THE PAY'S THE THING:

INTELLECTUAL PROPERTY AND THE POLITICAL ECONOMY OF CONTEMPORARY AMERICAN THEATRICAL PRODUCTION

by

Kimon Keramidas

A dissertation submitted to the Graduate Faculty in Theatre in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York

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ABSTRACT

THE PAY'S THE THING:
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Kimon Keramidas

Adviser: Distinguished Professor David Savran

Over the last hundred years, theatre has seen its place in American culture change greatly. Whereas theatre was once *the* popular culture, offering a variety of live entertainments that appealed to people across the socioeconomic spectrum, it now struggles to attract even a fraction of the audiences and faces new artistic and economic challenges as film, television, and the Internet become increasingly popular. This dissertation argues that scholars studying theatre must analyze the field of theatrical production from two new perspectives. First of all, theatre must be considered as a medium, so that it can become more readily apparent that theatre faces many of the same political, social, cultural, and economic circumstances as other media. Secondly, in order to better understand just how the field of theatrical production is integrated into the larger cultural marketplace, theatre studies must integrate the study of political economy into scholarly investigations into the theatrical field. In order to demonstrate the value of political economic analysis in the study of theatre, the majority of the dissertation will be spent examining the influence of intellectual property rights on the theatrical field. This dissertation looks at three ways in which intellectual property has been an important determiner in the development of theatrical production. The first section addresses attempts by directors, dramaturges, and actors to increase their capacity to claim ownership of intellectual property has created divisiveness within the theatrical field and

threatened the collaborative nature of theatrical production. The second portion considers the use of intellectual properties by media conglomerates, such as Disney and Time Warner, as a means to integrate themselves into the field of theatrical production. The final section looks at how intellectual property rights have helped accelerate the commodification and propertization of culture, and how these trends have impacted the economic capabilities of theatrical production.

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I would like to thank all of those people who helped me through the long and very often difficult process of doctoral work and the completion of this dissertation. Before you begin your dissertation people tell you it is one of the hardest things you will ever do, but even that warning can not prepare you for the challenge this type of work poses and the many academic and personal obstacles one must overcome to complete such a daunting task. I would never have made it through the process without the help of the following people who constantly egged me on with support, love, and sometimes pleas of desperation.

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SECTION I:
THEATRE STUDIES AND THE POLITICAL ECONOMY OF THEATRE

Chapter 1.
Museum and Method:
Approaching Theatrical Production in the United States

"Theatre is dying!" For decades people have foretold of the death of American theatre. When vaudeville was vanishing and film was ascendant, theatre was dying. When television arrived and drama could be viewed in the home, theatre was dying. When the NEA was mercilessly downsized and companies were folding, theatre was dying. And when Disney moved onto Broadway and set up shop, theatre was dying. So why is everyone always saying that theatre is dying? Why the constant questioning and uncertainty over the state of the art form? The constant declarations concerning the imminent death of theatre may be hyperbole but they do reveal a very real feeling of frustration or despondence as to where contemporary theatre stands as a cultural experience amongst theatre makers, audience, critics, and scholars. Whether this frustration stems from a utopian vision of what theatre could be or from some idyllic memory of what theatre once was, it seems that Americans regularly declare their contempt for either a lack of inventiveness in new productions, a sullying of the field by other cultural influences, or some other sad fact of theatrical affairs. While theatre is not quite dead yet, there is a palpable sense that "something is rotten in the state of Denmark."

The problems Americans have with theatre seem to hover around a familiar set of proclamations and frustrations. As one writer succinctly put it:

> No one writes anything worth watching anymore. If it's worth watching, it's too expensive. If it isn't too expensive, it's not something you can bring

> the whole family to see. If you can bring the whole family to see it, they won't want to go. If they go, they won't like it.[1]

But despite this frequently heard sentiment and a pervasive sense of despair there are thousands of performances across the country every year and audiences continue to attend and support the form whether productions are Broadway, Off-Broadway, Off-Off Broadway, college, amateur or regional theatre. In fact, Broadway is selling tickets in record numbers and returning huge profits to investors. To all outward appearances, theatre is doing well. So, why all the despair? The reason is that despite many signals that on the surface seem to point towards a healthy theatrical scene in the United States, theatre is increasingly developing into a form of art and entertainment that the majority of Americans view with indifference. Theatre continues to move farther and farther away from the position it held at the turn of the twentieth century as the country's dominant form of popular entertainment. Whereas theatre was once a place where important ideas and opinions could be heard, a century of technological innovation, economic development, and social change have turned theatre into a much more rigidly shaped commodity serving particular socioeconomic purposes and interests. Theatre may not be dead, but for the most part it remains a shadow of its former self.

From the Greeks to the vaudeville houses of the early twentieth century, people attended theatre in droves and immersed themselves in these spectacles to be entertained and briefly to escape the reality of their world. But over the last century new cultural forms and societal shifts have changed the position theatre holds in American cultural

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[1] Paul Linkletter, "An Introduction to Babel's Theatre Section," in *Babel: The Multilingual, Multicultural Online Journal and Community of Arts and Ideas*, http://towerofbabel.com/sections/masque/.

life. No longer is theatre a major form of mass entertainment in the hierarchies of popular culture, as other media such as film, television, video games, and the Internet now draw massive audiences that far exceed those drawn by theatrical performance. As these newer media have gained increased popularity, theatrical production has slowly succumbed to social and economic pressures evolving out of changes in American cultural life over the last century. Over the last twenty-five years, cutbacks in government funding of the arts, two recessions, a national shift to the right in issues concerning morality, increasing concentration of wealth and power, and two wars in the Middle East have made the cultural situation in the United States more and more challenging for theatre companies, especially those doing innovative and experimental work. Forty or fifty years ago the theatrical avant-garde questioned theatrical traditions in language, style, and production, but today the majority of theatergoers in the United States are able to find mostly performances that revive classic or established works in venues that utilize production styles and techniques that have not been considered innovative since World War II. This trend towards conservatism has affected theatrical production in a number of ways. First, content-blind funding for the arts by the government has been greatly reduced, and as a result many theatre producers have had to focus on more traditional repertoires. Focusing on established texts and avoiding experimental work or sensitive content that may offend keeps theatrical producers from alienating the potential donors and grant-giving foundations on which they now rely to be able to function. But such a conservative approach also means that fewer young artists are drawn to the theatre, as newer media offer the potential for substantially more remuneration as well as the possibility for a broader range of experiences and more

creative fulfillment. Secondly, cultural conservatism over the past twenty years has pushed theatre even farther into the echelon of the distinctive high arts. While the cultural elite has always appreciated theatre, it continued to be a dominant form of popular culture up to and including the turn of the twentieth century and was an important form of entertainment for all classes. But as the twentieth century progressed and the more popular forms of theatre suffered most significantly as a result of the rise of film, television, and radio, theatre has come to be seen more and more as a form of high culture and the more coarse characteristics that had at one point in time made theatre appealing to a larger spectrum of audiences have come to be considered inappropriate. In *Distinction* (1984), Pierre Bourdieu points out that the shift towards high culture has served the upper classes well as

> the denial of lower, coarse, vulgar, venal, servile–in a word, natural–enjoyment, which constitutes the sacred sphere of culture, implies an affirmation of superiority to those who can be satisfied with the sublimated, refined, disinterested, gratuitous, distinguished pleasures forever closed to the profane. That is why art and cultural consumption are predisposed, consciously and deliberately or not, to fulfill a social function of legitimating social differences.[2]

The result has been the continued social stratification of theatre and the alienation of lower classes. The combination of the sacralization of theatre as highbrow art within American cultural hierarchies and the self-censoring that occurs due to an over-reliance on private funding has so greatly affected American theatre that the majority of work now

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[2] Pierre Bourdieu, *Distinction: A Social Critique of the Judgement of Taste* (Cambridge, Mass.: Harvard University Press, 1984), 7.

resembles a museum piece, which is kept under careful supervision against alteration and evolution by upper-class curators. Whether those curators are moral pundits proclaiming what should or should not be funded, or cultural elites interested in the preservation of a historical ideal of pristine, inoffensive, literary drama, for the most part theatre has been rigidly maintained in content and in defiance of the major cultural upheavals in media and entertainment of the last century. More interested in the maintenance of theatre as an upper-middlebrow or elite art form, many of the artists and patrons of American theatre have chosen not to or been unable to develop theatre into a cultural product in synchronization with the other media that define the contemporary cultural landscape. The end result is that, as Richard Schechner predicted in 1992, "theatre as we have known and practiced it–the staging of written dramas–[has come to] be the string quartet of the 21st century: a beloved but extremely limited genre."[3]

The impact that the new media of the last century, and especially the digital media of the last two decades, have had on the contemporary cultural landscape cannot be overstated when considering current cultural conditions. No longer is theatre the only medium for mass entertainment. The market for popular audiences has fractured dramatically in one hundred years, as film, radio, television, cable, home video, and then the Internet have entered the cultural fray competing for audiences. It is this immense change in cultural consumption in such a short period of time that has contributed to much of the conservatism in theatrical production and facilitated the continued elevation of theatre as a high art form. Each successive new medium drew more and more of the popular audience out of the theatres with the temptation of new experiences. Theatre's

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[3] Richard Schechner, "A New Paradigm for Theatre in the Academy," in *TDR* 36, no. 4 (Winter, 1992): 8.

reaction was to either become more traditional and staid, which served the interest of the cultural elite and bored the unrefined, or become more experimental, which alienated the less adventurous popular audiences who found the work inaccessible. Contemporary theatre audiences now consist mostly of those people who have reached a lofty status of cultural privilege, and when not attending the theatre are more likely to patronize opera, ballet, and symphonic music than summer blockbuster movies, rock concerts, or sporting events. If theatre remains situated in this elite position, it will share the same fate as these other forms of "highbrow" culture, which have economically suffered due to prolonged isolation from popular audiences in an era of increasing competition for cultural resources. The average age of the established audience base of highbrow culture continues to rise and promoters are finding it increasingly difficult to entice younger audiences to become subscribers and donors. It is not too outrageous to predict that similar trends might begin to affect a majority of producing theatre companies.

Considering Theatre as a Medium

Putting the situation of contemporary theatre in perspective in its current position therefore demands a new approach, one that takes into account the historicity of the particular conditions of this cultural moment. As theatre has become more of a highbrow art form, its past as a medium for mass entertainment and popular culture falls further into the historical distance. According to Bourdieu, it takes the "learning made possible by a disposition acquired through domestic or scholastic inculcation of legitimate culture,"[4] to generate the particular cultural competence necessary to raise an art form to a level of higher distinction. In order to ensure that theatre remains a sacred institution, it

[4] Bourdieu, *Distinction: A Social Critique of the Judgement of Taste*, 28.

is in the best interests of the cultural curators who manage the conservatism in theatre that people acquire the disposition that theatre is by nature an elite form of extraordinary distinction. For this reason this study will focus on theatre not within the controlled parameters of traditional artistic expectations, but within a larger cultural context, a context that is best served by comparing theatre to the new media of the last century. Rather than think of theatre as separate and distinct from film, television, or the Internet, we must discuss theatre as a medium that is part of the same cultural landscape as these media. By placing theatre in the same context with and in relation to these other media, we will be reminded to consider the forces at play across all fields of cultural production.

The separation of theatre from these more technological media within studies of culture has been the result of a set of specific historical developments. Understanding how these developments have impacted theatre can be facilitated by a rethinking of the term "medium" in relation to the study of theatre. In *Marxism and Literature* (1977), Raymond Williams reminded us of the historical connotation of the term "medium." Originally the term described an intermediate substance necessary for the process of creation, such as paint or marble. But as art became idealized in the early Industrial Age, distinguishing it from purely mechanical work, the use of the term medium helped to reify the artist's proficiency and skill by describing his or her mastery of a particular medium. Therefore the elevation of the arts into "higher things" consequently elevated the term from a workmanlike materiality to a more abstract and venerable ability. However, as capitalism continued to mature, Adam Smith and other social and cultural critics began to consider how art was commodified via the forces of capital and the physical working aspects of art were once again brought to the fore. Williams noted that

when "'art' was exempted from, made exceptional to, what 'work' had been made to mean. . . the special senses of 'medium' were then exceptionally reinforced: medium as intermediate agency between an 'artistic impulse' and a complete 'work'; or medium as the objectified process itself."[5] As the relationship between art and society continued to evolve and new media developed over the last century the term "medium" once again shifted in its meaning. Social relationships in culture became linked to material production as new technologies raised questions of collaborative work and productive forces. These new technological media, such as film, television, radio, and the Internet, necessitate an elaborate process of culture-making and numerous participants involved in various stages of production, distribution, and consumption. Therefore, the understanding of the term medium has expanded and, as Williams noted "what had been isolated as a medium, in many ways rightly as a way of emphasizing the material production which any art must be, came to be seen, inevitably, as social practice; or, in the crisis of modern cultural production as a crisis of social practice."[6] Those concerned with the development of these practices and their impact on society, as the products of a society's personality and as tools to control that personality, began to focus on the importance of sociological factors, such as power, class, and access, in shaping cultural production. No longer was simply understanding and studying the final text the goal of analyzing the work of art and culture, and it soon became necessary to also study the various forces that came into play in the process of developing and producing that text.

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[5] Raymond Williams, *Marxism and Literature* (Oxford: Oxford University Press, 1977), 161.
[6] Ibid., 163-64.

As Marshall McLuhan has so famously said "the medium is the message."[7] Understanding media therefore means understanding that there are significant cultural, economic, and social forces at play in the production of contemporary culture. For instance media megafirms Disney, Time Warner, News Corp., have the ability to control the messages conveyed to the majority of consumers because of the dominating position their overwhelming advantage in economic and political capital gives them in the cultural market. These firms therefore are capable of controlling discourse, rendering lesser competitors impotent. This advantage allows them to saturate the market with content that either explicitly states or implicitly conveys the ideology of the corporation. The position of power that these firms enjoy in the field of cultural production therefore becomes an inherent part of any message conveyed via these media. As McLuhan reminds us "it is only too typical that the 'content' of any medium blinds us to the character of the medium."[8] So, we must remember to also consider the non-content aspects of media, such as wealth, ownership, and economic capital, which represent the ways in which media as social practices are complexly entwined in cultural production.

As the term "medium" has come to signify a larger social practice, new media have correspondingly come under scrutiny as important social forces beyond the scope of their content. Scholars across the disciplines of cultural studies, communication studies, media studies, economics, and sociology have all incorporated the study of the mass media–television, film, and the Internet–in their work, investigating how capital flow, labor forces, class, gender, and race operate within the creation of culture and how those

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[7] Marshall McLuhan, *Understanding Media: The Extensions of Man* (Cambridge, Mass.: MIT Press, 1994), 7.
[8] Ibid., 9.

influences have affected the resulting texts of these media. Despite the fact that communications and mass media studies have developed in response to the rise of the technological media of the twentieth century, the study of the older forms of cultural production that have attained highbrow or elite status, such as opera, classical music, the studio arts, has remained predominantly the study of texts and their particular presentations and representations. These traditional art forms are rarely investigated from a broader socio-cultural perspective as the new media have, and as a result the productive and economic conditions of their social practices are usually overlooked. Theatre studies for the most part approaches its object of study in the same manner as these highbrow cultural forms, with the focus on aesthetics and the phenomena of performance. As a result theatre is rarely analyzed as a medium akin to film and television, despite the fact that theatrical producers hope to reach similar audiences and are influenced by subject to similar cultural and economic forces.

There are two developments that are important as we consider how theatre became disconnected from the idea of a medium as a social practice. First, in the beginning of the twentieth century theatre's role as a prevalent and important part of popular culture began to be challenged by film and radio. The fate of vaudeville in the time between World War I and World War II is emblematic of the collapse of popular forms of theatre at this time. By the end of the nineteenth century, popular forms of theatre such as vaudeville, minstrel shows, and burlesque had long been a prominent part of the American cultural landscape. Charles and Louise Samuels have written that "during the half century from about 1875 to 1925 that variety shows or vaudeville reigned as America's favorite entertainment, there were 25,000 artists working part- or

full-time in 4000 theatres ranging from lodge halls and converted barns to marble palaces."[9] At the peak of vaudeville's popularity, which is regarded by many vaudeville historians as the day the Palace opened on Broadway in 1913, vaudeville theatres were continuing to gain value over time and theatrical entertainment was still considered to be robust business. The average vaudeville house cost from $125,000 to $600,000 to construct, and the Palace, which was the most famous of these houses, was worth approximately $800,000.[10] Furthermore, a *New York Times* study of the theatrical field done in 1913, revealed that at that time Americans were spending a significant amount of their annual income on theatre. The study showed that the American public was spending between twenty-five and thirty million dollars on their entertainment, at a time when an unskilled worker made less than $500 a year and a family needed approximately $800 to get along. These statistics show that a significant amount of the money earned by Americans at that time was going towards trips to the theatre.[11] Theatre at this time remained a thriving business that reached out to a wide range of social groups and classes, and continued to take up a large portion of the leisure time of the average American.

But even before 1913 the tide of popular culture had begun to change. Most significantly, film had begun to develop out of its origins as a novelty and was maturing as a medium aesthetically and in its ability to create profits for investors. Since movies were easy to reproduce and could be rapidly distributed to wider audiences at a lower

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[9] Charles Samuels and Louise Samuels, *Once Upon a Stage: The Merry World of Vaudeville* (New York: Dodd, Mead, 1974), 247.
[10] Ibid., 248.
[11] Ibid.

cost of admission, film producers were able to draw large audiences and generate much higher revenue than theatres could.

> In 1905 the first movie theatre was opened and by 1909 there were 8000. Early theatres seated about 100 and showed only short films. In 1914 the Strand Theatre in New York, with 3300 seats began a trend towards large houses. . . With their superior ability to capture spectacle and their markedly low admission costs, motion pictures began to draw away that audience that had sought illusionism and thrills in the theatre.[12]

In 1903 the cinema had its first great blockbuster in *The Great Train Robbery*, which "depicted a carefully planned train hold-up, the bandits' getaway, a posse hunt, and the final shoot-out in which the bad guys are killed."[13] *The Great Train Robbery* reflected how much film had developed since the early days of the kinetoscope as it was longer than the majority of earlier films and integrated a more complex narrative. The thrill-seeking segments of the popular audiences were quickly drawn to the movie houses and out of the vaudeville houses and away from literary theatrical productions by the spectacles that drove these blockbusters, a trend that we are reminded of every summer when audiences flock to see the newest installment of Harry Potter, *Star Wars*, or Spider Man. Film took another significant step in March of 1915 with the release of D.W. Griffith's *Birth of a Nation. Birth of a Nation* represented the beginning of a new era in cinematic storytelling, as Griffith employed new camera angles and editing techniques to

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[12] Oscar Gross Brockett and Franklin J. Hildy, *History of the Theatre* (Boston: Allyn and Bacon, 2003), 463.
[13] Charles Musser, *Thomas A. Edison and His Kinetographic Motion Pictures* (New Brunswick, N.J.: Published for the Friends of Edison National Historic Site by Rutgers University Press, 1995), 37.

revolutionize film as a narrative form.[14] Griffith's techniques were important for the development of film as a medium as they allowed for the development of a uniquely cinematic aesthetic that was no longer dependent on simply remediating[15] older media, but instead could develop stylistically in its own right. However as Tom Gunning notes

> the transformation from a cinema of attractions to one of narrative integration does not rest simply on the interior form of these films. The years 1908-9 witnessed a radical reorganization of the film industry. These two transformations are interrelated. . . . Changes in the film industry brought new conceptions of the film as a commodity and of the sort of audiences for whom films were made.[16]

As films grew longer in length and developed a format roughly analogous to a stage play, they evolved from being mere amusements into legitimate entertainment akin to the comedy, tragedy, and dramas once could find in the theatre. As a result, middle class audiences found the prospect of going to the movies more palatable and began to attend them in greater and greater numbers.[17] Film's aesthetic maturation and financial success, led many companies and individuals to invest in the motion picture industry and with this

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[14] Ibid., 54.
[15] Remediation, a term developed by David Bolter and Richard Gruisin, is the process by which new media inherit properties of older media in the earlier stages of their development. When the new media eventually mature and develop their own distinct characteristics the older media then are remediated as well, with the distinct characteristics of the new media influencing the development of the older media. For more on remediation see David J. Bolter and Richard A. Gruisin, *Remediation: Understanding New Media* (Cambridge, Mass.: MIT Press, 1999).
[16] Tom Gunning, *D.W. Griffith and the Origins of American Narrative Film: The Early Years at Biograph* (Urbana: University of Illinois Press, 1991), 7.
[17] S. D. Trav, *No Applause, Just Throw Money, or, The Book That Made Vaudeville Famous : A High-Class, Refined Entertainment* (New York: Faber and Faber, 2005), 247-50.

new financial backing film was able to spread to more markets and reach more audiences. At the same time, theatre owners looking to take advantage of the financial boon provided by this new, much more lucrative medium began to convert their venues to present movies.

As radios became more readily available to the public in the 1920s, theatrical producers had to now face competition for audiences from yet another new medium. Although radios were expensive in the beginning, as the prices lowered and the medium became accessible to more people it too began to draw popular audiences away from the theatre. Radio allowed Americans to experience mass entertainment in their own home and at a fraction of what it would cost to regularly attend the theatre. By the time NBC was launched in 1926 and CBS in 1927, there were three million homes with radios, a number that would reach thirty million by the end of the next decade. Radio brought mass culture into the home for the first time and was buoyed by the presence of all the stars of the time. These performers recognized that not only was it easier to work for the radio, but also realized the increased economic possibility inherent in being exposed to such large audiences. The economic pressures of the Great Depression helped make the radio an even more sound investment, and although money to be spent on leisure was in short supply and a radio cost $19.95 in 1932 (the equivalent to twenty to forty vaudeville tickets) "you could listen to it all day, every day, for years."[18]

The combined economic influence of radio and film soon pushed many popular forms of theatre aside and "by 1926 there were only a dozen theatres in America that offered nothing but big-time vaudeville. *Variety*, which had always made vaudeville its

[18] Ibid., 252.

main concern, shifted coverage to the back pages and devoted its front section to the movies and their box office grosses. That's where the big money was being made."[19] The final nail in the coffin for many of the vaudeville theatres came in 1927 when Warner Bros. released the first talkie, Al Jolson's *The Jazz Singer*. By this time many of the old theatrical performers had already began to look to the cinema and radio for work as they were able to command higher salaries than they could for stage performance and while being required to perform less work. "By 1929 the biggest names in vaudeville, the Marx brothers, Eddie Cantor, Mae West, Bob Hope, etc., had moved onto sound features and minor vaudevillians, such as James Cagney, Cary Grant, Walter Huston, and Henry Fonda, were becoming the first generation of movie stars."[20] Although the influence of vaudeville would continue to be felt in the movies, on the radio, and eventually on television, the death knell for vaudeville as a live theatrical style sounded in 1932 when the Palace was converted to showing only movies.[21] "By 1935 even the small-time vaudeville acts were dropped. The final blow to vaudeville was the Great Depression and with salaries having become prohibitively high due to the new competing entertainment media, and ticket demand not warranting high payout the industry collapsed."[22] The economic conditions that devastated popular theatrical production between the wars would be further exacerbated by the introduction of television in the 1950s. Television could bring drama to the living room much as the radio had, but now included a visual experience as well. Once again people could avoid the often

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[19] Samuels and Samuels, *Once Upon a Stage: The Merry World of Vaudeville*, 265.
[20] Trav, *No Applause, Just Throw Money, or, The Book That Made Vaudeville Famous : A High-Class, Refined Entertainment*, 252-4.
[21] Samuels and Samuels, *Once Upon a Stage: The Merry World of Vaudeville*, 266.
[22] Trav, *No Applause, Just Throw Money, or, The Book That Made Vaudeville Famous : A High-Class, Refined Entertainment*, 255-6.

prohibitively high cost of admission to the theatre and not even worry about having to leave the comfort of their own home.

The majority of theatrical productions that were to survive during the first half of the twentieth century were either commercial Broadway-style shows, housed in a number of theatres that survived the rash of conversions to film, or took the form of more sophisticated literary theatre, which continued in the footsteps of the Greeks and Shakespeare as an elite form of culture. This literary theatre and the regional theatre system, which had its origins in the Little Theatre movement, would become the predominant form of theatrical presentation and would be the home for works of American playwrights such as Eugene O'Neill and Tennessee Williams. While the commercial theatre of Broadway was still attended by people of the middle class and a small portion of the lower class who could scrape up enough money for a ticket, the literary tradition of theatre had become a bastion for those people who deemed the popular movies and radio to be too vulgar or base for their good taste. This mentality was symptomatic of the second development that affected theatre's relationship to other media, the sacralization of the theatre and its elevation to elite or "highbrow" culture.

Simon Frith has written:

> "Entertainment" is a term that always seems to be used with a hint of disdain: entertainment is always just entertainment. There are two implicit contrasts involved here. One rests on an aesthetic judgment: entertainment (fun, of the moment, trivial) is being contrasted to art (serious, transcendent, profound). The other rests on a political judgment:

> entertainment (insignificant, escapist) is being contrasted with news, with reality, with truth.[23]

This classification of any art form or medium as entertainment rather than art is not an ontological question, but rather plays on its specific social construction as determined by the tastes and styles that develop at any given point in history. In his work *Highbrow/Lowbrow*, Lawrence Levine pointed out that "an age constructs, or reconstructs, the symbols of culture into something it can be comfortable with, something in which it can locate meaning."[24] For the producers of meaning and value in the work of theatre in the late nineteenth century, such a reconstruction meant shaping the development of theatre so that it would develop along the lines of their sense of decorum, privilege, and scope of aesthetic preference. Levine noted that "The theatre in the first half of the nineteenth century played the role that movies played in the first half of the twentieth: it was a kaleidoscope, democratic institution presenting a widely varying bill of fare to all classes and socioeconomic groups."[25] But during the last half of the nineteenth century, the heterogeneous popular audiences who had once flocked to theatre for tragedy and farce alike soon found that many forms of theatre that had once entertained audiences from all walks of life were being transformed into a "highbrow" form of art. This new "highbrow" theatre looked to emulate the supposed superior qualities of European works and was aimed at a predominantly upper class, educated, and white audience. The theatre of the late nineteenth century quickly became a bastion for

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[23] Simon Frith, "Entertainment," in *Mass Media and Society*, ed. James Curran and Michael Gurevitch, 3rd ed. (London: Oxford University Press, 2000), 201.
[24] Lawrence W. Levine, *Highbrow/Lowbrow: The Emergence of Cultural Hierarchy in America* (Cambridge, Mass.: Harvard University Press, 1988), 240.
[25] Ibid., 21.

the elite as critical reviews celebrated cerebral interpretations, contending that major writers such as Shakespeare could and should only be experience by trained minds, and denounced flamboyant actors and enthusiastic audiences.

As popular audiences became alienated and much of American theatre shifted from being entertainment into being revered as "art,"[26] it became important for the proponents of theatre as high culture to elevate these works of culture away from their material reality. This desire to distance theatre from its social circumstances was influenced by Aestheticism, a movement in cultural discourse that followed the l'art pour l'art concept of art and argued that art by its nature was separate from society. Under these conditions art was created simply for the sake of creating art and the content of that work of art was considered as separate from historical developments and the political economic and sociocultural conditions surrounding its production. Peter Bürger in *Theory of the Avant-Garde* (1984) points out that Aestheticism developed in capitalist bourgeois societies out of the belief that

> Production and reception of the self-understanding as articulated in art are no longer tied to the praxis of life. . . . Not only production but reception also are now individual acts. The solitary absorption in the work is the adequate mode of appropriation of creations removed from the life praxis of the bourgeois, even though they still claim to interpret that praxis. In Aestheticism, finally, where bourgeois art reaches the stage of self-reflection, this claim is no longer made. Apartness from the praxis of life,

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[26] For a thorough description of the development of these cultural hierarchies and the sacralization of culture in America in the nineteenth century see Laurence Levine's *Highbrow/Lowbrow*.

> which had always been the condition that characterized the way art functioned in bourgeois society, now becomes its content.[27]

Therefore, as theatre was elevated into a form of elite culture, it was not only separated from being considered the type of social practice that is a product of its cultural and material situation, but also the applicability of the content of theatre to daily struggles of its audience, or what Bürger refers to as the "means-ends rationality of the bourgeois everyday."[28] The separations of the conditions of the production of theatre from its contents continues to impact the consideration of theatre within cultural discourse, and unlike in the study of media such as film or television, critics and historians rarely recognize theatre as the product of collaborative work under the influence of economic and political forces. Nor do these cultural curators considered theatre as a medium that communicates ideologies between cultural producers and consumers situated within and subject to the pressure of those same forces. Rather, the valuation of theatre as a medium or cultural product by critics, scholar, and even the general public is grounded merely on a theatrical product's merits as a work of art, studied and discussed for its more "serious, transcendent, profound" investigations of the human condition, or for the quality of its scripts, scenery, and performances. In order to understand theatre more fully within the scope of the contemporary cultural landscape, we must bring it back to a place where it is recognized as a social practice, a medium, studying it in the same manner we might study its younger, more technological siblings. In this way, we can properly determine theatre's strengths and weaknesses in relation to the contemporary cultural landscape.

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[27] Peter Bürger, *Theory of the Avant-Garde*, trans. Michael Shaw (Minneapolis: University of Minnesota Press, 1984), 47-8.
[28] Ibid., 49.

Viewing theatre as a medium reminds us of the struggle for funding, the pressures of moral conservatism on the production of culture, the economic and legal conditions that limit the range of theatrical work possible, and the position of theatre in the strategies of the giant media corporations that generate most of our culture. These are the very real forces of capital that impact the social recognition and economic potential of theatre and determine how theatre as a medium will function in the twenty-first century.

Methodology and the Study of the Theatrical Field

The goal of this study is to analyze American theatre from a perspective that considers the field of theatrical production as a part of a larger contemporary cultural landscape. Therein, theatre can be contextualized with respect to other media, and we can begin to better understand how various social, political, and economic trends have led to recent developments in the theatrical field. However, before this type of consideration of theatrical production can begin, the question begs to be asked whether the field of theatre studies provides sufficient methodologies to interrogate large-scale trends in cultural production and relate them to the specific conditions that challenge theatre producers, supporters, and consumers alike. One challenging aspect of the methodologies of theatre studies is that for the most part they have developed along the same lines of distinction and cultural classification that actual theatre production has. This development has left the field lacking in a crucial scope of political economic analysis necessary to comprehend the impact that the goings on in the world outside the theatre space have on the goings on inside the theatre space. At the same time that theatre has seen its audiences shrink in comparison to other media and fall to the back of the pack of popular culture, the field of theatre studies lacks the balance in approach

necessary to study the phenomena that are affecting theatrical production. Part of the problem is that much of the work being done by theatre scholars focuses on theatre as art and ignores theatre as cultural production. The state of contemporary theatre is related to economics as much as it is to aesthetics and the field must be studied as such. Bruce McConachie notes that within the field of theatre studies

> The general tendency to focus on means rather than relations has to do with the predilection of many historians of artistic practice to separate the aesthetic from the practical.
>
> Lack of attention to the social and economic relations of production has been especially deleterious to understanding the sweeping changes that occurred in the Western theater during the nineteenth and early twentieth century.[29]

Raymond Williams would say that theatre studies has become too immersed in the focused study of aesthetics, form, and ideology, while ignoring the status of theatrical products as commodities in a cultural marketplace driven by very real productive forces. Audience reception, the quality of writing, the style of production, gender and race representation, and the personalities of important actors, directors, designers, and producers are the focus of most theatrical studies, as scholars tend to focus on what is going on inside the theatrical space.

Even the most accomplished and important scholars in the field of theatre history often follow this pattern. Marvin Carlson's many invaluable surveys of the history of

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[29] Bruce A. McConachie, "Historicizing the Relations of Theatrical Production," in *Critical Theory and Performance*, ed. Janelle G. Reinelt and Joseph R. Roach (Ann Arbor: The University of Michigan Press, 1992), 169.

theatre, such as *Theories of Theatre* (1984), *Places of Performance: The Semiotics of Theatre Architecture* (1992), and *The Haunted Stage: The Theatre as Memory Machine* (2001), do address the historical place of theatrical events and contributors within broad historical eras or tie them to specific events. These studies do not however prioritize making a connection between those productions, individuals, theories, and artistic movements and an analysis of the economic conditions of the societies within which they produced. Nor are they invested in a critique of the material relations that complicate the social valuation of theatre during different time periods. Even in Carlson's more recent publications where his writing has incorporated new methodologies and acknowledged the evolution of new disciplines and interdisciplinary connections, such as the second edition of *Performance: A Critical Introduction* (2003), his analysis remains focused on individual artists, aesthetic movements, audience reception, and the characteristics of phenomena within the performance space. In another instance of this focus on what is going on inside the theatre, Patrice Pavis notes that

> The object of theatre studies is the theatrical experience, considered both from the point of view of its production (author, actor, director, art designer, etc.) and of its reception (spectators, society, theoreticians), an experience which is at the same time intellectual and emotional, somatic, and kinesthetic. We "simply" have to study this object with the relevant tools; we have to grasp its aesthetic experience and break it down into as many areas as necessary.[30]

[30] Patrice Pavis, "Theatre Studies and Interdisciplinarity," in *Theatre Research International* 26, no. 2 (2001): 154.

From one perspective this quote can be seen as a positive move towards expanding the analysis of the theatrical field with references to "production" and the reception of theatre by society. But Pavis's work, in books such as *Theatre at the Crossroads of Culture* (1992), is more concerned with "production" as the artistic rather than material process of creating theatre, and his study of the reception of theatre is devoted more to the way societies receive theatrical performances across and among different cultures rather than how the theatrical field fits within the political, economic, and social circumstances of different societies. Another European theatre scholar, Erika Fischer-Lichte, in her book *The Show and the Gaze of Theatre* (1997), like Pavis seems to be heading in the direction of material relations, beginning with the statement

> Theatre, in some respects, resembles a market. For, like a market, where an intense exchange of commodities takes place, an exchange of all kinds of cultural goods and products goes on between theatre and other spheres of social life–other institutions, cultural performances, art forms, and elements of everyday life.[31]

But Fisher-Lichte never considers theatre as a commodity, nor does she consider the competition of theatre faced from other media within the cultural marketplace of the twentieth century. Rather, Fischer-Lichte uses the market solely as a metaphor through which she can consider the exchanges that takes place between theatre and other cultural domains, particularly with regards to perception, body, and language. [32]

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[31] Erika Fischer-Lichte, *The Show and the Gaze of Theatre* (Iowa City: University of Iowa Press, 1997), 1.
[32] Ibid., 3.

When scholarship has gone beyond the doors of the theatre it has been to relate outside events and circumstances to performances, texts, or the state of the discipline rather than to situate theatre as a part of a larger field of cultural study. Take the piece from which McConachie's quote on means and relations is taken. In this essay, McConachie decries the "lack of attention to the social and economic relations of production," but rather than moving to rectifying that lack, the article focuses mostly on the history of the use of the word "production" in theatrical discourse and less on the material relations of the theatrical field.[33] Even Janelle Reinelt and Joseph Roach's influential anthology *Critical Theory and Performance* (1992), despite presenting analyses by numerous important scholars applying a variety of methodologies, barely scratches the surface of the influence of material relations on the production of theatre. While the anthology does include essays that approach theatre by using a wide range of methodologies, such as semiotics, phenomenology, psychoanalysis, cultural studies, and deconstruction, there is a noticeable lack of contributions that address the political and economic pressures that trends such as postmodern capitalism, globalization, corporatization, and commodification exert on theatrical producers in contemporary theatre.

There are some theatre scholars who have looked outside of the theatrical space to consider the economics of theatre and the costs of production. Take for example the article "Playwrights' Remuneration in Eighteenth-Century London," by frequent collaborators Judith Milhous and Robert Hume whose work uses archaeo-historicism to contextualize historical documents and statistics. While this article is clearly the

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[33] McConachie, "Historicizing the Relations of Theatrical Production."

culmination of the rigorous scouring of archives for information on the economic condition of theatre workers, the goal of the work is to come to relatively straightforward conclusions such as "How much did playwrights earn? Did the figure change substantially during the century? How much was it affected by inflation? During what periods could a writer earn his or her living from the theatre? How did women's earnings compare with men's? How well compensated were first plays? What could be earned from afterpieces? How much did publication add to the profits from performance?"[34] Milhous and Hume provide numerical data to answer these questions, but rather than considering the working conditions of playwrights in a more detailed manner and putting the role of theatre workers into perspective as compared to other cultural workers, they provide simple answers such as "with a bit of luck, an eighteenth-century writer might make quite a lot of money from a particular play, but basically what one could *not* earn from playwright was a living."[35]

For another example of the disconnect between the study of theatre and material relations, consider the chapter "Theatre and the Media: Specificity and Interference" in Pavis's book *Theatre at the Crossroads of Culture*. While Pavis does draw direct comparisons between theatre and other media, he does so largely on aesthetic parameters or through comparisons of the reception of theatre versus other media such as television of film, rarely if ever considering how market conditions impact the production, distribution, and consumption of the respective media.[36] And while interdisciplinary

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[34] Judith Milhous and Robert D. Hume, "Playwrights' Remuneration in Eighteenth-Century London," in *Harvard Library Bulletin* n.s. 10, no. 2-3 (1999): 3.
[35] Ibid.: 53.
[36] Patrice Pavis, "Theatre and the Media: Specificity and Interference," in *Theatre at the Crossroads of Culture*, trans. Loren Kruger (New York: Routledge, 1992), 99-135.

work is becoming more common in theatre studies, bringing in sociology, anthropology, and other disciplines and methodologies, the focus on texts, interpretation, and reception remains the dominant paradigm. For example, Sue Ellen Case, in *The Domain-Matrix* (1996) uses feminist theory to consider lesbian performance in a number of media, going as far as attempting to simulate the hyperlink experience in her writing. Unfortunately though, as she travels from medium to medium it is only in her analysis of the political, economic, and geographic impact of Los Angeles and the cultural industries that dominate that city that material relations come to the fore. Those sections of the book that do deal with live performance tend to focus more on the manipulation of dramatic structure, the representation and presentation of gender, and the relationship between performer and audience.[37]

This is not to say that scholarly work that focuses on theatre's aesthetics or performative characteristics is less important or significant, nothing could be farther from the truth. Rather, the point that I am trying to make with the these examples is that the field of study disproportionately leans towards this type of work and does not sufficiently address theatre's standing alongside its competitors in the cultural marketplace. To understand theatre within the context of the contemporary American cultural landscape one must not only understand the intertextuality of the works and the phenomena of different types of performance but also the materiality of the form, the productive forces that are active in the world outside of the theatre. A comprehensive study of the field must recognize that theatrical production functions within a larger cultural marketplace and that shifts in the politics, economics, and power dynamics of that marketplace

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[37] Sue Ellen Case, *The Domain-Matrix : Performing Lesbian at the End of Print Culture* (Bloomington: Indiana University Press, 1996).

ultimately come to affect the entire institution of theatre, all the way down to the actor-audience experience. Williams warned that losing the connection between the products of culture and the productive forces of culture

> is not only to lose contact with the actuality of these practices. . . . It is indeed to begin this most difficult work head down and standing on one foot. . . . It would be more reasonable to get back on both feet again, and to look at our actual productive activities without assuming in advance that only some of them are material.[38]

An incomplete interrogation of the field will therefore inevitably lead to an incomplete understanding of the trends and forces that impact contemporary theatre. If we are to understand how theatre has come to occupy a less prominent place in popular culture and what mechanisms have led so many people to bemoan the contemporary state of theatre, then theatre scholars must investigate the material realities of the cultural marketplace.

If theatre studies takes an unbalanced approach to its field of study in these increasingly complex times, we must ask ourselves what tools, what methodologies must be included in our analyses that will lead to a more complete understanding of the position of theatre in our contemporary cultural landscape. Whereas the theatrical pedagogy practiced in conservatories and practical undergraduate or MFA programs has managed to provide students with employable skills and teaches them the workaday aspects of the political economy of theatre, such as how to get a job, make budgets, or manage a space, programs and scholars that focus on critical and theoretical analyses for the most part continue to study theatre as a cultural object divorced from its political

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[38] Williams, *Marxism and Literature*, 94.

economic conditions. Fortunately, since its beginnings, theatre has been an art form of borrowing, having incorporated music, dance, literature, and new technologies into its open framework of creation. Likewise, as theatre studies developed as a discipline within speech and communication and English literature departments in the first half of the twentieth century, it adopted methods of research and analysis from other fields such as philosophy, comparative literature, and art history. Shannon Jackson's *Professing Performance* (2004) provides a useful genealogy of the study of forms of performance and theatre, from the origins of the study of drama in universities at the turn of the twentieth century up to the present. One of the first observations Jackson makes is that the introduction of theatre and drama into the academy at the turn of the twentieth century came at a time when philology and inductive analysis were being introduced as a means for analyzing literary works in English departments. This detail oriented, science-based methodology was used as a way to justify the study of the humanities at a time when the sciences dominated the academy and that every field needed to prove that it had a definable object of study. The philological approach therefore allowed the precedent to be set that the object of study of literary fields, and the study of drama by association, would be the text and the perceivable facts of influence and transformation contained therein. Because the study of theatre remained under the purview of English departments for most of the first half of the twentieth century, it remained a subordinate form of literature because it did not fit within the most respected formal parameters and was tarnished by its performative aspects. Theatre scholars were therefore frustratingly forced to either attempt to justify theatre as on par with literature or bemoan the inability of American theatre to frequently attain the levels of high art that non-dramatic literature

could. As a result of this constant ambivalence, the field was less focused on the political, economic, and social conditions of theatrical production or the rising competition from the rapidly growing technological media.[39] As these debates concerning the quality of theatre continued through to the1950s, critics, such as Robert Brustein, returned to a kind of Aestheticism in their considerations of American theatre. Jackson notes that "by criticizing dramatists for pandering to crowds or for sullying the theatre with the forces of economic rather than cultural capital, he [Brustein] resuscitated the anti-utility arguments of early cultural dissidents, condemning the effects of the 'real world' ethos of American business on the products of culture."[40] While Brustein's anti-utility approach empowered arguments for the analysis of dramatic works along more literary lines, the development of cultural studies in the 1960s provided new possibilities for the study of theatre through the lens of progressive, socialist, and Marxist ideals. In considering this shift, Jackson argues that the transition of theatre studies from literary to cultural studies comes via the dramatic criticism of Raymond Williams and his role in the foundation of the Birmingham School. Jackson also argues that since much of Williams's work in cultural studies comes out of his study of theatre, his study of the theatrical field acted as the genealogical progenitor of the cultural studies approach.[41]

As it continues its evolution in the twenty-first century, theatre studies has remained flexible enough to embrace newer methodologies from other disciplines such as gender studies and postcolonial studies in order to accommodate the challenges of studying the current conditions of the theatrical field. After all, as Marvin Carlson points

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[39] Shannon Jackson, *Professing Performance* (Cambridge: Cambridge University Press, 2004), 84-94.
[40] Ibid., 86.
[41] Ibid., 97-100.

out, theatre "is a cultural activity that has always thrived not by building walls but by assimilating every sort of cultural material within it,"[42] and the discipline of theatre studies has much to gain by following the example of its object of study. In particular, the rise of performance studies in the 1990s helped accelerate the rate at which traditional theatre studies adopted alternative methodologies, especially from disciplines in the social sciences such as anthropology, ethnography, and sociology. Patrice Pavis warns that this kind of interdisciplinarity with its "super-abundance of disciplines, methods and theories is not without danger, if those disciplines are employed indiscriminately and aimlessly." Nevertheless, Pavis continues, there is value to the application of interdisciplinarity to the theatrical field because "as a method utilizing the human sciences to analyse components of text and performance"[43] it has enabled theatre as an object of study to be considered as more than simply dramatic literature that would be most appropriately studied under the purview of English departments.

Considering the need to expand the study of theatre more seriously into the realm of material relations and the benefit of a careful interdisciplinary approach to the theatrical field, the next logical step in moving towards a more balanced study of theatre is to approach the field through the lens of sociology as a microcosm of the larger field of cultural production. A sociological approach to cultural production considers the cultural field as a dynamic system with active participants that, as Bourdieu would say, "is not the product of a coherence-seeking intention or an objective consensus . . . but the product of a permanent conflict; or, to put it another way, that the generative, unifying principle of

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[42] Marvin Carlson, "Theatre and Performance at a Time of Shifting Disciplines," in *Theatre Research International* 26, no. 2 (2001): 140.
[43] Pavis, "Theatre Studies and Interdisciplinarity," 154.

this 'system' is the struggle, with all the contradictions it engenders."[44] For Bourdieu the field of cultural production was driven by this struggle as

> The impetus for change in cultural works–language, art, literature, science, etc.–resides in the struggles that take place in the corresponding fields of production. These struggles, whose goal is the preservation or transformation of the established power relationships in the field of production, obviously have as their effect the preservation or transformation of the structure of the field of works, which are the tools and stakes in these struggles.[45]

The cultural field that Bourdieu delineates provides a homology[46] with which to understand class struggle, as the *habitus* of social fractions and their interaction with art reveal how art is valued in society, and subsequently the manipulation of distinction in art reveals differentiating structures between classes. Nicholas Garnham and Raymond Williams argued that in Bourdieu's formulations

> The cultural field serves as a marker and thus a reinforcer of class relations for two reasons. First because a field occupied by objects and practices with minimal use-value, is a field in which *par excellence* the struggle is governed by a pure logic of difference or distinction, a pure

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[44] Pierre Bourdieu, "The Field of Cultural Production, or: The Economic World Reversed," in *The Field of Cultural Production: Essays on Art and Literature*, ed. Randal Johnson, trans. Randal Johnson (New York: Columbia University Press, 1993), 34.
[45] Pierre Bourdieu, "Principles for a Sociology of Cultural Works," in *The Field of Cultural Production: Essays on Art and Literature*, ed. Randal Johnson, trans. Randal Johnson (New York: Columbia University Press, 1993), 183.
[46] A homology exists in sociological analysis when a resemblance in general form or structure becomes apparent between two social or cultural formations. For more on homologies see Williams, *Marxism and Literature*, 101-7.

