and unorganized precipitations and spontaneous patterns of shared symbolic work and creativity."<sup>93</sup> Such communities may evolve around a "consuming interest" in cultural commodities such as products of the communications media, with which new meanings are minted: "All popular audiences engage in varying degrees of semiotic productivity, producing meanings and pleasures that pertain to their social situation out of the products of the culture industries. But fans often turn this semiotic productivity into some form of textual production that can circulate among — and thus help to define — the fan community."<sup>94</sup>

Mass-media imagery allows people who share similar social experiences to simultaneously express their similarity by emotionally investing in a range of cultural referents to which media communications have afforded them shared access. It also enables them to author(ize) their difference by appropriating and improvising with these images to make them relevant to their social experiences and aspirations. These images may serve to present these emergent identities in the public sphere in a manner that may be both aesthetically appealing and politically charged; we are culturally drawn to the image because of its presence in our own lifeworlds and, arguably, are therefore more likely to be sympathetic to the legitimacy of the forms of difference and aspirations expressed in its renarrativization by subaltern groups.

## Doing gender

I want to recall Benjamin's critique of the state's techno-fetishization of technologies of reproduction in the context of contemporary lesbian bodies – bodies working under a signifying regime of simulation and within an economy of repetition. Jean Baudrillard has defined post-mechanical reproduction as the precession of simulacra, the accession of post World War. II, postindustrial culture to a state of hyper-reality . . . The cultural reproduction of lesbian bodies in the age of (post)mechanical reproduction, that is, in an economy of simulacral repetition, has more than ever destroyed any aura of an "original" lesbian identity, while exposing the cultural sites through which lesbianism is appropriated by the political economy of postmodernity. – Cathy Griggers, "Lesbian Bodies in the Age of (Post) Mechanical Reproduction"<sup>95</sup>

Let us turn to specific examples of the cultural politics of authoring social identities through the improvisational use of celebrity images. The phenomenon of projecting new meanings upon celebrity images is no doubt widespread, because, as I suggested earlier, the celebrity is an image that is both fantastic and real and embodies the realization of popular aspirations for recognition and legitimacy. The star persona is especially likely to attract the energies of those in subordinate or marginal groups for whom social recognition and a positively evaluated identity are pressing concerns. Although the recoding of celebrity images is in no way limited to a concern with gender identity, I will focus on practices that question traditional formulations of gender and express desires to construct alternatives.

The social construction of gendered subjectivity is the central premise of an anti-essentialist feminism that understands sexual difference to be "a complex, ever-shifting social practice."<sup>96</sup> If sexual identities are culturally, constructed, then we need to explore how specific gendered subjectivities are produced. Feminist poststructuralism has been characterized by a concern with the formation and reformation of gendered social subjectivities in fields of power and knowledge. Earlier I suggested that legal scholars needed to reconceptualize subjectivity in a manner that avoided both liberalism and essentialism and recognized the discursive constitution of subjectivity. I think this is particularly important for feminist legal scholars, for "one of the initial insights of the women's movement and one of the tenets of feminist discourse – that the personal is political – involves a recognition that there is a direct, albeit complex, relation between social life and subjectivity and between language and consciousness. The relation of experience to discourse is central to the very definition of feminism. The parameters of feminism correspond to certain subjective limits, limitations on possible subjectivities imposed by the constraints of language and sociohistorical structures of meaning. Within this range of constraints, however, women find possibilities for new configurations of subjectivity . . ."<sup>97</sup> Feminist historian Joan Scott suggests that we ask *how* categories of gender identity are constructed.<sup>98</sup> I take this question to contemporary domains of popular culture to consider the possibilities for new con-

endangers the production of alternatively gendered subjectivities; fortunately, it can never fully contain or control the direction of this cultural energy.

The concept of alternative gender identities is borrowed from Judith Butler's pathbreaking work *Gender Trouble*,<sup>100</sup> in which she suggested that a feminist politics required an inquiry into the political construction and regulation of gendered identities, a radical critique of the limitations of existing categories of identity, and an exploration of practices in which alternatively gendered worlds are imagined. The practices I explore here are active gender performatives "that disrupt the categories of the body, sex, gender, and sexuality and occasion their subversive resignification and proliferation beyond the binary frame."<sup>101</sup> Before we delve into these, we might ask why Butler believed such practices to be politically significant. One problem that has plagued feminist theory has been the effort to locate a common identity for a feminist politics. Traditionally presupposing "some existing identity, understood through the category of women, who not only initiates feminist interests and goals within discourse, but constitutes the subject for whom political representation is pursued,"<sup>102</sup> feminist theory has been challenged by poststructuralist theorists suspicious of the category of the subject, and by those (women) who refuse the category (woman) as insufficient to represent the complexity of their political identities.

Theoretically, Butler accepted the Foucauldian claim<sup>103</sup> that systems of power produce the subjects they supposedly served to represent, and they did so through political practices of domination and exclusion.<sup>104</sup> The feminist subject may "be discursively constituted by the very political system that is supposed to facilitate its emancipation"<sup>105</sup> and may, then, be defined, limited, and restrained by the requirements of these structures of power. Empirically, the insistence on a stable subject of feminism "generates multiple refusals to accept the category"<sup>106</sup> and "feminism thus opens itself to charges of gross misrepresentation."<sup>107</sup> Butler engaged in a genealogical critique to expose the foundational categories of sex, gender, and desire as the artifacts of a patriarchal, heterosexist system of power, invested in the maintenance of an exclusively or primarily reproductive sexuality.

Feminist theory long recognized a distinction between sex and gender, asserting "that whatever biological intractability sex appears to have, gender is culturally constructed."<sup>108</sup> Even if we assume the stability of binary sex, it does not follow that genders will accrue to sexed bodies in a one-to-one mimetic relationship (i.e., that "women" will interpret only "female" bodies). The recognition of gender as cultural construct enables the possibility of a multiplicity of genders, and also raises the question of whether sex itself may not be produced through the limitations that restrict the performance of gender to a binary economy. In other words, if gender is a cultural or discursive construction, it is perhaps this very act of production that establishes sex as a "natural" fact, and provides the means by which it could be established differently. For Butler, identity is articulated from within existing cultural forms; regimes of power institute, maintain, and stabilize naturalistic and causal relations of coherence among and between sex, gender, sexual desire, and sexual practice, but such correspondences are neither "natural" nor inevitable.<sup>109</sup> Other identities that express discontinuous relations between biological sex, cultural gender, and the "expression" or "effect" of these in sexual desire and practice are persistent; their

Gender, then, is *performative* (but not a performance), a doing and constituting of the identity it is purported to be: "there is no gender identity beyond the expressions of gender; that identity is performatively constituted by the very 'expressions' that are said to be its results."<sup>111</sup> Such enactments must of necessity draw upon existing cultural forms; sexuality and gender are always constructed within the terms of discourse and power, and thus must engage heterosexual cultural conventions:<sup>112</sup> "If sexuality is culturally constructed within existing power relations, then the postulation of a normative sexuality that is 'before,' 'outside,' or 'beyond' power is a cultural impossibility and a politically impracticable dream, one that postpones the concrete and contemporary task of rethinking subversive possibilities for sexuality and identity within the terms of power itself."<sup>113</sup>

Butler is interested in modes of "doing" gender that evoke but do not constitute simple imitations, reproductions, and consolidations of the terms of power but displace, subvert, and confuse the very constructs they mobilize, "displacing those naturalized and reified notions of gender that support masculine hegemony and heterosexual power."<sup>114</sup> The constructed character of sex and gender provides conditions of possibility for their deconstruction; as ongoing discursive practices, they are open to intervention and resignification. For example, "numerous lesbian and gay discourses understand lesbian and gay culture as embedded in the larger structures of heterosexuality even as they are positioned in subversive or resignificatory relationships to heterosexual cultural configurations."<sup>115</sup> The repetition of heterosexual cultural forms may also be the site of their denaturalization, bringing "into relief the utterly constructed status of the so-called heterosexual original."<sup>116</sup> As we shall see, celebrity images provide important cultural resources for practices of "doing" gender that subvert and reconstruct dominant forms of gender identity. Such practices, which do not choose, in any voluntarist or intentional way, to resist the normalization of sex/gender,<sup>117</sup> nonetheless pose the promise of an alternatively gendered world that displaces heterosexual cultural conventions even as it ironically evokes their forms.

### Respecting Judy

The denaturalization of heterosexual cultural forms is readily apparent in gay camp subculture, a phenomenon I have already alluded to as involving an engagement with media-disseminated celebrity images. Andrew Ross argued that gay camp had a significant influence on changing social definitions of masculinity and femininity from the late 1950s, working "to destabilize, reshape and transform the existing balance of accepted sexual roles and sexual identities."<sup>118</sup> Whatever its ultimate cultural effects, its origins must be understood in the context of gay urban life in the preliberation period. In the 1950s and '60s, a sophisticated gay male subculture evolved around a fascination with classical Hollywood film stars such as Judy Garland, Bette Davis, Mae West, Greta Garbo, and Marlene Dietrich. As Richard Jackson put it, "in an age when their ability to be open about the fact that they were gay was circumscribed, gay men's 'use' of certain star images constituted a kind of 'going public' or 'coming out.'"<sup>119</sup>

found in certain fantasmatic elements of film culture a way of imaginatively communicating its common conquest of everyday oppression. In the gay camp subculture, glamorous images culled straight from Hollywoodiana were appropriated and used to express a different relation to the experience of alienation and exclusion in a world socially polarized by fixed sexual labels. Here, a tailored fantasy, which never 'fits' the real, is worn in order to suggest an imaginary control over circumstances."<sup>121</sup>

This is explicated by Esther Newton, whose ethnographic study of drag queens and urban camp subculture in the late 1960s indicates that camp humor grew out of the incongruities of living gay and male in a patriarchal and heterosexist society during a period when the stigma of being gay was largely accepted and internalized rather than rejected as illegitimate. Drag queens were homosexual men performing the social character of "women" (that is, the signs and symbols of a socially defined American category) by artificially creating the image of glamorous women (often celebrities publicly affirmed as glamorous). Drag queens were often preeminent "camps," engaging the opposition between inner (subjective) self and outer (social) self in an assertive, theatrical, humorous, and stylized manner that defined a creative strategy for dealing with the homosexual situation.<sup>122</sup> As a practice, drag may perform a subtle social critique:

the effect of the drag system is to wrench the sex roles loose from that which supposedly determines them, that is, genital sex. Gay people know that sex-typed behavior can be achieved, contrary to what is popularly believed. They know that the possession of one type of genital equipment by no means guarantees the "naturally" appropriate behavior . . . one of the symbolic statements of drag is to question the "naturalness" of the sex role system *in toto*; if sex role behavior can be achieved by the "wrong" sex, it logically follows that it is in reality also achieved, not inherited, by the "right" sex . . . [it] says that sex-role behavior is an appearance [or performance].<sup>123</sup>

Stars who were most popular in the camp pantheon, and the subject of most frequent impersonation, were "glamorous" in highly mannered ways that indicated an awareness of the artifice in which they were engaged: Bette Davis, Mae West, Greta Garbo, Marlene Dietrich, and, to a lesser extent, Marilyn Monroe. The most popular stars were those who acted in subtle ways "against the grain of the sexually circumscribed stereotypes they were contracted to dramatize."<sup>124</sup> This celebration of the personas of those "whose screen identities could not be fixed by the studio machine,"<sup>125</sup> who often fought for their own roles<sup>126</sup> and subtly mocked the "corny flamboyance of femaleness . . . defetishized the erotic scenario of woman as spectacle."<sup>127</sup> Thus, they explored the relation between artifice and nature in the construction of sexuality and gender long before these issues were recognized as part of the political agenda: "To nonessentialist feminism and the gay camp tradition alike, the significance of particular film stars lies in their challenges to the assumed naturalness of gender roles . . . Each demonstrates how to *perform* a particular representation of womanliness, and the effect of these performances is to demonstrate, in turn, why

Greta Garbo, for example, was (and perhaps still is) regarded in the gay community as "high camp," according to Newton; as Parker Tyler put it, "Garbo 'got in drag' whenever she took some heavy glamour part, whenever she melted in or out of a man's arms, whenever she simply let that heavenly flexed neck . . . bear the weight of her thrown-back head . . . it is all impersonation whether the sex underneath is true or not."<sup>129</sup> Just as the covert homosexual must impersonate a "man" (or that social role as defined by the straight world), Garbo playing a "woman" was in drag, and life was theater. (As a performance, rather than a performative, such activities might simply reinforce and reidealize normative sex/gender systems, however.)

