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Policing Elvis: Legal Action and the Shaping of Post-Mortem Celebrity Culture as Contested Space

DAVID S. WALL

Celebrity cultures are neither benign nor static, they have their own careers during and beyond the lives of their creators. While they are shaped primarily by creativity and sustained by market forces, as soon as celebrity is created it becomes a contested space and a power struggle ensues. This article explores the use of legal and quasi-legal actions in the shaping of celebrity culture as contested space. It draws upon an analysis of the post-mortem career of Elvis Presley to illustrate how our knowledge of Elvis has been formed by the various legal actions which assisted the passage of his name, image and likeness from the public to the private domain and also the various 'policing' governance strategies that have since been employed to maintain control over the use of his image.

Central to the discussion is an exploration of the paradox of circulation and restriction, whereby the holder of an intellectual property right in a celebrity culture needs to circulate it in order to exploit its popularity and thus generate income streams, while simultaneously regulating the ways that the celebrity culture is consumed in order to maintain legal control over it in order to preserve those same income streams. The 'paradox' arises from the observation that, on the one hand, too much open circulation of a celebrity culture can lead to the development of secondary or even generic meaning that not only threatens the holder's exclusive rights over the property, but also has the potential to demean, debase or even destroy the overall integrity of the culture. On the other hand, too much restriction through over zealous control could effectively strangle the celebrity culture by killing off sensibilities of personal ownership and affiliation.

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It will be argued that not only will the balance between circulation and restriction never be an easy fit, but it is also wrong to perceive it simply as a zero sum equation. The relationship between the two is far more complex than assumed by the traditional legalistic model because the paradox provokes conflicting interpretations of the truth, which subsequently fuels debates about the celebrity, retains public interest and ultimately keeps the celebrity culture alive. The 'contestability' of celebrity culture is therefore not the traditionally assumed death threat to popular culture, rather, it is an important, if not essential, aspect of the career of a posthumous celebrity culture.

This article is largely concerned with US intellectual property law, particularly the right of publicity whose origins lie in the right of privacy; however, the discussion has potential significance for European jurisdictions because of the development there of privacy rights under EU law.

'Why, I'll just go right on managing him!' Colonel Parker, Elvis Presley's manager, is alleged to have replied when asked what he would 'do now that his meal ticket was dead'.¹ What he meant was that when Elvis died, neither his name, image, likeness and sound, nor his economic value died with him. But Parker's fighting words were fairly short lived because during the following years he found it increasingly harder to apply the exclusive control that he once exercised, particularly after his own competence as guardian of the Elvis legacy was called into question. Yet, his control over that legacy was also fairly weak because the post-mortem intellectual property rights over Elvis Presley had yet to be fully established, especially the right of publicity – which McCarthy has described as 'the inherent right of every human being to control the commercial use of his or her identity'.² This situation stands in stark contrast to the tightly regulated Elvis celebrity culture that we experience today.

The aspects of Elvis's celebrity culture in which there lies an intellectual property right (trademark, publicity rights, copyright) are now so jealously guarded that his name is almost synonymous with litigation. In fact Elvis Presley Enterprises (EPE),³ widely regarded as one of the most effective organisations of its genre, has been referred to as the 'Darth Vader of the merchandising-licensing business'. But, EPE's actions are not without controversy because they are frequently criticised for their heavily publicised actions to prevent the unauthorised use of the Elvis likeness,⁴ actions which, on the one hand, it is claimed, effectively restrict alternative expressions of Elvis as popular culture. On the other hand, had EPE not engaged in a series

of legal actions during the 1980s to establish its rights in the Elvis celebrity culture, then its core symbols (Graceland and contemporary Elvis knowledge) would probably have been lost and 'Elvis' would have become generic, possibly losing its specific meaning and cultural value in the process. Yet, despite these claims, there remains the contradiction, considered below, that even though Elvis culture (name, likeness, image, sound) is rigorously 'policed', many aspects of it that we experience today are not of the mortal Elvis. His post-mortem celebrity culture has been reshaped and so has our understanding of it, and these processes continue due to an expansion in the public consumption of Elvis. Notably, through the further embedding of Elvis within a global culture; through impersonation and simulation, Elvis art, an increasing spiritual following and the Internet. Each process is taking place despite the legal controls that are in effect and each is gnawing away at the very basis of the intellectual property rights over Elvis: its exclusivity.

The forthcoming analysis details the tensions existing in the space between those who believe that Elvis culture belongs in the public domain and his descendants who believe – with some legal justification – that his name and likeness is their lawful property. Central to the discussion is an exploration of the paradox of circulation and restriction,⁵ whereby the holder of an intellectual property right in a celebrity culture needs to circulate it in order to exploit its popularity and thus generate income streams, while simultaneously regulating the ways that the celebrity culture is consumed in order to maintain legal control over it to preserve those same income streams. The 'paradox' arises from the observation that, on the one hand, too much open circulation of a celebrity culture can lead to the development of secondary or even generic meaning that not only threatens the holder's exclusive rights over the property, but also has the potential to demean, debase or even destroy its integrity. On the other hand, too much restriction can effectively strangle the celebrity culture by killing off sensibilities of personal ownership and affiliation.

It will be argued herein that not only will circulation and restriction never be an easy fit, but it is also wrong to perceive it simply as a zero sum equation. The relationship between the two is far more complex than assumed by the traditional legalistic model, because the paradox provokes conflicting interpretations of the truth, which subsequently fuels debates about the celebrity, retains public interest and ultimately keeps the celebrity culture alive. The 'contestability' of celebrity culture is therefore not the traditionally assumed death threat to popular culture, rather, it is an important, if not essential, aspect of the 'career' of a posthumous celebrity culture. These tensions provide a unique opportunity to examine the impacts of 'governance' strategies, of which legal action is one, upon a celebrity popular culture.

The events and symbols discussed here mainly originate in the United States, but impact globally. The intellectual property issues, unless stated otherwise, largely refer to the US 'right of publicity', a term coined by Judge Jerome Frank in *Haelean Laboratories, Inc. v. Topps Chewing Gum, Inc.*⁶ to distinguish between the (property) right of publicity and the (personal) right of privacy.⁷ The right of publicity is therefore indigenous to US law. However, the ensuing discussion has potential significance in European jurisdictions which are currently developing constitutionally based privacy rights under EU law, where in the fullness of time publicity rights could (in theory) emerge.

Indeed, since the Human Rights Act 1998 came into force in the UK in October 2000, there have already been a number of cases brought by celebrities (so far unsuccessfully) to use their privacy rights to protect their celebrity status: Gary Flitcroft (*A v. B plc and another*);⁸ Naomi Campbell (*Campbell v. Mirror Group Newspapers Ltd.*);⁹ Jamie Theakston (*Theakston v. MGN Ltd.*);¹⁰ Mary Archer (*Archer v. Williams*);¹¹ and Catherine Zeta Jones and Michael Douglas (*Douglas and others v. Hello! Ltd and others*).¹² In the latter case, Michael Douglas and Catherine Zeta Jones sought to invoke their right of privacy under the Human Rights Act 1998 (s.8) to protect their exclusive agreement with *OK!* magazine to publish their wedding photographs. Michael Douglas openly declared his commercial interests in the case: '[o]n a professional level, because my name and likeness is a valuable asset to me, it has always been important for me, professionally, to protect my name and likeness and to prevent unauthorised use of either and I have taken steps to do so'.¹³ The Douglasses won their case on the grounds of breach of confidence rather than invasion of privacy; however, the case is significant because Mr Justice Lindsay dismissed the loss of privacy claim on the grounds that the law on privacy in the UK is still young and untested. He argued that '[t]he subject of privacy is better left to Parliament which can consult interests far more widely than can be taken into account in the course of ordinary inter partes litigation', and the privacy principle remains unchallenged at the time of writing. However, he did hint at the increasing persuasiveness of the privacy argument: '[f]reedom of expression on the media's part, as a counter-force to privacy, was not invariably the ace of trumps but it was a powerful card to which the court had to pay appropriate respect'.¹⁴ And UK IP lawyers are already openly arguing that under the Human Rights Act 1998, 'the right of privacy has a commercial value which is akin and no less real than the commercial value of goods'.¹⁵ The US debate is likely to be a useful rehearsal for things to come in the UK.

The first part of this article will explore the historic legal processes that led to the capture of the 'soul'¹⁶ of Elvis and its legal reconstruction as intellectual property. The second part will look at the various forms of the

public consumption of Elvis which can raise questions about celebrity rights ownership. The third part explores the ways in which Elvis's celebrity culture is 'policed' through formal and informal legal actions. The fourth part considers some of the implications and issues regarding intellectual property rights, particularly as they control the knowledge associated with the culture. The fifth and final part draws some conclusions. The discussion takes the form of a 'law in context' narrative rather than a specific debate over points of law.

Reconstructing Elvis

During the years immediately following Elvis Presley's death in 1977, the key challenge for the Elvis Presley estate was to remain solvent. While the Elvis Presley name, music and image retained its value, there were two main problems to be overcome. The first was that although Colonel Parker had assigned the right to use the Elvis image and likeness to Factors Inc. under an arrangement made previously with Elvis and subsequently with Vernon Presley as executor of the estate, many of Elvis's trademarks had yet to be registered, and the law relating to post-mortem right of publicity and its descendibility to heirs was in a state of flux. The publicity right had earlier been identified in *Haelean* (see above),¹⁷ then in *Zacchini v. Scripps-Howard Broadcasting Co.*,¹⁸ where it was established as a property right of the individual to exploit commercially his or her name and likeness. The decision in *Bela George Lugosi et. al. v. Universal Pictures*¹⁹ stated that the publicity right was descendible upon death if it had been exercised during the celebrity's lifetime, then later the court in *Price v. Hal Roach Studios*²⁰ ruled that the publicity right did not have to be exercised during the celebrity's lifetime. But the legal state of the publicity right remained uncertain in Tennessee because *Lugosi* and *Price* were argued in states (respectively, California and New York) that took a more pro-publicity right stance.

The ambiguity of the law, combined with the massive demand for commemorative merchandise led to a post-mortem souvenir merchandising industry quickly springing into production to sell a wide range of inventive products of varying quality over which there was little control – Elvis culture had effectively entered the public domain. Mainly intended for sale in the strip-malls across the road from Graceland (his home in Memphis) and the many memorabilia fairs, some of the more unforgettable products were: 'Love Me Tender Dog Chunks'; 'Always Elvis Wine'; the much sought after 'Elvis Sweat', that carried the profound message 'Elvis poured out his soul to you, so let his perspiration be your inspiration'.²¹ The souvenirs were successful, but few royalties found their way back to the estate.

