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THE COLOR OF CREATORSHIP: INTELLECTUAL PROPERTY, RACE, AND THE MAKING OF AMERICANS, by Anjali Vats. Stanford University Press, 2020. pp. 296, Hardcover, $90, Paperback, $28.

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Racism is a constant of American law. From the beginning, our legal system has incorporated and enforced racist values for racist ends. Often, the racism was obvious, intentional, and explicit. But just as often, it was subtle, institutional, and implicit. Sometimes, racism came as Jim Crow. Other times, it came as partition or precedent.[1] And more often than you'd think, it came as intellectual property.

Superficially, intellectual property seems racially neutral. After all, neither the Patent Act nor the Copyright Act has ever even mentioned race, and the Lanham Act explicitly prohibited racist trademarks, until the Supreme Court said it couldn't.[2] But the substance of the law is in the application, which has always been plenty racist. The law said enslaved people couldn't be patent owners because they couldn't be citizens. It denied copyright ownership to Black authors because it didn't recognize the value of their work. And it registered innumerable racist trademarks, never mind the statutory prohibition.

It was no accident. Racism wasn't an incidental feature of intellectual property law. It was baked in, just like in every other aspect of American law, politics, and life. Everywhere you look, the impact of racism on intellectual property is obvious, if you are willing to see it. Hell, invention and creativity were racially coded concepts, designed to ignore minoritized people. And they knew it. Black intellectuals have always promoted Black inventors and authors, as a way of countering racist intellectual property narratives. Other racial minorities have done the same. It didn't always work, but it helped. Maybe the dominant narrative is finally changing.

In her new book, THE COLOR OF CREATORSHIP, Anjali Vats explains how racial ideology shaped intellectual property and how intellectual property should change in order to expunge its racist history. Vats's premise is that racism affected every aspect of intellectual property. She's right. It's just indisputable that racism determined who could claim intellectual property rights, what kinds of rights they

could claim, and how they could exercise those rights. The question isn't how racism affected intellectual property, but how it didn't.

There's a lot to like about Vats's book. But I especially admired her framing of the problem. It isn't just that intellectual property law is racially biased. It's that intellectual property law reflects and amplifies racially biased values. We say that intellectual property is intended to promote innovation, but then define innovation in racially coded ways. Knowledge produced in a laboratory is science, the kind of innovation protected by patents, but knowledge learned by practice is "traditional," and not the kind of thing patents protect. Of course, reproducing traditional knowledge in a laboratory turns it into science. Similarly, copyright protects lyrics and melodies, the parts of a song you can transcribe, but doesn't usually protect rhythm or style, even though they are essential to a compelling performance. Trademarks literally police social meaning, often defining and enforcing racialized categories, even though racist marks were supposed to be unregistrable.

As a consequence, intellectual property tends to recognize and protect the kinds of things White people create and desire. It internalizes White values and reflects White preferences. Ironically, when minoritized people innovate and create things White culture doesn't understand, intellectual property law tends to either ignore, punish, or copy them. Obviously, it's better to be ignored than punished, but both are a drag. And while it's good to be copied, it's better by far to get paid.

Anyway, Vats's big picture point is that the racialization of intellectual property is only the same as it ever was. A particularly chilling example is Thomas Jefferson's dismissal of Black creativity in his book NOTES ON THE STATE OF VIRGINIA, which Vats quotes at length, in order to highlight how it encapsulated the received wisdom of its day:

> Comparing them by their faculties of memory, reason, and imagination, it appears to me, that in memory they are equal to the whites; in reason much inferior, as I think one could scarcely be found capable of tracing and comprehending the investigations of Euclid; and that in imagination they are dull, tasteless, and anomalous (pp.36-37).

Vats forcefully observes how Jefferson's gloss on innovation became the standard for intellectual property protection, subtly incorporating its prejudices into the law. I would have considered following Jefferson's appalling calumnies with Benjamin Banneker's wise and generous rejoinder:

> I apprehend you will readily embrace every opportunity to eradicate that train of absurd and false ideas and oppinions which so generally prevails with respect to us, and that your Sentiments are concurrent with mine, which are that one universal Father hath given being to us all, and that he hath not only made us all of one flesh, but that he

> hath also without partiality afforded us all the Same Sensations, and endued us all with the same faculties, and that however variable we may be in Society or religion, however diversifyed in Situation or colour, we are all of the Same Family, and Stand in the Same relation to him.[3]

Banneker enclosed his recently published almanac, which Jefferson grudgingly praised. But Jefferson still considered Banneker an unusual exception, and even questioned whether he actually wrote the almanac. There's nothing Banneker could have done to overcome Jefferson's racist double standard. As Vats explains, "In a move that exemplifies emotional capitalism and anti-Blackness, Jefferson not only made it acceptable to link race, creatorship, and public feelings; he made it intuitive and compulsory" (p.38).

Fast forward 250 years and little had changed, as the Supreme Court continued to apply the same racist double standard. When Acuff-Rose sued Luke Campbell of 2 Live Crew for his parody of Roy Orbison's song "Oh, Pretty Woman," the Supreme Court correctly held that it was a non-infringing, but for entirely the wrong reasons. According to the Court, Campbell's song was fair use only because he needed to copy in order to parody, suggesting not only that Campbell was less creative than Orbison, but also that other kinds of copying might not be fair use. Even worse, the Court patronizingly dismissed Campbell's song as low-quality vulgarity. "The Supreme Court's decision to craft *Acuff-Rose* narrowly reinscribes race liberal creatorship, allowing space for Black creativity only within narrow bounds determined on a case-by-case basis by predominantly White and largely culturally anti-Black judges" (p.95).

Sometimes, criticisms of the intellectual property system simply object to the fact that minoritized inventors, authors, and businesses often receive less protection than Whites. While true, it's unsatisfying, because it assumes that achieving racial justice requires more property rights when the opposite is usually the case. I was pleased to see Vats offer a structural critique of intellectual property, observing that racism pervades the system, not merely its application. Minoritized innovators can rightly object to the racial biases of intellectual property, even if they aren't necessarily entitled to a valid infringement claim.

While Vats discusses disputes in every area of intellectual property law, I found her copyright examples especially compelling, perhaps because copyright is the most explicitly moralized form of intellectual property. While we admire investors and entrepreneurs, authors receive an extra helping of adulation. Refreshingly, Vats uses stories like the Marvin Gaye estate's copyright infringement action against Robin Thicke and Pharrell Williams for "Blurred Lines" as an opportunity to reflect on its racial politics, not merely an opportunity to say the more copyright protection the better: "The racial justice conclusion that audiences ought to draw from the dispute over 'Blurred Lines' is not that *more* copyright can protect people of color,

but that *different* copyright is necessary to push back against the underlying values and ideologies that shape copyright law" (p.20). Amen.

In sum, this is an excellent, timely, and rich book. Vats is right to draw our attention to the racialized ideologies that justify the various intellectual property regimes and enable institutions to rationalize their discriminatory application. I hope and believe it will inform the conversation going forward.

