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Parodies of Ownership

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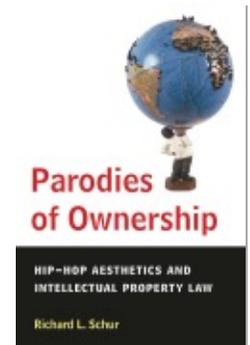
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From Invisibility to Erasure? The Consequences of Hip-Hop Aesthetics

In *Invisible Man* (1952), Ralph Ellison depicted the existential angst of his nameless protagonist who slowly comes to realize that he is invisible to whites. Through this novel, Ellison criticized existing social, cultural, political, legal, and economic discourses for failing to recognize African American subjectivity. In the novel's conclusion, the hero contemplates the actions necessary to cast off this invisibility and demand social recognition.¹ For Ellison, a series of masks have displaced authentic African American experience. Jon-Christian Suggs has argued that *Invisible Man* “brings the classical [African American literary] impulse as far as it can go” and constitutes a harbinger of the burgeoning Civil Rights Movement because it successfully illuminated the inner struggle faced by African Americans in a white supremacist culture.² Despite the novel's recognition and the many victories of the Civil Rights Movement, the visibility/invisibility binary has not steadily disappeared from African American literature, art, music, and cultural criticism. The quest for authenticity experienced and described by Ellison's narrator has become even more desperate in the post-Civil Rights era, albeit with an ironic twist.

African American cultural workers have increasingly found commercial and critical success precisely to the extent to which they produce images, lyrics, and texts that revel in presenting the sordid “reality” of the African American experience. During the 1990s, gangsta rappers created violent

(and increasingly fictional or metaphorical) descriptions of urban life. Other rappers “kept it real” by demonstrating their street credentials through their clothes, use of slang, and adoption of Black Nationalist themes. In art and literature, neoslave novels and conceptual art deployed racist imagery and slave or folk stories to subvert dominant assumptions even as they experimented with strategies to recuperate and claim ownership over such stereotyped texts. Like Ellison’s invisible man, hip-hop aesthetes express considerable doubt that authentic social recognition or cultural ownership can be achieved. They produce an ironic rendering of African American identity in which authenticity and experience are just another set of masks, concealing as much as they reveal. This dynamic also revealed itself during the 2008 presidential campaign in which Barack Obama was accused as being all style but no substance or all rhetoric and no action.

Due to hip-hop’s reliance on layered samples, rhythmic asymmetries, and irony, hip-hop aesthetics consistently undermines its promise of liberation and self-ownership because it, too, only offers masks. Despite its identification of intellectual property law’s racialized foundations, hip-hop aesthetics displaces and delegitimizes the very racial subjectivity it purportedly articulates, limiting its ability to redistribute ownership rights. This critique of copyright and trademark principles encounters its limit in hip-hop aesthetics’ ambiguous attitude toward property rights rhetoric. Such skepticism exists because property law seems either too individualistic or too interwoven with white supremacy. Any attempt to reconstruct intellectual property law would likely rely on an essential, authentic, or romantic subject, which hip-hop aesthetics constantly distrusts and defers. The net result is a series of artistic, musical, and literary works that struggle against intellectual property law’s complicity with racial hierarchy without suggesting a clear reform agenda. Exemplifying the conceptual uncertainty of the post-Civil Rights era, hip-hop aesthetics identifies the ongoing problem of an unjust distribution of resources and income without providing a ready solution. The irony that defines hip-hop aesthetics offers only a partial solution to racial hierarchy. This impasse presents distinct challenges to the various disciplines and theories discussed in this book. Although interdisciplinary inquiry has proved exceptionally useful for identifying a shared aesthetic and critique of American culture, the consequences of hip-hop aesthetics’ relation to intellectual property law reveal the limits of current disciplinary debates. As a result, this book offers five related yet distinct conclusions.

African American Literature

Hip-hop aesthetics has challenged romantic and tragic modes of African American literary representation. It has been wildly successful and productive. Precisely because it has rarely been the subject of litigation (the notable exception here is Alice Randall's *The Wind Done Gone*), contemporary texts that rely on hip-hop aesthetics have been able to sample more ambitiously and make bolder ownership claims over the American cultural imagination than hip-hop music. By the mid-1990s, litigation and changes in legal discourse caused producers to limit their use of sampling within music, and politically conscious or message rap had already peaked in popularity.³ Ironically, this historical moment coincides with the point when younger African American writers began experimenting with sampling to contest the racialization of intellectual properties. Although it has been commonplace within literary and cultural studies to construct African American culture across generic boundaries, copyright law's disparate impact on music, literature, and film serves as an important reminder that such disciplinary boundaries matter, especially in terms of how legal discourse applies to different artistic forms. In this study, it is clear that contemporary African American writers and painters have had significantly fewer intellectual property hurdles than musicians.

By the late 1990s, the turn to layered samples and voices, rhythmic and temporal asymmetry, and irony, however, had begun to seem cliché and potentially ineffective as an approach to sophisticated renderings of the contemporary African American experience. While writers continue to challenge stereotypical depictions of black life and the effect of raced intellectual properties, the multiplicity of voices, images, symbols, and icons in these texts nonetheless fails to produce a complete or satisfying picture. Toni Morrison's multivocal texts with their communal subjects and Colson Whitehead's tales of young black professionals struggling for professional success in the post-Civil Rights era do not provide complete access to their characters' interior lives. It is absence, not complete or robust representation, that defines hip-hop aesthetics. If earlier artists offered masks as propaganda in the struggle for social justice, hip-hop aesthetes stress the partial and constructed nature of those masks. This "new" approach has failed to capture the rich and potentially contradictory subjectivity of their characters. *Beloved*, *John Henry Days*, and *The Wind Done Gone* rely on hip-hop aesthetics to make their ownership claims over the American cultural imagination, but they ultimately fall short of realizing their artistic ambi-

tions. Morrison and Randall offer potentially romantic conclusions to otherwise ambiguous narratives, while Whitehead's protagonists simply disappear.