> logic of personality. Secondly, because the creation of art as a special social object and practice, defined by its difference and distance from everyday material reality and indeed its superiority to it, objectively depends upon the distance from economic necessity provided by the bourgeois possession of economic capital. Works of art, Bourdieu argues, require for their appropriation first an aesthetic disposition, that is to say an internalized willingness to play the game of art, to see the world from a distance, to bracket off a range of objects and practices from the immediate urgency of the struggle for social reproduction.[47]

This connection between cultural distinction and class struggle helps us understand how mechanisms of economic influence are deployed so that cultural production reinforces the position of the dominant class. Within this field cultural creators struggle to establish positions of power via the cultural and economic capital accrued through their work, capital that can then be converted into the economic capital necessary to sustain themselves within the market and enable them to continue to be productive. Inversely, those in control of the means of production are able to utilize the position of economic strength they gain via their economic capital to acquire cultural capital, enhancing their own position through their affiliation with the produced culture. As a microcosm of the field of cultural production, the field of theatrical production is homologous in that actors, designers, playwrights and other artistic creators must expend their cultural capital in the struggle to gain economic capital or vice versa, thus pitting their interests against

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[47] Nicholas Garnham and Raymond Williams, "Pierre Bourdieu and the Sociology of Culture: An Introduction," in *Media, Culture and Society: A Critical Reader*, ed. Richard Collins, et al. (London: Sage Publications, 1986), 124.

the economically powerful position of production companies, promoters, and donors. Scrutinizing the dynamics and tensions of this struggle between actors in the field of theatrical production is crucial to understanding how the field of theatrical production has developed over the past thirty years. If the methodologies that have been deployed by theatre studies up until this point are not sufficient for a thorough critique of the power struggles that are inherent in contemporary theatre, then the field must once again reach out and borrow from other disciplines to find approaches that will be effective.

The insufficiency of the methodologies of theatre studies brings us back to Shannon Jackson's consideration of Williams's work as an important predecessor to the current state of theatre and performance studies. It is interesting that Jackson connects Williams's contributions to theatre studies with the methodologies of cultural studies, because it could be argued that one of Williams's greatest contributions to the study of culture was his Marxist interpretation of cultural production. One needs look no further than *Marxism and Literature* to see that Williams was invested in questions of ideology, language, and form under the influence of productive forces and institutions, just as Marx was. The problem with Jackson's argument arises when one considers that a prominent critique of cultural studies is that it in fact often neglects these productive forces and institutions and is too dependent on the analysis of texts. Peter Golding and Graham Murdock, two prominent political economists studying communications in the United Kingdom, argue that a key problem with cultural studies is that it "offers an analysis of the way the cultural industries work that has little or nothing to say about how they actually operate as industries, and how their economic organization impinges on the

production and circulation of meaning."[48] Since theatre scholars have for the most part adopted cultural studies with these same limitations, it could be argued that despite Jackson's argument that Williams provided a new perspective for the study of theatre, theatre scholars have actually taken on only a limited portion of Williams's methods and have avoided the aspects of his work that deal with cultural industries and economic organization. Even Jill Dolan, who calls for a rethinking of the discipline of theatre studies in *Geographies of Learning* (2001), champions cultural studies as a way of extending the scope of theatre studies without considering its limitations in recognizing the importance of political economy. Dolan, points out that in the collection *Cultural Studies* there are no articles on theatre or performance and argues that "these exclusions and absences indicate that theatre is still marked as 'high' art, in an academic moment which, through cultural studies, in particular, is privileging the 'low'; the absences of theater examples here also indicates the academic marginality of the field."[49] Dolan continues in her footnote on this statement, writing "cultural studies' orientation toward studying 'low art,' which is generally considered cultural objects of mass distribution, is partly a result of its origins in media studies."[50] So, even though Dolan is able to make the connection that theatre should be considered alongside so-called "low art" and that media studies has served as a source for this kind of study, she is unable to take that final leap to recognize that the expansion of the field of theatre studies must include a more concerted focus on the conditions of cultural production, as the field of media studies has.

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[48] Peter Golding and Graham Murdock, "Culture, Communications and Political Economy," in *Mass Media and Society*, ed. James Curran and Michael Gurevitch, 3rd ed. (London: Oxford University Press, 2000), 72.
[49] Jill Dolan, *Geographies of Learning: Theory and Practice, Activism and Performance* (Middleton, Conn.: Wesleyan University Press, 2001), 68.
[50] Ibid., 161.

What is perhaps most frustrating about many recent analyses of the field of theatre studies, such as those found in Jackson and Dolan's books and the introduction of Janelle Reinelt and Joseph Roach's anthology *Critical Theory and Performance*, is that they repeatedly come close to acknowledging that the production, distribution, and consumption of theatre demand greater attention from the field, but never address the lack of investigations into productive forces. While they are able to address how the political and economic circumstances of the academic environment have influenced the growth of theatre departments, and have recognized how practical curricula have been affected by market pressures and the increasing dominance of film and television in the cultural field, they never consider or commit to the possibility that even amongst theoreticians and historians, political economy is a neglected aspect of the study of theatre. It is no wonder then that if these thorough considerations of the field are unable to make this realization, that the average theatre scholar would continue to address aesthetic forms, performative phenomena, and ideological constructions with no thought as to the role of productive forces in the theatrical field.

In order to address this lingering deficiency, theatre studies must continue to expand its methodological breadth until the productive forces–such as government funding, corporatization and consolidation in media and entertainment, and class economics–that increasingly come to bear upon the structures and qualities of theatrical production can be properly addressed. One such approach is that of critical political economy, a discipline whose methodologies are centrally built upon the critique of the socioeconomic features of fields of economic, social, and cultural study. Golding and

Murdock distinguished the work of critical political economy from mainstream economics in four main respects:

> first it is holistic; second, it is historical; third, it is centrally concerned with the balance between capitalist enterprise and public intervention; and finally – and perhaps most importantly of all – it goes beyond technical issues of efficiency to engage with basic moral questions of justice, equity, and the public good. Whereas mainstream economics sees the "economy" as a separate and specialized domain, critical political economy is interested in the interplay between economic organization and political, social, and cultural life.[51]

In this sense, critical political economy does not isolate the numerical statistics of dynamic relations from real social situations but rather considers them alongside the private interests, ideological motivations, cultural hierarchies, and shifts in public discourse that have an impact on the direction of social development. The purpose of this combination of the social and the economic is, as Anthony Giddens has written, "to explain how it comes about that structures are constituted through action, and reciprocally how action is constituted through structure."[52] Critical political economy thus provides an analytical approach to fields of study that understands a) that pressures generated in the field at large influence individual actors and b) that at the same time actors play a role in determining how those pressures will affect the larger society through their individual decisions. Through the lens of critical political economy, each

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[51] Golding and Murdock, "Culture, Communications and Political Economy," 72-73.
[52] Anthony Giddens, *New Rules of Sociological Method: A Positive Critique of Interpretative Sociologies* (New York: Basic Books, 1976), 161.

individual productive force can be identified for how it distinctly affects the entire cultural field. But, even more importantly it makes clear how the interconnectedness of these forces creates a dynamic and complex system of give and take where productive forces work against as well as in concert with one another. Identifying the forces providing the impetus for cultural production and the relationships those forces have with one another is therefore the goal of the political economist.

As critical political economists apply their integrated approach to the whole of society, many focus on questions regarding culture and cultural production, as the relationships between cultural producers, distributors, and consumers constitute a the type of complex and dynamic web of pressures and feedback for which critical political economy is best suited. As Richard Maxwell has noted "the work of culture has never taken place outside the areas of life determined by particular economic systems and power relations; that is, culture is always in political economy."[53] Many political economists have in fact focused on the study of communication and mass media in the past thirty years as the impact of factors, such as new telecommunications technology, intellectual property rights, globalization, and corporatization of the media have come to have a more visible and direct role in the production of culture. Considering the proliferation of these studies of the technological media and thinking back to our reconsideration of theatre as a medium in the sense of being a social practice, it becomes apparent why the logic of the political economist suits the study of the field of theatrical production. The same forces that challenge the mass media play a role in contemporary theatrical development and a study of theatrical production that is homologous to the

[53] Richard Maxwell, "Why Culture Works," in *Culture Works: The Political Economy of Culture*, ed. Richard Maxwell (Minneapolis: University of Minnesota Press, 2001), 3.

study of culture employed by political economist can help provide a substantial social context for the intertextual work prevalent in most of the work done in theatre studies. The work of critical political economy is particularly useful in addressing the critical isolation that has resulted as a result of the ascension of theatre to "highbrow" status. Maxwell has stated that the study of culture as part of political economy is important no matter how "peculiar that might sound to those of us raised on a notion of culture, economy, and politics enjoying a happy existence independent of one another."[54] Maxwell reminds us that in cultural fields, such as theatre, ideological history has often caused the bifurcation of the study of cultural forms and the study of economics and politics. We return to Bourdieu's statement that the development of tastes is the result of "learning made possible by a disposition acquired through domestic or scholastic inculcation of legitimate culture."[55] The elevation of theatre in particular to a form of elite culture has had a two-fold effect on the study of theatre and results in the cyclical promotion of theatre as a form divorced from its material realities. As we are educated to read the Greeks and Shakespeare, we learn to view theatre as separate from the work necessary to produce it. When we return later as scholars to comment on that theatre and "scholastically inculcate" ensuing generations, we deploy the same disposition and reinforce the same hierarchies. Maxwell and other critics use political economy to correct the bifurcation that has left culture severed from its material forces, by critiquing not only the forces at work in the study of culture but also the structures that generate particular biases accorded to different kinds of culture. The strategies of such an approach are methodologically appropriate to correcting the ideological patterns that

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[54] Ibid.
[55] Bourdieu, *Distinction: A Social Critique of the Judgement of Taste*, 28.

perpetuate the hierarchization of cultural forms and continue to prevent the inclusion of productive forces in most studies of contemporary theatre. For Maxwell, the step towards political economy and the inclusion of these productive forces in critical work is sensible in that it takes "the simple move to specify in more definite terms the kind of world in which we live."[56] This goal of such a move is to dissolve the barrier that separates the leisurely experience of cultural consumption from the compulsory work of cultural production. Critical scholarship can thus consider the work of production in combination with rather than in opposition to consumption, thus denying the comfort of the consumptive position and the promotion of the mental over the physical that generates differentiation of taste. By studying the strategies of controlling consumption alongside the forces directing production, it becomes clear that cultural structures that had once seemed metaphysical and outside of the realm of critique become are in fact concrete and visible products of the coalescence of real productive forces. Critical political economy assumes "a world in which culture is worked over and worked out through conflicts, as well as blunders, that have made the expansion of commercialization complex, uneven, dynamic, and unpredictable."[57] In the twenty-first century, American theatre continues to feel the very real impact of these conflicts of commercialization. For this reason the approach of critical political economy and the methods of practice in the study of the political economy of culture provide a powerful strategy with which to approach the field of theatrical production.

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[56] Maxwell, "Why Culture Works," 4.
[57] Ibid., 15.

Components of Critical Political Economy

Cultural political economy has its history in the larger scope of critical political economy, which since Adam Smith and Karl Marx has been looking to connect material forces to the productive patterns of society. Understanding the history and foundations of this larger field are important as they weigh on the manner in which political economy can be used effectively as a method to study the field of theatrical production. There is perhaps no better place to turn to for a comprehensive understanding of the methodologies and applicability of the discipline of political economy to the study of cultural production than Vincent Mosco's *The Political Economy of Communication: Rethinking and Renewal* (1996). Mosco's influential work, which includes detailed studies of the history, concepts, major contributors and a rich historiography, provides a nuanced account of how critical political economy has informed the study of communication and how it has the potential to inform analyses of other forms of cultural production as well. Mosco presents the following definition of political economy: "One can think about political economy as the study of social relations, that mutually constitute the production, distribution, and consumption of resources."[58] In this regard, political economy provides a method of analysis that takes social relations–in the case of this study the relations of audiences, theatrical producers, and the cultural economy at large–and considers how the push and pull of productive forces shapes the interactions and possible futures within a field. Political economy's development of ideas like the commodity form, organizational control of society, and survival in social life provides a structured methodology that considers the important historical and systemic changes that

[58] Vincent Mosco, *The Political Economy of Communication: Rethinking and Renewal* (London: Sage Publications, 1996), 25.

have shaped social life.[59] Mosco, in relating political economy to the study of communication, has stated that "political economy tends to concentrate on a specific set of social relations organized around power or the ability to control other people, processes, and things, even in the face of resistance. This leads the political economist of communication to look at shifting forms of control along the production, distribution, and consumption circuit."[60] In the same regard, a political economy of theatre can expand the scope of the study of theatrical production by including the controlling influences of legislators, individual donors, and foundations in controlling the economic direction of theatrical producers. Furthermore, political economy necessitates the consideration of influential forces such as intellectual property and cultural hierarchies in affecting the aesthetic direction the field of theatrical production.

Mosco describes the four major cornerstones of political economy as being "social change and history, the social totality, moral philosophy, and praxis."[61] The study of social change and history is important within the dialectical approach of political economy and allows for the consideration of both long-term transformations and short-term patterns of expansion and contraction when analyzing the continued development of societies. This ability to establish historical perspective is particularly important in eras of profound change where people are intrigued as to whether social structures are being fundamentally rearranged due to newly developing socioeconomic patterns or whether these changes are just the understandable result of long-term tendencies of systems that have historically been prevalent. For political economists this historical consideration is

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[59] Ibid., 26-27.
[60] Ibid., 25.
[61] Ibid., 27.

the key to remembering that social structures are "constantly *constituted* rather than constantly reproduced,"[62] and that the process of social and cultural production progression results in these structures being products of the time in which they are generated. The historical consideration of political economy thus allows the critic to penetrate the historical logic of situations as such and address the important cultural questions of their era. In their outline for a political economy of mass communications Peter Golding and Graham Murdock have pointed to four historical processes as being central to critical political economy in that field: the growth of media; the extension of corporate reach; commodification; and the changing role of state and government intervention.[63] This history of the mass media from the perspective of political economy thus reveals how that field is determined more and more by the impact and development of cultural industries. As Maxwell has pointed out, a political economy of culture maintains a sustained focus on the commercializing forces of these industries, examining "the historical circumstances in which cultural products, resources, and even cultural workers and consumers are turned into a commodity form or some form of income-generating property that can be bought and sold in a market."[64] Keeping history and social change in mind, political economists are careful not to consider this commercialization of culture as an inherent or instinctual phenomenon, but rather as a process that results from human effort and intention. Commercialization is thus analyzed as a process generated by individuals or corporate bodies within the public sphere and subject to social change. Critical study of political economy further asserts that this

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[62] R. W. Connell, *Gender and Power: Society, the Person, and Sexual Politics* (Cambridge: Polity Press in association with B. Blackwell, 1987), 44.
[63] Golding and Murdock, "Culture, Communications and Political Economy," 74.
[64] Maxwell, "Why Culture Works," 7.

process is the result of the struggle between commercial interests and those who push back against corporatization and commodification.[65] Within the theatrical field, the impact of cultural industries is most evident in the changes that have taken place on Broadway. Whereas a small cadres of theatre owners, such as the Syndicate at the turn of the twentieth century and more recently the Shubert, Nederlander, and Jujamcyn organizations, once dictated how business was practiced on Broadway, the growing impact of corporate media megafirms on the whole of American cultural production has now found its way onto the Great White Way. The presence of companies such as Disney and Time Warner on the theatre scene has had tremendous ramifications on not only the overall makeup of theatre producers and owners, but also on the types of works being produced, on labor relations, and on the productive practices used to put on a Broadway show. Understanding this as a historical phase in the organization of theatrical production and not a predictable condition is critical to understanding where theatre stands today and what role it will be playing in American society in the near and far term.

The second cornerstone of political economy, understanding culture as part of a social totality, ensures that political economists understand the connections between the political and economic influences of social and cultural fields.[66] This approach to the social totality can be traced back to the work of Adam Smith and Karl Marx and combines the idealism of systems thinking with the sensory observation of conventional scientific studies. In the mode of Marxian or Gramscian dialectical thinking, such an approach "recognizes that reality is comprised of both parts and a whole, organized in the

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[65] Ibid.
[66] Mosco, *The Political Economy of Communication: Rethinking and Renewal*, 31.

concrete totality of integration and contradiction that constitutes social life."[67] Political economy is therefore suited to the study of cultural forms because the process of cultural production is comprised of a wide range of factors that influence and respond to one another in an ever-fluctuating and dynamic system. Golding and Murdock have noted that this holistic approach is one of the factors that differentiates critical political economy from mainstream economics, as it considers "the interplay between economic organization and political, social, and cultural life"[68] rather than isolating the 'economy' from cultural and political factors. Another way critical political economy considers social totality is the manner in which it reconciles the relationship between concrete relations and the abstract theories and phenomena that mark the path of capitalism. Traditionally, Marx in his historical materialism separated these parts of the social totality as the base and superstructure, and as I have mentioned above Raymond Williams made a call to correct this separation and interrogate the material forces of the superstructure in *Marxism and Literature*. Williams wished to eschew the traditional superstructural approach to culture, which focused on the ideas and aesthetics of the products of culture, and ignored the material base, which consisted of the forces of production. Some political economists, such as Nicholas Garnham, have renewed the call for a more complex view of culture, one that combined an understanding of the ideas of the Marxist superstructure with Williams's call to study the material forces of cultural production and a recognition that there are also ideological forces at play in the economic practices of cultural production. Garnham points to the "industrialization of the superstructure" as a critical change in culture as the ideologies that used to be conveyed

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[67] Ibid., 33.
[68] Golding and Murdock, "Culture, Communications and Political Economy," 73.

through the content of cultural production are now also an integral part of the interplay between economic entities. Within Garnham's studies of mass communication, the impact of industrialization included the ideological influence gained by media corporations as they utilize their overwhelming capital resources to manipulate the means of production and influence labor. This advantageous position within the material field allows these economic actors to control the ideological output of their media outlets, as they use their capital to exert pressure over the creative process of their employees, competitors, as well as other individuals and businesses who are beholden to them. This goes against a more traditional base/superstructure analysis, which would have considered the power exerted in the material field separately from the ideological content within cultural products, and adds a necessary complexity to the analysis of the contemporary cultural situation. For Garnham, this economic ideology is "the precise historical elaboration of what Marx and Engels meant in *The German Ideology* by 'control of the means of mental production,'"[69] and his understanding of the ideological influences of economic factors considers the social totality as the state of the interrelationships between the material, economic, and ideological aspects of the cultural condition at any given historical moment.[70]

In the study of theatre, the concept of social totality affords us with a more nuanced way to approach the constantly fluctuating patterns of funding for American theatre. The complex dance that theatrical producers must perform in order to accumulate enough funds from the state, individual donors, foundations, and corporate

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[69] Nicholas Garnham, "Contribution to a Political Economy of Mass-communication," in *Media and Cultural Studies: Keyworks*, ed. Meenakshi Gigi Durham and Douglas M. Kellner (Malden, Mass.: Blackwell Publishers, 2001), 238.
[70] Ibid., 229.

sponsors is further complicated by the ebbs and flows based on a wide array of cultural conditions including politics, the status of the economy, predominant corporate operating procedures, and the ever-changing perception of the arts in the mind of the public. Recognizing that these factors are all at play within the auspices of a greater social totality therefore provides the theatre scholar with a starting point to better understand how aesthetics, productive forces, and ideological concerns can all influence funders as they consider supporting theatrical productions.

Mosco's third cornerstone, moral philosophy, refers "to social values (wants about wants) and to conceptions of appropriate social practices,"[71] and critical political economy makes a point of being explicit in how moral viewpoints are incorporated into the analysis of economic and political economic conditions. Historically, political economists have asserted moral philosophy in their work because they have understood that since the workings of commerce and industry are products of human interaction, they must be understood on a moral basis. The integration of moral philosophy goes back to Adam Smith, who in *The Theory of Moral Sentiments*(1759) discussed the advancement of the social good through systematic social benevolence. The consideration of the greater social good was also part of the work of Thomas Malthus and Marx, as both writers believed that it was their responsibility to analyze political and economic conditions in a way that would identify "visions of a morally appropriate way of living."[72] Robert McChesney, whose work is aimed at media reform and return of power to the many from the few, has often applied the question of moral appropriateness to contemporary media as they become increasingly driven by capitalist systems.

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[71] Mosco, *The Political Economy of Communication: Rethinking and Renewal*, 34.
[72] Ibid., 35.

McChesney views tenets such as liberalism and neoliberalism with trepidation, seeing them not as necessities of a democratic state, but as ideologies that guide policy in favor of markets and profit-making, thereby directly connecting freedom to the ability to buy and sell private property policy. Using the lens of moral philosophy, McChesney can reveal how these media systems thus empower wealthy elites, encumber the flow of free ideas, and ultimately depoliticize the majority of the population.[73] Similarly, Peter Golding and Graham Murdock have applied questions of morality and the public good in their analysis of the field of communication, as they focus on the connection between the extension of citizenship rights and the constitution of a good society. For Golding and Murdock, the analysis of media should not only consider how they function within the capitalist economic system but also about whether the media continue to provide consumers with access to a broad range of information that allows them to fully exercise their citizenship.[74] The moral tenets of political economy allow Golding and Murdock thus to act as proponents of an ideal communications system that creates "a public cultural space that is open, diverse and accessible, provides the basic yardstick against which critical political economy measures the performance of existing systems and formulates alternatives."[75]

As American theatres continue to produce more spectacular entertainments and fewer thoughtful, well-written works rich with social commentary, such as *Angels in America* or *A Raisin in the Sun*, proponents of the theatre, particularly those who still believe in theatre's ability to create landmark works, therefore often echo the views of

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[73] Robert W. McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times* (Urbana: University of Illinois Press, 1999), 2-7.
[74] Golding and Murdock, "Culture, Communications and Political Economy," 76.
[75] Ibid., 77.

McChesney, Golding, and Murdock. Considering these contemporary conditions the study of theatre must not be a dispassionate affair, but rather must represent a scholars' position and channel his or her attitude towards the prevailing political economic trends.

The integration of moral vision with empirical study however can create a tension in the study of both fact and value and is a point of contention between traditional economists and critical political economy. Whereas economics only looks upon values and morality as identifiers in more concrete marketplace choices, political economists recognize that culture and morality are themselves the central subjects of their work. Political economists also argue that when economists reduce the human factor in market dynamics to a quantifiable factor of production, such as in the case of their handling of living labor, they naturalize those practices and are in fact making a very powerful moral distinction whether they choose to acknowledge it outright or not. For this reason, critical political economists usually choose to follow the tradition of Marxist critique, specifically engaging the moral aspects of their analysis, as they "point to the distortions and inequalities of market systems and argue that these deficiencies can only be rectified by public intervention."[76]

The final characteristic of political economic analysis is *praxis*, the application of theory through action. The ancient Greek term praxis has substantial roots in both philosophy as well as social theory. Praxis has meant different things to different writers, from Kant's notion of praxis as practical reason in unity with theory to Marx's use of the term to make philosophy practical in his search for labor that was not alienated but rather free and self-motivated. Praxis specifically entered the political economy of culture and

[76] Ibid., 76.

communication through the Frankfurt School who expanded the idea of praxis to a general freedom of action that included the realm of communicative action as well as work. Mosco specifies the importance of praxis "to both the epistemological and substantive premises of political economy. In brief, praxis guides a theory of knowledge to view knowing as the ongoing product of theory and practice. . . . Knowledge requires more than a process of honing and purifying conceptual thought but grows out of the mutual constitution of conception and execution."[77] Putting intellectual thought into action in this way has been a challenge for political economists as they immerse themselves in fields such as communications where scholars such as Robert McChesney try to carry their work in policy studies to the legislative level, marketing their work to government officials and lobbying for change. In *Culture Works*(2001), Richard Maxwell notes that work done within the realm of critical political economy of culture opens up "the possibilities of political response–from informal to formal politics, from local to national and international scales of intervention, and from the imagination to the politics of writing."[78] This praxis-minded work is driven by an undercurrent of progressive thought that leads political economists to develop their analytical work with more practical goals in mind. Praxis is the understanding that the search for knowledge should inform a person's understanding of the world, providing him with the tools to motivate change and work towards social betterment. McChesney points out concisely that

> The world is changing rapidly and is doing so because of decisions made by actors working within a specific social system. If anything, humans

[77] Mosco, *The Political Economy of Communication: Rethinking and Renewal*, 38.
[78] Maxwell, "Why Culture Works," 20.

> now possess greater ability to alter their destiny than ever before. Those who benefit by the status quo know this well. They want to ensure that they are the ones holding the reins; they want everyone else to accept their privileges as "natural" and immutable.[79]

In light of this, the role of the progressive political economist, or of anyone studying contemporary culture, is to do work that empowers those that feel subjugated by the status quo. As control of our information outlets and artistic realms are ceded more and more to the purveyors of this status quo (corporations, media moguls, etc.), praxis-minded work in the realm of political economy of culture is necessary to keep a multiplicity of voices alive. Perhaps in this way theatre scholars can also use praxis to better integrate themselves within the field they are studying and begin to bridge the gap between academics and practitioners that has long kept the critical work of theatre studies far too divorced from the artists, producers, laborers, and audiences who comprise the field of theatrical production.

Critical Political Economy and the Field of Theatrical Production

Now that I have outlined the possibilities of critical political economy as well as the major components of a political economic approach, the methodological structure and relevance of a political economy of theatrical production begin to come into focus. But the work is not done yet, and admittedly the elucidation of such an approach must be more specific and explicitly connected to those unique facets of the field of theatrical production. Up to this point, many of the sources I have drawn from have been political

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[79] McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times*, 3.

economists of communication and media studies, and their strategies will continue to prove particularly useful in honing the focus of my study of the theatrical field. The field of communication studies provides a good example because it is homologous to theatre inasmuch as both theatre and the mass media are integrated into the same cultural landscape and are responding to many of the same concerns regarding control of production, cultural diversity, textual appropriation, and consumer agency. Mosco has noted that critical political economy in the study of communications and the media

> aimed to situate theory about mass mediated activity within the wider framework of political economic, particularly Marxian, theory. Political economy also argued for a critical approach that examines empirical findings in the light of a critical purpose, such as the need to advance democratic communications by building public television systems. Empirical results neither arose out of a black box nor spoke to no one. They grew out of a dialectical relationship with theoretical formulations and spoke to a broadly defined political interest. [80]

In the same manner, this study will combine empirical data with theory to discern what political and economic trends are having the most significant impact on development in the field of theatrical production. Furthermore, in considering theatre as a medium, I will be using a similar approach as the political economists of communication to look at theatre in relation to other media such as film and television and place theatre in a more complete cultural context.

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[80] Mosco, *The Political Economy of Communication: Rethinking and Renewal*, 79.

The next step then is to look at how scholars studying the political economy of culture, media, and communication implement the components of critical political economy and refine exactly how those components can best be applied to the specific problems of the field of theatrical production. In constructing a political economy for the study of communication, Golding and Murdock begin with three important areas of analysis:

> The first is concerned with the production of cultural goods, to which political economy attaches particular importance in its presumption of the limiting but not completely determining impact of cultural production on the range of cultural consumption. Second, we examine the political economy of texts to illustrate ways in which the representations present in media products are related to the material realities of their production and consumption. Finally, we assess the political economy of cultural consumption, to illustrate the relation between material and cultural inequality which political economy is distinctively concerned to address.[81]

This concise approach, which represents the type of framework used in much critical political economy, considers cultural production in communication via the actual text produced, the means by which that text is produced, and the structures of distribution and consumption that afford relative political and economic stature to a variety of cultural producers and consumers. Using a similar approach to look at the field of theatrical production broadens the scope by considering theatre as a social practice and promoting a continuity of analysis that follows the political economic life of a theatrical product from

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[81] Golding and Murdock, "Culture, Communications and Political Economy," 77.

inspiration, to realization, and performance. In the study of theatre, such an approach can allow for a full evaluation of the political economic circumstances that influence theatrical production from the initial stages of playwriting and fundraising, through physical production, performance, and audience reception, all the way to the historical place and possible canonization of a work of theatre. At the heart of this type of analysis, critical political economy of communication seeks continually to refer to culture as a commodity that can be analyzed similarly to a material good, weighing its use value and exchange value just as one could study the production of a dishwasher, paper towels, or a piece of fruit. This study of the commodity form has been the basis of political economy since Marx, who early in volume one of *Capital* (1867) aimed his study of the capitalist mode at the process of creating an "immense collection of commodities,"[82] and saw commodification as the means by which capital is accumulated and value realized.

The political economy of communication adjusts Marx's approach by also considering the particular characteristics of the cultural commodity that make it distinct from more traditionally material goods. Marx in his own studies saw cultural or "non-material production" as peripheral and not worthy of examination within the larger capitalist scheme. But, as Williams noted in *Marxism and Literature*, this perception of cultural production as "mere ideas" neglects the very real capitalist processes of commodification that occur in cultural production, especially in fields such as communication, and theatre. Garnham pointed out that "the problem with cultural and informational goods is that use value is almost limitless, i.e. cannot be destroyed or

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[82] Karl Marx, *Capital: A Critique of Political Economy, Volume 1*, trans. Ben Fowkes (London: Penguin, 1976), 126.

consumed by use, it is extremely difficult to attach an exchange value for them."[83] In the study of communication there have been two typical responses to this dilemma. On the one hand political economy has tended to focus on the institutions and structures that produce and distribute commodities, as well as the role of the government in intervening in culture industries. On the other hand, more traditional communication studies and cultural studies have focused on the content of the texts that are produced, searching for meaning, and context, but neglecting the underlying economic structures that are producing them. In this instance, a critical political economy of communication is best served by an increased attentiveness to the text and its meanings, as they are the manifestation of the intentions and ideologies of the producing and commodifying institutions that are so important to the study of political economy. For theatre studies the reverse is true, because, as has been noted already, the field currently is more akin to cultural studies in its approach to cultural products. By extending the analysis of the meaning of a theatrical text (in its variety of forms as a playscript, recording, or live performance) outward to include the place of that text as a commodity in a capitalist schema, study in the theatrical field can come to a more sophisticated and multi-faceted understanding of that text and the kind of experience that a cultural consumer may have upon encountering that text. Here we also begin to see the major components of political economy begin to play a role in studying the theatrical field. By placing the text in a larger economic and political context it is much easier to reflect on its role as part of a material history of society. The text is no longer isolated from social change and history, nor is it removed from the ebbs, flows, and influences of the social totality, be they

[83] Garnham, "Contribution to a Political Economy of Mass-communication," 244.

political or economic, local or global. With this broader, socially integrated perspective on the text, its producers, distributors, and consumers, we can now take a moral position on which agents benefit and which are exploited in the various productive transactions. Finally, armed with this knowledge, we are better prepared take action to improve the conditions of those transactions.

While commodification provides the starting point or entry point for analyses in critical political economy, Mosco has also pointed to spatialization and structuration as important processes to be considered. Spatialization denotes "the process of overcoming the constraints of space and time in social life,"[84] and is a particularly important concept as technology continues to speed up the pace of capitalist life and seemingly compress distances between spaces. Marx famously suggested that capitalism annihilated space, knowing that capital interests would always be looking to expand beyond local markets with the hope of ultimately reaching a global market. Capitalist interests in positions of relative power have thus always looked to exploit the opportunity afforded by the social instability of shifting perceptions of time and space. As time and space are compressed, difference is annihilated and barriers to the distribution of products and dissemination of capitalist ideology are likewise diminished. As traditional geographic boundaries are shifted or negated through capital forces such as globalization, power is located differently with multinational corporations and high-speed telecommunications symptomatic of the types of forces that destabilize traditional perceptions of time and space. David Harvey has said that

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[84] Mosco, *The Political Economy of Communication: Rethinking and Renewal*, 173.

> spatial and temporal practices are never neutral in social affairs. They always express some kind of class or other social content, and are more often than not the focus of intense struggle. That this is so becomes doubly obvious when we consider the ways in which space and time connect with money, and the way that connection becomes even more tightly organized with the development of capitalism. Time and space both get defined through the organization of social practices fundamental to the commodity production. But the dynamic force of capital accumulation (and overaccumulation), together with conditions of social struggle, renders the relations unstable. As a consequence, nobody quite knows what 'the right time and place for everything' might be.[85]

Spatialization and the progressive compression of time and space that has resulted from technological developments such as railroads, automotives, and aircraft have always had cultural repercussions. Harvey pointed to modernist movements such as Cubism as cultural representations of a society grappling with the compression of time-space and the anxiety of a shrinking, more claustrophobic world. While the modern era responded to a world shifting from the local to national and continental compression, artists in the postmodern era have used culture-blending, sampling, and montage to respond to geopolitical uncertainty as spaces come even closer together and the Internet brings near instantaneity to global interaction. The political economy of communication has responded to spatialization through the study of the concentration of control of the field in the hands of a few powerful media corporations, the role of the state in facilitating

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[85] David Harvey, *The Condition of Postmodernity: An Enquiry Into the Origins of Cultural Change* (Cambridge, Mass.: Blackwell, 1989), 239.

capitalist interests through commercialization, liberalization, privatization, and internationalization, and the impact of globalizing, localizing, and nationalizing forces.[86] Studying spatialization on these fronts is similarly important when considering the theatrical field of production where time-space plays a particularly important ontological role. Two characteristics of theatre that distinguish it from technological media are that it occurs linearly over a set period of time and relies on a relationship among performer, audience, and theatrical space that has for the most part changed little in three millennia. But despite the ontological specificity of theatrical time-space, capital pressure exerted by corporations and the state on both a local and global scale is increasingly influential in the field of theatrical production, and understanding the complexity of spatialization in twenty-first culture helps to inform any study of both the organizational structures and artistic tendencies of contemporary theatre.

The theory of structuration was developed by Anthony Giddens to address dichotomies in interpretive and structuralist sociologies. On the one hand, interpretive sociology focused on action and meaning over structure, choosing to analyze micro-scale social interaction. On the other hand structuralism and functionalism focused on the qualities of social structures over the action of the individual, choosing to view society on a macro scale. Giddens argued that the domain of study of the social sciences should not solely be made up of either the experience of individual actors or a social totality determined by its structures, but of "social practices ordered across time and space."[87] For Giddens, social structures did not come into being fully formed and determinant, nor

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[86] Mosco, *The Political Economy of Communication: Rethinking and Renewal*, 173-211.
[87] Anthony Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (Cambridge: Polity Press, 1984), 2.

do individuals have complete agency in defining social action free of historical circumstances: "Human social activities, like some self-reproducing items in nature, are recursive. That is to say, they are not brought into being by social actors but continually recreated by them via the very means whereby they express themselves *as* actors. In and through their activities agents reproduce the conditions that make these activities possible."[88] For Mosco structuration is most useful in studying the political economy of communication for the prominence it gives social change and for its understanding of the duality of structure and action. But critical political economy alters the approach to this duality slightly by giving "greater weight to *power* and to the incorporation of structuration into a *critical* approach to social analysis. Such a focus deepens the substantive and methodological approach to power in political economy."[89] Critical political economy of communication thus can use structuration alongside the understanding of commodification and spatialization to analyze the macro-scale questions of institutional and governmental power–such as the impact of mergers and corporate consolidation–alongside micro-scale questions of agency that operate in interaction between social individuals–such as what motivates CEOs to enter new markets or what leads corporate boards down a particular path of decision making. Furthermore, structuration helps critical political economy address aspects of class, race, gender, and social movements that are crucial to a thorough analysis of complex political economic interactions and social relationships. The theatrical field can benefit from the application of structuration in a manner similar to the field of communication. One example is the similar applicability of the micro-macro duality of structuration in

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[88] Ibid.
[89] Mosco, *The Political Economy of Communication: Rethinking and Renewal*, 214.

considering corporate involvement in theatrical production. Structuration informs not only the large-scale questions regarding the impact that corporations will have on the economic conditions of the field as a whole, but also the question of how content selection in heavily corporate-sponsored works reflects the specific strategies of companies such as Disney and Time Warner. Structuration is similarly useful in looking at copyright laws, which on the small scale impact the actions and tendencies of individual cultural producers and producing companies and on the large scale will influence the social perception of ownership and authorship across all fields of intellectual creation thus recursively reshaping copyright legislation to fit to new social conditions.

The Value of a Vanishing Commodity

If up to this point the focus has been on the homology between political economic studies of media and communication and those of the theatre, we must now look beyond the similarities to find the distinctive features that delineate where the homology ends and the unique circumstances of the theatrical field begin. Nicholas Garnham notes a crucial feature of the technological media of our era:

> Specialized technologically based institutional forms and practices have been developed to extend the process of cultural interaction through time and space beyond face-to-face interaction. Thus culture comes to be grounded no longer upon direct experience and upon the individual's natural information processing and communicative endowments, but upon

> access to and control of the scarce material and cultural resources mobilized by these specialized institutions.[90]

For all of the similarities we may be able find between theatre and other media, the defining characteristic of theatre that gives it specificity as a cultural form is that it requires face-to-face interaction and direct experience. A theatrical experience is ontologically tied to this *liveness* (to utilize Philip Auslander's term), the actor-audience connection that is irreproducible, and the inherent ephemeral quality of the form. Peggy Phelan has argued that "performance's being . . . becomes itself through disappearance. . . . Performance occurs over a time which will not be repeated. It can be performed again, but this repetition itself marks it as 'different.'"[91] The evanescence of the performative event resonates as both a unique possibility and a difficult obstacle in considering the political economy of theatre. Theatre studies–and even more so performance studies–has prided itself on championing the virtues of the ephemeral theatrical phenomenon, sometimes to the detriment of critical analysis of the field. As scholars prioritize and even fetishize the ephemeral experience, the study of the greater field takes on a narrow focus that is epistemologically restrictive. For example, Phelan's work in *Unmarked* immerses itself deeply into questions of memory, ontology, and resistance, while neglecting important social and economic factors, such as audience composition, cultural hierarchy, and financial motivation, that are significant in creating the cultural context for the art objects she is analyzing. Work on the theatrical field thus concentrates on the immediate

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[90] Nicholas Garnham, "Media Theory and the Future of Communication," in *Capitalism and Communication: Global Culture and the Economics of Information*, ed. Fred Inglis (London: Sage Publications, 1990), 9.
[91] Peggy Phelan, *Unmarked: The Politics of Performance* (New York: Routledge, 1996), 146.

circumstances of the theatrical event, ignoring the productive forces, greater social conditions, and economic pressures at work. This does not mean that work done on this portion of the theatrical field is any less valid or critical to a greater understanding of the field,[92] but in order for a full appreciation of that ephemeral event the field requires the breadth that a political economic approach provides. The evanescent phenomenon is more than a product of the performer and actor relationship within the aesthetic parameters of the theatrical approach. Through political economy, we can see this unique, and marketable, characteristic of the theatrical experience as a product of investment, labor, class relations, social history, and cultural positioning, as well as a potentially valuable commodity in the promotion of theatre as an important facet of the contemporary American cultural landscape.

The Value of Theatre and the Value of the Political Economy of Theatre

Bruce McConachie believes that

> Historicizing the relations of theatrical production opens up the possibility of a more complete historical sociology of the theater. . . . Were such a sociology to follow in the pathbreaking tradition of Raymond Williams, it would require extensive empirical and theoretical investigations into the sociohistorical conditions necessary for the emergence of various kinds of

[92] Philip Auslander's *Liveness*, which provides an interesting look at the question of the ephemeral live event in a mediatized culture, is one good example of how theatre and performance scholars are reconciling questions of ephemeral performance with regard to larger cultural mechanisms. While Auslander's analysis is not a political economy approach per se, his investigation into liveness versus mediatization in rock music and the use of videos in courtrooms combine questions of ontology and media evolution with legal issues and the role of the recording industry in shaping cultural perception of music. Philip Auslander, *Liveness: Performance In a Mediatized Culture* (New York: Routledge, 1999).

> theater, the relations between historical forms of theatrical expression and the dominant ideology of a historical period, and the functions of theater in reproducing, modifying, or contradicting hegemonic relations of production. Such studies could transform the discourse of theatre history as it is presently taught and written in the United States.[93]

In essence, this dissertation is an attempt to begin to construct such a new approach to theatre studies that expands its methodological base and considering aspects of the field of theatrical production that have been underexamined. The combination of these new methodologies and the reinvestigation of theatre's place within the contemporary cultural landscape, provides for the possibility of answering some very important questions within the discourse of theatre studies. As such, a political economic analysis of theatrical production can help us address a question that is critical to understanding the future of theatre in the United States: how do we value theatre in contemporary American society?

Despite the fact that theatre competes with movies, television, and the Internet for the American entertainment dollar, theatre scholars rarely engage with the question of the valuation of theatre in the contemporary cultural marketplace, and as a result tend not to critique how the producers, distributors, and consumers of culture ascribe value to theatrical productions. Perhaps it is because theatre is viewed as a pre-capitalist form of culture that scholars are wont to consider its commodity status, or because its ephemerality makes it hard to compare to more tangible forms of culture such as books, on DVDs, or as a file on a computer. This dissertation does not intend to come to a specific conclusion with regards to the question of to the value of theatre in the United

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[93] McConachie, "Historicizing the Relations of Theatrical Production," 176.

States as it is more a question to be constantly analyzed and complicated than to be definitively answered. It does however attempt to discern how the development of our cultural economy has impacted the place of theatre in our society, and how valuations of theatre and other media by different sectors of our society have resulted in the contemporary circumstances of our cultural landscape. Of particular note to this study is the consideration of theatrical production as part of a cultural schema that is constantly influenced by our capitalist economic system. Putting theatre in this context reaffirms the fact that theatre is a process that generates a commodity on a par with the products of the mass media, and this analysis is therefore better suited to interrogate how the erection of political, economic, and cultural apparatuses has impacted the value of live culture in general and theatre in specific as parts of cultural life. To this end, critical political economy provides a methodology by which to study the changing role of theatre throughout history, consider theatre as a component of a larger cultural landscape and social totality, react to the contemporary field of theatre as it pertains to the benefit of the greater social well-being, and choose a path by which our investigations can play a role in actively shaping the future path of the field.

Nicholas Garnham noted that he wrote primarily out of a "conviction that more is at stake in one's engagement in academic debates than academic demarcation disputes, careerism or matters of scientific nicety, and that secondly the academic field is itself an object in our field of inquiry and subject to the same analysis and critique as that directed at other cultural institutions and practices."[94] Garnham charged us all to look more incisively at our fields of study, keeping in mind that as we study our objects we must

[94] Garnham, "Media Theory and the Future of Communication," 1.

simultaneously study the mechanisms by which we study those objects. Critical political economy provides theatre studies with a new way to expand its methods of analysis in a way that provides the possibility for not only the improvement of the work done in the study of the theatrical field, but also in improving the future of the theatrical field itself. Armed with these new possibilities, now it is time to move on and look at what forces exactly are at play in the contemporary field of theatrical production in the United States, and begin to determine what the future may in fact hold for American theatre.

Chapter 2.
The Project of Critical Political Economy and Contemporary Theatrical Production

Having clarified that it is not only possible, but necessary to reconsider the place of theatre with regards to other media, and established why the parameters of political economic study are so appropriate to reacquaint ourselves with the position of theatre within the cultural marketplace, it is now important to consider what aspects of theatrical production fall under the scope of such a study. If one compares the objects of study in theatre studies to those covered media and entertainment scholars, it becomes apparent that a much broader range of political economic determiners are covered in the examination of technological media. Perhaps it is because many media scholars hail from the social sciences as much as from the humanities, while theatre studies has developed out of English departments and the study of the fine arts, but it general media studies scholars are as interested in how a text was produced, distributed and consumed as they are with the specific content of the text, which is where many studies of theatre begin and end. This investment in the more material political, economic, and social implications of cultural production usually results in the study of aspects of the cultural marketplace that are mostly neglected by theatre scholars. Using the study of these other media as a homology, it becomes clear that there are large portions of the field of theatrical production that have yet to be fully investigated. While this realization is a positive discovery inasmuch as it exposes a blind spot in the study of theatre, it also makes the process of sorting through and choosing those portions most in need of analysis that much more difficult. To further complicate this new approach to the field, the political economic conditions of the field are so inextricably connected that to choose

only certain portions of the field is tantamount to telling only a small part of a complex story. In the end, it became clear that while the original scope of this dissertation was to be the entire realm of the political economy of theatre, the study of such a broad and neglected aspect of theatre should probably be the province of a multi-volume investigation carried out by a number of researchers.