ENDNOTES

[1] See, e.g. Thomas W. Mitchell, Reforming Property Law to Address Devastating Land Loss, 66 Alabama L. Rev. 1 (2014); Justin SIMARD, Citing Slavery, 72 Stanford L. Rev. 79 (2020).
[2] Matal v. Tam, 582 U.S. __, 137 S. Ct. 1744 (2017)
[3] Banneker to Jefferson. https://founders.archives.gov/documents/Jefferson/01-22-02-0049

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THE COLOR OF CREATORSHIP: INTELLECTUAL PROPERTY, RACE AND THE MAKING OF AMERICANS, by Anjali Vats. Stanford University Press, 2020. pp. 296, Hardcover, $90, Paperback, $28.

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Anjali Vats's book THE COLOR OF CREATORSHIP is a very welcome and powerful addition to the burgeoning field of race/gender studied of intellectual property ("IP"). Just two decades ago, no legal scholarship addressed the racial divide in IP protection. The economic analysis of the law was firmly fixed as the dominant framework for understanding IP.

In the intervening years, I and scholars like Professor Lateef Mtima pioneered the analysis of race and intellectual property. My work was the first to apply a "critical race theory" ("CRT") lens to IP issues. My article "Copyright, Culture and Black Music: A Legacy of Unequal Protection" was the first of its kind to examine the ways in which copyright law and doctrines such as originality, fixation, the idea-expression dichotomy and copyright formalities operated to deprive Black creators of copyright ownership and enforcement.[1] Years later, my scholarship applied an explicitly CRT—and intersectionality lens—to other IP issues, including trademark law and to the right of publicity.[2]

The tributaries of this work on race and IP law, to which Professor Vats's book ably contributes, are arguably the most dynamic examinations of IP law, necessitating an interrogation of IP doctrine and policy that go far beyond the mundane analysis of case law and esoteric theoretical IP approaches common in much scholarship in the field. Such traditional scholarship draws few, if any, connections to real world IP problems or to how IP re-marginalizes marginalized communities.[3] Racialized inequalities are firmly baked into the IP cake, not simply relics from the past. A stark reminder of this dynamic is the Wall Street-driven feeding frenzy for legacy song catalogs—catalogs created by Black artists but now monetized by Wall Street money men.[4]

One of the core theses of Professor Vats's book is "that the outcome of individual legal cases involving creators of color is less important than how doctrinal standards were forged through epistemically raced conceptions of citizenship"

(p.7). Vats's focus on citizenship is a unique contribution of her book to the legal literature on race and IP. In Vats's conception, the "mythical ideal" obscures whiteness and racial power…." (p.6). By looking at IP inequality through the lens of citizenship, a historically racist trope in law and politics, Vats's work is highly effective in re-imagining the problem of race in IP, although perhaps the book is not quite as effective in shaping possible solutions to the problem, which is common critique of CRT scholarship.

Despite the melting-pot rhetoric many of us were fed as children, if it was ever unclear that the model of an American citizen is a white person and probably a white male, the candidacy and presidency of Donald Trump dispelled any vestigial illusions. In Vats's conception, IP's "'imagined communities' do not reflect America's melting pot ideal but instead systematically protect Whiteness as (intellectual) property" (p.9). This reflects a powerful, and historically irrefutable perspective ripe with potential for reforming the IP system to reflect values of equality and fair compensation—values lacking in today's IP arena, as the treatment of Black artists illustrates.

Professor Vats draws on historical examples, such as Thomas Jefferson's assertion that African Americans lack the ability to be truly creative, and contemporary examples, such as the free pass the rapper/singer Pharrell Williams received in the "Blurred Lines" copyright infringement case. Skillfully weaving these stories as race narratives, an essential tool in the CRT toolbox, Vats's book makes a valuable contribution to the legal literature on race and IP.

Professor Vats posits that use of the citizenship paradigm and the "[c]ritical rhetorics of race" can challenge systems of oppression rooted in racial and colonial oppression (p.12). She urges critical race IP scholars to link forces with traditional critical race scholars and to use "all available tools to think through race and (neo) coloniality" (p.13).

Vats, citing other IP scholars such as Professor Sibley, contends that "with the exception of few works", IP race scholars tend to focus on case studies and stories to analyze IP race issues, and that these approaches "serve to further reinforce the message of consent" (p.14, quoting Silbey). While I agree that this is indeed the case, my own work in this area did not solely engage in case studies and litigation, but challenged the foundational norms of the IP system, including economic incentive theory and the legal frameworks and policies that have devastated African American artists.

Professor Vats provides a compelling and unique analysis of one of the most talked about copyright infringement cases in recent times, known as the "Blurred Lines" case. In Professor Vats's retelling of the case, the crucial issue of the participation (guilt) of Pharrell Williams, a Black artist, was swept under the rug to protect the legacy of Marvin Gaye. The racial "script" of the "Blurred Lines" case pitted Gaye, an innovative artist associated closely with the Civil Rights Movement against

Robin Thicke, a White and, frankly, untalented singer who had never previously composed a hit song. Vats notes that the two Black singers on the "Blurred Lines" song, the rappers T.I. and Pharrell Williams, "act as props to Thicke's …. predatory sexual fantasy" (p,19).

The tangled battle of ownership and control, and race and gender landmines seen in the "Blurred Lines" case might be seen another way: it illustrates the depths of anger and frustration in the Black community over long-standing and continuing cultural appropriation by outside communities and the rampant theft of Black intellectual property. This anger is perhaps difficult for people outside of the African American community to gauge or understand. The genesis of my original work on IP and race was the Black barbershop, a locus of inquiry and interrogation of racial oppression.

I would suggest that the "pass" Pharrell Williams received in the "Blurred Lines" case from activists (and ordinary citizens) in the Black community was less about Williams's actual participation in the infringement and more analogous to the reaction of many African Americans to the O.J. murder verdict. The perception of many was, as I recall Professor Mtima saying "finally our team won one". Professor Vats posits that the "Blurred Lines" case is "a complex negotiation among Black and White publics from the soul and post-soul generations," i.e., a conflict between soul and hip-hop (p.21). However, I believe this contention misses the mark. In fact, there is no daylight between hip-hop and soul—both artforms are based on the Blues, the mother of all.

And while Vats correctly notes that the "Blurred Lines" song was not sued for digital sound sampling but for "feel," at heart the dispute is about cultural appropriation, a claim not recognized in copyright law. The outsized role that Robin Thicke played in the "Blurred Lines" song and video all but assured that, from the perspective of the Black community at least, this was a theft of cultural property, reinforced by the iconic presence of Marvin Gaye. Given these circumstances and the historic pattern of the theft of Black artistry, it is not surprising that the African American community would treat Pharrell Williams, a member of the community steeped in intercultural borrowing, differently than Thicke, an interloper with no connection to the community.