In *Erasure* (2001), Percival Everett brilliantly comments and signifies upon hip-hop aesthetics. Everett suggests that contemporary literature, with the aid of American popular culture, erases the complexity of African American identity and culture. For Everett, the challenge is not the social and political invisibility described by Ellison but the absence of ordinary African Americans from the American cultural imagination. *Erasure* tells the story of Thelonious Ellison (also known as "Monk"), a middle-aged African American writer whose books experiment with post-structuralist theory and rework classic texts from Western culture. When the novel opens, Monk has returned to Washington, D.C., his boyhood home, for an academic conference. The trip, however, quickly becomes a more permanent return as a number of family crises necessitate that he remain longer. Over the course of the novel, Monk must deal with his sister's murder by antiabortionists, his mother's emerging Alzheimer's, his brother's disclosure that he is gay, the revelation of his father's illegitimate daughter, and the dismissal of the family's longtime maid. To respond to these crises, Monk decides to stay in D.C. and take a leave from his academic position in California.

In the midst of sifting through his deteriorating family life, Monk reads a popular novel entitled *We's Lives in Da Ghetto* by Juanita Mae Jenkins and is disgusted by its stereotypical depiction of black life. Jenkins's novel provides a putatively realistic (and monolithic) account of black life, but it completely omits Monk, his family, and his favorite pursuits (fly-fishing, woodworking, and postmodern writing) in favor of stereotypes about black, urban poverty. Angered by Jenkins's book, Monk writes a parody of it. He writes it under the pen name Stagg R. Leigh⁴ and initially titles the book *My Pafology*, only to demand that it be changed to *Fuck* once publishers demonstrate an interest in it. His book includes a retelling of Richard Wright's *Native Son*, but in the vein of 1980s-style autobiographies, which claim to speak the truth about multicultural America. Of course, the greatest irony is that this parody is mistaken for realism and wins (over his protestations as he sits on the award jury as Monk) the National Book Award. The novel concludes with Monk accepting the book award as Stagg R. Leigh. In the ultimate act of irony, Monk becomes Leigh and erases his "real" experiences from the publishing industry and the study of literature.

Everett's *Erasure* mimics hip-hop aesthetics, deploying layered samples,

rhythmic asymmetry, and irony. Rather than exemplifying hip-hop aesthetics, the novel suggests that such artistic strategies constitute a failed response to the post-Civil Rights era because artists cannot control their reception and because audience perspectives increasingly determine decisions on whether to publish books or mount art exhibitions. For Monk, commercial success in the post-Civil Rights era means compromising his identity. Everett sides with the critics of Kara Walker and Michael Ray Charles against this commercialization of African American cultural production. For Everett, hip-hop aesthetics becomes a straitjacket, limiting expressive and representational possibilities. It relies on stereotypes, as either model or foil, and it requires its practitioners to adopt a series of masks or poses. Although Everett's narrator has ostensibly lived an African American life outside of racial stereotypes, the publishing and film industry forces him to become a parody of himself in order to receive cultural recognition and material wealth. Even before his foray into mass-market publishing, Monk's interest in fly-fishing, woodworking, and postmodern theory, according to the novel, confused both fellow African Americans and non-African Americans. In the post-Civil Rights era, writers, painters, and musicians willingly contribute to their cultural invisibility and misrecognition because hip-hop aesthetics offers a parody of ownership, not ownership itself, due to its overreliance on samples, layering, asymmetries, and irony. As components of an aesthetic system, each provides partial or ambiguous views, which erase as much African American subjectivity as they reveal. Ellison's nameless narrator engages in an existential struggle against invisibility, created and maintained by educational, social, legal, and political institutions. Everett's Monk struggles not against institutional limitations, but cultural ones. Academic discourse, the cultural industries, and the unspoken cultural assumptions of legal discourse continue to promote a reified version of black life, whether categorized as signifyin' or something else. The overreliance on signifyin' as a central principle for African American literature places textual revision, a potentially problematic strategy due to the expansion of intellectual property law, at the center of contemporary African American writing.

Although critics have criticized hip-hop for the limited or partial views of African American life it offers, Everett's novel attempts to simultaneously criticize and transcend hip-hop aesthetics on its own terms. Like *Invisible Man* before it, *Erasure* seeks to demonstrate Everett's mastery over hip-hop aesthetics and transform them from within the tradition. Everett argues that this form has not resolved African Americans' struggle with and

against literary discourse but merely translated it. The transition from metaphors of invisibility to those of erasure suggests that the post-Civil Rights era presents a similar yet distinct challenge for African American writers. Both invisibility and erasure result in the disappearance of African American humanity from public discourse. The metaphor of erasure, however, emphasizes the agency of those who elide the complexity of African American culture. Everett's main critical target is not simply hip-hop aesthetes, such as Toni Morrison, Colson Whitehead, and Alice Randall, who have relied on these literary strategies, but the market forces that demand publishers produce books with recognizable figures and tropes and the audiences who gravitate to such books precisely because they trade on such stereotyped imagery. Everett implicitly argues that publishing and literary discourses have consistently promoted such works, even though the underlying aesthetic continues to emphasize a faux racial authenticity. *Erasure* thus questions the entire enterprise of African American literature in the post-Civil Rights era because its growth and expansion as both a market and an academic discipline appear complicit in the ongoing marginalization and alienation of African American identity and culture. Hip-hop aesthetics and its effort to claim cultural ownership by engaging in revisionist histories and voicing the unspoken narratives hidden by extant intellectual properties has reinforced the history of slavery and American popular culture as the central forces shaping African American identity and culture. *Erasure's* Monk is rendered invisible precisely because he and other characters like him are conspicuous in their absence from African American literature. And if writers attempt to represent them, they are quickly transformed into more easily recognized stereotypes.