Since the study of the impact of political economic conditions on the development of theatre is a massive project that no single paper, dissertation, or book can completely address in detail, this dissertation instead continues in the following manner. First of all this chapter addresses three important sectors in the field of theatrical production that are impacted by political economic conditions: the impact of shifts in sources of funding for theatre, the role of labor relations in shaping the theatrical field, and the manner in which advertising and marketing pose a challenge for theatrical producers and influence public perception of theater. These are prominent aspects of any form of cultural production that, despite receiving only cursory consideration in the field of theatre studies, have a tremendous impact on the type of productions that make it to American stages and influence the development of theatre in the United States. Furthermore, they are prominent examples of the areas of consideration that can be found in the study of other media, such as film, television, and the Internet, and should likewise be considered in the field of theatre studies. This dissertation approaches these areas of study in a way that provides not only an example of how the political economy of theatre can be studied, but also shows that the political economic conditions of the contemporary cultural marketplace have a unique impact on theatrical production.

While the examination of labor, marketing, and funding helps put the range of political economic forces influencing the field of theatrical production in perspective, the brief examination of each area that follows is only a look into a fraction of their full range of impact on the theatrical field, and their analysis is limited to this chapter, comprising only a small portion of this dissertation. The majority of this work instead focuses on the impact of another political economic concept, intellectual property, and the prominent role it has played in recent developments in the theatrical field. I will leave a more detailed explanation of that aspect of this work for Section II.

Realms of Contention

Considering cultural production in the twenty-first century from the start becomes an engagement with the perplexing complexities, paradoxes, and drives of modern capitalism. As the United States continues to power its way through the late stages of capitalism, economic influence and consideration, as well the political and social trappings that accompany them, have transcended any previous notions of the boundaries between the markets of goods and products and the markets of culture and ideas. With mass reproduction and replication, the production of culture has become an industry of massive proportions as symbolic meaning can now be rapidly produced and disseminated to billions of individuals. As our culture has become industrialized the means of production have expanded and subsequently have been concentrated and integrated so that symbols easily cross from one medium to another along streamlined paths of distribution, which allow for the direct dissemination of ideology. It is within this challenging and contested marketplace that theatrical producers find themselves trying to keep up with the spread and influence of digital technologies and a society's increased

preference for mediated, instantaneous, and repeatable experiences. Underlying these transitions in the social and cultural spheres are ever-evolving trends in the way culture is produced, who produces it, whom it is produced for, and how it is brought to market and consumed. These are the central foci for the study of the political economy of culture, and they necessitate an intensely critical and complex approach to the conditions of cultural production. Specifying this kind of study within the theatrical field becomes increasingly complicated as one must reconcile theatre's place in the contemporary marketplace with its pre-industrial characteristics, which in many ways make it distinct from film, radio, television, and the Internet as a medium for expression.

Labor

When one thinks of political economy and its history and legacy, perhaps the most recognizable area of study is labor. Labor after all was one of the most central, if not the most central, concerns of Marx's writing and the dynamic between employer and employee that evolved out of the rise of capitalism and industrialization has always been important to the study of any form of production. That dynamic has of course changed and become more complicated as decades have passed and developments of new organizations, such as unions and corporations, and globalized patterns of production have made the study of labor an increasingly difficult, yet nevertheless important, aspect of political economic analysis. In particular, new paradigms for production and distribution in the digital age have made employers, employees, and contractors in all fields of production uncertain as to the future of labor relations. While theatre may in some ways be able to avoid highly publicized trends such as globalization and

outsourcing because of its necessarily local nature, it nevertheless feels the economic impact of changes in the contemporary cultural landscape. As in many other realms of production in contemporary markets, theatrical laborers have often suffered as corporations prosper.

Perhaps the group most impacted by changing labor practices and scales of remuneration has been theatrical artists. A recent study by the Theatre Communications Group, which represents the interests of America's non-profit regional theatres, found that in every year since 2002 artistic payroll has declined in polled theatres. Over the same time period, the amount spent on administration has risen, and for the first time in 2005 administrative pay surpassed artistic pay. TCG's analysts have hypothesized that "the adjustment reflects the competitiveness of the marketplace, as theatres have sought to keep administrative employees from defecting to better-paying positions in other fields."[95] From this analysis it becomes clear that the relative success of other fields such as banking, marketing, even foundations, has threatened to draw away those people responsible for the day-to-day functioning of the regional theatre system. Faced with this dilemma, regional theatres are left to cut back in the one area where they have a more captive labor force, the artists, who have a more specified range of skills that are less marketable to those fields of production offering the most significant remuneration. The overall weakened position of labor unions in the United States in recent years magnifies this problematic situation as groups such as the International Alliance of Theatrical

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[95] Celia Wren, "At the Intersection of Optimism and Uncertainty," in *Theatre Communications Group*, November 2006, http://www.tcg.org/publications/at/nov06/theatrefacts.cfm.

Stagehand Employees (IATSE), the Actor's Equity Association (Equity), and the American Federation of Musicians are forced to adapt to new market conditions.

The challenge that theatrical unions face is two-fold. First of all they must contend with a society that views unions with more skepticism than in say the first half of the twentieth century. Whereas unions once were considered bulwarks against exploitation by greedy capitalists, unions, justified or not, are now just as often blamed for having become oversized and for creating inefficiency in the workplace. Corporations have increasingly looked for ways to shed the burden of union affiliation and are willing to pay freelancers, temporary workers, and independent contractors a little extra to avoid dealing with unions and the attached costs of benefits such as health care and worker's compensation. Similar trends are affecting the theatrical field, as a producer may look to fill more roles with non-union actors or hire freelance technicians, thereby avoiding the economic requirements mandated by relying solely on unionized labor.[96] One of the main challenges that theatrical labor organizers face in trying to combat these trends is that many people are often willing to eschew salary and benefit demands they would insist upon in another field for the sake of putting on a show. As

[96] Most theatres rarely if ever hire more than the minimum number of union actors required by Equity. During my experiences as company manager in charge of actor payroll at the Studio Theatre (1998-9) and Olney Theatre Center (1999-0), I can remember very few if any productions where we hired more than the Equity minimum. The reason for this is that along with the large disparity in minimum weekly pay between Equity and non-Equity actors (at Studio we paid an Equity actor a minimum weekly salary of $310 while non-Equity actors usually received around $150 a week, at Olney Equity pay was $450 and non-Equity the same $150) the theatres were responsible for weekly contributions of over one hundred dollars per Equity actor to the union's pension and health programs. Considering most theatres are already struggling to cover their operating costs, it becomes difficult to justify the more than $250 weekly it costs to hire an Equity actor over a non-Equity actor (which adds up to $2000 over an eight-week rehearsal and performance schedule), no matter what the difference is in the quality of their performance.

one commentator wrote "the fact is workers aren't going to make steel or cars for free, but people will act and play music for free. Such is the lure of the stage, you may even get somebody to set the lights for free."[97] The resulting eagerness of, say, an actor who will take a non-Equity role for the experience of being on stage has long plagued Equity and other theatrical unions, which have never been able to gain as strong a bargaining position as trade unions in more traditional vocations such as auto-workers, plumbers, etc. Nor have they had the resources or organization to reach out to all the different levels of theatrical production, as it is only in commercial productions and the largest non-profit regional theatres where you will see exclusive contracts signed with all the major unions that represent the actors, directors, designers, musicians, and stagehands.

In recent years, labor unions have also had to contend with the fact that technology has changed the manner of all forms of production and that the role of the worker has changed due to increased mechanization and digitization. While this might be most obvious in an example such as the layoff of autoworkers in Detroit plants, theatre has similarly been affected. In 2003 Broadway musicians struck in protest to producers' desire to lower the required minimum number of musicians for a Broadway musical. The League of American Theaters and Producers, an organization that represents the combined interests of Broadway producers and the theatre owners they pay rent to, argued that the minimums were an antiquated employment guarantee that had become

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[97] Kate Taylor, "Maybe You Should Read This, Blue Man Group," in *GlobeandMail.com*, May 7, 2005, http://www.theglobeandmail.com/servlet/Page/document/v5/content/subscribe?user_URL=http://www.theglobeandmail.com%2Fservlet%2Fstory%2FLAC.20050507.TAYLOR07%2FTPStory%2F%3Fquery%3D%2522blue%2Bman%2Bgroup%2522&ord=7106757&brand=theglobeandmail&force_login=true.

particularly onerous in recent years as production costs had escalated.[98] Thirty years ago a musical could be staged for around $1.5 million and easily recoup its investments in less than six months. Today, a typical Broadway show can cost up to $10 million to $12 million with only one out of every five shows recouping their initial investment.[99] The musicians on the other hand saw these cutbacks as a first step towards the total elimination of live music. With the increased use of amplification of both singers and musicians, the augmentation of live sound with prerecorded music and effects, and the introduction of sampling to fill in for those instruments for which there was not a live musician, the federation of musicians was adamant about not allowing the producers to lead them down a slippery slope towards a completely virtual orchestra.[100] As Bill Moriarity, president of Local 802 of the American Federation of Musicians, stated "little by little, they'd get rid of all of us. We don't believe their real commitment to live music."[101] The strike ended up lasting four days, from a Friday through a Monday, and cost Broadway three days of performance. Since Equity and IATSE both decided not to

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[98] Robin Pogrebin and Steven Greenhouse, "Broadway's Lights Go Back On As Musicians Reach an Accord," in *New York Times*, March 12, 2003, http://query.nytimes.com/gst/fullpage.html?res=980CE1D9153EF931A25750C0A9659C8B63&n=Top/Reference/Times%20Topics/Organizations/A/American%20Federation%20of%20Musicians.

[99] Robin Pogrebin, "2 Choruses Out of Sync," in *New York Times*, March 10, 2003, http://query.nytimes.com/gst/fullpage.html?res=9A00E0DA163EF933A25750C0A9659C8B63&n=Top/Reference/Times%20Topics/Organizations/A/American%20Federation%20of%20Musicians.

[100] Anthony Tommasini, "A Long, Loud Journey Toward 'Virtual' Orchestra Began Years Ago," in *New York Times*, March 11, 2003, http://query.nytimes.com/gst/fullpage.html?res=9805E0DB173EF932A25750C0A9659C8B63&n=Top/Reference/Times%20Topics/Organizations/A/American%20Federation%20of%20Musicians, 1.

[101] Robin Pogrebin, "Broadway Impasse On Music: Computers Tune Up," in *New York Times*, February 26, 2003, http://query.nytimes.com/gst/fullpage.html?res=9A0CE1DF173CF935A15751C0A9659C8B63.

cross picket lines, Broadway was almost completely dark as the lack of musicians, actors or stagehands made it impossible to have performances. When the dust settled, the musician's moved from their hardened stance that there would be no reduction minimums and compromised on a new ten-year contract that saw minimums reduced by seven musicians down from a maximum of twenty-four in the largest houses to seventeen.

The impact of the deal on the economics of the production of Broadway musicals was in no ways trivial. Since salary and benefits cost producers at least $90,000 per musician per year in 2003, reducing the pit orchestra by seven players, therefore, had the potential of saving producers more than $630,000 a year per show. Furthermore, industry and union officials have stated that since a 25-member orchestra generally accounts for 8 to 10 percent of a musical's costs, the new minimums could reduce that proportion to between 5.5 and 7.5 percent.[102] While the producers were able to cut costs significantly, there was also a substantial negative result of the strike and negotiations. First of all, many of the musicians were not happy with the contract, as it was already difficult enough to get work on a Broadway show without a reduction of the overall number of position available. As one commentator noted "the settlement essentially means that musicians will be competing for an even smaller pool of orchestra seats and that the opportunities for young professional musicians seeking to pursue their careers will be further diminished."[103] Many of the members of the affiliated unions that supported the musicians, Equity and IATSE, were left questioning whether their participation was

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[102] Pogrebin and Greenhouse, "Broadway's Lights Go Back On As Musicians Reach an Accord."

[103] Peter Daniels and Bill Vann, "Union Bows to Producers' Job-cutting: Broadway Musicians End Strike on 'Minimums'," in *World Socialist Web Site*, March 12, 2003, http://www.wsws.org/articles/2003/mar2003/bway-m13.shtml.

worth it, as they saw the contract as a decisive victory for the producers and an ominous portent of what kinds of demands they would be facing from the producers in future negotiations. The other negative impact of the resolution was the devastating effect the closure of Broadway had on the local economy, which relies on the shows as not only primary sources of revenue, but also as secondary attractors for tourist sites, restaurants, and retail stores. The lack of traffic in and around Times Square for the three days without shows was estimated as having cost New York over $7.2 million.[104]

The tension between the unions and Broadway producers over minimum hiring requirements came to a head again in the fall of 2007, when IATSE went on strike after negotiations broke down with the League of American Theaters and Producers. The dispute arose after the theatre producers and owners called for a major restructuring of the labor agreement, which had come up for renewal in July of 2007. The producers argued that they should be given more flexibility as to when they have to hire IATSE members and how many of those members must be hired at the various different stages of the production process.[105] The main point of contention was over the parameters that determined how many stagehands must be hired per show, how long they needed to be at work, what tasks they could be required to do, and how they should be remunerated for different types of work. Just as in the musician strike, producers argued that the IATSE contract mandated the hiring of an unnecessary number of stagehands. For instance, during a load-in, the union and producer would agree on how many carpenters, electricians, and property men would be necessary and once agreed upon, those people

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[104] "Broadway Strike Over," in *BBC News.com*, March 11, 2003, http://news.bbc.co.uk/2/hi/entertainment/2840229.stm.
[105] Campbell Robertson, "Broadway Negotiations at a Standstill," in *New York Times*, October 10, 2007, http://www.nytimes.com/2007/10/10/nyregion/10bway.html.

would be hired for the entire load-in. The league argued that since there are times when only certain work can be done, say while lights are being focused, then there is no need for the producers to pay carpenters to sit around waiting until they could work again. Furthermore, there remained certain rules that the league felt were an unnecessary financial burden, such as a stipulation that said that if any crewmembers are asked to work overtime during a load-in, then the entire crew must stay and be paid the overtime as well. [106] Another dispute was over how work could be allotted during "continuity calls," the three-to-four-hour calls made on the days of performances. The expiring contract had stated that any additional work asked of the stagehands during these calls, such as mopping the stage floor, would cost the producers extra, even if the stagehand was still able to fulfill his/her other responsibilities in the allotted time. If that work took more than an hour, then the producers were beholden to pay another entire four-hour shift. The producers argued that they were paying the stagehands by the hour and should be able to ask them to fulfill a number of responsibilities while they were on the clock, while the union argued that the stagehands were paid for the tasks of putting on a show and not by the hour. [107]

The major sticking point that could have prevented a resolution from coming before the strike was the question of how the union would be compensated for the loss of jobs and earnings that the producers' proposed changes would cause. While both raises and hiring minimums were discussed from the outset, the two sides found it difficult to agree on what the future should hold for the relationship between the producers and

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[106] Campbell Robertson, "Broadway's Showdown: The Lowdown," in *New York Times*, November 14, 2007, http://www.nytimes.com/2007/11/14/arts/14broadway.html?ref=theater.
[107] Ibid.

stagehands. One of the main challenges in the reconciliation was that although a good deal of manual labor will always be a part of putting up and running a show, increased mechanization is making large numbers of stagehands less necessary, and just as the musicians feared drastic cutbacks, IATSE claimed that their membership would suffer as much as a 38 percent cut in work. League officials countered the union's claims by declaring that the contract was so far out of line with industry practices in the rest of the country that they refused to renew the contract,[108] especially as Broadway has become such a perilous place for investment. With the economic repercussion of the musicians' strike fresh in everybody's mind, the fiscal impact of this strike loomed large with potential losses during a work stoppage estimated by many to be more than the $2 million per day of the musicians' strike.[109] After nineteen days the two sides were finally able to come to an agreement and the strike finally came to a conclusion on the twenty-ninth of November. The new contract that was ratified by IATSE members were promised raises of 4 to 4.5 percent over the five-year duration of the contract as well as separate raises for specific specialized jobs. In return, producers are now allowed to determine how many workers they need for each day of a load-in, as long as they maintain a minimum of seventeen workers for a musical and twelve for a play. Furthermore producers could now

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[108] Ibid.

[109] Campbell Robertson, "On Broadway, Growing Gloom About the Holidays," in *New York Times*, November 20, 2007, http://www.nytimes.com/2007/11/20/theater/20broadway.html?hp, Miriam Kreinin Souccar, "A Broadway Strike Would Cost the City," in *Crain's New York Business.com*, October 21, 2007, http://www.crainsnewyork.com/apps/pbcs.dll/article?AID=/20071021/FREE/71019003, Sewell Chan, "Estimating the Broadway Strike's Economic Cost," in *New York Times*, November 19, 2007, http://cityroom.blogs.nytimes.com/2007/11/19/estimating-the-broadway-strikes-economic-cost/.

hire workers for up to two hours without having to pay for a full four-hour continuity call.[110]

While the specific details of the agreement ended up not being particularly monumental, and to many seemed as if they were not worth the extended strike, there were aspects of this labor dispute that were telling about the uncertain state of unions and employers in the contemporary cultural marketplace. Emmanuel Azenberg, a veteran producer and general manager best known for producing Neil Simon's works on Broadway, pointed out that

> The money lost in these three weeks will not be recovered by the men or the management. . . but the messages that both sides sent to each other are more significant.
>
> For the men, it's that this is our work, we've earned it and we're proprietary about it. And the management message is that what you thought was a disparate group isn't, and that if you push us too hard, we will take a strike.[111]

So, in many regards this strike was less about the particular productive practices and more of a power play by both sides during a time when the strength of labor unions remains uncertain and the cooperation among the various producers and owners is increasing. Whereas the union could at one time have relied on bickering between

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[110] Campbell Robertson, "Stagehands Vote to Ratify New Contract," in *New York Times*, December 10, 2007, http://www.nytimes.com/2007/12/10/theater/10bway.html?_r=1&ref=theater&oref=slogin.

[111] Campbell Robertson, "For Both Sides in Broadway Strike, the Message Was: Take Me Seriously," in *New York Times*, November 30, 2007, http://www.nytimes.com/2007/11/30/theater/30deal.html?fta=y.

theatre owners and producers to break solidarity, the League proved that is no longer true. Conversely, whereas the League once assumed that the theatrical unions would remain divided and not stand as a united front, the musicians, actors, and stagehands showed that they were willing to come to one another's aid. If it does anything, the strike of 2007 revealed that the field has entered a period of uncertainty, during which employers and employees will continue to probe one another for weaknesses and look to strengthen their respective bargaining positions.

While the examples of the challenges facing the musician's union and IATSE show how the dynamic is changing in situations where union contracts are in place, a larger and potentially more disturbing situation can be seen in the way that Blue Man Group has been able to establish an amazingly successful franchise while signing as few union contracts as possible. After opening at the Astor Place Theatre in New York 1991, Blue Man Group has gone on to develop franchises in the United States in Chicago, Boston, Las Vegas, and Orlando, all the time signing only one union contract[112], with IATSE at the Luxor in Las Vegas–a contract which they have been able to get out from under by moving the Las Vegas show to the Venetian.[113] Blue Man Group was able to initially avoid unions in part because Equity determined that since the group came from the performance art tradition and did not use a script that they were not under the union's

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[112] Blue Man Group had to sign labor contracts for their productions in both London and Berlin.

[113] James Adams, "Tangled Up in Blue," in *GlobeandMail.com*, April 16, 2005, http://www.theglobeandmail.com/servlet/Page/document/v5/content/subscribe?user_URL=http://www.theglobeandmail.com%2Fservlet%2Fstory%2FLAC.20050416.BLUEMAN16%2FTPStory%2F%3Fquery%3D%2522blue%2Bman%2Bgroup%2522&ord=7107525&brand=theglobeandmail&force_login=true.

jurisdiction.[114] Blue Man Group thus provides an inauspicious model to labor organizers, who must look on with dismay as freelancers are brought in as cheaper alternatives to union members, who bear with them the additional costs of benefits and the hassle of collective bargaining. Even more troubling for organized labor is that as a company that has gained significant economic success and public exposure–Blue Man Group now employs over five hundred people and has annual operating costs up to $100 million[115]–the organizational model of Blue Man Group may become tempting to other producers who are constantly looking for new ways to avoid the financial perils of the theatrical field. Blue Man Group's evasion of union entanglements has not been without its difficulties, and disputes with labor unions in Toronto and Las Vegas show not only that unions are willing to challenge Blue Man Group's approach to labor, but that when possible Blue Man Group is determined to resist union organization.

In 2005, when Blue Man Group opened a new franchise in Toronto it was greeted by nearly 300 protestors from Canadian Equity, the Toronto Musicians' Union and local IATSE members.[116] The unions were protesting the fact that Blue Man Group had come to Toronto to establish a franchise that they hoped would last the better part of a decade without signing a single union contract. Whereas Blue Man Group had been able to successfully follow this model while opening its other franchises, the tradition of unions in Toronto was significantly more important to the local artists, who felt that the actions of Blue Man Group was a greedy insult to the theatrical community. Unlike the American unions, which are often divided and less interested in supporting one another,

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[114] Taylor, "Maybe You Should Read This, Blue Man Group."
[115] Adams, "Tangled Up in Blue."
[116] Richard Ouzounian, "Canuck Unions Blue Over Group," in *Variety*, June 26, 2005, http://www.variety.com/article/VR1117925034.html.

the unions in Toronto quickly formed a cohesive resistance, organizing members and spreading their message throughout the city. An article in a local newspaper noted that in the United States

> The unions are so fragmented that stage performers alone are represented by three different groups. . . . Meanwhile, there are also an increasing number of non-union touring shows in the United States, usually relying on inexperienced talent. In Canada, the situation is clearer: in almost all instances, you aren't a professional stage show unless your actors belong to Canadian Actors' Equity Association. . . . Exceptions are occasionally made–and no doubt one will be made when Blue Man opens–but that has been the yardstick used for years to determine the difference between the professional and the amateur because it reflects the reality of the theatre scene.[117]

In this light it can be seen that the Canadian theatre community has a much more clear idea of how it wishes to distinguish between professional and amateur and how important that delineation is to the appraisal of the quality of cultural products in general. Similar standards do not apply in the United States, where some Off-Broadway and most Off-Off-Broadway performances exist outside of the scope of the unions, but nevertheless can gain notoriety and public acceptance–work by produced at La MaMa or by companies like the Wooster Group come to mind.

In the end, the most significant occasion of note during the dispute between Blue Man Group and the Canadian unions occurred in January of 2007 when the new

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[117] Taylor, "Maybe You Should Read This, Blue Man Group."

production in Toronto closed after a little over eighteen months of performances,[118] far short of the hoped-for ten years. It is probably impossible to determine whether the constant protesting by the unions –who even had a sign erected across the street from the Panasonic Theatre where Blue Man Group were performing– was the sole reason for the early closing, especially considering that 2006 represented a difficult time for the Canadian economy. But the unions did reach beyond typical picket lines to subvert the success of the show, as actors forced hotels to cancel package deals with the show by threatening to boycott them and educators supported the unions by not bringing groups to the production.[119] It therefore seems plausible that the strength of the union and their ability to organize and get the entire community behind them played a part in limiting the success of a show that had previously been a hit wherever it had gone.

Just as union organizers were celebrating the impending shut down of Blue Man Group's Toronto production, a new labor conflict had taken shape over the Las Vegas production. In October 2005, after accepting an offer from the non-union Venetian casino to relocate from the Luxor into a new performance space built specifically for them, Blue Man Group refused to renew their labor agreements with IATSE Local 720, which were tied to the specific operating parameters of the Luxor's performance

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[118] Mike Mackenzie, "Toronto's Blue Man Group to Close," in *Suite101.com*, October 1, 2006, http://moderntheatre.suite101.com/article.cfm/toronto_s_blue_man_group_to_close.

[119] "Blue Man Boycott Hurting Ticket Sales As Toronto Theatrical Coalition Begins Phone Campaign," in *Blue Man Group Boycott*, 19 May 2005. http://www.bluemanboycott.com/Release%20-%20Blue%20Man%20boycott%20hurting%20ticket%20sales%20-%20May%2018%200..pdf.

spaces.[120] As a result, the more than forty stage technicians for the show were left without health coverage or pension benefits, and were soon seeking alternative forms of union representation. The workers quickly received the support of IATSE Local 720 and appeared to have secured union representation after a secret-ballot election conducted by the National Labor Relations Board (NLRB) in May of 2006 showed that the majority of the workers were in favor of unionization. The initial climate surrounding the process of unionizing the Venetian technicians seemed as if it would not be confrontational. Before the election, original Blue Man Matt Goldman declared through a press release that the company would abide with the results of the election "in accordance with the great democratic traditions of our country,"[121] and apparently told the technicians that he and his partners Chris Wink and Phil Stanton were card carrying union members and would support whatever decision the employees made regarding IATSE Local 720. However, a search of national union membership records of the performing arts unions produced no results for any of the three original Blue Man.[122] This incongruity would be a harbinger of bad things to come for the attempts to unionize the show.

Despite claiming support for the union election and pledging union solidarity, Blue Man Group was in fact never interested in allowing their workers to unionize, and as soon as the election was completed they began looking for ways to avoid collective bargaining and finding reasons to have the election declared invalid. Even after the

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[120] Actors' Equity Association, "AFL-CIO Adds Blue Man Group to Don't Buy List," in *Actors' Equity Association*, 5 December 2006, http://www.actorsequity.org/NewsMedia/news2006/Dec5.BlueMan.asp.
[121] Michael J. Mishak, "Ignoring law, Blue Man Group drags out union fight," in *Las Vegas Sun Politics*, October 9, 2007, http://politics.lasvegassun.com/2007/10/ignoring-law-bl.html.
[122] Actors' Equity Association, "AFL-CIO Adds Blue Man Group to Don't Buy List."

NLRB reaffirmed the validity of the election Blue Man Group refused to come to the bargaining table with IATSE Local 720, despite being required to do so by the National Labor Relations Act. Blue Man Group continued to refused to acknowledge the unionization of its employees despite condemnations from other unions AFL-CIO Secretary-Treasurer Rich Trumka declared that "this production bills itself as 'cutting edge' as an entertainment concept, but it is a throwback to the dark ages in labor relations[123] and further sanctions from the NLRB. Even after the full NLRB ruled in favor of the workers in a hearing in Washington in September of 2006, Blue Man Group refused to relent and instead hired the powerful law firm Akin, Gump, Strauss, Hauer, and Feld LLP to sue to have the ruling overturned, a choice that undoubtedly will result in Blue Man Group paying significant legal fees. This willingness to continue to fight despite repeated legal losses and the economic drain of paying for lawyers, shows that Blue Man Group does not wish to allow the unions to set a precedent in Las Vegas that would change the way they run their business in other locations. While Blue Man Group may be able to differentiate the labor contracts they have in Europe from their labor practices in the United States, as soon as one of their productions comes under the umbrella of union influence it is possible, if not likely, that their other productions, none of which uses union labor, will follow suit. In the long run, Blue Man Group seems to be following the strategy that the longer they are able to delay the actual agreement on a contract, the more likely that the unionization process will lose its momentum. Labor law at this time provides the NLRB with little ability to truly enforce its rulings, and with a

[123] Ibid.

high profile legal firm on its side, Blue Man Group seems committed to defending the model for producing theatre that it has operated under for almost twenty years.[124]

These writers' strike of 2003, stagehands' strike of 2007, and Blue Man Group's recurring problems with theatrical unions, are three prominent examples of how important labor relations are in contemporary theatrical production, but they are far from being the only ones. Furthermore, these are three examples of relations in commercial theatre. There are endless more questions to be asked about the wages and conditions of workers in Off-Broadway, Off-Off-Broadway, regional, and community theatres, which employ the majority of theatre workers across the country. These three labor disputes do however reveal how the micro and macroeconomic repercussions of labor relations impact the political economic conditions of contemporary theatrical production. It is also important to note how in each of these examples changes in the productive practices of theatre, such as the rise of new technologies or increased corporatization in the field, prompted producers to try to change the conditions of their agreements with their employees, thereby testing the unions' ability to protect their members from the negative impact of such changes. On the one hand, producers continued to appeal to free market principles by pleading that they need to be masters of their own destiny in order to turn a profit in a challenging theatrical marketplace. On the other hand, unions continued to look for ways to ensure livable wages and good work conditions for their members. Taking these cases into consideration, it becomes apparent that the study of labor relations, hiring practices, and contract negotiations, is a critical part of the study of

[124] Mishak, "Ignoring law, Blue Man Group drags out union fight."

theatre as both a social practice and as an art form struggling to maintain its cultural prominence and relevance in a postmodern culture and economy.

Funding

While the changing relationship between unions and theatre producers and owners in the contemporary field of theatrical production may have their specific implications, they can be correlated to larger trends in the relationship between employers and labor across all fields of production. But one realm where theatre faces challenges very specific to the production of culture is in the manner in which funding for production is obtained. As a part of our cultural heritage, most people would agree that theatre remains an important part of American culture that should be maintained because of its inherent value to society. After all, theatre provides a strong connection to important cultural touchstones such as the Greeks and Shakespeare, which have for a long time been a significant part of the literary canon. The challenge in the United States has always been the ability of the supporters of theatre as a high art to reconcile the desire to maintain a certain cultural standard with the free market impulses of American capitalism.[125] Whereas some people have pointed to arts funding programs in Europe that provide significant support to cultural producers as an example of how a government can ensure the health of art forms that are deemed essential,[126] those in favor of a free market approach to culture have often argued that the survival of the arts should not receive

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[125] David Savran, "Middlebrow Anxiety," in *A Queer Sort of Materialism: Recontextualizing American Theater* (Ann Arbor: University of Michigan Press, 2003), 24-5.

[126] Danielle Fox, "Art," in *Culture Works: The Political Economy of Culture*, ed. Richard Maxwell (Minneapolis, MN: University of Minnesota Press, 2001), 49-50.

subsidy should be decided by their ability to survive on their own merits in the cultural marketplace.[127]

Before the twentieth century, the arts received little support from the government, and it was the marketplace that determined the cultural winners and losers, as well as what types of culture would be consumed and where. But as the marketplace for culture changed after the turn of the twentieth century, new media began to compete with the old, and the patterns of cultural production and consumption shifted. With this shift came changes in the manner in which the production of culture was funded as well, as the market bifurcated along the lines of private and public support. Graham Murdock has pointed out that

> in most democracies for most of the twentieth century, the field of cultural production was split between a private sector funded out of customer payments and/or advertising revenues and a public sector supported out of local and national taxation. . . . The primary purpose of commercial cultural enterprise was to retain, reproduce, and increase market share and to maximize profits. The principal aim of the subsidized sector was to address "market failures" by producing and distributing forms of cultural expression that were unlikely to survive in the marketplace but which were judged to be essential to the maintenance of a diverse communal culture and the exercise of rational citizenship.[128]

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[127] Tyler Cowen, *In Praise of Commercial Culture* (Cambridge, Mass.: Harvard University Press, 1998).
[128] Graham Murdock, "Back to Work," in *Cultural Work: Understanding the Cultural Industries*, ed. Andrew Beck (Routledge: New York, 2003), 26-7.

While the public sectors of cultural production that were supported by taxation have almost always received more support in European nations (such as England where Murdock is from), the United States government nevertheless has provided financial support to those sectors of the American cultural scene that suffer from market failures but are deemed as vital to cultural heritage.[129] A good example of the kinds of social, political, and economic conditions that have motivated this type of subsidy came during the Cold War. When the global political climate changed after World War II, the United States government recognized the importance of art to global prestige and the spread of American values, and in parallel to the buildup of weapons in the United States and the Soviet Union a cultural arms race led to increased funding of the arts. Danielle Fox has written that

> By the 1960s it became evident that neither the relatively small group of superwealthy private patrons of the arts nor the broader public who enjoyed access to museums and performing arts were willing to bear the enormous costs of supporting the large-scale cultural institutions and individual careers necessary for a flourishing contemporary art world. For roughly a quarter-century, from the mid 1960s to the early 1990s, U. S. government agencies and corporations filled this gap in the art-world economy, providing subsidies for individual artists and organizations interested in both traditional and avant-garde formats. This support, which

[129] TCG's web site cites a recent poll that showed that 79 percent of Americans supported government funding for the arts. The same poll found that 61 percent of Americans would pay an additional five dollars in taxes for increased funding for the arts. Theatre Communications Group, "Importance of Federal Funding for the Arts," in *Theatre Communications Group*, http://www.tcg.org/advocacy/importance.cfm.

> took the form of grants to museums and theaters for operations, performances, exhibitions, and acquisitions as well as grants to individual artists in the form of commissions and awards, enriched a cultural scene that was recognized throughout the Western world as an exemplar of vitality, creativity, innovation, individualism, and free expression.[130]

Fox has pointed out that the impulse to become this cultural exemplar was due in no small part to the fact that the Soviet Union had quickly become renowned for producing outstanding works in theatre, painting, music, and dance. There was a desire to show that not only could the United States match the Soviets in military might, but that a free democratic society could produce superior culture.

One of the most visible engines of this era of promotion and subsidization of the arts was the National Endowment for the Arts. Started in 1966 with a meager budget of almost $3 million, the NEA grew rapidly during its first decade of existence so that by 1979 it was providing over $143 million a year to artists across the country. The NEA continued to provide anywhere between $145 and $175 million over the next decade and a half, acting as a sustainer for established companies and as a catalyst for up and coming artists.[131] The problem with these subsidies was that, as the Cold War ended and the Soviet Union collapsed, so did the urge to provide financial support to the arts. As political and economic leaders with conservative values took hold of important positions, the flow of funds quickly dried up.[132] 1996 saw a drastic drop of almost 40 percent as funding was reduced to $99 million and continued to be cut until it reached a mere $97

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[130] Fox, "Art," 23.
[131] National Endowment for the Arts Office of Communications, *Annual Report of the National Endowment for the Arts for Fiscal Year 2005* September 2006), 139.
[132] Fox, "Art," 50.

million in 2000, the organization's lowest output since 1976.[133] This hit to government subsidies has been particularly difficult for theatres to endure. Whereas the NEA gave theatres and theatre-related programs $6.2 million in grants in 1976, about $22 million in today's dollars, the fiscal year 2006 saw many more recipients divide a meager $8.7 million in grants falling under the same category.[134] Cuts such as these affected theatrical producers across the country, as the NEA was not the only source of government funds to greatly reduce its support during this time period. For instance, in 1976 the New York State Council on the Arts (NYSCA) awarded a grant to the then six-year old Manhattan Theatre Club of $45,000, or $160,000 in today's dollars, at a time when MTC's budget was $220,000. However, by 2005, when MTC's annual budget had climbed to $20 million, the theatre received a grant of only $97,200. In a similar example Playwrights Horizons received a state council grant of $79,000 in 1976; and in 2005 received only $60,200.[135]

Looking at the NYSCA grants given to New York City theatre companies in 2007 reveals another issue with government funding for theatre. Not only have grants in general gone down, but the distribution of grants also tends to favor larger companies that often are in less need of government subsidy to stimulate growth. NYSCA gives out a significant amount of money to theatres in New York City, and in 2007 it gave out 205 grants for a total of $2.7 million, averaging approximately $13,000 a grant. But a closer

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[133] Communications, *Annual Report of the National Endowment for the Arts for Fiscal Year 2005*, 139.
[134] Campbell Robertson, "Nonprofit Show, But Money's Riding On It," in *New York Times*, March 18, 2007, http://www.nytimes.com/2007/03/18/theater/18robertson.html?ex=1331870400&en=c88fe77ada3b4d9a&ei=5088&partner=rssnyt&emc=rss.
[135] Ibid.

look at the grant allocation reveals that over $1 million of those funds were allocated in twenty grants that went to only 16 theatres and organizations[136], at a rate of over $66,000 per grant. That means that the remaining $1.7 million was split between 185 grants, at an average of just under $9,000 per grant.[137] Furthermore, of those sixteen larger theatres and organizations, nine of them also received one of the twenty-five NEA grants given to New York City theatres (the nine grants totaled an additional $315,000) including five of the seven largest grants given by the NEA to area theatres that year.[138] Considering that most of the theatres that received these larger grants have been around for decades it is not surprising that they are able to argue for and receive the largest grants. They all have a history of success in the field, as well as the development staff that can dedicate their efforts to writing grant proposals that are likely to be accepted. But the flip side to this is that those companies are also the ones that are less likely to rely heavily on government funding to prosper, not to mention survive. Smaller companies, which usually don't have either the stability of their own space or a dedicated audience, need these types of grants to justify larger production budgets and to ameliorate the periods of financial trouble that many smaller theatres often suffer. Add to this the fact that the Manhattan Theatre Club

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[136] The sixteen institutions, which were the only ones to receive over $35,000 in grant money, were: The Alliance of Resident Theates $124,000; Fiji Theatre Company $43,450; International Arts Relations $44,500; La Mama Experimental Theatre Club $71,000; Manhattan Theatre Club Inc $86,625; New Federal Theatre Inc $71,095; New York Shakespeare Festival $89,250; New York Theatre Workshop, Inc $36,750; Playwrights Horizons Inc $55,335; Roundabout Theatre Co Inc 84,840; Second Stage Theatre Inc $38,430; Spanish Theatre Repertory Co $50,400; Theatre Development Fund Inc. $95,215; Vineyard Theatre & Workshop Center $42,420; Vivian Beaumont Theatre Inc $86,625; Wooster Group Inc. $36,750.

[137] NYSCA, "NYSCA Grant Search," in *NYSCA: New York State Council on the Arts*, http://www.nysca.org/grant_app/org_search.cfm.

[138] National Endowment for the Arts, "2007 Grant Awards: Access to Artistic Excellence - Theatre," http://www.nea.gov/grants/recent/07grants/07AAE.php?CAT=Access&DIS=Theater.

received $45,000 in 1976, and now younger companies do not receive NYSCA grants anywhere near that size, one can see how the climate of government subsidies for the arts has fundamentally changed.

So, despite a recent rebound in some areas of arts funding (the NEA's annual output grew back to $120 million in 2005),[139] the environment remains difficult for cultural producers that rely on subsidies to survive. At the same time, foundations and corporations, which had helped augment government appropriations and provide an alternative source of funding, have also tightened their purse strings. Perhaps the most troubling aspect of this change in funding practices is that while the once dependable stream of government funds has dwindled considerably, production costs have skyrocketed, leaving theatres scrambling for financial resources and looking for new ways to streamline their production models in order to survive.

Even with the slow increase of funds back to their highs in the 1970s, theatrical producers are finding that government, corporate, or foundation support is now more likely to come with strings attached. One such condition is that the type of content being funded has become more and more important to the providers of funds. As can be seen by the treatment of experimental artists such as Ron Athey and the famous NEA Four (Holly Hughes, Karen Finley, Tim Miller, and John Fleck)[140] in the 90s, government

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[139] Don Ball, Paulette Beete, and Elizabeth Stark, *Annual Report of the National Endowment for the Arts for Fiscal Year 2005* (Washington, D.C.: National Endowment for the Arts Office of Communications 2006), 139.

[140] The so-called NEA Four are infamous for having their NEA grants revoked on the grounds that their work was obscene. The group subsequently sued the NEA for discrimination and for violating their First Amendment rights. The case made it all the way to U.S. Supreme Court where the court ruled that the First Amendment did not oblige the government to fund all art and that the NEA had the power to allocate grant money based on what the judges deem as appropriate and beneficial to society. Although

subsidies that were supposedly content-blind have been revoked and the Supreme Court has even ruled that the government can set parameters for decency and social value when distributing funding to artists.[141] While these implicit limitations are most notable in the case of highly publicized experimental productions, it is a problem that had always been lurking in the structure of the regional theatres, but has become more apparent as economic conditions have become more difficult for artists and producers. In a 1993 essay that predates the most drastic cuts in federal funding, Richard Schechner noted that

> regional theatre as imagined 30 years ago by the Ford Foundation's W. McNeil Lowry was never intended to be for the artists. By emphasizing subscription audiences (instead of permanent public subsidy), the Ford Foundation guaranteed that the regionals would be creatures of the middle class. Public support, when it came via the NEA and foundations following Ford's lead, was based more on "responsible" fiscal management than on innovation or any challenge to middle-class tastes. Increasingly, artists with a bent toward experimentation were either alienated within the regionals or shut out altogether. The proportion of

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Hughes and Miller later received NEA grants Finley and Fleck never again applied. The artistic community was frustrated by the court's decision and the ruling represented one of the most visible examples of the clash between avant garde experimentation and performance art aesthetics running up against an increasingly conservative Congress. *National Endowment for the Arts et. al. v. Finley et. al.* , 524 U.S. 569 (1998). Jennifer Dunning, "No Shock Here: Performance Artists Speak Out," in *New York Times*, August 31, 1997, http://query.nytimes.com/gst/fullpage.html?res=9B01EEDA1631F932A0575BC0A961958260&sec=&spon=&pagewanted=print. Mel Gussow, "Critic's Notebook: Artists See No Decency in Ruling on Grants," in *New York Times*, July 2, 1998, http://query.nytimes.com/gst/fullpage.html?res=9D04E3DD1E3FF931A35754C0A96E958260&sec=&spon=&pagewanted=print.

[141] *National Endowment for the Arts et. al. v. Finley et. al.* .

> foundation or public money that went to the avantgarde anywhere . . . was very small.[142]

Schechner's premonitions seem to have become an unfortunate reality, because as the temporary subsidies evaporated, regional theatres were left to squeeze as much revenue out of their subscription audiences as they could in order to survive. The regional scene has as a result become a predictable landscape that caters to a relatively conservative audience who prefer a literary theatre short on innovation and spectacle and big on recognizable authors and classic plays. This means that theatrical seasons have come to be filled with more proven money-makers, such as Shakespeare, Arthur Miller, and an occasional Greek or Molière, and artistic directors are afforded less flexibility to pursue challenging productions that are not guaranteed to be economic successes.

As government support has become increasingly unreliable, it has become more obvious that the theatre scene in the United States will never receive the same level of subsidy as it does in countries such as those in Western Europe where theatre remains recognized by governments as an important cultural foundation. In the United Kingdom, funding for culture is approximately nineteen times per capita that of the United states, and whereas France remains dedicated to reserving 1 percent of all government expenditures for cultural endeavors, the United States contributes less than .01 percent of its government budget to the arts.[143] Theatres have therefore had to look for alternative forms of funding in order to supplement the difference between their operating budgets and the amount of income they can generate from ticket sales.

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[142] Richard Schecner, "Do You Care If the Not-for-Profit Regional Theatre Goes Under?," in *TDR* 37, no. 3 (Autumn, 1993): 8.
[143] Fox, "Art," 49.

One way that theatres have looked to generate more income has been to increase their involvement in so-called enhancement deals. Enhancement deals work in two ways. The first way is that a non-profit theatre will work as a developmental platform, where commercial producers can try out ideas for shows that may later turn into national tours or a full-scale Broadway production. Elizabeth Wollman notes that in this way the non-profit realm is able to acquire "a greater share of the financial rewards traditionally found in its commercial counterpart. Hence, more and more nonprofit groups have begun to serve as hosts to what are essentially workshop versions of productions being tailored for the commercial realm."[144] Schechner has noted that this type of arrangement is another development of the structure that was imagined for regional theatres. According to Schechner, this system develops a symbiosis that "joins the regionals to Broadway. Instead of the New Haven tryout, Broadway run, and touring company, plays are developed in a few premiere regionals, imported to Broadway, and then produced around the country by a second tier of theatres."[145] The second way an enhancement deal can develop is that as a non-profit goes ahead with a project they see as artistically promising but a challenge for their budget, the non-profit producer will exchange any possible commercial options to a for-profit producer for the financial assistance necessary to make the show work. In this case, the commercial producer will provide hundreds of thousands or even millions of dollars to up the level of production of a potentially successful musical or play and see how the show might look on a bigger scale. As Campbell Robertson reported in *The New York Times*

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[144] Elizabeth Wollman, L, "The Economic Development of the 'New' Times Square and Its Impact on the Broadway Musical," in *American Music* 20, no. 4 (Winter, 2002): 461.
[145] Schecner, "Do You Care If the Not-for-Profit Regional Theatre Goes Under?," 9.

> for most participants the deal is a no-brainer. In exchange for the money (which can be tax deductible) the commercial producer gets a research and development lab for the show and the rights to transfer it elsewhere. The theater gets a bigger show and a better chance that it will transfer to a commercial run — and, if everyone is lucky and the show hits, a steady flow of royalties.[146]

In this way enhancement deals allow a low cost development opportunity for commercial producers, while making the non-profit flush with resources that can be then put towards the development of riskier more experimental works that otherwise might not have seen the light of day.

Considering the current fiscal challenges theatres are facing, enhancement deals have become more common. Some of the most prominent regional theatres in the country have made recently made sizable enhancement deals including the La Jolla Playhouse, the Pasadena Playhouse, the Goodman in Chicago and the Center Theater Group in Los Angeles, which received $3 million for developing *The Drowsy Chaperone*.[147] In the process, theatres have become less abashed about publicizing their involvement in enhancement deals and some producers are even willing to take on a play they might otherwise have avoided if it came with the guarantee of enhancement money. Douglas Aibel, the artistic director of the Vineyard Theater, has said that while he was a purist about enhancement deals when he started working in nonprofit theatre more than 25 years ago, the changes in economic conditions have made him change his mind. Because of successful enhancement deals, such as the Vineyard's affiliation with *Avenue*

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[146] Robertson, "Nonprofit Show, But Money's Riding On It."
[147] Ibid.