I greatly enjoyed Professor Vats's exploration of the artist Prince in connection with ideologies of race and power. Professor Vats notes that Prince was not the first Black artist to challenge the racialized power structures that were and still are the American music industry—an industry innovated and dominated by African American artistry, but controlled by White executives. As she states, "Prince was neither the first nor the only artist to raise objections about the politics of race and intellectual property or race and inequitable contractual arrangements" (p.159).

While Prince is rightfully celebrated as an innovator in his own right, much of his musical production, persona and oppositional stances to domination by elites were

very much in line with a long tradition of his Black forbears. James Brown, who had a profound musical influence on Prince--and indeed every musician who plays Black music--was also famously protective of his output, and fiercely independent and entrepreneurial. James Brown, like Prince, refused to hew to standard release dates and formats dictated by major record labels. James Brown, like Prince, stringently and stridently railed against sampling of his music, stating "everything on my record is mine."

However, the great James Brown did not escape from exploitation on an economic level—Brown was saddled with absurdly low royalty rates from the major record labels. His plan to "stick it to man" was constrained by the power and racialized dynamics of the music industry. Sam Cooke, too, refused to bow to the standard (i.e., exploitative) practices of the American music industry. He died under circumstances which are still unresolved today.

Professor Vats examines Prince's epic conflict with his record label (and my former client) Warner Brothers in vivid terms that add richly to the literature around race and contracts. One could counterpose Prince's treatment by Warner Brothers with that of another musical innovator (and major influence on Prince), Jimi Hendrix. Both Prince and Hendrix played guitar, but one, Prince, landed a major record deal with significant financial benefit, while the other received completely something else. In 1965, Hendrix signed the infamous "PPX" contract with music producer Chapin that conveyed ALL of his output from 1965 to 1969 for the paltry sum of a one dollar and a one-percent royalty rate. The PPX contract would go on to be litigated over twenty years after Hendrix's death in 1970 (Hendrix had signed multiple contracts conveying the same rights to other labels).

Contrast Hendrix's PPX deal with Prince's 1992 Warner Brother's contract, reported at the time to be the largest in history at $100 million, and one could argue that real progress had been made in closing the racial equity gap.[5] However, either Prince's lawyers did not explain recording industry economics to him, or perhaps he simply did not want to listen if they did. Prince's Warner Brothers contract was not a $100 million contract. Rather, it was a *hypothetical* $100 million contract, a heavily conditional deal that was based on "Purple Rain"-level sales—sales Prince never achieved after "Purple Rain".[6]

And of course, once Prince changed his name (trademark) to an unpronounceable symbol and left his record label, his sales plummeted to a mere trickle. Prince ultimately effected termination of his grants to Warner Brothers, and promptly resigned a distribution deal with—wait for it—Warner Brothers.[7] It is still today the case that only major record labels can ensure record sales across the United States, and in Berlin, Buenos Aires, and Tokyo. Professor Vats posits that Prince's name change was "emancipatory", but the later facts at least perhaps show otherwise.

Vats notes that Prince's "maximalist" copyright stand drew the ire of critics angered by his many restrictions on use of his music and his no-sampling policy. Many of us as academics writing about race in the IP arena and advocating for corrective justice have faced similar criticism—e.g., for advocating for expanding protection of African American creatorship to "finally get a piece of the pie." The abstract conception of the "public domain" looks like a very different creature when one's works have been constantly dedicated to it under arcane copyright doctrine and hostile judicial declarations.

However, these critics fail to grasp that for Black artists like James Brown and Prince, having climbed to the top, they see no reason they should not play the game just like the major record labels and videogame studios, who are, after all the paradigm of copyright maximalists. These are companies that pay a pittance of the revenues generated for digital streaming, revenues powered by hip-hop music and Black rappers, and who appropriate the dances of Black teenagers on the internet without credit or compensation.

At its heart, these dynamics are part and parcel of capitalism and the altar of profit. The Motown label, built by an African American, was also known as one of the most rapacious. An alternative narrative, articulated by James Brown himself is that when a race of people has been "'buked and scorned", they get "tired of articulated beatin' our head against the wall and workin' for someone else."[8]

I would like to conclude with a few words about Professor Vats's exploration of trademark and race. Citing Professor Schur, she notes that the doctrine of consumer confusion in trademark is more than just a legal doctrine: the doctrine is "also a metaphor for understanding the intersecting relationships among the reasonable consumer, national identity, and racial feelings" (p.65). This argument is certainly borne out in the historical use of trademark law as a leading perpetrator of anti-Black imagery.

My scholarship was the first to train a CRT lens on trademark law, and posited that trademark law protected and thereby promoted racial stereotyping, to the level that racist trademarks were central to the project of racial subordination in the United States.[9] The cumulative effect of racist trademarks, in an era where Americans woke up with Aunt Jemima and Ratus, the Cream of Wheat chef, brushed their teeth with Darky toothpaste, took a chaw of N-word Hair Tobacco, and had dinner with Uncle Ben while watching Amos & Andy on TV cannot be overstated. In this sense, from a CRT perspective, trademark law did far more damage in promoting anti-Blackness than even the "coon" songs of the minstrel era.

In THE COLOR OF CREATORSHIP, Professor Vats has created a thoroughly intriguing and scholarly exploration around issues of race and IP. Her book is chock full of insights, and the stories she recasts, whether about the "Blurred Lines" case, the racialized digital sound sampling wars or the artist Prince and his fight against Warner Brothers. CRT is a powerful tool for exposing the many gaps in IP

protection that have long plagued communities of color, particularly the Black community. Vats has outlined the many ways that IP, like other forms of law, can constitute a mask that covers up domination under the guise of white supremacy.

CRT is indeed perhaps the only tool in the analytical arsenal that can deconstruct the mythology of race-neutrality and contextualize the conduct of White judges in assessing IP protection and ownership for marginalized communities. The core tenets of CRT—the permanence of racism, "insiderism", the fallacy of race-neutrality and colorblindness, the reality of white privilege and whiteness as property, and the need for interest convergence—are ably explored in Professor Vats's book through the use of the narrative.

With this fascinating and important book, I believe that Professor Vats takes us one step closer to the elusive goal of copyright justice, and toward a world where "Black Artists Matter" is more than a mere slogan on a poster.