Some recent novels, such as Lalita Tademy's *Cane River* (2002), Martha Southgate's *Fall of Rome* (2002), and Bernice McFadden's *Sugar* (2000), have retreated from hip-hop culture and hip-hop aesthetics as primary influences. They suggest a movement away from layered samples, rhythmic asymmetries, and irony. To some, this work might reflect a return to more romantic or tragic narrative modes, which possess more confidence in literary representation to produce positive imagery. Unlike Everett's *Erasure*, these novels deemphasize fragmentation and the power of popular culture in shaping African American identity and culture. It could also be argued that these works seem less explicitly invested in claiming ownership over the American cultural imagination or redistributing property rights. Rather, they offer smaller narratives that chart the complexity of African American life and seek to represent the trauma of history. They do not

conclude with a reconstructed imaginary domain that leaves the future open to limitless possibility. In a subtle but effective way, they suggest that hip-hop aesthetics may constitute merely one moment rather than a transcendental feature in the development of African American literature. They may also portend a shift from cultural politics to other potentially more successful venues for reform and transformation. In the late 1980s, Trey Ellis announced that the New Black Aesthetic (NBA), which Nelson George and Mark Anthony Neal have named Post-Soul Aesthetics, was in the process of transforming the aesthetic strategies inherited from the Black Arts Movement. Recent responses to these hip-hop-based movements and their relative shortcomings invite the conclusion that post-Civil Rights era literary and artistic movements fit more neatly within the ebb and flow of African American cultural history than previously thought. Perhaps the development of hip-hop aesthetics shares its strengths and weaknesses with the very movements, the Harlem Renaissance and the Black Arts Movement, it had apparently transcended.

African American Art

Hip-hop aesthetics has also caused artists to explore new subject matter and deploy new methods. Adrian Piper, Michael Ray Charles, and Fred Wilson have each developed conceptual approaches that undermine the supposed stability and authority of American popular, mass, and public culture. They deconstruct the effects of newspapers, advertising, and museums in shaping public knowledge and opinion, especially by illustrating the racialization of visual culture. Their art has turned away from depicting African Americans to explore the relationship between dominant culture and African American culture. Burgeoning during the 1980s and 1990s, their work echoes the concerns about cultural ownership articulated in hip-hop music. It also focuses on the cultural life of stereotyped imagery. Like their literary counterparts, Piper, Charles, Wilson, and others deploy sampling, layering, asymmetry, and irony in ways that frequently exceed music's experimentation. Generally, visual artists have found greater freedom to sample copyrighted and trademarked imagery than their musical counterparts, in part because they have sold fewer copies of their work and because their critical commentary may seem more explicit.

This work, based on layered samples, asymmetry, and irony, has found considerable notoriety, winning Guggenheim fellowships for Fred Wilson

and Kara Walker. Walker and Michael Ray Charles also became the focus of a generational dispute about the politics of post-Civil Rights era art during the mid-1990s. Perhaps even more so than African American writers, hip-hop generation artists find themselves writing a new chapter in the Harlem Renaissance debates among W. E. B. Du Bois, Alain Locke, and Langston Hughes.⁵ Should art constitute propaganda; reflect cultural development; or express the beauty, romance, and tragedy of being a human being with a particular racial/ethnic history? For their critics, the danger implicit in the art of Walker, Charles, and Wilson is that they have lost connection or “empathy based on a rootedness within the center of African American cultural sensibilities and ancestral connections.”⁶ Their work, rooted in commodified identities, asymmetrical fissures, and irony, does not fit neatly within the paradigms articulated by the founding figures of African American cultural studies. Although hip-hop aesthetics attempts to reclaim ownership of raced texts, it fails as Du Boisian propaganda because the form performs the critique rather than the subject matter presenting one. Hip-hop aesthetics also fails to embody Lockean principles of cultural development, because of its reliance on dominant imagery. It could be argued that such work, due to its reliance on popular culture and its attempt to represent a particularly raced perspective way of viewing the world, could fit within Langston Hughes’s paradigm for creating art that flows from the experiences of ordinary African Americans. However, too often this work mines the cultural landscape for symbols whose origin and flow extend far beyond the borders of the African American community. Rather, it was their popularity with non-African American audiences that produced or initiated the controversy. Contemporary African American art has challenged tradition precisely because it fails to conform to expectations about subject matter and its social purpose. For these reasons, Glenn Ligon and Thelma Golden have coined the term *post-black* art to capture this new situation.⁷

Few art critics or historians, however, have explicitly linked these new artistic paradigms to the emergence of hip-hop as a dominant musical force. Only recently, in a 2005 cover article, did the *International Review of African American Art* address “‘Post-Black,’ ‘Post-Soul,’ or Hip Hop Iconography? Defining the New Aesthetics.” The cover featured a Kehinde Wiley painting, depicting a young man clad in an Adidas warm-up suit and holding a flower adorned with a baroque arrangement of leaves and berries. In this issue, the editors and writers explore the work of young and/or new African American artists. Despite the inclusion of “aesthetics”

in the subtitle, Soraya Murray and Derek Murray's cover article emphasizes primarily the range of imagery being deployed rather than shared methodologies or approaches to the production of art.⁸ While Murray and Murray are quite correct in observing that Kehinde Wiley, Lisa Beane, Erick Mack, Wangechi Mutu, and Kori Newkirk, their article's subjects, have chosen a wide range of subject matter, they ignore or elide the shared deployment of layers, samples, rhythmic flows/asymmetries, and irony. The example of Wiley is particularly revealing on this point. It is not simply his choice of young, urban African Americans as models that invokes hip-hop, but the interaction of these models with Renaissance poses, religious imagery, and trademarked objects from popular culture. Together, these elements represent and criticize hip-hop aesthetics' ambiguous relationship with racialized commodities and the dominant culture it supports more generally. Subject matter analysis has dominated African American art criticism—especially for critics following Du Bois's or Hughes's approach to art—for so long that it will prove difficult to focus on the politics of form, which has become a hallmark of contemporary African American art.