The second problem to be overcome was the questionable management strategy of Colonel Parker. He was subsequently found to have made a string

of fairly poor business decisions and also acted largely in his own self-interest. Following the death of Vernon Presley in 1979, the Presley estate was left in a state of disarray and on the verge of bankruptcy. Elvis's closest family and friends would probably have liked things to continue as before with Parker managing affairs, but the Shelby County Probate Court appointed former wife Priscilla Presley, accountant Joe Hanks and the Memphis National Bank of Commerce as successor executors and trustees on behalf of Lisa Marie Presley, Elvis's daughter and sole heir. The court also ordered an investigation into the estate's financial affairs by Blanchard Tual, lawyer and Lisa Marie's guardian *ad-litem*. The resulting report, known as the 'original report', was very critical of Parker's management of Elvis's affairs and found the estate in poor financial health.²² Despite Elvis being one of the highest paid performers of all time, the estate was said to be worth less than \$500,000 and headed towards bankruptcy.²³ All of the major financial assets, such as the rights to the early song royalties, had been sold off in the early 1970s for derisory amounts (once taxes and Parker's 50 per cent commission had been removed).²⁴ In addition, Elvis had consistently followed (independent) bad financial advice and lost money in a series of investments.²⁵ The upshot was that Elvis's finances had for many years been kept buoyant by the fees generated by his punishing though highly remunerative tours.²⁶

Tual's investigation found Parker guilty of self-dealing and overreaching and it accused him of violating his duty to Elvis and his estate.²⁷ The Probate Court accepted most of the report's recommendations and encouraged the estate to recover monies from Parker. All further payments to Parker ceased and the estate filed suit against Parker and RCA Records for recovery.²⁸ In 1983 the courts settled in favour of the estate and Parker turned over the Presley assets to the estate in exchange for a cash payment of over \$2m from RCA Records, and RCA paid the estate \$1.1m in royalties owed on recordings sold since 1973.²⁹

Following the release of Parker's grip, Elvis Presley Enterprises, the company formed to manage the estate, sought to consolidate its assets, Graceland and 'Elvis', then expand its business. An early move was to open Graceland to the public on a commercial basis – which it did in the early 1980s. It also tried in the short-term, with mixed success, to recover any outstanding debts, such as the substantial amounts collected for uncollected advance ticket sales for the cancelled final concert tour.³⁰ The next strategy was to gain legal control over its key asset, the Elvis Presley name, image and likeness, and over the next decade or so, five major US legal actions achieved this goal. They were (with dates) *Factors etc. v. Pro-Arts* (1977–83),³¹ *Memphis Development Foundation v. Factors* (1977–80),³² *Presley v. Russen* (1981),³³ *EPIMF (Elvis Presley International Memorial Foundation) v. Crowell* (1987),³⁴ and *EPE v. Elvisly Yours* (1987–91).³⁵

The first case, *Factors etc. v. Pro-Arts*, was initiated by Factors Inc. of New York, the promotions company to which Colonel Parker had persuaded Vernon Presley to license Elvis's rights of publicity.³⁶ The case centred around a memorial poster carrying a picture of Elvis, for which the publisher, Pro-Arts, believed they had bought the rights from its creator. In their defence, they also claimed their right to publish the poster under the First Amendment on the basis that 'it commemorated a newsworthy event'.³⁷ A preliminary injunction against Pro-Arts was granted, affirmed, then later reversed by the Court of Appeals for the Second Circuit. The Second Circuit cited the court in *Memphis Development Foundation v. Factors* (the second case brought by Factors Inc., which involved a dispute over the gift of an eight-inch pewter statuette of Elvis in return for donations to fund the erection of a full-scale memorial to Elvis), to argue 'that Tennessee does not recognize a descendible right of publicity'.³⁸

Shortly after the decision in *Memphis Development Foundation*, the third case, *Presley v. Russen*, was brought against Rod Russen, producer of the 'Big-El Show', which closely imitated a 'late period'³⁹ 1970s Elvis stage show. During the show, entertainer Larry Seth copied Elvis's clothing and jewellery, gave out 'scarves to swooning audience members',⁴⁰ sang Elvis songs, and 'imitated the singing voice, distinctive pose and body movements made famous by Presley'.⁴¹ The Presley Estate sought an injunction to prevent Seth's Elvis stage impersonations and the unlicensed sale of Elvis trinkets. The court granted a preliminary injunction against the sale of celebrity paraphernalia, but it did not prevent the live performances on the grounds that they had no adverse impact upon the estate's economic interest,⁴² and also because of first amendment considerations.⁴³ Importantly, following the facts in *Groucho Marx Productions, Inc. v. Day & Night Co.*,⁴⁴ the court did recognise that Elvis's right of publicity was implicated by the nature of the performance,⁴⁵ and that 'Elvis Presley's right of publicity survived his death and became part of Presley's estate'.⁴⁶

Presley v. Russen, along with the decisions in *Commerce Union Bank* (1981),⁴⁷ *Lancaster v. Factors* (1982),⁴⁸ and *Boxcar Enter. v. Lancaster* (1983),⁴⁹ strengthened the case for the right of publicity becoming descendible upon death in Tennessee as long as it had been exploited during the life of the celebrity and if there existed a proven and tangible property that could be bequeathed.⁵⁰ After mixed results in the courts, the Presley estate employed a lobbyist to put forward a case to the Tennessee State Legislature to pass a law establishing the descendibility (inheritability) of the right of publicity.⁵¹ In 1984 the Personal Rights Protection Act,⁵² colloquially known as 'Elvis Law',⁵³ enshrined in Tennessee law the right of publicity and its descendibility. This was not an unusual action because during the same

period, various other US states also passed celebrity rights acts. At the time of writing, 11 states recognised publicity rights by way of common law and a further 18 via statute.⁵⁴

The problem with the Elvis publicity rights was that they predated the Act, so it took another case, *EPIMF v. Crowell*, to establish that the posthumous right of publicity did exist in the case of Elvis Presley grounded in the Tennessee common law. This decision later informed the court in *EPE v. Elvisly Yours*,⁵⁵ which prevented the unsuccessful defendant/appellant, Sid Shaw, who had relied upon the decision in *Memphis Development Foundation*, from trading in any goods which use the name and likeness of Elvis Presley or any EPE trademarks.⁵⁶

The five Elvis cases, in combination with others, clarified ownership and control over the key components of Elvis culture. They also contributed more broadly to the strengthening of the common law position of the right of publicity, a contribution to legal history that is fairly well established. But the cases also raise some interesting broader narratives which drive the discussion and frame the law. In particular, the cases highlight the contested nature of celebrity⁵⁷ and show how the conflict is integral to the career of celebrity culture. These, and other similar celebrity legal actions, did not take place just to further the development of law, rather they represented the exercise of power in the battle to control celebrity cultures and the economic power that they represent. And one outcome of the battle was a more favourable legal position because the commercial interests of those with the greater resources nearly always tend to prevail. But, while the strengthened legal position provides a set of formal legal (control) instruments, it is incomplete because of the relentless need to circulate the celebrity culture in order to maintain an income stream from it. The process of circulation to exploit the culture commercially immediately exposes it to the constant threat of appropriation, especially when new media, such as the technologies of the information age, change the manner of public consumption and production and subsequently threaten to generate additional, more generic meanings of Elvis culture. The worse case scenario is, as indicated earlier, that the property becomes so generic that it reverts to the public domain (see the discussion below about the original judgement in *EPE v. Capece (Capece 1)* Elvis Presley Enterprises Inc. V. Capece [1996], U.S. Dist. LEXIS 20695). The lesser case scenario is that the successful application of one of the traditional defences in intellectual property law, such as educational, parody, transformative or fair use, would reduce the level of control over the property and threaten the income stream. The strategies used to perform this function are discussed below. The following section looks briefly at some important trends in the public consumption of Elvis during the past two decades which pose a threat to the exclusivity of the ownership and monopoly control over Elvis.

The Public Consumption of Elvis in the Information Age⁵⁸

There are four distinct ways in which Elvis culture finds new meaning and is 'recoded' – as a cultural icon, spiritually, as simulation and simulacra, and as an art form. During the past decade or so, each has been facilitated and also accelerated by the technologies of the information age. They demonstrate how the posthumous Elvis image and its meaning is departing from the original and in doing so they pose some very interesting legal and moral questions about the ownership and control of an intellectual property (see below). They also demonstrate how Elvis mediates multiple discourses, strategies and policies which simultaneously enable and restrict access to the consumption of popular culture.⁵⁹

Elvis as a Cultural Icon

The cultural impact of Elvis is legendary yet still potent. In life he represented the unique convergence of folk hero and media event.⁶⁰ In just one 15-minute television appearance it is alleged that Elvis wiped out 4,000 years of Judeo-Christian uptightness about sex.⁶¹ He was felt to be such a moral threat to the nation that his actions were closely monitored and secretly filmed by the Federal Bureau of Investigation.⁶² Such was the concern at the time about Elvis's impact upon America's moral standards and public decency, that television executives decided to film him only from the waist upwards. Yet, the folk devil and parvenu at the centre of the mid-1950s rock'n'roll moral panic stood in stark contrast to the real person. Away from the hysteria stood Elvis as the archetypal all American boy: a maligned southern gent. 'This is a real decent, fine boy', said Ed Sullivan, as he scolded Elvis's detractors before the whole nation on live prime-time TV. 'We've never had a pleasanter experience with a big name', he said,⁶³ only a few months after he had said quite publicly: 'I wouldn't have Presley on my show'.⁶⁴ Here was Elvis the patriot who was prepared to abandon his successful career in order to serve his country,⁶⁵ and Elvis quickly transformed from a folk devil to a symbol of national pride that characterised the virility of post-war America. In the late 1950s Elvis represented the untamed, but tameable, pioneer spirit of America, and continued to do so during the course of his life.

Elvis's death left behind a space that was on the one hand an empty signifier, yet on the other hand bloated with contradictory meaning which subsequently filled the void. So major contributors to the longevity of Elvis's memory are the many controversies which characterised his life. Perhaps the most ironical of these was his longstanding opposition of narcotics, which he believed to be anti-American,⁶⁶ and which he maintained during his later years, when his health was deteriorating from his own abuse of prescribed drugs.⁶⁷ Elvis's life story was a celebration of the self-made American dream

– from rags to riches, from lumpenclass to ‘high class’.⁶⁸ This metaphor was celebrated in the many accounts of the hardship that Elvis and his parents endured during his upbringing, and also in the stories about his legendary generosity to the poor.⁶⁹ His cultural legacy is now so deeply embedded in American culture that his birth and death days have become annual events and there are moves afoot to make them national public holidays.

Of course we do not necessarily have to like Elvis to consume his celebrity culture. Indeed the anti-Elvis debate is an important and growing part of the development of the post-mortem Elvis. Initially, the anti-Elvis lobby concentrated upon the moral implications of his apparent lewdness upon American youth, and Elvis was perceived as standing against the very values that adult Americans had fought and died for a decade previously. He was also widely castigated because he played black music; indeed, radio listeners initially assumed that he was black and many radio stations refused to play his music. Two decades later, the anti-Elvis stance has taken an interesting twist: instead of being castigated by whites because of his indulgence in black culture, he is now criticised by some because of his alleged cultural imperialism,⁷⁰ having built his career on the back of blacks.⁷¹

A most telling indicator of the cultural embeddedness of Elvis has been his inclusion as the subject of academic study. Since the early 1990s Elvis has increasingly become the focus of undergraduate study. Academics such as Peter Nazareth,⁷² Mark Gottdiener⁷³ and Vernon Chadwick⁷⁴ have all taught popular degree courses in Elvis-related studies. Other well-respected academics from a broad range of disciplines have also conducted academic research into the various cultural impacts of Elvis.⁷⁵ These efforts are in addition to the regular American/Cultural Studies teaching diet of which Elvis is already a part. A popular focus for the dissemination of Elvis focused research has been the successful academic conferences on Elvis Presley, held from the mid-late 1990s onwards.

Far more important than whether or not we like Elvis is the fact that we are still talking about him almost three decades after his death. Even if you do not like Elvis, you are still consuming him and potentially contributing to the cultural development of his posthumous celebrity culture.

Elvis as a Spiritual Icon

Synonymous with the acculturation of Elvis has been the growth in his spiritual following. In life Elvis was a considerably spiritual person,⁷⁶ though he is alleged to have strongly discouraged worship of himself. Yet, in death he has acquired spiritual significance which displays all the signs of turning into a religion(s).⁷⁷ It is now quite common, for example, to find accounts in which Elvis’s life and his achievements are likened to those of Jesus. Furthermore, Elvis is now widely perceived as a martyr to the pressures of

modernity and there is considerable evidence⁷⁸ to suggest that he has already acquired an unofficial canonical status.

