Literature as Proleptic Globalization, or a Pre-History of the New Intellectual Property

Caren Irr

[post-print version of article published in SAQ (Spring 2001): 773-802.]

During 1999 and 2000, public protests in Seattle and Washington DC helped to solidify a First World activist narrative about globalization.¹ Focusing on the roles played by international institutions such as the World Trade Organization, the World Bank, and the International Monetary Fund, these protests described globalization as a face-off between corporate, regulatory bodies and the vast majority of the world’s populace.² Further, they have drawn attention to the effects and premises of specific policies of the international institutions. In the activist rhetoric about globalization, disputes over debt servicing, structural adjustment, fair labor standards, and environmental regulations are not identified as the results of an aberrant form of neo-colonialism. Instead, the anti-globalization protestors assert that all of these policies together amount to a reorganization of the economic and political forces that constitute contemporary capitalist globalization. Giving these forces names, faces and institutional specificity then makes it possible to begin to legitimate some alternatives.

It is in this spirit of a quest for alternatives that I wish to ask in this essay what kind of literature is ultimately central to globalization. After all, literature is very much a question of international economic policy. Not only have national literatures historically taken on the responsibility of commenting on the condition of politics in a particular culture, but also, as a commodity, profession, and institution by which cultures speak to one another, literature is closely bound up with the practices of international trade.
To date, most theories of globalization have granted a prominent role to non-literary culture or “media” (along with information technology, finance capital, reorganization of labor, declining sovereignty of nation-state and other elements) when they describe contemporary global developments. Sometimes these theories describe the “culture” transmitted by the media as a static collection of inherited values; other times, culture seems a super-structural effect or response to market forces. In still other versions, culture appears to offer a residual area of resistance where politically significant transformation of mass-produced forms takes place. But in few of these discussions of globalization does the literary medium figure centrally; film, food, music and fashion have been more common topics. Autobiographies of the education of post-colonial intellectuals often pay some attention to literature as a mode of representation, but one less frequently finds scholarship bringing a broadly defined materialist account of policy together with reflection on the economics of literature in particular.

To the existing efforts to survey and assess the emerging relation of culture and globalization (or, more narrowly, literature and globalization), then, I would like to add the following assertion: in the context of globalization, “literature” as intellectual property forecasts the treatment of a wide array of the new economy’s most valuable products. Along the way, literature does not lose its capacity to represent various political or social themes; nor does the struggle for new styles or voices cease to be significant. Contests over the power and reproduction of tradition also retain their force. Nonetheless, in the context of contemporary globalization, literature in its aspect as intellectual property has a historically original role. As I hope to demonstrate below, while in earlier phases of the history of capitalist development, literature as intellectual property operated as a homology for mercantilist means of accumulation and later as a synecdoche for industrial expansion, in the context of globalization, literature as
intellectual property operates proleptically. If we understand by globalization the outsourcing of major elements of industrial production to the Third World and the reorganization of much First World labor along post-Fordist lines, accompanied by an acceleration and geographical remapping of the routes of capital’s circulation, then globalization is a process that relies heavily on the capitalization of lines of communication and the labor involved in the communications industries. While recent electronic communication technologies make this process possible, the forceful establishment of capitalist property relations in the texts that are communicated is perhaps of greater long-term significance than the technological fireworks. Because intellectual property, especially copyright, is the area of the law that has historically balanced the interests of various parties in intangible entities (such as the word, the idea, or the text), in the context of globalization as it has been described, intellectual property has become extremely prominent. I argue that the specificity of intellectual property in the current era of globalization is that it models or forecasts the developing global infrastructure of contemporary capitalist relations. Intellectual property disputes leap ahead of (or are “prolepses”) for conflicts over the dynamics of contemporary global capitalism.

To substantiate this essentially historical thesis in the space of this too-long but also still too-brief essay, I examine three moments in the development of the model of intellectual property that is currently hegemonic on a global scale—the Anglo-American model. For each historical moment, I build out from a specific literary content and form to the legal infrastructure supporting that mode of literature and then further to the phase of capitalist development in which the law of the day participated. My aim here is not to suggest a continuous narrative of development from one moment to the other or to produce a full explanatory narrative of each
transition, but rather, through juxtaposition, to point to differences and discontinuities that will help us situate contemporary global capitalism and property relations.

As the structure of the essay might suggest, my analysis is informed by the concept of “la longue durée.” In the spirit of Giovanni Arrighi, Immanuel Wallerstein, and Fernand Braudel, or the school of economic history that insists on the long prehistory of capitalism as a world system, I treat what we call today “globalization” as the latest phase in planetary capitalist expansion, rather than viewing the present as a unique and unprecedented awareness of “others” by economic means. The advantages of this approach include the insistence on seeing cultural forms throughout history as always a part of their social totality and especially as implicated in international and interregional relations of domination. It is the task of a critic of culture, I think, to reveal the way that the pleasures and dangers of culture are tangled together. In a perhaps over-quoted turn of phrase, Walter Benjamin said there is no document of civilization that is not also and at the same time a document of barbarism. This existential duality seems especially crucial to highlight in the context of globalization when powerful documents of civilization (such as life-saving pharmaceuticals and human rights regimes, for example) are also powerfully tied to forms of barbarism, not all of which we can realistically call “residual” (I think here of crippling debt, economic neo-colonialism, radical fundamentalisms, and declining standards of literacy and women’s rights, for instance). Situating these contemporary developments in la longue durée will, I hope, help us to pay attention to the contradictory elements of globalization, and following one thread—literature in its guise as intellectual property—helps to isolate the consequences and the promise of the present in a wider terrain. Ideally, along the way, my narrative will yield neither to premature utopianism nor to a conspiracy-theory cynicism about the long-term results that follow from the unfolding of these contradictions. Instead, by
sketching the sites of conflict around intellectual property as a proleptic element of globalization, I aim to support, at least implicitly, the narratives of protestors cited above—those identifying and acting in emergent areas of struggle.

As a period of many revolutions—economic, political, social and technological—the eighteenth-century was also an era of significant legal transformation. As England gradually overtook the Netherlands as the center of the European mercantilist economy, English law also entered a phase of consolidation. Especially in regards to property rights, eighteenth-century English law became more systematic, coherent and aggressive. Military disputes with France and Spain, along with the demographic displacements these created, however, undercut the apparent fixity of the law—revealing property law in particular to be plagued by persistent anxieties about piracy. The fine lines between heroic explorers, commissioned privateers, adventurous solo buccaneers and stateless pirates preying on the ships of the nation of their birth became the subject of considerable public interest. Simultaneously, a very similar—and more than simply analogous—concern developed with literary piracy. During the eighteenth-century, intellectual property rights were codified in England—with the explicit purpose of outflanking pirates. These foundations for modern copyright law are homologous, I argue, to the structure of the English mercantilist economy as a whole.