Judy Garland had a special place in gay culture as the symbol gay men used in the pre-Stonewall period to speak to each other about themselves.<sup>130</sup> She also symbolizes an important historical era. The period of camp's heyday is punctuated by Garland's repeated suicide attempts (1950–1969), and the Stonewall riots (which inaugurated a new gay political praxis and a rejection of camp) took place on the evening of Garland's funeral. Moreover, Garland occupies a unique role "expressing camp attitudes" because of her repeated shows of resilience in the face of oppression, her strength in the face of suffering, her determination to carry on with the performance no matter how exhausting and debilitating, and the disparity between her ordinariness in film roles and her extraordinary private life.<sup>131</sup> All of this resonated with gay men living on the edge between a stigmatized gay identity and the daily fragile performance of passing for straight.<sup>132</sup> Her failure at femininity and the hints of gender androgyny in her film performances also served to make the Garland image a compelling vehicle for gay men to use as a means of going public or coming out before less heavily coded assertions of identity became possible.<sup>133</sup>

Camp lost its appeal with the arrival of a militant gay politics that asserted the "natural" quality of homosexuality, revived "masculine" styles, and sought to undermine the "effeminacy" of the stereotypical gay image. As Al La Valley noted in 1985, the movement from negotiating gay sexual desire through strong women stars to a more direct appreciation of male celebrities was coincident with Stonewall: "the natural-man discourse with its strong political and social vision and its sense of a fulfilled and open self, has supplanted both the aesthetic and campy discourses."<sup>134</sup> The finale of Michel Tremblay's acclaimed play *Hosanna*<sup>135</sup> well illustrates the new attitude toward camp. Hosanna, an aging drag queen who identifies with and projects her identity upon Elizabeth Taylor, is humiliated and forced to renounce her attachment to the star and disarm herself of her Taylor impersonation. Stripped naked, he declares "I'm a man," and, at long last, it is implied, allows his lover to embrace his "true" "masculine" self. Camp has, however, enjoyed something of a resurgence in the 1980s, confluent, perhaps, with the influence of Foucault, poststructuralism, and a revival of the credibility of the notion of the socially constructed subject and the historical contingency of sexual identities. Judy Garland has survived the vicissitudes of gay politics, continuing as an icon of struggle into the 1990s. As Douglas Crimp writes of his longtime friend, "quintessential gay activist turned AIDS activist"<sup>136</sup> Vito Russo, "a very funny queer": "Reminiscing about Vito's pleasure in showing movies at home to his friends and about his unashamed worship of Judy Garland,

Lesbian engagement with celebrity images is a less documented and more recent phenomenon (although, as well shall see, "Judy" also has a certain significance here). Just as gays dignified and reclaimed Garland from the clutches of the star-making machinery that victimized her, there is some indication of lesbian identification with and resurrection of sixties female pop stars and "girl groups." In Toronto a band called the Nancy Sinatras reworks her songs and in a Queer Culture skit give Sinatra a lesbian identity and the opportunity to strike back at the patriarchal figures who controlled, contained, and ultimately, they suggest, crushed her in the sixties.<sup>138</sup>

nine women, speaking singly or in groups, tell the story of an evening at the Lower East Side performance space P.S.122 when lesbian comedian Reno was performing. What made the occasion worth talking about was that someone special was in the audience . . . Nancy leaned over to say, "Fran Liebowitz is over there . . ." "We're both, you know, we both kinda have a thing for Fran . . . there was a commotion on the stairway as the audience was leaving . . . and all I see is this giant hair. It's almost like it could have been hair on a stick passing by, this platinum huge thing on this little black spandex." In case we haven't yet figured out what the commotion is about, Zoe adds another little clue: "I turned around, and I saw her breasts, I saw this cleavage, I saw this endowment, and, oh my God, I saw the hair, and it was . . . Dolly Parton."<sup>139</sup>

Crimp proposes that the discussion in the video isn't really about Dolly Parton but about gossip and its significance in the construction of lesbian subjectivity and visibility; "Dolly is the absence around which a representation of lesbianism is constituted."<sup>140</sup> Communities are always constructed around identifications of particular kinds. Although Dolly Parton's rumored lesbianism makes her a more likely choice of object,

the emphasis on signifiers of Dolly's feminine masquerade — huge hair, huge cleavage, tiny spandex miniskirt — by a group of women whose masquerade differs so significantly from hers implicates their identifications and their desire in difference. None of the lesbians visible . . . looks femme like Dolly; compared with her absent image, they are in fact a pretty butch bunch. Identification, is, of course, identification with an other, which means that identity is never identical with itself. This alienation of identity from the self it constructs, which is a constant replay of a primary psychic self-alienation, does not mean simply that any proclamation will be only partial, that it will be exceeded by other *aspects* of identity, but rather that identity is always a relation, never simply a positivity . . . perhaps we can begin to rethink identity politics as a politics of relational identities formed through political identifications that constantly remake those identities.<sup>141</sup>

gossiped about as a fag or a dyke ("So that's what I am") enables identifications to emerge from derogations, confirmed as self-derogations that are then positively nuanced in queer communities through new identifications forged in gossip.<sup>142</sup> Such gossip often involves celebrities; their circulation makes them shared cultural knowledge, and the esteem in which they are generally held, as well as the iconic and semiotic dimensions of their personas, invite such identifications.

### Fictionalized sexualities

There is nothing much deader than a dead motion picture actor, and yet . . . — John Dos Passos, *Midcentury*<sup>143</sup>

. . . more than any time since the fifties, James Dean now represents the coherent icon of our time. He is an American object whose nature is condensed energy, an objectification of attitudes simple and immediate enough to become a brand whose implicit value, like the Coke bottle, is reinforced through repetition . . . In the eighties, Levi Strauss made a series of commercials using James Dean look-alikes . . . one of the commercials features an actress wearing a cowboy hat and Levi jeans, with her boots up in an antique Rolls Royce convertible — imitating the classic James Dean pose in *Giant*. — David Dalton, *James Dean: The Mutant King*<sup>144</sup>

One lesbian challenge to the "truth" of sex, gender, and desire and the restrictions of a binary sexual economy is given voice and celebrated by Sue Golding in her discussion of a performative gender identity she calls lesbian hermaphroditism.<sup>145</sup> This "erotic sensibility," worn, felt, and enacted by a number of lesbians, is a "fictionalized sexuality" that finds its performative significations in mass-media icons that it replicates in ironic, playful, and assertive reconfigurations:<sup>146</sup>

no tits, no cock, oozing with a kind of vulnerable "masculinity," sheathed in a 50's style black-leather motorcycle jacket. Or to put it slightly differently, it's James Dean, with a clit . . . What emerges is the "virile girl," the butch baby, full of attitude but not of scorn, lots of street smarts and a bit of muscle. This new hermaphrodite embodies forever the image of the destructive adolescent dramatically and in one being, teeming with a creative, raw-energy, and beckoning with the possibility of a new era. She's the Peter Pan who reaches puberty and survives — her boyhood and her cunt intact, and ready. Most of all, she's public. But she's public in quite a different sense than meaning simply "out of the closet." For she is the orphan of a people's imaginary; a peculiar offspring of the avant-garde art world, the butch 50's "diesel dyke," and that kind of feminism which knew above all that sexual difference was ever only a *political* and not biological category. She is public in the most profound sense of the term: a composite copy of a mass invention, a replica of our own societal icons,

James Dean with the morbid leather boots, James Dean against the whole boring suburban middle class . . .<sup>147</sup>

As Golding makes clear, this is an erotic sensibility or sexual identity that rejects the truth of anatomical sex and goes well beyond the idea of gender as a cultural construction built upon a naturally sexed body that provides a politically neutral surface for multiple significations. Or, as Butler poses it:

The cultural matrix through which gender identification has become intelligible requires that certain kinds of "identities" cannot "exist" — that is, those in which gender does not follow from sex, and those in which the practices of desire do not "follow" from either sex or gender . . . Indeed, precisely because certain kinds of "gender identities" fail to conform to those norms of cultural intelligibility, they appear only as developmental failures or logical impossibilities from within that domain. Their persistence and proliferation, however, provide critical opportunities to expose the limits and regulatory aims of that domain of intelligibility, and, hence, to open up within the very terms of that matrix of intelligibility rival and subversive matrices of gender disorder.<sup>148</sup>

Demonstrating that gender identity (construed as a causal or natural relationship among sex, gender, sexual practice, and desire) is the effect of a regulatory practice that reproduces medical and juridical hegemonies, this gender rebel without a cause also rejects prior forms of "gender trouble" that accepted and worked within the terms of the natural sex/cultural gender dichotomy. This hermaphroditism bears no relation to a biological hermaphroditism "connected to some formulaic equation of the x and y chromosome, scientifically tested in relation to the size and shape of the breast and clitoris"<sup>149</sup> (except insofar as nineteenth-century science labeled *all* women hermaphroditic whose sexual orientation was nonheterosexual, insufficiently submissive, or masturbatory). Neither, Golding makes it clear, is this a '60s androgyny that built around an absence or sameness of the sexual organs, nor a '70s sexual aesthetic "born out of an acknowledged irony of the ways in which society enforces gender specific clothing."<sup>150</sup> Rather, this gender rebel performs with her body an erotic identity that is an embodied performative: "a fiction as 'real' as the specific body parts of her hermaphroditic predecessor. Only this time, her 'truth,' the clues to her sexual transgression will never be found in the physical attributes of her body *per se*, but only in their 'look,' only in the defiant aesthetic of the erotic masculine shot through with the voluptuousness of the female sexual organs' [and] 'the celebration of female genitalia' that refuses definition as 'a bleeding wound of castrated cock.'" <sup>151</sup> An "erotic mutant," "a fractured playfulness of social icons [like the Dean image, although Elvis Presley offers other possibilities, as k. d. lang might suggest] copied over and over again," <sup>152</sup> the lesbian hermaphrodite enacts a performative signification that parodies, proliferates, and subverts gendered meanings. To what extent this particular performative engenders communities as well as identifications, however, is never made clear.

certain groups of North American science fiction fans who articulate new gender identities and construct communities by literally rewriting their favorite television series characters into narratives that express their fears and aspirations.

### Enterprising women

The science fiction fan world structures itself around a series of conventions; media fans constitute a distinct fan world and *Star Trek* is one of a number of television and movie series around which a fan community has emerged. *Star Trek* fans constitute a social and cultural network that is international in scope. Within this community itself, there are distinct groups of fans that organize around the production, circulation, and consumption of fan magazines.<sup>153</sup> The fanzine community is almost exclusively female and predominantly heterosexual. It involves middleclass women who work as housewives and in nursing, teaching, and clerical and service occupations.<sup>154</sup> Fans exchange letters, distribute newsletters, create artworks, make videotapes, and produce and circulate fanzines that contain original fiction, poetry, and illustrations by women across North America, Britain, and Australia. I will focus here on the *Star Trek* fanzine community, a subculture explored with great sensitivity by Camille Bacon-Smith in her sparkling ethnography *Enterprising Women*.<sup>155</sup> As well as attending conventions, fanzine community members may belong to clubs that distribute newsletters, and see themselves as members of a larger fan community or interest group (250 to 500 participants) and its constituent parts – local circles (of ten to thirty women) who gather at weekend house parties where they talk, watch videos, read fanzines, work out stories, and establish interpretive norms for their reading and writing activities.<sup>156</sup>

Usually produced out of women's homes, fanzines are generally mimeographed or photocopied productions, but some have become more sophisticated with the introduction of computerized desktop publication technology; most issues are more than a hundred pages long.<sup>157</sup> In 1988, it was estimated that there were 300 publications that enabled fans to explore aspects of television series, 120 of them centered on *Star Trek*,<sup>158</sup> a number that no doubt *underestimates* the production of fan literature because it doesn't include literature circulated only in photocopy circuits or the more covertly circulated publications.<sup>159</sup> These publications are sold at cost, relying on subscriptions and often prepayment to finance production and distribution costs; producers are motivated more by the desire to express identity and establish community than any monetary interest and often operate at a loss.<sup>160</sup> Fans are aware of the copyright status of the source products on which they draw and know that neither writers nor publishers may legally profit from their work.