Q, the company, which had a budget of around $2 million was able to bring in $1 million from enhancement deals and co-productions, not to mention hefty royalties when *Avenue Q* moved to Broadway. Aibel points out that his job is to ensure that Vineyard's shows reach the largest audience possible and stated "I've really grown to see it as a positive thing if the partnership is right."[148] Paula Vogel concurs with Aibel, noting that the financial landscape is really what is making these deals necessary, and as long the process remains under the control of artistic directors then the presence of commercial support is unlikely to do much harm.[149] Nevertheless, a minority of producers, such as James C. Nicola, the artistic director of the New York Theater Workshop, remain unconvinced that the tarnish of commercial involvement can really be avoided and that despite the opportunity it provides, its benefit rarely outweighs the negative impact it has on a production. Even after overseeing the co-production of *Rent*, which provided the New York Theater Workshop with millions of dollars of revenue and prolonged financial stability, Nicola still believes that the commercial aspect of an enhancement deal irrevocably pollutes the atmosphere of the creative process.[150]

Whether the producers conceptually approve or disapprove of enhancement deals, recent numbers collected by TCG reveal that enhancement deals will continue to be an important part of the economic reality of theatrical funding. Production income for non-profit regionals, which includes co-production with other non-profits and enhancement income received from commercial producers, while fluctuating greatly from year to year appears to be an increasingly important method for some non-profit theatres of obtaining

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[148] Ibid.
[149] Ibid.
[150] Ibid.

funding beyond box office receipts, no matter what the size of the theatre.[151] In the past five years, of the 105 theatres that completed the TCG survey between 20 and 27 (or roughly 20 percent) were participating in co-production for an average of $126, 664 per theatre per year over the five-year period. [152] Added to this, roughly 10 percent of theatres reported enhancement income over the same period at the following rates: ten theatres averaged $194,000 in 2002, twelve theatres averaged $527,000 in 2003, nine theatres averaged $252,000 in 2004, 13 theatres averaged $679,000 in 2005, and 10 theatres averaged $295,000 in 2006.[153] As these numbers show, theatres are looking towards these deals as a significant source of supplemental income during a time when each and every source or revenue is precious and it is becoming more and more difficult to get audiences into the theatre. Even though it may be a difficult decision for an artistic director to have to work alongside another non-profit or make a deal with a commercial producer who has a different set of economic motivations and priorities, the success of productions such as *Rent*, *Avenue Q*, and *The Drowsy Chaperone* will remain an enticing proposition for a theatre struggling to balance its books.

While enhancement deals and co-production income helps to balance the books, the difficult economic situation that many theatres face with increased costs and decreased government subsidy is exacerbated by theatrical producers' growing reliance

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[151] Zannie Giraud Voss et al., *Theatre Facts 2006: A Report on Practices and Performance in the American Not-for-Profit Theatre Based on the Annual TCG Fiscal Survey* (New York: Theatre Communications Group, 2007), http://www.tcg.org/tools/facts/, 6.

[152] Ibid.

[153] The authors of the TCG report on these statistics are careful to note that a single theatre earned more than $3.3 million in 2005 (33 percent of all funds that year) and $2.95 million in 2006 (49% percent of all funds that year) which skews these numbers. Ibid.

on corporations as a funding source. Like it or not, theatres have for the most part come to accept that a certain portion of their annual operating budget will have to be funded from corporate sources, and they are resigned to the fact that they will have to deal with the economic and artistic questions and concerns that cultural institutions must address when accepting corporate philanthropy. Gordon Cox reported in *Variety* that "corporate support generally accounts for a smaller chunk of a theater's funding than coin from individual donors. For Trinity Repertory in Providence, R.I., . . . corporate money makes up 17% of donations received, versus the 40% provided by individual donors. Still, every penny counts, especially with government funding rapidly dwindling."[154] While the last few years have shown that donations from individuals will remain a relatively reliable and constant source of income, the early 21st century has proven to be a less than ideal time to be reliant upon corporate sources for even a small portion of a theatrical operating budgets. Whereas corporations once sought to raise their public profile by augmenting and complementing government subsidies to the arts, recently the purse strings have tightened and other causes, such as 9/11 and Hurricane Katrina, have garnered more public attention, causing corporations to cut back on their philanthropy to the arts. [155] Furthermore, these companies are more wary of whom they are going to sponsor and are more concerned with the particular manner in which their donated funds are going to be deployed. Corporations now unabashedly connect their public agendas with their philanthropy and are much more likely to support conservative mainstream projects with broad popular appeal. In his article, Cox quoted Heather Kitchen, executive director of

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[154] Gordon Cox, "Theaters Embracing Brand Stand," in *Variety*, January 23, 2007, http://www.variety.com/article/VR1117957791.html?categoryid=18&cs=1&query=theater.

[155] Ibid.

San Francisco's American Conservatory Theater, “the days of just getting a donation with no quid pro quo are waning."[156] As a result, the struggling theatre that is looking for corporate donations to stay in the black is more likely to compromise their artistic selection, ultimately giving the corporation an implicit role in the direction of the producing institution.

One significant way in which corporations have been able to tie their donations to theatres more directly, and thereby giving them higher visibility, is through sponsorship. The most notable example of this is the Roundabout Theatre naming its 42nd Street Broadway house the American Airlines Theater in exchange for a significant contribution.[157] Sponsorship is in fact one of the most significant areas of growth in corporate support for the arts and according to sponsorship analyst group IEG it was expected to increase for the fifth year in a row in 2007.[158] The one benefit derived from the new approach taken by corporations in determining their involvement in theatrical production is that the increased visibility often results in larger donations, and although the number of donors is decreasing the size of individual gifts is increasing.[159]

One of the most unusual examples of a corporation using theatrical production as a chance to raise its visibility is the recent Broadway production of *Hot Feet*. Although this Broadway show was a commercial production and thus was influenced by a different set of parameters than the budgetary constraints of non-profit regional theatre, the actions of the Transamerica Company in providing seed money for *Hot Feet* nevertheless are a

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[156] Ibid.
[157] Campbell Robertson, "As *Hot Feet* Ends Run on Broadway, Transamerica Is Content," in *New York Times*, July 19, 2006, http://www.nytimes.com/2006/07/19/theater/19tran.html.
[158] Ibid.
[159] Ibid.

telling example of corporate motivations in the field of theatrical production. *Hot Feet* closed in 2006 after 109 performances, and like most shows that open on Broadway it lost money. However, Transamerica, an insurance company that put up and lost about half of the show's $8 million cost, still considered *Hot Feet* a good investment. Despite this loss, Lon Olejniczak, the chief distribution officer for Transamerica Capital Inc. and the company's force behind the musical, said "obviously, you always hope that the actual business side of the production could have done better, but stepping back, we accomplished a lot of things that we set out to do."[160] The reason that Transamerica can shrug off a $4 million loss at the box office is that the company never saw the sponsorship of a Broadway play as a revenue-earning opportunity. Rather, they saw it more as a form of advertising, a branding opportunity that from an accounting perspective came out of the company's marketing budget and could be written off as an expense, just as they would write off the costs of producing a television commercial or a radio spot. For Transamerica, the payoff was in the exposure that the company would gain from the passerby's who would see the company's name in lights on 42nd Street or the thousands of people who would read it in their Playbills every week.[161] In this way the public exposure that theatre can bring is a lure to the corporations who are always seeking more visibility for their brands and is an asset for theatrical producers who are looking to supplement their earned income in a period during which costs are increasing, cultural competition is stiff, and alternative funding sources are drying up.

The critical importance of funding that supplements box office receipts, whether it is via government subsidy or corporate donation, and its resulting repercussions has been

[160] Ibid.
[161] Ibid.

highlighted by recent surveys of the field of non-profit theatres taken by the Theater Communications Group. In these surveys, theatres polled by TCG in 2005 reported that 51 percent of their income came from earned sources while 49 percent was from contributions a development in revenue flow that TCG executive director Ben Cameron called "potentially frightening."[162] The disturbing aspect of these statistics was that just five years previous, the ratio of earned income to contributions was 59 to 41 percent. That means that in just five years theatres have seen an annual drop in earned income of almost 2 percent a year, which prompted Cameron to warn that the "field is increasingly reliant on contributed income and we are witnessing a steady erosion in earned revenues." [163] What makes this even more alarming is that while attendance and box office income on Broadway are reaching record highs, audiences in the non-profit sector have been steadily decreasing. Despite a slight 1.5 percent increase in attendance in 2006, TCG reported that over the five-year period of 2001 to 2006 attendance declined by 8 percent even though the number of performances over that same period increased by nearly 2 percent.[164] These troubling numbers are further exacerbated by the fact that while special events like children's series, staged readings, and workshops have seen an increase attendance, attendance at main series events remains down over the five-year period. These trends create fiscal difficulty because it reveals that people are staying away from the full-price main events, and are more likely to come to discounted performances that generate less revenue. The disturbing end result of these trends in attendance coupled with the evaporation of unconditional government and corporate

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[162] Wren, "At the Intersection of Optimism and Uncertainty."
[163] Ibid.
[164] Voss et al., *Theatre Facts 2006: A Report on Practices and Performance in the American Not-for-Profit Theatre Based on the Annual TCG Fiscal Survey* 14.

subsidy is that theatres are left flailing for funds on a day-to-day basis. TCG has reported that working capital ratio, which the survey describes as "the proportion of unrestricted resources available to meet operating expenses"[165] and which is a determiner of the fiscal health of an organization, has steadily been on the decline since 2002. This means that more often than not theatres are struggling to meet their day-to-day financial obligations and that they have little flexibility to respond to unforeseen economic crises. Essentially, a negative working capital signals a cash flow crisis, and being that the field as a whole has had ratios of -12 percent, -9 percent, -9 percent, and -11 percent in the last four fiscal years, the authors of the annual report on the TCG survey believe that the field's continued low working capital ratio is a cause for real concern.[166]

A lack of working capital makes it difficult for a theatre to feel confident in its daily operations and this level of concern in a non-profit can distract from important initiatives, such as fundraising for long term projects and the allotment of funds for the improvement of facilities and performance spaces, that ensure the theatre's future health. It is no surprise then that as they struggle to muster the funds to pay the salaries of the staff, cast, and crew from week to week that they are looking away from the older model of large government subsidy or corporate donations, and looking to employ a business model that is more flexible and takes advantage of as many revenue streams as possible. Whether that means the directors of theatre must make artistic compromises or not will depend on the situation of the theatre and the proclivities of a theatre's artistic leadership. Either way, the nature of funds coming into theatres to supplement subscription and box office sales will inevitably trickle down to the performance on stage and play an

[165] Ibid., 13.
[166] Ibid.

important role in what shape the theatrical field as a whole takes in the twenty-first century. For this reason, understanding how the funding characteristics of the American cultural marketplace impact the artistic decisions made by theatrical producers, whether they are experimental performers, regional theatres of Broadway promoters, is critical to a complete understanding of the field and the pressures faced by the individuals and companies that operate within it. Any analysis or study of the aesthetics must recognize that the artistic decisions of creators are never created within a financial vacuum, especially in the current climate where philanthropy and subsidy are becoming more contingent on the particular agendas of corporations, politicians, and lawmakers.

Marketing and Advertising

While labor is one of the most historically prominent aspects of any political economic study and funding of the arts has always been one of the areas with the most concrete statistics by which to measure changes in the relationship between society, economics, and culture, the specific role that marketing to audiences has in shaping cultural production has always been more difficult to discern. Because it is impossible to measure just how effective marketing strategies are in attracting audiences to any cultural product (whether it is a stage production, a film, a book, or a web site), producers are often left unsure as to how much of their already limited time and resources they should spend on publicity. As Cheshire Isaacs, Managing Director of the Impact Theatre in Berkeley posted on the company's blog, "marketing is a giant mystery. If there were one magical way to attract people to a particular good or service, everyone would be doing it.

Since there isn't, everyone has their own hunches about what works and doesn't work."[167] In fact, when compared to other forms of entertainment, theatre producers in general have always been a little behind the times when it comes to the best ways to market their product. Some of this lag has to do with limited resources, as most non-profit theatres struggle to find room in the budget for the cost of marketing. This condition is especially true in the contemporary cultural marketplace in which supplementary income is short and the artistic side of the work is already underfunded. Such a shortage of resources accentuates the already uncertain value of marketing. If a company has to cut back on a production's design because they don't have enough money, do they really want to spend a lot of money on print and web ads, posters, postcards, and radio spots? As Isaacs succinctly put it "the cost of the poster represents about 40 audience members. Are more than 40 people coming to the show strictly because they saw the poster?" [168] To further complicate matters, the theatre has always been and continues to be one a form of entertainment idealized by many of its producers. Just as the lure of working on a show causes grief for labor unions in developing the solidarity necessary for successful collective bargaining, the mystique of putting on a show sometimes obscures the practical aspects of producing culture and the need to market and cultivate audiences. When considering his own feelings about marketing, Isaacs displayed the quixotic vision that many theatrical producers share, revealing "that deep down, we also feel that we shouldn't have to resort to marketing; we think that simply making great theatre ought to

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[167] Cheshire Isaacs, "Theatre Marketing: What Are We Not Doing?," in *Impact Theatre.com*, December 6, 2006, http://www.impacttheatre.com/splatter/2006/12/theatre_marketing_what_are_we.php.
[168] Ibid.

be enough to generate great audiences."[169] This impracticable sentiment is not only held by non-profit theatrical producers, but extends to the commercial sector as well. Longtime Broadway producer Emanuel Azenberg, when commenting on new marketing techniques that employ focus groups of Broadway theatergoers, has said "I don't think it's hugely interesting, and I don't think everything can be translated into marketing. . . . It's not selling Chevrolets."[170] Nevertheless, in an increasingly competitive cultural marketplace, the importance of marketing and advertising becomes paramount for theatrical producers who have to work harder and spend more marketing dollars to keep people coming to the theatres instead of going to the movies, staying home and watching television, or spending time on the Internet.

The challenge of marketing theatre is related to the management of a number of important variables that will ultimately determine the economic viability and success of a production. First of all, the theatre company knows that it must earn at least enough income to offset the cost of production, which is different for every show. This income is mostly generated by box office sales, which means that ticket prices, the second variable, must be set in a way that ensures that costs can be recouped as quickly as possible, while not driving away audiences with high prices. The third variable that must be determined is how long a production can and should run until it no longer draws sufficient audiences at every performance to at least break even. The marketing and advertising challenge in this production equation is that just as there are ways to control the first variable costs of production, there are ways to promote a show that will maximize the revenue gained

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[169] Ibid.
[170] Campbell Robertson, "Nielsen Brings a New Marketing Strategy to Broadway," in *New York Times*, August 1, 2006, http://www.nytimes.com/2006/08/01/arts/01niel.html?pagewanted=1&_r=1&ref=arts.

from ticket sales, and there are ways to maintain interest in a show so that audience numbers do no drop below the required economic threshold. So, it is not surprising to find out that as the challenge of financing theatrical production become more difficult, theatrical producers are looking for new ways to market not only individual shows, but theatre in general, to draw in more audiences and improve their economic health. As a result, producers of theatre have gone about the task of discerning the value of marketing and then applying it to their operations in a number of ways: they have adopted aggressive discounting policies to draw new audiences and stimulate interest in theatre; they have formed regional and national coalitions that help them consolidate and organize marketing initiatives; they have adopted data-mining strategies usually reserved for television and film production in an attempt to expand their visibility; and they have begun digital marketing initiatives that take advantage of the advertising and outreach possibilities provided by the Internet and the World Wide Web. In pursuing these new methods, theatrical producers have to ask themselves a number of questions: what is the makeup of their current audience? how can they reach out to audiences that feel alienated by the "high culture" moniker of theatre? how can they reach beyond local audiences to find a broader appeal for their product? and even, how can they use their established audience to develop financially beneficial partnerships with corporations? The ultimate goal is to grow audiences and increase revenue without influencing the artistic integrity of the productions. How easily that goal is achieved and what sacrifices must be remains to be seen as theatrical producers continues to jockey for position in the American cultural marketplace.

At the most basic level, ticket-pricing is the major determiner of whether people will come to see a show or not. In that sense, discounting tickets acts as a form of marketing, because a lowered price is meant to reach a potential customer that otherwise would have not purchased a ticket. Establishing the right prices for tickets at different levels is therefore an important part of any theatre's marketing strategy as producers look to draw in as many customers as possible while maximizing revenue potential. Hal Varian, a professor of business, economics, and information management at the University of California, Berkeley has written that because of the ephemeral nature of the medium "The value of a seat in a theater, like a seat on an airplane, is highly perishable. Once the show starts or the plane takes off, a seat is worth next to nothing."[171] This condition emphasizes the location-specific and time sensitive nature of tickets, and discounting must therefore be managed in a way that ensures that as many seats as possible are sold and that the lost revenue that every empty seat represents is minimized. The challenge in discounting thus becomes finding the revenue-maximizing sweet spot where the optimal proportion of discount to attendance gained is established. Producers don't want to set the discount too high so that they are still losing money even though they are drawing larger audiences. On the other hand they don't want to set the discount so low that they don't expand they audience sufficiently to see a noticeable increase in income. For instance, Varian cited a study done on a 1996 production of August Wilson's *Seven Guitars* by Stanford economist Philip Leslie. In this study, Leslie reported that while the 50 percent discount at Theater Development Fund's Times Square

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[171] Hal R. Varian, "The Dynamics of Pricing Tickets for Broadway Shows," in *New York Times*, January 13, 2005, http://www.nytimes.com/2005/01/13/business/13scene.html?n=Top/Reference/Times%20Topics/Organizations/T/Theater%20Development%20Fund.

TKTS booth is effective at bring more people into the theatres, a 30 percent discount would maximize revenue, by increasing revenue at a rate that would exceed the revenue lost by reduced audiences. Varian does point out however that there is a very good likelihood that the uniformity of the discounts at the TKTS booth, while not necessarily at the exact price point that all producers would prefer, probably has some level of universal benefit to all Broadway shows by stimulating general attendance and centralizing the availability of a certain kind of discount.[172]

Discounting practices also impact what kind of audience come to the theatre. Recently, there has been a sharp rise in the cost of an average Broadway ticket, a trend that is beginning to have an impact on the type of people who can afford to go to a show. During the 2006-7 Broadway season, the average ticket price was $76.27, an increase from the 2005-6 average of $71.78, and a twenty-dollar increase from the 2000-1 average of $56, the last season before Broadway ticket prices began to surpass $100. In November 2001 that year, *The Producers*, riding a tremendous wave of success at the box office, began charging $480 for premium tickets. Soon other shows followed suit, with shows such as *Jersey Boys* ($351.50), the revival of *A Chorus Line* ($301.25), and *Frost/Nixon* ($201.25) setting aside seats at premium prices.[173] This trend of premium tickets has now become such a standard practice that the producers of *The New Mel Brooks Musical Young Frankenstein* announced the availability of premium tickets

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[172] Ibid.

[173] Philip Boroff, "*Mary Poppins* Leads Broadway to Season Sales Record," in *Bloomberg.com*, May 30, 2007, http://www.bloomberg.com/apps/news?pid=20601088&sid=aqgNcnLVMAi4&refer=muse.

costing $450, $320 above the nonpremium price of $120, before the show had even gone into previews or been reviewed.[174] Charles Isherwood has written that

> full-price orchestra tickets for a standard Broadway show now cost at least a C-note, and Off Broadway ticket prices can reach as high as $70. That's a big investment compared with the obvious alternative: a movie. Two can go to a movie and have a creditable dinner at one of the lower-end Mario Batali restaurants for a hundred bucks (sans booze, but still).[175]

Considering this current state of escalating ticket prices, a Broadway show now seems to be more of a luxury for the wealthiest class or an extravagance that tourists may afford themselves than something that your everyday cultural consumer keeps on their entertainment radar. Discounting therefore becomes a very important mechanism for maximizing not only the revenue of a production but also the heterogeneity of the audiences it attracts. For instance, Varian noted that between 1998 and 2005 the top ticket price on Broadway had risen 31 percent. However, due to discounting practices, such as the TKTS booths, student rates, two-for-ones and group pricing, the actual price paid per ticket had only gone up 24 percent.[176] Discounting therefore can soften the blow of skyrocketing ticket prices and possibly keep theatre in reach for the portion of society, i.e. students, budget tourists, lower income families, that otherwise would lack the financial resources to afford the high ticket prices. However, these discounts do not

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[174] Campbell Robertson, "*Young Frankenstein* Will Not Disclose Its Weekly Grosses," in *New York Times*, September 7, 2007, http://www.nytimes.com/2007/09/07/theater/07gros.html?partner=rssnyt&emc=rss.
[175] Charles Isherwood, "If You Discount It, Will They Come?," in *New York Times*, October 7, 2007, http://query.nytimes.com/gst/fullpage.html?res=9500E5DD113EF934A35753C1A9619C8B63.
[176] Varian, "The Dynamics of Pricing Tickets for Broadway Shows."

necessarily come without a different type of cost to the consumer. As Varian pointedly noted "it is inconvenient to wait in line at TKTS. But that is the point. If it weren't inconvenient, everyone would do it, and this would result in substantially lower revenues for Broadway shows."[177] The theatres after all have to remember that they can't bite the hand that feeds them, and providing discounts without the inconvenience of waiting in line or day-of purchasing would mean that their bread and butter audiences, investment bankers and the like, would no longer have any incentive to pay ahead of time for that most revenue-rich commodity, the $450 premium ticket.

Discounting is of course not limited to the big Broadway shows that establish the upper ceiling for ticket prices in the field of theatrical production. Off-Broadway and regional theatres are faced with the same dilemma of rising costs, and they likewise have sought out methods for lessening the impact that those rising costs have on ticket prices. These theatres are also even more concerned about the heterogeneity of their audiences, because while many of the commercial producers are interested in expanding their audience base mainly due to revenue potential, the non-profit sector has usually maintained a stronger commitment to social enrichment and accessibility of their work to as large a swath of society as possible. The result has been a number of significant initiatives aimed at providing discounted tickets, sometimes to a particular demographic group, in the hope of expanding audiences and maintaining a certain level of diversity in the theatre. Roundabout Theater's Access Roundabout program is one such initiative. Since the beginning of their fall 2007 season, Roundabout has put aside 16,400 twenty-dollar tickets per season, so that every performance in each of its three theatres will have

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[177] Ibid.

a minimum amount of discount tickets (30 in Studio 54, 20 in the American Airlines Theater and ten in the Laura Pels Theater). The program, which comes with a price tag of potentially $1 million in lost revenue, is aimed at generating interest in a demographic that is showing increasing apathy towards theatre as an entertainment alternative, college-aged and early career young adults. The theatre has therefore made these particular discount tickets only available to members of Roundabout's Hiptix program, which is free but requires you to be between the age of 18 and 35.[178] Roundabout is following a trend set by many other producers in the performing arts, including the Metropolitan Opera and New York City Ballet, which are realizing that high ticket prices create homogenous audiences that are older, wealthier, and predominantly white. The revenue stream from these older audiences may pay the bills right now, but the lack of interest from younger audiences does not bode well for future economic stability. If younger audiences do not develop an interest in theatre, they are less likely to spend money on tickets once they do begin to earn more, and theatrical producers recognize that if that happens they will certainly be in dire economic straits. Todd Haimes, the Roundabout's artistic director noted that that theatre had made a decision to act more aggressively in their attempts to cultivate younger audiences and stated that "we can't necessarily control any of the sociological factors that are keeping younger audiences away from theater, but we can deal with the economic part."[179]

While many performing arts institutions are approaching discounting from the straightforward standpoint that discounts will increase audiences and as a result there will be a net gain in revenue, some producers, especially those with smaller seasons that do

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[178] Isherwood, "If You Discount It, Will They Come?."
[179] Ibid.

not provide a safety net for significant discounts, are experimenting with alternative strategies of discounting. In 2005, the Signature Theatre Company convinced Time Warner to underwrite an entire season of discounted tickets in exchange for the exposure and prestige that Time Warner would receive from being affiliated with the theatre. Signature, which produces three shows a season in a 160-seat house, was able to discount tickets that were normally $45 apiece down to $15 for every performance of the regular run, totally changing the demographic potential of the company's shows. Once the initiative took hold, Signature saw an almost instantaneous change in the composition of its audiences. Soon 30 percent of the audience was under 35, the number of attendees making an annual income of $50,000 or less increased by 25 percent, and half of the audience was new to Signature. The company also began to draw audiences that were far more diverse in terms of age and ethnicity than your typical theatre.[180] Signature's artistic director James Houghton stated that Signature's leaders

> began to believe we were at a point where we were shutting out audiences, so that theater was gradually becoming an elitist pastime. I wanted to figure out if you could get audiences back if the economic piece of the puzzle was no longer a factor.
>
> What we discovered pretty quickly is that if you take that financial barrier away, there is a lot of interest in theater. I didn't know for sure that there would be, frankly. It was an experiment, but the results have really been clear.[181]

[180] Ibid.
[181] Ibid.

It is clear from the ticket initiatives at Signature and Roundabout that not only do theatres in the non-profit realm have a desire to expand the demographic of their audiences, but that the price of tickets can have a very real impact on the type of audiences that are attracted to theatre as a medium. Finding ways to attract and maintain new audiences is particularly imperative, because for the first time non-profit theatres have in recent years seen single-ticket income outpace subscription sales. This change in the traditional pattern of revenue-earning is much less predictable for theatrical producers, as there is less assured long-term income and more uncertainty as to how steady cash flow will be. Ben Cameron, the executive director of TCG, notes, "it's a change in the way we live. . . . A lot of theatres are asking, 'How do we cultivate a long-term relationship with people without subscriptions?' "[182] Discounting may not develop the relationships that Cameron has alluded to, but it will bring new audiences into the theatre and increase the potential for increased subscription sales and more sustained income. In this regard it is heartening to see that at least some of the challenges that theatrical producers face in increasing attendance at performances remain economic in nature, and despite the difficulty that contemporary economic conditions create, at least they are more manageable than larger sociocultural shifts, which are far more difficult to respond to.

While ticket discounting is one of the most direct and measurable ways of increasing attendance and incoming revenue, the value of most other marketing strategies remains difficult to quantify, despite the relative magnitude of their costs. Theatre budgets tend to pale in comparison to the other major entertainment media, especially for

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[182] Robin Pogrebin, "Uncertain Times: Impulse Buyers Replace Ticket Subscribers," in *New York Times*, October 16, 2002, http://query.nytimes.com/gst/fullpage.html?res=9E0CE0D81F3AF935A25753C1A9649C8B63.

small companies that find it difficult to commit the resources to pay the high prices for high-visibility advertisements. The question for theatres therefore becomes less about how to market their product and more about how to manage the costs of marketing. In light of these economic conditions, theatre companies and producers have had to develop methods of maximizing the value per dollar invested in marketing. By investing more time and energy in market research, forming theatrical marketing coalitions, and maximizing the potential benefits of the digital marketplace, theatrical producers continue to look for ways to ensure that every dollar they invest in marketing is most likely to draw more attendances and increase income.

Although the development of new marketing strategies is imperative to the success of any theatrical endeavor considering the current conditions of the cultural marketplace, it is also important to recognize that different sectors of the field of theatrical production are faced with different circumstances and therefore develop different strategies to respond to economic challenges. The most obvious division in approaches to audience outreach can be seen between commercial and non-profit theatres. While the commercial sector, and in particular Broadway productions, is recording record sales, the non-profit sector faces more difficult economic circumstances as entertainment consumption changes in the digital age. This means that commercial producers are able to employ marketing strategies and advertising tools that are either beyond the economic reach of non-profit theatres or do not pertain to their artistic mission.

One such initiative has developed out of collaboration between the news and ticketing web site Broadway.com and the Nielsen National Review Group, which

corporately connected to the Nielsen television-ratings system. These two companies joined forces in 2005 to form Live Theatrical Events, a firm that does focus group research and data mining for theatre producers looking to maximize attendance and revenue for their productions. While theatres of all budgets have used focus groups in the past to gain marketing information, Live Theatrical Events, because of its specific design for the theatrical field and its access to mountains of data through its connection with Broadway.com, can provide a much more detailed and pervasive study of a show and its audiences. The tradeoff of course comes in the cost with a package including audience surveys at three performances, after-show focus groups, and a detailed written analysis costing $8,000.[183] While some producers believe that cost is worth it –producers of successful shows like *Wicked* and *Altar Boyz* have employed Live Theatrical Events and feel that the insight they gained has proved invaluable– many Broadway producers believe that these research projects are not worth their high cost. Jeffrey Seller a producer of *Rent* and *Avenue Q* has said "we're still in a business that is a strange intersection of art and commerce. . . . But all of the great shows have been promoted and created through the gut aesthetic, artistic instincts of the creators and producers."[184] Despite the fact that a portion of Broadway producers remain resistant to adopting approaches to marketing that are traditionally associated with younger media such as film and television, it is apparent that cost permitting these techniques are slowly making their way into the field of cultural production. Live Theatrical Events is proof of this trend as the company has been affiliated more than sixty producers across the country and around the world. In fact, the League of Off-Broadway Theaters and Producers hired Live

[183] Robertson, "Nielsen Brings a New Marketing Strategy to Broadway."
[184] Ibid.

Theatrical Events to look for reasons behind a recent downturn in attendance. Live Theatrical Events found that half of the people attending these shows did not even recognize Off-Broadway as a brand, and recommend that Off-Broadway producers more vigorously market their productions as independent, risk-taking alternatives to the big productions nearby on Broadway.[185]

In 1995, the League of American Theatre Producers and Owners, a 600-plus member organization represents the interests of North American theatrical producers and owners, began their "Live Broadway" campaign, which incorporated a branding approach for all Broadway productions that was similar to the one suggested to the Off-Broadway producers by Live Theatrical Events. "Live Broadway" is an interesting example of groups of discreet producers coming together due to regional proximity to find way to maximize exposure and coordinate marketing and advertising tactics. The League's official web site stated that "Live Broadway" symbolizes that the League is "dedicated to fostering increased interest in Broadway theatre and supporting the creation of profitable theatrical productions."[186] The campaign allows the League to create a visible presence that can be used to promote its interests as a trade association, and hopefully boost consumption of the works produced by its affiliate members. The operations of the campaign include a combination of special events, such as the Tony Awards and an annual outdoor concert called "Broadway on Broadway," corporate sponsorships,

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[185] Ibid.

[186] Inc. The League of American Theaters and Producers, "About the League," in *Live Broadway: The League of American Theaters and Producers, The Official Website of Broadway Theater*, http://www.livebroadway.com/index.php?url_identifier=about-the-league-1.

Continental paid $37.5 million from 1997-2002 to be the official airline of Broadway,[187] and other programs and marketing initiatives aimed at increasing the exposure of Broadway and the success of its shows. As a result, "Live Broadway" has drawn interest from a number of corporations with significant contributions and sponsorship deals set up with J.P. Morgan, Anheuser-Busch, Visa, and others netting the League hundreds of millions of dollars. The numbers over the campaign's twelve-year life span also point to the success of the campaign, as Broadway producers have seen attendance increase by almost 27 percent and grosses nearly double from $436 million to $862 million.[188] But, as is often true with the various Broadway producers and owners, there is little agreement as to whether branding strategies, such as "Live Broadway," are actually worth their cost. While many believe that the campaign has in fact played some role in the revival of Broadway, others believe the rebound from 9/11, renewal in New York's tourist economy, and most importantly the success of major shows such as *Rent*, *The Lion King*, and *Mamma Mia!* should instead be given credit for the upturn in ticket sales and profits. David Stone, a producer of *Wicked*, one of those successful shows, has said that "while the term Broadway certainly generates good will, I think it has to be a desire to see a particular show that causes people to spend a good deal of money."[189] Here is just another in a long list of examples of how uncertain the return on marketing strategies is and why a certain ambivalence continues to pervade the theatrical field as to what the best approach to marketing theatre is, no matter whether the producers are commercial or

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[187] Campbell Robertson, "We All Got Together And Put On a Brand," in *New York Times*, July 2, 2006, http://query.nytimes.com/gst/fullpage.html?res=9903E5D81730F931A35754C0A9609C8B63.
[188] Ibid.
[189] Ibid.

non-profit. Whether the League continues to promote "Live Broadway" as the face of the entire Broadway industry or not, one thing is for sure, it will remain a challenge to keep all of the producers and theatre owners and their disparate opinions and interests united over the direction the campaign should take. To that end, Campbell Robertson, *The New York Times* writer who reports on the business of Broadway, had this insightful comment to say about the challenge of maintaining "Live Broadway" as a cohesive brand: "A brand, in marketing terms, is supposed to encompass the associations people may have with a certain product or service, a difficult thing to achieve if the service providers are constantly bickering with one another."[190]

While focus groups, branding, and expensive market research may be feasible for the commercial sector of theatrical production, non-profit theatres are faced with a distinctive set of economic circumstances and must contend differently with changing trends in the way people consume theatre. For instance, 2005 represented the first time ever that average single-ticket income topped subscription income in every budget group of TCG's annual statistical survey. Furthermore, from 2001 to 2005 the subscription-renewal rate in all theatres surveyed by TCG fell from 73 percent to 65 percent, which means that more than a third of those people who subscribed chose not to the following year. [191] The loss of subscription income is an issue of quality of revenue as much as it is quantity of revenue. While a theatre can make up lost subscription sales by selling single tickets, subscriptions provide guaranteed up-front income that single-ticket sales that occur closer to the date of performance cannot. This up-front income provides financial security and flexibility by providing larger amounts of working capital and allowing

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[190] Ibid.
[191] Wren, "At the Intersection of Optimism and Uncertainty."

theatres to forecast their expenses better. According to Paula Tomei, managing director of California's South Coast Repertory, "the particular challenge we face now is when the subscription income is not in the bank to rely on. You're forced to rely on single ticket projections a little more and we know what kind of a crapshoot those can be. Audiences are fickle and you don't know who is going to buy tickets."[192]

The decline in subscription sales has generated a number of important marketing questions for non-profit theatres. As single-ticket income increases and fewer theatergoers are purchasing complete subscriptions, theatres must change their business model to attract new audiences and find ways to get single-ticket buyers to come back for more. One of the first challenges is the fact that marketing a theatrical season show-by-show costs more than marketing a subscription to an entire season. TCG reported that in 2005 theatres spent 3.5 cents more on marketing for every dollar earned via single-ticket sales than they did in 2001.[193] It therefore becomes a priority for non-profit theatres to promote package sales, such as subscriptions or flexible season passes, because as David Hawkanson executive director of Chicago's Steppenwolf Theatre Company put it, "the continuum of relationship with the subscriber to the whole season is a vital part of the artistic culture of [an] organization"—not to mention "the cheapest, most effective revenue dollars we get."[194]

As the organization representing the interests of non-profit theatres in the United States, TCG plays an important role in assisting theatres with the development of

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[192] Ben Pesner, "Special Report: Theatre Facts 2004, Through the Looking Glass," in *Theatre Communications Group*, November 2005, http://www.tcg.org/tools/facts/lookingglass.cfm.
[193] Wren, "At the Intersection of Optimism and Uncertainty."
[194] Pesner, "Special Report: Theatre Facts 2004, Through the Looking Glass."

marketing strategies that will help them increase revenue and negotiate the shifts and economic challenges that develop in the contemporary cultural marketplace. TCG accomplishes this by gathering and analyzing statistics on the state of the field of non-profit theatrical production and suggesting ways in which theatres can improve their economic efficiency, enhance ticket sales, and maximize marketing efforts. Through mailings, publications, and their annual statistical survey of non-profit theatres, TCG is able to develop a detailed analysis of the state of non-profit theatrical production in the United States and then provide informed suggestions and advice that enables theatres to respond to changing market conditions, such as the shift from subscriptions to single-ticket purchases. An example of the informational role that TCG plays for the non-profit theatrical community are its *Centerpieces*, which provide analysis and case studies in marketing as well as other areas such as development, education, governance, international programs, management issues, research, and technology. The marketing *Centerpieces* provide an interesting insight into the challenges facing non-profit theatres in attracting audiences and raising the level of interest in their productions in their communities. In each of these publications, members of the TCG community share experiences and strategies that worked for them, providing other theatres with guidance as to how to implement marketing strategies either developed specifically for the field of theatrical production or borrowed from other industries, how to best allocate marketing and advertising funds, and ways of maximizing marketing resources in order to gain the highest return for every marketing dollar spent. Recent marketing *Centerpieces* have covered social marketing, newspaper partnerships, branding, building community-based audiences, targeting audiences, and ways to market theatre during uncertain economic

times.[195] These publications highlight the value of pooling resources and the benefit of having TCG as a kind of informational hub for all non-profit theatres. Because many of these theatres share the same characteristics and are looking to attract similar audiences, the ability to easily share information is very valuable. Furthermore, since most if not all of these non-profits operate under a limited budget, they cannot afford to hire marketing consultants and researchers the way a for-profit commercial theatre could.

While TCG is an example of a national initiative to consolidate the interests of non-profit theatres, coalition forming is in fact a very important strategy in the development of marketing tactics at the regional level, as theatres face mounting competition in the cultural marketplace from other entertainment forms, such as film, the Internet, television, and video games. The marketing and public relations budgets for a blockbuster movie would dwarf the entire operating budget of most theatres, so in a landscape where consumers are buffeted with billboards, television spots, print ads, and all sorts of merchandise for the next epic film, theatres must be organized and precise in developing their marketing strategies. One way that theatres have been able to boost their stature in this competitive environment is to work together to promote theatre as a common cause within a regional community. Groups of theatres and other performing artists in most major metropolitan areas have banded into these coalitions, which allow them to pool resources, share in the costs of promoting the performing arts, and to provide a type of regional brand that is similar to the "Live Broadway" initiative that the commercial producers created in New York. One example of such a coalition is Theatre Bay Area (TBA), which is a service organization that represents the theatre and dance

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[195] Theatre Communications Group, "Centerpiece," in *Theatre Communications Group*, http://www.tcg.org/publications/centerpiece/marketing.cfm.

communities of the greater San Francisco Bay Area. With over three hundred member companies and over three thousand individual artist, TBA has developed into a commanding conglomeration of individuals and organizations that share similar concerns with regards to advocacy, marketing, and community building.[196] With such a large constituency, TBA is able to do a better job of ascertaining the state of theatre around San Francisco as well as be able to allocate resources more effectively to address the needs of the performing arts community. Coalitions like TBA exist across the country, and in many instances have allowed the theatres to pool resources in areas that are cost-prohibitive on a theatre-by-theatre basis, but are easier to manage and absorb as a larger community. For instance, in New Jersey, eleven performing arts institutions pooled their resources to form ArtsWeb, an initiative that aimed at giving all these institutions digital capabilities to extend their ticketing services, marketing, development, and outreach strategies. Hosted by McCarter Theatre in Princeton, ArtsWeb created a sophisticated information technology infrastructure that could be shared by independent organizations with similar missions. During a time when this type of technology was beyond the means of smaller organizations like the New Jersey Shakespeare Festival, ArtsWeb allowed these companies to take advantage of the potential of the Internet in its earliest stages.[197]

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[196] Sabrina Klein, Belinda Taylor, and John Warren, "The Performing Arts: An Essential Public Good, Critical to a Healthy Society," in *Centerpiece, Focus On: Marketing, Social Marketing and the Arts*, edited by Belinda Taylor, (New York: Theatre Communications Group, Inc., 2002), http://www.tcg.org/pdfs/publications/centerpiece/centerpiece_1202.pdf, 3.

[197] "Artsweb," in *2005 Computerworld Honors Program*, http://www.cwhonors.org/search/his_4a_detail.asp?id=2779. I have personal experience with the ArtsWeb system and the evolution of technology initiatives through coalitions such as this, as I was hired as the Information Systems Manager at the New Jersey Shakespeare Festival in early 2001. At this time, four years into the ArtsWeb project, an interesting paradigm shift occurred as information technology costs were plummeting,

Meanwhile in Washington D.C., the local coalition of theatres was able to pool resources together to lower health care costs for their employees and get discounted airline tickets from corporate sponsor United Airlines. These coalitions can also cover a scope of organizations that goes beyond the performing arts to include other arts organizations such as museums. For instance, Boston's "Big List" database is a cleaned up and analyzed collection of the mailing lists of more than 40 arts organizations in that region. [198] Having a centralized list that gathers information on a broader range of cultural consumers allows these organizations to make more informed, targeted selections for direct-mail campaigns and other marketing initiatives.

The "Big List" approach to information sharing that has taken place in Boston as well as in other cities such as Detroit and Philadelphia and the success of ArtsWeb in New Jersey are examples of how the tools of the Information Age are helping theatres

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while the demand on the ArtsWeb system had blossomed beyond its capabilities. McCarter decided to dissolve the coalition as managing the expansion of the needs of multiple organizations had become more than the theatre's staff could handle and the economic barrier of entry to owning integrated information systems was no longer insurmountable for its fellow institutions. The Shakespeare Festival therefore had to develop its own ticketing and development information infrastructure and had to allot significant resources to the acquisition of hardware and software. It was my responsibility to make the necessary purchases and to integrate the new systems into the operations of the theatre. While it was a challenging time for the Shakespeare Festival, having control over its own information systems was in some ways liberating as it allowed the company to customize ticketing and development software to its specific needs (we purchased Theatre Manager, which has since become one of the software suites recommended by TCG member theatres, Miki Robinson, *Centerpiece, Focus On: Technology, The Good, The Bad and The Ugly: A Look at Software in Theatre*, (New York: Theatre Communications Group, Inc., 2004), http://www.tcg.org/pdfs/publications/centerpiece/centerpiece_0504.pdf.) What is perhaps most interesting about this series of events is that it displays that these coalitions are most often born out of necessity (in this case the high cost of Internet technologies in the late 1990s) and that when presented with the opportunity, many of these organizations either prefer or choose to work independently.

[198] Wren, "At the Intersection of Optimism and Uncertainty."

expand their marketing tactics. In fact, in recent years the most prominent developments in the marketing of both commercial and non-profit theatre have come from theatrical producers looking to increase their presence in the digital world. A TCG *Centerpiece* from February 2004, which provided advice for theatre companies on how to develop their web sites, noted that electronic commerce in the United States during 2003 exceeded $50 million and that a there was a 47 percent increase in overall online shopping from January to September of that year.[199] The rapid expansion in the world of e-commerce has continued since those numbers were compiled and theatres of all kinds have responded in kind, as they have expanded their digital marketing and advertising strategies in an attempt to increase the exposure of their work. From the investment of resources into the refinement of web sites, to the expansion of online ticket sales, to the use of online videos as "viral" marketing tools, theatrical producers have come to realize that their success is at least partially determined by their ability to tap into the digital world.

An important catalyst in this overall improvement in the use of digital marketing tools was the recognition that the Internet was a valuable two-way resource that allowed theatrical producers not only to reach out to audiences, but also to gather information on the theatre going public. The Holy Grail of marketing theatre has always been generating positive "word of mouth," the positive reviews that people receive from trusted friends. Because word of mouth is a direct form of communication, it is more memorable and credible than traditional printed advertising, and thereby is a significant determiner in

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[199] Barbara Geeson Watson, *Centerpiece, Focus On: Marketing, Leading Your Theatre's Website Development Project*, (New York: Theatre Communications Group, Inc., 2004, 1.

product evaluation and purchase decisions.[200] While it is risky to rely on word of mouth– a bad review can start the kind of bad word of mouth that can kill a show–the benefits of getting positive momentum outweigh the negatives, as the positive word of mouth generated by a hit will allow a show to ride person to person recommendations for quite a while. Therefore, theatrical producers have always looked to stir up as much positive word of mouth as possible, relying on strong early advertising to get people talking to one another, thereby expanding audience interest in a production and selling more tickets.

However, most pre-Internet marketing strategies utilized traditional outreach methods, such as direct mail and print ads, that were expensive and imprecise in their ability to increase word of mouth. Furthermore, these techniques did not allow producers to learn much about their audiences, as these methods of outreach were one-way interactions that allowed the producers to gain little if any information about the types of people to whom they were reaching out or what impact their ads were having in generating revenue. But with the advent of the Internet and marketing tools, such as mass email, web sites, blog coverage, and banner ads, producers are now able to gather the type of feedback and traceable information that allows them to more precisely record and then predict how to best generate interest in an individual show, entire season, or even in the mission of the theatre.[201] This digital imperative has been heightened by the increasing expense of print ads and traditional mailings and the decreasing value to cost

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[200] Rajdeep Grewal, Thomas W. Cline, and Anthony Davies, "Early-Entrant Advantage, Word-of-Mouth Communication, Brand Similarity, and the Consumer Decision-Making Process " in *Journal of Consumer Psychology* 13, no. 3: 188.

[201] Jesse Green, "You Saw The Show, Now Read The E-Mail," in *New York Times*, July 9, 2006, http://query.nytimes.com/gst/fullpage.html?res=990CE4DE1230F93AA35754C0A9609C8B63.

ratio for advertising via physical media such as newspapers, posters, and postcards. Since the relative costs of creating and disseminating digital advertisements are lower than those of traditional media, theatres of all shapes and sizes are beginning to question whether the investment in these traditional approaches to advertising is really worth it.[202] Furthermore, the ability to integrate multimedia makes Internet-based advertising more attractive to theatergoers and therefore more appealing to theatrical producers. Ken Davenport, the producer of the Off-Broadway musical *Altar Boyz*, has pointed out that a full-page newspaper ad "can't have music, video clips and all my reviews, like I can have on my Web site, where I'm also not competing with all the ads next to it. . . . My chance of converting a sale dramatically increases, and for much less money."[203] As a result, investment in Internet-based marketing has greatly increased in recent years as its ability to more precisely reach target audiences and its relatively high value-to-cost ratio has made it a much more appealing alternative to traditional marketing approaches.

