

Preface

Through her camera, Martha Cooper captured much of the energy of the emerging hip-hop scene during the late 1970s and early 1980s. Cooper, a white photographer for the *New York Post*, gained entrance into graffiti culture and was provided an opportunity to document the birth of hip-hop.¹ Her photographs render the burgeoning aesthetic of early hip-hop culture, its socioeconomic context, and the youthful exuberance of the participants. Because photography is a visual medium, these pictures tend to privilege graffiti and break-dancing over deejays and emcees. Cooper's *Hip Hop Files* shows graffiti artists sketching ideas on notepads, kids painting in dimly lit train yards, and trains covered with designs that require multiple cars.² She also took photographs of the Rock Steady Crew, one of the earliest and most important break-dancing groups.³ Her work depicts them training, practicing, and ultimately performing. These shots also provide evidence of how New York City was suffering from neglect and decay even as these early hip-hop pioneers were laying the foundation for a new cultural aesthetic.

Cooper documents, among other things, how property, cultural ownership, and materialism, in various forms, have shaped hip-hop culture. Cooper's photography portrays graffiti artists acquiring paint and canvases by whatever means possible and documents the disintegration of the Bronx and other boroughs. It also depicts how young people sought to reclaim a form of ownership over their crumbling communities. In retrospect, these photographs highlight battles over public space, private property, and intellectual property. Although the City of New York criminalized the par-

ticipants, graffiti art, break-dancing, and deejays, at their best, sought to beautify a decaying urban landscape and create public spaces for post-Civil Rights era youth to enjoy the freedoms for which the Civil Rights Movement fought so gallantly.

These early elements of hip-hop culture quickly entered both mainstream and elite cultures. Break-dancing, due to MTV's emergence and the immense popularity of Michael Jackson, found adherents across the country and in many suburban communities. Graffiti art also soon merged into the New York art scene as graffiti writers, including Lee Quinones and Fab Five Freddy, became the subject of gallery shows during the early 1980s. Jean-Michel Basquiat, who gained as much or more celebrity in the art world than in the world of hip-hop, transformed graffiti into an "elite art" and soon became associated with Andy Warhol and other New York artists. Prefiguring intellectual property law's conflict with hip-hop, his work from the early 1980s frequently included ironic usages of copyright and trademark symbols. Richard Marshall argues that "the © is Basquiat's stamp of approval, authority, ownership, and originality." He further observes that "by symbolically copyrighting his SAMO sayings, Basquiat was not just identifying them as his own, but sarcastically commenting on the obsession with legitimacy, ownership, and authorship, even of his often cryptic, subversive, and anti-ownership phrases."⁴ Long before sampling became the subject of copyright disputes, hip-hop aesthetes, like Basquiat, examined who "owned" American culture and how the distribution of property and putatively color-blind property law doctrines operated to produce racial inequalities.

Hip-hop would soon expand beyond New York and the United States. Although it has relatively quickly become a key element of youth culture worldwide and a form of mass or corporate culture, its initial concerns with ownership, property, and materialism remain integral elements of hip-hop. Hip-hop culture continues to provide a running dialogue, albeit sometimes confusing, contradictory, and highly metaphorical, about the material conditions of African American life and the relationship of Black America to American society and culture. The term *hip-hop aesthetics* denotes how these issues shape the content and form of contemporary African American cultural texts. My examination of hip-hop aesthetics seeks to explain the relationships among post-Civil Rights era art, literature, and music and view them as interrelated phenomena. By privileging artistic and literary texts in my account, I hope to transcend the debates about hip-hop lyrics, especially their violence and sexism, and focus on the underlying aesthetic strategies that shape their production.

Preface / vii

Another purpose of this book is to try to make some sense of the confused debate about property, property rights, and materialism in the post–Civil Rights era. Law, economics, cultural studies, and the arts all lay claim to these words, and no one book could synthesize all these usages. Scholars have most frequently viewed this conflict as pitting hip-hop music, especially with its reliance on sampling, against copyright law’s understanding of fair use. In part because this is well-worn territory, and because I thought this narrow focus has unintentionally omitted some key elements of the story, I have broadened the conflict to examine a wider range of visual and textual production and to provide an occasion to speculate in a more philosophical tone (as opposed to a doctrinal one) about the purposes and effects of intellectual property law. As I hope this book makes clear throughout, intellectual property law is not the sole or primary influence shaping contemporary African American cultural production. Rather, it has become one of the key contemporary battlegrounds for a wide range of social, cultural, economic, and political questions.