Analogous to Percival Everett's criticism of contemporary African American literature, Lorna Simpson has consistently offered a counternarrative to the one offered by hip-hop aesthetics even as she relies on many of the same artistic devices and strategies. Simpson's photographs blend text and image. The photographs typically offer only a partial portrait of their subject, which is then given meaning in relation to the accompanying text or title. Focusing on particular clothing items or body parts, the images, especially those from the early 1990s, often dismember her subjects, who adopt dramatic but enigmatic poses. Alternatively, Simpson simply photographs the person from the back. Whereas hip-hop aesthetics typically revels in the ambiguity produced by sampling, layers, and rhythmic breaks, Simpson's photographs consistently mourn the loss of the subject ostensibly represented, frequently because racist and/or sexist narratives imprison them. Sampling and layers do not offer freedom for Simpson's subjects, only stale poses that frustrate the putative object of photographic representation.

Huey Copeland argues that the black body has slowly "retreated" from Lorna Simpson's work. While some critics have lauded this move because they perceive that this has made her work more universal, Copeland disagrees and argues that Simpson's work more forcefully than ever "assert[s] the presence of one black woman . . . even as her figure is ghosted away."⁹ Copeland's brilliant reading of Simpson's oeuvre implicates hip-hop aes-

thetics in the erasure or continued cultural invisibility of African Americans. Simpson's work does not seek to destroy hip-hop aesthetics as an illusion, following Everett. Rather, Simpson has remained a steadfast residual or emergent voice remarking on the limits of hip-hop aesthetics as a mode of cultural representation. Against the playfulness of hip-hop aesthetics, with its carnivalesque upheaval of discourses and symbols, Simpson's work consistently evokes the violence hiding just beneath the surface of her images. For example, her well-known piece *Guarded Collections* (1989) consists of six identical African American women figures with their hands crossed behind them. Underneath the women, Simpson arranges twenty-one plaques that alternate between "Skin Attacks" and "Sex Attacks." By blending text and image, Simpson depicts the typically hidden violence that African American women must endure. Similarly, her installation *Wigs* (1994), which includes images of many wigs, invites viewers to wonder about how the hair was obtained and the effects of white standards of beauty that continue to damage the self-esteem of African American women. In this piece and others, the parts' detachment from actual bodies is so efficient, complete, and clinical that Simpson suggests the violence of severing the hair from the body without actually depicting it.

Drawing on and criticizing the logic of the sample, Simpson forces viewers to grapple with the violence of removing or creating such objects and texts. Simpson, especially in this early work, implicitly criticizes hip-hop's reliance on layers and sampling to produce irony and ambiguity. For Simpson, this constitutes a failed response to post-Civil Rights America because African American culture suffers from the effects of such partial views, due to the influence of newspapers, advertising, and other forms of popular culture. While she shares hip-hop aesthetes' concern with the effects of such intellectual properties, Simpson's work implicitly argues that these racialized images and texts cannot be reconstructed by simply deploying them as samples. Nor can African American artists gain ownership over them by clever or ironic layered samples. She suggests that they promote racism and sexism precisely because they are partial and incomplete. Further partial views, Simpson implies, cannot lead to complete and complex images and narratives. Simpson's work provides an exemplary reminder that hip-hop aesthetics has only constituted one strategy to claim cultural ownership over the persistence of racial stereotypes, especially those frequently associated with intellectual properties and popular culture. Pieces such as *Guarded Collections* and *Wigs* haunt contemporary African American art precisely because they require us to encounter the

ongoing difficulty of representing black bodies. Layered samples, rhythmic flows/asymmetry, and irony may only defer this foundational problem without resolving it. Clarifying the relationships among art, literature, and music will allow scholars to better understand the central tensions, conflicts, challenges, successes, and failures of post-Civil Rights era cultural production.

Intellectual Property Law

Many developments in digital culture, from Google's project to create a virtual library to the birth of YouTube.com, have eclipsed sampling as a cutting-edge issue within intellectual property law. These issues are important ones that need to be considered. However, the creation of new technologies and the resulting challenges for intellectual property lawyers cannot mask how "settled" case law and legislation never quite resolved the questions of property and cultural ownership that hip-hop aesthetes have put forward over the past two decades. For critical race theorists and other students of African American culture, the construction and allocation of intellectual property rights remain crucial issues because race has affected and continues to affect the distribution of wealth, especially as images of blackness remain key components of how American-style capitalism operates.

In his essay "A Portrait of the Trademark as a Black Man," David Dante Troutt creates an extended hypothetical about an African American named MarCus (or "Mark Us"), who owns an advertising company and decides to trademark himself as the symbol of his company. This hypothetical situation functions as an allegory about the perils of intellectual property law for contemporary African Americans. In his trademark application, MarCus imitates the language of legal discourse and describes himself and what makes him trademark worthy in color-blind terms.¹⁰ Despite the potential difficulties with becoming a trademarked property, MarCus reasons that "being a registered trademark allows me both to name myself and to interpret the meaning of that name."¹¹ Taking seriously the commodification of identity, Troutt wants to examine hip-hop's apparent complicity in the proprietization of African American identity and culture. He wonders how intellectual property law would understand this situation and explores the cultural consequences of MarCus's decision. Ultimately, Troutt concludes that law continues to perpetuate a de facto racist and racialized distribution of intellectual property law rights.¹²