ENDNOTES

[1] See K.J. Greene, Copyright, Culture, and Black Music: A Legacy of Unequal Protection, 21 Hastings Comm. & Ent. L.J. 339 (1999).
[2] See K.J. Greene, Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues, 16 J. Gender, Social Poly' & the Law 365 (2008).
[3] See Carys J. Craig, Critical Copyright Law and the Politics of IP, in RESEARCH HANDBOOK ON CRITICAL LEGAL THEORY, Emilios Christodoulidis, Ruth Dukes, and Marco Goldoni, eds. (Edward Elgar Publishing, 2019). (2019). Articles & Book Chapters. 2715, noting that critical "IP scholarship effectively generated a resurgence or 'second wave' of critical legal studies (CLS) critique and activism, at least in substance if not in name."
[4] See Royalty Exchange, "WHAT'S BEHIND THE MUSIC CATALOG 'GOLD RUSH'", noting that in "the last five years, more than $9 billion has been spent on music catalogs by investors worldwide." May 11, 2021, www.royaltyexchange.com.
[5] The 1992 Prince-Warner Brothers contract "which included Warner/Chappell Music Publishing, covered six albums and allowed him to release up to one new album a year, a $10 million advance per album and a 25 percent royalty rate." See Melinda Newman, "Inside Prince's Career-Long Battle to Master His Artistic Destiny," Billboard, April 26, 2016, (Issue 12, May 7, 2016) https://www.billboard.com/articles/news/cover-story/7348551/prince-battle-to-control-career-artist-rights.
[6] See Goldies Parade, "Prince and the Warner's Dispute", noting that the "contract would indeed guarantee Prince a substantial $10 million advance with each album, as long that its preceding album shipped at least 5 million units—the amount Warner needed to recoup their advance, taking into account Prince's royalty fee of 20%.", https://goldiesparade.co.uk/new-power-generation/.
[7] See Ed Christman, "Prince Gains His Catalog in Landmark Deal with Warner Bros–New Album Coming," Billboard, April 18, 2014, noting that in "cutting

what appears to be a landmark deal, Prince has chosen to remain with the label that was the subject of his ire back in the 1990's avoiding a risky and costly legal battle and still retains ownership of his catalog." https://www.billboard.com/articles/news/6062423/prince-deal-with-warner-bros-new-album-coming.

[8] James Brown, "Say it Loud, I'm Black and I'm Proud," King Records (1968).

[9] K.J. Greene, Trademark Law and Racial Subordination: From Marketing of Stereotypes to Norms of Authorship," 57 Syracuse L. Rev. 431 (2008). This was the first law review article to examine trademark law through a CRT lens.

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THE COLOR OF CREATORSHIP: INTELLECTUAL PROPERTY, RACE, AND THE MAKING OF AMERICANS, by Anjali Vats. Stanford University Press, 2020. pp. 296, Hardcover, $90, Paperback, $28.

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I begin this review with an anecdote apparently unrelated to IP: A pit bull used to be a dog generally considered appropriate for "little old ladies"—a gentle, undemanding companion. In the US, moral panics over pit bulls, as well as pit-bull-specific licensing requirements that led to dogs being seized from people who couldn't pay the license fees and euthanized, emerged when young Black men started adopting pit bulls.[1] The lesson: To a first approximation, all issues, especially all legal issues in the US, are racialized. A book like THE COLOR OF CREATORSHIP thus provides vital insights for understanding specific legal doctrines.

Vats focuses on the ruling trifecta of IP: copyright, trademark, and utility patent. This selection is of special interest to her project because the incentive-based justifications for utility patent and copyright are very different from the official American anti-deception/investment-protecting justifications for trademark. The racialization of creativity and inventiveness gets more attention in the book, even in the title, than the ways in which commerce is racialized, though Vats does not neglect the latter. The comparison suggests that it is trivial to observe that race matters to an area of the law; one must continue on to ask exactly how it matters.

And here is where a book series could answer questions that a single volume simply can't. Vats uses some examples from outside the US, especially when discussing alternative possibilities for recognizing invention and traditional knowledge. American IP, like American law more generally, is often exceptionalist, but perhaps not so much in core doctrines such as originality and novelty. If other nations with other racial compositions and histories have similar doctrines, that could suggest that the IP doctrines themselves are not necessarily corrupt. It is rather the racially biased lenses that almost-all-white judges have brought to those concepts that have produced the worst offenses in which white appropriation was recognized as creation and Black creation defined out of existence. But Vats might well think that liberal conclusion doesn't go far enough, since originality and novelty also support

systems in which tradition seems to have little market value or protection against the market.

I want to make three points about Vats's account of trademark law, which I found somewhat less convincing than her analysis of copyright and patent. First, Vats claims that "[t]he homogeneity of the 'reasonable consumer' coupled with the inability of people of color to file claims allowed the Doctrine of Consumer Confusion to become a vehicle for protecting White supremacy and Whiteness, even through race neutral language" (p.65). While I agree that the "reasonable consumer" is often just the judge's image of himself (usually) with a shopping bag, I didn't find much evidence directly connecting likely confusion as a doctrine with racialized results. Among other things, Vats does not show that there was a history of appropriation of Black trademarks—allowing Whites to profit from creating brand value while Blacks were expropriated—as there is with copyrightable creativity.[2] The key mechanisms of inequality seem to have been the suppression of Black wealth-creation that minimized the number of valuable trademarks that Black businesses could develop and the related inaccessibility of courts to people of color. But trademark confusion itself doesn't seem like a proximate or but-for cause of upholding White supremacy.

Second, Vats also intriguingly claims that trademark dilution law "functions, racially speaking, as a mechanism for mediating the white racial anxieties of the time, particularly around 'mixing,' in its artistic and identity forms" (p.24). Specifically, the book argues that the invention of dilution by Frank Schechter was justified by the need he perceived to avoid "the gradual whittling away or dispersion of the [trademark's] identity" which is "eerily similar to the language of miscegenation and racial purity (p.102). I find her analysis perhaps more persuasive in the other direction: it seems plausible that white racial anxieties helped make the "trademark dilution" harm story more persuasive in all-white contexts.

The available litigated cases don't seem to show suppression of depictions of racial mixing. Before federal dilution law existed, notable dilution cases instead focused on sexual anxieties; courts readily found pornographic or abject depictions of trademarks to be dilutive. The language of "mixing," both for trademark dilution and racial discourse, pastes a surface scientism on what is really a moral distaste. Barton Beebe has deftly traced the way that Schecter invented dilution out of plain old unfair competition/free riding principles, but with an American empiricist gloss.[3] Just as what matters in scientific racism is the racism, what matters in dilution is the dislike of free riding but borrowing pseudoscientific terminology can help lawmakers feel better about themselves.

Third, Vats suggests that trademark can also be a vehicle for reclamation, valuing Black lives and bodies. She argues that "[i]n a move that refused trademark law's objectification and propertization of people of color, Marshawn Lynch claimed property rights in his own Black bestial body through the Beast Mode® clothing line" (p.25). I confess that I wasn't able to distinguish this propertization, which

she acknowledges is double-edged, from others that the book subjects to greater criticism.

For example, when Vats discusses the "Blurred Lines" case, including the participation of Black artists on both sides, she acknowledges that a racialized system must inevitably pit different disfavored groups and members of such groups against each other. (p.19). She characterizes Simon Tam's attempt to register THE SLANTS for his band as participation in racist logics, understandably but futilely challenging hierarchies by trying to "own" THE SLANTS (p.120), but how does that differ from Lynch's tactics? Vats calls Lynch's refusal of NFL conventions about talking to reporters combined with his registration of his Beast Mode mark "(de)propertizing disidentification" (p.184), but his trademark is both *propertizing* and *playing on identification with* the violent/beast stereotype—the opposite of both the words the book uses. That doesn't mean Lynch's strategy is clearly productive *or* counterproductive for antiracist purposes, but I find the book's deployment of these categories underdetermined in ways that limit their utility.