In their writings and drawings, contributors to the fanzine employ images, themes, and characters from a canonized set of mass-culture texts (the *Star Trek* television series episodes, films, and commercially produced novels) to explore their own subordinate status, voice frustration and anger with existing social conditions, envision and construct alternatives, share new understandings, and express utopian aspirations.<sup>161</sup> In so doing, they force media texts to accommodate their interests, to become relevant to

personal identities, and, I will argue, alternative gender identities. These activities create new relationships between those who contribute to fanzines and the larger world, forge a sense of community and extensive social networks, and provide new possibilities for individual expression.<sup>162</sup> Above all, these are shared *social* activities:

Elaine Showalter picks up the metaphor of quilt-making when she describes women writing commercially and her analysis applies equally to fan writers. Using well known communal patterns, the craftsperson creates a work like a quilt top, unique in the way it combines the familiar elements with the distinctly personal statement she makes through her selection of elements . . . Women fan-writers, like the women who wrote gothic romances in the 1850's, value their workmanship in the community, but place little or no emphasis on the concept of "auteur" as solitary creator of an aesthetically unique piece of art. In the fan community, fiction creates the community. Many writers contribute their work out of social obligation, to add to the discourse, to communicate with others. Creativity lies not in how a writer breaks with the tradition of the community's work, but in how she uses the language of the group to shed a brighter light on the truth they work to communicate. Commercial television fits uniquely into this scheme of women's culture . . . television is a readily available source of infinitely combinable but specifically not unique elements. They borrow wholesale from the television sources [to construct fictional "universes" with which they organize their own social worlds].<sup>163</sup>

*Star Trek* fans characterize their entry into fandom as a movement from the social and cultural isolation imposed on them (both as women in patriarchal society occupying low-paid jobs and as seekers of pleasure within media representations) toward more active participation in a community where cultural creativity is encouraged and appreciated.<sup>164</sup> *Star Trek* episodes and characters are revised and reworked and new texts are authored to reclaim female interests, experiences, and feelings from a set of common references that women separated by great distances can share. Issues of gender roles, sexuality, and the tension between family obligations and professional ambition are explored. The *Star Trek* future world holds out the promise of opportunities for nontraditional female pleasures, active involvement in decision making, and a state of sexual equality in which emotional needs and professional responsibilities are taken seriously by men and women alike.<sup>165</sup>

Many early stories featured a young, well-educated woman who was desirable, competent, and moral, simultaneously winning the love and respect of the *Enterprise* crew and ultimately the romantic interest of one of the major male characters. These "Mary Sue" stories, however, produced great discomfort and ambivalence in the community, although most fan writers have written at least one, usually early in their careers.<sup>166</sup> Contemporary fanzine editors now refuse to publish them. Bacon-Smith suggests that in this writing, women are engaged in re-creating adolescent selves that they may now feel shame or pain in recalling:

during which active, even aggressive behavior was acceptable for prepubescent girls who were expected to put away their grubby corduroys and baseballs, their books that chronicled the male fantasies of exploration and adventure, when they entered adolescence. With the teen years girls were expected to turn to make up, curlers, and high heel shoes to attract the attention of boys . . . The teenaged girl had to be not just seductive, but non-threatening; she could not challenge the supremacy of the male or in the classroom.<sup>167</sup>

Many women in fandom couldn't successfully make this transition – they were too tall, too “serious,” wore glasses, were unable or unwilling to mask their intelligence – and “Mary Sue” reconciles the felt anomalies of their identity. Combining the characteristics of active agent with culturally approved traits of beauty, sacrifice, and self-effacement, she wins the love of the hero: “We can easily see that Mary Sue is a fantasy of the perfect woman created within the masculine American culture. Men are served by Mary Sue, who ideally minimizes her own value while applying her skills, and even offering her life, for the continued safety and ease of men. Even in her superiority Mary Sue must efface her talents with giggles and sophomoric humor. She must deny that her solutions to problems are the result of a valid way of thinking, modestly chalking up successes to intuition.”<sup>168</sup> “The writer, become reader, recognizes Mary Sue’s childish behavior as a coping mechanism she has used herself or observed in her friends to mask the threat their own intelligence and competence poses to men.”<sup>169</sup> But once in fandom, women encourage each other to leave such camouflage behind and construct alternative roles: “Women in the fan community have rejected Mary Sue and the cultural role of precocious child, and in many cases have replaced her with the Matriarch in the genre referred to as “Lay” stories, so named because the alter-ego heroine develops a sexual relationship with the hero. Her adventures are an adjunct to his world and her demeanor is one of matriarchal dignity outside of the bedroom and politically correct sensuality within it.”<sup>170</sup>

In “Lay” stories, however, women appear to be more engaged in rewriting the masculine gender than in imagining alternative feminine ones. In particular, the stories teach women how to deal with male sexuality – an uncontrolled or unpredictable internal physical urge coupled with a controlled, emotionless exterior. The female heroine is an intelligent, supportive woman who (often after a period of subjugation and oppression) helps her partner to accept his emotions and recognize that true love and sexual satisfaction grow out of mutual respect and trust. Even these women, however, are being increasingly dismissed as falling into the contemptuous category of Mary Sue, and the lack of strong female characters in most fanzines “signals a continuing dissatisfaction with the options available to women characters and to women in society.”<sup>171</sup>

Stories focusing on women represent very few of the stories fanziners read and many more stories involve male friendships. Two significant genres of fanzine fiction are “Slash” (or homoerotic) and “Hurt/Comfort” stories, both of which center on relationships between the male characters in the series. In all of these stories, the links

empathy, knitting them into close family and community relationships as well as intimate caring friendships that nurture and support them in their adventures.<sup>172</sup>

In “Slash” fiction, women write erotic stories and draw illustrations depicting a love relationship between Kirk and Spock (erotic fiction is also written about the *Starky and Hutch*, *Blake’s 7*, *The Man From U.N.C.L.E.*, *Miami Vice*, and *The Professionals* characters). Fearing social ridicule, loss of employment, and potential legal repercussions, fanzine writers often write such stories under pseudonyms, although within the community most of the authors’ identities are known. Some of this literature circulates only through complex subterranean photocopying networks in order to evade exposure outside of the group.<sup>173</sup> So well-hidden is the circuit that only the most experienced readers and writers have access to it. Within this realm of secrecy and risk women explore and express personally painful and significant themes: “Homoerotic fiction addresses some of the most risk-laden questions in the community. It protects the questioner from direct exposure of some of her deeper anxieties, but conserves the risk with a level of metaphor that offers the greatest distance but which itself poses the greatest danger from within and without the community.”<sup>174</sup> Some fans oppose these stories on religious or moral grounds, others find them “untrue” to the source or canon, some find them too explicit, and others worry about exposing the original actors to ridicule. Both outside and within the community, writing “Slash” fiction is risky business. Similarly, in the relationships depicted, “romantic love is fraught with risk – of trust broken, of exposure or even loss of the self, of society’s disapproval, or of misinterpretation of the intent of the partner – and the prize for risking all is perfect physical and psychic fulfillment,”<sup>175</sup> represented by the mind meld or telepathic union.

Bacon-Smith describes a number of tasks performed by the homoerotic romance in the communication of personal needs and experiences and rejects the idea that the male characters are surrogate women, an idea popularized by Joanna Russ when she argued that because of the overriding importance of touch, to the slow thoroughness and sensitization of the whole body, the sexuality expressed is female.<sup>176</sup> For Russ, “the penis is a sign, literally, behind which the woman can express femaleness free of male domination.”<sup>177</sup> Bacon-Smith, however, asserts that these women are writing consciously and deliberately about men,<sup>178</sup> exploring who men are and reconstructing them into people with whom it might be more comfortable to share life, love, and sexual relationships.<sup>179</sup> Certainly, “sexual experiences with men, as they are presently enculturated, can seem intimidating to heterosexual women,” and a number of fans “openly express a need for more satisfying sexual relationships.”<sup>180</sup> These women also want to explore relationships between powerful equals while tearing “down the very institution of hierarchical power that constructs men as individuals” – reconstructing power itself as an integrated union of mutuality with full and open communication.<sup>181</sup>

In both “Slash” fiction and “Hurt/Comfort” stories,<sup>182</sup> as well as the friendship stories described earlier, the “male” characters are given a combination of gender traits: Kirk’s “feminine” traits are matched to Spock’s “masculine” ones and vice versa. Each shares aspects of traditional gender roles. In this way, new genders are inscribed on “male” bodies, and new desires, experiences, feelings, and practices may therefore proliferate.<sup>183</sup> Men’s suffering, rage, and need for comfort can thus be acknowledged



As well as being alternatively engendered, the male characters are freshly embodied; their bodies are inscribed with ranges of sensitivity, zones of erogeneity, and a heightened receptivity to tactile pleasures and physical comfort: "women in the fan community prefer images that reclaim the sensuality of the whole body . . . hands are perceived as sensual, and faces as vulnerable, hands touching a face in an environment of trust symbolize sensuality as protective . . . kisses to the neck, the wrists, the inner arm elicit as strong a reaction as mouth to mouth osculation; women viewers seem to value the rediscovery of some of these more neglected erogenous zones."<sup>185</sup> Their heroes' pain, decontextualized in the mass media, is reunited by fanzine writers with both physical and psychological suffering. The male characters, then, are reconstructed as fully emotional and sentient beings. Perhaps the fanzine writers perform the most thorough practices of "doing gender" that we have examined. Constructing new connections among novel (male?) bodies, new masculinities, erotic desires, and sexual practices, they simultaneously situate these newly engendered creatures in personal and social relationships, empowering themselves and their communities as they do so.

In writing about gender and fanzines as an academic engaged in the production of an authorial work, however, one's authority and one's work are themselves open to the subversion of other authorial energies. Postmodernism is a condition in which genres blur, popular culture and high culture dance seductively, academic commentators can become celebrities, and academic critique can itself become the stuff of parody and fanzine fantasy. One fanzine has turned Judith Butler's own persona into a celebrity image available for the fantastic fabulations of its apparently lesbian graduate student readership. Simply titled *Judy*, the first issue proudly proclaims that all of its texts are anticopyright: "Copy this whole thing if you want; send it to your friends, that's cool – saves me money. Isn't this whole copyright thing out of hand? Go ahead, copy it at Kinko's."<sup>186</sup>

The fanzine features two pictures of Judy Garland with the apology that "it's really hard to find pictures of Judith Butler so here is another Judy."<sup>187</sup> It also features ironic and lusty commentary on several other theorists of gender and sexuality. Declaring itself "a non-academic, sex-oriented, wish-fulfillment magazine,"<sup>188</sup> it includes, in true *Cosmopolitan*<sup>®</sup> fashion, a special quiz to determine whether you're "a theory-fetishizing biscuithead" or "an illiterate pre-theory peon." This author finds herself guilty, as charged.