Both Troutt and I suggest the difficulty of simply applying putatively color-blind doctrines to African Americans and their creative products. Throughout this book, I have examined how African American intellectuals and artists are continuing to struggle to deracialize the concepts of ownership, property, and intellectual property. As part of this effort, my account of hip-hop aesthetics challenges three assumptions that seem to structure the ongoing dialogue about intellectual property: (1) that copyright and trademark law prior to the 1990s balanced appropriately the rights of copyright owners and the public, without negatively impacting particular social and cultural groups; (2) that national and cultural boundaries pretty much overlap and that a text's meaning does not depend on cultural boundaries;¹³ and (3) that the distinctions among copyright, trademark, patent, and increasingly publicity rights possess a quasi-transcendental character and that most cultural groups recognize them as valid. The growing concern about intellectual property law's expansion has been premised upon the basic assumption that, until recently, legal discourse appropriately balanced the rights of intellectual property owners and the public.¹⁴ While the founding figures of critical intellectual property studies, such as Rosemary Coombe, Jane Gaines, Lawrence Lessig, Kembrew McLeod, and Siva Vaidhyanathan, have gestured to the historical inequalities resulting from intellectual property law, they have frequently opted for "color-blind" solutions, emphasizing free culture, freedom of speech, democratic dialogue, and creativity.¹⁵ Even though I appreciate their attempts to speak in a language that courts understand, one of the central lessons to be drawn from CRT and hip-hop aesthetics is that such color-blind rhetoric has rarely realized African American dreams for freedom and equality.

The scholarship of Olufunmilayo Arewa, Stephen Best, K. J. Greene, Norman E. Kelley, and Frank Kofsky documents how property and contract discourses, along with discriminatory business practices, have systematically transferred the ownership rights over African American creativity to whites. The history of blues and jazz music also provides abundant evidence that African American artists, musicians, and storytellers have rarely received the ownership rights supposedly offered by intellectual property law. The current battle over the hip-hop aesthetic's reliance on sampling does not offer a novel instance of intellectual property law's racialized operation and effects. Rather, it provides another instance of legal discourse's marginalization and delegitimization of African American culture. By focusing on historic inequalities and their relation to contemporary intellec-

tual property law issues, I would argue that today's copyright and trademark activists are participating in a civil rights effort whose origins can be traced back to when the first slaves and indentured servants stepped onto American soil.

On a deeper level, the putative goals behind many criticisms of recent intellectual property law—of promoting innovation, creativity, and democracy—distort the very voices such critics seemingly support. Hip-hop culture is a materialist discourse, and participants do want to get paid. While it certainly fosters innovation and offers an alternative public sphere for some disenfranchised African American youth, hip-hop aesthetics is fundamentally concerned with the fair distribution of ownership rights and claiming control over the American cultural imagination. To ignore or downplay these aspects of hip-hop aesthetics engages in epistemological violence against the very creators to whom these critics offer support. At stake in hip-hop's use of sampling is not simply some theoretical point about abstract principles or the public good. Rather, at stake is a battle over capital and capital formation in cash-starved urban communities and middle-class communities that have too often encountered the glass ceilings in American corporate life. Despite the partial view it offers of African American life, hip-hop aesthetics may constitute one of the few avenues to social, cultural, and economic capital for some African American cultural workers. While few musicians, artists, or writers will likely earn a big payday from their work, hip-hop culture and its accompanying aesthetics constitute one of the few "natural" resources possessed by many young African Americans. A cynical reader, following Derrick Bell, might conclude that copyright's and trademark's critics only discuss hip-hop or African American cultural history when it coincides with white and/or middle-class interests. While this reading may have some merit, this book is more concerned with encouraging legal critics to gain a deeper understanding of African American culture as a whole and how the marginalization of African Americans has been affected through seemingly innocuous and color-blind rules and doctrines.

One instance in which African American studies can help improve legal scholarship is through its attention to the shifting nature of cultural boundaries. Because federal law regulates copyright and trademark (although there is some state trademark legislation), courts and commentators tend to assume that cultural borders follow legal ones. While legal discourse distinguishes between genres in applying copyright law, it does not recognize how African American culture differs from dominant culture. As

this book argues, African American culture possesses a distinct perspective about the definition of a text and the rules that govern ownership over a text. Through hip-hop aesthetics, African American culture has engaged in a vigorous discussion about the right to copy (i.e., sampling versus biting) and creating trademarked identities out of neologisms and commodities. Because copyright and trademark have adopted the color-blind rhetoric of most legal discourse, such cultural distinctions have not been judicially sanctioned even if they structure how audiences understand hip hop texts. Rather, courts have attempted to ignore cultural formations and racial identity even as key cases, such *Acuff-Rose v. Campbell* and *SunTrust v. Houghton Mifflin*, appear to hinge on racial and cultural distinctions. Following the cues of courts, many intellectual property law critics invoke deraced and degendered “universal” creators, users, and subjects as if people do not create, use, and understand texts and objects through a particular cultural lens.

Perhaps most illustrative of hip-hop aesthetics’ challenge to intellectual property law is its deconstruction of the idea/expression dichotomy. As discussed throughout this book, copyright and trademark assume that ideas can be articulated in many ways, but each expression possesses a singular meaning. Hip-hop aesthetics, rooted in signifyin’, sampling, rhythmic asymmetry, and irony, challenges this foundational assumption of intellectual property law. Hip-hop aesthetics sees textual complexity where legal discourse assumes simple or surface meaning. Because many critics elevate the broad, general legal assumptions over the more nuanced and specific categories deployed by cultural studies, some analyses of intellectual property resolve prematurely the very cultural and economic conflicts between African Americans and white Americans that have found legal expression within intellectual property law. Attempting to remedy the inefficiencies or absurdities of intellectual property law without referencing its complicity in the de facto and probably de jure transfer of wealth from African Americans to white Americans is unlikely to prove successful. Resolving other cultural/economic conflicts, whether they involve fan fiction or unauthorized music trading, probably requires engaging with histories of discrimination and power inequalities, not simply a slight tweaking of abstract legal formulas.