Lynch, Vats says, refuses the NFL's symbolic ownership (p.180), which seems right, but there's tension in presenting artists like Prince (pp.158-69) (who famously asserted copyright aggressively) and athletes like Lynch as heroic and only slightly problematic, while Tam is offered basically as an unwitting tool of white capitalism despite his reclamatory aims, which the book says can't be achieved. Lynch profits from the stereotype of Black bestiality, but also provides that stereotype with reinforcement, though perhaps the marginal effects of that reinforcement are minimal. Indeed, at the end the book suggests that inclusionary, incrementalist changes within IP are fundamentally ineffective because they don't disavow the concepts of exclusion and propertization. That might well be true, but it suggests that the framing of the book's last section as reclamatory is at war with itself in some ways.

I want to end by emphasizing two thought-provoking and chilling points from the book: First, Vats points out that,

> Through the embrace of restrictive laws against sampling and relegation of the works of people of color to the category of parody, the protections that courts afforded to non-whites increasingly became exceptional instead of ordinary moments of creativity that merited special protection instead of a categorical recognition of citizenship, personhood, and the capacity to create (p.87).

Campbell v. Acuff-Rose thus stands as a victory for black artists, but only as fair users and not as creators of equal dignity. This is an important point, and I would only add that we can recognize this dynamic without denigrating fair use. We do not need to propertize style to recognize the contributions of Black artists; instead, we should note how white claimants like Saul Steinberg have been allowed to lay claim to broader swathes of style than Black claimants.

Second, Vats highlights the racialization (and gendering) of who is allowed to "move fast and break things," in the phrase that Facebook's Mark Zuckerberg made famous. "Black urban youths who participated in hip hop and rap subcultures were cast as threats whose presence marked zones of decay and 'social death,' while White suburban youths who participated in technology and Internet subcultures were cast as innovators whose presence marked zones of flourishing and 'reproductive futurism'" (p.89). The passive voice here hides some attribution: White "free culture" activists like Larry Lessig celebrated both groups, while others like Siva Vaidhyanathan were decidedly friendlier to the former, but judges, legislators, and regulators definitely proved more hostile to the former. Uber and Facebook got to break the law in the course of remaking the law to favor their operations, while powerful men called for the military to shoot Black Lives Matter protesters to stop "looting" , and around the country legislatures pass laws to make it easier to kill protestors with cars. Music sampling is theft, but Bill Gates trespassed into University of Washington facilities to get computer access to start his career and is now a billionaire with the power to reshape entire school systems to his preferences. Vats correctly demands that we pay attention to the privileges afforded innovative white lawbreakers alongside the disadvantages inflicted on innovative Black ones.

ENDNOTES

[1] See, e.g., Bronwen Dickey, PIT BULL: THE BATTLE OVER AN AMERICAN ICON, 140-49 (Penguin Random House, 2016).

[2] For example, although Madam CJ Walker held valuable trademarks, a major biography does not seem to find that she struggled with unredressable infringement or counterfeiting. A'Lelia Bundles, ON HER OWN GROUND: THE LIFE AND TIMES OF MADAM C.J. WALKER (Scribner, 2002).

[3] Barton Beebe, The Suppressed Misappropriation Origins of Trademark Antidilution Law: The Landgericht Elberfeld's Odol Opinion and Frank Schechter's "The Rational Basis of Trademark Protection," in INTELLECTUAL PROPERTY AT THE EDGE: THE CONTESTED CONTOURS OF IP, 59 (Rochelle Cooper Dreyfuss and Jane C. Ginsburg, eds., Cambridge University Press, 2014).

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THE COLOR OF CREATORSHIP: INTELLECTUAL PROPERTY, RACE, AND THE MAKING OF AMERICANS, by Anjali Vats. Stanford University Press, 2020. pp. 296, Hardcover, $90, Paperback, $28.

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When Stuart Hall wrote about encoding and decoding as distinct processes of communication,[1] he was highlighting an important fact about the nature of human interaction: texts, be they visual or rhetorical, exist in the eye of the beholder as much as they do in the eye of the creator. I am grateful for the labor and care that the authors of the reviews in this issue took in responding to THE COLOR OF CREATORSHIP. I am also mindful that their decoding is as much part of the metaphorical life of the book that I wrote as the text itself. A fellow scholar advised me before I had completed my book that I would know what it was about after I finished writing it. At the time, I could not make heads or tails of this wise statement. But, from my present vantage point, a year and a half after the book was released, I can appreciate that my colleague was pointing to a process of radical co-creation, what Hall refers to as "the articulation of complex practices, each of which, however, retains its distinctiveness and has its own specific modality, its own forms and conditions of existence"[2] that gives life to the work that we do. Like Dr. Frankenstein's monster, books are *alive*, they are records of thoughts from a particular moment in time, hungry for engagement. Ideally, they continue to evolve, live, and breathe as they are taken up in reviews, interviews, podcasts, talks, and panels. They crystallize in some places, they disintegrate in others. We would not be human if our ideas did not develop, if we did not come to see our work in new lights as we learn and change. It is from this framework that I want to respond to the reviews that Professors Kevin J. Greene, Brian Frye, and Rebecca Tushnet have offered. Instead of responding to every idea in each review, I have chosen to take up three themes: 1) the strategy of selective storytelling inherent in longitudinal history as research agenda, 2) the White liberalism intertwined with doctrinal focus, and 3) and the utility of translation as intervention in scholarly research. In fleshing out these themes, I have responded to bits and pieces of the reviews contained herein. The rich reflections and additions that my colleagues have offered are worth meditating on for anyone interested in thinking through issues of race and intellectual property. They are part of an ongoing dialogue.

Several years before THE COLOR OF CREATORSHIP was published, I found myself presenting a chapter to a works-in-progress group. A senior scholar in the room, Professor Dale Herbeck, exclaimed: "This isn't a book, it's a research agenda that could span a whole career!" Prof. Herbeck was correct. I thought about that moment often while writing the book, how, as Professor Tushnet so accurately observes, "here is where a book series could answer questions that a single volume simply can't." Knowing going into a project that it cannot possibly cover all the ground it endeavors to tell a story about is strange and humbling, inevitable in some ways with any project, but perhaps particularly acute with longitudinal histories.