The spiritual interest in Elvis was stimulated by the widespread death denial during the 1980s, fanned by the longstanding debate in the tabloids over the circumstances of his demise.⁷⁹ Although they have somewhat abated, these debates continue to this day and yet, like the pro- and anti-Elvis debate, their outcome is much less important than the fact that they keep us talking about Elvis. Moreover, this talk tends to display a deep spiritual attachment towards both Elvis and his memory which is manifesting itself in forms of social organisation in the 'Churches of Elvis', which include amongst others: The First Presleyterian Church of Elvis the Divine,⁸⁰ The Elvis Gospel Ministries,⁸¹ The Elvis Gospel,⁸² The 24-hour Church of Elvis/Mini-Mobile Church of Elvis,⁸³ The First Church of Jesus Christ: Elvis,⁸⁴ The Graceland Wedding Chapel, Las Vegas.⁸⁵

Many of these so-called churches appear to be little more than pranks that border on performance art; the remainder tend to be fairly humorous adventures. Nevertheless, they bring together groups of people with a common purpose and in many cases further intensify spiritual attachment to him. The 24-hour Church of Elvis in Portland, for example, claims to offer a wide variety of services, 'all priced moderately from one to four quarters, including weddings, confessions, catechisms, sermon, and photo opportunity with the King. Legal weddings are also available for \$25 and up'.⁸⁶ It is certainly the case that the spoof imagery and irreverence of the idea of a Church of Elvis has a great appeal for many; however, in many cases it is increasingly hard to discern the spirituality from the art form. The 24-hour Church of Elvis is based upon a strong artistic statement. Others, such as the First Presleyterian Church of Elvis the Divine and the First Church of Jesus Christ: Elvis, incorporate elaborately designed religious iconography and/or employ rhetoric of a religious nature. Importantly, these links between Elvis and religion all serve to consolidate his spirituality, particularly when paraphrasing/misquoting the opening words of St John's Gospel with statements such as: 'In the beginning there was the word, and the word was Elvis'. The 'catechism' of the First Church of Jesus Christ: Elvis is a good example of this ersatz religion:⁸⁷

And I turned to see the voice that spake with me. And being turned, I saw seven golden records; and in the midst of the seven golden records one like unto the Son of Zeke, clothed with a jumpsuit down to the foot, and girthed . . . er . . . girt about the paunch with rhinestones. His hairs were black like vinyl, as black as Brilcream; and his eyes, how they twinkled, his dimples, how merry . . . Who is this King of Rock-n-Roll? The Lord of Hostess, he is the King of Rock-n-Roll. Shaboom.⁸⁸

This pseudo-religious type of prose is entertaining and clearly written in jest, yet it contains numerous cultural signifiers that relate to our experience of Elvis and also modernity. If it survives the test of time, then it is not inconceivable that the parodic origins of the prose and the circumstances of its authorship will be lost. In the fullness of time it is likely to be accepted at face value.⁸⁹ But an outcome of this upsurge in Elvis (pseudo)-spirituality is that individuals begin to feel that they can worship God or some higher order through Elvis because he is more accessible to them than, say, Jesus. Alternatively, Elvis makes it cool for a generation brought up outside the Church to worship publicly when peer pressures dictate against it. Of course, the growing spiritualisation of Elvis also begins to change the meaning of Graceland from the home of mortal Elvis to the 'spiritual' home of Elvis culture, cementing further his deification. This change in the meaning of Graceland finds a resonance in Baudrillard's description of Disneyland: 'a perfect model of all the entangled orders of simulacra ... a play of illusions and phantasms ... the tenderness and warmth of the crowd ... the contrast with the absolute solitude of the parking lot ...'.⁹⁰

Elvis as Simulation and Simulacra (the Impersonators)

If the Elvis Churches symbolise the institutional spiritualisation of Elvis, then the impersonators are the clergy. 'The cast of Elvises grows larger by the hour'.⁹¹ There are three basic schools of Elvis impersonators – the imitators/illusionists, the translators and the lookalikes – and each perform specific roles. The first types of impersonators are the imitators or illusionists – the high priests of 'Elvisdom' as the religious space is often described. They are the precession of the simulacra, representing the symbolic order in which the meanings of the (Elvis) signs have already been established.⁹² They simulate Elvis and recreate the drama of his performances both visually and musically. In performing Elvis illusion they try to achieve high levels of authenticity, wearing exact replicas of the clothes that Elvis wore, following specific performances to the letter, even using members of Elvis's own backing group. Furthermore, many will often try to establish a personal link with Elvis by wearing 'relics', such as a piece of jewellery once owned by Elvis, or else they may also include within their performance schedule a person who had been close to Elvis in life. The Elvis illusionists' live performances are the nearest thing that Elvis fans are going to get to seeing Elvis. The sites of their performances become, to all intents and purposes, a church, and the similarities between the performance and the evangelical congregation blurred.

Second are the Elvis 'translators'. If the 'illusionists' seek to simulate Elvis by substituting the 'signs of the real for the real',⁹³ then the 'translators' are the first (and second) orders of simulacra,⁹⁴ insofar as they are copies without

originals. Although they are fake, they are an infusion of original (Elvis) ideas and principles. In the 'competition for the meaning of signs' the simulacra aim to restore an ideal image of nature within novel contexts. They are Baudrillard's baroque angels, but just as 'real' as their archetype. By drawing upon the Elvis concept as the basis for their performance, then interpreting the Elvis signs for specific audiences, they take them beyond the original and make the signs of the real actually become real. Which causes Elvis Artist, Patty Carroll to ask: 'Are the Impersonators the simulacra of themselves or of Elvis? More importantly, what is their real experience, or ours as we watch them?'⁹⁵

The translators make Elvis accessible to a culture or audience who may have previously been excluded from it. Below are seven very different examples of Elvis translators. First is El-Vez, the Mexican Elvis, who adds Mexican culture to conventional Elvis to create a synthesis which is both recognisable to the Elvis fans but also reaches out to a broader audience – Mexicans and the Hispanic community. Then there is Elvis Herselvis, the lesbian Elvis, who re-genders the Elvis culture and displays its androgynous qualities. In choosing male-oriented songs, typically written to depict the anticipation of male sexual conquest she imputes new meaning for a previously alienated constituency. Dr Jukka Ammond, the Latin Elvis from Finland, translated the lyrics and meaning of the songs that Elvis sang into Latin. Claiming that the idea came to him in a dream, he said, 'Latin is an eternal language, so what better way to immortalise a legend?' 'Nunc hic aut numquam' is Latin for 'It's Now or Never'.⁹⁶ There is a growing cadre of Asian Elvis impersonators/translators⁹⁷ who have graduated from the karaoke bar scene. There is a 'Black' Elvis,⁹⁸ and even a 'Green' Elvis, whose song 'Are you recycling tonight?' is aimed at the environmentalist lobby. The National Association of Amateur Elvis Impersonators⁹⁹ was established in 1996 and boasts around 400 members. It describes itself as an incubator for Elvis Impersonator talent. It is estimated that there are 20–30,000 Elvis impersonators worldwide who 'come from every walk of life, but share a common dream . . . to be Elvis!'¹⁰⁰ And then there is Nude Elvis . . .¹⁰¹

At the far end of the spectrum are the 'translators' who take the Elvis image far beyond that for which it was intended. Two translator groups in particular have achieved considerable popularity: the Flying Elvi, who 'hit the silk on behalf of the king'¹⁰² to entertain at large public events; and the Snorkelling Elvises,¹⁰³ who strive to live up to the expectations invoked by their title through underwater Elvis impersonations. 'We're all getting geared up to get down', said Otis May of Key West, Florida, just before he and three other Snorkelling Elvises 'descended 25 feet with bright red guitars'.¹⁰⁴

Third are the Elvis lookalike 'impersonators' who dress in a similar fashion to Elvis, but neither simulate or translate, just invoke their own interpretation

of the (post-mortem) spirit of Elvis. They are the deacons of Elvisdom. Their clothes are usually homemade after the fashion of Elvis's, but do not pretend authenticity. These clothes and homemade symbols are usually worn at local Elvis events organised by the fan clubs and at the bi-annual festivals in Memphis and elsewhere during the week of 'death week' in August and 'birth week' in January. At a 'glocal' level, where the global mediation of Elvis impacts upon the local, also included within this category of impersonator are the fancy dress Elvi (the plural of Elvis ... see Flying Elvi above). The weekend partygoers all over the world who don Elvis style fancy dress and play with the symbols of Elvis, the 'lip curl', the Elvis voice, without actually imitating or translating him. They represent the third order of simulacra. They simulate the simulators and in doing so represent the death of the real, not counterfeits or prototypes. There are no originals to which to compare the lookalikes, they are Baudrillard's hyperreal.¹⁰⁵ As an adjoinder, one of the more extreme illustrations of pure third order simulacra can be found on the Tim-Elvis www pages which depict two Budgerigars posing as Elvis. Friz-Elvis (who appears with his girlfriend Priscilla) bears no actual physical resemblance whatsoever to the King of Rock'n'Roll, but he does share the same signs and symbols and is therefore recognisable as Elvis.¹⁰⁶ A further irony here is that Fritz-Elvis is actually a digitally constructed budgerigar – he is a double fake.

Cynics are quick to argue that the cult of Elvis is simply another publicity stunt pulled by Elvis Presley Enterprises in order to keep the market for Elvis merchandise buoyant. Whilst it cannot be denied that the 'cult' of Elvis has been very good for business by perpetuating and increasing the demand for Elvis merchandise, it does nevertheless seem to have happened despite the estate rather than because of it. Of particular relevance here is the observation that a great deal of the worship takes place outside the United States. If EPE had engineered the cults, then the focus would have been closer to Memphis, where they could have kept it under greater control. In response to the allegation that the Elvis cult has been kept alive by clever and manipulative marketing, a public relations spokesman for EPE once remarked that the estate has no need for marketing because: 'It would take a really deliberate effort to mess this Elvis thing up. Elvis was so dynamic he sells himself. He has such a tremendous following and had such tremendous talent, there is no marketing in it'.¹⁰⁷ Like the cultural consumption of Elvis, the spiritual consumption not only keeps the image alive, but also serves to define new markets for consumption of the physical or commercial product.

Elvis as Art

On the periphery of the post-mortem Elvis industry work are the many artists who draw inspiration from the Elvis image and use it as the focus of their art.

Their cottage industry appears to mark a line in the sand as to where the border lies between artistic free expression and commercial exploitation: indeed there is often a very fine line between the two. Even before his death, the Elvis image had long been the focus of artistic expression – Warhol's famous Elvis screen prints were perhaps the most famous example. Since his death, however, as interest in the Elvis image has expanded an increasing number of artists, Joni Mabe, Elaine Goodman, Danny Williams, Chris Rywalt and photographer Patty Carroll, to name but a few, feature Elvis prominently in their artwork. Marcus's study, *Dead Elvis*,¹⁰⁸ provides a significant document of the various facets of Elvis art between the late 1970s and early 1990s. Because most Elvis art sits on the borderline of commercialism it is prone to legal action, and although individual works of Elvis art are ignored, even if sold, some of the more popular and commercially produced types, for example, the Mexican Velvet art form, are perceived as problematic and have become a focus for legal action, even though the form of production makes each one individual. This discussion is taken up in a later section.

Aside from fine art and popular art forms, the Elvis celebrity culture finds artistic expression in an ever-broader range of commercially exploited and non-commercial artistic formats. Elvis images and knowledge have featured in fictional novels,¹⁰⁹ plays,¹¹⁰ musicals¹¹¹ and many contemporary Hollywood movies.¹¹² Away from the traditional marketing formats, he also been found imbued with superhero powers in comic strips like *Elvis Shrugged*, and in computer games¹¹³ and CD-Roms of infodata.¹¹⁴ Elvis knowledge has been especially popular on the World Wide Web, there are dedicated home pages¹¹⁵ and email discussion lists,¹¹⁶ there is even Elvis software,¹¹⁷ children's Elvis games, screensavers and other downloads.¹¹⁸

So, the Elvis name and likeness and its accompanying meaning provides the basis for a range of artistic expression, some of which involve the manufacture of products and others the provision of Elvis-related services. The expansion of the cultural, spiritual and artistic expression of Elvis has led to a gradual broadening of the artistic meaning of Elvis. In recent years, as indicated above, these trends have been accelerated by the growth in popularity of new information technologies. One particular technology, the Internet, has accelerated the diversity of Elvis expression and globalised its consumption.