Last, this cross-genre study of hip-hop aesthetics challenges the established distinctions among intellectual property law’s subfields. Although doctrinal distinctions differentiate copyright, trademark, patent, and increasingly publicity rights, it is increasingly common for individuals and

corporations, no matter their racial identity, to claim multiple forms of ownership over identical or similar materials. For this reason, judicial, intellectual, and scholarly attempts to divide discussions about intellectual property have proven unrealistic and unduly abstracted from the actual functioning of intellectual property law in everyday life. From the perspective of a particular cultural formation, in this case hip-hop culture, the doctrinal differences appear merely as roadblocks in the quest for freedom and equality. Nonlawyers, I found, in the course of working on this book, respond with bemusement to learn that trademark law applies to Michael Ray Charles's use of Aunt Jemima, but copyright regulates Alice Randall's parody of Scarlett O'Hara and *Gone With the Wind*. It has also proven difficult to explain to nonlawyers why John Henry is public domain but Uncle Ben is not, even though both figures originate from, more or less, the same time period and arguably embody similar racial stereotypes.

These legal distinctions do not immediately affect how African Americans deploy and rework such images, texts, and stereotypes. Rather, it appears as if genre, along with any racial stereotypes associated with it and the author's/artist's racial identity, can shape how courts analyze fair or transformative use, more than the formal elements contained within the work. Although much criticism focuses on the universal or cross-cultural effects of individual doctrines, hip-hop aesthetics suggests that copyright, trademark, and even publicity rights increasingly are asked to provide the procedural and substantive rules to negotiate among conflicting cultural groups. Perhaps efforts to persuade Congress to revise its copyright maximalist approach have failed because proponents have not been sensitive enough to cultural differences. I think the lessons from the Civil Rights Movement are illustrative. Although general principles about voting, housing, and employment discrimination grounded the efforts of activists, it was the specific instances of race-based discrimination that moved Congress to enact legislation. Today, most people accept race or cultural arguments as necessary elements of employment or voting law. It seems that a similar revolution is needed for intellectual property law if we aim to create a vibrant intercultural discussion about American culture.

Critical Race Theory

Although the two movements responded to the same events and developed concurrently, few scholars have examined the relationship between hip-

hop and CRT. This book frequently juxtaposes seminal critical race theorists with hip-hop aesthetes because each provides important contextual clues to understand the other. I have not claimed or even suggested that critical race theorists are hip-hop artists or vice versa. Rather, this book provides some evidence that the aesthetic strategies adopted by both enable them to make similar criticisms about how white perspectives dominate American culture and have largely shaped the distribution of property rights. A more thorough study might reveal that hip-hop aesthetics—sampling, layering, rhythmic asymmetry, and irony—provided the form through which CRT articulated its alternative vision for legal discourse. Similarly, further study might conclude that hip-hop and CRT constitute complementary social justice strategies.

In late 2003 and early 2004, Richard Delgado and Kevin Johnson engaged in a spirited debate about CRT's future. In a review essay that contrasted a collection of recent CRT writings¹⁶ and Derrick Bell's autobiography *Ethical Ambitions* (2002), Delgado expressed concern that CRT lost its focus during the 1990s and has become splintered into various factions, especially as Latino/a Critical scholarship (Lat Crit) and its annual conference have become more active.¹⁷ He argued that the conceptual framework underlying this new scholarship has shifted from a materialist outlook to a more idealistic one, favoring textual analysis over interrogations of the specific interrelationships among race, racism, and American law.¹⁸ Foundational CRT themes and arguments, such as the interest convergence thesis, voice scholarship, intersectionality, law school hiring and promotion policies, and racialized scholarly networks, have disappeared, according to Delgado, and abstract analyses that seem far removed from the lived experiences of African Americans and other racial minorities have become the norm in CRT and Lat Crit scholarship. Supporting his claim, Devon Carbado and Mitu Gulati have noted that CRT has increasingly viewed race as macrolevel phenomena rather than as the result of concrete actions and decisions.¹⁹ They, like Delgado, suggest that CRT needs to adopt a more pragmatic and materialist outlook and examine how specific policies and doctrines contribute to the persistence of racial inequality.

Within a few months of the review, Kevin Johnson defended recent trends in CRT against Delgado's attack. Johnson made an effort to show how Lat Crit had developed, in part, because CRT, de facto, had ceased to exist, no longer holding regular meetings, and because CRT needs to transcend the black-white binary, which it may have strengthened inadvertently.²⁰ In addition, he attempted to show that "Delgado overstates the

distinction between ideal and material forms of discourse.”²¹ For Johnson, the recent focus on discourse analysis helps explain how social, political, and economic forces have impeded legal efforts to address the ongoing effects of race, racialization, and racism in American culture. He argues that Delgado’s claim that contemporary iterations of CRT do not offer strategies to reduce poverty, housing discrimination, and economic underdevelopment in minority communities neglects the relationship between material and discursive realms. Using the example of immigration, Johnson attempts to show how Lat Crit has tackled a practical issue facing minority communities. The cultural politics around immigration also offers an exemplary instance of how the racialization of American culture gets translated into both international and domestic policies.²² Through their engagement with immigration, Lat Critics have mapped out the forces that have been used to divide communities of color, splitting the Latino/a community and pitting African American and Latino/a leaders against one another. Johnson concludes his response to Delgado by suggesting that Lat Crit has staked out new territory that complements the arguments offered by CRT’s founding figures.