By far the most visible example of how theatres are integrating a digital presence into their marketing strategies is in the development and use of their web sites as a way for generating revenue, increasing contact with established audiences, and expanding their reach to new audiences. The development of sites that effectively portray the mission and quality of work of any particular theatre has not been without its challenges. Barbara Geeson Watson, in a recent TCG *Centerpiece*, noted that as recently as 2002, "the web sites of most professional theatre companies were a collective reflection of inconsistent priorities, values and resources" and that the range in quality of these web

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[202] See Isaacs, "Theatre Marketing: What Are We Not Doing?." and Green, "You Saw The Show, Now Read The E-Mail."
[203] Green, "You Saw The Show, Now Read The E-Mail."

sites ranged from "design-it-yourself hodgepodges to slick and sophisticated marketing machines."[204] But Watson noted that many theatres quickly realized that a web site that was not well designed and well thought out reflected poorly on a particular production or company and that by 2004 most web sites showed considerable improvement with "an increased emphasis on professional design, expanded content and enhanced features."[205] Broadway producers are also expanding their investment in their web sites and overall web presence, as they realized it is an invaluable way to promote their shows and that in order to draw audiences to those shows their web sites also needed a high level of production values. Damian Bazadona, who runs Situation Marketing, a company which is responsible for managing the web presence of more than half of all new Broadway shows, has said that with regards to digital marketing and web site development "there is a lot of evidence to suggest that if not created and implemented correctly you are really throwing your money away."[206] The cost of designing and maintaining a Broadway web site are not insubstantial, as a the initial cost of setting up the site may cost upwards of $100,000 with weekly maintenance costing producers anywhere between $10,000 and $15,000. Nevertheless, while these costs may seem prohibitive, they in fact represent only 3 to 5 percent of an average Broadway production's marketing budget, which is really just a drop in the bucket considering the potential returns a well-produced web site can offer.[207]

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[204] Watson, *Centerpiece, Focus On: Marketing, Leading Your Theatre's Website Development Project*, 1.
[205] Ibid.
[206] Green, "You Saw The Show, Now Read The E-Mail."
[207] Ibid.

Of the many marketing possibilities that have made improved web sites appealing to theatrical producers, the ability to implement online ticketing services has been the major motivation behind design upgrades. The past few years have shown particular growth in online ticket sales, as can be evidenced by the proportion of Broadway tickets sold online. From 2003-4 to 2005-6 online ticket sales for Broadway productions increased from 7 percent to 33 percent, an almost five-fold increase in only two years. Even more staggering was that online sales of non-group tickets for the 2005-6 season were more than 60 percent.[208] Non-profit theatres are experiencing a similar transition in their ticket sales with theatres such as the New Repertory Theatre in Watertown, Massachusetts reporting that they do more than 50 percent of their ticket sales online.[209] Drawing potential customers to a production's web site to sell them tickets provides a number of benefits to a theatrical producer. First of all, it makes economic sense to be able to control sales rather than rely on an independent ticket seller who receives a commission for every sale. Direct sales that result from site visits or from responses to email blasts can result in tremendous sales. Successful shows such as *The Color Purple* can regularly generate $150,000 in sales per week from 200,000 visits to its site. Other producers have found that during slow periods emailing the right list can produce sales of seats that would have otherwise been lost. In May of 2006, *Avenue Q* producers were finding it hard to fill the house during the middle of the week. A quick email to 20,000 emails and soon $40,000 of those difficult to sell tickets were filled, at virtually no cost.[210]

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[208] Ibid.
[209] Wren, "At the Intersection of Optimism and Uncertainty."
[210] Green, "You Saw The Show, Now Read The E-Mail."

While a well-designed web site gives theatrical producers the ability to quickly disseminate information and provide a central location online for the theatergoing public to gain information about a particular show or an entire season, there is another appealing aspect to these new forays into the digital realm. Because traffic on the World Wide Web and across the Internet is much easier to record than marketing and advertising via traditional media, theatres are now able to gather large amounts of data on who is buying tickets for which shows and at what price levels. With the ability to harvest e-mail addresses, gain information through online surveys, and measure the traffic patterns of users who are visiting a site or responding to a specific e-mail, theatres are able to gain a much more detailed picture of what their customer base is and respond in kind. Digital applications therefore allow theatres to be more precise in their marketing strategies, as they are able to promote their productions specifically to those demographic groups that are most likely to purchase tickets. Producers can also use this information to find out why certain audiences are not drawn to their shows and adjust their marketing techniques to reach out to those audiences more effectively. In this way theatres can use the information collected from their web site to reach out to social networks that seem to be likely potential audiences. A good example of such a campaign is a recent promotion tied to *The Color Purple* called "Organize Your Group" which aimed to encourage and assist groups such as families, schools, gospel choirs and churches in coming to see that show.[211] Theatres can also use this information to create more specialized discount packages. As Hal Varian noted in his study of discounting practices of theatre tickets "as more and more transactions become computer-mediated, it becomes easier for sellers to

[211] Ibid.

collect data, to experiment with pricing and to analyze the results of those experiments."[212] As a result theatres are more likely to tinker with a variety of discounts and price points, as they try to implement the information they gather in a way that will maximize income.

Beyond a well-designed web site and online ticketing, theatres have expanded the use of Internet in variety of additional ways. Some producers have established pages for their shows on MySpace and Friendster to reach younger audiences and to help form digital communities around their productions.[213] Meanwhile, the producers of *The Wedding Singer* offered free tickets to theatre bloggers, in the hopes that the exposure would drive people to their web site. In this way producers can reach thousands of additional potential patrons and for only the cost of a couple of orchestra seats.[214] Another method is advertising on other web sites. A Google ad campaign for *Doubt*, which prominently placed a link to the show's web site on the top of the results page of pertinent Google searches, cost $15,000 dollars but brought in over $400,000 via online ticket sales, which is remarkable compared to direct mailings which are considered successful if they bring in twice as much in sales as they cost.[215] In an effort to spread word of mouth and increase a show's visibility, some producers have even taken to creating short videos featuring songs and characters from their shows and placing them on video posting sites such as YouTube, with the hope that they will act as "viral" marketing tools. Viral marketing is "a pass-along marketing effort that asks friends to

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[212] Varian, "The Dynamics of Pricing Tickets for Broadway Shows."
[213] Green, "You Saw The Show, Now Read The E-Mail."
[214] Ibid.
[215] Ibid.

recommend to friends,"[216] which theatrical producers have begun to adopt in the hopes of better taking advantage of the connectivity of those members of their audience that are Internet users. The goal of viral marketing is to produce advertisements and supplementary content that will hopefully break out and get passed from one person to another, like a virus, generating valuable word of mouth. This marketing approach provides fans of the show with content beyond the performance in an attempt to draw them back to the theatre and increases the possibility of advertisements reaching audiences who might otherwise never have even heard of the show. Producers of shows such as *Spring Awakening* and *The Drowsy Chaperone* have already developed videos that allow audiences to experience aspects of the show not included in the theatrical performance, in the hopes of generating viral buzz.[217]

The ability to expand marketing reach via digital media is one of the most attractive aspects of advertising via the Internet and World Wide Web. For those people responsible for marketing the increasingly costly commercial productions on Broadway, it is important to reach out to as many people as possible and make them potential customers. Damian Bazadona has noted that "by opening up an instantaneous channel for those with casual interest, the Web may develop the future audience."[218] These digital tools become especially valuable when they are able to reach young audiences, a

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[216] Lee Wochner, "Clairol Marketing Through Email," in *Centerpiece, Focus On: Development & Marketing, Building an Online Presence for Live Theatre: Experience from the Field*, edited by Jim Royce, (New York: Theatre Communications Group, Inc., 2001), http://www.tcg.org/pdfs/publications/centerpiece/centerpiece_0801.pdf.

[217] Mark Blankenship, "Legit Producers Try Viral Marketing," in *Variety*, March 17, 2007, http://www.variety.com/article/VR1117961295.html?categoryid=1009&cs=1&query=legit.

[218] Green, "You Saw The Show, Now Read The E-Mail."

challenging demographic for almost all theatrical producers. For instance, non-profit theatres have come to recognize that as their subscription base ages and dwindles they have to work hard at expanding their audiences. Harriet Sheets, managing director of New Repertory Theatre in Watertown, Massachusetts, has noted that "if you want to try to change the face of your audience and get younger audiences, electronic media e-mails and websites and online ticketing are the way to do it."[219] This desire to reach out and draw new audiences, whether young or old, is really what is at the heart of any marketing and advertising campaign in the theatrical field, as the ultimate challenge of any theatre producer is to fill the house on any given night. For this reason, theatrical producers will always be on the look out for whatever techniques, tools, and strategies that are likely to put the proverbial butts in the seats. Marketing is an important bridge between the producers of theatre and the consumers, and there is much to be learned about the dynamics of the theatrical field of production from the realm of publicity, advertising, and ticketing. Therefore, as these techniques become an integral part of the process of theatrical production, it should become an imperative for theatrical scholars to include the study of marketing strategies and reach of different sectors and different producing companies in their consideration of the theatrical field

Labor, funding, and marketing may represent important sectors of the field of theatrical production that demand more scholarly attention, but they are far from the only areas whose study could shed valuable light on the current condition of theatre in the United States. For instance, the corporatization of culture, perhaps the broadest reaching

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[219] Wren, "At the Intersection of Optimism and Uncertainty."

and most pervasive development in cultural production over the past thirty years, is another driving trend that influences almost every cultural transaction. As international corporations and media conglomerates consume their competitions and merge their realms of influence, a increasingly smaller group of individuals and companies have come to own and control a larger percentage of our cultural production and ideological discourse. But as the extensive investigation of all of these influential sectors of the field of cultural and theatrical production demands a breadth and depth of analysis that is more suited to a multiple volume study, this particular work will now shift to a more focused study of another important sector in the political economy of theatre, the impact of intellectual property rights on theatrical production. While intellectual property may not have the history of consideration that labor, funding, marketing or corporatization do in the study of culture, it does have enormous repercussions for our entire culture, not to mention for the way that theatre is produced and consumed in the United States. The ascendancy of intellectual property as a driving force behind cultural production and our cultural economy brings to the fore questions of authorship, ownership, commodification, as well as the exploitation of the cultural field by corporate conglomerates and media megafirms. Viewing the conditions of the field of theatrical production through the lens of intellectual property is particularly useful to show how terms, concepts, trends, and paradigms normally associated with the technological and digital media of the last hundred years are just as relevant when discussing a form of culture and entertainment that is millennia old, as theatre is. Furthermore, considering the importance of intellectual property to theatrical production reasserts the relevancy of applying methods of critical examination that are normally reserved for its thriving younger siblings in the

cultural marketplace. Ultimately, looking at intellectual property within the field of theatrical production will help us better put the place of theatre in perspective to other media, and provide us with insight into how theatre may develop in years to come and what trends may come to dominate the field of theatrical production.

SECTION II.
INTELLECTUAL PROPERTY AND CONTEMPORARY THEATRICAL PRODUCTION

Introduction

As theatrical production has been, for the most part, able to evade the effects of cultural corporatization and adhere to nineteenth century authorial conventions and pre-World War II production techniques, traditions of theatre-making and in particular the concept of who authors and has ownership of a theatrical work and its derivatives has remained relatively unchanged. But as the political economic conditions of cultural production have changed over the last hundred years, so too have the parameters of theatrical production. Looking at some of the important developments that the cultural field has gone over is a good place to start when considering how intellectual property rights have come to impact the field of theatrical production.

Perhaps the most noticeable change in the cultural field has been the burgeoning growth of the cultural industries. In particular, the last quarter century has seen a rapid expansion of corporate interest in the production of culture, as they have used their capital strength to assert themselves and affect great change on all aspects of cultural production. Simultaneously, the scope of law has expanded to encompass more portions of the cultural field and in greater detail than ever before. This increased legal intervention has resulted in more legal cases involving cultural producers and products, and has seen an increase in the importance of legislation and judicial precedents in the cultural field. Lastly, the digital explosion of the Information Age has changed the cultural landscape even further, as new creative technologies and the Internet have lowered the barrier of entry for creative work, begetting new products, new markets, new

means of distribution, and even new media.[220] These factors have all combined to influence the development of the cultural marketplace so that it is more complex and competitive and significantly expanded than it was just thirty years ago.

The concept of intellectual property was a central factor in these changes, as developments in the legal architecture of the copyright, trademark, and patent laws that make up intellectual property rights have added significantly to the complexity of the cultural market. Michael Curtin and Thomas Streeter have stated that the development of cultural production

> Is no longer primarily shaped by technological constraints, government regulation, or even corporate conglomeration. What binds today's major brands such as *Star Wars* together are elaborate architectures of copyrighted texts, trademarks, and licensing agreements. These architectures are based not on networks or technologies or government protected oligopolies (or, if the reviews of *Episode I* are any measure, artistic quality), but on intellectual properties. And this is not a politically neutral or economically inevitable development. It is instead an attempt to respond to an increasingly fragmented, cluttered, and diverse media environment.[221]

With the production, reproduction, and dissemination of culture becoming increasingly facilitated by digital technologies, cultural producers have come to realize that the

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[220] Lawrence Lessig, *The Future of Ideas: The Fate of the Commons in a Connected World* (New York: Random House, 2001), 126.
[221] Michael Curtin and Thomas Streeter, "Media," in *Culture Works: The Political Economy of Culture*, ed. Richard Maxwell (Minneapolis, MN: University of Minnesota Press, 2001), 234.

management of their intellectual properties is crucial to their survival and the key to their prosperity. The deployment of intellectual property rights are therefore dictating the conditions of the cultural marketplace, raising the economic stakes of any form of cultural production and changing the way that people go about producing culture. Producers have also come to realize that digital technology facilitates not only the sanctioned reproduction and distribution of content, but also alternative methods of content acquisition, and the potential for legal and economic uncertainty abounds. These alternative methods are noteworthy, as they have raised not only questions of legality, but also stir up debates surrounding the social qualities of cultural products, the nature of cultural consumption, society's views on ownership and authorship, and the question of originality and creative borrowing. As a result, the extent to which cultural producers can protect and control the replication and distribution of the products of their labor has become a prominent point of contention within the realm of both cultural and legal discourse, and the concept of intellectual property has become an increasingly important aspect of the study of cultural production

While debates concerning intellectual property are most often related to the technological mass media, which can most directly take advantage of digital reproduction and distribution, intellectual property rights are having a similar impact on the development of theatrical production in the United States. Since the most frequent mentions of intellectual property in the news refer to digital rights management on music downloads, bootleg copies of movie DVDs in China, and software illegally copied and shared online, it may at first seem unusual to address the role of intellectual property in the development of the political economy of theatre. Theatre is a medium whose origins

precede the digital era by millennia, and its reception and cultural place are attached to inherent characteristics that predate the PCs, CDs, and software, like Napster, that are the main focus of these reports. Furthermore, theatre, as an ephemeral art form, is left out of consideration in most debates regarding intellectual property rights because American copyright law most directly applies to media that are digitally or mechanically reproducible. In fact, the laws are shaped to directly address those tangible and reproducible media, stating that

> Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. [222]

As a result, the study of the political economic impact of intellectual property tends to remain within fields that address more technological media, such as film, television, publishing, and the Internet. But, as I have argued thus far, the thorough study of theatre as a productive process and social practice requires an evaluation of the economic situation of theatre in comparison to and competition with these other media, as theatrical production must reckon with the same characteristics of the cultural marketplace. Therefore if intellectual property has become a consideration in the study of media in general, we must come to a better understanding of how it plays a role in the field of theatrical production. This is especially imperative if the legal foundations behind

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[222] U.S. Copyright Office, *Circular 92: Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code* (Washington, D.C.: Library of Congress, Copyright Office, 2007), 8.

intellectual property claims remain as ill suited to address the particular ephemeral nature of the theatrical commodity as current laws are.

Central to this approach to the study of theatre is the understanding that the ontological foundations that most Americans take for granted as inherent and natural to theatre as a medium are in fact constructions that have been shaped by a particular American temperament towards theatre and its place in culture. Intellectual property has played a role in the construction of this temperament, particularly as the creative process, roles of authorship, and reproducibility of theatre have influenced the elevation of theatre within cultural hierarchies. Looking at theatrical production in this light reveals the very real and significant impact of intellectual property rights on the development of theatre, as artistic control, the freedom to create, and economic possibility are influenced in the theatrical field just as they are in other media. But while it is important to consider the ways in which theatre is affected like other media, it also becomes clear that there are characteristics inherent to theatre that differentiate it as a medium, and as a result we will see how intellectual property rights affect theatre in unique ways as well.

The Historical, Legal, and Cultural Ramifications of Intellectual Property Rights

Although copyright, patent and trademark laws (the legal foundations of intellectual property) have long existed, the history of the term intellectual property is in fact a short one. Mark Lemley notes that the first use of the phrase was in the title of the United Nations' World Intellectual Property Organization, first assembled in 1967.[223] During the forty years that the term intellectual property has been in use, there have been

[223] Mark Lemley, "Book Review–Romantic Authorship and the Rhetoric of Property," in *Texas Law Review*: 895.

significant transitions in politics, economics, and global culture, which have changed the way culture is produced. With corporations becoming increasingly involved in the production and control of cultural goods and the technological advances of the Information Age affecting the processes of cultural production, intellectual property has been recognized as a valuable resource in the generation of revenue as well as a tool by which producers can assert cultural power. Ronald Bettig in *Copyrighting Culture* argues that

> Since the early 1970s, an ascending fraction of the capitalist class, centered in the knowledge, culture, and high-technology sectors, has begun to organize the transition to a new phase of capitalism–post-Fordism or "technocapitalism"–in which the ownership of intellectual property rights to information, knowledge, and cultural goods is central.[224]

The development of intellectual property as an important factor in corporate strategies has led to a heightened awareness of how producing structures and copyright laws best serve the various contractors in contemporary cultural production. This constant struggle pits producers, investors, artists and artisans against one another, as each cultural worker realizes the value of his or her work and tries to lay claim to as much of the available intellectual property as possible. Bettig notes that since "intellectual property rights are both economic and statutory in nature, claims to ownership of intellectual and artistic works must be recognized by law to be effective."[225] The legal system must therefore evolve and adapt to new forms of cultural production and distribution to ensure that

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[224] Ronald V. Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property* (Boulder, Colorado: Westview Press, 1996), 49.
[225] Ibid., 3.

intellectual property rights serve the best interests of the public good. Legislators and judges are constantly redefining the boundaries of intellectual property, so that the financial rewards of controlling intellectual property and the copyright system will continue to promote creative endeavors without giving holders of intellectual property too much power to prevent the work of other artists, thereby constricting creativity. At the same time, these laws must be constructed in a way that encourages culture over commerce and does not provide powerful media and entertainment firms with an unfair competitive advantage in the cultural marketplace. These media conglomerates are already endowed with significant economic capital resources, and further concessions to their calls for expansions of the duration and scope of intellectual property rights will allow there even more control over the production and dissemination of ideology through cultural content.

This question of cultural control is at the center of debates concerning intellectual property, whether explicitly stated or not, as internet anarchists look to free content from copyright restrictions, media firms refine digital rights management systems on Internet-based content, and law enforcement polices copyright infringement, online piracy, and bootleg distribution. But despite claims that pirates, hackers, and file sharers threaten the intellectual property rights of cultural producers and the economic stability of the cultural marketplace, scrutiny of the actual impact of intellectual property rights in contemporary culture reveals that intellectual property rights are being extended beyond their original intent and no longer serve the best interests of those people the laws were originally meant to protect. Lawrence Lessig in *The Future of Ideas* enumerates a number of examples of this distortion from film production. From the need to clear the rights to use

a Coke poster in the background of shot, to a sculptor holding up the release of *The Devil's Advocate* because a prop resembled one of his works, to the movie *Batman Forever* being threatened by an architect who demanded money when he noticed that the Batmobile drove through a copyrighted courtyard he had designed, holders of intellectual properties are more and more using the law to make economic claims that ultimately force studio lawyers to exert control over the production of a film and thereby has an impact on the creative freedom of the director of the film.[226] This changing impact of intellectual property rights is not limited to film; rather it has become endemic of cultural production in the United States. Siva Vaidhyanathan believes that "copyright issues are now more about large corporations limiting access to and use of their products, and less about lonely songwriters snapping their pencil tips under the glare of bare bulbs."[227] Vaidhyanathan also points out that the evolution of intellectual property rights over the last hundred years has "really been about the rights of publishers first, authors second, and the public a distant third."[228] Finally, Bettig argues that the problematic state of intellectual property rights and the ability of corporate megafirms to exert their economic wealth and political power has resulted "in the unequal distribution of the rewards for human intellectual and artistic creativity, especially to the detriment of actual creators, and that it primarily benefits the capitalist class rather than society as a whole."[229]

History reveals that the transformation of intellectual property rights into tools for profit-making and cultural control belies the intent of early American intellectual

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[226] Lessig, *The Future of Ideas: The Fate of the Commons in a Connected World*, 3-4.
[227] Siva Vaidhyanathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity* (New York: New York University Press, 2001), 12.
[228] Ibid., 15.
[229] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 44.

property legislation. Copyright laws have been an important legal consideration in the United States since its inception. Section 8 of Article I of the Constitution states that one of the powers of Congress is "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."[230] The founding fathers were aware that legal protection would provide incentive for authors and inventors by ensuring their ability to generate revenue and make a living from their intellectual work. This protection was provided via copyright law which for the first hundred years of American history promoted creativity by giving publishers control of who gets to make copies of works, thus acting as a shield against unfair competition from piracy and protecting the publishers' profits and their ability to pay authors for their work.[231] But the ratifiers of the Constitution also felt that it was the promotion of invention and cultural production in the name of the public good that was the purpose of copyright and not the codification of property or natural law as has increasingly become the case. Alex Kozinski, a judge sitting on the Ninth Circuit Court of Appeals, elucidated the danger of such codification, stating that

> Overprotecting intellectual property is as harmful as underprotecting it. Culture is impossible without a rich public domain. Nothing today, likely nothing since we tamed fire, is genuinely new: Culture, like science and technology, grows by accretion, each new creator building on the works of

[230] US Constitution, art I, sec 8.
[231] Lawrence Lessig, *Free Culture: The Nature and Future of Creativity* (New York: Penguin Press, 2004), 99.

> those who came before. Overprotection stifles the very creative forces it's supposed to nurture.[232]

But every party with a vested interest in the definition and scope of intellectual property has a different opinion on how much protection is overprotection. On the one hand, the lawsuits filed by major media corporations, music producers, and film studios have shown how much they value their intellectual property and how strongly they believe those properties should be protected. Their argument is that these properties are the fruits of their business and if they are to continue to be creative and productive they must remain profitable, and maintaining control over these properties is the way they are able to do that. On the other hand, creative authors who sample music and remix culture in their own production of culture have made an argument that less strict controls ultimately lead to more production and a more diverse and creative culture. These artists do not wish to steal and pirate these properties to make money, but rather they want to have the freedom to use existing culture to beget new culture. Lawrence Lessig clearly states the terms of the debate:

> This is a struggle about an ideal–about what rules should govern the freedom to innovate. I would call it a "moral question," but that sounds too personal, or private. One might call it a political question, but most of us work hard to ignore the absurdities of ordinary politics. It is instead best described as a *constitutional* question: it is about the fundamental values that define this society and whether we will allow those values to

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[232] Gigi Bradford, "Why Would You Read This Book?," in *So What . . . About Copyright?: What Artists Need to Know About Copyright & Trademarks* edited by David Bollier, et al., (United States of America: Public Knowledge, 2005), http://static.publicknowledge.org/pdf/so-what-about-copyright.pdf.

change. Are we, in the digital age, to be a free society? And what precisely would that idea mean?

As Betting, Vaidhyanathan, and Lessig point out, intellectual property rights no longer reward creators and provide the public with a wide array of cultural goods, but rather protect the economic interests of media and entertainment corporations. Congress has facilitated this transition by repeatedly altering copyright laws, thereby extending the duration of copyright and expanding the protection that these rights offer. Over the last forty years the duration of copyrights has increased from a maximum of fifty-six years to a maximum of ninety-five years and producers no longer need to register or renew copyrights to be protected. This new legislation has greatly diminished the value of the public domain as properties are now protected twice as long. In addition, copyright law has been extended to cover so-called "derivative rights," so that if an individual is making a film based on a book one has written or is developing a translation, he must first obtain permission before he can proceed. While covering derivative rights seems a sensible legal consideration, the interpretation of the legislation that provides this extension of intellectual property rights has been extended to cover not only commercial derivations and duplications, but also any kind of transformation, even if that transformation takes a small piece of an original work as an impetus to create a wholly new and different work.[233] The combination of the extension of the duration of copyright and the expanded interpretation of derivative rights has resulted in a system that is much more restrictive to cultural producers of new works and greatly limits the freedom of our culture. Lessig emphatically states,

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[233] Lessig, *Free Culture: The Nature and Future of Creativity*, 136-9.

> *Never* has copyright protected such a wide range of rights, against such a broad range of actors, for a term that was remotely as long. This form of regulation–a tiny regulation of a tiny part of creative energy of a nation at the founding–is now a massive regulation of the overall creative process. Law plus technology plus the market now interact to turn this historically benign regulation into the most significant regulation of culture that our free society has known.[234]

Furthermore, Lessig affirms that

> The law and technology are being transformed in a way that will undermine our tradition of free culture. The property right that is copyright is no longer the balanced right it was, or was intended to be. The property right that is copyright has become unbalanced, tilted toward an extreme. The opportunity to create and transform becomes weakened in a world in which creation requires permission and creativity must check with a lawyer.[235]

Considering Lessig's argument, it easy to see how the case could be made that the initial spirit and intent of copyright law has been lost. Whether copyright as a concept continues to act as a motivator for creative cultural promotion or not, it however cannot be debated that intellectual property rights continue to have an impact on the field of cultural production as mechanisms of capitalist accumulation and ideological control.

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[234] Ibid., 170.
[235] Ibid., 173.

Assessing the Impact of Intellectual Property on Theatrical Production

While the scope of the arguments of Vaidhyanathan, Bettig, and Lessig cover the larger field of cultural production, the repercussions of developments in intellectual property rights on the cultural control and the freedom of creative producers are the same within the field of theatrical production. Just as significant is that these issues are economic, legal, and thus political in such a way that critical scrutiny of them requires analysis beyond the textual and phenomenological approaches usually associated with theatre studies. Understanding how intellectual property rights are shaping contemporary theatrical production demands an interrogation of the cultural logic of capitalism as a system and the logic of corporate and individual behavior within that system. It requires a methodology that can engage with the apparatuses of authorship, ownership, distribution, and commoditization at both the conceptual and practical level and sufficiently address how those apparatuses impact theatrical production. The political economic approach allows us to accomplish this by integrating the empirical details of the microinteractions of the producer-creator and distributor-consumer relationships with the macro-level legal and economic forces that provide the structure and logic of theatrical production. Looking at the contemporary theatrical field we see a Disneyfied Broadway, disagreements between playwrights and directors over who reaps the rewards for creating dramatic action, and a constant stream of screen-to-stage remakes of popular films on American stages. These developments, all of which are driven by trends in the political economy of intellectual property, are symptomatic of the condition of theatre in contemporary culture and reveal how theatrical producers are responding to the cultural logic of capitalism in the twenty-first century.

Surveying the field of contemporary theatrical production, it becomes apparent that the legal and economic concepts shaping the current interpretation of intellectual property rights directly influence the production of theatre on a number of different levels. First, within the community that is directly involved with the development and creation of the theatrical event, individual artists are more keenly aware of the income generating potential for work they have done while producing theatre and the possibilities that copyright law offers them to claim ownership over that work. Historically, the playwright was the primary theatrical producer to hold marketable rights to materials that resulted from the process of creating theatre. But recently dramaturgs, directors, and performers have attempted to position their work as ownable and copyrightable, giving them greater control over their work and a stake in royalties from future productions. This changing notion of who is the "author" of theatre has important conceptual as well as economic implications, as the traditional roles of theatrical production are challenged.

Taking a step back from the individual artists who create theatrical works and looking at the corporations and individuals that raise the money and develop theatrical productions, we can see how intellectual property is shaping the content selection process in new theatrical productions. Over the last decade, producers have increasingly developed new productions based on established properties from other media such as film and popular music. Rather than generating new intellectual properties that can later be developed into other media, as was the dominant trend in theatrical production throughout most of the twentieth century, theatrical producers are increasingly more inclined to develop plays or musicals that are based on a successful movie or a well-known music recording artist. The result is that musicals such as *Hairspray*, *Mamma*

Mia!, *The Lion King* and plays such as *The Graduate* are becoming a more prominent portion of the scope of theatre in America, whether on Broadway, as touring shows, in regional productions, or on college campuses. This trend can be contributed to corporate media firms such as Disney, Time Warner, and Vivendi Universal seeing theatrical production as a way to propagate their intellectual properties. This approach to developing theatre also allows producers to manage rising costs and limited income from box office receipts, as these firms raise the probability of recouping more from their initial investment because they are based on properties that have already proven to be successful and have an established audience.

Finally, in placing theatre within the larger field of cultural production, we can see cultural producers across all media looking to take advantage of the digitization of culture by promoting, managing, and distributing their most lucrative assets, their intellectual properties. Just as new technologies have made it easier to reproduce and distribute content through digital media, they have also made it easier for cultural producers to adapt their intellectual properties across a number of different media and extend the life and profitability of those properties. But the success of this model is predicated on creating durable creative goods that can be easily reproduced, mass marketed, and cross-promoted via delivery media such as DVDs and CDs. The ephemeral and live nature of theatre makes it difficult for theatrical producers to profit greatly in this market as the primary commodity that results from the process of theatrical production vanishes at the end of each live performance. The costs of copying and distributing music, books, or films pale in comparison to the costs of recreating a theatrical performance, which include actor and crew salaries, rent for space, costs of

props and scenery, playwright royalties, etc. This difference in cost is made even more glaring by the audience limitations of live performance, which can reach at most thousands of viewers while other media can easily reach millions or even billions. Thus, the ephemeral nature of theatre and the difficulty of capturing the complete experience on recordable media leave theatre at a distinct economic disadvantage.

Looking at theatre on these different levels, we can begin to see how the management and manipulation of intellectual property has played a role in directing the development of contemporary theatrical production just as it has in shaping the expansion of cultural production in general during the twentieth and twenty-first centuries. Tracing the development of intellectual property rights is particularly important because the precedents that are currently being established with regard to the propertization and privatization of cultural work portend how the cultural economy will evolve in the near and far terms. As culture moves away from its origins as a communal experience towards a paradigm of commodification and private ownership of cultural products, each medium and art form will be affected differently, gaining or losing ground within economic and cultural hierarchies and changing their relative importance within the cultural marketplace and society as a whole. It is for this reason that the discourse surrounding intellectual property is so active and heated, as there is much at stake with different parties each weighing in with their particular perspectives, preferences, and visions for the future of cultural production. Taking these circumstances into consideration, the analysis that follows addresses the question of where theatre fits into this discourse and considers how theatrical production will fare in the future as our society develops new ways of thinking about the production of culture.

Chapter 3.
Concepts of Authorship and Ownership Within the Field of Theatrical Production

At the heart of the question of intellectual property and copyright are the concepts of the author and ownership of creative work. Since the history of intellectual property rights stems from the publishing and printing of books, much of the original legal language and the judicial approach to these concepts was developed with the interests of individuals and corporations involved in the business of bookselling. In fact, as I have mentioned above, the original copyright laws in the United States were developed to protect publishers from piracy and were modeled after British statutes that had approached intellectual property rights in the same manner.[236] The most noticeable of these British statutes was the Statute of Anne, which was one of the earliest codifications of a "copy-right." The Statute of Anne, which was enacted in 1709 and then later put into effect in 1710, provided a fourteen-year copyright, renewable once if the author was still alive, and a single term of twenty-one years for any works published before 1709. The first United States copyright law was the Copyright Act of 1790. Modeled on the Statute of Anne, the Copyright Act of 1790 provided copyright to authors of maps, charts and books for a period of fourteen years with the possibility of one further renewal of fourteen years. Works had to be registered with a local clerk's office and a copy had to

[236] For more information on the history of the development of the copyright statutes in England that were precursors to the original copyright laws of the United States see Vaidhyanathan's *Copyrights and Copywrongs* (35-80) and Lessig's *Free Culture* (85-94 and 130-5).

be deposited in the office of the Secretary of State.[237] One distinguishing characteristic of the Copyright Act of 1790 was that it only protected United States citizens, and foreign authors, such as Charles Dickens, often bristled at the American market for pirated versions of their works.

The Statue of Anne and the Copyright Act of 1790 were significant because they were the first pieces of legislation that bestowed rights of ownership upon intellectual property creators. George Washington, upon declaring his support for the Copyright Act of 1790 declared that the new law would be a step toward "teaching the people themselves to know, and to value their own rights; to discern and provide against invasions of them; to distinguish between oppression and the necessary exercise of lawful authority."[238] But these statutes provide only a certain level of protection, as they forbade the reprinting of a book without permission, and specifically limited that right to the use of a particular machine (a printing press) to replicate a particular kind of work (a book).[239] The laws were designed this way so that copyright would function as a control to publishing monopolies, ensuring the cheap distribution of knowledge as well as security for authors, and not as an inhibitor to cultural development and expansion.[240] Nevertheless, soon after the enactment of the Copyright Act of 1790, authors were clamoring for an expansion in the scope and duration of copyright as they wanted more protection and for that protection to last longer. Throughout the nineteenth century,

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[237] William F. Patry, "The First Copyright Act," in *Copyright Law and Practice*, (Washington, D.C.: Bureau of National Affairs, 1994), http://digital-law-online.info/patry/patry5.html.
[238] Siva Vaidhyanathan, "Copyright as Cudgel," in *The Chronicle of Higher Education*, August 8, 2002, http://chronicle.com/free/v48/i47/47b00701.htm.
[239] Lessig, *Free Culture: The Nature and Future of Creativity*, 86-7.
[240] Vaidhyanathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity*, 40.

prominent American literary figures such as Noah Webster and Mark Twain were constantly pushing to extend copyright duration by championing the proprietary rights of authors. Despite this concerted push there were only two changes made to the protection provided to authors. In 1831, the initial term of protection was expanded from fourteen to twenty-eight years, increasing the maximum term to forty-two years. Then, in 1909 Congress extended the renewal to twenty-eight years, so that the maximum term was now fifty-six years, but only if the author made the effort to renew his copyright.[241]

Unlike the relatively slow expansion that occurred from 1790 to 1909, the twentieth century saw a rapid expansion of both the scope and duration of copyright laws, and the concept of intellectual property continues to expand today. A number of different bills have incrementally increased the duration of copyright in the United States to a term of life plus seventy years for "natural" authors and ninety-five years for corporations, and there is no longer a need to renew a copyright at any time.[242] Furthermore, the scope of copyright has expanded in recent years to cover more cultural products as has the notion of who is an author and who can own culture. As a result, cultural producers across the varied media are impacted differently as the marketplace continues to respond and adapt and the legal and economic ramifications of these changes remain uncertain.

In the theatre, we are starting to see established traditions of collaborative work challenged as artists begin to question what parts of their contribution to the joint work of theatre are copyrightable and individually ownable. With increasing frequency, creative individuals and producing companies find themselves in difficult situations concerning ownership, adaptation, copyright, and remuneration, with many disputes needing to turn

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[241] Ibid., 79.
[242] *Sonny Bono Copyright Term Extension Act*, *U.S. Statutes at Large* 112 (1998): 2827.

to the courts for guidance and resolution. Central to the debate over the ownership of theatrical production is the notion of authorship, a concept that is particularly unclear and fraught in a form of cultural production that is inherently and inevitably collaborative.

Authorship has famously been a part of the discourse of cultural theory, particularly since Roland Barthes published his essay "The Death of the Author."(1967) In this essay, Barthes theorized that it was in fact the reader who produced the meaning of a work while interacting with the text, rather than some controlling persona guiding events from outside the text.[243] But, while Barthes's theory empowered the reader by "killing" the author, it did not address the real world implications that authorship and ownership have on cultural production. In the essay "What is an Author?" (1969), Michel Foucault responded to Barthes by writing that "The coming into being of the notion of 'author' constitutes the privileged moment of individualization in the history of ideas, knowledge, literature, philosophy, and the sciences."[244] For Foucault the conception of the author is culturally important, because he realizes that attributing creation or assigning ownership to any intellectual good has as an impact on the public's relationship to that good. In this sense, the author as "individual"–whether that may be a single person a group or even a corporation–is privileged for the unique role that he has played in bringing the good to the public. In discussing Foucault's theory of the author, Vaidhyanathan has written that

> The law and thus the culture use the idea of an "author," even if it is merely a proper name, as a locus for a complex network of activities and

[243] Roland Barthes, "The Death of the Author," in *Image-Music-Text* (New York: Hill and Wang, 1977), 142-8.
[244] Michel Foucault, "What is an Author?," in *The Foucault Reader*, ed. Paul Rabinow (New York: Pantheon Books, 1984), 101.

> judgments that deal with ownership, power, knowledge, expertise, constraints, obligations, penalties, and retribution. . . . So for Foucault the author matters. But it matters for what it does in a culture, not necessarily whom it represents. [245]

This notion of the author does not however match with the idealized conception of the author that most people have. Foucault's author is not diligently working alone, inspired by creative genius, to develop a new work of art, rather it is a concept more directly concerned with the ownership of produced goods, who deserves protection from the law, how long they deserve that protection, and what parts of the fruit of their labor will be protected. Michael Curtin and Thomas Streeter have noted that

> The author "functions" as an organizing name tag for the social production of ideas, but just as importantly it functions as an important rationale for the ownership and marketing of ideas. It was one thing to say that [Guglielmo] Marconi invented the radio; it was quite another to give him a patent that allowed his company to create an extremely powerful monopoly over the early development of the technology, which in turn established patterns of organization in the industry that are with us to this day. And here we begin to detect an important connection between culture and economics.[246]

Curtin and Streeter thus develop their argument out of Foucault to reiterate that the idealistic notion of the author should not be considered only as an idea, the picture of the

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[245] Vaidhyanathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity*, 9-10.
[246] Curtin and Streeter, "Media," 236.

struggling artists at his desk, but as a historical development that resulted from specific sociocultural and economic conditions. To elaborate upon this socioeconomic role of the author construct, Curtin and Streeter noted that "the persistence of the author construct reflects the persistence of various forms of romantic individualism in the culture at large,"[247] and that likewise this romantic individualism not only became a necessary condition to contemporary capitalism but also acted as a motivation for the resistance of capitalism. Curtin and Streeter have argued that the romantic author has come to be utilized as "a discursive resource or a rhetorical trope"[248] that can be invoked just as easily by a corporation looking to claim ownership over an intellectual property as it can by a cultural producer who creates a work that challenges the status quo. From this it becomes apparent how the concept of authorship has come to have an almost paradoxical effect, as it both encourages and problematizes the valorization of authorial ownership in cultural production. In response to the challenge posed by the paradox of authorship, Vaidhyanathan has written that

> We should define an "author" broadly, as a cultural entity: a "producer." Since 1909, the copyright statute has recognized this broad sense of authorship, the "unromantic" author. . . . American copyright law itself undermines any romantic sense of individual genius. It recognizes both Microsoft and Miles Davis as authors in a legal sense. The law has changed over the course of the century to create that special legal entity that in fact has little to do or nothing to do with a personified "author" as

[247] Ibid., 237.
[248] Ibid., 238.

> we traditionally imagine. Still, we must deal with the "producer" in some form, in court if nowhere else.[249]

One desired result of the legal expansion of the concept of the author was to empower authors with the means by which to control and prosper from their intellectual labor. Thus protection for the rights of the "author" becomes an important justification for the reification of the abstract nature of cultural goods, as it allows for intellectual property to be handled in the same manner legally as one would handle physical property such as land, a house, or a car. While on the one hand this reification and protection seems logical and in fact aligns with the intellectual property aims of the Constitution, the uncontrolled expansion of the control of authors over their work and the increasing scope of what can be owned and controlled threatens their own creative flexibility in contemporary culture. Afraid of lawsuits and scared off by prohibitively high licensing costs, artists find the pool of recyclable culture dwindling and the burden of doing creative work increasing. So while many cultural producers would prefer freer restrictions that would seem to promote creativity, they are beginning to realize that if they do not stake their own claims they may eventually be unable to protect their own works from intellectual property theft. As a result, authors of all types find themselves uncertain as to how much protection for intellectual property is enough and how much is too much.

The condition of the author in the production of twenty-first century culture is further complicated by the evolution of cultural production in the digital era. As the replication of most media has become virtually effortless, and new social mechanisms

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[249] Vaidhyanathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity*, 10-11.

have arisen to facilitate collaboration and innovation (such as the open source movement and collaborative authoring tools such as wikis), the notion of who is an author and how the work of an author can and should be protected or made available to the public have become further complicated. To magnify the challenges of this digital age, the innovations that develop from information technologies have often appeared so unexpectedly and at such a pace that lawmakers have often found it difficult to simply keep legislation up to date and able to cope with each new situation, not to mention create legal structures that will be appropriate for future conditions. As adjustments to the laws are made and enforcement of those laws is modified, cultural producers must work in an environment fraught with frustration and apprehension.

As this conception of the author impacts culture in general, it likewise complicates theatrical production specifically. Theatre has always been a collaborative cultural form, which is created jointly by playwrights, directors, performers, designers, administrators, and many others. These individuals work together to create a contained, live, and ephemeral product that can only be fully experienced by the audience present for the specific duration of the performance. Unlike most all other forms of cultural production there is no object that remains from the performance that can completely be reproduced or copyrighted as such. For the time that preceded copyright law and the codification of the author that Foucault and Vaidhyanathan discuss, this was not a major concern. Theatrical creators paid for materials and made a living either by being paid by an institution or individual that funded the production, or by taking advantage of the exclusivity inherent to theatrical exhibition by charging admission to the performance or a combination of the two. But as new technologies arose and the concept of intellectual

property expanded, theatre producers, just like other producers, had to become more concerned with how easy the reproduction of culture has become. When considering the entire history of theatre, this increased concern by theatre artists over the protection of intellectual property is a relatively recent phenomenon. Ronald Bettig has detailed the conditions that have prompted the current escalation of concern over who deserves a copyright in our culture. When describing the political economic conditions for authors in contemporary Western culture, Bettig argues that

> The basic premises of copyright were worked out at a time when the production of intellectual creativity, mainly books, was a far simpler process, mainly involving a single author bargaining with a publisher over terms of exploiting a literary work. Currently most artistic and intellectual creativity involves the participation of many actual creators in the production of "works for hire." Ownership of copyrights increasingly rests with the capitalists who have the machinery and capital to manufacture and distribute them.[250]

The early copyright laws that Bettig refers to, such as the previously mentioned Statute of Anne, were designed to protect the specific copying of a physical medium using a particular machine. This legislation provided no specific protection for theatre artists, as the understanding of culture and the concept of author did not seem to necessitate such protection, even though the production of theatre involved "the participation of many actual creators." In this sense we see that contemporary trends in intellectual property

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[250] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 8.

rights are directly related to the technologies and methods of cultural production as well as the particular legal sensibilities of twenty-first century culture.

Precedents and Systems in the Case of the Individual Ownership of Theatrical Products

As our culture and laws have changed since the Statute of Anne, theatrical production has been altered and the theatre community has responded to the changing notion of who is the "author" of theatre. The aspects of the first copyright laws that were applicable to theatrical production allowed publishers who had received the proper permissions from playwrights to reproduce playscripts. In 1902, Edward Rogers wrote in *The Michigan Law Review* that

> Before the dramatic copyright acts, plays were protected before publication as manuscripts, in the same manner as purely literary work. After publication they were protected as books, and the making of unauthorized copies forbidden, but the exclusive right of public performance or representation, as distinguished from the right to multiply copies, did not exist, until created by statute.[251]

These laws therefore had no impact on the interpretation of the play or any other artistic works derived from the play. Lawrence Lessig points out that early copyright laws such as these "would not have controlled anything, for example, about how the work could be performed, whether the work could be translated, or whether Kenneth Branagh would be allowed to make his films. The 'copy-right' was only an exclusive right to print–no less,

[251] Edward S. Rogers, "The Law of Dramatic Copyright," in *Michigan Law Review* 1, no. 2 (November 1902): 108.

of course, but also no more."[252] But just as Twain and Webster were constantly attempting to valorize and secure more rights for the author, playwrights and publishers of playscripts were equally interested in consolidating and fortifying the ownership rights of theatre artists.

One of the earliest and most famous cases of intellectual property dispute in American theatre took place between two important figures in late nineteenth century theatre, Augustin Daly and Dion Boucicault.[253] The case, which was known officially as Daly v. Palmer (Palmer was the name of the manager of the theatre Niblo's Garden, where Boucicault's play was produced), considered Boucicault's use of a famous railroad rescue scene in his 1868 play *After Dark*. The problem arose out of the fact that Boucicault's railroad rescue was strikingly similar to a scene from Daly's first play, *Under the Gaslight*, which was produced in 1867.[254] Daly claimed that Boucicault had infringed on a copyright he had made on the railroad scene in "which one of the characters is represented as secured by another, and laid helpless upon the rails of a railroad track" and just as the train is about to run over him "another of the characters contrives to reach the intended victim, and to drag him from the track as the train rushes

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[252] Lessig, *Free Culture: The Nature and Future of Creativity*, 88.

[253] For an account of an even earlier dispute over theatrical intellectual property that took place between Thomas Holt and Arne and Thomas Lowe in London in 1752 see Judith Milhous and Robert D. Hume, "Librettist Versus Composer: The Property Rights to Arne's *Henry and Emma* and *Don Saverio*," in *Journal of Royal Musical Association* 122, no. 1 (1997). In another article, Milhous and Hume provide detailed information on the 1786 purchase of the copyrights to early works by playwright Isaac Bickerstaff, that reveals how early copyright statues created complex ownership relationships between authors and publishers. See Judith Milhous and Robert D. Hume, "Isaac Bickerstaff's Copyrights--and a Biographical Discovery," in *Philological Quarterly* 83, no. 3 (2004).