Elvis in Cyberspace

The physically unbounded virtual environment created by the Internet that we now refer to as cyberspace has moved from science fiction¹¹⁹ into a socially constructed reality¹²⁰ – Castells's 'information society'.¹²¹ Its implications are quite profound and wide reaching,¹²² particularly the ability of networked

digital technology to detach ‘information from the physical plane, where property law of all sorts has always found definition’.¹²³ It is a brand new publication medium that is ‘a constellation of printing presses and bookstores’.¹²⁴ But it is also a virtual environment in which values tend to be attached to ideas rather than traditional physical property¹²⁵ and are constantly under threat of appropriation.¹²⁶ Possessing the dual characteristics of global reach and instantaneity, it is a medium that does not readily respect traditional legal boundaries and therefore challenges some of the traditional forms of legal regulation and procedures. Furthermore, its relative ease of use and ready access also empowers relatively unskilled individuals to manipulate cultures or images in sophisticated ways that were previously the domain of experts.

In short, the rapid growth of the new medium in the early 1990s rapidly outpaced understanding of how to control it and instantly created, for a brief period at least, a new public domain. A situation was created not entirely dissimilar to that in which the Elvis image and signs were placed after his death, where the boundaries were uncertain and laws and procedures were uncharted. Easy to use technology, ready access, plus the increasing stature of Elvis as a global cultural symbol, resulted in Elvis culture becoming a common feature in cyberspace. Not only are Elvis references regularly found on numerous Internet sites, but there are many sites that are solely devoted to him. These Elvis-related sites range from the rather sober official Graceland page to the more adventurous, some even ridiculous, sites, many of which were described earlier. The majority of websites lie somewhere between the two extremes and are evidence of that way that the medium of cyberspace has served to accelerate further on a global scale the cultural, spiritual and artistic expression of Elvis that had already begun during the late 1970s and 1980s. However, the fact that the new technologies so easily enable the exploitation of images and signs and also their instantaneous publication across a global plane created many new problems for the regulation or governance of the Elvis intellectual property, explored in the next section.

Policing Elvis ‘in the shadow of law’

With Elvis, demand always outstripped supply; his manager, Colonel Parker, wanted it that way,¹²⁷ and if you wanted to consume Elvis you paid for the privilege, that was the colonel’s motto from the early days. The philosophy was continued after Elvis’s death and by Elvis Presley Enterprises after Parker relinquished control. Jack Soden, EPE’s chief executive explained in an interview: ‘[a]ll we want . . . is to run our own business and not have every little schlocky guy around ripping off Elvis and putting his face on edible underwear and all kinds of things that demean the long-term value of what

we've got'.¹²⁸ He further described the mission of EPE as 'clearing the swamp' of what it saw as a vast collection of tacky and unauthorised souvenirs and products that had appeared following Elvis's death.¹²⁹ The formal EPE position is couched in slightly less colourful language, but expresses the same sentiments.

Elvis Presley Enterprises' Licensing Division is charged with the responsibility of protecting and preserving the integrity of Elvis Presley, Graceland and other related properties. We accomplish this through the pursuit of the right commercial opportunities that fit with our financial strategies while maintaining desired branding and positioning for Elvis and our other properties.¹³⁰

EPE's principle mission, then is to preserve its own economic interests, which is no surprise and it would be considered negligent not to do so. What is of interest, however, is the set of methods by which these interests are preserved. The prime goal is to protect EPE's interests by regulating and controlling the use of the Elvis signs to ensure that they are not appropriated, demeaned or transformed. They are assisted in this task by an authority drawn from the corpus of law, described earlier. But the naked use of law as a means to achieve justice in the courts can be both brutal and expensive, even destructive. It is brutal, because it rarely achieves its stated goal and it rarely attracts public sympathy or support, often achieving the opposite. It is also very costly in terms of both financial and human resources, and although costs are usually awarded in a successful action, the whole exercise is rarely cost effective. There are also further problems with the exercise of legal powers in that the right to publicity varies from state to state in the US – only 18 states have right of publicity statutes and 11 recognise it in common law – and similar rights do not tend to be found in jurisdictions outside the United States.¹³¹ Finally, recourse to law is also an expensive gamble, especially when there appears to be a distinct shift in court considerations from economic interests in the right of publicity towards focusing upon artistic transformation and free expression. In a series of recent cases involving disputes over artists infringing celebrity publicity rights – *Cardtoons, L.C. v. Major League Baseball Players Association*;¹³² *Comedy III Productions, Inc. v. Gary Saderup, Inc.*;¹³³ *Parks v. Laface Records*;¹³⁴ *ETW Corporation v. Jireh Publishing, Inc.*¹³⁵ – the courts have tended to side with defendants by favouring First Amendment freedoms of (artistic) expression over the celebrity right of publicity.

Therefore, in order to facilitate control over the intellectual property and bridge the gap between the theory (the possession of legal rights) and practice (the ability to exercise those rights), a range of 'policing' or governance

strategies are utilised.¹³⁶ Control (or the impression of control) is exercised, while avoiding expensive legal action. These strategies are best understood as regulatory configurations,¹³⁷ because they are composed of configurations of different regulatory elements that orient and shift themselves as part of a regulatory effort that is guided by specific strategies' (such as a business plan).¹³⁸ A crucial function of this governance approach is to construct 'objects of regulation', both in the social world and also in the 'social imaginary'. But as Hermer and Hunt observe,¹³⁹ the boundaries between the two do not always make for regulatory efforts that are either successful or predictable: '[t]hus, regulatory efforts are then directed at both violators who are known to be "real"' (unlicensed traders) and also the 'violators people imagine to be real' (those who express a potentially commercial interest in Elvis).¹⁴⁰ The choice of regulatory effort, whether it be 'reporting, inspecting, warning, information collection, and invoking legal and bureaucratic process', is the responsibility of 'regulatory agents',¹⁴¹ in this case the licensing division and their lawyers.

Curiously, the strategies of 'policing' governance not only reflect the broader politics of law and order but they also lend themselves to analogy with four basic strategies of public 'policing'. The purpose of these analogies is not to engage in a debate over the function of policing, but, as stated earlier, to disaggregate the litigative and policing functions of control.

The first type is 'preventative' policing, where strong legal messages are sent out to would-be appropriators of the intellectual property that EPE mean business and that legal action will be taken against them. These messages are 'regulatory icons' or objects of regulation that are constructed in the social imaginary, and are not dissimilar to Hermer and Hunt's 'official graffiti of the every day'.¹⁴² They are warning signs or messages that facilitate 'government at a distance'.¹⁴³ The five legal actions mentioned earlier set precedents for subsequent legal action and they add strength to the claims of action, exerting a controlling force upon the field. The continued existence of highly publicised legal actions has continued to advertise the consequences of transgression and have marked Elvis Presley Enterprises as a vigorous defender of its perceived rights. One specific example of 'preventative' policing aimed at the 'social imaginary' was the rumour seeded through letters to some fan club presidents warning that the FBI might raid the hotels and motels around Graceland for bootlegged merchandising, as they did on the tenth anniversary. This rumour, which did not eventually bear fruit, effectively warned the fan clubs not to manufacture and sell or purchase unlicensed memorabilia.¹⁴⁴

The second type of policing strategy is 'community policing', also to achieve governance at a distance and typically effected through the various fan clubs and appreciation societies to which the bulk of Elvis fans belong.

These organisations have, through their membership magazines,¹⁴⁵ activities¹⁴⁶ and sales operations, created a powerful moral majority that can be influenced in order to exercise its considerable economic power. Policing by mobilising the organic ‘Elvis community’ – the fan and fan club networks – has been achieved in a number of different ways, for example, when Dee Presley, nee Stanley, Elvis’s former step-mother, wrote a supposedly whistle-blowing account of Elvis’s last years.¹⁴⁷ The fan clubs refused to endorse the book and condemned it in their editorials. The combined effect of this economic action and negative publicity was poor sales and the apparent withdrawal of the book. With a combined membership of millions, the fans form a formidable constituency of consumer power. Dee Presley subsequently wrote an article in the *National Enquirer* about Elvis’s alleged incestuous relationship with his mother.¹⁴⁸ This action invoked an angry reaction from the fans; for example, the *T.C.B. Gazette*, journal of the Looking for Elvis Fan Club in Mobile, Alabama, published an open letter by Midge Smith to encourage all fans to boycott the *Star*, a US tabloid: ‘[a]s Elvis fans, we all feel compelled to protect Elvis from those that profit from his name and image, only to turn the truth into trash’. Smith’s stance was supported by the fan club, which appealed to “‘Elvis’ fans world-wide not to purchase the *Star* magazine any more’.¹⁴⁹

Another interesting, but slightly complicated, example of the *de facto* ‘community’ policing of Elvis occurred after the organisers of the Second International Elvis Presley Conference, held at the University of Oxford, Mississippi in August 1996, invited San Francisco-based Elvis Herselvis, a lesbian Elvis impersonator, to perform at the conference. The conference organiser, Professor Vernon Chadwick, sought ‘not to provoke controversy gratuitously’, rather, ‘to test the limits of race, class, sexuality and property, and when these traditional strongholds are challenged, controversies arise from the subjects themselves’.¹⁵⁰ Furthermore, as an official University event, the conference must comply ‘with all applicable laws regarding affirmative action and equal opportunity in all its activities and programs and does not discriminate against anyone protected by law because of age, creed, colour, national origin, race, religion, sex, handicap, veteran, or other status’.¹⁵¹ Whilst these intentions were widely known, a number of local Baptist Ministers complained to the Mayor of Tupelo about the inclusion of Elvis Herselvis on the conference programme and sought to block funding for the conference. The church’s concerns were supported by the organiser of the Elvis birthplace and Museum, then EPE followed suit. Conference organiser Chadwick argued that these actions ‘really get interesting when you throw in all the indigenous racism, homophobia, and class distinction that Elvis suffered in the South and throughout his career’.¹⁵² Chadwick received a formal, but diplomatic, letter from EPE’s licensing officer which formally

withdrew support for the conference. It referred specifically to the controversial nature of the ‘performers’ invited to the 1996 conference¹⁵³ and alluded to the ‘possible [negative]’¹⁵⁴ media exposure of this controversial event’. Indeed, it seems probable that the estate’s own actions were themselves forced by the broader community view. Whilst the withdrawal of Graceland’s support was not critical to the survival of the conference, the organisers were disappointed because of the event’s cultural affinity with Graceland. In the final analysis, and considering all things equal, the conference was a success and, mainly due to the substantial publicity surrounding the Tupelo and Graceland actions, attracted considerable media coverage which in turn helped attendance. In the words of Elvis Herselvis, ‘I think I should employ Graceland as my press agent, all this publicity is great’.¹⁵⁵

The third type is the ‘proactive’ policing of Elvis, where ‘regulatory agents’ (EPE’s licensing division) initiate regulatory activities proactively to police an object of regulation. Of which a very good example was the crackdown by EPE upon the whole genre of Elvis ‘Black Velvet’ art: a popular Hispanic art form. Each painting is individually painted upon black velvet and signed by the artist. Where the art form differs from more traditional art is that the artists have rationalised the production process, thus tending to concentrate upon a few styles in order to paint in bulk, and consequently each painting is very much a variation of the artist’s previous work. The issue here was not so much fiscal as the quality of the product, and in defence of the anti-black velvet stance, Carol Butler, then director of licensing at Elvis Presley Enterprises said ‘[w]e feel that Elvis on velvet is just not something that meets the criteria that we’re looking for in the way of quality product today. It’s just a product that we have chosen not to have available in the marketplace’.¹⁵⁶ This case is particularly interesting as the apparent originality, and therefore authorship, of each of the velvet works raises some basic First Amendment issues, such as denial of free expression. EPE openly state that they do not try to stop artists from selling paintings of Elvis as long as they have not been mass produced.¹⁵⁷ Rather curiously, during final revisions to this text it was found that the Velvet Store was selling Velvet Elvis art over the Internet¹⁵⁸ – they are not listed as licensees of EPE.¹⁵⁹ Perhaps the trend in judgments towards First Amendment protection (see *ETW Corporation v. Jireh Publishing, Inc.*¹⁶⁰ etc. above) now prevail over the prior stance towards Velvet art.