Hip-hop aesthetics, in many ways, provides a ready analogy for the dispute between Delgado and Johnson about recent developments in CRT and Lat Crit. Like CRT, hip-hop has exceeded its original boundaries and come to dominate contemporary African American art, music, and literature. As it has grown and developed, hip-hop is no longer the exclusive property of urban youth of color, adopting multiple forms and being adapted to many audiences. The original innovators have generally receded from the scene, and a new generation, for whom hip-hop has always existed, now dominates contemporary African American music, art, and literature. By identifying 1991 as the baseline year, this book recognizes the shifting nature of cultural movements and thus maps hip-hop’s effects on multiple genres and traditions.

Like hip-hop culture, CRT has also changed since its inception. The debate between Delgado and Johnson, however, need not harden into two competing camps: materialism and idealism. As both Delgado and Johnson suggest, CRT need not choose one over the other, because the ideological and the material are linked domains. Hip-hop offers a ready example of one strategy for crossing this apparent divide. Hip-hop aesthetes question the definition and distribution of property rights even as they create texts that make ownership claims. This seemingly contradictory attitude reflects both law’s historic complicity in racial hierarchy and its unrealized poten-

tial for creating racial justice. More surprising than its turn to ideological criticism has been hip-hop's absence in the writing of CRT and Lat Crit. Although hip-hop began in the mid-1970s, only recently has CRT or Lat Crit seriously engaged with law's regulation of the hip-hop generation and hip-hop culture. As the dominant aesthetic structure in the post-Civil Rights era, hip-hop has increasingly served as the voice for and representation of urban youth of color, even if many judges, legislators, and legal scholars may lack the skills or cultural competence to decode its meaning.

CRT and now Lat Crit articulate the need for outsider voices in policy making and legal analysis. Most frequently, they have turned to autobiography, dialogue, and other realistic modes of representation as their principle means. Questions of genre, aesthetic structure, and narrative mode have rarely been engaged, resulting in a fairly uncritical reliance on romantic notions underlying authorship—assumptions these theorists share with intellectual property law.²³ CRT's literary turn during the 1980s and early 1990s coincided with growing suspicion about the stability of textual meaning, especially as texts move across cultural and historical boundaries. Lat Crits' more recent focus on discourse analysis reflects contemporary intellectual debates. Lat Crit has attempted to explain the relative marginalization of CRT doctrines within legal discourse even as CRT has been moderately successful in publishing books and creating a network of scholars across the country. Bill Clinton's failed nomination of Lani Guinier reflects the relative failure of CRT's influence on legal doctrine. Guinier's critics easily distorted her ideas about reforming elections law by characterizing her as a "quota queen," out of touch with mainstream values. Guinier's example suggests that knowledge of material inequality does not necessarily provide a corresponding politically viable solution to that problem. Part of this challenge results from the malleability of language, image, and sound. Content alone does not determine a text's meaning. As a reterritorializing method for creating art, music, and literature, hip-hop aesthetics challenges CRT's trust in alternative narratives and reconstructed doctrines for remedying inequality because hip-hop struggles to "keep it real" in the endless cycle of textual and symbolic appropriation and reappropriation.

Hip-hop and intellectual property law have become significant prisms through which politicians, cultural critics, activists, and artists of all races, ethnicities, and classes discuss the nature of creativity and the optimal way to distribute the ownership rights of creative properties. By and large, CRT and Lat Crit have not participated in this conversation, nor have crit-

ics and lawyers engaged in an exhaustive analysis of how the doctrines of intellectual property law further the racialization of American cultural life and distribute the ownership rights of those racialized properties. This book has attempted to bridge the materialist-idealist divide within CRT and Lat Crit by exploring how hip-hop aesthetics constitutes a literary-artistic-musical style where material and ideological concerns exist together. To participate in this debate most productively, CRT and Lat Crit will need to find ways to blend methods and theories with the approaches of those trained in fields of law that have typically be absent from their conversations. While Delgado is quite correct that poverty, housing, education, immigration, and the prison-industrial complex continue to affect the lives of people of color disproportionately, CRT and Lat Crit cannot ignore how current intellectual property doctrines commodify cultural products in a manner that tends to distribute ownership rights over African American creativity to predominately white corporate interests. Activism efforts should not only ameliorate poverty and social inequality but promote the structural conditions whereby African American communities can capitalize on existing cultural wealth. Perhaps even more importantly, CRT and Lat Crit need to maintain open dialogues with the communities they purport to represent. Hip-hop's materialism, its development of an aesthetic form as the basis of its ownership claim over American culture, and its attempt to distinguish itself from previous generations all require careful attention as CRT and Lat Crit develop the next generation of legal-cultural criticism. The relative absence of hip-hop and the hip-hop generation as specific CRT and Lat Crit themes constitutes a major oversight, but one that can be remedied fairly easily, especially given the large number of hip-hop texts.

Hip-Hop Studies

Mark Anthony Neal, one of the founders of hip-hop studies, recently observed that hip-hop culture has consistently defined itself not only as a racial or ethnic movement but as the product of working- or lower-class norms, values, and experiences. According to Neal, "the concept of 'ghetto fabulous' . . . celebrates certain notions of a normative 'ghetto' experience" as central to hip-hop culture.²⁴ Even though many of hip-hop's stars, including Chuck D, Run DMC, Russell Simmons, and Sean "Diddy" Combs, possess middle-class roots, hip-hop culture has largely identified

itself in opposition to middle-class values and behaviors. Hip-hop studies has reinforced this distinction by, all too frequently, isolating hip hop-music and street culture from contemporary art, literature, and cultural criticism. The unsurprising result is that much, but not all, hip-hop scholarship has severed hip-hop from its relationship to African American culture, writ large. Hip-hop culture thus appears to transcend the traditional debates of African American cultural studies as articulated by Du Bois, Locke, Hughes, Hurston, and Gates and articulate the pure perspective or experience of disenfranchised and marginalized African Americans.