[254] Edward Samuels, "Daly vs. Boucicault," in *The Illustrated Story of Copyright*, http://www.edwardsamuels.com/copyright/about/anecdotes/daly.html.

in and passes over the spot."[255] The case was important because whereas copyright for playscripts could clearly be discerned from legislation passed in 1831 and for the performance of a play in legislation passed in 1856, there had yet to be any definitive laws or judicial decisions made regarding copyrights on staging. The judge in the case ruled that Boucicault had in fact plagiarized Daly, that scenes like the railroad scene were dramatic compositions, and that even if they only made up a portion of a play they remained protected by copyright.[256] The ruling reasserted the playwright's ability to enforce his copyright on the stage as well as in the bookstore, either in whole or in part.

As the playscript has gained a particular sanctity as well as legal and cultural prominence, the playwright has come to be established as the privileged creator in the theatrical process. Playwrights and publishers have thus been able to gain control over the texts of theatrical production and establish a royalty system by which playwrights are remunerated for every performance of their work either by a flat fee or more commonly through receipt of a percentage of box office receipts. By managing royalties control and payments, publishers have been able to take an active role in the process of theatrical production, placing them in an important position in the political economy of the field.[257] Furthermore, the publishers along with the estates of individual playwrights have come to act as the guardians of the intellectual property of the playwright. As the role of publishers has increased and the language of contracts has become more specific, the freedom of a theatrical producer to adapt and interpret the text of a play has become more

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[255] *Daly vs. Palmer*, 6 F.Cas. 1132 (C.C.S.D.N.Y. 1868) (No. 3,552).
[256] Ibid.
[257] Ironically, Dion Boucicault, who was the defendant in *Daly vs. Palmer*, was one of the first playwrights in England successful enough to take advantage of copyrights and receive royalties as a percentage of profits from the production of his works. See Samuels, "Daly vs. Boucicault."

and more restricted. The most prominent example of how these changes have manifested themselves in contemporary American theatre is the manner in which Samuel French, Inc., the largest and most important publisher of playscripts in the United States, asserts its privileged position in the field of theatrical production. Since 1846, Samuel French has been publishing playscripts and representing playwrights in negotiating contracts and collecting royalties. The company's goal of course is to prosper financially and their model of business relies on playwrights being successful. As the company has a stake in the economic success of the playwright it also is invested in how cultural consumers view the significance of the playwright. Samuel French makes clear its investment in the playwright on the company's web site. The web page concerning rights and royalties, states "the writing of plays is a means of livelihood. We support theatre by supporting the creator of theatre, the playwright."[258] On the surface this position seems justifiable considering the important role that intellectual property rights have in acting as an impetus for creative work and the need for creators to have competent and consistent representation within the royalties and fee economy of play licensing. But, there is more behind this statement that hints at the reasons behind recent fracturing within the theatrical community regarding intellectual property rights and the ownership of theatrical production. Attempts by publishers and playwrights to further consolidate the ownership and control of the production of plays in American theatre has created tension between playwrights, directors, dramaturgs, and actors. As public discourse over intellectual property rights has increased, the different individuals involved in the

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[258] Samuel French, Inc., "Royalties & Rights Information," in *Samuel French, Inc. The House of Plays & Musical Plays for 175 Years*, http://www.samuelfrench.com/store/royalties.php?osCsid=274cd379f2759288728b2a65867e46f7.

production of theatre are more frequently looking to lay claim to their ownership of individual parts of theatre, challenging the claim that the playwright is "the creator" of theatre and looking for their share of the royalties earned and credit given as authors. The battle lines have been drawn on the pages of magazines, on the Internet, and in the courtroom creating an increasingly adversarial climate that inevitably affects the growth, development, and creative freedom of theatrical producers.

The first place to look in order to understand how this division is affecting theatre is to return to the role of Samuel French in establishing the legal framework for play licensing and the cultural perception of playwrights. An important aspect of the field of cultural production that motivates the actions of publishers such as Samuel French is the role of cultural businessmen (the art dealers, publishers, theatre owners, and media conglomerates that control distribution of cultural goods) in producing value for cultural goods. Pierre Bourdieu argues that despite the sacralization of the artist by the ideology of creation and authorship (the painter, writer, or film director), cultural businessman play just as important a role in the production of value for a cultural good.

> The question can be asked in its most concrete form (which it sometimes assumes in the eyes of the agents): who is the true producer of the value of the work–the painter or the dealer, the writer or the publisher, the playwright or the theatre manager? The ideology of creation, which makes the author the first and last source of the value of his work, conceals the fact that the cultural businessman (art dealer, publisher, etc.) is at one and the same time the person who exploits the labour of the "creator" by trading in the 'sacred" and the person who, by putting it on

> the market, by exhibiting, publishing or staging it, consecrates a product which he has "discovered" and which would otherwise remain a mere natural resource; and the more consecrated he personally is, the more strongly he consecrates the work. The art trader is not just the agent who gives the work a commercial value by bringing it into a market he is not just the representative, the impresario, who "defends the authors he loves." He is the person who can proclaim the value of the author he defends. . . and above all "invests his prestige" in the author's cause, acting as a "symbolic banker" who offers as security all the symbolic capital he has accumulated.[259]

Therefore it is important for Samuel French to maintain the importance of the playwright in the field of cultural production for a number of reasons. First of all, because it has built up its symbolic capital based on the playscript as the sacred text of theatrical production and the playwright as the sole author of that text. If the symbolic value of the playscript was diminished, Samuel French would lose its dominant position as a "symbolic banker," and thereby lose economic leverage in the field as well. Secondly, any diminishment of the importance of the playscript and the playwright would effect the economy of the field of the field of theatrical production, much of which is driven by the ability of the publisher to "consecrate" the work of a playwright through discovery and then distribution. If the system were to experience a paradigm shift away from the ideology of authorship that ascribes privilege to the playwright, Samuel French's

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[259] Pierre Bourdieu, "The Production of Belief: Contribution to an Economy of Symbolic Goods," in *The Field of Cultural Production: Essays on Art and Literature*, ed. Randal Johnson, trans. Randal Johnson (New York: Columbia University Press, 1993), 76-7.

operating model and its ability to influence and profit from the field of theatrical production would be greatly diminished. Therefore Samuel French and other publishers of playscripts use their economic strength and influence in the field to assert their position in the field, setting the terms of ownership and authorship of theatrical production and thereby protecting the position of playwrights as well as their own financial interests.

Samuel French establishes and maintains the notion of the playwright as the ultimate author of any production by very rigidly setting the limits within which a theatrical company can alter a play it has licensed:

> The play will be presented as it appears in published form and the author's intent will be respected in production. No changes, interpolations, or deletions in the text, lyrics, music, title or gender of the characters shall be made for the purpose of production. This includes changes or updating the time and place/setting of the play. In reference to changing the gender of characters, men will play male roles and women will play female roles.[260]

This language displays how comprehensive the authority of the playscript is, and thus the position of power and legal strength of the playwright is asserted. Samuel French is able to enforce such language because of the strong bargaining position it maintains as the holder of the rights to approximately 5000 plays.[261] Theatres, most of which license plays and do not produce original works, are therefore beholden to Samuel French's licensing structures. Samuel French's position in the theatrical field is further strengthened by the

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[260] Samuel French, "Royalties & Rights Information."
[261] Samuel French, Inc., "Index of Titles," in *Samuel French, Inc. The House of Plays & Musical Plays for 175 Years*, http://www.samuelfrench.com/store/2003_basic_cat/Sam2002e.pdf.

fact that it is much easier to market and sell tickets to productions of well-known plays or plays by well-known authors, an important factor in a cultural marketplace with increasing competition for audiences and higher costs of production. In the end, by claiming the playwright as "the creator of theatre," and affirming that claim in contractual language that establishes the conditions for production, Samuel French is able to bestow upon the playwright a primacy that belies the collaborative creativity of the theatrical process.

The political economic conditions that result from this primacy establish for the playwright a privileged position from which to accrue economic, cultural, and symbolic capital. The maintenance of this position thus relies on the perpetuation of a cultural predilection that considers the playscript as both the origin point for theatrical creativity and the most representative remnant of the collaborative process of theatrical production. As a result, the playscript and the text therein are attributed with value as a commodity and sanctity as an artifact of the creative process that surpasses any other product of theatrical work. It is here where we can see how the role of intellectual property laws in empowering the playwright and playscript above all other theatre artists or works threatens the cultural understanding and impression of the medium. In particular, the fetishization of the text threatens the place of theatre in the cultural contemporary landscape because it betrays the multimedia, multisensory nature of experiencing theatre. Jacques Derrida poses a metaphorical analysis of the textual theatre in his reading of Antonin Artaud's *Theatre and Its Double* that elucidates the danger of the contemporary text-driven "museum" theatre. Derrida is wary of many of the conditions that so many of

the parties concerned with the ownership of property rights in theatre are eager to claim, and discusses what he calls the theological stage.

> The stage is theological for as long as it is dominated by speech, by a will to speech, by the layout of a primary logos which does not belong to the theatrical site and governs it from a distance. The stage is theological for as long as its structure, following the entirety of tradition, comports the following elements: an author-creator who, absent and from afar, is armed with a text and keeps watch over, assembles, regulates the time or the meaning of representation, letting this latter represent him as concerns what is called the content of his thoughts, his intentions, his ideas. He lets representation represent him through representatives, directors or actors, enslaved interpreters who represent characters who, primarily through what they say, more or less directly represent the thought of the "creator."[262]

Playwrights and their representatives have a passion for this theological stage, a logocentric stage where the text looms ever-present and unalterable, safe on its cultural pedestal. This is a stage where interpreters are secondary participants in the creative process, simultaneously subservient to the cultural predisposition towards textual sanctity and afraid of the imposition of legality that supports the theological stage. But those secondary interpreters now see a new culture where they may have claims to stake their individuality and economic claim on the already limited bounty of theatrical production. What has resulted is rising tensions among playwrights, directors, dramaturgs, and other

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[262] Jacques Derrida, "The Theatre of Cruelty and the Closure of Representation," in *Writing and Difference*, trans. Alan Bass (Chicago: University of Chicago, 1978), 235.

theatre artists over whether the work of the interpreters deserves equal legal consideration and protection as the author-creator who has been bestowed privileged cultural standing.

Samuel French Inc.'s ability to so firmly entrench itself in the political economic landscape of contemporary theatre has been the result of a confluence of two factors, the work done to consolidate the idea of who authors theatre and the characteristics of copyright law that afford protection to the most tangible artifacts of culture. In the case of theatrical production this artifact is the playscript. But Samuel French is not the only beneficiary or participant in the development of the primacy of the playwright and the hegemony of the playscript in American theatre. Rather, most, if not all, playwrights have come to recognize the benefit of maintaining their privileged position in the field of theatrical production. In particular, the Dramatists Guild, an organization which represents the interests of playwrights in the United States, has taken great strides to champion and defend the legal and cultural positioning of the playwright as the ultimate author of theatre and thus the sole creative individual worthy of copyrights.

Expression and Interpretation: The Debate Over A Director's Copyright

On its web site, the Dramatists Guild states that its purposes are: "To protect and promote professional interests of authors of dramatic and dramatico-musical works, to protect their rights in such works, and to improve the conditions under which their works are created and produced."[263] The Dramatists Guild is very protective of the idea of the playscript as the point from which all theatrical inspiration is derived. As such the Guild takes the stand that the work of the playwright should be protected as the most valuable

[263] The Dramatists Guild of America, "Constitution and By-Laws," in *The Dramatists Guild of America*, http://www.dramatistsguild.com/content.aspx?id=guild_constitution.

contribution in the collaborative process of creating theatre. Nowhere is this more clearly laid out than in the Dramatists Guild's Author's Bill of Rights,[264] which provides the minimum protective language that all member contracts should contain and acts as a guide when playwrights are drawing up contracts with producers. The Author's Bill of Rights (see Appendix I) establishes a framework of what the rights protect the work of the playwright, how to protect those rights, how to control possible changes made to their work, and how to reconcile with producers when conflicts arise regarding the use of a playscript. Knowing what type of protection is afforded playwrights by law is especially important when a play is still in development and there remain high-stakes questions about the ownership of work done during workshops, rehearsals, and previews. The Bill of Rights also gives playwrights guidance as to how much control they can and should exert over the development of their work throughout the process of production, as well as how much control they have over any subsequent productions of that work by a producer.

Within the Author's Bill of Rights, the Dramatists Guild has decisively laid out a position of control for the playwright that belies the kind of flexible and collaborative approach that theatrical production traditionally has followed. The first of the eight rights states that the playwright should have final say over all changes to the script:

> ARTISTIC INTEGRITY. No one can make changes, alterations, and/or omissions in your script without your prior consent. This is called "script approval." You should never permit this provision in your contract to be diluted by phrases such as "such prior consent not be unduly or

[264] The Dramatists Guild of America, "The Author's Bill of Rights," in *The Dramatists Guild of America*, http://www.dramatistsguild.com/content.aspx?id=bill_rights.

> unreasonably withheld," or by settling for "consultation" rather than "approval" of such changes."[265]

Another of the rights gives the playwright final approval of all casting, directing, and design choices:

> APPROVAL OF PRODUCTION ELEMENTS. You have the right to select the cast, designers, choreographers, conductors and director (including replacements) for your production. This is called "artistic approval." Together, you and the Producer will also confer on other elements of the production (i.e. costumes, advertising, etc.). [266]

Both of these rights, while reasonable to a certain degree, greatly exceed the standard practices of theatrical production. Even the most famous of plays are at times subject to line editing to fit the specificity of the production, space, or current events. Furthermore any company (whether it is commercial or non-profit) that is providing the financing for a production is going to be guided by a producer or artistic director responsible for ensuring the artistic as well as financial success of a work. Giving the playwright control over all casting, directing, and design decisions would seem to strip these companies of their institutional sovereignty and provide the playwright with an unreasonable amount of control and authority.

The Guild's approach to ownership and authorship of theatre is even more firmly elucidated in the following two sections of its Bill of Rights:

> OWNERSHIP OF INCIDENTAL CONTRIBUTIONS. You own all contributions made by other participants in the production to your script.

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[265] Ibid.
[266] Ibid.

> You do not owe anyone any money for these contributions unless you have a written agreement providing for such payment.
>
> DIRECTOR/DRAMATURGE AGREEMENTS. Although a director or dramaturge may work with you over time to shape your script, such development never makes that person an "Author" unless they have actively collaborated with you as an author. No director or dramaturge should have a right of first refusal for productions after the initial production by them, or be entitled to receive a percentage of your income from future productions.[267]

These two sections stand out with regard to intellectual property rights because of the manner in which they reinforce the position of primacy of the playwright already established through the laws and political economic structures of American culture. The Author's Bill of Rights reinforces the notion that contributions from collaborators should inherently be subsumed and colonized by the property rights of the playwright and essentially negates the value of the contributions of directors and dramaturges to the lasting success of a play. This protective intellectual property language is therefore potentially divisive, because it pits the holders of intellectual property rights and the collaborators as adversaries rather than co-creators.

One important feature of the Author's Bill of Rights is that despite being laid out in a format similar to the Bill of Rights in the American Constitution and using legal language found in copyright and other intellectual property laws, it is in fact not a separate official legal document that can be used in court to codify the property rights of

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[267] Ibid.

a playwright. Nor is it part of a collectively bargained agreement between a labor union and employers. Since the law treats playwrights as independent contractors and not employees, they are not allowed to organize as a typical union could. In the end the Dramatists Guild is just that, a guild that brings together a community of independent workers with common interests and not a union. The separate clauses in the Bill of Rights do however make it into many contracts as they have come to be a standard part of the model contracts that the Dramatists Guild provide for their members and are used across the field of theatrical production. Nevertheless, the unenforceability of these rights is significant because of the aggressive stance that the Dramatists Guild takes in favor of the playwright's unquestioned ownership and control of his or her intellectual property. Furthermore, it reflects the way in which playwrights have been ascribed a privileged position in the field of theatrical production due to the development of American culture and authorial conventions.

The Dramatists Guild has made it its mission to ensure that political economic conditions favor their members, and to maintain the cultural dispositions that underpin the sanctity of the playscript, reinforce the textual focus of contemporary theatre, and strengthen the position of the playwright within the field. Since the playwright is afforded legal protection and authority above and beyond the other creators of theatrical spectacle, and the playscript is deemed to have economic value and longevity that supercedes that of any other theatrical commodity, the members of the Dramatists Guild and playwrights as a whole are bestowed with a privileged amount of symbolic capital when compared to other artists within of the field of theatrical production.

While the Dramatists Guild has acted as a champion for the playwright, actively working to protect the extent to which playwrights can benefit from and exert control of their copyright, other members of the theatrical community have taken strides to claim more symbolic and economic capital within the field by attempting to exert their own property rights. Just as the Dramatists Guild has lobbied and organized for playwrights, the Society of Stage Directors and Choreographers (SSDC) has looked for ways to improve the earning potential and self-determination of its members. Through publicity, commentary in publications, and involvement in a number of important court cases, SSDC has campaigned for the recognition of the work of a director as valuable and copyrightable. The first level at which SSDC is trying to extend the possible remuneration for directorial work is in how directors negotiate their contracts with producers and playwrights. Barbara Hauptman, executive director of SSDC, has noted that very often directors are significantly involved in the production of new works in smaller theatres, but receive no compensation when that work results in later financial windfalls. "You'll have a young director working with his best friend—and they put together this musical, and it's developed, and then it's put up on its feet in a certain situation. It's very successful. A Broadway producer comes in and looks at it. All of a sudden it's on its way to Broadway—and the director is left behind."[268] Hauptman suggests that directors should be proactive in their contract negotiations to ensure that they receive the economic windfall of any further productions, especially if their stage pictures and directorial decisions have contributed to the work's success. Since the issue

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[268] Terry Berliner, "What Directors of New Musicals Need to Know," in *Theatre Communications Group*, April 2006, http://www.tcg.org/publications/at/Apr06/music7.cfm.

regarding a director's copyright has yet to be resolved in court –there has still yet to be a case with a definitive ruling on whether the work of a director is copyrightable– SSDC believes that the director is best protected by addressing all of these issues before production begins. Delineating the director's rights with regards to both the producer and the playwright in a manner that explicitly protects the work done by the director prevents controversy from possibly developing later in production or when the show becomes a hit. Hauptmann points out 'some directors create an agreement between themselves and the writer. Others negotiate two contracts: one as director, the other as dramaturg. There are no hard-and-fast rules. SSDC can only protect the work that actually happens on stage in terms of stage pictures, as well as directorial solutions to the production, but not anything that has to do with script or structure. Those issues often get mixed up."[269]

But while SSDC has looked for ways for its members to protect themselves on a case by case basis, there has been a more concerted effort in recent years to solidify the standing of the director's work as ownable and protected by copyright law. The union has championed a director's copyright that would establish a precedent by which director's would not only have firmer legal protection against plagiarism, but would perhaps allow them to begin to participate in a royalty structure similar to that which playwright's benefit from. One of the most specific instances of SSDC voicing its desire for such a copyright came in an article by Ted Pappas, the president of the union at the time, published in *American Theatre*. In the article, Pappas was responding to what he called "misinformation and misunderstanding" regarding the legal action directors had taken in protecting their property rights. More specifically, Pappas was defending

[269] Ibid.

directors and their union from claims that they were unjustly trying to take credit for work actually done by playwrights in an attempt to make more money. Pappas rebutted those claims, stating that

> Property rights give a director or a choreographer ownership of the staging they create for a production of a play or a musical. Repeatedly, directors' claims against other directors have been confused with cases involving playwrights versus dramaturges. . . . But these are two separate issues. The directors' cases have never involved a claim against a playwright; they have never made a claim against royalties or other income of a playwright. [270]

Specifically, Pappas was trying to distance the work done in favor of director's copyrights from the *Thomson vs. Larson* case that arose out of a disagreement over the authorship of *Rent* and was pending at the same time his article was published in *American Theatre*. In this case Lynn Thompson, the dramaturg of *Rent*, claimed that since she had completed the script after the central author Jonathan Larson died and prior to the opening of the show, she should be considered a co-author. The court eventually ruled against Thompson, claiming that although Larson intended for Thompson's work to be merged into the script, he never intended her to be considered a joint author.[271]

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[270] Ted Pappas. "Protecting the Director." *American Theatre* 16, no. 2 (February 1999): 6. Academic Search Premier, EBSCOhost. (accessed 20 November 2006).

[271] Jessica Litman, Kay Murray, and Christine Steiner, "Overview: 'What Every Artist Should Know About Copyright and Trademark Law' " in *So What . . . About Copyright?: What Artists Need to Know About Copyright & Trademarks* edited by David Bollier, et al., (United States of America: Public Knowledge, 2005), http://static.publicknowledge.org/pdf/so-what-about-copyright.pdf, 37.

Although Thompson lost her suit, many playwrights soon became wary of what they considered unjust attempts by other members of the theatrical community to stake a claim on their copyright. Wary of these rising tensions, Pappas was quick to point out that the cases in which SSDC had supported its members' rights to their intellectual property specifically addressed plagiarism.

> The SSDC has proceeded on a case-by-case basis, assessing the uniqueness of a stage director's contribution to a production, determining to what extent it can be defined, and finally calculating to what extent they were actually copied by another director. . . . We have acted only in extreme and egregious cases. . . . We are not claiming to be playwrights. We are claiming that a director can make additions to a play that are distinct and separate from the original play itself; if those additions are copied, intentionally and pervasively, the director whose work has been taken is entitled to compensation for his or her direction and appropriate credit from those who took and used the work.[272]

Pappas continued, stating that in these cases "the directors' work was used without authorization or credit by another director or producer. In all of the cases, directors have claimed only that their work–exclusive of any material in an author's script–was copied."[273] The two most notable cases of such directorial plagiarism were Gerald Gutierrez's suit against a theatre company outside of Chicago that he claimed had restaged in detail his direction of *The Most Happy Fella* and Joe Mantello's claim that the Caldwell Theatre Company in Boca Raton, Florida had replicated his direction of

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[272] Pappas. "Protecting the Director."
[273] Ibid.

Terrence McNally's *Love! Valour! Compassion!* without permission. Gutierrez and Mantello both claimed that the theatre companies had copied not only blocking, but also poses and movement, and in some cases even changed the orders of scenes or lines in the same manner that the original directors had. In both cases the directors came out on the winning side and although no judicial precedents were established, as the suits were both settled before a verdict, the director's were paid and given credit for their work. But, the Mantello case carried one extra note of significance. In an order dated July 22, 1997, the presiding judge, Judge Kenneth L. Ryskamp, denied the defendant's motion to dismiss the case as he was unconvinced that a director's copyright was inherently uncopyrightable. Judge Ryskamp ruled, "once the plaintiff produced a copyright, the burden shifted to defendants to demonstrate why the claim of copyright is invalid."[274] The presumption, in other words, was that since Mantello's application for copyright–which was a copy of the script that noted in detail his directorial choices–had been accepted then the Florida theatre company had to prove why there should in fact be no director's copyright. However, the case was settled before this burden of proof was resolved, and although the judge opened the window for a possible director's copyright the settlement prevented the trial from reaching completion, as well as forestalling a final verdict on the validity of such a copyright. Pappas pointed to the success of the directors in these cases as examples of the justification for increased recognition of the ownership rights of directors. He argued that the work of the director needed to be respected and protected to the same extent as the playscript. To further support the union's move

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[274] Jesse Green, "Exit, Pursued by a Lawyer," in *New York Times*, January 29, 2006, http://www.nytimes.com/2006/01/29/theater/newsandfeatures/29gree.html?ex=1296190800&en=c464cd605d3a4041&ei=5090&partner=rssuserland&emc=rss.

toward a director's copyright, Pappas noted that to a certain extent the protection that a full copyright would provide was already beginning to be acknowledge by producers. Specifically, Pappas pointed to the following clause, which appears in the collectively bargained contracts agreed to by SSDC and the theatrical management associations:

> In order to facilitate the Director's and/or Choreographer's ability to prevent unauthorized re-creation of direction and/or choreography. . . all rights in and to the Direction and Choreography. . . shall be, upon its creation, and will remain the sole and exclusive property of the Director and/or Choreographer respectively. . . . The foregoing is not intended to alter, diminish or affect, in any way, any of the Author's rights in the play.[275]

This clause has allowed SSDC to protect its members, and is the most thorough legal defense aimed specifically at the work of the theatrical director. But despite SSDC's confidence in the need for a director's copyright and the existence of such a contract with the producers, it remains an isolated contractual agreement and not part of the United States copyright law.

John Weidman, the head of the Dramatists Guild at the time, submitted a rebuttal to Pappas's article, in which he was quick to point out that the finer points of the United States copyright laws make Pappas's call for a director's copyright more tenuous.

> Pappas begins by asserting that "property rights give a director or choreographer ownership of the staging they create for a production of a play or musical." In fact, there is no recognized property right that gives a

[275] Pappas. "Protecting the Director."

> director ownership of any aspect of theatrical production. Traditionally, directors have not attempted to copyright their work, and to my knowledge, no court has ever recognized the validity of a director's copyright claim.[276]

This is true even in the Daly vs. Boucicault case, where the two parties involved were both playwright and director and when the judge addressed the copyrightability of the work he regarded the dramatic composition of the railroad escape as if a play rather than as an expression of directorial work. There have been cases regarding a director's copyright–such as Mantello's case against the Caldwell Theatre Company–but in all instances those cases were settled out of court before the judge made a final verdict and therefore cannot be used as cases setting judicial precedents. Furthermore, Weidman pointed out that in laying out the language from the standard contract SSDC uses with producing companies, Pappas has conveniently left out the phrase "as between themselves."

> With this phrase left out, the paragraph seems to mean something of enormous significance: that the director owns his staging, and that the producer will assist him in protecting it against the world. With the phrase restored, the paragraph means a good deal less: merely, that a producer who hires a director agrees not to use the director's staging in other productions *which he himself produces*, without acknowledgement and compensation. Why was this phrase omitted? Perhaps because Pappas

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[276] John Weidman, "No Copyright for Directors," in *American Theatre* 16, no. 7 (September 1999): 6.

> would like us to see the world of director's rights not as it is, but as he would like it to be.[277]

In pointing out this discrepancy in Pappas's description of the director/producer contracts, Weidman hits on the most significant obstacle that SSDC faces in its attempt to establish a director's copyright. As Edward Rogers's article on the law of dramatic copyright clearly stated 'since copyright is the creation of statute, it follows as a necessary corollary that only those things expressly enumerated in the statute can be protected and that any additional right must first be created by statutory enactment before protection can be successfully sought."[278] As the legislation currently stands, only the following cultural goods are protected United States copyright law:

> (1) literary works;
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> (2) musical works, including any accompanying words;
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> (3) dramatic works, including any accompanying music;
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> (4) pantomimes and choreographic works;
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> (5) pictorial, graphic, and sculptural works;
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> (6) motion pictures and other audiovisual works;
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> (7) sound recordings; and
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> (8) architectural works.[279]

According to the manner in which the law is most frequently interpreted and enforced, the works that pertain to the director's copyright are in areas (3) and (4). Dramatic works and accompanying music applies specifically to playscripts and musical scores and

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[277] Ibid.
[278] Rogers, "The Law of Dramatic Copyright," 108.
[279] U.S. Copyright Office, *Circular 92: Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code*, 8.

books, which can be recorded using text or musical notation, while pantomimes and choreography covers works that can be recorded using movement notation, such as the Laban system.

But as far as Pappas and many other proponents of a directorial copyright are concerned, the act of directing is much like that of choreography, and if choreographers are able to copyright their work then directors should be afforded the same rights. Since the law states that "copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device,"[280] one of the most important steps for directors looking to establish a copyright is to develop a system of recording their work that allows for comparison once the ephemeral work of theatre is over. Although there are no standardized methods of notation, such as the Laban system for dance movement, there are ways that directors record their work, whether they are personal notation systems, a stage manager's bible, or video recordings. Some director's have taken to filing these notations with the copyright office, in hopes that they would receive recognition under some other category and could protect their work using that copyright. At least one director has even suggested that a set form of directorial notation be created, enabling a standard that might more readily be recognized by the courts and lawmakers. On his web site, the director Edward Einhorn writes that

> When looking at blocking notated upon paper, the average layperson sees almost nothing. Even an experienced director can have trouble envisioning

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[280] Ibid.

> a production from mere notation. Yet notation, unfortunately, is about the only practical way to keep track of blocking. Although videotaping may also work, the reality of theater is that it is very difficult to videotape rehearsals and performances under the constraints of a variety of union contracts. Fortunately, the laws regarding choreography state that you do not need videotape in order to place it in a fixed form for the purposes of copyright. As long as the choreography is clearly notated, preferably but not necessarily using one of the standard forms of choreographic notation, it can be admitted for copyright.
>
> So I propose . . . that there be a system entitled Standard Directing Notation (SDN), for use in copyright matters. As I say, it already exists to an extent, in a casual form. But giving something a name (not to mention an official-looking abbreviation) makes it more tangible. It is equally valid, of course, with or without a name, but by having a professional standard that can be referred to in court, it may take us one more step to the very important goal of establishing the right to copyright a director's work.[281]

Einhorn believes that establishing a standardized method of notation would allow the practice of directing to more easily conform to the standards that copyrightable materials are held to by giving it the same recordability as the forms of live performance that are already covered by law. Although the logic of this argument seems rational and well thought out, it would still need to pass through considerable scrutiny and the intellectual

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[281] Edward Einhorn, "A Case for the Stage Director's Copyright," in *Untitled Theater*, http://www.untitledtheater.com/DirectorsCopyright.htm.

property laws have enough gray areas that even the apparently homologous approach that Einhorn is a proponent of may not make it past a skeptical judge or uncertain legislator.

Even with a standardized notation, there are other important legal considerations that stand in the way of a director's copyright. First of all there is the lingering question as to whether directing is a series of ideas or an expression. The United States copyright laws specifically states that "in no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work."[282] This part of the law is meant to elucidate that only the fixed expression or manifestation of an idea is protected by copyright and not the fundamental idea itself. This distinction, which is known as the idea-expression dichotomy (or divide), has been clarified in the 1961 *Report of the Register of Copyrights on the General Revision of the United States Copyright Law*.[283]

> Copyright does not preclude others from using the ideas or information revealed by the author's work. It pertains to the literary, musical, graphic, or artistic form in which the author expresses intellectual concepts. It enables him to prevent others from reproducing his individual expression without his consent. But anyone is free to create his own expression of the same concepts, or to make practical use of them, as long as he does not copy the author's form of expression.[284]

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[282] U.S. Copyright Office, *Circular 92: Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code*, 8.

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[284] *Report of the Register of Copyrights on the General Revision of the United States Copyright Law* (1961), reprinted in 3 G. Grossman, *Omnibus Copyright Revision*

In simpler terms, a play such as *Hamlet* can be copyrighted because its plotlines, character interactions, and complete story are the integrated and complex individual expression of the author, and they can be recorded in a text-based playscript. However the plot device of using the performing troupe to expose King Claudius's guilt is an isolated idea that would not be copyrightable, especially as it can be interwoven into a different plot and story with different characters producing different dramatic results. The jury still seems to be out as to whether the work of a director is a complete expression of that artist's individual vision– as the work of a choreographer is considered to be– or whether the director's ideas are isolated and rely on the expression of the playwright to come to fruition, and therefore are not deemed worthy of copyright. This latter interpretation of the extent of the director's work brings me to the second obstacle a director's copyright faces, the question of whether the act of directing is a derivation of the playscript. The copyright law states that "the owner of copyright under this title has the exclusive rights to do and to authorize any of the following: (1) to reproduce the copyrighted work in copies or phonorecords; (2) to prepare derivative works based upon the copyrighted work."[285] As a result, derivative works are not deemed copyrightable without the permission of the original author, meaning that the playwright would ultimately have control over any director's copyright. For either of these issues to be reevaluated in favor of directors there would have to be either a definitive judicial decision (which has yet to happen so far) or new legislation passed.

Legislative History 3 (1976), found in Edward Samuels, "The Idea-Expression Dichotomy in Copyright Law," in *The Illustrated Story of Copyright*, http://www.edwardsamuels.com/copyright/beyond/articles/ideapt1-20.htm#fn1.

[285] U.S. Copyright Office, *Circular 92: Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code*, 16-7.

While Einhorn's proposed notation would not solve either of these problems, his position as the author of the article has further significance to the issue of director's copyright because of his involvement in a highly publicized and very heated case in which a judge did actually make a final ruling related to copyright. In October of 2004, Einhorn was involved in a dispute regarding his work done on *Tam Lin*, an Off-Off Broadway work put on by Mergatroyd Productions. Einhorn was dismissed two nights before opening by the playwright/producer of the play due to a disagreement over the amount and quality of work done. While the specifics of what exactly happened between the two parties remain fuzzy, what is known is that in October 2005 Einhorn, who had yet to receive any remuneration, filed suit for the $1000 he was promised to direct the play. More importantly, Einhorn also claimed that the producers had continued to use his directorial work in 2004 and during a subsequent production of the play in 2005 and that this constituted an infringement of his copyright. Since Mergatroyd had put on ten performances in both 2004 and 2005, each performance was considered a violation of copyright, and each violation of copyright was punishable by a maximum of $150,000, the producers of *Tam Lin* now faced a lawsuit of over $3 million.[286] Rather than settling out of court, the producer/playwrights of *Tam Lin*, Nancy McClernan and Jonathan X. Flagg, decided to allow the case to go in front of a federal judge, feeling strongly that they had to protect their own work as well as prevent what they saw as a possibly detrimental precedent for a director's copyright. The case became heated both inside the courtroom and out, as both parties vituperatively struck out at one another on their own

[286] Green, "Exit, Pursued by a Lawyer."

websites[287] and throughout the digital world on blogs and in discussion forums. The case also drew attention from the Dramatists Guild and SSDC as both groups saw how high the stakes were in the case and how important any precedent would be to their position on either side of the director's copyright issue. The guild supported their member McClernan by submitting a brief against director's copyright, while the director's union had executive board president Pamela Berlin testify for the plaintiff Einhorn even though he was not a member. In the end, the judge ruled on the quality of the director's version of the script that Einhorn submitted for copyright more than on the nature of a director's copyright.

> The claimed (blocking and choreography script) consisted of movements of actors and positioning of actors. There is a very lively question, I suppose, as to whether that is an appropriate subject of the copyright as to which I express no opinion. If it is, however, the deposit copy certainly didn't cover it because it is impossible to discern with precision from the deposit copy just exactly what the movements were and what the positioning was.[288]

Although the judge's statements seem to imply a belief that there is not a strong legal justification for a director's copyright, his ruling was based more on the fact that Einhorn did not provide the proper recording and documentation of his work. In the end, Einhorn was awarded $800 (less than the $1000 he had initially agreed upon with Mergatroyd, but

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[287] See Nancy McClernan, "The Strange Case of Edward Einhorn vs. Mergatroyd Productions," in *Heavens to Mergatroyd*, http://www.mcclernan.com/mcclernan/strangecase/default.asp. and Einhorn, "A Case for the Stage Director's Copyright."

[288] McClernan, "The Strange Case of Edward Einhorn vs. Mergatroyd Productions."

more than the $500 they were willing to pay upon firing him), on the condition that he rescind his application for a copyright on the blocking and choreography script.

The case offers a prime example of how contentious the debate over director's copyright has become, how strongly most playwrights believe in the sanctity of the playwright's work, and how adamantly they will defend control of their work and their royalties. Furthermore, this case was neither the first nor will it likely be the last instance in which the Dramatists Guild and SSDC have butted-heads over the issue. As I have noted above, soon after Ted Pappas wrote his column for *American Theatre*, John Weidman wrote a response pointing out how portions of Pappas's arguments for a director's copyright were based on isolated contracts and agreements and did not reflect the overarching United States copyright law. After covering how the specific terminology and technical language make it difficult to justify a director's copyright, Weidman expanded his argument to address why playwrights should care about the impact such a new interpretation of copyright would have on their work specifically and on theatrical production in general. Weidman stated that

> Playwrights should care because if a director's copyright is ever established, it will drastically limit a playwright's ability to control the work that he creates, it will inevitably undermine the spirit of trust and openness which is essential to the collaborative process that moves a play from the page to the stage, and it will have a deeply disruptive effect on theatrical production generally.[289]

[289] Weidman, "No Copyright for Directors," 6.

This sentiment is not only an individual stance on the part of Weidman, but rather reinforces the steadfast stance that the Dramatists Guild takes towards the work of directors when advising and representing its member playwrights. Ralph Sevush, executive director of the Dramatists Guild, in an even more extreme commentary on the Guild's take on a director's copyright, believes that director's don't in fact create anything on their own, rather their contribution to the theatrical process is "moving around the copyrightable contributions of others."[290] This comment shows how divisive and contentious the question of intellectual property rights has become in the theatrical community, as well as the position of privilege that the playwrighting community often approaches the debate from.

Above and beyond their claims that there is no place in the law for a director's copyright, the Dramatists Guild have warned that allowing a director to copyright his staging will set the theatrical field down the kind of slippery slope that both Lessig and Vaidhyanathan have warned about. In comments to reporters,[291] published articles,[292] and in testimonies in court,[293] the Guild has repeatedly warned that if intellectual property rights were extended to directors that freedom of creativity would suffer. Nancy McClernan on her web page dedicated to the *Einhorn vs. Mergatroyd Productions* case, quotes the amicus brief that the Guild submitted as saying the following:

> If directors are able to copyright their ideas, the consequences for the theater are both far-reaching and disturbing. Ironically, the first victims that would suffer from the establishment of a copyright in a director's

[290] Green, "Exit, Pursued by a Lawyer."
[291] Ibid.
[292] Weidman, "No Copyright for Directors," 6.
[293] McClernan, "The Strange Case of Edward Einhorn vs. Mergatroyd Productions."

> blocking or 'stage pictures' would be other directors. Every director strives to be free to direct a play in the way he best conceives it. If a director had to ensure that his version did not in some way employ ideas similar to those in another put up by a director years earlier, it would stifle and ultimately strangle the ability to direct any play. In addition, theatres, when confronted by claims of stage direction copyrights by directors of prior versions of the play, may decide to cancel a production – or decline to produce the play in the first place – because of the threat of litigation by the directors of the prior versions. . . . The chilling effect resulting from the assertion of such tenuous claims will work to the detriment not only of authors and future directors, but also of the theater-going public and society as a whole.[294]

The Dramatists Guild believes strongly that a director's copyright would eventually lead to the closure of creative possibility, as each director would claim ownership to a new aspect of directing whatever play they were working on. After numerous iterations of such copyright claims, ultimately any possible production of any dramatic work would have to take into consideration the existing licenses, and the costs and risks of lawsuits that such licenses bring to bear. Furthermore, the Guild also believes that a director's copyright would lead to classics being removed from the public domain, as famous works, such as *Romeo and Juliet*, would eventually be just as encumbered by licensing.[295]

Pappas tried to alleviate fears that a director's copyright would grow out of control by claiming in his column that a director's copyright will be infrequently

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[294] Ibid.
[295] Green, "Exit, Pursued by a Lawyer."

enforced, and only in extreme cases of plagiarism, such as in the Mantello case. Nevertheless, the Dramatists Guild remains wary of just how limited the enforcement of such a copyright would be, and Weidman stated as much explicitly in his response to Pappas's column: "The copyright that Pappas asserts would belong not to the union, but to its individual members. And the degree of restraint exercised by individual directors will be as varied as the directors themselves."[296] What is ironic about this statement is that playwrights have historically been renowned for taking the kind of overenthusiastic protective stance of their work that Weidman fears directors will take, and this playwright protectiveness has had the same "potentially devastating effect on the facility and vitality of theatrical production."[297] Now of course not all playwrights are as adamant about how strictly directors and actors adhere to the specific language in their plays, and therefore not all instances of "changes, interpolations, or deletions' are pursued and prosecuted. But many are quite orthodox about how their plays are treated and take advantage of the legal structures in place for such control. Perhaps the author best-known (some would say most infamous) for an orthodox enforcement of the interpretation and production of his plays is Samuel Beckett. By looking at two examples of interventions by Beckett and his estate in productions of his works in the United States, one can learn a number of things about the dilemma of copyright in contemporary theatrical production and the challenges that face both directors and playwrights. First, that the strict enforcement of property rights and aggressive legal actions can in fact be stultifying for theatrical production, preventing potentially important productions from ever reaching the public and generating harmful negative publicity for the entire theatrical field. Secondly, that

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[296] Weidman, "No Copyright for Directors," 7.
[297] Ibid.

these instances of protection, prevention, and ultimately legal intervention reveal how other political economic interests become invested in the process of theatrical production and the role that external entities such as licensors, publishers, and lawyers play in the ultimate fate of many theatrical endeavors. These examples illustrate how fraught the relationships between playwrights, directors, and their respective representatives can become and how any theatrical artist must be wary of asserting a position of too much control within the collaborative process.

The Playwright as Hegemon: The Case of Samuel Beckett

Beckett, always a stickler for precision in language, was also particularly diligent and outspoken about alterations of his work. He believed that his works were to be produced in a very particular way and that the language and stage directions should not be augmented or edited in any way. If there were any changes made, then directors were no longer producing the play as Beckett intended, but rather their own version of his play. Beckett wanted nothing to do with such a production and did his best to make it publicly known that he denounced what he considered a mis-representation of his work. Furthermore, in a number of instances across Europe and in the United States, Beckett was not shy about calling a cadre of lawyers and literary agents to help him enforce a rigid adherence to the language and stage directions put forth in his plays. Two prominent occasions in which questions of interpretation escalated to legal action occurred during a 1984 production of *Endgame* at The American Repertory Theatre in Cambridge, Massachusetts and a 1998 production of *Waiting for Godot* at The Studio Theatre in Washington, D.C. In both cases, "cease and desist" letters were sent to the producing theatres because they had been deemed to have violated contract language that

stated that no changes would be made to the play. The rigid stance that Beckett and his estate took on these two occasions serve as cautionary tales when considering the debate between directors and playwrights because they reveal just how subjective and uncertain the parameters of authorship and interpretation are. Furthermore, they exemplify how even those playwrights whose legacy is as assured as Samuel Beckett's can be as protective as those directors that John Weidman fears will disrupt the development of theatre.

The 1984 incident at The American Repertory Theatre (ART) is one of the most well-known of Beckett's legal clashes over the interpretation of his work. The problems began when Joanne Akalaitis, the director whom ART hired to direct *Endgame*, decided to stage the play in an abandoned subway station filled with detritus and to make the cast inter-racial. In addition, an overture, composed by Philip Glass, and some accompanying bursts of music to emphasize particularly dramatic moments were added.[298] While Akalaitis did not make any changes to the script, once Beckett was made aware of the changes he made it clear that he abhorred the interpretive decisions in staging and the use of music declaring "this has nothing to do with my play. . . . They can't do this. They have no permission to do this."[299] Beckett was soon in contact with his lawyers and literary agents in attempt to stop what he saw as a misrepresentation of his work.

The challenge in this dispute, and any dispute concerning the interpretation of a playscript, was that it quickly became a confluence of a number of legal and artistic issues. The first issue under dispute was, did the director's interpretation of the work

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[298]Gussow, "Critic's Notebook: Artists See No Decency in Ruling on Grants."
[299] Martin Garbus and Stanley Cohen, *Tough Talk : How I Fought for Writers, Comics, Bigots, and the American Way* (New York: Times Books, 1998), 192.

represent a violation of copyright law? The second concern was if, as copyright law and contract language would suggest, a playwright does have the ability to control changes to his or her work, then who gets to decide which changes have gone too far, the playwright or director?[300] In this instance, copyright protection did not impact the ownership of the work and its reproducibility, but rather the degree to which a director or designer can interpret the text and how far the reach of the playwright's right to authorship extended. The most challenging aspect of these circumstances was that these conditions are very specific to the production of theatre and that neither United States copyright law nor any judicial precedent expressly addressed the conditions of the dispute.

When faced with the unclear parameters of such conditions, Robert Brustein, ART's artistic director at the time, stated that although he held Beckett's work in the highest regard "a playwright cannot serve as the designer, director and actor of his own play. He has to collaborate."[301] Beckett and his lawyers however saw the confrontation differently, and believed that the specificity of language and stage direction that Beckett demanded were crucial to conveying the full and truest meaning of the work. They believed that the change in the setting of the play in fact altered the focus and dynamics and that it was no longer the play that Beckett had written.[302] In fact, Barney Rosset, who represented Grove Press the publisher of Beckett's plays, stated that

> In the author's judgment–and ours–this production makes a travesty of his conception. A living author of Beckett's stature should have the right to protect himself from what he perceives to be a gross distortion of his

[300] Ibid., 193.
[301] Ibid.
[302] Ibid., 192-3.