### Engendering and endangering alternative identities

. . . the very conceptualization of "sex" and "gender" underlying legal categorization creates difficulties that cannot be resolved through resort to static, binary, essentialized approaches. Instead . . . it will be necessary to challenge the system of classification itself in fundamental ways to take account of the ambiguities of homosexual and transsexual identity . . . these identities [are] themselves a challenge to the stable system of identity formulation that lies at the heart of U.S. legal discourse – a challenge that

These subcultural or alter/native practices at first seem distant, if not divorced, from the legal regime of publicity rights, but they do occupy cultural spaces in the social fabric intersected and influenced by relations of law, commodification, and cultural form. We need to think about law not simply as a set of prohibitions, but as an authoritative and pervasive discourse that defines, shapes, and is imbricated within the everyday life of cultural practice. The risks these people run under legal regimes of prohibition are certainly significant ones. So are the ethical risks of writing about their practices. Bacon-Smith, Jenkins, and Penley have been very careful not to reveal details about or examples of particular fanzine writing, filming, and drawing practices or the identities of practitioners. I respect their circumspection and similarly will not, as a matter of ethical principle, delineate the precise ways in which fanzine writers or those in gay and lesbian subcultures could be held to violate either publicity rights or the copyright and trademark rights held by the commercial producers of the media products on which they draw. To do so would be to provide the legal resources with which to prosecute them, or with which they might once again be threatened with the prospect of legal action.<sup>190</sup>

It is important, however, to recognize that juridical power is productive as well as prohibitive; the law, as discursive cultural practice, is generative of categories, distinctions, and valuations – of knowledges, spaces, identities, and subjectivities.<sup>191</sup> As Lisa Bower suggests, law simultaneously limits the aspirations and claims of individuals and groups and provides resources for the marginalized to refigure identities; people recreate law in their everyday lives as they draw upon its norms and forms in both conventional and transformative practices.<sup>192</sup> Bower goes beyond such claims, however, to add that law also plays a constitutive role in creating cultural spaces for politicization and community formation.

The law of publicity rights functions in just such a fashion – or at least these are some of its unanticipated consequences. By prohibiting public reproductions of the celebrity image for another's advantage, it promotes the mass circulation of celebrity signifiers by ensuring that they will have a market value; if the image were freely available for mass reproduction, there would, presumably, be less of an incentive to engage in the investments necessary to disseminate it through media channels (the same argument might be made for copyright and trademark). Ironically, then, the law creates the cultural spaces of postmodernism in which mass-media images are authorized and become available for the authorial practices of others. It produces fixed, stable identities authored by the celebrity subject, but simultaneously creates the possibility of places of transgression in which the signifier's fixity and the celebrity's authority may be contested and resisted. Authorized and unauthorized identities are both, therefore, engendered in relation to this juridical regime. The law, however, lends its authority only to those meanings that the celebrity wishes to appropriate, attributing these to his or her own efforts, and denies that legitimate cultural value may be produced elsewhere.

Power may be in a productive relation with forms of resistance, but it does not determine the content of the practices that transgress its strictures. Through its prohibitions, the law may produce the means by which unauthorized identities are both engendered and endangered, but these practices are not simply effects or con-

Performative enactments of erotic identity are unlikely to be direct or univocal statements of opposition to any singular structure of power; more often they effect diverse forms of cultural "resistance" to multiple sites and forms of power. Through irony, mockery, parody, pastiche, and even alternative modes of appreciation, activities of creative appropriation enable fans to comment indirectly not only on gender ideology, but on law, culture, authorship, authority, and the commodity form.

Such commentary is especially cogent in the fanzine context. Fans don't see *Star Trek* as something that can be reread but as something that must be rewritten in order to make it more responsive to female needs and a better producer of personal meanings and pleasures.<sup>193</sup> According to Henry Jenkins, fans expressly reject the idea that the *Star Trek* texts or the Kirk/Spock characters are a privileged form of exclusive property, but at the same time they have developed a complex moral economy<sup>194</sup> in which they legitimize their unorthodox appropriation of the texts, characters, and personas drawn from the television series. Despite the potential for legal prosecution, they see themselves as loyalists, fulfilling the inherent promise and potential of the series – a potential unrealized or betrayed by those who "own" the intellectual property rights in it. Fans respect the original texts, and regularly police each other for abuses of interpretive license, but they also see themselves as the legitimate guardians of these materials, which have too often been manhandled by the producers and their licensees for easy profits.<sup>195</sup> As one fan writes: "I think we have made *Star Trek* uniquely our own, so we have all the right in the world . . . to try to change it for the better when the gang at Paramount starts worshipping the almighty dollar as they are wont to do."<sup>196</sup> Fan writers exercise an ethic of care with regard to the characters – a care they fear that more commercially motivated parties frequently do not share.

In *Enterprising Women*, Bacon-Smith also illuminates the complexities of the attitudes fanziners hold with regard to the legal status of the source product. On the one hand, they are aware that the characters, plots, films, television episodes, videos, logos, and dialogues with which they work are the properties of others. On the other hand, they take quite seriously the philosophy of IDIC (Infinite Diversity in Infinite Combination), propagated by Gene Roddenberry, the originator of *Star Trek*. They respect the legal prohibition against selling their writings, videotapes, and artworks for profit, but the possibility that many of their activities might still be enjoined on copyright, trademark, or publicity rights grounds does not appear to operate as a serious deterrent. These women know they assume risks of legal prosecution, but legal risks are only a very few and possibly the most distant of the risks they face; indeed, Bacon-Smith implies that the assumption, management, and shared exploration of risk is the central ethos of the community and constitutive of the construction and reconstruction of culture in which they engage.

Bacon-Smith also discusses the moral economy in which fans operate (although she does not expressly employ the term). She suggests that fans have a respect for the characters and relationships as they are presented in the source product devised by the commercial producers, which serves as "the source of infinitely combinable but specifically not unique elements. A fan does not change the status of the

Consonant with the science fiction assumption that any change from the known history splits off a timeline, or universe ongoing simultaneous to all others, writers who do permanently change the status of a character or characters are said to create a new universe . . . [creating] their own universes, with characters and relationships that exist only in the stories their creators write."<sup>197</sup>

There are aspects of the original story and episodes that fans reject, however. For example, fans insist upon seeing characters grow and evolve and engage in relationships that change them as people. They reject linear narratives, aperspectivity, and closure. They don't see either the original episodes or their own stories as a self-sufficient work but as an expression of a continuing experience. At the end of the story characters go on living and changing; later in their lives they may recall the events of the original story differently, or perhaps the events, told from the perspective of another character, tell a different story. There is, then, no final or authoritative account of an event or experience; stories can and must be rewritten according to new perspectives: "The linear story with a single narrative perspective per scene is so alien to this group that they use their fiction to 'correct' the error of linearity in the source products. The fan writers see life as a sea of potentialities, many of which can be realized simultaneously, many of which spread out like ripples across the lives of others, and all of which must somehow be encompassed in the literature if it is to express any kind of truth . . . a worldview that sees every interaction as a multi-layered experience out of which reality is negotiated."<sup>198</sup>

Fans clearly engage in moral deliberation and dialogue when considering the legitimacy of particular activities. These amateur writers and the professional science fiction writers on whose works they have drawn have had to consider the vexed question of what distinguishes the activities of "a community in dialogue" from simple copyright infringement: "Many writers who express concern about the loss of autonomous control of their creation actually embrace the idea of sharing their worlds with their friends – we are not speaking of two groups of professional writers at odds, but of battles being waged within the heart and mind of each individual."<sup>199</sup>

Moreover, the fan community has a relationship with the stars of the various series from which they borrow. Although I know of no publicity rights suits, it is clear that celebrities regard these fan activities with some ambivalence. Stars are often asked to appear at conventions and many of them feel a sense of obligation to the fans for their support. Often they become aware of the fanzines and feel flattered by the attention. Robin Curtis (Saavik in the two *Star Trek* movies) said: "I really had no idea that this all existed . . . I don't know that I'll ever stop being amazed . . . really, the care and the time which people devote to something . . . It is really quite an honor to be the receiver of that kind of appreciation . . . [but] I haven't read it, to be honest with you."<sup>200</sup>

Other celebrities *have* read the literature and responses seem mixed. Constance Penley notes that Shatner and Nimoy have commented appreciatively on fanzines generally and found the homoerotic texts surprising but not inconceivable given what they now see as the "campiness" of some of the old episodes.<sup>201</sup> Other stars have viewed these texts less benignly. One actor in *Blake's 7* encouraged fanzine writing,

reputations of stars they regarded with respect and affection; they insisted upon keeping the product underground to protect their heroes.<sup>203</sup>

Relations with the corporate producers of their source texts are more complex. Although some program producers and network executives celebrate the ongoing involvement of fans in the production of derivative texts, others see such activities as competitive and as threatening to their goodwill. In extreme cases, producers may try to bring fan activities under control:

Lucasfilm initially sought to control *Star Wars* fan publications, seeing them as rivals to their officially sponsored and corporately run fan organization. Lucas later threatened to prosecute editors who published works that violated the "family values" associated with the original films. A letter circulated by Maureen Garrett (1981), director of the official *Star Wars* fan club, summarized the corporation's position: "Lucasfilm Ltd. does own all rights to the *Star Wars* characters and we are going to insist upon no pornography. This may mean no fanzines if that measure is necessary to stop the few from darkening the reputation our company is so proud of . . . You don't own these characters and can't *publish* anything about them without permission."<sup>204</sup>

Jenkins explores the ways in which the fan writing community responded to this threat, regarding it as "unwarranted interference in their own creative activity"<sup>205</sup> that attempted to impose male definitions of correct sexuality and prohibit works that explicitly challenged patriarchal assumptions. "Several fanzine editors continued to distribute adult-oriented *Star Wars* stories through an underground network of 'special friends,' even though such works were no longer publicly advertised or sold."<sup>206</sup>

Although fanzines, gay camps, and lesbian hermaphrodites are not necessarily engaged in practices directly opposing the law (however often they may unintentionally violate it), the law of publicity rights informs their performative activities. The knowledge that the cultural icons with which they express themselves do not belong to them, however affectionately they are adopted, is constitutive of these practices. The relationship of fans to the commodification of the texts and images whose meanings they simultaneously interpret and create may be one of admiration or antagonism, irony or parody, fear or nurturing, or even complicitous critique.<sup>207</sup> In any case, the law generates spaces for a proliferation of politics as well as identities, ethics as well as expressions, as people forge their own ethical distinctions between expression and theft, collectively negotiating community norms.

Legal forms and norms are socially engaged – embraced and rejected – in practices that do not seek legal recognition but do use legal narratives and forms in counterhegemonic activity. Such practices may coalesce, forging historically contingent (and continually emergent) identities and communities. It is in such activities that "culture" is made and "politics" practiced. Here, I am drawing upon an emergent conceptualization of politics that rejects the state as the singular site for identity claims and community coalition and transformation, and incorporates "the everyday enact-

If we recognize the essence of democratic politics to be a dialogic process whereby social identities are actively articulated from contingent cultural or discursive resources, we must be sensitive to the critical role that commodified media texts – mass culture – play in shaping politically salient forms of difference. The subjects produced in popular cultural practice populate the social world with utopian and aspirational articulations. They pose the promise of an "alternatively gendered world" that displaces heterosexist cultural conventions even as it ironically evokes their forms. Those who control intellectual properties must always cope with the presence of others in the cultural spaces they attempt to colonize.

## Notes

- 1 A character in N. Grieg and D. Griffiths, *As Time Goes By* (1981), cited in R. Dyer, *Heavenly Bodies: Film Stars and Society* 141 (1986).
- 2 A. McRobbie, *Postmodernism and Popular Culture* 70 (1994).
- 3 A. Doty, *Making Things Perfectly Queer: Interpreting Mass Culture* xviii–xix (1993).
- 4 M. Madow, "Private Ownership of Public Image: Popular Culture and Publicity Rights," 81 *California Law Review* 127, 173, n.229 (1993).
- 5 Throughout this chapter, I will use the term *celebrity image* to designate not only or exclusively a celebrity's visual likeness but rather all elements of the complex constellation of visual, verbal, and aural signs that circulate in society and constitute the celebrity's recognition value. The term *persona* will also refer to this configuration of significations.
- 6 I use the umbrella term *publicity rights* to encompass the tort of appropriation of personality as it has developed at common law, the proprietary right of publicity that has developed in U.S. law, and rights to prevent the appropriation of (*inter alia*) names and likenesses that have been enacted in provincial and state statutes as well as federal trademark legislation.
- 7 D. Vaver, "What's Mine Is Not Yours: Commercial Appropriation of Personality under the Privacy Acts of B.C., Manitoba and Saskatchewan," 15 *University of British Columbia Law Review* 241 (1981).
- 8 See American Law Institute, *Restatement (Second) of Torts* § 652A–652I (1977). Also, American Law Institute, *Restatement of the Law (Third) Unfair Competition* (1995) S. 46–49. As Christopher Pesce points out, the right of publicity is "a hybrid of privacy's tort of appropriation, the law of unfair competition, and the law of property" (C. Pesce, "The Likeness Monster: Should the Right of Publicity Protect Against Imitation?," 65 *New York University Law Review* 782, 792 [1990]).
- 9 See F.M. Weiler, "The Right of Publicity Gone Wrong: A Case for Privileged Appropriation of Identity," 13 *Cardozo Arts & Entertainment Law Journal* 223, 224–225, n. 14–17 (1994), for a list of state name-and-likeness statutes, a list of those states that have codified the right of publicity and recognize an independent common law right of publicity, a list of states that recognize the right only at common law, and the varying periods of protection afforded to the right in different American jurisdictions.