I, therefore, want to begin by framing these responses as evidence that there is much more work to be done at the intersections of race, nation, coloniality, and intellectual property, using a range of methodological approaches. My hope is that the work to come will continue to be in conversation with the complex arguments and historical records—such as the exchanges Benjamin Banneker and Thomas Jefferson engaged in about creativity and race that Professor Frye cites, and the negotiations Prince, James Brown, and Jimi Hendrix engaged in with their record companies that Professor Greene cites—that race and intellectual property scholars have made and continue to make. As a recent book review by Professor Janewa Osei-Tutu illustrates, the conversations yet to be had extend well beyond the book reviews including here, for instance, extending into consideration of theories of international intellectual property and colonialism, including TWAIL, or Third World Approaches to International Law.[3]

I want to take a moment to reflect on why I wrote the book that I did, knowing full well that it would necessarily be imperfect and incomplete, like all scholarship, but in some ways that were knowable up front. When I began writing, I was in the middle of completing a Ph.D. in communication, with a focus on race and rhetoric. I was still integrating new theoretical languages, through which I found myself revisiting and rereading intellectual property cases that I had first encountered in law school. For me, the work of my race and intellectual property elders—Keith Aoki, Rosemary Coombe, Vandana Shiva, Margaret Chon, Kevin J. Greene, Madhavi Sunder, Anupam Chander, Lateef Mtima, Kara Swanson, Ruth Okediji, Sonia Katyal, Ernesto Hernández-López, Olufunmilayo Arewa, Adam Haupt, Rebecca Tsosie, Graham Dutfield, Kavita Philip, and so many others—represented fragments in a larger conversation that I was convinced needed to be had about the intellectual property law's sweeping and interlocking historical racial trends.[4] I wanted to understand for myself how racial categories evolved across purportedly distinct rhetorical and cultural legal spaces over time, in conversation with concepts that make America so very American with respect to race. Citizenship emerged as a throughline for doing so. But the book I wrote is necessarily constrained by the amount of time that it maps and the number of cases it considers. I understand these gaps as opportunities for further conversations, with many possible directions.

The book does not, as a result of its breadth, unpack the case studies included in it with the depth necessary to answer all of the questions raised by the reviewers. For

me, that is okay because, as Professor Willajeanne F. McLean so generously put it: "What makes Vats's perspective unique is that she focuses on how claims to citizenship structure the ways in which intellectual property is constructed…far from being race neutral, intellectual property law, ab initio, reifies and calcifies racial biases."[5] Professor McLean points to what I only fully appreciated after THE COLOR OF CREATORSHIP was published, i.e., why *citizenship* is a productive organizing concept for the book, even when "only" anchored through a close reading of a handful of historical moments. Case studies are touchstones in a larger metanarrative of race, not exhaustive examples of the argument being made. They must hold up, of course. But they operate as litmus tests for developing a theory of a longue durée. In this respect, Professor Greene's attentiveness to James Brown's and Jimi Hendrix's negotiations over their master records, which I take up in a forthcoming piece about Taylor Swift's rerelease strategy of ownership and the erasure of Black musical liberation struggles, is incredibly productive because it directs scholars to continually return to intellectual property's histories, in order to refine theory and praxis. Questioning whether Prince's music contracts were as emancipatory as I suggest is also valuable, because it sheds light on the limits of liberation under contemporary copyright law and contract law, both of which exist in the larger context of capitalism—and also serves a reminder of a sometimes-forgotten truth that people of color can read situations differently and validly even while agreeing that the big picture, here that racial inequality persists, holds.

That said, I do not actually think that Professor Greene and I disagree much, if at all. Before he published his review, I wrote an essay about Prince in which I consider the rock star's decision to change his name to the Love Symbol in the 1990s and his posthumous "performance" at the Halftime Show at the 2018 Superbowl.[6] Using theoretical frameworks drawn from Black Studies, I argue that, while Prince was able to change, in Christina Sharpe's words, the "microclimates" of race and intellectual property, even he could not alter the "weather"[7] produced by the structures, repetitions, and materialities that Sadiya Hartman contends entrench the "afterlives of slavery."[8] The essay is the beginning of what will become an entire book project about Prince, tentatively titled CREATING WHILE PURPLE: PRINCE, INTELLECTUAL PROPERTY, AND BLACK CAPITALISM. Without a doubt, there are more lessons to be learned, tensions to be explored, and theories to be developed, in engagements across areas of law. Scholars that are taking up these conversations now—Amaka Vanni, Matthew D. Morrison, Minh-ha Pham, Nora Slominsky, Betsy Rosenblatt, Sajjad Ali Malik, Ngozi Okidegbe, Hyo Yoon Kang, Larisa Kingston Mann, Tiffany Nichols, Akshat Agrawal, Olivia Bethea, and so many more—are doing discipline-shaping racial justice scholarship, using new and exciting concepts and methods. Moving between case studies and structural landscapes, in conversation with the social sciences and humanities, will remain important as these discussions develop in form and content.

While we are careful not to define people's scholarship or allegiances, Deidré Keller and I contend in a book chapter that we wrote about race and intellectual property methodologies, that writing about doctrine, power, capitalism, or even

inequality is not necessarily writing *about* race.[9] The distinction we make focuses on the object of analysis: asking how and why structural dispossession happens does not inherently address questions of racial identity. This is not a negative with respect to approach, only a difference therein. Still, I want to discuss the implications of focusing on doctrine without focusing on race. Writing about race, as through critical race studies, is an exercise in understanding structural *racial* power and identity, often in nexus spaces, including its historical trajectories, its material structures, and its stubborn persistences. Laying the groundwork to discuss race in the context of technical areas of law, such as intellectual property, can be a formidable task. Moreover, the resulting scholarship is not always legible across disciplinary boundaries if it emphasizes critical race studies-based concepts, theories, and methods. Property and propertization, which are inseparable from histories of settler colonialism, anti-Blackness, and anti-Asianness in the United States,[10] necessarily raise racial questions, that are shaped by what Natalia Molina describes as relational dynamics between racial groups.[11] Professor Tushnet writes that I am harder on Simon Tam than Marvin Gaye or Marshawn Lynch. In a literal sense, this is arguably true. But in a racial sense, the differences between the situations are stark. Neil Gotanda and Robert Chang speak of "racial triangulation"[12] as a method of dividing and conquering. That racial triangulation occurs in the context of (racial) capitalism, with some acts fracturing social justice movements more than others. The distinguishing factor between Tam and Gaye, Lynch, and Prince for me is the *racial cost* associated with their actions. I do not speak to Tam's character or critique the nature of his interventions. But Tam's *victories* come at the expense of Indigenous peoples, in a way that those of Gaye, Lynch, and Prince do not, at least in such a direct fashion. The ethical stakes of the cases are distinct as well, though perhaps not doctrinally so. I do not deny that Gaye, Lynch, and Prince entrench destructive systems as they struggle toward liberation. The concept of (de)propertizing disidentification recognizes the complexity of emancipatory praxis, that it is possible to simultaneously confront stereotypes and entrench them, unmake property and remake it. The purpose of (de)propertization as an analytic is not to offer concrete answers but to make visible the relational pushes and pulls that make pure counterhegemonic action impossible within a system of (racial) capitalism. In that framework, leveraging intellectual property law to make monetary gains, as Greene notes, is not wrong. To quote Beyoncé, sometimes "best revenge is your paper." But all too often, the paper becomes an end in itself, without constant thoughtfulness about the consequences of attaining it. This is, I believe, a place where the epistemological nuance of Black Studies, Indigenous Studies, and Asian American Studies can aid in developing richer analysis of the cases.