> work. We deplore the refusal of the American Repertory Theatre to accede to Beckett's wishes to remove his name from this production, indicate in some way that this staging is merely an adaptation, or stop it entirely.[303]

So, when ART vowed to go on with the show despite Beckett's protests, lawyers representing Beckett filed a "cease and desist" order to halt the opening. In a last minute settlement, ART was allowed to proceed with their vision of *Engame*, but with the stipulation that every program would have an insert that declared Beckett's protestations. The insert included the first page of *Endgame* and a disclaimer signed by Beckett that read

> Any production of *Endgame* which ignores my stage directions is completely unacceptable to me. My play requires an empty room and two small windows. The American Repertory Theatre production which dismisses my directions is a complete parody of the play as conceived by me. Anybody who cares for the work couldn't fail to be disgusted by this.[304]

This compromise, which was unprecedented in this type of case, allowed the parties to avoid a drawn-out court case and the likelihood of an aborted opening night. Unfortunately it also meant that once again there was no legal precedent established for how exactly to deal with cases such as this, and no parameters were set that would explicitly state how far a director could go before a playwright could protest and revoke

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[303] Arthur Holmberg, Jan Geidt, and Lynn Kasper, *The Lively ART : A Treasury of Criticism, Commentary, Observation, and Insight from Twenty Years of the American Repertory Theatre* (Chicago: Ivan R. Dee, 1999), 54.
[304] Ibid.

the rights to his work. Ever since the ART production, any theatre that does manage to obtains the rights to a Beckett play must agree to not only the standard contract language that protects playwrights, but also an additional rider that stipulates that "there shall be no additions, omissions, changes in the sex of the characters or of the performers as specified in the text...or alterations of any kind or nature in the manuscript and presentation of the Play as written."[305]

An instance where a precedent for the limits of interpretation could have proved useful involved The Studio Theatre's 1998 production of *Waiting for Godot*. This production, directed by Studio's artistic director Joy Zinoman, was able to draw the wrath and ire of Beckett even though he had died in 1989. The choices that were under dispute in this particular production were Zinoman's casting of two black actors as the lead characters Vladimir and Estragon, and her use of black vaudeville as an inspiration for her directorial choices. Ironically, the dispute stemmed from a review of the play by Peter Marks in the *New York Times,*[306] which was the first time that Studio had ever been reviewed in the *Times*. Upon reading the review, George Borchardt, Inc., the literary agency that represents the Beckett estate in the United States, instructed Samuel French to issue a "cease and desist" letter to the Studio Theatre before any member of the Borchardt agency or the Beckett estate had actually seen the show and based entirely on

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[305] Jeanne Whalen, "Directors, Take Note: Samuel Becket Was a Micromanager," in *WSJ.com: The Wall Street Journal Online*, June 29, 2006, http://online.wsj.com/article/SB115150675300593074.html.

[306] Peter Marks, "A Street-Smart *Godot* In a Cultural Wasteland," in *New York Times*, September 24, 1998, http://theater2.nytimes.com/mem/theater/treview.html?_r=1&html_title=&tols_title=WAITING%20FOR%20GODOT%20(PLAY)&pdate=19980924&byline=By%20PETER%20MARKS&id=1077011431942&oref=slogin.

the review.[307] While the thought of closing a show without having ever seen may seems like overkill, we can see in the review why Marks's choice of words would have incited the Borchardt agency. Marks described the piece as "liberty-taking," and noted that "the play begins with a few jazzy notes on a saxophone" (remember Beckett adamantly protested the addition of music where he did not explicitly call for it), and perhaps the most significant quote is when Marks noted that the actors "perform bits of hip-hop and, in the kinds of improvisations that would have driven Beckett up the wall, embellish the text with caustic asides, resort to black slang and even flirt and banter with the audience."[308] It could be argued, that if there was ever a review that the Beckett estate could use as a call to arms then this was it.

But, what Marks had seen as "liberty-taking," Zinoman had seen as strict adherence to the text, noting that there are specific instances in the text that call for "general outcry," for Vladimir and Estragon to "turn toward the auditorium," or state that "Vladimir and Estragon protest violently."[309] Zinoman claimed that it was in these spaces that any ad-libbing or audience interaction occurred and that she in fact revered the text, just as Brustein had stated his admiration for Beckett. The issue became extremely sensitive when there were accusations that Borchardt was protesting the fact that black actors and performance traditions were being used in the piece. Tom Jones, who played Vladimir, believed that their was a misconception from the review "that what we're doing is running around grabbing our crotch, looking like young urban black America, trying to

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[307] Jane Horwitz, "At Studio, *Godot's* Woes," in *The Washington Post.com*, November 10, 1998, http://www.highbeam.com/doc/1P2-692715.html.
[308] Marks, "A Street-Smart *Godot* In a Cultural Wasteland."
[309] Horwitz, "At Studio, *Godot's* Woes."

impose that in this piece of work."[310] Furthermore, Jones added that "when you try to close a piece without having seen it, there are some real challenges. . . . I do stand by the fact that I think that racism got in the way."[311]

Artistic choices aside, the Studio dispute, much like the ART dispute, quickly became an issue of legality as much as it was about creative freedom and the interpretation of a director. Zinoman of course ran up against the problem that she had signed the rider that had been instituted since the ART incident, agreeing to not make changes to the text or stage direction. Despite the "cease and desist" letter, Zinoman went ahead with the production and promised to do so unless someone from the agency came down to see the play. After back and forth negotiations and phone calls, someone finally came to see the play, but with an affidavit for Zinoman to sign that would ensure that no ad-libbing or audience interaction would continue. Zinoman refused to sign, holding to her stance that the ad-libbing was in fact part of the text. While Zinoman was continuing to resist any legal steps Borchardt or Samuel French took to stop the show, Studio's *Waiting for Godot* continued to run and eventually completed not only its original four-week run but also four weeks of extensions.[312] Just like the ART dispute,

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[310] Ibid.
[311] Ibid.
[312] In the interest of full disclosure I think it is important to note that I was working as the Assistant to the Production Manager at the Studio Theatre during this infamous production of *Waiting for Godot*. Because I was working closely with the artistic and production team (and since we had an open office where you could hear everything that was going on at all times) I can attest to the organizational strain that a legal standoff such as this can put on the cast and crew of a show as well as the staff of the theatre hosting the production. There was a palpable level of apprehension and concern over the status of the play, as well as a varying range of opinions as to where we were in the right and where we might have been in the wrong. It was representative of the uncertainty within the field of theatrical production as to whether artistic freedom or contractual obligation should carry more weight in cases such as these. These types of situation

there was no further legal action taken and there was no time spent in courts.[313] What did however make the Studio dispute stand out was the question as to whether the Borchardt agency was properly representing Beckett's interests after his passing. Interestingly, after hearing of the events that occurred in regards to the Studio production, Robert J. Orchard, managing director of ART, seemed unsurprised. Orchard said, "I think the agency is reflecting the interests of the Beckett estate, because how it's being handled now and how it was being handled in 1984 are similar."[314] Nevertheless, such prominent theatre figures as Athol Fugard have come out and said that Beckett would not have been concerned with issues of race and stated that any such action by the Borchardt agency was overprotective and belied what Beckett would have wanted.[315]

One issue that constantly hovers over copyright disputes in the theatrical field such as the preceding two examples is the economic toll that these disputes take on theatres. While both ART and the Studio Theatre relatively unscathed financially, they both had the benefit of being relatively large companies with the resources to hire lawyers and the financial cushion to absorb the losses a closing might have incurred. But for smaller theatres the economic stakes are much higher. A smaller company that produces only one or two plays a year and is already struggling to break even, is likely to comply with a "cease and desist" letter more quickly than a larger or more financially stable institution because a prolonged dispute and the costs of lawyers could threaten to eventually force a small company to close for good. The economic implications are

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become particularly contentious when the certainty of future paychecks is in question and people's live begin to be threatened.

[313] Horwitz, "At Studio, *Godot's* Woes."

[314] Ibid.

[315] Ibid.

particularly acute because copyright holders tend to not lodge a protest until the end of rehearsals or until right after opening because it often takes that long for the style of a show to fully take shape or for a copyright holder to become aware of alterations. At this point, much of the production budget has already been spent on costumes, sets, and rehearsal salaries, and very little if any of those costs can be recouped if a show was shut down. As a result, many theatres that wish to not worry about limitations on their ability to interpret a playscript often choose to work only with works that are in the public domain. The Wooster Group provides a good example of a company that chose the route of working solely on works in the public domain. Ever since a run in with Arthur Miller over the use of excerpts of Miller's *The Crucible* in their production *L.S.D. (. . . Just the High Points . . .)* in the early 1980s,[316] the Wooster Group has worked exclusively with public domain texts, such as *Hamlet*, *The Hairy Ape*, and *Phaedra*. The end result is that fewer new plays are likely to be produced by those companies that fear the repercussions of playwrights who strictly monitor their works. Considering that these smaller companies, such as the Wooster Group, are more likely to push the boundaries of interpretation, this may serve the protective playwright well, but it also limits the possibility that new aspects of the play, which can attract new audiences and expand the cultural life of the play, will ever be discovered.

Two recent productions of Beckett work have added to the confusion of just what the parameters for producing Beckett exactly are, and how the representatives for the

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[316] The sequence of events that took place with regard the Wooster Group's attempts to secure the performance rights to *The Crucible* represent an interesting intersection of the experimental inclinations of theatrical producers in small Off-Off-Broadway spaces with the commercial interests of playwrights whose works have the potential to be produced on Broadway. For a detailed explanation, see David Savran, *Breaking the Rules: The Wooster Group* (New York: Theatre Communications Group, 1986), 188-95.

Beckett estate determine whether a production show be stopped or not. The first production was a version of *Waiting for Godot* presented by the Classical Theatre of Harlem. Using the devastation wreaked on New Orleans residents by Hurricane Katrina as motivation, director Christopher McElroen transformed the traditional empty stage with a tree so that Vladimir and Estragon were instead stationed on a rooftop in the middle of a pool of waist-deep water, with entrances made by actors wading on stage or via rafts.[317] While this radical reimagining of the staging of the play seems to eerily be in accordance with the plight of Beckett's characters and to suit the despair that is central to the play, it is also a much more drastic reimagining than previous performances which had been protested by the Beckett estate. But, despite reports of some minor grumblings from the estate[318] the production went without interruption and avoided the legal entanglements that so many previous alterations had suffered. Even when the production was transferred to New Orleans, where it was performed in the devastated Lower Ninth Ward[319], the estate never filed the "cease and desist" letters that many other theatres have been subjected to. The estate was even armed with the types of quotes from major reviews that put the Studio Theatre in hot water. The *New York Times* review of the Harlem production includes these comments, which had the potential of drawing the ire of the Beckett estate: "more interesting than the whiffs of vaudeville are the debts the

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[317] Genzlinger, "*Waiting for Godot* Performed by the Classical Theater of Harlem," in *New York Times*, June 3, 2006, http://www.nytimes.com/2006/06/03/theater/reviews/03godo.html.

[318] John Schwartz and Jonny Coleman, "*Waiting for Godot* in the 9th Ward," in *Found Gallery Blog*, May 10, 2007, http://www.foundla.com/blog/2007/05/10/waiting-for-godot-in-the-9th-ward/.

[319] David Cuthbert, "*Godot* is Great " in *NOLA.com: The Times-Picayune*, November 6, 2007, http://blog.nola.com/davidcuthbert/2007/11/godot_is_great.html. Ethan Brown, "The Lower Ninth Ward Meets Samuel Beckett " in *Guardian Unlimited*, November 12, 2007, http://arts.guardian.co.uk/theatre/news/story/0,,2209888,00.html.

production owes to another, more recent pop form: rap. Speed and rhythm are much in evidence. . . . Too gimmicky for purists? Probably. But dazzling for everybody else."[320] Meanwhile, the review in New Orleans's *Times-Picayune* reports that "the second act begins in lively fashion with Pierce strutting down the road, giving out with a Mardi Gras Indian chant, a bit of 'Hey Pocky Way' and a Beckett lyric set to a New Orleans street beat."[321] While it is impossible to know exactly why the estate did not act as firmly in the case of the Classical Theatre of Harlem as it did with other theatres, it would not be hard to guess that its connections to the plight of the residents of New Orleans had something to do with it. Despite carrying the hallmarks of many previously halted productions, black actors, vaudeville characteristics, changed scenery, musical additions, it would be hard for the representatives of Beckett's estate and its lawyers to justify attacking an interpretation of the work that is connected to such as devastating event as Hurricane Katrina. It would most definitely be construed as an attempt to exert excessive control on a production whose main intention is to help heal a national wound that is far more important than a playwright's need to retain ownership of his work.

The second recent production directly relates to the controversy surrounding ART's 1984 *Endgame*. In December 2007, the New York Theatre Workshop presented a production entitled Beckett Shorts. The interesting aspect of this performance, which included *Act Without Words I, Act Without Words II, Rough For Theatre I*, and *Eh Joe*, was that it was directed by Joanne Akalaitis and included incidental music composed by Philip Glass. While in 1984 after the ART incident it seemed like neither Akalaitis or Glass would ever be able to work on Beckett's plays again, the passing of time, and

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[320] Genzlinger, "*Waiting for Godot* Performed by the Classical Theater of Harlem."
[321] Cuthbert, "*Godot* is Great ".

perhaps Beckett's death, seems to have softened the estate's opinion of these two artists ability to portray Beckett's works. This change in stance is particularly notable because Akalaitis and Glass have not changed their stance on their ability to interpret and add to Beckett's stage directions, as there were a number of noticeable changes in the staging as well as the addition of music where none is explicitly stated. There are a number of reasons that may possibly explain why the estate did not block a production by two artists with a history of altering Beckett's works. The first reason is that because these are less-known shorter pieces the estate does not feel that they need to be as staunchly protected as more famous and sacred texts, such as *Waiting for Godot* or *Endgame*. *Eh Joe* after all was originally a screenplay for film, and Beckett himself was know for directing stage versions of his plays and vice versa.

The second and more interesting reason that the Beckett estate may have backed off such a production was its lead actor, Mikhail Baryshnikov. As Patricia Cohen comments in the *New York Times* "as his guest appearance as Carrie's boyfriend on *Sex and the City* showed, he is one of those rare highbrow artists, like Luciano Pavarotti or Beverly Sills, who easily cross over into pop culture."[322] Baryshnikov has the kind of cultural presence that can transcend cultural hierarchies and therefore he is naturally a magnet for public attention and support. An attempt to prevent a production with such a prominent cultural figure represents an instance, much like the post-Katrina *Waiting for Godot*, where a legal intervention by the estate could backfire into a storm of bad publicity. This is particularly true because Baryshnikov's fame attracts audiences who

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[322] Patricia Cohen, "A Master of Motion Learns Lessons of Inspired Immobility," in *New York Times*, December 25, 2007, http://www.nytimes.com/2007/12/25/arts/25mikh.html?scp=2&sq=akalaitis+beckett+shorts+ART&st=nyt.

might not readily accept that the playwright should be able to exert unquestioned control over his work, which is more in line with the taste of high culture enthusiasts who are more likely to support theatrical traditions.

Interestingly, the review of *Beckett Shorts* in Newsweek in fact shows both the dynamic of Baryshnikov's fame and the perpetuation of exact interpretations at work. The fact that a small Off-Off-Broadway production received coverage in Newsweek, which would not normally review this type of show at New York Theatre Workshop, shows how Baryshnikov's broad appeal and fame gave this production unusual exposure. Nevertheless, the reviewer, David Gates, seems to have been watching the production with a copy of the text in his lap. Take these following quotes for example:

- Akalaitis takes some liberties. . . . Akalaitis uses two cubes instead of Beckett's three, perhaps figuring that his calibrated tedium could be too tedious these days.
- Beckett doesn't describe the goad, which comes out on wheels; Akalaitis makes it a silvery harpoon, and accompanies its entrances with menacing "Jaws"-like music by Glass. Beckett specifies no music, but the effect isn't vulgar: it's scary.
- When Camp nastily enunciates the word "har-mon-i-ca," we forgive Akalaitis for changing Beckett's "mouth organ."
- Only a purist as fierce as Beckett himself could object much to such pragmatic tweakings.[323]

[323] David Gates, "Big Fun in Purgatory," in *Newsweek.com*, December 24, 2007, http://www.newsweek.com/id/78179.

In a sense, the Newsweek piece is not only a review of the performance but also a detailed analysis of where Akalaitis changed the original Beckett scripts. Perhaps the reviewer come to the performance aware of Akalaitis and Glass's history and was curious to see exactly what kinds of changes they would make and if that would spark controversy with the Beckett estate. Or perhaps the reviewer is himself a Beckett aficionado or scholar and is well aware of the detailed stage directions of each piece. Nevertheless, this kind of article reinforces the authority of the playwright in the theatrical process. The exacting recitation of each deviation establishes the playwright as the sacred author of the theatrical production, and rather than considering each individual interpretation on its own merits for enhancing the theatrical experience they are judged on whether they properly adhere to the tenets of the text and whether they would have garnered acceptance by the ultimate author of the theatrical experience, the playwright, and in the case Samuel Beckett. In this way the Beckett estate is not only enforcing Beckett's wishes in protecting his works, but it also perpetuates the established paradigms of authorship and ownership in the field of theatrical production.

Alongside these two examples of the possible impact of public perception on choices made by the Beckett estate, the fact that an article titled "Directors, Take Note: Samuel Beckett Was A Micromanager"[324] recently appeared in *The Wall Street Journal* of all places is another useful reminder that the disputes surrounding Beckett's work are not only about artistic freedom and creativity, but also are motivated by political economic considerations. One has to remember that just like in the dispute over a director's copyright, the value of intellectual property rights tends to vary depending on

[324] Whalen, "Directors, Take Note: Samuel Becket Was a Micromanager."

which side of the argument you are on. While Beckett's intentions and the intentions of the executors of his estate since his death seem to be motivated by his perceptions of artistic integrity and interpretation of the extent of control a playwright can have over his work, the numerous injunctions, cease-and-desist letters, and court cases that he and his estate have dispatched or initiated nevertheless involve external parties who see the value of theatrical properties in a different light. For lawyers, licensors, and publishers, these legal actions are ways to maintain control over the realm of intellectual property and as a result Beckett's vigorous protection of his work has received substantial support from those who recognize how control of this particular content will benefit them economically.[325] By vigorously pursuing the protection of Beckett's work these lawyers and agents ensure that the estate will continue to retain their services as watchdogs for the entire corpus of Beckett's work, a highly valuable and prized commodity for any company that makes money off of the licensing of rights to plays. We can see in the preceding two examples that there were numerous legal and corporate entities interested in profiting from the management of these particular properties, such as George Borchardt, Inc., Samuel French, and Grove Press. In fact, the protection of the Beckett properties has become a sort of global industry of its own, as there have been repeated instances across Europe from the Netherlands to England to Ireland to Italy and as far abroad as Sydney, Australia where Beckett and/or his estate have sought to shut down

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[325] For an explanation of how high-risk investments, such as an original new play, can result in long term financial successes for publishers, see Bourdieu's description of the rate of sales of *En attendant Godot* (*Waiting for Godot*) in France and the economic returns it provided for the publisher Éditions de Minuit in the 1950s and 1960s. Bourdieu, "The Production of Belief: Contribution to an Economy of Symbolic Goods," 97-8.

productions of his work that have either made untraditional casting choices or have altered stage directions or design specifications. Because strict adherence to intellectual property right legislation is likely to net them the most income, it therefore behooves these entities to take a stance of extreme protectionism against copyright infringement.

To this end, the conservative legal approach of licensors, publishers, and lawyers towards Beckett's work once again brings us back to the debate over a directors' copyright. Martin Garbus, the lawyer who represented Beckett during the dispute with ART, has this to add with regards to the defense of copyright laws

> The dispute underlined the irony that copyright laws, no matter how scrupulously crafted, contain within them an element of paradox, for they are designed to guarantee the ownership of words and ideas that become the property of an author only when he makes them public. Once in circulation, they are freely cited, adapted, and often quoted at length. They were written, after all, in the hope that they would prove memorable enough to insinuate themselves into the consciousness of those they reached. If, however, a reader is sufficiently enamored of the author's work to make a substantial part of it his own, he will have committed the ultimate copyright infringement; it is called plagiarism and is tantamount to theft.[326]

In Garbus's statement we can hear echoes of the opponents of the directors' copyright. Shed in this light, is the copyright of any director therefore nothing more than the plagiarism of a playwright's work and thereby the theft of his livelihood? This is in fact

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[326] Garbus and Cohen, *Tough Talk : How I Fought for Writers, Comics, Bigots, and the American Way*, 194.

part of the argument of John Weidman and the Dramatists Guild as they claim that by seeking to copyright their work, directors are in fact attempting to take credit for the creative work that has been done by the playwright. Beckett's stance, and the stance of his estate, can thereby be considered an extreme example of the deployment of copyright as both guarantee of livelihood and guarantee of creative control.

There are many fellow playwrights who share Beckett's sentiments, and they believe, as Edward Albee has said that "when you have written a play you copyright it, which means that not a word may be used without your permission and without you being paid, and no changes are permitted."[327] Albee is in fact a great fan of Beckett's overall approach to the protection of his work and believes that Beckett's strict controls were the way to do business. For Albee, the role of the director is to "put their intelligence on it [the play], they should put their talent on it. But that does not include changing the playwright's intention."[328] Ultimately, Albee believes that Beckett "really knew what was best. . . . Directors for years have been trying to break down playwrights' control. . . . I've seen too many performances where the directors are showing off and showing how clever the director is at the expense of the text."[329] Albee's comments however harken back to Barthes and Foucault and the question of whether the author really has a role in the audience's interpretation of culture and whether an author's intention can be conveyed as Albee would like. Foucault argues that in relation to the text, the author "at least in appearance, is outside it and antecedes it."[330] Foucault

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[327] Jeanne Whalen, "Albee on Beckett," in *WSJ.com: The Wall Street Journal Online*, June 29, 2006, http://online.wsj.com/article/SB115151938193393274.html?mod=A-hed.
[328] Ibid.
[329] Ibid.
[330] Foucault, "What is an Author?," 101.

proceeds from this assumption to argue that the function of the author in discourse is not to relate a text to the particular individual but rather functions as a discursive tool. As such, the communication of intentionality is impossible because the "author function" in cultural discourse "does not refer purely and simply to a real individual, since it can give rise simultaneously to several selves, to several subjects–positions that can be occupied by different classes of individuals."[331] This discursive reference to multiple selves is evident in the various interpretations of what Beckett's intentions for his works were. While Beckett may have had one perspective on the author function within the discourse surrounding the staging of his plays, Edward Beckett assumes a different set of Beckettian parameters, as do the Borchardt Agency and Beckett's colleagues Athol Fugard and Edward Albee, each of whom claims to have known what Beckett would have wanted. In this sense, Beckett as an "author" controlling the interpretation of his work is not the work of an individual's ensuring that his intentions are properly channeled through productions of his work, but rather in this case the author is an accumulation of different imaginings of what Beckett the individual would have wanted. In fact, Foucault declares that the existence of the author as a discursive tool "is a matter of depriving the subject (or its substitute) of its role as originator, and of analyzing the subject as a variable and complex function of discourse."[332] For this reason, the "author function" can extend beyond the life of the individual, as Beckett's so clearly has, because it is part of a discourse on the interpretation of texts rather than a singular individual's intentions.

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[331] Ibid., 113.
[332] Ibid., 118.

While Foucault's "author function" explains why the conveyance of the intentions of a subjective author cannot be guaranteed via a text, and explodes Albee's complaints of misrepresentation of intentionality by directors, the operation of the term is different in the realm of copyright enforcement. Interestingly enough, despite the long list of definitions that makes up the first section of United States copyright law, there is no specific definition for what an author is. Nevertheless, the privileges of authorship are granted to those people who claim ownership of a work through the possession of a tangible incarnation of an intellectual property. In a sense, these privileges thereby give that individual and his representatives not only control the content, but also provide them with a privileged position in the discourse pertaining to that work. For example, Albee or Beckett may not be able to guarantee that their intentions are conveyed through copyright enforcement, but by exercising their legal rights, they are able to ensure that interpretations of the "author function" related to their names that they dislike or disagree with are stifled within public discourse. In this way they are afforded a position of dominance in that particular realm of cultural discourse, and in many regards it is a leveling of this discursive playing field that many other theatrical producers are looking for through the extension of copyright to their intellectual property.

In counterpoint to Albee's statements as well as the legal positioning of the copyright holder as a dominant figure in certain areas of discourse, it is interesting to consider Joanne Akalaitis's perspective on the role of the director in the theatre, and how that role relates to strict playwrights such as Beckett and Albee. In an interview that discussed the events surrounding the ART production of *Endgame*, Akalaitis said

> I think that when a playwright licenses a work, especially if it's not the premiere of the play, it is licensed to a director, and in a sense it is given over, it's gone. . . . I mean, what do we do as directors and designers? We don't just buy the Samuel French edition and say, "Here's the prop list; here's what the set should look like."[333]

Akalaitis continues on how important the role of the director is in creating the theatrical experience declaring that

> The script is a starting point. The script is dramatic literature. The script is not the play. The play is an event. . . . There is this very silly reaction towards directors as *auteurs*–that, if you have a visual idea, if you do more than put a tree on a stage, you have violated the author's intentions. Are directors ruining plays? It's really a very false, a misguided, notion about what theater is, because theater is what happens on the stage. It's about design and actors and director and audience.[334]

Akalaitis clearly has a different notion of the point at which the playwright yields control of his or here intellectual property than Beckett or Albee, as she believes that it is the unique skills of the directors, designers and actors that truly give life to a script, culminating the social practice of theatre and elevating a work of literature to a communal cultural event. Furthermore, while she does not directly refer to Foucault's argument, we see in Akalaitis's comments that many directors believe that even if it were possible for a performance to act as a vehicle for the intentions of a playwright that is not

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[333] Lois Oppenheim, *Directing Beckett* (Ann Arbor: University of Michigan Press, 1994), 137.
[334] Ibid., 137-8.

the point of producing theatre as a collaborative art form. In this point-counterpoint between playwrights, i.e. Beckett and Albee, and directors, Akalaitis, Brustein, et. al., it is important to recognize that it is not just the union and guild leaders who are voicing disparate perceptions of who is the author of theatre and who should be given credit for creating the theatrical event, but also prominent artists on both sides of the argument. The visibility of prominent directors and playwrights on either side of this debate shows that there really is a radical disparity in perception between different factions as to who is responsible for the authorship of theatre and consequently whose work should be considered intellectual property that should be copyrightable and protected under the law. It also reveals the magnitude of the developing confrontation, as these opposing stances are representative of a bifurcated community that on one side is eager for a reassertion of historical trends and on the other is looking for a significant paradigm shift in how the legal system and cultural marketplace consider the field of theatrical production.

Jesse Green of the *New York Times,* who wrote about the *Einhorn vs. Mergatroyd Productions* case, pointed out that the argument over how far the interpretation of a text can go and who should be given primary control over the theatrical process has an important historical dimension. In Green's opinion, the anxiety of playwrights regarding a director's copyright has its origins in the changes to theatrical production over the last hundred or so years. As playwrights have come to be less directly involved in the production of their works, directors have seized more of the control and artistic direction of the actual product put on stage and

> Playwrights have looked on in horror as people [directors] who used to be glorified actors gradually usurped their power. The usurpers have long

> since conquered Hollywood, where writers are positioned so far below directors on the totem pole, they're basically underground. Now they are threatening the playwrights' ancestral home, claiming, with some anxiety of their own, not just power but also paternity.[335]

Green's comments point out the complexity of the issue at hand, and remind us that this is just as much a question of economics and power as it is pride and overprotectivity. But determining where "putting one's talent to it" ends and altering the intention of a play begins remains a very challenging and subjective process. Not to mention the challenge of how to determine whether authorship and ownership should be attributed to directorial work that manages to stay true to a playwright's desired interpretation of a play, but still manages to provide a refreshing originality. After all, the push for a director's copyright by SSDC and others has been driven less by an outright desire to wrest artistic control from playwrights and more by the desire on the part of directors to have the same protection against plagiarism that established copyright laws already provide playwrights. Despite the belief by many playwrights that this struggle is about directors trying to take credit for something that isn't theirs, the motivation for directors is really about developing structures to protect their own labor, which remains very different from the labor of writing a play, so that people eager to illegally replicate it can also be stopped.

The disputes surrounding the works of Samuel Beckett are exemplary illustrations of how the collision of copyright laws with the interpretive nature of theatrical artistry can create a paradoxical dilemma for theatrical producers who are trying to balance creative impulses with legal restrictions. On the one hand there are authorial traditions

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[335] Green, "Exit, Pursued by a Lawyer."

that have generated from the political economic and social circumstances of over three hundred years. On the other hand there are issues of capitalist production that necessitate creators to seek remuneration and subsequently protect the fruits of their labor, both physical and intellectual. And finally you have a two-and-a-half millennia old medium that relies on the dynamics of group creation and a collaborative spirit, which often functions most effectively when the authorial traditions and capital needs are ignored. It is a complex situation that brings uncertainty to the theatrical field, as the social practice of creating theatre is questioned and individuals try to situate exactly where their beliefs and artistic impulses lie and what kind of stand they wish to take in a variety of ongoing debates. In such a situation it is inevitable that sides will be taken and conflicts will occur, however the underlying question is how those individual debates and specific arguments will impact the development and stability of the theatrical field as a whole.

Looking for Resolution and Finding More Division

Despite the conflict and divisiveness that the question of authorship in theatre has generated, there are efforts being made to counsel, assuage, and reconcile within the theatrical community. Many writers, directors, and producers are able to navigate the difficult and undefined parameters of the ownership of intellectual property in the theatrical field, and in particular the Theatre Communications Group (TCG) has made an effort to keep the situation from flaring up by promoting communication among the various parties concerned about intellectual property and facilitating conciliatory negotiations. As an organization that attempts to keep the best interests of the greater theatre community in mind, TCG often tries to mediate debates, proposing solutions and

compromises that benefit both directors and playwrights. TCG considers the tenuous position of theatre in the contemporary marketplace and tries as best it can to keep the community stable and non-combative, fearing that the instability along with the inevitable negative publicity these disagreements generate will contribute to a perception that the community is fractured and that theatre is a struggling medium. From TCG's point of view it is in the best interest of all parties involved as well as the art form in general to not allow divisiveness to grow out of intellectual property debates. In April of 2006, Joan Channick the managing director of TCG wrote an editorial on the organization's website titled "Author! Author?" that addressed the question of what impact intellectual property rights were having on theatre as a medium and how the community might best respond to this heightened aspect of the field. Channick, in discussing copyright, joint authorship, and work made for hire, repeatedly stressed the importance of the community to harken back to theatre's history of collaboration and group inspiration and creation whenever these topics become overwhelming and divisive.

> It is ironic that in a field like theatre, where our ethos is artists' ownership of their own work (unlike film and television, where work is always done as work made for hire), the response to suggestions that more expansive notions of authorship be recognized seem to elicit an immediate entrenchment in each discipline's foxhole, creating dissension among artists and between artists and theatres. The truth is that, whether stage direction is ultimately found to be copyrightable or not—and that's up to the courts and Congress, not to us—what is within our control is the individual relationships among artists, and between artists and theatres.

> Whatever presumptions the law creates are just the starting point in the discussion. [336]

Channick also reiterated to the community that most of these disagreements can be avoided by acting in good faith and constructing working agreements early on in the production process that protect against the misuse, misappropriation, and abuse of intellectual property rights. [337]

Despite the thoughtful interventions of concerned and informed members of the community, instances of theatrical creators claiming that their intellectual property rights have been violated are becoming more frequent and more visible. In 2006, the creative team of *Urinetown* sued two theatres near Chicago for copyright infringement for what they claim is a replication of the staging and choreography used in the Broadway production.[338] This legal action has resulted in a countersuit by the two accused theatres,[339] and a related claim by the director of the Fringe Festival version of *Urinetown*

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[336] Joan Channick, "Author! Author?," in *Theatre Communications Group*, April 2006, http://www.tcg.org/publications/at/apr06/exec.cfm.
[337] Ibid.
[338] Zachary Pincus-Roth, "*Urinetown* Broadway Team Accuses Two Regional Productions of Plagiarism," in *Playbill*, November 15, 2006, http://www.playbill.com/news/article/103580.html. and Campbell Robertson, "Creative Team of *Urinetown* Complains of Midwest Shows," in *New York Times*, November 15, 2006, http://select.nytimes.com/search/restricted/article?res=F30C12FD3C5A0C768DDDA80994DE404482.
[339] Zachary Pincus-Roth, "Charged With Plagiarism, Regional *Urinetown* Teams Fire Back; Lawsuit Filed," in *Playbill*, December 1, 2006, http://www.playbill.com/news/article/103961.html. and Zachary Pincus-Roth, "We're Not Sorry: Chicago *Urinetown* Sues Broadway Team," in *Playbill*, December 11, 2006, http://www.playbill.com/news/article/104140.html.

who claims that the Broadway team took elements of his staging.[340] In another instance, the recent revival of *A Chorus Line* on Broadway, actors and dancers have gotten in on the debate. Despite having sold the rights to their stories for one dollar, many of the dancers whom the characters in *A Chorus Line* were based on still received royalties from the original production of the show, due to arrangements made for them by the creator and director Michael Bennett. However, as the revival made its way back to Broadway, these dancers found that they would not be receiving royalties from the new production due to the interpretation of language in Bennett's will by his estate. The dancers continued to organize to receive royalties from the revival, but due to the vagaries of property rights in dealing with collaborative work such as this, they realized they had a difficult battle ahead of them, as the language in the will was clearly against them.[341] Separately from the dilemma of the dancers from *A Chorus Line*, Actor's Equity Association has recognized the uncertain state of intellectual property rights, especially when it comes to protecting the unauthorized taping and distribution of work done by actors. As digital technology makes it easier to record and reproduce performances, Equity, which has always been very careful to control who is given recording permissions, has recognized that increased diligence and alternative methods of monitoring must be developed in order to protect the work done by actors in the process of collaboratively creating theatre. Equity's web site states:

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[340] Zachary Pincus-Roth, "*Urinetown* Fringe Festival Director Accuses Broadway Production of Copying," in *Playbill*, December 7, 2006, http://www.playbill.com/news/article/104073.html.

[341] Campbell Robertson, "*Chorus Line* Returns, As Do Regrets Over Life Stories Signed Away," in *New York Times*, October 1, 2006, http://www.nytimes.com/2006/10/01/theater/01line.html?ex=1317355200&en=e7b8d5cb00c26600&ei=5090&partner=rssuserland&emc=rss.

> With the advent of the Internet and the World Wide Web, Actors' performances have become even more vulnerable to exploitation. Equity continues to monitor the Internet and develop new strategies to protect Actors' images and artistry.[342]

The interest of actors and dancers, who rarely if ever have been considered authors or owners of their work, in intellectual property rights shows that the influence of these rights on questions of ownership has expanded to cover a large swath of the work done in the field of cultural production. Another example of this is the question of who can own the name of a production, and what that name can and cannot be used to advertise. While the majority of this chapter's discussion has focused on copyright, and understandably so since most questions of authorship and ownership fall under the umbrella of copyright laws, one must remember intellectual property laws also cover trademarks. This study has already touched one aspect of the political economic importance of trademarks in the field of theatrical production. The affiliation of a corporate brand or trademark to a production can bring much desired public exposure and prestige and has lured companies such as Transamerica, with its investment in *Hot Feet*, and Time Warner, with its sponsorship of the discounting initiative at Signature Theater and its commissioning of new works at Second Stage Theater, into the field. But there is also a more direction relationship, as trademark infringement has recently been added to the list of intersections between intellectual property rights and the field of theatrical production.

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[342] Actors' Equity Association, "Filming and Taping," in *Actors' Equity Association*, http://www.actorsequity.org/newsmedia/filmtaping.asp.

Although the idea for a production remains on the unprotected side of the idea-expression dichotomy, so that anyone can come up with a jukebox musical without fearing impending suits, the question of whether the title of a production or the way it is advertised can be owned remains under debate. This uncertainty came to light most recently in two separate instances where different shows with a common past have fought legal battles over the use of certain aspects of a production's identity. One of the productions, *Three Mo' Tenors*, was meant to showcase the talent of classically trained African-American tenors. Due to a dispute between the producers of the show and the original three tenors over contract terms, most notably that there would be a rotating cast of at least six singers at any time, the original cast and creators of the show parted ways. When the three singers went on to create their own show, there was uncertainty as to what extent each party could use the name *Three Mo' Tenors*, especially since the show had had a successful run and gained some critical recognition. After numerous lawsuits a judge finally ruled that the original three tenors, Victor Trent Cook, Rodrick Dixon and Thomas Young, could continue their new show under the title *Cook, Dixon, and Young*, and could keep their repertoire, but were forbidden from using the title *Three Mo' Tenors* in any materials related to their show. Even though Cook, Dixon, and Young have followed the court order, there are still theatres that book them and try to use the connection with *Three Mo' Tenors* in promotional materials. The current producers, fearing confusion in the theatergoing community and frustrated with the turn of events, continued to send letters threatening legal action to any theatres that use the *Three Mo'*

Tenors name when dealing with Cook, Dixon, and Young, and as a result the three original tenors have lost a number bookings.[343]

Another show, *Naked Boys Singing!*, has suffered a similar fate of questionable identity. After producer Mark Vijn was unable to obtain the license to take *Naked Boys Singing* to England, he did the next best thing, he created a similar show, but one that did not share the same songs or storyline, and called it *Get Naked*. Now this was completely legal since you can copyright an entire show like *Naked Boys Singing!*, but you can't copyright an idea like naked men singing on a stage. Carl D. White, the producer of *Naked Boys Singing!*, didn't have a problem with that. He did however have a problem when Vijn started using a similar design and color scheme in his advertisements, and when he started promoting the show by saying that the "boys were back in town" although the show had yet to open, and therefore had never really left. White accused Vijn of trying to ride on the coattails of the success of *Naked Boys Singing!*, and exclaimed "do your own *Naked* production, that's fine. . . but don't take everything of ours."[344]

These two examples show that the playscript, direction or the design are not the only contestable pieces of intellectual property and that the debate over what aspects of a theatrical production are ownable and protected by property rights extends to titles, trademarks, promotional materials, etc. Furthermore, while the playscript and its interpretation may be the most easily recognized piece of intellectual property, there remain numerous other properties of political economic importance that impact a

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[343] Campbell Robertson, "Imitation or Flattery in Dueling Shows," in *New York Times*, August 22, 2007, http://www.nytimes.com/2007/08/22/theater/22copy.html?_r=1&oref=slogin.
[344] Ibid.

theatrical production's success and possibilities as a revenue-earning endeavor. With intellectual property rights only increasing in importance in the political economy of cultural production, cases like those that have been mentioned in this chapter do not seem likely to go away anytime soon. The discourse concerning authorship and ownership continues to expand to include more forms of cultural production, while the legislation and judicial precedents that determines boundaries remain unclear or outdated, further muddying an already complicated field. Theatrical producers of all types must therefore struggle through as our society reassesses the value of cultural products and moves towards a clearer definition of how authorship is defined and what rights are bestowed to the owners of cultural works.

Ronald Schechtman, the lawyer who represented Mantello in the *Love! Valour! Compassion!* Case, succinctly pointed to what really lies at the heart of the specific conditions of the field of theatrical production and suggested what it may take for the different factions within the theatrical community to resolve their differences:

> If it's truly a collaborative art form, then why is it only the author who participates in the subsidiary rights that flow from a successful New York production? . . . The appropriate resolution is to give fair credit to all the artists' contributions. One day, it may end up that the author gets 80 percent, the director 10 percent, the original cast X and the designers Z. Because, at bottom, this is all about money.[345]

Indeed, it does all come down to the question of making money, making a living, and at the same time making theatre. The question of subsidiary rights and the distribution of

[345] Green, "Exit, Pursued by a Lawyer."

revenue that Schechtman saw on the horizon is related directly to the question of who owns what part of the production and what percentage of the success of the work can be attributed to a particular aspect and the labor of a particular individual. Whereas in the past subsidiary revenue was typically split between the investors, producers, and playwrights, now artists who are recognized as being prominent contributors to the success of a show are demanding a share of long-term profits. For instance, when Nathan Lane agreed to come back to *The Producers*, he did so only after ensuring that he would receive a portion of subsidiary royalties from the show.[346] In the same vein, the recent dispute over royalties from *A Chorus Line* mentioned above, was more about a steady stream of income for the dancers than it was about reclaiming the rights to their personal stories. Directors in particular have made a point of ensuring that the language in their contracts guarantees them subsidiary royalties. Nancy Rose, a theatre lawyer who has supported Joe Mantello and other directors has said "I find it's a sore spot for many directors who are involved in the beginning of a production (and aren't granted subsidiary royalties). . . . I don't know any new musical where the director isn't getting a subsidiary slice."[347] The directors of course recognize that, while the desire to seek protection from plagiarism is a major motivator in their movement for a director's copyright, this aspect of the ownership debate has the potential to give them even more leverage in negotiations for subsidiary rights. Barbara Hauptmann and Pam Berlin, two

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[346] Eriq Gardner, "Curtain Is Rising on N.Y. Theater Revenue Disputes," in *The Hollywood Reporter, Esq.: Inside Entertainment & Media Law*, October 17, 2006, http://www.hollywoodreporteresq.com/thresq/spotlight/article_display.jsp?vnu_content_id=1003256020&imw=Y.

[347] Ibid.

of the leaders of the Society of Stage Directors and Choreographers made this much clear in a statement released by the union.

> The SSDC believes that in those cases where the director and possibly the choreographer have played a fundamental, even critical role in the creation of the success of the play, they should be entitled to participate in the income generated from productions that would not likely have occurred without their artistic imprint on the original, authoritative production.[348]

While the authors profess that they are resisting the movement for a director's copyright for the good of the art form and to ensure that plays can continue to be produced and interpreted in a variety of innovative and culturally-enriching ways, the fear that the pool of artistic royalties that they have long held sole ownership of will shrink or vanish completely motivates them as well. As the boundaries of intellectual property rights continue to get tested and more and more participants in the production of theatre try to stake their claims, musical arrangers, choreographers, and even theatre owners have all tried to dip their respective hands into the pot of subsidiary royalties. In the end, it is the playwrights who have the most to lose and the most incentive to resist, as they stand to lose a place of economic and symbolic power that has served them well for a long time.

The end result of the disputes surrounding authorship, ownership, plagiarism, and who deserves what portion of the economic windfalls of theatrical production is that as more time and energy is expended staking out territory, formalizing contracts, and lobbying for legislative reforms in Congress, less time is devoted to the development of

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[348] Ibid.

the work and investment in artistic exploration and innovation. These legal apparatuses and strict authorial frameworks ideologically isolate theatre artists, as they generate a climate of suspicion and self-protection that is anathema to working collaboratively. Innovative theatrical work is difficult enough in the contemporary economic climate, not to mention the challenge of creating a work of theatre without the benefits of the collaborative process. Robert Brustein, in a statement made during the *Endgame* incident at ART, said

> To threaten any deviation from a purist rendering of this or any other play–to insist on strict adherence to each parenthesis of the published text– not only robs collaborating artists of their interpretive freedom but threatens to turn the theatre into a waxworks. [349]

Brustein's statement makes it clear what is at stake when individuals take a rigid stance in protection of their intellectual property and what the possible repercussions can be for the entire field of theatrical production. Reconciling whether the stringent protection of notions of authorship and intellectual property is more important than the development of innovative and vibrant works is critical to determining the fate of American theatre. Ultimately, the stance that directors, playwright, choreographers, and other theatre artists take towards one another in the debate over ownership, whether it is antagonistic or cooperative, will expose whether the theatrical community is willing to put aside individual concerns and exert the energy and effort it will take to prevent theatre from suffering from artistic stagnation.

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[349] Holmberg, Geidt, and Kasper, *The Lively ART : A Treasury of Criticism, Commentary, Observation, and Insight from Twenty Years of the American Repertory Theatre*, 56.

Chapter 4.
Intellectual Property Rights and the Expansion of Corporatization into the Field of Theatrical Production

If the debate over ownership and authorship epitomizes the internal dilemmas that intellectual property rights have stirred within the field of theatrical production, the changes in the field that have resulted from increased corporate involvement exemplify how the exploitation of intellectual property rights can create external pressures as well. Just as individual authors in the twenty-first century have realized the value of their intellectual properties, large media firms, such as Time Warner, Disney, and Sony have come to recognize how lucrative their libraries of properties can be if properly managed and deployed. So, as these companies have looked to push their properties into new media, theatre has inevitably been drawn into a whirlwind of product repurposing and cross-promotion. Looking at the manner in which Disney and Time Warner bring properties such as *The Lion King* and *The Color Purple* to American stages, helps to provide an insight into the importance of intellectual property in the larger field of cultural production and reveals how theatre has become integrated into the considerations of these companies. The debate over authorship and copyright within the theatrical field may have a significant impact on the individuals and productive practices of theatre artists, but corporatization has the potential to dramatically alter our culture's understanding of where theatre fits in relation to other media and drastically change the economic parameters of theatrical production.

The one place where the impact of corporate action on the direction of American theatre is most directly visible is on Broadway stages. Broadway is an important

microcosm of the field of theatrical production in the United States for a number of reasons. First of all, while theatrical successes may occasionally come out of the markets around Los Angeles, Washington D.C., or Chicago, it would be hard to argue that any place is as prosperous in producing enduring shows or receives as much national recognition as New York. Secondly, with that national recognition comes the expectation from both audiences and producers that a successful play on Broadway will most likely find its way to theatres across the country in one way or another. Big hit musicals will result in lucrative touring shows or permanent installations in other cities, while successful dramas will quickly move to the top of the list of plays that regional theatres will consider for their upcoming seasons. Finally, as the center of commercial theatre in the country, Broadway is where the largest and most concentrated amounts of financial investment in the theatrical field occur, with big musicals requiring budgets and capital outlays that exceed the entire annual operating budgets of most regional theatres. So as patterns emerge on Broadway stages, it is fair to say that those trends will have repercussions across the country and throughout the field of theatrical production.