To begin our examinations of homologies between literary and sea-faring piracy, let’s examine a strange moment in Daniel Defoe’s *A General History of the Pyrates* (1724). While in the midst of describing a utopian community formed by pirates on the shores of Madagascar, Defoe reports that they built some unusual structures:
all the Houses were neatly framed and jointed, not built from any Foundation, but so made that half a dozen Men could lift and transport them from Place to Place; and sometimes a whole Village shall be in Motion, which would be an odd Sight in Europe, and surprizing to see Houses moving.  

This village of foundationless houses encapsulates some of the contradictory elements that made the pirates so fascinating for Defoe and many of his contemporaries. On the one hand, the houses are innovative and mobile, wisely made portable, in case of attack from the natives (who the pirates are playing off one another) or other pirates or military forces. Each man has his own house, and many of the pirate-settlers have married native women, according to Defoe. So, there is a sense in which the village of moving houses represents a kind of egalitarianism, at least among the Europeans, as figurative colonists. Certainly, the democratic spirit of the pirates is a theme that Defoe repeatedly underlines (here and in other passages on their division of the “prizes” and the on-board decision-making process).

Yet, on the other hand, this individualistic mobility also provokes anxiety on Defoe’s part. It is of course “an odd Sight” and “surprizing”—perhaps because European eyes expect houses to exemplify solidity or permanence, to be ancestral seats even. Because houses are the prototype of real estate or “real property,” making them without foundations means conceptualizing a different kind of property, and with it, a different kind of community and history. This innovation introduces danger into Defoe’s narrative. As The General History repeatedly emphasizes, the re-organization of status and labor that took place on a pirate ship generally involved barbaric violence—not only in mutinous take-overs of the pirate ships themselves, but also when those ships met other vessels. And, further, the pirates incurred moral risks in a mobile, individualist economy—drunkenness and swearing, for instance, or slavery.
Released from the bonds of traditional commercial ethics and the hierarchies of Catholicism (which the Protestant Defoe viewed as inherently tyrannical and corrupt), the pirates ran the risk of becoming morally foundation-less themselves. Like Robinson Crusoe, the pirates were left to their own devices, and their challenge, says Defoe, was to rise above mere capture to a more ethical version of the emerging Protestant capitalist economy.

This pedagogical account of the Madagascar community appeared in the second edition of *A General History*, when Defoe added new information based on captivity narratives, pirate trials, and interviews with rogue sea captains who had purchased their pardons and resettled in England. Here, as in much of his writing, Defoe used depictions of outcasts or scandals to introduce ideas for reform of English society. In the “Preface,” he warns readers that, although they may find the text surprisingly entertaining, they should not neglect its political import. Primarily, he argues that, to reduce the number of sailors left at loose ends in times of peace, England should imitate the Dutch in establishing an active fishing industry. Secondarily he asserts the need for continuing official naval protection of trade routes in areas where British ships trade, especially the Americas. Here, as elsewhere, Defoe stresses the economic concerns of pirates, and uses them as an allegory for exploring some of the principles of mercantilist political philosophy.

The pirates were available as a topic for this kind of reformist theorizing in 1724 in part because their golden age of activity had taken place approximately one generation previously. During the period of rapid colonial expansion in the Americas and inter-European rivalry at the end of the seventeenth-century, independent sailors and soldiers from Europe made their own alliances with Arab and Mogul sailors. They regularly interfered with trans-Atlantic commerce and with the early activities of Dutch and British East India companies. Although English
sailors’ involvement in piracy declined from 1700 to 1713 during the war of Spanish Succession, public fears generated earlier outlasted the imminent threat. By 1724, when Defoe composed his History, legends of the famous pirates (such as Captain Kidd and Blackbeard) were well-established adventure stories. They had a popular and scandalous appeal (as the Preface testifies) but the reportage was not fresh enough to stand on its own. An interpretation in light of political disputes of the day was thus both possible and necessary.

Defoe’s delayed concern with the pirates was consistent with his ongoing concerns as a political pamphleteer. He was primarily known in his day as a commentator on the interlinked topics of religious freedom and commerce. After a long and busy career, by 1724 Defoe’s interests as a political journalist had definitely led him to identify his own interests as an investor and professional writer with those of the English merchant class. Also, Defoe clearly took the stand that religious tolerance, individualism and mobility were essential to the expansion of the empire and thus to the vitality of England’s role in global commerce. His conception of writing was that it could and should be used to influence economic policy, but also that the very possibility for being a writer was enabled by the mercantilist economy and its trade in the kind of journalistic information he produced. His concern with piracy then is not simply scandal-mongering; it is also an opportunity to reflect on the morality of the emergent merchant class and associated new professions such as his own. The foundationless pirate offers a certain figure for the writer, the Döppelganger of mercantilism run awry.

As Defoe’s narrative suggests, what made the merchant class and mercantilism of eighteenth-century England distinctive and so central for the development of global capitalism was in part its approach to mobility. According to standard narratives of economic history, medieval canonism had placed a very high premium on stability and the reproduction of existing
landlord-tenant relations as well as social hierarchy; the quest for financial gain was actively discouraged by dominant ideologues of the era. Against the long-established use of land as the primary source of value, merchant capitalism introduced portable financial considerations—especially speculation on trade in commodities.

Of course, mobility was central to capitalism from its earliest innovations, such as the bill of exchange which was introduced for the convenience and safety of European merchants during the fifteenth-century. Different means for providing security and continuity to counterbalance mobility, then, characterize phases of capitalism. The formula that was ultimately successful for the British involved establishing a network of colonies that produced raw materials. These were then shipped to England where they were reprocessed as high value commodities, which were then shipped back to the colonies as expensive imports. Although colonies were encouraged to engage in some local production, the strength of British mercantilism was the global network of exchanges of low-value raw materials for high-value commodities (as opposed to the centralized collection of high-value exotic commodities, such as silks or spices, from other parts of the world for a European luxury market—a pattern more characteristic of the Dutch, according to Arrighi). The continuous mobility of raw materials and goods vitalized English mercantilism and thus the profits made by the merchant class at home and in the colonies during the seventeenth- and eighteenth-centuries.

Ensuring this mobility against the interference of pirates and other vicissitudes thus became an especially high priority during the preparatory and expansion phases of English capitalism. During this phase, minimizing competition among English enterprises was also important; it was at this phase that the joint-stock companies such as the East India Company and the Hudson’s Bay Company emerged. Under agreements with the Crown, these companies
received military protection and exclusive rights to trade in a particular geographical area, in exchange for substantial investments of surplus capital in other Crown endeavors (such as the on-going wars against other European powers). This arrangement served the double goal of internalizing protection costs within the nation (by farming them out to the royal navy) as well as laying the ground work for internalizing production (by claiming vast territories of the globe, such as “East India,” as internal to English commerce). Through national monopolies of colonial economies, mobility of capital was ensured.