In its effort to synthesize the vibrant conversations around intellectual property⁵ and hip-hop aesthetics,⁶ this book, engaging in a thought experiment of sorts, asks what insights could be gleaned if we viewed hip-hop aesthetics and African American cultural history, more generally, through the lens of intellectual property law (with occasional slippages into property law) and if we imagined what intellectual property law might look like if it tried to use copyright and trademark regulations to create a more just circulation of racialized texts. Obviously, these questions are artificial ones, because neither legal nor cultural texts can be so neatly isolated. The “real world” is infinitely more complex. That being fully admitted, this thought experiment helps shed light on how the mind-sets or worldviews promoted by hip-hop and intellectual property law conflict at a conceptual or theoretical level and further the contemporary racial divide.

To examine this interface between hip-hop aesthetics and intellectual property law, I rely heavily on critical race theory and Latino/a critical theory.⁷ These models have helped me imagine how a color-blind area of law, intellectual property law, might be transformed into a discursive space where race-conscious remedies might be developed and a more just popular culture nurtured. In a nutshell, the overall structure of this book follows what I would term a critical race theory methodology, which seeks to examine the historical, popular, and cultural origins of today’s debate about intellectual property and then proceeds to offer a number of case studies in which legal doctrine is applied to specific texts. The conclusion then tries

to suggest how each discipline or field might be affected by this conflict between hip-hop aesthetics and intellectual property law. Because this project attempts to synthesize the work of so many scholars from numerous fields, I regret that it has been impossible to recognize every scholarly contribution to this book without destroying the flow of the text and the central argument developed herein.

The book begins in chapter 1 by examining the historical debate within the African American community about the role of property and materialism in shaping a social justice agenda. The second chapter shifts to an examination of African American popular culture and its relation to the development of critical race theory. I consider how Henry Louis Gates's influential description of vernacular and artistic practices within the African American community relies on assumptions that run directly counter to intellectual property law's assumptions about creativity. The third chapter draws on Anna Deavere Smith's *Twilight—Los Angeles, 1992* to map out the characteristics of hip-hop aesthetics and provide an overview of contemporary aesthetic strategies, highlighting how those strategies have resulted in legal conflict or led to the threat of legal conflict. Chapter 4 applies the hip-hop aesthetic to Toni Morrison's *Beloved* and Adrian Piper's *Vanilla Nightmare* series. Neither Morrison nor Piper is part of the hip-hop generation, but this chapter tries to show how the structure and themes of their work, especially their focus on the meaning of ownership, constitute a bridge between Civil Rights generation strategies for social justice and hip-hop era approaches. Chapter 5 examines copyright and trademark law's approach to fair use by engaging in a close reading of Colson Whitehead's *John Henry Days* and Michael Ray Charles's *Forever Free* series. The penultimate chapter considers the possibility of social transformation and what intellectual property law terms "transformative use" by exploring Alice Randall's *The Wind Done Gone* and the artwork of Fred Wilson. The book concludes by suggesting possible directions for future scholarship in African American literature, African American art history, intellectual property law, critical race theory, and hip-hop studies.

By examining hip-hop as an aesthetic structure that underlies a range of genres, this book can provide a fuller critique of contemporary social and cultural relations. *Parodies of Ownership* ultimately concludes that intellectual property law doctrine has contained and neutralized the critical impulse of hip-hop aesthetics even if contemporary African American writing and art have flourished. Despite attempting to transform how intellectual property law distributes ownership rights for ideas, expressions, and texts,

Preface / ix

courts have been unwilling to modify copyright law even when practitioners of hip-hop aesthetics, such as Alice Randall, win their cases. The widespread popularity of hip-hop aesthetics has challenged but not transformed intellectual property law.

Because this book regularly shifts among four academic disciplines (literature, art, law, and music) that do not always share premises or methods, I must acknowledge a few of my working assumptions in writing this book:

1. While this study describes how hip-hop has influenced contemporary African American literary and artistic production, it is clear that hip-hop is not solely an African American phenomenon. At its origins, hip-hop blended multiple ethnic traditions in its aesthetic and continues to do so today, especially as its popularity in Europe, Africa, and Asia attests. However, I have limited my study to hip-hop's effect on African American art and literature in order to keep the project a manageable one and to maintain a fairly unified focus throughout.