While (racial) capitalism can improve the situations of some, operate as harm mitigation so to speak, it alone cannot, at least in its increasingly unregulated forms, produce equity of any type. In fact, the neoliberalism that Lauren Berlant argues anchors trademarks to nation *is* an integral part of the superstructure that produces inequity.[13] In this way, Professor Tushnet's observation that likelihood of consumer confusion is not connected to racialized outcomes is and is not true. On the one

hand, she is correct that this is a place in which the argument of the book is underdeveloped, i.e. I do not delve into the cases through which race is mediated via "confusion." On the other hand, I maintain that the optics of racialization that I am attempting to pin down are built into the larger dynamics of trademarks. Professor Greene writes about how the doctrine of consumer confusion, beginning in the early 1900s, became a tool of (White) robber baron capitalism, shutting out competition in a cutthroat manner.[14] Rosemary Coombe shows this as well, by centering trademarks as important mediators for alterity.[15] In foundational scholarship on trademarks and coloniality, she shows how brand loyalty was a means of encouraging White consumers to invest in the nostalgic racial hierarchies that anchored the post-Emancipation world. I demonstrate how unfair competition cases that evolved into copyright and trademark doctrine, especially those involving Aunt Jemima, normalized White ownership of Black people and their likenesses.[16] Derogatory images perpetuated through (White) judicial interventions relating to consumer confusion were the currency of trademark law. The likelihood of consumer confusion was conceived and produced in a world of (racial) capitalist looking, sustained through the (White) judicial entrenchment of everyday violence. Thus though trademark owners may not be "authorial" or "inventorial" in a literal sense, they play a role in upholding a regime of what Michel Foucault would speak about as power/knowledge in which people of color are systematically diminished by trademarks as well as copyrights and patents. Similarly, as Richard Schur contends, the doctrine of dilution functions as a mediator of purity, one that frequently interfaces with fears of miscegenation. In this respect, dilution cases need not take on race in order to contribute to racial harm.[17] The mere rhetorical invocation of dilution, whether caused or embraced as a result of White racial anxieties, reinforces a fear of mixing that is embedded within narratives of race itself. Professor Tushnet and I seem to be in agreement that the moralization inherent in dilution law is problematic insofar as it adds a layer of potential cultural contempt over top economic concerns. In my mind, the array of issues that Professor Tushnet points to are important ones—but that fact mainly highlights that issues of race deserve more consideration.

This raises what I consider to be a central question in Critical Race Theory, namely the epistemological concern of how scholars ought to orient to doctrine in discussing structure. At times, deep focus on doctrine can be a distraction from structure, a means of looking away from cultural phenomena and legal trends by homing in on the comfortable minutiae of statutes and cases. In some instances, a deep focus on doctrine can also become a way of watering down racial arguments, by hiding behind the safety of seemingly fixed rules through which White supremacy fluidly sustains and defends itself. The deradicalization of race occurs when doctrine becomes a be all end all, when fidelity to judicial rhetorics becomes a rhetorical constraint as well as a way of occluding racial inequality. Richard Delgado describes the process of producing "imperial scholarship" as a type of (White) doctrinal and interpersonal confirmation bias.[18] Sometimes this imperial scholarship revolves around the production of plausible deniability about the intent of lawmakers or deracialized methods for arguments with similar evasions of

accountability. My suggestion, then, is that the doctrinal gaps in the COLOR OF CREATORSHIP and other works are opportunities for further curiosity about the *function* of doctrine with respect to race and "rhetorical culture,"[19] instead of moments for rehabilitating statutory interpretations that have consistently harmed people of color and entrenching narrow conceptions of legal practice as about the expertise in doctrine. Consumer confusion and dilution, after all, reproduce *cultural norms* that are far from emancipatory. Present racial struggles have persisted so long because trademark law became a tool for managing race through visual culture, the "scopic regimes"[20] that Judith Butler discusses. This is a reason to lean into critical race studies and the works of scholars of color, while deprioritizing doctrine, in essence making the familiar strange again.

Doctrine can, even if it is racially neutral on its face, operate as a mediator of public emotion, with different effects across populations.[21] Professor Greene highlights this in rereading the "Blurred Lines" controversy through the lens of Black rage, a public feeling that has very validly characterized the American landscape for some time.[22] Calling upon the barber shop, which has taken center stage as a site of community organizing in contemporary shows like *Luke Cage*, he stresses that negotiations *within* Black spaces structure larger responses to law.[23] Professor Greene's explanation does the same type of translational work that Elie Mystal recently did on Twitter, when he explained: "I know that this is going to be lost on a lot of white people and almost all white Republicans. But when you see Booker or Padilla getting emotional… I just don't think ya'll know how *hard* it is. For us. To get her." The "her" in question is Judge Ketanji Brown Jackson, whose confirmation hearing was a racial legal moment, emotionally akin to the OJ Simpson trial and the Clarence Thomas hearings. Doctrine implicates questions of musical origin—and the public emotions around discussion of those origins—as well. While I agree with Professor Greene's observations that Soul and hip hop are both heavily influenced by the Blues, I am less convinced that they are consistently treated, in musical or cultural contexts, as though their common origins merit equal respect. Generational conflicts over Soul and hip hop have reared their heads a number of times over the years, with emotionally intense disagreements about respectability politics often anchoring them.[24] Moreover, even if the majority of Black people were, as Prof. Greene argues, largely uninterested in punishing Pharrell Williams and T.I. for their copyright violations, their understanding of the situation was far from universal across racial identities. I observed a tendency in mainstream (White) media coverage to erase Pharrell Williams and T.I. as artistic contributors to the song in ways that struck me as epistemically violent. Recognizing that the song was a joint effort—and that Pharrell Williams authored or co-authored its lyrics—may have opened the door to different responses, not based in litigation. But dominant imaginings of the popular song centered on Thicke as protagonist and target of feminist ire. Disposing of Pharrell and T.I. made it easy to rhetorically position Gaye as put-upon hero. Professor Greene and I are in agreement that "Blurred Lines" was a complex negotiation of victimhood, deeply intertwined with race and music. Finding satisfying solutions to thorny cases like this one is not an easy task. I note in a footnote in the book that I signed onto an

amicus brief in the "Blurred Lines" case, though I felt ambivalent about doing so. This is the world in which we operate. No solutions are perfect or unanimous, even when they move the ball forward. Individuals, then, must decide how they will position themselves vis-à-vis incrementalism given the impossibility of ideal options. For better or worse, there is no "right" choice here; there is value even in taking utopian and pragmatic positions.