What is important for our purposes, however, is not only the anticipatory flavor of this emphasis on capital mobility and spatial reorganization during the world system of seventeenth- and eighteenth-century capitalism. We are also concerned with the homologous relationship between these basic processes of mercantile capitalism and intellectual property rights. To isolate this homology, we will first need to turn our attention briefly to geographical questions.

Contemporary geographers such as Saskia Sassen have drawn attention to the spatial reorganization that accompanied twentieth-century globalization—the overlapping flows, the emergence of new city-state platforms for high-tech transmissions overlooking regional blocs and a persistent system of permeable national borders. One of the advantages of this map is the way that it clarifies the basic elements of other moments. In contrast to the system of high rises and overlapping lowlands, the spatial logic of the mercantile economy of the early eighteenth century, for instance, appears to be organized around an array of local, peripheral nodes, connected to a dominant center by protected transport routes; at the center, raw materials from the periphery enter into relations that result in high value-added products that are then exported back along protected trade routes to sites along the periphery. In this centrifugal arrangement, price and value differentials between center and periphery account for the high rate of profit
during the expansionist phase. This spatial arrangement operates on the principle of extending laterally, as it were, by incorporating more local, peripheral nodes into the system. In this sense, the hub and spoke arrangement of mercantilism provides contrast not only to the contemporary form of globalization (with its relatively de-centered or multi-centered regionalism) but also to the classic forms of medieval canonism, with their strong emphasis on hierarchical patronage and intensive reproduction of relations at the “center.”\textsuperscript{15}

If this necessarily schematic description is accurate enough, then we can begin at last to see how the intellectual property rights codified in the eighteenth-century employ the mercantilist spatial logic. Over the sixteenth- and seventeenth-centuries, the English marketplace saw the introduction of practices that foreshadowed modern copyright. Author’s contracts, for instance, recognized something like property rights in copies, and the registration systems required under the Licensing Act required that texts be treated as tangible commodities, with fixed authors.\textsuperscript{16} Since 1557, the Stationer’s Company had organized booksellers, registered publication, and authorized reproductions; it operated by dispensation from the Crown. Throughout the sixteenth- and seventeenth-centuries, the Stationer’s Company also did much of the dirty work of censoring political and religious dissent in England, and in this sense it has often been seen as the opponent of author’s rights as individuals with civil liberties, in the modern (especially American) sense of the phrase.\textsuperscript{17} Certainly, the London booksellers who were official members of the Stationer’s Company acted forcefully over the eighteenth century to retain their “collective monopoly” over the English book trade—unsuccessfully asserting, for instance, a perpetual copyright in works published before 1710 and justifying themselves with reference to the need for control of religious publications in particular.\textsuperscript{18}
At the same time, though, that the strategies the Stationer’s Company employed to retain its monopoly recall the Hobbesian absolutist state, they also reveal their embeddedness in the emergent modern mercantilist arrangements. When the threats of literary piracy from the colonies, as well as outlying areas such as Ireland and Scotland, became particularly acute, for instance, the Stationer’s Company ultimately outflanked the pirates by forming with some of them a joint stock company that sold shares in the copyrights or “authorial patents to valuable literary properties.” Only members of the Stationer’s Company were eligible to purchase this stock, and so the mercantilist tactics for minimizing and privatizing risk revealed themselves as being entirely compatible with centralized control. The networks of trade expanded, and the pirates were excluded, while political control continued to emanate from those faithful to the Crown. As the continuing reliance on licensing reveals, some elements of the Stationer’s centralism were holdovers from the patronage system, but many of the tactics were the same as those employed by the East India Company and other more prototypical mercantilist organizations. As the book trade expanded over the course of the eighteenth-century, the printing of books remained concentrated in London as the center of the network, while the systems of distribution and consumption were rationalized along lines that began to forecast techniques of industrial capitalism.

These mercantilist tactics in the book trade established the institutional prerequisites of intellectual property rights. Codifying existing practice in 1710, the Statute of Anne is usually pointed to as the legal origin for modern copyright. The Statute asserted some author’s rights against the booksellers and to some extent redefined the political role of the writing. Instead of authorizing the Stationer’s Company to act as a private censorship agency, the Statute of Anne granted some control over publication rights to authors. Economic incentives for authorship and
a public interest in promoting learning were explicitly recognized; the duration of copyright was limited and the rights conferred by ownership of the copyright were enumerated and limited. Some elements of what later came to be understood as the “originality” standard were introduced. Provisions were made for the deposit of published works in libraries, and grievance procedures for over-priced books were established. Although disputes over the terms of copyright raged over the course of the century, with the Statute of Anne, the book trade attained legal recognition as a mercantilist operation. The centralized structure of the trade was retained, since the limited monopoly of copyright owners was preserved, but at the same time nodal production by a dispersed network of authors was explicitly encouraged, and the booksellers’ distribution practices were protected. Here, it is not so much the discourse of “piracy” that points to the protection of trade routes, since the literary pirates were really attacking at the point of production by reproducing the commodities in question without permission. Instead, the Statute of Anne protected trade routes by ensuring fair pricing and limiting the duration of the copyright. Trade routes in the book trade were, after all, not only subject to the conditions of the roadways and harbors; because of the long-lasting nature of the commodities in question, safe trade routes for booksellers also included protections of the future value of the commodity. By establishing limited monopolies, the Statute of Anne endeavored to balance the interests of the booksellers, the authors, and the reading public. Time here becomes the equivalent of the oversea route.

This interpretation of the mercantilist logic of eighteenth-century intellectual property helps, I think, to resolve some of the disagreement about the significance of the Statute of Anne. Some scholars see the eighteenth-century debates over literary property—and intellectual property more generally—as evidence of the local and specific nature of early modern legal
systems; in this interpretation, it is the non-systematic nature of the various mechanisms put into place by the Statute that is significant.24 Others focus on the emergence of author’s rights in the Statute of Anne and criticize the effects of what emerges as a Romantic commitment to an aesthetics of originality and authenticity.25 A third interpretation situates the history of copyright in terms of state control of political speech; in this context, modern copyright standards are more continuous with early modern censorship than the authorship debate suggests, since authority to regulate intellectual exchange remains at least partly in the hands of the state.26 Of course, these disagreements have partly to do with differing ideological interpretations of the Enlightenment and the role of the press (or, more broadly, civil society) in stimulating social change. But, my goal here has been to suggest that some of these disputes look different and less fully opposed to one another if we shift the grounds from the political effects of intellectual property to the economic terrain. If we focus on the way that eighteenth-century intellectual property rights discourse employs a logic of mercantilism, then we can see that the conception of the production of the “raw materials” of copyright in particular is understood as taking place at peripheral nodes where artisanal or pre-modern standards may well apply; this is the terrain of the local and the specific, the non-systematic. The protection of transport and the centrifugal trade routes are then apparent in their relation to the emergent possessive individualism of the merchant class, and it is this logic that is later combined with an analysis of literary production to comprise the investment in originality criticized by Woodmansee and others. Finally, the focus on centralized value-addition (that later emerges into full-blown industrial organization of capitalism), as well as highly regulated export to dependent colonies clearly bears traces of the strong state control associated with both the Renaissance court and the nineteenth-century British empire. Each of the major interpretations of the Statute of Anne, in other words, accurately describes a
component of the mercantilist trade relay. Understanding eighteenth-century intellectual property not in terms of a single political effect or identity but rather in terms of its conformity to this multi-phasic economic logic helps us to understand the contradictory history of capitalist property relations and also suggests, I hope, something about the early role of literature in a developing globalization.