- Communications and Entertainment Law Journal* 143 (1987). See also F. Houdek, "The Right of Publicity: A Comprehensive Bibliography of Law-Related Material," 7 *Hastings Communications and Entertainment Law Journal* 505 (1985), and F. Houdek, "Researching the Right of Publicity: A Revised and Comprehensive Bibliography of Law Related Materials," 16 *Hastings Communications and Entertainment Law Journal* 385 (1994). Unfortunately, the latter author's summaries of the materials he includes are both inadequate and misleading.
- 12 Hirsch v. S. C. Johnson & Son, 90 Wis.2d 379, 280 N.W.2d 129 (1979) (athlete has right of publicity in his nickname "Crazylegs" and could sustain action against shaving gel manufacturer).
  - 13 Cepeda v. Swift & Co., 291 F.Supp. 242 (E.D. Mo. 1968), aff'd, 415 F.2d 1205 (8th Cir. 1969); U.S. Life Insurance Co. v. Hamilton, 238 S.W.2d 289 (Tex. Civ. App. 1951).
  - 14 Athans v. Canadian Adventure Camps Ltd., 34 C.P.R.(2d) 126 (Ontario High Court 1977).
  - 15 Lugosi v. Universal Pictures, 160 Cal. Rptr. 323.; Price v. Worldvision Enters., Inc., 455 F.Supp. 252 (S.D.N.Y. 1978) aff'd, 603 F.2d 214 (2d Cir. 1979); Price v. Hal Roach Studios, Inc., 400 F.Supp. 836 (S.D.N.Y. 1975).
  - 16 Midler v. Ford Motor Co., 849 F.2d 460 (9th Cir. 1988) (singer awarded damages for television commercial's use of a "sound-alike" to imitate her voice and singing style).
  - 17 In Lahr v. Adell Chemical Co., the court noted that Lahr had achieved stardom due to his "style of vocal delivery which, by reason of its distinctive and original combination of pitch, inflection, and comic sounds has caused him to become widely known and readily recognized." A television commercial using a similar voice was "stealing the thunder" of the performer (300 F.2d 256 (1st Cir. 1962) at 257).
  - 18 Joseph v. Daniels, 11 C.P.R.(3d) 544 (B.C.S.C. 1986).
  - 19 Carson v. Here's Johnny Portable Toilets, Inc., 698 F.2d 831 (6th Cir. 1983) (portable toilet manufacturer violated Johnny Carson's right of publicity by using phrase "Here's Johnny" with the slogan "The World's Foremost Comedian"); Ali v. Playgirl, 447 F.Supp. 723, 3 *Media Law Reporter* (BNA) 2540, 206 U.S.P.Q. (BNA) 1021 (S.D.N.Y. 1978) (illustration depicting nude black male with caption "The Greatest" violated plaintiff's right of publicity because the phrase was known to be a common reference to the plaintiff).
  - 20 Motschenbacher v. R. J. Reynolds Tobacco Co., 498 F.2d 821 (9th Cir. 1974) (plaintiff racing car driver had identifiable attributes appropriated because unique and distinctive decorations on his car were recognizable in cigarette commercial).
  - 21 Lahr v. Adell Chemical Co., 300 F.2d 256 (1st Cir. 1962) (comic delivery style); Booth v. Colgate Palmolive Co., 362 F.Supp. 343 (S.D.N.Y. 1975) (imitation of Shirley Booth's voice and style of portraying television character Hazel).
  - 22 Lombardo v. Doyle, Dane & Bernbach, Inc., 58 A.D. 2d 620, 396 N.Y.S. 2d 661 (N.Y. App. Div. 1977).
  - 23 H. L. Hetherington, "Direct Commercial Exploitation of Identity: A New Age for the Right of Publicity," 17 *Columbia-VLA Journal of Law & the Arts* 1, 43 (1992).
  - 24 See, e.g., J. R. Braatz, "White v. Samsung Electronics America: The Ninth Circuit Turns a New Leaf in California Right of Publicity Law," 15 *Entertainment Law* 161

- Rights in State and Federal Courts," 79 *Minnesota Law Review* 485 (1994); R. C. Dreyfuss, "We are Symbols and Inhabit Symbols, So Why Should We Be Paying Rent? Deconstructing the Lanham Act and Rights of Publicity," 20 *Columbia-VLA Journal of Law and the Arts* 123 (1996); P. B. Frank, Note: "White v. Samsung Electronics America Inc.: The Right of Publicity Spins Its Wheels," 55 *Ohio State Law Journal* 1115 (1994); W.M. Heberer, Comment: "The Overprotection of Celebrity: A Comment on White v. Samsung Electronics America, Inc." 22 *Hofstra Law Review* 279 (1994); Hetherington, *supra* note 23; J. F. Hyland and T. C. Lindquist III, "White v. Samsung Electronics America, Inc.: The Wheels of Justice Take an Unfortunate Turn," 23 *Golden Gate University Law Review* 299 (1993); D. R. Kelly and M. E. Hartmann, "Parody (of Celebrities, in Advertising), Parity (between Advertising and Other Types of Commercial Speech), and (the Property Right of) Publicity," 17 *Hastings Communications and Entertainment Law Journal* 633 (1995); Madow, *supra* note 4; G. A. Pemberton, "The Parodist's Claim to Fame: A Parody Exception to the Right of Publicity," 27 *University of California-Davis Law Review* 97 (1993); S. M. Perez, "Confronting Biased Treatment of Trademark Parody under the Lanham Act," 44 *Emory Law Journal* 1451 (1995); T. F. Simon, "Right of Publicity Reified: Fame as Business Asset," 30 *New York Law School Law Review* 699 (1985); L. J. Stack, "White v. Samsung Electronics America, Inc.'s Expansion of the Right of Publicity: Enriching Celebrities at the Expense of Free Speech," 89 *Northwestern University Law Review* 1189 (1995); Weiler, *supra* note 9.
- Most of these articles review the history of the doctrine and make suggestions for limiting the right of publicity and recognizing First Amendment concerns; I find many of the recommendations plausible and potentially effective, but my interest here does not center on law reform, but on the celebrity as a medium for the creation of alter/native identities. The slash here is meant to indicate that in the creation of such new identities, that which is "native" is altered. I prefer this to the term *subaltern*, for it suggests the potentially transformative effects that the margins may have upon the center and dominant understandings of what is natural or native to human being.
- 25 Canadian and British courts have not gone so far as to recognize the right as proprietary and continue to deal with it as a tort. This has not prevented celebrities from entering into licensing contracts and conveying merchandising rights, however.
  - 26 American courts are divided on the issue of whether a right of publicity survives the individual's death and in what circumstances. Some courts have refused recovery for the relatives or assignees of a decedent where the name or likeness has been appropriated for commercial purposes on the grounds that an individual's personal right of privacy does not survive his or her death. Others have allowed recovery for invasion of privacy in similar circumstances. Decisions predicated upon rights of publicity range from those that hold that the right survives death in all circumstances, those that require the celebrity to have engaged in some form of commercial exploitation during his or her life before the right will be descendible, and those that unconditionally oppose descendibility in any circumstances. The tendency, however, has been toward greater recognition of the descendibility of publicity rights, and state legislatures have also inclined toward statutory recognition of the descendibility of such rights. The issue has yet to be

- 27 See discussion and cases cited in J. Gross, "The Right of Publicity Revisited: Reconciling Fame, Fortune, and Constitutional Rights," 62 *Boston University Law Review* 965 (1982), and R. T. E. Coyne, "Toward a Modified Fair Use Defense in Right of Publicity Cases," 29 *William & Mary Law Review* 781 (1988). In the case of celebrity images employed in commercial advertising, there are conflicting lines of authority. Historically, U.S. law accorded commercial advertising little or no value when it conflicted with an individual's privacy or publicity rights. Before 1976, this was consistent with the low constitutional value placed on commercial speech. As T. F. Haas, "Storehouse of Starlight: The First Amendment Privilege to Use Names and Likenesses in Commercial Advertising," 19 *University of California Law Review* 539 (1986) argues, however, the extension of limited First Amendment protection to commercial speech suggests that many of the cases involving appropriations of name and likeness in commercial advertising would now have to be decided differently.
- 28 D. Sudjic, *Cult Heroes: How to Be Famous for More than Fifteen Minutes* (1989). See also R. Schickel, *Intimate Strangers: The Culture of Celebrity, Where We Came In* (1985).
- 29 Sudjic, *supra* note 28, at 10.
- 30 *Ibid.*, at 15.
- 31 *Ibid.*, at 19.
- 32 *Ibid.*, at 83.
- 33 H. Gordon, "Right of Property in Name, Likeness, Personality and History," 55 *Northwestern University Law Review* 553, 555-557 (1960); Comment, "The Right of Publicity: Premature Burial for California Property Rights in the Wake of Lugosi," 12 *Pacific Law Journal* 987, 995-997 (1981).
- 34 D. Lange, "Recognizing the Public Domain," 44(4) *Law and Contemporary Problems* 147 (1981).
- 35 W. Gordon, "On Owning Information: Intellectual Property and the Restitutory Impulse," 78 *Virginia Law Review* 149 (1992).
- 36 See M. Radin, "Market Inalienability," 100 *Harvard Law Review* 1859 (1987); M. Radin, *Contested Commodities* (1996); and E. Anderson, "Is Women's Labor a Commodity?," 19 *Philosophy and Public Affairs* 71 (1990), for philosophical discussions of the factors we need to weigh in determining if commodification is an appropriate mode of valuation.
- 37 Lange, *supra* note 34, cites S. J. Hoffman, "Limitations on the Right of Publicity," 28 *Bulletin of the Copyright Society* 111, 116-133 (1980), as asking a similar question. See also A. M. Weisman, "Publicity as an Aspect of Privacy and Personal Autonomy," 55 *Southern California Law Review* 727, 729-751 (1982).
- 38 J. Locke, *Second Treatise of Government*, ch. 5 (1978), [1690].
- 39 E. C. Hettinger, "Justifying Intellectual Property," 18 *Philosophy and Public Affairs* 31, 37 (1989).
- 40 For example, "the celebrity has invested time, money, and effort to develop a high level of public recognition. Therefore, the unauthorized use of the celebrity's persona . . . deprives the celebrity of the economic gain he or she deserves, unjustly enriches the user and reduces the celebrity's ability to control his or her public image" (A. Cifelli and W. McMurray, "The Right of Publicity - A Trademark Model for Its Temporal Scope," 66 *Journal of the Patent Office Society* 455, 462