Although generally separated by academic scholarship and the public, the forces that shape hip-hop culture also influence contemporary African American art and literature. Increasingly, African American artists and writers make explicit references to hip-hop culture within their work and, like Kehinde Wiley, use hip-hop music to create the context for showing their work. Hip-hop music does not speak simply to the urban working class, but to a broad range of African Americans who are still waiting for legal discourse to deliver on its promises of freedom and equality. Like blues and jazz before it, hip-hop has become a central artistic paradigm for cultural production that cuts across disciplinary boundaries. Contemporary artists and writers rely on sampling, layering, rhythmic asymmetry, and irony in their work. These writers and artists have also become the focus of public controversies and lawsuits regarding their use of racist imagery. In order for scholars to capture the full impact of hip-hop aesthetics, we will need to get beyond the romantic view of working-class culture that underwrites much hip-hop scholarship.²⁵ The debate inaugurated by hip-hop aesthetics involves a broader range of African Americans than typically considered, and it may demand a profound reworking of our understanding of African American culture. Hip-hop's criticism of property law cannot be characterized as a "pure" or "authentic" working-class perspective. Isolating hip-hop as the music of poor urban youth in effect marginalizes its critique and encourages class and generational conflict. It also decontextualizes the many African American writers and artists who have engaged with similar questions, albeit from different cultural and professional locations. By linking generations and art forms, scholars and intellectuals can foster community building around shared political, economic, and cultural concerns.

Although Chuck D described rap as "Black America's CNN," hip-hop studies should not mistake the music, art, and literature of the post-Civil Rights era for unmediated realism.²⁶ Grandmaster Flash and the Furious

Five, Kurtis Blow, and countless others have insisted on “keepin’ it real.” This rhetorical realism, however, does not mean that these artists simply describe everything they see or experience. Such an understanding would neglect the many stylistic and aesthetic choices they make. From Run DMC’s “Peter Piper” to Jay Z’s “Hard Knock Life” and Kanye West’s “Gold Digger,” rappers and deejays display conscious efforts to transform familiar imagery and sounds. These songs display aesthetic traits similar to those found in texts and images produced by post–Civil Rights era African American artists and writers. Rather than separating their work, this book suggests that scholars must engage in greater efforts to examine how hip-hop aesthetics shapes multiple genres. Perhaps we will learn that KRS One, of Boogie Down Productions, and CRT share an understanding about how best to transform American culture. We might also learn to hear the feminism of Lauryn Hill in the writing of Alice Walker, and vice versa. The wordplay and humor of De La Soul might have analogs in the writing of Paul Beatty and the art of Ellen Gallagher. This book challenges the assumption that music is the best or most authentic source for learning about African American criticism of cultural, social, political, economic, and legal structures. Rather, it argues that African American music, literature, art, theater, and film frequently work together to develop such criticisms of American culture.

Most analyses of hip-hop, especially those that consider lyrics, eventually grapple with their putative violence and misogyny. Such examinations rarely connect rappers with visual or literary artists. While Dr. Dre, Snoop Dogg, and many others have been roundly criticized for writing lyrics that degrade women and/or rely on invidious stereotypes, scholars rarely examine how their imagery compares to that of Kara Walker, Robert Colsecott, Ishmael Reed, Darius James, Dave Chappelle, or Spike Lee. Perhaps the existence of similar imagery in other genres can help provide a fuller account of this cultural dynamic. Similarly, the tales of violence found in the music of N.W.A., Ice T, and Jay-Z may have a greater relation to the violence depicted and referenced by Alice Walker, Toni Morrison, Fred Wilson, and Allison Saar than previously thought, even if the nature of the violence is quite different. Of course, scholars should try to understand hip-hop music on its own terms, but that effort should not cause them to forgo examining the overlap with other artistic forms. Why is it that African American musicians, artists, and writers—no matter their connection to hip-hop—continued to offer such violent narratives even after the victories of the Civil Rights Movement? The answer to this question, I be-

lieve, is more linked to ongoing race relations than to the nature or essence of hip-hop music. I hope that this study convinces many hip-hop studies scholars to look beyond music, graffiti, and dance to engage with a fuller range of post-Civil Rights era cultural productions in answering questions like these. Hip-hop exemplifies contemporary tensions, but it is not the sole repository of those tensions within the post-Civil Rights era.

The conflict between hip-hop aesthetics and intellectual property law reflects the broader and continuing gap between law's promise and the reality many African Americans face. Hip-hop aesthetics has offered many African American artists, writers, and musicians a form to articulate this social frustration and offer cultural criticism. Because of its increasing importance in defining and distributing property, intellectual property law has regulated how these cultural workers create texts and has become the subject of considerable discussion within contemporary African American culture. By viewing each through the lens offered by the other, it is clear that the turn to intellectual property does not provide a ready solution to the maldistribution of property rights African Americans have inherited, nor has legal discourse developed a coherent strategy for applying legal principles to contemporary African American cultural production that respects its creativity and originality. Like cultural studies scholars who view hip-hop as realism, legal discourse tends to view hip-hop aesthetics in simple terms and underestimates and misinterprets the resulting texts. While African American writers, artists, and musicians clearly rely on property rhetoric and demand ownership over their work and African American culture, they also see property law's limitations and express doubt that such property claims will produce the results they seek. At this time, intellectual property law has apparently settled on its method for resolving sampling cases without fully addressing the cultural conflict that underlies the tension between hip-hop aesthetics and legal discourse. It is my hope that one day lawyers, judges, and scholars can create an intellectual property law regime that recognizes the creativity of hip-hop and other African American cultural forms and allocates the ownership rights over these songs, images, and stories to their African American producers.