If I have been persuasive so far in arguing that eighteenth-century intellectual property was codified with the same logic as mercantilist exchange, then it should not be surprising to assert that the same contradictions that plagued mercantilism and led to its transformation into the classic forms of industrial capitalism took hold in trades devoted to intellectual property. Certainly, the relatively free-standing nature of colonial production in the mercantilist economy was a major topic for post-Revolutionary American writers, who commented regularly on the need for home-grown literary production and a reduction of economic and cultural homage to the imperial center. Despite the complex and often critical attitude of the American intelligentsia towards industrialism, the cultural nationalism of the American Renaissance can thus, very schematically, be understood as a kind of anti-mercantilist reaction, as well as serving a progress-oriented pro-industrial function. Its Romanticism helped to foster an understanding of the writer and of literary production that fed, as Woodmansee and others have argued, a commitment to an essentially individualist concept of originality. But, this ideology of the author and the accompanying focus on the production of the text is not, I will argue, merely a residue of a suspiciously pre-professional individualism, so much as it is a synecdoche for the conflicts of mid-nineteenth century industrialism. This is the case because in the nineteenth-
century the focus on Romantic authorship in nineteenth-century copyright disputes is significantly counter-balanced by the attention to standardized access—a.k.a. “fair use”.

To trace the synecdochic relation between literature as intellectual property and nineteenth-century industrialism, let’s begin with an emblematic story by Nathaniel Hawthorne. In his 1837 short fiction "The Prophetic Pictures," an unnamed European painter arrives in the New World to grapple with the sublime and unrecorded wonders of nature. His actual talent, as it turns out, though, is portraiture. The "whole mind and character were brought out on the countenance, and concentrated into a single look" in his paintings, and after being struck by the vision of two young lovers—"living pictures of youth and beauty"—he agrees to paint them. The resulting pair of portraits depicts expressions that the lovers do not entirely recognize as their own. The "strangely sad and anxious" look in the woman's eyes initially seems inappropriate to the wedding portrait, as does the latent violence in the man's face. As a result, these haunting images compel a fascinated gaze from the couple, their visitors, and the artist himself. The climax and conclusion of the story occur when the painter returns to view the portraits, and they come alive before his eyes: confronted with the correspondence between the ominous portraits and his wife's now fearful expression, the husband lunges at her threateningly. By revealing the inmost secrets of his subjects' souls, then, the artist has doomed them to a fate that he has no power to impede. In love with his own powers of creation, he recklessly produces the actions prefigured in the "PROPHETIC PICTURES."

The moral of this story for Hawthorne is the mixed blessing of artistic production. On the one hand, the artist's task is to find a transcendent truth available on the surface of the face and rework and resurface it, making it legible to others in the artwork. Like Kant’s genius, he imprints his unique vision and personality in the work, by translating his impressions of the
surrounding world into tangible form. On the other hand, once the artist has revealed himself and his subject in the artwork, his powers cease and the tragic inevitability of audience reception begins. At least in Hawthorne’s story, the art work is also realized in a social world. For Hawthorne’s nineteenth-century readers, the role of the artist was often understood as one of socially responsible craftsmanship, not originality and an obsession with darkness. Of course, modernist revisionism led many twentieth-century interpreters to stress the story’s allegory of the moral life of the artist; in fact, a concern with the artist as a troubled soul characterizes most twentieth-century responses to Hawthorne's work. Concerned with themes of guilt, power, technology and history, twentieth-century critics often situated his writing more firmly in a Romantic discourse than his contemporaries did. For our purposes, then, it is important not to be distracted by the war between sunshine and shadow in this story, and to focus instead on the fact that all of these interpretations are fixated on artistic production. While the identity and moral status of the writer/pirate was Defoe’s central concern, here it is the minutiae and psychology of the production process that retains narrative interest. It is at this level that Hawthorne’s story provides its first thematic elements linking it to a larger contemporary debate about the rights and privileges of artists in an industrial society. But in case we are in danger of missing the point, Hawthorne also embeds other clues. He is especially concerned that the economic features of artistic production receive the reader’s attention.

In the author's note to "The Prophetic Pictures," Hawthorne indicates that the story was inspired by "an anecdote of Stuart, related in Dunlap's History of the Arts of Design." The Stuart in question is Gilbert Stuart, one of the foremost portrait painters of the early American republic. Since William Dunlap's study of American arts devotes three lengthy chapters to Stuart, it is not clear exactly which anecdote in particular inspired Hawthorne. Perhaps
Hawthorne refers to the unsettling account of a viewer so impressed with one of Stuart's portraits that he swore it had come alive. More likely, though, the reference is to one of the episodes surrounding the production of the paintings for which Stuart was most renowned—his portraits of the Presidents, especially Washington.

Contemporaries credited Stuart with being one of the only painters of the early Republic who "could provide a living image of America's hero." That is, his portraits were associated with Gothic craftsmanship—where it is the subject, not the artist, whose personality is imprinted on the work. The unfinished quality of Stuart’s famous Washington portrait encouraged the viewer to identify with the artist and to witness the emergence of Washington's features from the unconventional scumbling and hazy middle distances. This artistic effect, however, was not the sole motivation for the portrait's condition:

Mr. Stuart told me one day when we were before this original portrait, that he never could make a copy of it to satisfy himself, and that at last, having made so many he worked mechanically and with little interest. … I asked him if he ever intended to finish the coat and background of the original picture? To this he replied, "No: and as this is the only legacy I can leave to my family, I will let it remain untouched." (Meaning that it would be, as is true, more valuable as it came from his hand in the presence of the sitter, than it would be if painted upon at this late period; for by painting upon, it would be more or less altered.)

Mr. Stuart (we again copy Mr. Neagle), considered that every painter held an inherent copyright in his own works, and that they should not be copied without the consent of the artist. A copy made of an artist's picture while he lived, and without his consent, he called "pirating."
In this complex passage, the artisanal conception of artistic production is foremost. While the unfinished quality of the painting does recall an irrecoverable Romantic-style moment of authenticity (when painter and President met), the artist’s primary concerns are with the mechanics of copying his own work and the property he will leave his family. True, Stuart regards himself as originator or author and thus owner of the painting, but notice that no mention is made of the inferior quality or sensitivity of illicit copies; the sole concern is that they were made without consent.