The fourth type of policing is the ‘reactive’, or ‘enforcement’, policing of Elvis’s intellectual property, again by EPE’s lawyers acting as regulatory agents. Andrea Berman, a Human Factors Engineer at NASA, created a ‘cyber tour’ of Graceland, which as the name suggests contained ‘official’ (copyrighted) pictures, audio clips and information about Elvis and the

Graceland mansion. The 'cyber tour' was originally made available through a website, but was removed by Berman after she received a 'cease and desist' letter¹⁶¹ from the lawyers acting for Elvis Presley Enterprises Inc. In their letter,¹⁶² the lawyers cited *EPE v. Elvisly Yours* (1991),¹⁶³ and claimed that Berman was infringing their exclusive rights to copy, distribute and create derivatives of its copyrighted images of Graceland, its copyrights in the music used in the tour and its rights in the name, voice and likeness of Elvis Presley under state law. Furthermore, Berman was accused of engaging in unfair competition by infringing EPE's rights to create a similar tour of Graceland 'by either satisfying demand for an authorised electronic tour of Graceland or by alienating potential customers with an inferior product'. The letter went on to demand that Berman agreed in writing that she would not, in future, reproduce or make publicly available the Cyber Graceland Tour and so on, and would not engage in any activities that infringe EPE's rights. Also it threatened that if the Cyber Tour was not removed from the Internet within seven days, 'EPE will have no choice but to exercise its rights under the law to their fullest extent'.¹⁶⁴

Asked why she responded so quickly in removing the page from the Internet, she said that: '[a]t the time, it seemed like the best thing to do – just comply immediately. That letter was very intimidating, as you can imagine'.¹⁶⁵ Berman later realised 'with the help of some legally-minded friends' that the statement she had signed was so broad that if 'I were to be walking down the street wearing an Elvis T-shirt, I could be going against this statement, and a representative of Elvis Presley Enterprises could take legal action against me'. After the event, she regretted not seeking legal advice over the letter, stating that: '[n]ow I feel like they wrote a generic, legally inaccurate letter that they knew would intimidate me into doing what they wanted; therefore, I feel used'.¹⁶⁶ Since removing the offending material Berman continued to develop the Elvis home page from materials that did not infringe EPE's rights. In February 1995 with much (including legal) support from outraged subscribers, she rebuilt the 'cyber tour' of Graceland using fans' personal photographs. Shocked at the level of publicity that she received over the affair, Berman said: 'I'm having more than my 15 minutes of fame, but not much more'.¹⁶⁷ The most important aspect of the 'cyber tour' of Graceland affair is that it graphically illustrates one of the key mechanisms by which popular culture is actively policed. Other than in reported court cases, we rarely get such an insight into the policing process itself. The 'legalistic' action enabled the estate to achieve its goal, Berman acted immediately and, unquestioningly, withdrew the offending material the next day because she felt intimidated by the letter. It was very formal and cited previous successful actions; it also assumed, possibly from prior experience, that their actions would attain their desired result.

The lawyers' assumption that they would get a result from their actions is a point that was raised by Sid Shaw, the unsuccessful defendant in *EPE v. Elvisly Yours*, who believes that lawyers deliberately used 'cease and desist' letters which threaten to bring the full weight of the law to bear as a strategy to encourage compliance.¹⁶⁸ Such action would appear to be a fairly common legal practice, although it is not always condoned.¹⁶⁹ Its key purpose is to exercise a 'chilling effect' over the 'defendant'. The thrust of Shaw's argument is that this is a clear case of economic power prevailing over justice. In justice systems which are both lengthy and costly to pursue, the victor is more likely to be the wealthier of the parties rather than the victim of the greater injustice.

The analogies drawn here with terrestrial street policing strategies are very deliberate because of the broad similarity of approach. Clearly, they are strategies of governance that take place under the 'shadow of the law',¹⁷⁰ through regulatory configurations rather than in its full gaze, and we should interpret these policing strategies as statements of territoriality or 'symbolic offensives against infringers' that are exercised to back up their proprietary right.¹⁷¹ Like street policing, they are intended to achieve an effect, which is usually to encourage the perceived offender to desist. But also like street policing, the examples demonstrate that the policing of intellectual property is not a clear and incisive action as the formal legal rules might imply. Formal rules do not determine action; rather it is the action which determines the manner by which the formal rules are applied.

Private versus Public Control over IP Rights: Cultural Production or Cultural Preservation?

The examples and discussion in the previous sections indicates quite strongly that the Elvis celebrity culture would probably have survived if had been left 'unfettered' in the public domain. This begs the rather awkward question over whether or not the private 'ownership' of the intellectual property rights is justified. The primary argument for allowing private ownership and control over celebrity cultures is both moral and financial, namely to provide an incentive for cultural production. Elvis's intellectual property rights were tangible products of his own labour, so he earned them and had the legal right to exploit them during his own lifetime and therefore leave them to his descendants – which is the current view taken by the courts. The general principle here is that without financial return there would not be a general incentive to encourage the development of culture and the production of cultural symbols. A further argument for retaining private control is that without the (private) legal interventions and subsequent 'policing' actions, then the Elvis culture and memory would, allegedly, have been so 'diluted' as

to lose any special meaning, and as a consequence the exclusivity which gave it its high financial value. Indeed, in support of this argument are often cited the very poor quality, cheesy, sometimes bizarre, inappropriate or even distasteful Elvis merchandising following his death that degraded the Elvis service mark as a sign of quality – the Elvis Jell-O-moulds, the Elvis casket, wigs, plaster busts, phials of Elvis Sweat and so on mentioned above. But although the licensed products of today are perhaps slightly more reverent, more expensive and of better overall quality, they nevertheless epitomise kitsch but lack the irony of their predecessors – flyswatters, snow globes, commemorative guns, condiments packages, fridge magnets and so on¹⁷² – which (for me) was the greater appeal.

So the principle argument for retaining private control – incentivising cultural production – has become lost in a debate over income generation, and if not the wish to exercise control, then the ‘feeling’ of dominance over the field.¹⁷³ This begs the important question as to whether in fact descendants should be able to control and benefit financially from something that has a social and global cultural meaning, is an important part of the US national, if not global, heritage and arguably belongs to all citizens; regardless of whether or not they would personally choose to subscribe to that form of popular culture.¹⁷⁴ Yet, a stronger counter argument in favour of the retention of private rights is that the lack of income from the unlicensed merchandising ventures during the widespread commercial exploitation of Elvis culture in the 1980s being channelled back into the estate, threatened its solvency – as argued by the Tual report (see above). At one point the Elvis hinterland, Graceland and its associated cultural artefacts, were nearly sold to pay off debts.¹⁷⁵ If it had been, then it cannot be assumed that Graceland would have been preserved in perpetuity as a museum and an important cultural site. It is very important, therefore, to seek where possible to disaggregate the principle of cultural production from the principle of cultural preservation, and compelling reasons for doing so are laid out below.

In constructing his own public image during the early 1950s, Elvis unconsciously appropriated, synthesised and ultimately capitalised upon images from a series of contemporary cultural icons. These ranged from Captain Marvel and Dean Martin to Jackie Wilson.¹⁷⁶ ‘Cultural production’, states Madow, ‘is always (and necessarily) a matter of reworking, recombining, and redeploying already existing symbolic forms, sounds, narratives, and images’.¹⁷⁷ To this effect – on the current standing of US publicity rights law – one could actually begin to question Elvis’s right to call the Elvis image his own in the first place; however, few would deny that the Elvis whole was definitely greater than the sum of its parts. The overall effect of his efforts was to create a unique image which had a fresh and vital meaning in post-war society. If there did not exist any rights of control over

the creation of cultural symbols then there would be little financial incentive for individuals to spend the time, energy and resources to develop their 'talents and produce works which ultimately benefit society as a whole.'¹⁷⁸ Although no one would seriously question Elvis's right to use the image he created, this line of argument does bring into question the right of his descendants to 'possess' this collection of cultural symbols. In fact – it will be recalled – prior to the ascendance of the principle of descendibility in the early 1980s, the consensus of opinion was that the rights to publicity could be exercised throughout the lifetime of the artist, but that they were not descendible upon death. Individuals could use and rework the 'public' cultural symbols during their lifetime, but effectively returned them to the cultural melting pot upon their death. The 'descendibility' of rights, such as the publicity right, does raise concerns, both in theory and also in practice, about the free flow of the signs and symbols which make up our popular culture, further emphasising the need to treat cultural production and preservation quite differently.

The importance of protecting the free flow of signs and symbols raises particular concern about the long-term impact upon popular culture of the private ownership of inherited celebrity rights through the accumulation of wealth and power. History attests to the direct correlation between the amount of accumulated wealth and the level of power exercised. Greater financial resources enable the employment of more sophisticated methods to protect rights, for example, through bringing expensive legal actions which shape common law and also send out warnings (regulatory icons¹⁷⁹), eventually increasing the formal authority to control, even distort, both the signs of celebrity culture and their meaning. Writ large, such intensive private domination over popular culture therefore carries a subtext¹⁸⁰ which is to control the production and circulation of meaning in our society. Applying this line of argument to intellectual property in the information age, Boyle has warned against the increasing refinement, and exercise, of intellectual property laws to establish property rights to 'information capital'.¹⁸¹ He seems to suggest that the accelerating political economy of information capital will consume popular cultures and draw them into private ownership as tradeable commodities, rather than living cultures. We can already see, on the official Elvis website,¹⁸² examples of an 'approved' and regulated version of Elvis's life history minus the contradictions. Thus providing evidence of Gaines's reflection that intellectual property law can be used by the owners of popular signs, in this case the Elvis signs, to bind a sign to a single source that functions as through it were the only source of meaning,¹⁸³ this is the 'exclusivity' that was mentioned above. The irony here is that the over-zealous application of intellectual property law can curtail the production of the popular culture it seeks to protect,¹⁸⁴ either by

stifling our use of cultural forms as a means by which to express identity, community or difference,¹⁸⁵ or by interfering with the autonomy of individuals to achieve cultural self-determination,¹⁸⁶ or just simply by undervaluing free expression.¹⁸⁷

To further support the above it is argued that, Elvis's celebrity culture is now so globalised and embedded in our cultural heritage that it long ago lost any specific and exclusive meaning that it once possessed: it now belongs to us all. This concern arose in two trademark cases decided against Elvis Presley Enterprises, in the US in 1996 and in the UK in 1997. In the first case, *Capece I*, EPE initially failed in their attempts to prevent Barry Capece, a Houston bar owner, from calling his club 'The Velvet Elvis',¹⁸⁸ on the grounds that he was infringing and diluting their trade marks and creating unfair competition. Capece, who had registered his trade mark without challenge in 1991, argued in his own defence that the phrase 'Velvet Elvis' was not derived from 'Elvis Presley'; rather, it parodied 'an era remembered for its sensationalism and transient desire for flashiness', and that Capece was ridiculing a culture's obsession with the fleeting and unimportant.¹⁸⁹ Judge Gilmore agreed, stating in her decision that: '[t]he phrase "velvet Elvis" has a meaning in American Pop Culture that is greater than the name, image or likeness of Elvis Presley'.¹⁹⁰ Unfortunately for Barry Capece, the 1996 decision was overturned on appeal in 1998 (*Capece II*),¹⁹¹ on the grounds that the district court had failed to consider the impact of Barry Capece's advertising practices on EPE's service mark and that it had also misapplied the doctrine of parody in so far as there still remained a likelihood of (commercial) confusion with EPE's trademarks. However, Judge Gilmore's original comments regarding Elvis becoming generic remained, even if their practical application has been weakened.