As conversations about race and intellectual property continue, my hope is that they will answer unanswered questions, including the ones raised here, by drawing upon existing research and new archives. The rapid speed with which intellectual property and digital technologies—both of which are increasingly at the center of political discourse—are moving means that novel issues will continue to emerge, often before problems with the previous ones have been addressed. Some of the same issues that I have written about will undoubtedly rear their heads again, in slightly different iterations. One of the most difficult tasks in having these conversations will be bridging the gaps between disciplinary spaces. While legal practitioners may find themselves erring on the side of policy over theory and humanities scholars may find themselves erring on the side of theory over policy, these two sets of conversations must engage with one another. Practice without theory risks ignoring the historical mistakes of intellectual property that seem to be repeating themselves. Theory without practice risks squandering the important lessons that have come out of humanistic investigations of racial inequalities. I often remind my students that meaningful disagreement with a theoretical position requires understanding and respecting its epistemological groundings. The challenge of the coming years will be in building widely accessible bridges and spaces in which conversations such as the one presented in this special issue can be had and solutions such as the ones suggested here can be imagined and implemented. I remain convinced that successful building is grounded in relationality, as well as an ethic of care for one another. I am grateful that the three brilliant scholars whose work I responded to today so generously engaged with my book. I hope that future conversations can be equally, if not more, generative in advancing social justice objectives related to race and intellectual property, in the United States and globally.

ENDNOTES

[1] Stuart Hall, Encoding/Decoding, in CULTURE, MEDIA, LANGUAGE: WORKING PAPERS IN CULTURAL STUDIES, 1972-1979, 117-127 Stuart Hall et al., eds. (Routledge, 1980).
[2] Id. at 117.
[3] Janewa Osei-Tutu, Denying Cultural Intellectual Property: An International Perspective on Anjali Vats's The Color of Creatorship, 55 New England L. Rev., 79-91 (2021).
[4] In rhetorical studies, we speak of texts themselves as fragmented, especially in an era of digital technologies. Rarely do audiences engage with complete texts. And when they do, they are still engaged in the process of decoding those texts by

piecing together fragments of them with other texts that are contextually and personally important to them. Michael Calvin McGee, Text, Context, and the Fragmentation of Contemporary Culture, 54, WESTERN JOURNAL OF COMMUNICATION, 274-289 (1990); Darrel Allan Wanzer, Delinking Rhetoric, or Revisiting McGee's Fragmentation Thesis through Decoloniality, 15 Rhetoric of Public Affairs, 647-657 (2012).

[5] Willajeanne F. McLean, The Color of Creatorship: Intellectual Property, Race and the Making of American*s*, 34 Intellectual Property Journal, 113-126 (2021).

[6] Anjali Vats, Prince of Intellectual Property: On Creatorship, Ownership, and Black Capitalism in Purple Afterworlds (Prince in/as Blackness), 30 Howard Journal of Communications, 114-128 (2019). The "performance" was actually a recording of Prince, projected onto the screens near Justin Timberlake.

[7] Christina Sharpe, IN THE WAKE: BLACKNESS AND BEING (Duke University Press, 2016).

[8] Saidiya Hartman, LOSE YOUR MOTHER: A JOURNEY ALONG THE ATLANTIC SLAVE ROUTE (Farrar, Straus and Giroux, 2008).

[9] Anjali Vats & Deidré A Keller, Critical Race Theory as Intellectual Property Methodology: Lenses, Methods, and Perspectives, in HANDBOOK OF INTELLECTUAL PROPERTY RESEARCH: LENSES, METHODS, AND PERSPECTIVES, 777-790, Irene Calboli & Maria Lilla Montagnani, eds. (Oxford University Press, 2020).

[10] Cheryl I. Harris, Whiteness as Property, 106 Harvard Law Review 1707 (1993).

[11] Natalia Molina, HOW RACE IS MADE IN AMERICA: IMMIGRATION, CITIZENSHIP, AND THE HISTORICAL POWER OF RACIAL SCRIPTS (University of California Press, 2014); Natalia Molina, Understanding Race as a Relational Concept, 1 Modern American History, 101-105 (2018).

[12] Robert S. Chang and Neil Gotanda, Afterword: The Race Question in LatCrit Theory and Asian American Jurisprudence, 7 Nevada L.J., 1012-1030 (2006).

[13] Lauren Berlant, THE FEMALE COMPLAINT: THE UNFINISHED BUSINESS OF SENTIMENTALITY IN AMERICAN CULTURE (Duke University Press, 2008).

[14] Kevin J. Greene, Abusive Trademark Litigation and the Shrinking Doctrine of Consumer Confusion: Trademark Abuse in the Context of Entertainment Media and Cyberspace, 27 Harvard Journal of Law and Public Policy, 609 (2004); K. J. Greene, Trademark Law and Racial Subordination: From Marketing of Stereotypes to Norms of Authorship, 58 Syracuse Law Review, 432 (2008).

[15] Rosemary J. Coombe, Marking Difference in American Commerce: Trademarks and Alterity at Century's End, 19 PoLAR: Political and Legal Anthropology Review, 105-116 (1996).

[16] Anjali Vats, Marking Disidentification: Race, Corporeality, and Resistance in Trademark Law, 81 Southern Communication Journal, 237-251 (2016).

[17] Richard Schur, Legal Fictions: Trademark Discourse and Race, in AFRICAN AMERICAN CULTURE AND LEGAL DISCOURSE, 191-207, Lovalerie King and Richard L. Schur, eds. (Palgrave Macmillan, 2009).

[18] Richard Delgado, The Imperial Scholar: Reflections on a Review of Civil Rights Literature, 132 University of Pennsylvania Law Review, 561 (1984).

[19] Marouf Hasian, Jr., Michelle C. Condit & John Luis Lucaites, The Rhetorical Boundaries of "The Law": A Consideration of the Rhetorical Culture of Legal Practice and the Case of the "Separate but Equal" Doctrine, 82 Quarterly Journal of Speech, 323-342 (1996).
[20] Judith Butler, Endangered/Endangering: Schematic Racism and White Paranoia, in READING RODNEY KING/READING URBAN UPRISING, Robert Gooding-Williams, ed. (Routledge, 1993).
[21] See, e.g., Sara Ahmed, Affective Economies, 22 Social Text 117-139 (2004); Margaret Chon, Emotions and Intellectual Property Law, 54 Akron Law Review, 529-554 (2021).
[22] Soyica Diggs Colbert, Black Rage: On Cultivating Black National Belonging, 57 Theater Survey, 336-357 (2016).
[23] Quincy T. Mills, CUTTING ALONG THE COLOR LINE: BLACK BARBERS AND BARBER SHOPS IN AMERICA (University of Pennsylvania Press, 2013).
[24] See, e.g., Bakari Kitwana, Hip-Hop Studies and the New Culture Wars, 18 Socialism and Democracy, 73-77 (2004). Conversations about respectability, of course, extend far beyond the realm of music.

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