In this respect, Stuart resembles Pope and other eighteenth-century writers who asserted author’s rights, while conceiving of themselves as both Romantic geniuses and inspired craftsmen passing on well-established traditions. In fact, as the passage continues, this comparison becomes explicit: "My answer will be found in a number of the 'Spectator,' mentioning it, and my feelings understood, by referring to that paper: the only difference is that Addison speaks of pirating the works of an author. Substitute for author the word painter." Appealing to the English disputes over literary property, Stuart sought to establish his ownership of the image by analogy. In such a move, it is clearly not the specificities of an author’s personal relation to his medium that counts. Ownership is here a social relation made evident because it can be violated by the pirate.

The persistence of these pre-Romantic ideas of authorial production is, as we have seen, referenced in Hawthorne’s story, and the same notions also persist in the law. To date, however, the Romantic elements have received more scholarly attention. Notably, Mark Rose has argued that in these early formulations of copyright, "a work of literature belonged to an individual because it was, finally, an embodiment of that individual." Rose emphasizes that in the landmark case *Donaldson v. Becket*, the human face is designated as the form of embodiment
that best captures individuality: "a literary work really original, like the human face, will always have some singularities, some lines, some features, to characterize it, and to fix and establish its identity."\textsuperscript{37} The right to control reproduction of a work of literature is thus understood as deriving from the right to own one's necessarily singular self and especially one's body. To the extent that the author is a Lockean individual with property in himself, then he also has a right to his equally individualized literary property.\textsuperscript{38} This foundational series of analogies linking the author, the face, and the text was, as mentioned earlier, codified in 1710 in the Statute of Anne, and similar ideas were adapted for the US Constitution. On the basis of an individualistic right to intellectual property, the Constitution grants a limited monopoly right to authors and inventors in order to promote the progress of science and the arts.\textsuperscript{39} Despite the early American book industry's reliance on pirating English editions, this Constitutional clause appears to have been relatively uncontroversial and so an early version of the doctrine of Romantic originality was installed.

By the 1840s, however, this version of individual author's rights was so well established that it had become necessary to counter-balance the Romantic view. In a landmark 1841 decision, an American jurist recorded the emerging changes in intellectual production and public life in copyright law. In \textit{Folsom v. Marsh}, Justice Story outlined the fair use standards that ultimately became codified in American copyright statutes.\textsuperscript{40} Fair use as articulated in \textit{Folsom v. Marsh} is not a special exception to otherwise monopolistic property rights; it is a fundamental counter-balance required to achieve the goals of copyright as put forward in the Constitution.\textsuperscript{41} Fair use protects public and future uses of a text, as well as the original author's economic incentive.
Coincidentally, the particulars of the dispute in *Folsom v. Marsh* also involved President Washington. The President had left his letters as a bequest; his representatives then had Mr. Sparks, a respected editor, compile them—together with a biography—in a twelve-volume work titled *Writings of President Washington*. Not long thereafter, a Rev. Charles Upham used the letters contained in Sparks’ edition to produce his own biography of the president, *The Life of Washington*. This 800-page biography was told in the first person, with narrative passages linking substantial quotations from Washington’s letters and other official documents. When the original editor sued the biographer, the defendant argued that the letters were not the proper objects of copyright protection since they were the manuscripts of a deceased person, were not literary in nature but rather letters of business, and were designed for public use. In his landmark decision, Justice Story rejected each of these defenses.

Story decided that the letters were the proper objects of copyright protection in all three respects. First, they were property, since the President had bequeathed them to his heirs. Second, in a significant expansion of the concept of literature, Story argued that all letters are literary, “for they consist of the thoughts and language of the writer reduced to written characters.”42 And, third, the Justice distinguished between “public property” and “national property,” asserting that the rights of addressees of letters, as well as government agencies such as Congress, to make use of literary property were limited rights or exceptions to the governing principle of private ownership. The dominant factor, as stressed in Story’s decision, is that -“the author of any letter or letters, (and his representatives,) whether they are literary compositions, or familiar letters, or letters of business possess the sole and exclusive copyright therein.”43 With some reluctance, then, Story concluded that the defendants’ use of Washington’s letters did constitute an invasion of the copyright owner’s property rights.
Although the case at hand resulted in a judgement of infringement, the most enduring effect of *Folsom v. Marsh* has been to provide standards for legitimate uses of another’s material. The most quoted passage in the decision identifies four factors commonly referenced in a fair use decision: “we must often, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work.”⁴⁴ Since the 1840s, these factors have been installed in US statutes. All factors matter, and each is typically weighed against the others. In the eyes of a prominent contemporary judge who rules frequently on intellectual property cases, the ultimate significance of these fair use standards lies, however, not so much in their internal coherence as in their appropriateness to the goals of the Constitutional copyright clause. Because “copyright law embodies a recognition that creative intellectual activity is vital to the well-being of society … excessively broad protection would stifle, rather than advance, the objective,” Leval argues.⁴⁵ Despite the details of the original decision, the long-term effect of *Folsom v. Marsh* has been to provide an essential recognition of the necessity of limiting property rights in intellectual production. Furthermore, over the years, the fair use standards have remained usefully imprecise—resisting the urge, for instance, to fix with any finality a quantifiable percentage of any original work that may be reused with impunity.

Thus, historians of intellectual property law Brad Sherman and Lionel Bently appear to be correct in arguing that modern intellectual property law has become abstract and standardized where pre-modern mercantilist law concerned an assembly of local and specific exceptions. It is in this respect that the fair use standards, as they have been abstracted from their original context and reinterpreted in copyright statutes, apply something like the logic of industrial mass
production to intellectual property disputes. According to Fernand Braudel, early industrialists were organizers and planners more often than they were inventors or technicians.46 This is only fitting if we understand (as Braudel does) the industrial revolution not as the consequence of a single factor (be it the steam engine, high rates of credit, or demographic changes) but rather as a reorganization of the social totality:

If by the late eighteenth-century, British growth had become irreversible, being by now as Rostow puts it the ‘normal condition’ of Britain, it was certainly not on account of progress in some particular sector (such as the rate of savings or investment) but on the contrary as the consequence of an overall and indivisible process, the sum of the reciprocal relations of interdependence and liberation that each individual sector as it developed, sooner or later, by accident or design, had helped to create for the greater benefit of other sectors. Can ‘true’ growth (or as some people would call it true development—the word does not much matter) be anything but growth which links together, irreversibly, progress on several fronts at once, creating a mutually sustaining whole which is then propelled on to greater things?47

This multiplicity of elements constituting industrialism made it possible for features of what we might consider mercantile, industrial and financial capitalism to co-exist during the nineteenth century (as they have, Braudel emphasizes, previously and subsequently). With industrialism, however, the relations among these elements, as well as the organization of the world-system of which they were a part, changed. While a central hub with long octopus arms may have provided a rough prototype of the organization of mercantilism, with industrialism, the crucial change took place at the center, where, as Arrighi puts it, production was “internalized.” With
industrial capitalism, the core or hub became more demographically dense and principles of social planning took hold—rationalizing the great urban centers, much as the techniques of mass production rationalized labor around principles of efficiency. The basic means for this transformation, from the point of view of the capitalist, was the mechanization of the labor process. While this transformation did often involve the use of metal machinery, “mechanization” here refers more broadly to the analysis of the labor of production. Instead of treating production as a holistic process in which traditional skills are exercised by their guild-authorized guardians, the industrialist treated labor as a series of tasks that could be isolated and redistributed to machines or workers in any fashion that served the ultimate goal: producing the maximum number of commodities that would retain their exchange-value in the marketplace. To remind ourselves of the denaturalizing logic at work in this thinking, we need only recall Marx’s analysis of the capitalist’s approach to the working day in *Capital*. For the purposes of production, the working day can be expanded by increasing the duration of hours worked, increasing the numbers of workers employed simultaneously, or increasing the rate of workers’ activity with the aid of machinery or in other ways.48 With industrialism, the “day,” in other words, becomes not only a measure of time elapsed, but also a spatial unit and a velocity.