In the second case, Sid Shaw, the London businessman who had been the unsuccessful defendant in *EPE v. Elvisly Yours* a decade previously, was successful in appealing against the UK Trade Marks Registrar's decision to allow Elvis Presley Enterprises to register the names 'Elvis', 'Elvis Presley' and the signature, 'Elvis A. Presley', as trade marks on class three toiletries.¹⁹² Shaw's case rested on the argument that the marks did not display a distinctiveness that enabled consumers to be able to distinguish the proprietor's goods from those of another. The decision was subsequently upheld following appeal.¹⁹³ Broadly speaking, the narratives in both *Capece I* and *Shaw* demonstrate the magnitude to which Elvis culture now signifies a cultural genre rather than a particular source of goods or quality; especially as the culturalisation and spiritualisation of Elvis continues. As the public (cultural, artistic and spiritual) consumption of Elvis demonstrated earlier in this article, the post-mortem Elvis culture has undergone considerable transformation in terms of its looks, usage and meaning. There are now

aspects of the Elvis celebrity culture that are so far beyond the efforts of the mortal Elvis that any claim to exclusivity of authorship must now be lost.

The power of the Elvis signs and their multiple meanings are so strong that Elvis has, in effect, mediated his own celebrity culture beyond the grave. The ultimate test of this post-mortem development, although highly unlikely,¹⁹⁴ would arise if Elvis really was not dead and suddenly turned up one day wishing to return to public life. Could he then simply carry on where he left off in 1977 and legally able to be 'Elvis' again? It is quite clear from the earlier discussion that the nature, ownership and control of the property have changed considerably since its original owner's alleged death and it is not inconceivable that the returning Elvis might encounter a number of problems arising from the re-authoring of his image.¹⁹⁵

Conclusion

What the above findings bring into question is the commonly assumed simple zero sum binary of circulation versus restriction, suggesting instead the presence of a rather more complex and paradoxical set of relationships between law and celebrity. The examples described earlier illustrate the extent to which post-mortem Elvis has already acquired a much broader set of global meanings than the somewhat more parochial mortal Elvis in Graceland. Supporting the view that Elvis has become a generic symbol and remains a vibrant source of signs used in global cultural production, thus strengthening the case for placing him in the public domain. However, although there is a very strong case to favour more free circulation and less restriction, it is very important to emphasise that without the authority gained from those earlier legal interventions and the strategies of governance 'under the shadow of law', EPE would not have been as effective in protecting its commercial interests and the estate may not have survived as a financial success. The likely consequence of this event would have been the loss of Graceland and the symbols and memories of the mortal Elvis Presley – cornerstones of Elvis celebrity culture. But the most effective form of governance of a celebrity culture is not simply that owners of popular cultures should talk tough, but cut a bit of slack every now and then. A more functional (legal, moral and financial) separation of the principles of cultural production from the principles of cultural preservation is required.

Yet, it could be argued that, though unspoken, this separation is currently accommodated within the current situation – although not in a particularly satisfactory manner. Whereas legal strategies imply binaries of action or non-action, guilt or lack of guilt, governance strategies in contrast, though effective, rarely if ever fully achieve their goals because of their inherent reflexivity and plurality.¹⁹⁶ This flaw unintentionally forms a contestable

space in which resistance can flourish as a constituent of compliance rather than of non-compliance. Therefore it is the possibility of evasion which makes life under the regime of IP rights more tolerable.¹⁹⁷ Furthermore, it is the tension within the space of resistance that encourages creativity, often driven by an (Elvis) counter-culture that proffers alternative versions of the truth, which sustains public interest and keeps the culture in circulation.¹⁹⁸

This space is important to the overall quality of cultural life because it is clear from the earlier exploration of the public consumption of Elvis that considerable numbers of individuals and groups use his image, or signs, in their everyday lives to communicate meanings of their own making.¹⁹⁹ As Coombe has argued, celebrity images are widely used in contemporary American culture to create and communicate meaning and identity.²⁰⁰ So, not only does Elvis provide individuals and groups with a meaningful set of symbols through which to construct themselves, but he also provides a means by which they generate their social relations, enabling them 'to express and communicate their sense of themselves and their particular experience of the world'.²⁰¹

While the direction of the legal debate over IP rights tends to focus upon curtailing the excesses of ownership, it emerges from the above discussion that both the owner and non-owner (consumer) of rights are also key players in celebrity culture. This is because celebrity culture can never entirely be a people's culture,²⁰² and neither can it be purely a commercial creation because of its ability to engender broader meaning (and resistance).²⁰³ It is also clear from the earlier discussion that the legal debates over the ownership of celebrity intellectual property rights are really about who controls the social meaning of the culture. If equity in control of social meaning becomes a consideration in the pursuit of justice, then intellectual property rights need to be restricted to the function of cultural preservation in order to give non-owners the space to shape their own messages and engage in cultural production, and in so doing, benefit from their own intellectual creation/craftwork.²⁰⁴ However, one of the shortcomings of this 'deconstructionist' stance is highlighted by Hughes, who argues that while it addresses the tensions between the owners wishing for stability and the non-owners wishing to recode its meanings, two additional scenarios must be recognised if there is a genuine desire to increase the broader interest.²⁰⁵ The first is when both the property owners and the non-owners may want a stable position. The second is that a situation may arise in which the non-owner wants stability, but the owner wants to 'recode' the meanings (engage in further cultural production). Of course, an additional and slightly more problematic scenario is where both owner and non-owner may wish to 'recode' the meanings and engage in cultural production. What is valuable about Hughes's take is its reflexivity to include the desires of the owners of

intellectual property rights in further cultural production, whilst also giving non-owners a stake. The problem with this reflexive position is how to deal with the inherent power relationship within the contested space that is located within the economic interests, further emphasising the need to separate formally the principles of cultural production from the principles of cultural preservation.

NOTES

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1. G. Marcus, *Mystery Train*, 4th edn. (London: Penguin, 1991), xiv. This is only one of many responses attributed to Colonel Parker upon receiving news of the death of Elvis. Others include: 'Elvis isn't dead. Just his body is gone', from A. Nash (with B. Smith, M. Lacker and L. Fike), *Elvis Aaron Presley: Revelations from the Memphis Mafia* (London: HarperCollins, 1995), 731; 'Nothing has changed, this won't change anything', in D. Vallenga, *Elvis and the Colonel* (New York: Delacorte, 1988), 174; 'It don't mean a damn thing. Its just like when he was in the army', in K. Quain (ed.), *The Elvis Reader: Texts and Sources on the King of Rock'n'Roll* (New York: St Martin's Press, 1992), 275.
2. J.T. McCarthy, *The Rights of Publicity and Privacy* (Deerfield, IL: Clark Boardman Callaghan, 1987), s.1.2, 1–8; see also ch.9 on the Post Mortem Right of Publicity. McCarthy's work is the key text on the right of publicity.
3. EPE is an American company which operates in the interests of the successors of Elvis Presley and which has 'as its principal object the exploitation of [his] name and likeness'. Laddie J., *Draft Judgement* [1996], 17 March, at 2, lines 21–3).
4. S.C. Gwynne, 'Love me legal tender', *Time Magazine* 150/5, 4 August 1997, 46–9 at 49.
5. Developed from Gaines 'double movement of circulation and restriction'; see J.M. Gaines, *Contested Cultures: The Image, the Voice, and the Law* (London: British Film Institute, 1992), 5.
6. *Haelean Laboratories, Inc. v. Topps Chewing Gum, Inc.* [1953] 202 F.2d 866 (2nd Cir).
7. See further McCarthy (note 2), ch. 1; and for a very useful synopsis of the right of publicity see Mark Roesler's website, <<http://www.markroesler.com/ipresources/rightofpublicity.htm>>.
8. *A v. B plc and another* [2002] EWCA Civ 337 [2003] QB 195.
9. *Campbell v. Mirror Group Newspapers Ltd* [2003] 1 All ER 224 applied.
10. *Theakston v. MGN Ltd* [2002] EMLR 398.
11. *Archer v. Williams* [2003] EWHC 1670 (QB) (3 July 2003).
12. *Douglas and others v. Hello! Ltd and others* [2003] EWHC 786 (Ch); 3 All ER 996 (11 April 2003).
13. D. Bainbridge, 'Cases – Michael Douglas, Catherine Zeta-Jones and Northern & Shell plc v Hello! Ltd and Others', *Intellectual Property and Information Technology Law* 8.2/8 (2003).
14. *Douglas and others v Hello! Ltd and others* [2003] EWHC 786 (Ch); 3 All ER 996 (11/4/03); see also comment in Bainbridge (note 13); and R. Harrison, 'Selling privacy', *New Law Journal* 153/7077 (2003), 616.
15. L. Joseph, 'Human Rights Act 1998: Privacy As An Exploitable Property Right (a personal view)' (2003), <<http://www.kaltons.co.uk/HR=pptyrts.htm>>.
16. The term soul is used here as a metaphor rather than in a spiritual context.
17. *Haelean Laboratories, Inc. v. Topps Chewing Gum, Inc.* [1953] 202 F.2d 866 (2nd Cir).
18. *Zacchini v. Scripps-Howard Broadcasting Co.* [1977] 433 US 562.

19. *Bela George Lugosi et. al. v. Universal Pictures* [1979] 25 Cal. 3d 813; 603 P.2d 425; [1979] Cal. LEXIS 346; 160 Cal. Rptr. 323.
20. *Price v. Hal Roach Studios* [1975] 400 F. Supp. 836.
21. Marcus (note 1), 249.
22. Vallenga (note 1), 179.
23. R. Hilburn, 'Elvis's Millions were disappearing when Priscilla Presley took charge and rebuilt the King's fortune', *Los Angeles Times*, 11 June 1989, 10. Estimates vary by author and range from less than \$500,000 to \$4.6m.
24. Vallenga (note 1).
25. J. Parker, *Elvis: The Secret Files* (London: Anaya, 1993).
26. Hilburn (note 23), 10.
27. Vallenga (note 1), 179.
28. *RCA Records v. Hanks* [1982] 548 F. Supp. 979; 1983, No.81 Civ. 6594 (RLC).
29. *Ibid.*
30. *North Carolina State Treasurer v. City of Asheville* [1983] 300 S.E.2d 283; *Presley v. City of Memphis* [1988] 769 S.W.2d 221; [1989] LEXIS 114; *Presley v. County of Nassau* [1990] 148 Misc 2d 125; see also S. O'Neal, *Elvis Inc: The Rise and Fall of the Presley Empire* (Rocklin, CA: Prima Publishing, 1996).
31. *Factors etc. v. Pro-Arts (Factors Etc. Inc. & Boxcar Enterprises Inc. v. Pro-Arts Inc. and Stop and Shop)* [1977] 444 F.Supp. 288; [1978] 579 F.2d 215; [1979] 440 US 908; [1980] 496 F.Supp. 1090; [1981] 652 F.2d 278; [1982] 456 US 927; [1983] 701 F.2d 11; [1983] 562 F. Supp. 304.
32. *Memphis Development Foundation v. Factors, Etc., Inc.* [1977] 441 F.Supp. 1323; [1978] 578 F.2d 1381; [1980] 616 F.2d 956.
33. *Estate of Elvis Presley v. Rob Russen* [1981] 513 F. Supp. 1339 (hereafter *Presley v. Russen*).
34. *The State of Tennessee, Ex Rel. The Elvis Presley International Memorial Foundation, and The Elvis Presley International Memorial Foundation v. Gentry Crowell, Secretary of State, The Elvis Presley Memorial Foundation, Inc., and Elvis Presley Enterprises, Inc.* [1987] 733 S.W.2d 89 (hereafter *EPIMF v. Crowell*).
35. *Elvis Presley Enterprises, Inc. v. Elvisly Yours, Inc., a Tennessee Corporation, Sid Shaw, individually, Elvisly Yours, Ltd.* [1987] 817 F.2d 104; [1991] 936 F.2d 889 (hereafter *EPE v. Elvisly Yours*).
36. *Presley v. Russen* [1981] 513 F. Supp. 1339 at 1347.
37. *Presley v. Russen* [1980] 496 F.Supp. 1090 at 1103.
38. *Presley v. Russen* [1983] 701 F.2d 11 at 12.
39. R. Stamets, 'Ain't Nothin' Like the Real Thing, Baby: The Right of Publicity and the Singing Voice', *Federal Communications Law Journal* 46/2 (1994), <<http://law.indiana.edu/fclj/pubs/v46/no2/stamets.html>>.
40. *Ibid.*
41. *Presley v. Russen* [1981] 513 F. Supp. 1339 at 1348.
42. *Presley v. Russen* [1981] 513 F. Supp. 1339 at 1379; see also discussion in Stamets (note 39).
43. *Presley v. Russen* [1981] 513 F. Supp. 1339 at 1379.
44. *Groucho Marx Productions, Inc. v. Day & Night Co.* [1981] 523 F. Supp. 485, reversed, [1982, 2nd Cir.] 689 F.2d 317. 'The Court of Appeals for the Second Circuit later reversed the district court's grant of partial summary judgment. While recognizing the legitimacy of the doctrine of right of publicity, the court of appeals held that there was no descendible right of publicity that protected plaintiff's interest under California law ... 689 F.2d at 323'; see Stamets (note 39).
45. *Presley v. Russen* [1981] 513 F. Supp. 1339 at 1378; see Stamets (note 39).
46. *Presley v. Russen* [1981] 513 F. Supp. 1339 at 1355.
47. *Commerce Union Bank v. Coors of the Cumberland, Inc.* [1981] 7 Media L. Rep. (BNA) 2204 (hereafter *Commerce Union Bank*).
48. *Lancaster v. Factors Etc. Inc.* [1982] 9 Media L. Rptr. 1109.
49. *Boxcar Enter. v. Lancaster* [1983] Shelby Equity No.16. (Tenn. Ct. App. 5 December).