- 42 Dyer, *supra* note 1; and R. Dyer, *Stars* (1979).
- 43 D. MacCannell, "Marilyn Monroe Was Not a Man," 17 *Diacritics* 114, 115 (1987).
- 44 Hettinger, *supra* note 39, at 38.
- 45 Lange, *supra* note 34, at 162.
- 46 R. R. Kwall, "The Right of Publicity vs. the First Amendment: A Property and Liability Rule Analysis," 70 *Indiana Law Journal* 47 (1994). Professor Kwall's support of an "authorship rationale" for publicity rights is also shown in her belief that American copyright law in practice is inordinately concerned with pecuniary as opposed to personal interests and is to that extent incompatible with publicity rights protection. She suggests that *copyright theory*, to the extent that it acknowledges and protects an individual's authorial presence in his or her work and recognizes the personal interests of creators in their works, is compatible with publicity rights: "If copyrighted property can be said to represent the embodiment of a creator's heart, mind, and soul, this is even more true for attributes such as an individual's name and likeness that are protected by the right of publicity" (*ibid.*, at 59-60). The extent to which one's labor is embedded in one's name or likeness is questionable (except for some obvious examples), and a right to privacy, protection against defamation, and consumer protection laws would cover most objectionable usages of these attributes. Unfortunately, other attributes protected by rights of publicity go well beyond those that are most "personal" to include all attributes that are *publicly* recognized and hence, by virtue of mass exposure, the *least* intimate aspects of one's persona. The right, after all, does not protect one from alienation inasmuch as it fosters one's ability to engage in self-commodification.
- 47 523 F.Supp. 485 (S.D.N.Y. 1981), 689 F.2d 317 (2d Cir. 1982).
- 48 *Ibid.*, 523 F.Supp. 485, 492-494.
- 49 See T. Podlesney, "Blondes," in *The Hysterical Male: New Feminist Theory* 82 (A. Kroker and M. Kroker, eds., 1991), who argues that "the blonde" is the perfect post-WWII product and the ultimate sign of U.S. global supremacy, white patriarchy, and the triumph of American mass media and mass production. Madonna, she suggests, is the blondest blonde ever, "with forty years of the blonde phenomenon informing her every move." As Podlesney notes, Madonna has frequently been "heralded for mis(re)appropriating the iconography of patriarchy" (*ibid.*, at 84). On January 16, 1991, the *Washington Post* reported that Florida State University professor Chip Wells was writing a doctoral dissertation on Madonna as a "postmodern social construct." For a recent academic study, see S. P. Baty, *American Monroe: The Making of a Body Politic* (1995).
- 50 R. Goldstein, "We So Horny: Sado Studs and Super Sluts: America's New Sex 'Tude," *Village Voice* 16 October 1990, at 35, 36.
- 51 Lange, *supra* note 34, at 163.
- 52 *Ibid.*, at 165.
- 53 I have no idea whether Jarmusch sought the consent of the Presley estate or the corporate owners of his publicity rights and, if so, what royalties he agreed to pay. Nor do I know whether the Presley estate ever sought to enjoin the film's production or to demand royalties. The very possibility of such an injunction and its potential consequences have. Celebrities or their estates are not obliged to

the works in which these are deployed, and may withhold consent on any pretext. In this hypothetical scenario, *Mystery Train* might be privileged under the First Amendment, but then again, it might not, given the difficulties contemporary courts face in distinguishing between fact and fiction in consumer markets.

- 54 A party launching "Elvis Presley" cologne was held at the New York club Hot Rod in early October of 1990 (reported by M. Musto, "La Dolce Musto," *Village Voice* 26 October 1990, at 44). Wine is now marketed as "Marilyn Merlot," with the actress's likeness on the label (her image also adorns lingerie), and "Rebel" cologne is marketed with an image of James Dean's face, which, in Canada at least, is registered as a trademark. I am grateful to lawyers at Gowling & Henderson in Toronto for bringing this to my attention.
- 55 *Memphis Development Foundation v. Factors Etc., Inc.*, 441 F.Supp. 1323 (W.D. Tenn. 1977). On appeal, the Sixth Circuit reversed and remanded, holding that the right of publicity was not descendible under Tennessee law 616 F.2d 956 (6th Cir. 1980). The Tennessee legislature responded by statutorily recognizing a descendible exclusive property right in an individual's name or likeness, terminable only upon two years of commercial nonuse (Tennessee Code Annotated [1988] § 47-25-1101-1108). The Tennessee Court of Appeals has since determined that Presley's right of publicity survived his death in 1977 and expressly rejected the Sixth Circuit's opinion on Tennessee law (*Elvis Presley International Memorial Foundation v. Crowell* 733 S.W.2d 89 [Tenn. Ct. App. 1987]). The Sixth Circuit then declared itself bound by the Court of Appeal's ruling in *Elvis Presley Enterprises v. Elvisly Yours* 817 F.2d 104 (6th Cir. 1987). For a discussion of some of the alternative moral economies in which Elvis figures in the American Midwest, see L. Spigel, "Communicating with the Dead: Elvis as Medium," 23 *Camera Obscura* 177 (1990).
- 56 Hettinger, *supra* note 39, at 39-40.
- 57 W. Gordon, "A Property Right in Self-Expression: Equality and Individualism in the Law of Intellectual Property," 102 *Yale Law Journal* 1533 (1993).
- 58 Hettinger, *supra* note 39, at 40.
- 59 Commentators seem eager to extend publicity rights using analogies to copyright, patent, and trademark, but they rarely carry such analogies through to the point of imposing either temporal limits on the right or permitting a range of defenses, exemptions, and opportunities for cancellation equal to those afforded the public in these other areas of law. In both copyright law and patent law, the grant of a property right is part of a socially beneficial bargain between the creator of the work and the public. Because we deem progress in the arts and sciences socially beneficial, we wish to encourage creative efforts and innovations. To induce individuals to invest their efforts in these areas, we grant such individuals exclusive property rights in their works and inventions for a limited period of time in order to recoup their investment costs. In exchange, the creator is obliged to disseminate these works and make them available to the public (sometimes by way of compulsory license) while the patent or copyright is in force, and bequeath the work to the public domain after the monopoly expires.

The reasons we bestow property rights in literary, artistic, and scientific works, and the reasons we put limitations upon those rights, emerge from a

of intellectual labor as an incentive to encourage socially desirable activities, then we need to address three questions: Is fame or celebrity a socially desirable product whose cultivation we wish to encourage? Are incentives necessary to encourage this activity? Does the necessity for incentives require the granting of exclusive property rights? The first question is the most difficult to answer; the celebrity phenomenon does appear to serve certain social needs and desires. However, to the extent that the celebrity aura is harnessed to develop wholly symbolic market distinctions among functionally indistinguishable goods (and may, therefore, concomitantly decrease incentives to improve product quality or encourage innovative product research and design), its social utility may be doubted. Such a qualification, however, already presupposes the answers to the second and third questions; only when exclusive rights to the image are granted will licenses of such rights have value in the market.

If we decide that the development of celebrity is socially desirable, then we need to determine if incentives are necessary to encourage these creative endeavors. Clearly the potential for financial reward afforded by the commercial exploitation of one's persona must glimmer on the horizon as a tantalizing possibility for some celebrities, especially those, like sports stars, whose professional lives are temporally limited. But again, this possibility begs the question. Those stars most likely and able to exploit their personas are those with successful careers in acting, singing, athletics, or politics who receive media recognition for their achievements. In the course of their careers they have been compensated with large salaries, lucrative bonuses, valuable perks, fees for public appearances, and fame itself. Arguably, they are already so well compensated (some would say overcompensated) for their activities that no additional incentives are necessary. Legal recognition of an exclusive right of publicity does not serve to induce, protect, or compensate the celebrity's achievements, but serves instead to give an additional and collateral economic value to the benefit of fame itself.

It seems doubtful that any further economic incentive is required to encourage the achievements of media and sport stars, and even more dubitable that such incentives should take the form of exclusive property rights. If required, such incentives might just as well take the form of higher salaries, public subsidies, reduced taxes, or free housing. But even if we *had* determined that an exclusive property right was a necessary incentive to have a celebrity bestow his or her fame upon us, the logic of intellectual property rationales would demand that the celebrity give us something in return. Copyright and patent laws insist that the work be made publicly available, whereas celebrities may insist upon seclusion and refuse to let their image circulate or price its use on the market so high that no one else can possibly have access to it.

Moreover, copyright laws enable fair uses to be made of a work, whereas we have no criteria or legislation enabling appropriators of a celebrity's image to claim that their use was a fair one. See K. E. Kulzick and A. D. Hogue, "Chilled Bird: Freedom of Expression in the Eighties," 14 *Loyola of Los Angeles Law Review* 57 (1980); K. S. Marks, "An Assessment of the Copyright Model in Right of Publicity Cases," 70 *California Law Review* 786 (1982); R. Kwall, "Is Independence Day Dawning for the Right of Publicity?," 17 *University of California-Davis Law Review* 191 (1984); Hoffman, *supra* note 37; Simon, *supra* note 24; and Coyne, *supra* note 27.

*supra* note 24, and Weiler, *supra* note 9, for other potential copyright-based exemptions.

Copyright, furthermore, is limited to works of authorship fixed in a tangible medium of expression on the policy grounds that although expressions can be owned, ideas should be freely accessible to promote further creative endeavor. Many of the attributes protected by the right of publicity are intangible attributes of an individual that have become associated with that individual in the public mind. These associations are ideas in the public realm. By designating these public ideational associations the private property of individuals, we create individual monopolies in ever more ephemeral attributes and preclude these ideas from contributing to new creative works and the social goal of progress in the arts. Some commentators suggest that the copyright model is inadequate precisely *because* it cannot fully protect all aspects of the celebrity image, given that "the myriad of quirks and nuances that comprise the persona are not capable of being fixed in a tangible medium of expression" (B. Singer, "The Right of Publicity: Star Vehicle or Shooting Star?," 10 *Cardozo Arts & Entertainment Law Journal* 1 [1992]).

Moreover, not all of the elements that make up a copyrightable work are protected by copyright. Many components of the work are deemed to be in the public domain. See J. Litman, "The Public Domain," 39 *Emory Law Review* 965 (1990). Use of standard plot lines and stock characters, for example, are not considered copyright infringement because such devices are considered part of the public domain that must be available to future creators. We have more conceptual difficulty recognizing any recognized attribute of a persona to be in the public domain because these are understood to be bound up in the person, but if we think of celebrities as works we wish to promote, then some famous attributes will have to enter the public domain to provide resources for others. Otherwise, models such as Claudia Schiffer would have to receive licenses and pay royalties to ancestresses like Bridget Bardot and their estates and assigns.

Copyright and patent laws grant a limited term of exclusive rights on the basis that a temporarily limited monopoly satisfies the need for economic incentive and that the fruits of humanity's intellectual labors thereafter fall into the public domain and become the collective resources of humankind. The descendibility of publicity rights, however, raises the specter of human creative works owned and controlled in perpetuity by avaricious assignees ever more distant from the original creator, concerned only with a continuing stream of royalties and license fees. (For a longer discussion of the inaccuracies and inadequacies of comparing publicity rights to copy-right, see Simon, *supra* note 24.)

Some have argued that a right of publicity is more akin to a trademark than to copyright and patent, and, to a limited degree, the analogy holds. Few, however, have pushed the analogy to its logical conclusions. For trademark law, too, has social purposes, grants limited rights, and affords reasonable defenses, all of which serve to contain the property right in a manner that contrasts with the absolute nature of proprietary publicity rights. Trademark law is concerned with the protection of words and symbols as indicators of the source or sponsorship of commercial goods and services. Trademark rights arise through the extensive and continuous use of a brand name, image, or symbol in marketing particular goods

use that mark in conjunction with that particular class of wares. He or she can then prevent others from using the mark on the same or similar goods on the basis that potential customers are likely to be confused as to the source of those goods and that the reputation of the trademark owner may be diminished by the use of the mark on inferior goods.

The value of a trademark is integrally related to the goods and services it represents. Rights to trademarks are never absolute property rights but exclusive rights to use the sign or symbol in conjunction with a particular class of goods or services. Thus, it is not a violation to use a mark in association with unrelated goods or services where there is no competition between the parties, no likelihood of customer confusion, and no suggestion in the public mind that the original trademark owner endorses the second group of goods. Trademark rights are linked to a certain line of goods and services; they cannot, for example, be assigned except in conjunction with the goodwill of the goods or services to which they pertain. Hence the rule that it is the trade and not the mark that trademark law serves to protect. Neither the common law nor trademark legislation recognizes a property right "in gross" (although [ . . . ] this may well be the effect of enforcing antidilution provisions and stretching the doctrine of confusion). To maintain a dilution claim, however, the symbol must at least serve as a trademark or trade name, whereas celebrities are enabled to enforce rights to icons even where these icons do not serve distinguishing roles in commodity markets. Even when trademarks are licensed, licensors were traditionally obliged to maintain control over the quality of the goods and services being rendered under the mark, because trademarks were intended to prevent the deceit of the public as to the source and quality of goods. Where there is no likelihood of confusion of sponsorship, and hence no possibility of public deception, the use of a mark would not be enjoined. Although consumer confusion is increasingly found by judges with alarming alacrity, these principles at least provide some guidance and limitations. Trademarks, moreover, must be monitored; they may be deemed abandoned, and they may be challenged for lack of use and loss of distinction.