It is in this sense that fair use standards are industrial in character. After all, Justice Story’s standards are flexible and “standardized”; they treat the copyrighted work not according to its essentially artistic character or its genetic relation to an author, but rather as a quantifiable object to be rotated geometrically in the mind of the jurist. The resulting standards are then simple and abstract enough to be used in a variety of legal situations, much as the techniques of industrial mass production could be applied to commodities as diverse as diapers and diamond rings.
The effects of this industrial logic being applied to intellectual property have not necessarily been entirely adverse. While a continuous battle is waged in the American courts over the list of exceptions to copyright protection that will continue to be accepted, the fair use standards do more than simply mention a range of socially particular activities recognized by the law (scholarship, reviewing, etc.). Instead, the fair use standards ensure that public access to and use of private property is guaranteed. The public sphere imagined in the fair use standards is not simply one of visibility—in which the public can pay (or not) to view the spectacle of intellectual production from afar. It is instead a hands-on public sphere in which “secondary” or other “uses” can be understood as “fair” precisely because they involve the reproduction of portions of an original in the production of new work.

I stress this last point so heavily because when reading the pre-history of contemporary intellectual property disputes, it is tempting to look back at the mid-nineteenth century as the era of the consolidation of industrial capitalism and all its affiliated ideological excuses. Conversely, some have interpreted the nineteenth-century as a period when the Romantic ideology of the literary genius was formulated as a kind of false consciousness for the newly professionalized middle-class writer. What I have tried to suggest here is that the Romantic mythology of the artistic genius—as, say, one astute at reading and rendering the human face—was not simply an escape from the emerging social logic of industrialism. Nor was it a blind apology for industrialism. Rather, the larger model of artistic production—a model certifying the necessity and fairness of derivative use as much as Romantic originality—installed in American intellectual property law was an intimate part of the industrial reorganization of modern societies. The Romantic ideology of the uniquely sensitive artistic individual certainly does not resemble on its surface the standardized logic of industrialism, but it relies upon the
technical and organizational means of industrialism to circulate and in this sense is inseparable from its conditions of possibility. In the legal version of this ideology, the economic incentives of the author (and publisher or bookseller) are balanced against those of the public at large, and in this sense the Romantic ideal of the artist synecdochally recalls the larger social world of early industrial capitalism.

If Defoe’s history of the pirates recalls the homologous role of copyright in protecting author’s rights across distances of time and space during the heyday of English mercantilism, and if Hawthorne’s story reminds us of the synecdoche between the disputes over fair use of protected writings and the social reorganization of labor accompanying industrialism, then our third example will introduce the proleptic character of intellectual property with respect to contemporary global capitalism.

The final section of Don DeLillo’s 1991 novel *Mao II* is titled “Beirut.” At the conclusion to this novel’s exploration of the dialectic of celebrity and anonymity in American artistic life, a disenchanted photographer (who had previously been photographing writers) arrives in Lebanon to produce pictures of a terrorist leader. On her way to the hideout, she observes the war-torn city: “The streets run with images,” she observes, from Khomeni’s portrait plastered on passing cars to advertisements for the latest soft drink, Coke II. These regimes of images blur together for the photographer, until the red Coke signs and the Maoist/fundamentalist ideals of the terrorist find one another in the title of the novel. Ideology to one side, the Western and the non-Western movements share the logic of the replication of the image in DeLillo’s narrative.
Furthermore, DeLillo emphasizes that it is not only the Western photographer who places such high value on the image. His representation of the terrorist leader also insists on this theme. When asked why the boys who serve in his organization wear hoods covering their faces and pin images of the leader to their shirts, he replies (through an interpreter) that this practice gives them an identity: “They are all children of Abu Rashid. All men one man…. The image of Rashid is their identity.”51 The culture of celebrity, in other words, goes hand in hand with the erasure of the faces and identities of the anonymous, childish masses in whose name celebrity functions. The logic of the image here is to saturate, to dominate, to erase whatever may have preceded it. When the Western photographer tries to intervene in this logic by removing the hood from a boy’s face in order to photograph him, the boy’s response is entirely hostile—apparently not the wide-eyed look of suffering she expected. Once in place, the logic of the image does not revert easily to the Romantic ideal of self-expression, we are led to believe.

This chronic theme in DeLillo’s writing (the flat depressive affect and cultish obedience of the young in particular in a media-dominated society) is mirrored in the novel’s style. As the brief quotations I’ve given should indicate, the novel favors simple declarative sentences, combining the tone and rhythm of understatement with the dogmatic bravado of revolutionary slogans: “The image of Rashid is their identity.” It is as if all the florid complications of history have been expelled in an explosive blast, leaving behind only these few, crucial, but often incongruous, remains. What’s left in DeLillo’s writing of Doctorow, Dos Passos, Dreiser or other novelists in the American social realist tradition is only the sense of consciousness as a receptive apparatus in an alien world. Purposeful action—individual or collective—does not appear. It is the all-consuming image that compels attention and response, and the simple repetitive rhythm of the unlinked sentences reproduces this effect at the level of the style. As in
the opening of the novel (a mass Moonie wedding), DeLillo’s style reduplicates the same compressed and familiar elements until the overall effect is something new.

Leaping from this single novel to a much larger cultural dynamic, I would like to suggest that DeLillo’s kind of textual fetishism characterizes many developments in late twentieth-century American intellectual property law. By fetishism, of course, I refer to a fixation on the text (or writing or invention) alone rather than on its interaction with other elements of the literary process—the author/producer or user/reader, for instance—that were the foci of mercantilist and industrial attention respectively. The significance of this kind of fetishism for the law may become clearer if we briefly analyze a significant Supreme Court case and a few related trends in the law.