2. While much contemporary African American cultural production fits within the hip-hop paradigm, it would be a mistake to apply the model to all people with a certain skin tone. Rather, this book identifies the central elements of hip-hop, translates them to a number of aesthetic realms, and demonstrates how a range of creative endeavors within African American culture share a common methodology or approach.⁸ Not all books by African American writers will fit within this paradigm, nor will every piece of art by African American artists. For example, this book does not examine "street lit," despite its recent popularity and its focus on hip-hop-related content, because these books tend not to display the aesthetic strategies discussed herein.

3. Hip-hop's journey through the legal system has been well-documented and analyzed, especially as it relates to the "fair-use" doctrine, by numerous hip-hop and intellectual property law scholars. While this book examines the fair-use doctrine and applies it to contemporary African American cultural production, it spends most of its critical energy examining the abstract or philosophical meaning of intellectual property, rather than engaging in doctrinal analysis. The doctrinal analysis of fair use's application to hip-hop has largely been accomplished, and the most pressing issues in intellectual property law scholarship, from a lawyer's point of view, have moved onto new terrain. Rather, this book is concerned with a different set of questions. Who "owns" the American cultural imagination and possesses the ability to rework and reconstruct it? What kinds of own-

ership rights can be asserted through art, music, literature, and law, especially by historically marginalized people? Do textual producers draw on particular aesthetic or cultural traditions when they assert their ownership claims, no matter whether they are making copyright, trademark, or even patent claims? Although this book frequently relies on dominant legal analysis as a point of comparison, I am even more interested in explaining the cultural and philosophical significance of the gap between intellectual property law and hip-hop aesthetics. I have chosen “intellectual property law” as the key theoretical focus, despite the book’s emphasis on copyright, because it is a more general term and offers a more appropriate analog for understanding what Rayvon Fouché terms “black vernacular technological creativity,” forming the basis for the hip-hop aesthetic during the post-Civil Rights era.⁹

4. I rely on the term *property* to denote a range of meanings: self-ownership; a claim of ownership; a tangible good; the laws regulating the ownership of tangible goods, land, or texts; and property rhetoric/talk. Within the context of African American historical experience and cultural criticism, one definition frequently blurs into the others, and literary, musical, and visual references to any one aspect of property frequently constitute metaphors for the other definitions of property. This slippage, I would argue, is intentional within African American cultural criticism because it is designed to destabilize or challenge legal discourse. It also serves to question the existing distribution of property and property rights. To respect this tradition, I have adopted this metaphorical usage of *property*.

5. As a heuristic device, I argue that contemporary African American criticism reflects a shift from civil rights to property rights. For many lawyers, this is a distinction without a difference because property rights are civil rights too. I nonetheless use this language because property rights, by and large, rely on the logic of alienability, where one’s interest can be bartered or traded away. Civil rights approaches, by contrast, tend to assume that one’s rights to due process and equal protection cannot be alienated or given up as a part of negotiation or contract. (Again, I realize that lawyers more familiar with the nuances of property and civil rights law might disagree with this broad characterization.) Because of hip-hop’s materialism and its emphasis on commodified forms of identity, I believe that examining the shift from a rhetoric of inalienability (civil rights) to one of alienability (property rights) and its legal ramifications is absolutely essential for any understanding of contemporary African American cultural production and its critique of dominant legal discourse.

6. Although I do see differences between the Civil Rights and the hip-hop generations, I also see many linkages.¹⁰ If their parents generally saw the Civil Rights Movement as a romantic struggle to overcome racial injustice, then hip-hop children tend to view the earlier generation's accomplishments and their effects more ambiguously and ironically. My assumption, as a cultural historian, is not that these attitudes are incommensurate and unrelated. Rather, the purpose of this book is to trace out how and why the hip-hop generation has turned from romantic optimism to a more ironic attitude. The recent election of Barack Obama suggests that these two generations do share values and goals and that the cynicism and irony of the post-Civil Rights era may be transforming into a new cultural narrative or sensibility.