Trademark rights, then, are limited rights, designed to serve social purposes – not absolute or exclusive property rights in a sign or symbol that can be evoked by a trademark "owner" in any context. Some aspects of publicity rights might be justified by analogy to trademark law. A celebrity might well use his or her name or likeness to market a particular class of goods or services. If the name or likeness came to identify and distinguish particular wares to consumers, a trademark right would be justified. However, the doctrine of publicity rights extends to celebrities a property right to their name and likeness before any marketing use of the celebrity image has been made and whether or not the public has come to recognize the image as distinguishing a group of goods or services. Moreover, a celebrity may attempt to prevent the use of his or her image even where there is no competition between the parties, no evidence that the defendant intended to pass off goods as those endorsed by the celebrity, and no evidence that the public was in any way confused by the use of the persona.

Indeed, whereas trademark laws (theoretically) attempted to prevent deceit in the marketplace, publicity rights may be exercised in a manner that contributes

distribution of the merchandise to which he or she has linked his or her image, and he or she assumes no responsibility to the public for the quality of those goods. A well-known architect can license his name for use in the marketing of tea kettles, and the estate of an artist may collect royalties for the use of his name on perfume. If the public comes to associate certain attributes of quality with goods bearing these names, they may well be confused and disappointed when the architect's or the artist's estate later licenses these names to totally unrelated manufacturers who use them to market shoddy merchandise of inferior quality.

Celebrities may do nothing more than make a few carefully orchestrated public appearances every year to command a steady return of royalties from the licensing of their merchandising rights. They need invest no money of their own or have any involvement in the design, production, or dissemination of the products that bear their names. Once a famous designer, Pierre Cardin now earns a small fortune merely by capitalizing on his name. In 1987 he made \$125 million from licenses to eight hundred licensees in ninety-three countries who sell merchandise worth more than \$1 billion a year, from which he earns royalties of about \$75 million. The Cardin name adorns products as diverse as cigarettes, clocks, and deodorants, but neither Cardin nor his company maintains much involvement in their design or production; Cardin's director of licensing admitted that "even we don't know all the products we license." (See discussion of Cardin in Sudjic, *supra* note 28, at 61.) Consumers were given no guarantee of source or quality; the goods bearing the Cardin name might have come from a Filipino factory or the former Soviet Union's Ministry of Light Industry (one of the hundreds of Cardin licensees), but still legitimately carried the celebrity's name. The recent controversy over celebrities' licensing their names to goods produced in sweatshop conditions makes it clear that such activities are only illegitimate in the court of public opinion and that publicity provides the only form of censure. For a longer discussion, see R. J. Coombe, "Sports Trademarks and Somatic Politics: Locating the Law in a Critical Cultural Studies," in *Competing Allegories: Global and Local Cultures of Sport* (R. Martin and T. Miller, eds., 1998).

Trademark law also incorporates a recognition that no sign or symbol can be taken out of public discourse except insofar as it actually continues to distinguish a particular range of goods. [ . . . ] If a mark ceases to distinguish particular goods, a trademark holder may lose his or her exclusive rights to the mark unless he or she can show evidence of behavior indicating an intent not to abandon it. If the mark ceases to be used in connection with those goods with which it was acquired, or ceases to be distinctive in that it becomes a name in common parlance used to designate all goods of a particular class, then the mark holder will no longer have exclusive rights to it and the mark will be consigned to the public domain. A trademark owner is therefore obliged to police his or her mark in order to retain the rights to it. A celebrity or his or her estate is under no such obligation. A deceased star's estate or assignees, for example, might decide to use the star's likeness to market shoes years after his or her death, even though the likeness doesn't distinguish the shoes from others in the public mind, the celebrity's image has never been used to distinguish goods before, and the celebrity's image has become part of the popular culture used for a variety of entertainment and/or

likeness in the past yet suddenly claim exclusive rights to an image commonly understood to be part of a cultural heritage available to us all.

60 As Judge Kozinski put it in his acute dissent in *White v. Samsung Electronics*, 971 F.2d 1395 (9th Cir. 1992) at 1516:

Intellectual property rights aren't free: They're imposed at the expense of future creators and of the public at large . . . This is why intellectual property law is full of careful balances between what's set aside for the owner and what's left in the public domain for the rest of us: The relatively short life of patents; the longer, but finite life of copyrights; copyright's idea-expression dichotomy; the fair use doctrine; the prohibition on copyrighting facts; the compulsory license of television broadcasts and musical compositions; federal preemption of overbroad state intellectual property laws; the nominative use doctrine in trademark law; the right to make soundalike recordings. All of these diminish an intellectual property holder's rights. All let the public use something created by someone else. But all are necessary to maintain a free environment in which creative genius can flourish.

The evocation of the Romantic "creative genius" aside, Kozinski's outrage with the unprecedented expansion of publicity rights effected by the decision (that a celebrity could claim damages and demand royalties from anyone who in any way reminded the public of his or her celebrity or evoked the celebrity's image in the public mind) was a welcome departure from judicial proclivities.

61 *Ibid.*, at 1521.

62 Madow, *supra* note 4, at 128.

63 Doty suggests that the term *subculture* reinforces marginality:

we queers have become locked into ways of seeing ourselves in relation to mass culture that perpetuate our status as *subcultural* . . . By publicly articulating our queer positions in and about mass culture, we reveal that capitalist cultural production need not exclusively and inevitably express straightness. If mass culture remains by, for, or about, straight culture, it will be so through our silences, or by our continued acquiescence to such cultural paradigms such as connotation, *subcultures*, *subcultural studies*, *subtexting*, the closet, and other heterocentrist ploys positioning straightness as the norm. Indeed, the more the queerness in and of mass culture is explored, the more the notion that what is "mass" or "popular" is therefore "straight" will become a highly questionable given . . . (*supra* note 3, at 104).

64 W. Benjamin, "The Work of Art in the Age of Mechanical Reproduction," in *Illuminations* (H. Arendt, ed., 1969).

65 *Ibid.*, at 221.

66 *Ibid.*, at 221.

67 *Ibid.*, at 224.



- 70 *Ibid.*, at 231.
- 71 *Ibid.*
- 72 See G. McCann, *Marilyn Monroe* (1988), for an extended elaboration of a male feminist's reflections on his relationship to her image, and Dyer, *Heavenly Bodies*, *supra* note 1, for an insightful discussion of her position in newly emergent discourses of sexuality in the 1950s. Monroe's ongoing dynamic presence in contemporary sexual politics is addressed by MacCannell, "Marilyn Monroe Was Not a Man," *supra* note 43, in a perceptive and scathing review of biographies written by Norman Mailer, Gloria Steinheim, Anthony Summers, and Roger G. Taylor. See also Baty, *American Monroe*, *supra* note 49.
- 73 S. Ewen, *All-Consuming Images: The Politics of Style in Contemporary Culture* 90 (1988).
- 74 *Ibid.*, at 91.
- 75 *Ibid.*, at 95–96.
- 76 H. Jenkins III, "Star Trek Rerun, Reread, Rewritten: Fan Writing as Textual Poaching," 5 *Critical Studies in Mass Communication* 85, 87 (1988).
- 77 H. Jenkins III, *Textual Poachers: Television Fans and Participatory Culture* 18 (1992).
- 78 M. de Certeau, *The Practice of Everyday Life* (1984).
- 79 P. Willis, *Common Culture* (1990).
- 80 See especially the studies in J. Fiske, *Reading the Popular* (1989), and J. Fiske, *Understanding Popular Culture* (1989).
- 81 *Loving with a Vengeance* (T. Modleski, ed., 1983); *Studies in Entertainment* (T. Modleski, ed., 1986); J. Radway, *Reading the Romance* (1984).
- 82 Conversations with Brett Williams. See also *The Politics of Culture* (B. Williams, ed., 1991).
- 83 H. Foster, *Recordings: Art, Spectacle, Cultural Politics* (1985).
- 84 The concept of the mediascape is borrowed from A. Appadurai, "Disjuncture and Difference in the Global Cultural Economy," 2 *Public Culture* 1 (1990), who asserts that we need to consider the complexity of the global flow of cultural imagery as producing new fields he defines as ethnoscapas, technoscapas, finanscapas, mediascapas, and ideascapes. For an overview of postmodernism and popular culture, see J. Docker, *Postmodernist and Popular Culture: A Cultural History* (1994).
- 85 S. Connor, *Postmodernist Culture: An Introduction to Theories of the Contemporary* (1989).
- 86 *Ibid.*, at 186.
- 87 *Ibid.*
- 88 D. Hebride, *Cut 'n' Mix: Culture, Identity and Caribbean Music* (1987).
- 89 McRobbie, *supra* note 2.
- 90 L. Hutcheon, *The Politics of Postmodernism* (1989).
- 91 McRobbie, *supra* note 2, at 174–175.
- 92 Willis, *supra* note 79.
- 93 *Ibid.*, at 141–142.
- 94 J. Fiske, "The Cultural Economy of Fandom," in *The Adoring Audience: Fan Culture and Popular Media* 30 (L. Lewis, ed., 1992). See also H. Jenkins, "Strangers No More, We Sing: Filking and the Social Construction of the Science Fiction Fan Community," in *The Adoring Audience: Fan Culture and Popular Media* 208 (L. Lewis, ed., 1992).

- 96 M. J. Frug, *Sexual Equality and Sexual Difference in American Law*, talk presented at the Symposium on Sexual Equality, Sexual Difference and Law at West Virginia University College of Law, Morgantown, West Virginia, 8 April 1988. See generally M. J. Frug, *Postmodern Legal Feminism* (1992).
- 97 T. de Lauretis, "Feminist Studies/Critical Studies: Issues, Terms, and Contexts," in *Feminist Studies/Critical Studies* 1 (T. de Lauretis, ed., 1986).
- 98 J. W. Scott, *Gender and the Politics of History* (1988).
- 99 An alternatively gendered world was one that I imaginatively shared with the late Mary Joe Frug, a legal scholar and feminist who was shaping a postmodern feminist legal theory that recognized the iterative quality of gender identity and the significant role played by law in constructing a variety of gendered subjectivities. We shared a belief that legal scholarship and legal thought should be characterized by a far greater variety of voice and a surfeit of style(s) that could evoke the irony, humor, rage, and sensuality that characterize everyday life and everyday struggle. We both regretted that commercial culture was so quickly dismissed and denigrated in academic circles. Mary Joe hoped that the voices of lesbian hermaphrodites and *Star Trek* fanziners might be heard, and that the cultural energy of the streets might one day invigorate legal debate. May her memory, her work, and her spirit continue to engender such utopian possibilities in the law.
- 100 J. Butler, *Gender Trouble: Feminism and the Subversion of Identity* (1990) (*hereinafter* Butler, *Gender Trouble*).
- 101 *Ibid.*, at xii.
- 102 *Ibid.*, at 1.
- 103 This argument is elaborated in M. Foucault, *History of Sexuality, Vol. 1: An Introduction* (R. Hurley, trans., 1980).
- 104 In earlier work, I attempted to demonstrate how juridical systems of power produce the subjects they claimed only to represent. For a historical discussion and elaboration of the juridical production of gender and class subjectivities through representational practices in the adjudication of defamation claims, see R. J. Coombe, "Contesting the Self: Negotiating Subjectivities in Nineteenth-Century Ontario Defamation Trials," 11 *Studies in Law, Politics, and Society* 3 (1991) (*hereinafter* Coombe, "Contesting the Self").
- 105 Butler, *Gender Trouble*, *supra* note 100, at 2.
- 106 *Ibid.*, at 4.
- 107 *Ibid.*, at 5.
- 108 *Ibid.*, at 6.
- 109 *Ibid.*, at 17.
- 110 *Ibid.*, at 17–23.
- 111 *Ibid.*, at 25. For an elaboration of the meaning of performativity as used here, see J. Butler, "For a Careful Reading," in *Feminist Contentions: A Philosophical Exchange* 127 (S. Benhabib et al., eds., 1995), and J. Butler, "Critically Queer," 1 *Gay and Lesbian Quarterly: A Journal of Lesbian and Gay Studies* 17, 21–24 (1993).
- 112 Butler, *Gender Trouble*, *supra* note 100, at 25–30. Butler's position here is congruent with my stance in "Room for Manoeuvre," 14 *Law and Social Inquiry* 60 (1989), where I argue that subjectivity is always constructed within the dis-