Like *Folsom v. Marsh*, the 1983 decision *Harper & Row v. Nation* concerned infringement of a presidential text. This case addressed efforts by the news magazine the *Nation* to scoop Gerald Ford's autobiography *A Time to Heal*. After receiving an advance copy of the text in question, *Nation* editor Victor Navasky hurriedly assembled a 2,250-word article that made use of passages from Ford's book, especially those concerning Ford's controversial pardon of Richard Nixon. Harper & Row, the publishers of the autobiography, then sued the *Nation* for copyright infringement, among other things, claiming that this prior publication had soured their serialization agreement with *Time* magazine.

The rulings in *Harper & Row v. Nation* were several, since the case proceeded all the way to the Supreme Court. First, the New York District Court judge found infringement on the grounds that the *Nation*'s borrowings were few but substantial—pertaining to the "heart" of Ford's memoir. Ford's reactions and phrasings were, in this judge's view, integral and necessary to the historical facts, thus the facts themselves became copyrightable. Ford—and by contract
Harper & Row—owned the text because Ford's presence was distributed everywhere throughout the text, not simply in its style, mode, and construction. This decision was promptly overturned by the Court of Appeals, however; their ruling began with the balance between copyright as a monopoly and the presumed public good of debate over significant issues such as Nixon's pardon and then moved quickly into the question of the copyrightability of fact. Ford's state of mind at the time of the pardon, they ruled, was a fact and thus exempted from copyright on the grounds that it was news.

These disputes about the factuality vs. the faciality of Ford's memoir—and thus its vulnerability to infringement by the Nation—remained contested at the level of the Supreme Court. A majority of six judges on the high court ruled in favor of Harper & Row, granting greater weight to the author's right to first publication than to fair use. In the majority opinion, Ford's rights as an economic agent took precedence over public interest in the distribution of knowledge, because "the Framers intended copyright itself to be the engine of free expression." That is, the Supreme Court majority ruled that the economic philosophy of the framers of the Constitution necessarily converts an author's private monopoly into a public good. Not surprisingly, the three dissenting judges found this invisible hand defense an overly zealous application of intellectual property rights and argued that a monopoly on ideas (vs. expression) stifles the public debate necessary for a democracy and violates the goal of copyright statutes. Relying on the principles of fair use articulated by Story in Folsom v. Marsh, the dissenting judges found no infringement since information cannot be monopolized. In short, for both the majority and the minority in this 1985 decision, Ford's originality or expressiveness as an author was almost completely irrelevant. Only the economic and the political effects of his authorship as these were made evident in the text were at issue. At no point is reference made to the habits
of his mind being revealed in the text or in the Nation's article. In short, in the late twentieth-century, the author can be construed as an almost entirely anonymous creature—faceless, factual, dispersed into the events in which he was an integral but somehow also impersonal player. In this respect, this decision represents the fetishistic substitution of the text for the author as the central concern of intellectual property disputes.

Similarly, Harper & Row v. Nation exemplifies a trend obscuring the reader or user in its restriction of fair use. As technologies that facilitate reproduction of texts, images and sounds have proliferated since the 1970s, copyright decisions in the lower courts have increasingly protected the owners rather than the users of intellectual properties in question. The Kinko’s decision regarding course packs, so well known to university professors, is an excellent example. Furthermore, new legislation now protects most computer software and programming language under intellectual property statutes, essentially ensuring corporate control over the codes that provide the foundations for the tools more and more knowledge workers use everyday. Despite federal efforts to combat the monopolistic organizational structure of corporations such as Microsoft, there has been little effort to interfere with the monopolistic structure of the model of ownership these corporations promote for their products. Quite the contrary. Since the late nineteenth century, the trend in American copyright legislation has been to expand the kinds of texts treated as intellectual property and to extend the duration of that protection. The last years of the twentieth century saw several efforts to extend protection even longer, and these initiatives simply follow the logic of their predecessors.

Accompanying this trend towards more extensive and expansive protection of the rights of intellectual property owners is another tendency indicated in Harper & Row v. Nation. In that case, we saw that smaller and smaller units of an original were treated as protected property.
Whereas in *Folsom v. Marsh*, entire letters had to be reproduced and had to comprise one-third of the infringing text, in *Harper & Row* only brief quotations and references were necessary for a finding of infringement. Irrespective of the complex debate over the ownership of facts, the trend here is towards an atomistic treatment of text. Units of quantification are not only increasingly crucial to intellectual property decisions at present; they are also smaller and smaller units. Significant litigation can take place over differences of a single letter (as in the case of Curious George vs. the punk rock band Furious George) or over musical samples that last for fractions of a second (such as 2 Live Crew’s use of riffs from Roy Orbison’s “Pretty Woman”). Even the space of a few millimeters between a doll’s eyes can become the target of litigation (as in *Mattel v. Miss America*). Overall, increasingly precise elements of intellectual property are now being protected more stringently and for longer amounts of time in American law.

So, what makes these protectionist trends in American intellectual property law proleptic with respect to contemporary global capitalism? Well, if DeLillo’s images have been at all useful, they have reminded us that the reproduction on a mass scale of even a relatively benign icon (such as a leader’s face) can ultimately produce the visual equivalent of white noise. Reproduced seemingly infinitely, these small gestures accumulate into a different totality: “All men one man.”

It is this cumulative and reproductive process that is taking place on a global scale in the realm of intellectual property today. Since the advent of the TRIPS agreement and the launching of the WTO, international economic administrative bodies have made the global standardization of intellectual property legislation a priority. Signatory nations around the world are required to pass and implement intellectual property laws conforming to American-style standards by January 1, 2000. Though some provisions for longer-term transitions were made for
developing countries, the goal of this standardization has been, in the eyes of many commentators, to protect the interests of the First World owners of valuable intellectual properties—notably, film and pharmaceuticals. The standard rhetoric in defense of these industries’ interests being so strongly protected is the rhetoric of development as Western-style modernization; i.e., coercing changes in the diverse legal systems that have evolved around the world in response to the conditions of various anti-colonial struggles for sovereignty is defended in the name of global “economic harmony” that will supposedly lift the tide on which all boats float. Global protection of the property rights of the Microsofts and Burroughs-Welcomes is asserted as the necessary condition for people around the world someday possibly achieving a per capita income high enough to allow them to purchase some of the goods offered by those multinational corporations. In the meantime, nations dependent on foreign capital are being blackmailed economically by means of investment ratings into passing national legislation that will protect the property rights of multinational corporations and punish so-called pirates who reproduce or market without proper licensing properties such things as drugs for the treatment of AIDS.