50. For a more detailed description of the case law, see McCarthy (note 2); and for a critical narrative, see also M. Madow, 'Private Ownership of Public Image: Popular Culture and Publicity Rights', *California Law Review* 81 (1993); Gaines (note 5); and R. Coombe, 'Objects of Property and Subjects of Politics: Intellectual Property Laws and Democratic Dialogue', *Texas Law Review* 69 (1991), 1853–80.
51. O'Neal (note 30), 134.
52. Tenn. Code Ann. @ 47-25-1101 [1994]; see also Title 47. Commercial Instruments and Transactions Chapter 25. Trade Practices Part 5. Model Trademark Act, Tenn. Code Ann. @ 47-25-501 [1994].
53. See Grossman's quote in D. Snow, 'Velvet Art Puts Customers in Picture – The Internet keeps genre alive', *The Commercial Appeal* (Memphis, TN), 16 August 2003, E3.
54. Those with statutes are: California, Florida, Illinois, Indiana, Kentucky, Massachusetts, Nebraska, Nevada, New York, Ohio, Oklahoma, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. Listed at <<http://www.markkroesler.com/>>.
55. *EPE v. Elvisly Yours* [1987] 817 F.2d 104; [1991] 936 F.2d 889.
56. Interview with Sid Shaw, 3 February 1995; see also the introduction to S. Shaw, *Rare Elvis* (London: Elvisly Yours, 1990).
57. See further Gaines (note 5).
58. For a very interesting cultural study of Elvis' posthumous career, see G. Rodman, *Elvis After Elvis: The Posthumous Career of a Living Legend* (London: Routledge, 1996).
59. Following F. Debrix, 'Introduction', in F. Debrix and C. Weber (eds.), *Rituals of Mediation: International Politics and Social Meaning* (Minneapolis: University of Minnesota Press, 2003), xxi–xlii.
60. Quain (note 1).
61. Paraphrasing Mojo Nixon paraphrasing Texan songwriter, Butch Hancock, in the preface to Quain (note 1). I think that this originates from Michael Ventura's 'Hear that long snake moan', in M. Ventura (ed.), *Shadow Dancing in the USA* (New York: St Martins Press, 1985).
62. Parker (note 25).
63. 'Special Elvis 60th Birthday Edition', *Life Magazine*, 10 February 1995, 42.
64. P. Humphries, 'Never Loved Elvis', in A. Clayson and S. Leigh (eds.), *Aspects of Elvis* (London: Sidgwick and Jackson, 1994), 232–7 at 232.
65. He could have easily been released from his army service because of his public position, or he could have served in the army special services and have continued with his music career; Vallenga (note 1). Elvis's cousin Gene Smith believes that Elvis did not want to be treated like everybody else; rather he just complied with what ever the Army told him to do; G. Smith, *Elvis's Man Friday* (Nashville: Light of Day Publishing, 1995).
66. One of the reasons for Elvis's visit to President Nixon in December 1970 was to offer his services to the United States in the fight against drugs. Later, purportedly as an agent of the Bureau of Narcotics, he was allegedly responsible for John Lennon being denied a green card for so long; Parker (note 25), 96.
67. Which he rationalised to others as medication. Note that benzedrine, the amphetamine, was given to soldiers on night duty to keep them awake. It has been suggested that Elvis actually started taking these drugs before entering the Army; Nash (note 1), 111.
68. A term taken from 'Hound Dog'. Elvis aspired to be 'high class' (not upper class) which must be interpreted to mean 'not lower class', from where he came. Note that Elvis never wore jeans, the clothes he wore during his younger days. He allegedly dismissed anybody in his employ caught wearing them: he wanted to distance himself from his past. Despite his riches, neither he nor his family, with the possible exception of his daughter, attained any significant degree of social mobility.
69. George Klein quoted from the Channel 4 programme *Elvis in the Movies*, 2 January 1995.
70. His friends and family strenuously deny the allegations of racism; Smith (note 65).
71. This sentiment is perhaps best summed up by the lyrics of 'Fight the Power' by Public Enemy (1990). 'Elvis was a hero to most, But he never meant shit to me you see, Straight up racist that sucker was, Simple and plain, Mother fuck him and John Wayne'. Shocklee, Sadler and Riderhop (aka Public Enemy), 'Fight the Power', *Fear of a Black Planet* (Def

- Jam Records, 1990). See also S. Hammer, 'Elvis Presley and the society of hate', *NUVO Newsweekly*, 12 January 1994.
72. Professor of English and African-American World Studies at the University of Iowa.
 73. Professor and chair of sociology at the State University of New York in Buffalo.
 74. Formerly Executive Director of the Institute for the Living South and formerly Assistant Professor of English at the University of Mississippi.
 75. Rather than suffer the wrath of colleagues for not including them here I have chosen not to mention any. The various Elvis conference programmes give a fairly comprehensive list of those academics who are currently conducting research into Elvis. Selections of academically oriented writings can be found in this collection, but also in Quain (note 1); Clayson and Leigh (note 64); and V. Chadwick (ed.), *In Search of Elvis: Music, Race, Art, Religion* (Oxford: Westview, 1997).
 76. L. Geller and J. Spector, *Elvis's Own Story: If I can Dream* (London: Arrow Books, 1989).
 77. T. Harrison, *Elvis People: The Cult of the King* (London: Harper Collins, 1992); J. Strausbaugh, *E: Reflections on the Birth of the Elvis Faith* (New York: Blast Books, 1995).
 78. Harrison (note 77); see also his TV documentary, *Elvis and the Presleyterians*, BBC1 Everyman series, screened 10.35pm, 17 August 1997.
 79. G.B. Giorgio, *Elvis Files: Was His Death Faked?* (London: Impala Books, 1990); and C.C. Thompson III and J.P. Cole, *The Death of Elvis: What Really Happened* (London: Robert Hale, 1991). A special date for the debate over Elvis's death was 13 June 1993, because after a decade and a half of speculation and reported sightings, it was the date when the *Weekly World News*, which had kept the story alive, finally put Elvis to rest. They claimed that Elvis died of sugar diabetes in May 1993 at the age of 58, instead of when he was 42 on 16 August 1977.
 80. The First Presleyterian Church of Elvis the Divine, <http://www.geocities.com/presleyterian_church/home.html>.
 81. The Elvis Gospel Ministries, <<http://www.elvisgospel.com/>>.
 82. The Gospel Of Elvis Converts Corner, <<http://www.zymondo.com/tgoe/ccorner.html>>; See also L. Ludwig, *The Gospel of Elvis* (Arlington, TX: Summit, 1995).
 83. 24-Hour Church of Elvis, <<http://www.frankwu.com/elvis1.html>>.
 84. The First Church of Jesus Christ, Elvis, <http://jubal.westnet.com/hyperdiscordia/sacred_heart_elvis.html>.
 85. Graceland Wedding Chapel, <<http://www.gracelandchapel.com/>>.
 86. 24 Hour Church of Elvis (note 83).
 87. The First Church of Jesus Christ, Elvis (note 84).
 88. Ibid.
 89. I have ignored here the jokey similarities that are often made between Elvis's life story and that of Jesus. For example, 'Jesus said Love thy neighbor (Matthew 22), Elvis said Don't be cruel (RCA, 1956)', and 'Jesus said that man shall not live by bread alone, Elvis liked his sandwiches with peanut butter and bananas'; James's Joke Archive, <http://members.tripod.com/~Mysterium/elvis_jc.txt.html>.
 90. J. Baudrillard, *Simulacra and Simulation* (Ann Arbor, MI: University of Michigan Press, 1994), 12.
 91. K. Barker, and K. Pritkin, *The King and I: A Little Gallery Of Elvis Impersonators* (San Francisco: Chronicle Books, 1992).
 92. Baudrillard (note 90), 12.
 93. See later discussion and Baudrillard (note 90).
 94. Baudrillard (note 90), at 2.
 95. P. Carroll, 'The Sincerest Form of Love' (2000), Elvis Impersonators website, <<http://www.elimpersonators.com/essay.html>>.
 96. The Phoenix Gazette, 'What's Latin for "Shoot the TV"', *Phoenix Gazette*, 4 March 1995, G1; M. Wainwright and G. McIvor, 'Nunc hic aut numquam for Finland's Elvis fans', *Guardian*, 11 March 1995, 1.
 97. 'Rise of the Chinese Elvis', BBC News Online, 15 August 2002, <<http://news.bbc.co.uk/1/hi/entertainment/music/2194920.stm>>.