- bricolage — cultural practices that deploy existing cultural forms in ever-emergent new fashions that may transform structures of power even as they evoke its significations.
- 113 Butler, *Gender Trouble*, *supra* note 100, at 30.
- 114 *Ibid.*, at 33.
- 115 *Ibid.*, at 121.
- 116 *Ibid.*, at 31.
- 117 Butler clarifies the nonliberal character of the subject and the reiterative and rearticulatory (rather than original or intentional in any Romantic or modern sense) nature of the agency involved in *Bodies That Matter* (1993) at 15.
- 118 A. Ross, *No Respect: Intellectuals and Popular Culture* 159 (1989).
- 119 R. Jackson, *Modernist and Postmodernist Inscriptions of Camp*, paper presented at the Popular Culture Association meetings (7–10 March 1990).
- 120 Ross, *supra* note 118, at 157–158.
- 121 E. Newton, *Mother Camp: Female Impersonators in America* 3 (1979).
- 122 *Ibid.*, at 103.
- 123 *Ibid.*
- 124 Ross, *supra* note 118, at 159.
- 125 *Ibid.*, at 160.
- 126 *Ibid.*
- 127 *Ibid.*, at 159.
- 128 *Ibid.*, at 161.
- 129 P. Tyler, "The Garbo Image," in *The Films of Greta Garbo* 28 (M. Conway et al., eds., 1968); cited in Newton, *supra* note 121, at 108.
- 130 Dyer, *Heavenly Bodies*, *supra* note 1, at x.
- 131 *Ibid.*, at 148–154.
- 132 *Ibid.*, at 154, 160.
- 133 See Jackson, *supra* note 119.
- 134 A. La Valley, "The Great Escape," 10(6) *American Film* 71 (1985).
- 135 M. Tremblay, *Hosanna* (J. Van Burek and B. Glassco, trans., 1974).
- 136 D. Crimp, "Right On, Girlfriend!," 33 *Social Text* 2, 4 (1993).
- 137 *Ibid.*, at 3.
- 138 Lesbian identification with Sinatra does not appear to be limited to Toronto, judging from the New York "Lookout" Downtown Community Television's second annual Gay and Lesbian Video Festival. There, a video titled *Cruisin' the Rubyfruit Jungle* contained "a tribute to Nancy Sinatra that would make Irving Klaw blush" according to M. Dargis, "Being on the Lookout," *Village Voice*, 16 October 1990, at 51.
- 139 Crimp, *supra* note 136, at 12.
- 140 *Ibid.*
- 141 *Ibid.*
- 142 *Ibid.*, at 13.
- 143 J. Dos Passos, *Midcentury* (1960).
- 144 D. Dalton, *James Dean: The Mutant King* (1983).
- 145 S. Golding, "James Dean: The Almost-Perfect Lesbian Hermaphrodite," in *Sight Specific: Lesbians and Representation* 49 (D. Brand, ed., 1988).
- 146 *Ibid.*, at 50.

- 148 Bntler, *Gender Trouble*, *supra* note 100, at 17.
- 149 Golding, *supra* note 145, at 50.
- 150 *Ibid.*
- 151 *Ibid.*, at 52.
- 152 *Ibid.*
- 153 For a discussion of the social and institutional structures of particular fan communities, see C. Bacon-Smith, *Enterprising Women: Television Fandom and the Creation of Popular Myth* (1992) at ch. 2. See also C. Penley, "Brownian Motion: Women, Tactics, and Technology," in *Technoculture* 135 (C. Penley and A. Ross, eds., 1991).
- 154 Bacon-Smith, *supra* note 153, at 322; Jenkins, "Star Trek Rerun, Reread, Rewritten," *supra* note 76; C. Penley, *To Boldly Go Where No Woman Has Gone Before: Feminism, Psychoanalysis, and Popular Culture*, lecture delivered at the Public Access Series CAPITAL/CULTURE, Toronto, 24 April 1990.
- 155 Bacon-Smith, *supra* note 153, at 26–28.
- 156 *Ibid.*, at 16–31.
- 157 *Ibid.*, at 45.
- 158 Jenkins, "Star Trek Rerun, Reread, Rewritten," *supra* note 76, at 89.
- 159 In 1991, Constance Penley, *supra* note 154, estimated that there are 300 to 500 publishers of homoerotic fanzines alone. This number has no doubt increased with the ease of electronic communications.
- 160 Bacon-Smith, *supra* note 153, at 45.
- 161 Jenkins, "Star Trek Rerun, Reread, Rewritten," *supra* note 76, at 104.
- 162 Fanzine writers face ridicule and hostility both in "mainstream" society and among other (predominantly male) science fiction fans who see them as less than intelligent and as an embarrassment to fandom (Bacon-Smith, *supra* note 153, at 7–43, 77). For a more extensive discussion of their vilification in academia, the mainstream press, and the larger science fiction community, see Jenkins, *Textual Poachers*, *supra* note 77, at 1–24.
- 163 Bacon-Smith, *supra* note 153, at 56–57.
- 164 Jenkins, "Star Trek Rerun, Reread, Rewritten," *supra* note 76, at 88.
- 165 *Ibid.*, at 93–97.
- 166 Bacon-Smith, *supra* note 153, at 94–98.
- 167 *Ibid.*, at 100.
- 168 *Ibid.*, at 101–102.
- 169 *Ibid.*, at 102.
- 170 *Ibid.*, at 102–103.
- 171 *Ibid.*, at 141–143.
- 172 *Ibid.*, at 145–147.
- 173 *Ibid.*, at 209–216.
- 174 *Ibid.*, at 334.
- 175 *Ibid.*, at 230.
- 176 J. Russ, "Another Addict Raves about K/S," 8 *Nome* 28 (1985), cited in Bacon-Smith, *supra* note 153, at 371.
- 177 Bacon-Smith, *supra* note 153, at 245.
- 178 *Ibid.*, at 247.
- 179 *Ibid.*, at 246–249.
- 180 *Ibid.*, at 246.

- 182 Hurt/Comfort stories are those in which one male character is hurt and suffers and the other comforts and nurses him (see discussion in *ibid.*, ch 10, at 255–281).
- 183 This would help to explain why fans don't necessarily see the sexual relationship between Kirk and Spock as a homosexual one (Penley, *supra* note 154). As some fans see it, there are forms of love that defy description; the sexual orientation of Kirk and Spock is irrelevant because their love is a matter of cosmic destiny (*ibid.*). For similar reasons, fans don't see even the most sexually graphic material as pornographic (Bacon-Smith, *supra* note 153, at 243). Such categories are simply inappropriate in these alternative universes.
- 184 Bacon-Smith, *supra* note 153, at 270–277.
- 185 *Ibid.*, at 195–196.
- 186 1(1) *Judy!* 1 (spring fever 1993) (unpaginated fanzine, P.O. Box 121, Iowa City, IA 52245–0121).
- 187 *Ibid.*
- 188 *Ibid.*
- 189 E. Mertz, "A New Social Constructionism for Sociolegal Studies," 28 *Law & Society Review* 1243, 1257 (1994).
- 190 It will undoubtedly be argued that if the individuals engaged in these subcultural practices were to be threatened with legal action, they could claim a defense under the First Amendment. Such responses evince an incredible naïveté about the obstacles that confront most people in even reaching a legal forum in which a constitutional challenge could be made. Moreover, First Amendment defenses in this area are rarely upheld and often dismissed out of hand. The case law in this area, moreover, is extremely confusing and often contradictory, as I will discuss in my concluding essay.
- 191 This insight finds its clearest articulation in the work of Michel Foucault. Although he dealt with the law as primarily repressive in his early work, he also argued that regimes of power were productive rather than merely prohibitive: they produce what they purport merely to represent. Others have extended this insight into the juridical domain. Clifford Geertz makes similar observations in *Local Knowledge: Further Essays in Interpretive Anthropology* (1983). These ideas are developed in G. Peller, "The Metaphysics of American Law," 73 *California Law Review* 1151 (1985), and elaborated in C. Harrington and B. Yngvesson, "Interpretive Social Research," 15 *Law & Social Inquiry* 135 (1990). For a discussion of the juridical production of class and gender subjectivities in the transition to industrial capitalism, see Coombe, "Contesting the Self," *supra* note 104.
- 192 L. Bower, "Queer Acts and the Politics of Direct Address," 28 *Law & Society Review* 1009 (1994).
- 193 Jenkins, "Star Trek Rerun, Reread, Rewritten," *supra* note 76, at 100.
- 194 This concept is developed in E. P. Thompson, "The Moral Economy of the English Crowd in the 18th Century," 50 *Past and Present* 76 (1971). The development of moral economies with respect to celebrity images – informal modes of regulation and sanction that grow up in the shadow of the law and with knowledge of the policing activities of those with legally recognized rights in the text – is not limited to the fanzine context. For example, it would appear that Elvis impersonators and fans are not alone in this. R. B. ...

- featuring "the King," computer games featuring Elvis as street fighter, and at least one lesbian Elvis impersonator). However, some impersonators feel that they themselves have acquired rights by virtue of their transformative appropriations and, in at least one case, the law has supported the claim. In *Flying Elvi v. Flying Elvises* (unreported), one team of skydiving Elvis impersonators successfully sued another on grounds of potential consumer confusion. The defendants attempted to counterclaim "on behalf of anyone who wants to hit the silk in the name of the King" but lost. See M. Neill and A. M. Otey, "All Shook Up: Two Skydiving Groups Try To Chute Each Other Down," *People* (27 February 1995) at 50; "Look Up in the Sky. It's the Flying Elvises, er, Elvi," *The National Law Journal* (17 April 1995) at A27. For a discussion of the maintenance and social transformations of the Elvis image, see D. S. Wall, "Reconstructing the Soul of Elvis: The Social Development and Legal Maintenance of Elvis Presley as Intellectual Property," 24 *International Journal of the Sociology of Law* 117 (1996).
- 195 Jenkins, "Star Trek Rerun, Reread, Rewritten," *supra* note 76, at 100.
- 196 *Ibid.*, citing Schnveller, 4 *Sociotrek* 8–9.
- 197 Bacon-Smith, *supra* note 153, at 58.
- 198 *Ibid.*, at 66.
- 199 *Ibid.*, at 40.
- 200 *Ibid.*, at 33.
- 201 Penley, *supra* note 154.
- 202 Bacon-Smith, *supra* note 153, at 35.
- 203 *Ibid.*, at 223.
- 204 Jenkins, *Textual Poachers*, *supra* note 77, at 30–31. Constance Penley told me in conversation that Lucasfilm threatened legal action on copyright grounds when they discovered that fanzine writers had depicted Luke Skywalker and Han Solo in an erotic relationship. Bacon-Smith, *supra* note 153, at 251, n.6, also notes that fandom has had an uneasy relationship with Lucasfilm but does not elaborate. A copyright claim would not require that the use be commercial to succeed and is thus a more flexible instrument for producers to use than trademark and more economically feasible than backing publicity rights claims by all of the individual actors to achieve the same ends.
- 205 Jenkins, *Textual Poachers*, *supra* note 77, at 31.
- 206 *Ibid.*
- 207 For a discussion of complicitous critique as an attitude symptomatic of post-modernism, see Hutcheon, *supra* note 90.
- 208 K. McClure, "On the Subject of Rights: Pluralism, Plurality and Political Identity," in *Dimensions of Radical Democracy: Pluralism, Citizenship, Community* 123 (C. Mouffe, ed., 1992).