This, then, is how intellectual property is proleptic: once the industrial-style expansion of production in new commodities such as psychotropic pharmaceuticals or information technologies has achieved a basic reorganization of markets and labor in the “core,” then the full-scale global expansion begins. Global expansion of capitalism since the 1970s has involved not only the mercantilist-style elaboration of trade routes (the supposed consumption revolution by which high-tech commodities appear outside the economies of the industrialized core) and the revamping of production facilities along flexible post-Fordist principles. What has also and perhaps most distinctively occurred is the sudden and immensely profitable treatment of a vast
array of existing relations as property relations—a sort of virtual land grab, if you will. In this enclosure of the global textual commons, Disney has seized monopolistic hold over the folk and fairy tales of a Brothers Grimm type European heritage; Time-Warner seizes recent history in the form of the Zapruder tapes, for instance; pharmaceuticals companies lay claim to the biological commons of the rainforests; and corporate-funded geneticists race to see who will decode and patent the information contained in the human genome. By converting existing natural and cultural resources into certain kinds of texts, corporations are now able to claim monopolistic ownership in a range of potentially super-valuable intellectual commodities. In this virtual homesteading, the law is a crucial player. To ensure that the gambles of investors in these areas pay off and to maintain a high rate of profit and thus ensure continued investment—that is, to keep pumping air into the economic bubble—the dominant capitalists must shore up their markets with legal remedies against those entering the game a few steps behind them. The global “harmonization” of intellectual property legislation foreshadows this shoring up. This national and international legislation provides a safe climate for further integration of global capitalism in the intangible goods of nature and culture; it is the symptom of a phase of expansion at the core reaching its saturation point, and it may well be the harbinger of a different style of expansion on a global scale, reorganizing once again the global geography of core and periphery.

In confronting this pre-history of intellectual property in contemporary globalization, I have made use of Arrighi’s notion that the “long centuries” of capitalist cycles of growth have been diminishing. For Arrighi, the Genoese/Iberian “fifteenth-” century lasted almost three hundred years; the long seventeenth- (or Dutch) century was just over two hundred; the long
nineteenth- (or British) century came close to one hundred and seventy five years, while the
twentieth- (or American) century that began in the 1880s promises to be shorter still.  

Following this pattern, I have suggested that the relations among elements of capitalist 
social totalities may have been shifting temporally as well. My researches into the history of 
copyright law tend to uphold the assertions of those who argue that intellectual property is 
becoming ever more central to the global economy. In fact, intellectual property has been 
significant for several hundred years, but with the acceleration of economic cycles and the lag 
time necessary for the law’s response to the economy somewhat out of phase with one another, 
this area of the law now appears somewhat “ahead” of the economy. In the early eighteenth- 
century, the promotion of author’s (really booksellers’) rights was homologous to protection of 
merchants’ property rights against the ravages of piracy over long and dangerous trade routes; 
the law for intellectual property seems to have changed about one to one-half a generation after 
the economy as a whole shifted into the full flower of mercantilism. In the mid-nineteenth 
century, the affirmation of a public right to access and fairly use protected intellectual property 
was a synecdochic part of a reorganization of production along standardized industrial lines. At 
this point, the industrial process was well underway in the United States as in England, but its 
full consequences were still developing. Intellectual property law was thus being formulated 
along more industrial lines at the same time that the broader reorganization of labor was 
underway; the two developments were more closely synchronized than they had been in the 
previous cycle. In the late twentieth-century by contrast, the law seems to have changed together 
with and also ahead of the economy. More expansive copyright statutes were introduced in the 
US in 1976 and added to thereafter. The TRIPS agreement and other regional accords 
influencing intellectual property (such as NAFTA) were signed in the late 1980s and early 1990s
when (according to Arrighi et al.) the global phase of the latest cycle of capitalist expansion was just taking hold.

Whether this changing relation between law and economy is due primarily to the acceleration of economic cycles or to a change in the role of nation states and international organizations in formulating the regulatory principles influencing the economy, I am not in a position to say. Either way, it is clear that the texts of nature and culture themselves (as well as their means of circulation and production) are now objects of sustained capitalist attention. “Literature” in this sense—that is, as the prototype of intellectual property—is thus by no means exterior to globalization, nor has it been for at least two hundred years. Literature is not and has not been waiting to comment from some sideline as the economy passes by like some gaudy cheerless Thanksgiving Day parade. Taken in its aspect as an increasingly central model of property relations, literature is intimate with globalization—perhaps even to the point of paving the way for further capitalist expansion in societies that have previously employed other models of ownership (or non-ownership) over what Americans call “literary” writing.

To conclude, we may want to ask whether the central role of literature in globalization carries with it any additional power for those—such as the Seattle and DC anti-globalization protestors—interested in constructing an alternative narrative of capitalist development. This remains an open question, I think. At the very least, in the near future, as communications industries continue to merge and centralize corporate control over the production and dissemination of intellectual property, we can expect new forms of “piracy” to emerge. It is perhaps here—in the use and practice of an alternative conception of property—that literature offers at least some utopian potential. But, we’ll have to wait and see.
Notes

1 I would like to thank Evan Watkins for the advice he gave while I was writing this essay.

2 See, for instance, websites for Global Exchange (an international activist organization devoted to fair trade; www.globalexchange.org) or sites devoted more directly to organization the protests—e.g., www.a16.org.


4 This characterization is very roughly appropriate to Nestor Garcia Canclini’s *Hybrid Cultures* (Minneapolis, 1995); and Stuart Hall and Martin Jacobs, eds. *New Times: The Changing Face of Politics in the 1990s* (London, 1989).

5 Here, I think mainly of Arjun Appadurai,* Modernity at Large* (Minneapolis, 1996), but also some contributors to Fredric Jameson and Masao Miyoshi’s *The Cultures of Globalization* (Durham, 1998).


8 See John Brewer and Susan Staves, eds., *Early Modern Conceptions of Property* (New York, 1997).


10 See Manuel Schornhorn’s introduction to *A General History*.

For more detail on Dutch strategies, see Arrighi, *Long Twentieth Century*, 176-177.


See also Ernest Mandel’s prophetic description of this process in *Late Capitalism* (New York, 1975): Chapter 10, “The International Concentration and Centralization of Capital.”


See Mark Rose, *Authors and Owners* (Cambridge, MA, 1995).


28 Ibid., 104.


36 Rose, *Authors and Owners*, 114.

37 Quoted in Rose, *Authors and Owners*, 125.


39 Constitution of the United States of America, Article I, Section 8.

40 *Folsom v. Marsh* 9 F. Cas 342 (1841). For the latest legislation and treaties, see the US Copyright Office’s website: /lcweb.loc.gov/copyright/.


42 *Folsom v. Marsh*, 346.

43 Ibid., 346.
Ibid., 348.

45 Leval, “Toward a Fair Use Standard,” 1109


47 Ibid., 539.


51 Ibid., 233,


55 Pamela Samuelson has written extensively on this topic; see her online papers at www.sims.berkeley.edu/~pam/papers.html.


57 The Furious/Curious George story was reported on MTV.com on May 12, 1998. See also *Campbell v. Acuff-Rose Music* 510 U.S. 569 (1994); *Miss America, Org. v. Mattel, Inc.* 760 F. Supp. 1107.

58 For typical language on the need for harmonization, see www.wipo.org.

Discussion to commemorate the 50th Anniversary of the Universal Declaration of Human Rights. (Geneva, 1998), 13-42.

60 Other than Drahos, most commentators in *Intellectual Property and Human Rights* defend harmonization of global intellectual property legislation.