98. J. Strausbaugh, 'Night of 100 Elvii', *New York Press* 14/ 50 (2003), <<http://www.nypress.com/14/50/news&columns/publishing.cfm>>.
99. The National Association of Amateur Elvis Impersonators, <<http://www.nudeelvis.com/>>.
100. Quoted from the film, *Almost Elvis* (Olympia, WA: Blue Suede Films, 2000), <<http://www.almostelvis.com/>>.
101. Nude Elvis of San Francisco, <<http://www.nudeelvis.com/nudeelvis/>>.
102. Cited during their legal battle in the Nevada Courts (unreported). M. Neill and A.M. Otey, 'All Shook Up: Two Skydiving groups try to chute each other down', *People*, 27 February 1995, 50.
103. 'Underwater music fest held', *United Press International*, 8 July 1995, BC cycle.
104. Ibid.
105. Baudrillard (note 90).
106. See Friz-Elvis in 'The Showroom', <<http://www.nwlink.com/~timelvis/showroom.html>>.
107. Harrison (note 77), 97.
108. G. Marcus, *Dead Elvis: A Chronicle of a Cultural Obsession* (London: Viking, 1992).
109. R. Graham and K. Baty, *Elvis: The Novel* (London: Granada, 1984); and J. Womack, *Elvissey* (London: Harper Collins, 1993).
110. For example, Phil Robert's play 'Elvis is Alive: and She is Beautiful'.
111. See 'Elvis: The Musical'.
112. Recent examples are *Honeymoon in Vegas*, *Wild at Heart*, and *The Client*, to name but a few of many.
113. For example, *Pele's World Cup Soccer* game reveals an image of Elvis. In one *Street Fighter* clone game the similarity of one of the fighting characters to Elvis led to action being brought against the producers. Other games include *Zak McKracken and the Alien Mindbenders* by Lucas Arts Adventure, in which Elvis appears on a spaceship above the Bermuda Triangle and eventually helps Zak to win the lottery.
114. Ranging from the authorised CD-ROM documentary of Graceland to entries in various popular encyclopaedias.
115. Access to the Elvis home page can be obtained at <<http://www.ibiblio.org/elvis/elvishom.html>>.
116. There are at least three news/discussion groups/lists that can be accessed through the World Wide Web, the main ones are alt.elvis.king, alt.fan.elvis-presley and alt.elvis.sighting.
117. For example, the Elvis detector 'detects the presence of the King', and the Elvis decoder allows Elvis devotees to send 'secret messages that only the King can decode'; S. Rappoport, 'Thank you for the music', *.net: the internet magazine* 1 (1995), 50.
118. See <<http://www.elvis.com>>.
119. W. Gibson, *Neuromancer* (London: HarperCollins, 1984).
120. D.S. Wall, 'Cybercrimes: New wine, no bottles?', in P. Davies, P. Francis, and V. Jupp (eds.), *Invisible Crimes: Their Victims and their Regulation* (London: Macmillan, 1999), 105–39.
121. M. Castells, 'Materials for an explanatory theory of the network society', *British Journal of Sociology* 51/1 (2000), 5–24.
122. Wall (note 120).
123. J.P. Barlow, 'The economy of ideas: a framework for rethinking patents and copyrights in the digital age (Everything you know about intellectual property is wrong)', *Wired* 2/3 (1994), 84.
124. J. Wallace and M. Mangan, *Sex, Laws and Cyberspace: Freedom and Censorship on the Frontiers of the Online Revolution* (New York: Owl Books, 1997), 228.
125. Barlow (note 123), 84.
126. Wall (note 120).
127. Vallenga (note 1).
128. Gwynne (note 4), 49.
129. J. Langton, 'Elvis lives – and he'll sue for every cent you've got', *Sunday Telegraph*, 10 August 1997, 22.

130. From the Elvis Presley Enterprises website, <<http://www.elvis.com/licensing/default.asp>>.
131. The reasons why the Right to Publicity evolved in the US are not discussed here. See further McCarthy (note 2), ch.1; and Madow (note 50).
132. *Cardtoons, L.C. v. Major League Baseball Players Association* [1996] 95 F.3d 959 (10th Cir.).
133. *Comedy III Productions, Inc. v. Gary Saderup, Inc.* [2001] 106 Cal. Rptr. 2d 126 (Cal. Sp. Ct.).
134. *Parks v. Laface Records* [2003] 329 F.3d 437 (6th Cir.).
135. *ETW Corporation v. Jireh Publishing, Inc.* [2003] 332 F.3d 915 (6th Cir.).
136. I am drawing upon and adapting here aspects of the neo-Foucauldian sociology of governance expressed by Alan Hunt and colleagues. See J. Hermer and A. Hunt, 'Official Graffiti of the Everyday', *Law and Society Review* 30/3 (1996), 455–80; and A. Hunt and G. Wickham, *Foucault and the Law: Towards a New Sociology* (London: Pluto Press, 1994).
137. See Hermer and Hunt (note 136), 460.
138. Not unlike the concept of assemblage; see P. Miller and H. Rose, 'Governing Economic Life', *Economy and Society* 19/1 (1990), 1 at 9.
139. Hermer and Hunt (note 136), 461.
140. *Ibid.*
141. *Ibid.*
142. *Ibid.*
143. A parallel is drawn here with the contradiction between the commands placed upon government to exercise more government within a (global) context that makes it less able to govern. In order to address this contradiction, a range of governance tactics are employed to achieve 'government at a distance'. See Miller and Rose (note 138), 1.
144. It was primarily designed to encourage the fan club presidents to sign a licensing agreement with EPE. See the *Newsletter of the Blue Hawaiians for Elvis* (Autumn 1996), at 2.
145. See, for example, *Elvis in the 90s* and *Elvis Monthly*, magazines produced by the Official Elvis Presley Fan Club of Great Britain; or *Elvisly Yours*, produced by the Elvisly Yours fan club.
146. Most of the appreciation societies organise trips to and tours of Graceland, Tupelo and other 'Elvis' related places, such as Bad Neuheim, where he spent his military service. They also hold annual conventions such as the Annual Elvis Convention held at Pontin's in Hemsby by the Official Elvis Presley Fan Club of Great Britain.
147. L. Frydman, 'Elvis Presley: Close Friend Hits Back At Claims by Star's Stepmother', *Hello Magazine* (1994) (date and page unknown).
148. D. Presley, 'Elvis and His Mom Were Lovers', *National Enquirer* (February 1992).
149. Strausbaugh (note 77), 28.
150. Email conversation with conference organiser Vernon Chadwick, 5 July 1996.
151. *Ibid.*
152. Email conversation with conference organiser Vernon Chadwick, 2 July 1996.
153. Email conversation with conference organiser Vernon Chadwick, 5 July 1996.
154. My brackets.
155. Comment made during a concert at the Fulton Chapel, University of Mississippi, 8 August 1996.
156. 'Elvis Presley estate aggressive in removing some icons', 'All Things Considered', National Public Radio, 21 December 1995, 4.30pm ET.
157. *Ibid.*
158. The Velvet Store, <<http://www.thevelvetstore.com/>>.
159. Elvis Presley Enterprises licencees, <<http://www.elvis.com/licensing/list/default.asp>>.
160. *ETW Corporation v. Jireh Publishing, Inc.* [2003] 332 F.3d 915 (6th Cir.).
161. Often confused with a Cease and Desist Order, which is a formal order of a US court, the 'cease and desist' letter has no formal legal sanction. It is a stern, but polite, letter, usually from a lawyer, that is designed to make the recipient aware that they, in the eyes of the lawyer's client, are either committing unfair acts against them or infringing their rights in

- some way. At their best they highlight the legal issues and outline the action required by the sender to remedy the complaint within a set time frame, else full legal action will be taken. At their worst they are vehicles for quasi-legal bullying. Of concern is that stern and strong (though not necessarily impolite) language frequently used, and which paints the issue in black and white in the sender's favour, can easily make the recipient believe that they are in the wrong, or in peril of crippling litigation, when in fact they may have a legitimate defence. The letters usually tend to result in speedy compliance, often without the recipient taking proper and full legal advice because of the short time frame. From the sender's point of view, they are a relatively cheap and efficient way of exerting authority over another in order to achieve a result.
162. A copy of the letter dated 10 November 1994 is available on the Original 'Unofficial' Elvis Home Page, <<http://www.ibiblio.org/elvis/elvishom.html>>.
 163. *EPE v. Elvisly Yours* [1987] 817 F.2d 104; [1991] 936 F.2d 889.
 164. All quotes are from the letter dated 10 November 1994.
 165. Email interview with Andrea Berman in 1995.
 166. *Ibid.*
 167. J.D. Reed, 'Graceland Under Fire', *People*, 19 December 1994, 35; M. Higham, 'Letter from America', *PC Format* 40 (1995), 18.
 168. S. Shaw, *Rare Elvis* (London: Elvisly Yours, 1990), 5.
 169. See further the Chilling Effects Clearing House, which is a joint project of the Electronic Frontier Foundation and Harvard, Stanford, Berkeley, University of San Francisco, and University of Maine law school clinics, <<http://www.chillingeffects.org/>>.
 170. D.S. Wall, 'Maintaining Law and Order on the Internet', in D.S. Wall (ed.), *Crime and the Internet* (London: Routledge, 2001), 167–83 at 167.
 171. Gaines (note 5), 228.
 172. Follow links at <<http://www.elvis.com/licensing/list/default.asp>>.
 173. See Jack Soden's comments earlier; see also M. Lollar, 'Want a good luck charm? Or just a t-shirt?: Elvis stuff is big hunka business', *Go Memphis* (2001), <http://www.gomemphis.com/mca/goelvis_king_weeks/article/0,1426,MCA_2779_1308602,00.html>.
 174. Not discussed here is the debate over manufactured fame, such as that which arises from the Hollywood Star system or with a number of pop groups. And then there is accidental fame: Eddy 'the Eagle' Edwards, Great Britain's former Olympic hopeful, and the now famous Eco-Warrior called 'Swampy' are interesting recent examples of accidental fame. D.S. Wall, 'Policing the Virtual Community: The Internet, Cyber-Crimes and the Policing of Cyberspace', in P. Francis, P. Davies and V. Jupp (eds.), *Policing Futures* (London: Macmillan, 1997), 208–36. For discussion of accidental fame, see Madow (note 50), n.305.
 175. O'Neal (note 30), 106.
 176. Marcus (note 1); Nash (note 1), 36. A quick look at the early Captain Marvel image (recently reproduced in the comic series *The Power of Shazam*) reveals Elvis's black kiss curl; also the lightning bolt emblazoned on Marvel's chest forms part of Elvis's trademarked TCB jewellery design.
 177. Madow (note 50), 196.
 178. *Ibid.*, 205.
 179. Hermer and Hunt (note 136), 467.
 180. Madow (note 50), 141–2.
 181. J. Boyle, *Shamans, Software and Spleens: Law and the Construction of the Information Society* (Cambridge, MA: Harvard University Press, 1996).
 182. The Official Elvis Presley site, <<http://www.elvis.com>>.
 183. Gaines (note 5), 232.
 184. *Ibid.*, 232; D. Wall, 'Reconstructing the Soul of Elvis: The Social Development and Legal Maintenance of Elvis Presley as Intellectual Property', *International Journal of the Sociology of Law* 24/3 (1986), 117–44.
 185. Coombe (note 50), 1855.
 186. W.J. Gordon, 'On Owning Information: Intellectual Property and the Restitutory Impulse', *VA. Law Review* 78 (1992), 149 at 156.

187. R.N. Kravitz, 'Trademarks, Speech, and the Gay Olympics Case', *Boston University Law Review* 69 (1989), 131–84 at 166.
188. *Elvis Presley Enterprises Inc. v. Capece* [1996] US Dist. LEXIS 20695.
189. *Ibid.*, 3.
190. *Ibid.*, 19.
191. (*Capece II*) *Elvis Presley Enterprises, Inc. v. Barry Capece, et al.* [1998] (No.97-20096, Fifth Circuit, 7 May).
192. Laddie J., *Re Elvis Presley Trade Marks* [1997] RPC 543 (Chancery 18/3/97) (original case CH [1996] E No.1337). Please note that this case was heard in the English courts where the right of publicity is not recognised, but the key issue was the debate over the distinctiveness of the 'Elvis' mark. Class three toiletries are: toilet preparations, perfumes, eau de colognes; preparations for the hair and teeth; soaps, bath and shower preparations; deodorants, anti-perspirants and cosmetics.
193. Laddie J., *Re Elvis Presley Trade Marks* [1997] RPC 543 (Chancery 18/3/97).
194. In January 1995, UK bookmakers William Hill increased their odds on Elvis turning up alive from 200–1 to 500–1. At one point in the late 1980s when the sightings were at their peak the bookmakers faced a possible £2m pay out if Elvis had proved not to be dead. See further, Wall (note 184).
195. A precedent here might be found in the experience of Clayton Moore, the actor whose name and likeness became solely associated with the Lone Ranger. See further *ibid.*
196. Hermer and Hunt (note 136), 463; see also Hunt and Wickham (note 136), 102.
197. Hermer and Hunt (note 136), 477.
198. This point is based upon an observation made by Gaines (note 5), 228.
199. See Madow (note 50), 142.
200. Coombe (note 50), 1855.
201. Madow (note 50), 142.
202. S. Hall, 'Notes on deconstructing "The Popular"', in R. Samuel (ed.), *People's History and Socialist Theory* (Boston: Routledge Kegan and Paul, 1981), 233.
203. Gaines (note 5), 5.
204. J. Hughes, "'Recoding" Intellectual Property and Overlooked Audience Interests', *Texas Law Review* 77 (1999), 923.
205. *Ibid.*