Taking into consideration both the importance of Broadway production and the shift in corporate strategies towards their intellectual properties, a review of the historical relationships between Broadway productions and other media reveals interesting developments. One of the first things one sees when looking at the early years of the technological media is that early filmmakers, radio broadcasters, and television producers borrowed enormously from the corpus of work from the theatre and other live performing arts. As far back as 1894, when Thomas Edison was recording some of the first moving images in 1894 in Menlo Park, New Jersey, local vaudevillians or actors performing

scenes from successful Broadway shows would often appear in front of his cameras.[350] As film editing and narrative techniques improved, plays also became valuable for their ability to be quickly adapted into screenplay. For instance, *The Jazz Singer* (1927), the first film to have sound synchronized dialogue, was based on a play written by Samson Raphaelson that had opened on Broadway in 1925.[351] In fact, for most of the twentieth century the prevailing cultural trend was toward musicals and plays would make their way from Broadway stages to the movie house and later onto radios and televisions, since theatre was seen as a wellspring for characters and stories that would be successful in a number of media. During this time, many Broadway musicals and plays, from the *Belle of New* York (musical 1897, film 1952), to *Chu Chin Chow* (musical 1917, film 1934) to *Show Boat* (musical 1927, film 1929) to *You Can't Take It With You* (play 1936, film 1938) to *South Pacific* (musical 1949, film 1958) to *The King and I* (musical 1951, film 1956) to *A Raisin in the Sun* (play 1959, film 1961) to *Who's Afraid of Virginia Woolfe* (play 1962, film 1966) to *A Chorus Line* (musical 1975, film 1985) to *M. Butterfly* (play 1988, film 1993) made successful transitions to the screen.

While the stage-to-screen transition remained the dominant trend for most of the twentieth century, the maturation of film as a medium meant that Broadway was soon borrowing from Hollywood as well. In fact, during the prolific twenty-five year period of Broadway productions that followed the 1943 opening of *Oklahoma!*, twenty-two films

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[350] Musser, *Thomas A. Edison and His Kinetographic Motion Pictures*, 19.
[351] Richard Barrios, *A Song in the Dark : The Birth of the Musical Film* (New York: Oxford University Press, 1995), 32.

made the screen-to-stage transition.[352] Nevertheless, even as films were making their way to Broadway stages the predominant trend remained plays and musicals heading to Hollywood, along with numerous successful original productions appearing on New York stages every year. The last fifteen years, however, have seen a significant increase in movie remakes on Broadway, and whereas the occasional play or musical, such as recent theatrical releases of *Proof* and *Rent*, may make its way to the silver screen, now more movies are being turned into musicals or straight plays. Corporations have been responsible for much of this shift as they have increased their investment in the field and looked to transplant their film properties onto the stage. Between 2001 and 2007, there were sixteen screen-to-stage adaptations,[353] and in any given season as many as half of the new big-budget musicals are likely to be remakes of movies.[354] Many of these expensive movie-remakes have become smash hits and a significant percentage of the longer-running and economically successful productions running on Broadway in 2008, such as *Hairspray* and *The Lion King*, have their roots in Hollywood.

It is no coincidence that the beginning of the increase in the number of screen-to-stage adaptations correlates directly with the opening of the Disney produced musical *Beauty and the Beast* (1994). The success of that show not only led to more Disney musicals, but also attracted other corporate media firms to the field of theatrical

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[352] Henry Edwards, "At the Broadway Box Office It's 'Hooray for Hollywood'," in *ABC News*, February 8, 2007, http://abcnews.go.com/Entertainment/Story?id=2859918&page=1.

[353] Ibid.

[354] League of American Theatre Producers, "The League of American Theatres and Producers Announces 2006-2007 Broadway Theatre Season Results " in *Live Broadway: The League of American Theaters and Producers, The Official Website of Broadway Theater*, 30 May 2007, http://www.livebroadway.com/index.php?url_identifier=press-releases&news=the-league-of-american-theatres-and-producers-announces-2006-2007&type=news.

production, greatly changing the financial stakes of producing theatre and influencing the process of content selection for new Broadway shows. This transition therefore raises a number of important questions as to how the theatrical field will continue to develop and how that development will occur in relation to the larger field of cultural production. First of all, there is the question of how American cultural consumers now consider theatre. Is theatre thought of as a place where important works of culture originate, and where intellectual debate prospers along with quality entertainment? Or is it now a comfortable space to nostalgically relive re-released cultural amusements, created during eras with decidedly different sociopolitical conditions? Secondly, and on a broader scale, there is the question of how do these new productions represent larger changes in the structure of the field of cultural production? How does the involvement of these corporations change the economies of labor/compensation/ownership and distribution/consumption that pertain to Broadway in particular, and the field of theatrical production in general? Will the shift in capital control that these megafirms bring with them impact the experiences of producers, artists, performers, and theatrical audiences? Finally, we must consider how increased corporate involvement in the theatrical field impacts theatre as a medium in the larger contemporary cultural landscape. What does the inclusion of theatrical productions in the highly integrated formations of these corporations influence the consideration of theatre in relationship to other media? How does the control of theatrical productions by dominant conglomerates, such as Disney, Time Warner, and Sony, and the continued concentration of all cultural production in the hands of these few firms bode for the ability of artists to control their content and for the ability of the theatrical field as a whole to be a locus for the creation of original works

that expand the cultural lexicon? While intellectual property rights are not the only motivating factor in all of these changes, they are crucial because they facilitate the mobility of properties and franchises and enable the economic possibility that draws these corporate firms to produce theatre. Therefore, intellectual property is as good an entry point as any to come to a better understanding of how corporatization has altered the American cultural landscape and to consider the place of theatre within the field of contemporary cultural production.

PART I: New Ways of Producing and the Culture(al) Industry

As every year passes and a new Disney production opens on Broadway or another theatre company is sponsored by a corporation such as Ford or American Airlines, the corporate imprint on American theatre becomes more and more apparent. What had been a novelty only fifteen years ago when *Beauty and the Beast* first opened has by 2008 become the norm and perhaps the most significant economic determinant in the commercial theatre, if not the entire theatrical field. The evolution of the corporate presence in the theatrical field is important not only because of how it is directing the field's development, but also because it is evidence that theatre is being folded more directly into the corporatized culture of the twenty-first century.

In a little over a hundred years we have seen a massive paradigm shift in how culture is produced, who owns the means of production, and how the ideological content of culture is controlled by those producers. A recurring theme in considering the current state of the political economy of theatre is the immense cultural and technological upheavals of the late nineteenth and early twentieth centuries and how these changes have led to the accelerated ascendancy and maturation of capitalism into an economic system that has come to permeate and influence every level of cultural production.[355] One of the most significant shifts that occurred during this time period was the industrialization of American culture. As culture came to be increasingly produced using recordable, mechanically reproducible, and electronically distributable media (such as

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[355] For a detailed explanation of the polical economic, cultural, and social changes that took place during this time period see John Frick, "A Changing Theatre: New York and Beyond," in *The Cambridge History of American Theatre: Volume II, 1870-1945*, ed. Don B. Wilmeth and Christopher Bigsby, vol. 2 (Cambridge: Cambridge University Press, 1999), 196-232.

film, radio, and later television), a number of significant changes occurred and the cultural field of production began to operate under a different set of economic conditions. First of all, cultural products became more readily managed as commodities. This shift changed the way in which investors, producers, distributors, and consumers came to think of cultural production and consumption. The second change that occurred was that as the process and profitability of producing culture changed, so did the types of individuals and companies interested in the cultural field. Culture-making had become more like making widgets than ever before, and those individuals and companies who had profited in the production of physical goods since the Industrial Revolution now came to see the production of culture as a homologous market with the potential to provide the same rewards that making physical goods had. Culture had become its own industry.

While perhaps the first and most famous use of the term culture industry in theoretical discourse came from "The Culture Industry: Enlightenment as Mass Deception"[356]–Max Horkheimer and Theodor Adorno's seminal essay in the *Dialectic of Enlightenment* (1944)– the issue of the technologization and industrialization of culture had become an important subject within the discourse of theatrical and cultural production at a much earlier time. David Belasco, the famed Bishop of Broadway and one of the most successful theatrical producers around the turn of the twentieth century, was an early critic of the aesthetic and economic differences and challenges between traditional cultural forms such as painting and theatre and the new media of film and radio. In 1919, Belasco wrote that film was one of the first media to come along and

[356] Max Horkheimer and Theodor W. Adorno, "The Culture Industry: Enlightenment As Mass Deception," in *Dialectic of Enlightenment*, trans. John Cumming (New York: Continuum, 1969).

seriously challenge theatre's place as the leading form of popular culture. Although a true champion of the theatre who believed that film ultimately did not have the qualities to surpass the superiority of theatrical drama, Belasco recognized that these new media were changing the economics of entertainment, noting that it was difficult to keep actors from being attracted to the shorter work periods and higher paydays of the film industry. Though Belasco did not believe that he would lose his audiences (in 1919 he was yet to see a decline in attendance at his own Broadway houses), he did believe it would be a struggle to keep actors and directors who could have become theatrical "geniuses," because the profession of film acting was easier and they did not want to face the difficulty of the professional theatre life.[357] However, by 1919, while a number of filmmakers including Cecil B. DeMille and Charlie Chaplin had already set up shop in southern California, the film industry had only just begun to reach out to every corner of the country and reach much larger audiences.[358] Although it would take a decade or so for film to mature as a medium through the codification of American narrative cinema and for the "Hollywood studio system" to be firmly established, once it did, film and the other technological media of the twentieth century, radio and then later television and the Internet, would come to have a tremendous impact on the political economy of entertainment in the United States and around the world. The plight of vaudeville and other popular theatre forms in the twenties and thirties, attests to the tremendous growth of film and radio into powerful industries and the striking impact they would have on theatrical production.

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[357] David Belasco and Louis Vincent De Foe, *The Theatre Through Its Stage Door* (New York: Harper & Brothers, 1919), 196-234.
[358] Allen John Scott, *On Hollywood: The Place, The Industry* (Princeton, N.J.: Princeton University Press, 2005), 17-35.

As the new media spread, the cultural and economic repercussions were felt around the world, as the inherent reproducibility of these new cultural products allowed them to be quickly copied and then disseminated across long distances. By 1936, the confluence of dramatic change in continental European politics and the continuing permeation of these new media into daily life led Walter Benjamin to write his now famous essay "The Work of Art in the Age of Mechanical Reproduction."[359] In the essay, Benjamin appraises the aesthetic, cultural, political, and economic paradigm shifts occurring in the first half of the twentieth century as a result of new technological media. Benjamin argues that, as the technologies of mechanical reproduction become ubiquitous the ritual of live experience, which Benjamin calls the "aura," is being stripped from regular cultural consumption, changing our very understanding of culture. Benajmin writes that

> For the first time in world history, mechanical reproduction emancipates the work of art from its parasitic dependence on ritual. To an even greater degree the work of art reproduced becomes the work of art designed for reproducibility. . . the instant the criterion of authenticity ceases to be applicable to artistic production, the total function of art is reversed. Instead of being based on ritual, it begins to be based on another practice– politics.[360]

Benjamin was hopeful that new media and in particular film would enable a "radical cultural and media politics concerned with the creation of alternative oppositional

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[359] Walter Benjamin, "The Work of Art in the Age of Mechanical Reproduction," in *Illuminations*, ed. Hannah Arendt (New York: Schocken Books, 1968).
[360] Ibid., 224.

cultures."[361] He believed strongly that film's ability to allow for a "simultaneous collective experience"[362] permitted for the organization of collective cultural response, which would shift the position of the masses towards art as well as exploding the seemingly ever-shrinking modern world with new visual and audio experiences. At the same time Benjamin was acutely aware of the organizational structures that were being deployed to produce films, recognizing that the producing components of the new media lent themselves to be arranged more akin to industrial models than artisanal modes of producing culture. Rather than compare the new media to the old simply along the lines of their aesthetic specificity, Benjamin acknowledges that the impact of the new media would be felt along political and economic lines as well and were certain to have a lasting impact on society. He also recognizes the particular impact that the rise of new media would have on theatre, writing "any thorough study proves that there is indeed no greater contrast than that of the stage play to a work of art that is completely subject to or, like the film, founded in, mechanical reproduction."[363] Even in 1935, it was becoming apparent to theorists and cultural critics that the developments of the early twentieth century were going to have a significant if not devastating affect on the place of theatre in Western culture.

"The Work of Art in the Age of Mechanical Reproduction" was not embraced wholeheartedly by Benjamin's Frankfurt School colleagues, Theodor Adorno and Max Horkheimer, who were concerned that by abandoning auratic works and championing the valorized experience of mechanically produced of art, Benjamin had simply replaced one

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[361] Meenakshi Gigi Durham and Douglas M. Kellner, eds., *Media and Cultural Studies : Keyworks* (Malden, Mass.: Blackwell Publishers, 2001), 35.
[362] Benjamin, "The Work of Art in the Age of Mechanical Reproduction," 234.
[363] Ibid., 229-30.

overly romanticized view of artistic production and consumption with another. In "The Culture Industry: Enlightenment as Mass Deception" Horkheimer and Adorno present a very different Marxist critique from Benjamin's. In this seminal essay, Horkheimer and Adorno are the first to use the term *culture industry*, which would quickly become an important term in the sociological and political economic study of culture. For Horkheimer and Adorno the development of industrial cultural production portends an ominous future for the realm of creative human expression. The essay boldly begins with the statement that "culture now impresses the same stamp on everything. Films, radio and magazines make up a system which is uniform as a whole and in every part. Even the aesthetic activities of political opposites are one in their enthusiastic obedience to the rhythm of the iron system."[364] Horkheimer and Adorno, who were not shy about their aesthetic and cultural preferences, develop an argument that is crucial to understanding how the cultural trends of the twentieth century have played an important role in the contemporary state of culture, the institutionalization of productive practices, and the place of theatre.

Horkheimer and Adorno are direct and unapologetic in their criticism of the political and economic conditions of industrial cultural production. They lay bare the social machinations that allow for the propagation of the culture industries without falling victim to technological determinism or the justifications the culture industries make for their own actions.

> Interested parties explain the culture industry in technological terms. It is alleged that because millions participate in it, certain reproduction

[364] Horkheimer and Adorno, "The Culture Industry: Enlightenment As Mass Deception," 120.

> processes are necessary that inevitably require identical needs in innumerable places to be satisfied with identical goods. . . . The result is the circle of manipulation and retroactive need in which the unity of the system grows even stronger. No mention is made of the fact that the basis on which technology acquires power over society is the power of those whose economic hold over society is greatest. A technological rationale is the rationale of domination itself. It is the coercive nature of society alienated from itself. . . . It has made the technology of the culture industry no more than the achievement of standardization and mass production, sacrificing whatever involved a distinction between the logic of the work and that of the social system. This is the result not of a law of movement in technology as such but of its function in today's economy.[365]

For Horkheimer and Adorno, it is not the technology that drives the development of society but rather that technology and its application are the product of and are influenced by those in control of that technology and thereby the means of cultural production. As a result, it was not the technology behind the new media that Horkheimer and Adorno feared the most, but the industrialized organizational structures developed to manage and control the means of production.

> To speak of culture was always contrary to culture. Culture as a common denominator already contains in embryo that schematization and process of cataloging and classification which bring culture within the sphere of

[365] Ibid., 121.

> administration. And it is precisely the industrialized, the consequent subsumption which entirely accords with this notion of culture.[366]

Horkheimer and Adorno, as Marxists, were concerned with the conditions of domination, alienation, and economic manipulation that the culture industries produced. As a result, they understood that the changing nature of culture would have a significant impact on all phases of the creation of cultural goods, from production to distribution to consumption. Furthermore, they recognized that while these new industrialized processes produced a seemingly democratic effect –as observed by Benjamin– due to the numbers of copies made, the amount of capital required to build and maintain the means of production gave control of that aspect of the field to only the most wealthy individuals and companies.

> Whereas today in material production the mechanism of supply and demand is disintegrating, in the superstructure it still operates as a check in the rulers' favor. The consumers are the workers and employees, the farmers and lower middle class. Capitalist production so confines them, body and soul, that they fall helpless victims to what is offered them. [367]

This critique of the producer –consumer relationship continues to apply to the political economic conditions of contemporary culture and provides a valuable insight into the origins of corporate investment in the cultural field.

Despite the fact that Horkheimer and Adorno in "The Culture Industry" tend to oversimplify the complexity of the consumer's reception of cultural works and deny the ability of cultural goods to act as sites of struggle, the basic premises of the essay continue to be adopted and adapted by sociologists and political economists looking to

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[366] Ibid., 131.
[367] Ibid., 133.

more thoroughly understand cultural production. David Hesmondhalgh argues that time has yielded a respectful but somewhat more temperate view of the industrialization of culture.

> Miège argued that the introduction of industrialization and new technologies into cultural production did indeed lead to increasing commodification, but that it also led to exciting new directions and innovations. The commodification of culture, then, was a much more ambivalent process than was allowed for by Adorno and Horkheimer's cultural pessimism. [368]

Hesmondhalgh also points out that sociologists have adapted Adorno and Horkheimer's more orthodox stance with a view of the field of cultural production that is less static and takes a more nuanced approach to the complexity of the reception of culture by the individual. Sociologists and political economists have even modified Horkheimer and Adorno's initial terminology using the term "cultural industries" rather than "culture industry" to describe the range of industries and institutions considered when studying cultural production. Cultural industries is preferred because "it not only refers to a type of industrial activity, it also invokes a certain tradition of thinking about this activity and about the relationship between culture and economics, texts and industry, meaning and function."[369] The use of the term "cultural industry" has indeed become so prevalent that in 1982, UNESCO (the United Nations Scientific and Cultural Organization) provided an official definition

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[368] David Hesmondhalgh, *The Cultural Industries* (Thousand Oaks: Sage Publications, 2002), 16.
[369] Ibid., 14.

> Generally speaking, a cultural industry is held to exist when cultural goods and services are produced, reproduced, stored or distributed on industrial and commercial lines, that is to say on a large scale and in accordance with a strategy based on economic considerations rather than any concerns for cultural development.[370]

Within these guidelines, the core cultural industries are generally recognized as advertising and marketing, broadcasting, film industries, the Internet industry, the music industries, print and electronic publishing, and video and computer games, because both the production and circulation of texts in these media have become industrialized. Hesmondhalgh is careful to note that while these are the dominant modes of industrialized culture, other forms of cultural production have also have been influenced by changes in the production of culture, and it is in a second "peripheral" category that he places theatre. In this usage "peripheral" is not a marginalizing term but rather is meant to clarify that some forms of cultural production are only semi-industrial or like theatre have only recently taken on the forms of production and reproduction that are the result of industrialization.[371] By developing a new term for the study of industrialized cultural production, critics and theorists have been able to acknowledge the work of the Frankfurt School theorists, without having to carry the burden of those theorists' particular biases and subjectivity. This adjusted adoption of the Frankfurt School is notable in the work of the Birmingham School in developing cultural studies. Birmingham School theorists, such as Stuart Hall, argue that cultural products do not inherently and definitively carry

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[370] UNESCO, *Cultural Industries: A Challenge for the Future of Culture* (Paris: 1982), 21.
[371] Hesmondhalgh, *The Cultural Industries*, 12-13.

the message of their producers, but rather that texts can be read in multiple ways and that some of those readings may in fact be counter to and resist the originally intended meaning. Through these types of evolved and nuanced approaches to the cultural industries, sociologists and political economists are able to initiate investigations into the field of cultural production from the perspective that the process of commodification was not smooth and unresisted, but rather that the field remains a site for struggle and constant contestation.[372]

Even if Horkheimer and Adorno wrote from a position of extreme aesthetic judgment or viewed their cultural scene with a seemingly hopeless pessimism, theirs remains an uncanny perception of the changes that transpired in the early parts of the twentieth century. Most importantly they realized the influence of entertainment on cultural consumers and that as culture became more of a business, the profit-driven motives of industrial cultural producers would have a greater impact on that relationship.[373] In fact, the entertainment business that Benjamin, Horkheimer, and Adorno saw in nascent form has become far more complex than they probably even imagined it ever would. As direct and indirect corporate investment in culture has become a critical and sometime necessary part of production, distribution, and consumption, the cultural landscape has been altered and more media have felt the impact. Today all forms of cultural production, including theatre, feel the inevitable impact and changes in institutional organization that have resulted from this corporate investment.

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[372] Ibid., 16.
[373] Horkheimer and Adorno, "The Culture Industry: Enlightenment As Mass Deception," 136.

Institutions and Means of Production

The arguments of both "The Work of Art in the Age of Mechanical Reproduction" and "The Culture Industry" were primarily driven by the appearance of cultural works that were made possible by and benefited from developing technologies of mass reproduction. Although the manner in which this new approach to cultural production influenced aesthetics was an important focus for Horkheimer and Adorno as well as Benjamin, their regard for the changing organizational and administrative properties of the cultural field was just as important to their take on the production of culture. For, while changes in aesthetics in the twentieth century, however great, can be argued as being part of the progressive development of culture over millennia of history, the development of industrialized organizational structures to produce culture represented a significant shift in not only what types of culture were produced, but how they were produced, who was in control of production, and how cultural production was considered with regards to the economy as a whole.

One of the most significant developments in the nature of cultural industries in the last hundred plus years is that the production of culture is no longer a secondary or complementary portion of Western economies. Whereas in the past, the production of culture may have had significant social impacts due to aesthetics and ideology, the economic scale of the cultural marketplace was small when compared to markets for physical and durable goods. This relative difference in scale was in part the result of the scarcity of cultural works (such as paintings, sculptures, and before Gutenberg even books), which limited ownership to the most wealthy members of the upper-upper class or nobility, or the ephemerality of the performing arts (such as music, opera, theatre),

which could only be viewed live and were limited by their inherent temporality and spatiality. But now, anybody can own culture, and cultural works come in multiple ownable deliverable media, such as printed texts, DVDs, CDs, digital files. This transition has led to a radical reorganization of the ownership and organization of the cultural industries, as more companies have entered into the business of producing and distributing culture. In addition, companies once known for specializing in other forms of production, such as GE and Seagram, have also entered into the fray, making the cultural marketplace more complex and more directly integrated into the larger economy than ever before. As Hesmondhalgh notes

> The largest companies . . . now operate across a number of different cultural industries. These conglomerates compete with each other, but more than ever before they are connected in complex webs of alliance, partnership and joint venture. . . . Yet there are also more and more small and medium-sized companies in the business of culture and there are increasingly complex relationships between large, medium, and small cultural companies.[374]

The significance of this shift in the organization of cultural production can be seen in the rise of conglomerated media corporations as the key factor in the development of the cultural field over the last half of the twentieth century. As culture industrialized and the means of production came to necessitate the movement of large amounts of capital, the opportunity for investment and involvement in the field became apparent. Some corporations, such as telecommunications operator AT&T and electronics company

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[374] Hesmondhalgh, *The Cultural Industries*, 1-2.

Sony, adapted their work practices and became producers of culture, while others, such as Disney and Time Warner, came into being solely for the purpose of profiting from the production of culture. As the corporatization of culture has expanded, every aspect of cultural production has either been impacted by or come under its umbrella of influence.

David Hesmondhalgh and Raymond Williams have both written that the current phase of organization in the field of cultural production, that of corporate professional management, is the third since the middle ages, following eras that saw patronage and then market professionalism as the dominant modes of funding and organization.[375] Patronage, which lasted until the nineteenth century, was a system in which artists relied on the financing, protection and support of wealthy aristocrats. Market professionalism, which developed during the nineteenth century once works of art began to be seen as objects that could be bought and owned and continues to exist today, allowed artisans to independently produce and sell their works. The current phase is dominated by corporate professional organizations, although both previous forms of production still exist alongside corporate or complex professional production. Williams clarified the difference between the second era, where the artist was primarily in control of his own economic fate, and the third, by noting that

> in some earlier relations, notably those of the productive post-artisanal and the market professional, it indeed quite often happened that a work originated in a commission, from a bookseller or publisher. But in the corporate structure this has become very much more common, in relation to a highly organized and fully capitalized market in which the direct

[375] Ibid., 49-52. Raymond Williams, *The Sociology of Culture* (Chicago: University of Chicago Press, 1981), 33-56.

> commissioning of planned saleable products has become a normal mode. . . . Cinema, radio and television are the outstanding examples, in which capitalist and some non-capitalist corporations organize production from the beginning and offer salaried or contracted employment within these terms. The great cultural importance of these new media has made these social relations, in the late twentieth century, dominant and even typical.[376]

In light of this transition to a new phase of economic organization for cultural production, it becomes increasingly important to understand the nature of the institutions that are able to mobilize the capital necessary to create mass culture, and the dominant position afforded to these institutions due to their control over the majority of culture.

In his elaborate discussion of cultural industries, David Hesmondhalgh writes that "the cultural industries have usually been thought of as those institutions (mainly profit-making companies, but also state organizations and non-profit organizations) which are most directly involved in the production of social meaning."[377] When looking at the American cultural marketplace one begins to see that these institutions gain positions of prominence through their influence in both the economic sector and the realm of social meaning, thereby changing American political, economic, and socio-cultural dynamics. Disney provides a perfect example of a company that has, through the durability of its characters and stories, become a staple of the early cultural exposure of multiple generations of children thereby inscribing itself into the fabric of American culture. From such a strong position, Disney is able not only to perpetuate its success as a company, but also to become an important determinant in what consumers come to

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[376] Williams, *The Sociology of Culture*, 52-3.
[377] Hesmondhalgh, *The Cultural Industries*, 11-12.

expect out of cultural production. The question that therefore must be posed is, how have these changes in the modes of production of culture become intrinsic in our understanding of culture and thereby shifted the relationship between the producers and consumers of cultural goods? In his consideration of this concern, Williams provided a concise and perceptive explanation of the current institutional organization and its potential ramifications as compared to previous eras.

> There is then a qualitative change from earlier socio-cultural relations, even within the earlier market phases. For the effective (if of course never absolute) origin of cultural production is now centrally sited within the corporate market. The scale of capital involved, and the dependence on more complex and specialized means of production and distribution, have to an important extent blocked access to these media in older artisanal, post-artisanal and even market professional terms, and imposed predominant conditions of corporate employment. . . .Thus the late phases of a market culture are very different from its early phases. Its institutions, in their increasing centrality, have moved towards a situation in which it could again be said (but with the qualitative difference of an epochal change) that the cultural institutions are integral parts of the general social organization. In a modern capitalist economy, and its characteristic kind of social order, the cultural institutions of press, publishing, cinema, radio, television, and the record industry, are no longer, as in earlier market phases, marginal or minor, but, both in themselves and in their frequent interlock or integration with other

> productive institutions, are parts of the whole social and economic organization at its most general and pervasive.[378]

With this "pervasive" incorporation into the social order, corporate cultural institutions therefore hold a position of influence in the evolution of culture, previously reached only by governmental institutions. The control of both the means of production and distribution allows companies to establish positions of economic dominance as well as allowing them to gain tacit control of forums for discourse.

The ownership of the means of production and distribution therefore become a major factor in determining the cultural relevance of corporate institutions as a whole and of individual corporations as they look to assert themselves in the field of cultural production. The model by which this study will address just how corporate institutions influence production and distribution and are asserting themselves in the field of theatrical production comes from Raymond Williams's consideration of the impact of institutions on the cultural field in *Sociology of Culture*. Just as Williams clearly states the importance of identifying the role of institutions of all types in the understanding of the sociology of culture, he likewise is concerned with what implications the ownership of the means of production would have on society and the cultural field. Williams returns to the shifts in productive and distributive capabilities made possible by mass reproductive technologies as important signifiers as to when and how the corporatization began to shift cultural modes. Williams notes that in previous eras individual artists or professional companies might have been able to own their means of productions and deal directly with potential consumers,

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[378] Williams, *The Sociology of Culture*, 53-4.

> but in the advanced technologies, up to our own time, it has been almost impossible for working companies to have direct access to their relevant means of production, and a third form of the division of labour then appears, and in capitalist conditions becomes stable and regular. Beyond professional specialization, and beyond the internal class division within social forms of cultural production, there is ultimately controlling form of ownership and management, within which the other forms have to operate. Every kind of cultural and productive worker, within the highly capitalized systems of these advanced technologies, becomes an employee of owners or managers who need not be directly concerned with cultural production at all.[379]

This is the state of salaried or contracted employment under which most artistic producers work and to which Williams refers when discussing the unique characteristics of contemporary cultural production. With an employer now controlling the means of production and making decisions based on his particular needs and concerns, which are inevitably attached to his capital investment and interest in making profit, the role of the artist in the creative process is affected as well as the artist's relationship to the cultural good he is creating. Williams continues

> This is of course never only an economic relationship. Wholly dependent on one or one type of owner or controller of his means of production, the cultural worker in these technologies is in a radically different set of social relations from those of the individual producer or earlier type of company,

[379] Ibid., 116.

> and fundamental questions of cultural autonomy and purpose are raised in quite new ways.[380]

In this formation, control and ownership of any cultural product therefore reverts to the management, due to their position as primary investor, changing not only the impetus behind any productive endeavor, but also the priorities used in decision making, where economic concerns will trump all. It is under these conditions that the cultural industries arose and evolved and that the cultural field began to see a shift in the management and control of the means of production. As the twentieth century progressed and new media such as radio, television, and the Internet were developed, producers gained the ability to mass reproduce their products more rapidly and transmit cultural expression across farther distances. These new possibilities required heavy capital investment to accommodate the demands of producing these new media as well as a refinement and streamlining of the processes of production to ensure they would remain profitable. The capital demands resulted in increased concentration of ownership and further corporatization of culture. Williams argues that

> problems of capitalization, marketing and integration of production have led to the widespread appearance of the conglomerate, within which ownership and control of the means of cultural production become a sector within the wider ownership and control of a much wider (non-cultural) productive and financial area. The conglomerate is indeed becoming typical of technologically advanced cultural production in the advanced capitalist economies, and its theoretical importance, in this context, is that

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[380] Ibid.

> it is at once dominant in modern cultural production and yet, in its determining forms, radically separate from it; its "purpose" now primarily elsewhere.[381]

Such is the involvement of corporate firms in cultural production, as companies with enormous capital resources yet no history in the production of culture purchase media production and distribution companies.

Seeing the cultural field as rich with profit-capable economic assets, these corporations invest in cultural production ventures with their sight primarily set on profit-making and corporate expansion, with only a secondary interest in cultural enrichment.[382] This scenario has provided for mergers or purchases that have created some unlikely corporate partnerships and fundamentally changed the way in which culture is produced, distributed, and consumed. An example of one such unlikely corporate marriage and the important role that media production often takes in such mergers was the purchase of Paramount Pictures by Gulf and Western Industries, Inc. In 1966, Gulf and Western,

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[381] Ibid., 116-7.

[382] An interesting side note to Williams's discussion of organizations and corporatizations comes from Hesmondhalgh who argues that "Important as large companies are in cultural production in the late twentieth century, Williams in fact intends the term in an older sense: 'a number of people in a unified group.'"(Hesmondhalgh, *The Cultural Industries*, 50-1.) Hesmondhalgh's claim can perhaps be connected back to Max Weber who defined the term *corporate group* as "a social relationship which is either closed or limits admission of outsiders by rules, will be called a 'corporate group' (*Verband*) so far as its order is enforced by the action of specific individuals whose regular function this is, of a chief or 'head' (*Leiter*) and usually also an administrative staff. These functionaries will normally also have representative authority." (Max Weber, *The Theory of Social and Economic Organization*, ed. Talcott Parson, trans. A.M. Henderson and Talcott Parsons (New York: The Free Press, 1964), 145-6.) From this we can see how Hesmondhalgh, is trying to reemphasize that the shift in organization does not relate to the size of the company, which can be distracting when considering contemporary conglomerates, but rather that there is a controlling group that changes the dynamic of the relationship between owner, producer, product, and consumer.

which at the time was known for being highly diversified in a number of industries that included cigars, jet engine and missile parts, traffic lights, nuclear power plants, steel and zinc products, and lingerie, bought Paramount Pictures Corporation.[383] Despite an initial lull during the 1970s when Paramount was less significant as a cultural producer, the takeover eventually helped Paramount become one of the studios that could be relied on to produce franchises, such as the *Raiders of the Lost Ark*, *Beverly Hills Cop*, *Star Trek,* that were successful in both their popular reach and economic return. In fact, Paramount Pictures became such an important part of Gulf and Western, that the company reconsolidated its assets in 1989, selling off many its non-media related assets, such as financial services firm Associates First Capital Corporation, which at the time was valued at $3 billion. Gulf and Western then took the money from those sales and invested in other entertainment properties. After this makeover, Gulf and Western put the final stamp on its evolution into a media megafirm by changing its corporate name to Paramount Communications.[384] Paramount Communications's lines of business would eventually come to include film and television production, movie theatres, television broadcasting and network ownership, music and book publishing, sports teams and even theme parks.[385] The cycle of expansion, merger and refinement at Paramount continued in 1994, when Viacom purchased Paramount Communications for $8.28 billion[386]

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[383] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 37.
[384] Richard W. Stevenson, "Paramount Pictures' Success Key to Revamping at G&W," in *New York Times*, April 11, 1989, http://query.nytimes.com/gst/fullpage.html?res=950DE1D61139F932A25757C0A96F948260.
[385] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 37-8.
[386] Geraldine Fabrikant, "Viacom to Announce Deal to Acquire Paramount," in *New York Times*, September 12, 1993,

creating a massive conglomerate that was able to control a number of different types of cultural goods from production through to distribution.

The concentration of cultural production in the hands of a few very large media firms has been a particularly important characteristic of the development of the cultural marketplace over the past twenty-five years. There are two approaches to this type of conglomeration that have proven particularly useful to companies looking to competitively assert themselves. The first method is *horizontal integration*, which is a strategy applied by firms who look to control some types of media by owning outlets in as many markets as possible. Companies like Clear Channel, which at one point in 2000 owned more than 1,200 radio stations, and News Corp in newspapers, have practiced horizontal integration by purchasing smaller companies in a wide range of locations, thereby giving them control over a larger percentage of the field and concentrating media ownership in increasingly fewer hands.[387] As competition decreases, a horizontally integrated conglomerate has more bargaining power with suppliers and more control over the prices it can charge for its products. These benefits encourage firms to use mergers and acquisitions to expand their umbrella of ownership, as well as encouraging them to lobby for deregulation and develop technologies that benefit concentration.[388]

While horizontal integration occurs through controlling the cultural output in a number of different markets, a second trend in conglomeration is *vertical integration*.

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http://query.nytimes.com/gst/fullpage.html?res=9F0CE1DF1E39F931A2575AC0A965958260.

[387] Frank Ahrens, "Clear Channel Sale to End Era," in *The Washington Post.com*, November 17, 2006, http://www.washingtonpost.com/wp-dyn/content/article/2006/11/16/AR2006111600537.html.

[388] McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times*, 16-7.

Vertical integration is an approach in which a company not only owns the means to produce content, but also owns the means by which that content is distributed, guaranteeing that the content has a way to reach the marketplace. A prime example of vertical integration is Time Warner. Just a few of Time Warner's global media holdings include the following: Warner Bros film studios (one of the six dominant global film studios), Warner Bros. television production studios, Warner Music Group (one of five dominant publishers), numerous cable TV channels (including global powerhouses CNN and HBO), Time Warner Cable (which controls the largest cable system in the United States), and media holdings in numerous countries including France, South Africa, Japan, and Germany.[389] In this way, Time Warner can control its properties from production through to distribution along numerous channels, allowing for greater control and efficiency in the process of cultural production.

Horizontal and vertical integration strategies have allowed a few firms to dominate global media ownership and production, so that the majority of cultural output in 2006-2007 was created and distributed by seven firms (2006-2007 revenue in US$ billions):[390] General Electric (168), Sony (70), Time Warner (44), Walt Disney (34), Viacom, News Corp. (25), Vivendi (25), and Bertelsmann (24).[391] For the most part,

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[389] Ibid., 92-3.

[390] "Fortune Global 500: 2007," in *CNNMoney.com: Fortune*, July 23, 2007, http://money.cnn.com/magazines/fortune/global500/2007/full_list/index.html.

[391] Prior to 2005, an eight firm, Viacom, was amongst this top tier of media conglomerates. But during 2005, the company was split into two separate publicly traded companies: the CBS Corporation and a newly reconstituted Viacom. CBS Corporation included such television and entertainment assets as CBS, UPN, Showtime Networks, and Paramount Television. The new Viacom included the various MTV properties, BET, Dreamworks, and the Paramount movie division. Interestingly since the split, the privately held company National Amusements, headed by former Viacom chairman Sumner Redstone, holds controlling voting interest in both companies, essentially making

these first-tier firms consolidated their media empires during the 1990s at a phenomenal pace. In *Rich Media, Poor Democracy* (1999), Robert McChesney details that

> in 1988 Disney was a $2.9 billion per year amusement park and cartoon company; in 1998 Disney had $25 billion in sales. In 1988 Time was a $4.2 billion publishing company and Warner Communications was a $3.4 billion media conglomerate; in 1998 Time Warner did $28 billion in business. In 1988 Viacom was a measly $600 million syndication and cable outfit; in 1998 Viacom did $14.5 billion worth of business.[392]

Two strategies have allowed for this rapid expansion. One has been the aggressive expansion and diversification of their holdings within the markets of cultural production. These companies have purchased cable systems and television networks, grown their television and film production capabilities, acquired movie theatre chains, invested in sports teams and facilities, and expanded beyond the United States to markets around the globe. As a result, each megafirm is able to rely on revenue from different media and is less dependent on the success of one particularly industry. This security and consistency has allowed these conglomerates to amass large amounts of wealth and to provide them with the capital necessary for further expansion and growth.

National Amusements the new eighth top-tier firm. Bloomberg News, "Viacom Explains Split Into Units," in *New York Times*, October 6, 2005, http://www.nytimes.com/2005/10/06/business/media/06viacom.html?scp=5&sq=viacom+cbs+redstone&st=nyt. Bloomberg News, "Viacom Completes Split Into 2 Companies," in *New York Times*, January 2, 2006, http://www.nytimes.com/2006/01/02/business/media/02viacom.html?scp=8&sq=viacom+cbs+redstone&st=nyt. Richard Siklos, "Viacom Chairman Says Stock Sales Are Formality, Not a Valuation," in *New York Times*, July 20, 2006, http://www.nytimes.com/2006/07/20/business/media/20place.html?scp=1&sq=national+amusements+cbs+viacom&st=nyt.

[392] McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times*, 19-20.

The second strategy has been to shift the focus of their media industries from hardware, such electronics or even cable networks, to software, which includes all cultural content, such as television shows, films, books, etc., developed for media. While there was a time when producing consumer electronics or controlling telecommunications were premier assets in the media market, circumstances have changed. Although these industries remain profitable and a value segment of these media conglomerates' assets, market competition in cable and other telecom industries and the inevitable market saturation that occurs with every consumer electronic innovation, means that the profit potential of investments in hardware is limited. So, as these conglomerates have realized the limitations of hardware they have turned their attention to software. As Ronald Bettig points out, software "can be repackaged and sold continuously; given the peculiar nature of intellectual property, it is never used up."[393] What the media conglomerates have come to realize is that if they control substantial software, then they will have a renewable source of revenue they can turn to whenever they are in need. Furthermore, a strong investment in software is key to their ability to maximize the profit potential of their outlets for cultural distribution. Michel Curtin and Thomas Streeter note that "it is significant that executives such as NBC's Scott Sassa no longer refer to popular programs, films, or songs when discussing media strategy. Instead, they talk about leveraging a copyright or purchasing a library of copyrights."[394] At the heart of this whole system lie intellectual property rights, which provide corporations with the legal

[393] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 42.
[394] Curtin and Streeter, "Media," 235.

protection they need to control the circulation of their software properties within the field of cultural production.[395]

The Importance of Intellectual Property in Corporate Cultural Production

Nicholas Garnham wrote that "the problem with cultural and informational goods is that, because their use value is almost limitless, i.e. cannot be destroyed or consumed by use, it is extremely difficult to attach an exchange value for them."[396] This characteristic of cultural goods comes to bear when considering intellectual property in the twenty-first century, as new technologies and increased audience expectations have resulted in escalating costs in the production of movies, television, video games, and even theatre. Even moderately successful cultural projects often barely recoup their expenses, and while mega-blockbusters seem to make more money than ever, there are many flops that leave their financial backers with significant losses. In Hollywood, for every *Lord of the Rings* there is a *Waterworld* or *Ishtar*. In television for every *Law & Order* there is a *Chevy Chase Show*, and in the theatrical world for every *Lion King* there is a *Capeman*. This is the risk of cultural production, which relies so heavily on highly fickle and unpredictable audience responses to generate revenue. Just as Garnham and also Marx remained uncertain about the best way of ascertaining the exchange value of any cultural good, investors and corporations are similarly puzzled and are increasingly wary of sinking money into uncertain projects. This uncertainty therefore makes it very difficult to create predictive models that will determine what work will succeed and which will

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[395] Ibid., 234.
[396] Garnham, "Contribution to a Political Economy of Mass-communication," 244.

fail, an important necessity when determining how much capital investment will be necessary to produce any cultural good.

But when cultural production is profitable it can be extremely so, especially when a cultural object transcends the status of humdrum culture and is endowed with symbolic worth that can be translated to economic value. In his analysis of the art market, which revolves around the ownership of scarce physical products, Bourdieu explains why cultural producers are willing to invest time, energy, and resources in such an uncertain marketplace.

> Having no market in the present, this entirely future-oriented production presupposes high-risk investments tending to build up stocks of products which may either relapse into the status of material objects (valued as such, by the weight of paper) or rise to the status of cultural objects endowed with an economic value incommensurate with the value of the material components which go into producing them.[397]

In looking for ways to consistently develop culture products that are endowed with the aforementioned "incommensurate economic value" and thus generate profits, corporations have found that by tapping into reliable and established properties, they at least have some history of success on which to base their chances of relative success or failure. Therefore, those companies that are armed with these significant libraries of intellectual property have looked to propagate their intellectual properties across numerous different media. Ronald Bettig wrote that this type of corporate behavior is based on what economists have identified as a

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[397] Bourdieu, "The Production of Belief: Contribution to an Economy of Symbolic Goods," 97.

> characteristic of informational and cultural goods that also fosters economic concentration–economies of scope. Economies of scope arise when it costs less to produce several different products by the same firm because the firm draws from the same raw or intermediate product. Costs are reduced as a result of this joint production.[398]

In the case of contemporary cultural production, intellectual properties act as the raw product from which to develop various forms of cultural production, thereby generating an economy of scope. The deployment of these properties across different media provides two advantages to the owner of the intellectual property. First, the cost spent in dollars and/or creative energy on developing new story or characters is little or nothing, since that work only needs to be done once during the initial production of the property. Secondly, less work needs to be done to convince audiences of the potential quality and success of a new cultural product based on an older intellectual property, since it is assumed that targeted audiences will most likely remember or at least be aware of the initial product. In fact, Bourdieu argues that this reworking and redeployment of inactive properties is a fundamental characteristic of corporate cultural production. In his discussion of the difference between "commercial" and "cultural" business in the art market, Bourdieu writes that "the more directly and completely the products it[a cultural producer] offers corresponds to a pre-existent demand, i.e. to pre-existent interests in pre-established forms,"[399] the more likely that cultural producer is to prioritize commercial interests. While the cross-promotion of intellectual properties does not guarantee equal

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[398] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 101.
[399] Bourdieu, "The Production of Belief: Contribution to an Economy of Symbolic Goods."

success for each property in any medium in which it is manifested, the ability of information goods to endure in a culture does make the reconfiguring of these intellectual properties more financially attractive than a completely new venture despite the risks inherent to any investment in cultural production.

The owner of a property can thereby take advantage of the fact that an already very popular movie or television has a certain amount of built-in momentum when it re-enters the market. This momentum is attractive for investors since production costs are more likely to be amortized, and for conglomerates that need a risk-reducing mechanism as they attempt to fill the various channels in their distribution network.[400] The perceived reliability of established intellectual properties in the creation of new cultural products across all media has motivated the significant acquisition and stockpiling of intellectual property by companies such as Disney, Time Warner, and Viacom. In fact, Wall Street analysts predict that when we look back on this era in our cultural history that it will not have been the hardware of this era that reaped the greatest rewards but that software, the intellectual properties and trademarks, will ultimately have proven to generate the most lucrative returns.

While developments in corporate structuring and the economic conditions of the contemporary era have prompted media conglomerates to maximize the value of their libraries of intellectual properties, the value of these properties also stems from an expansion of the property rights of these companies. Hesmondhalgh explains that

> the tendency in all modern copyright systems is for the cultural-industry companies to own rights. In the twentieth century, this already

[400] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 97.

> contradictory and complex legal framework became vastly more complex, as new media forms developed such as film and recorded music, requiring their own modifications to the copyright laws originally developed for publishing. Nearly all the new media forms involved a much more complex division of labour, bringing about further complexity about who is the 'author' of a cultural work. With the complex professional era of cultural production, cultural corporations, rather than publishing companies, became the main owners of rights.[401]

As laws were developed to compensate for the complexities of the new media, corporations recognized that it was in their best interest to guide legislation in a direction that would benefit their economic goals. Because of the extensive economic and legal advantages that corporations hold within the cultural marketplace and the political influence they are able to exert through lobbying and economic leverage, it did not take long for the corporatization of culture to have a distinct impact on the legal structures that modulate and control the course of business in the cultural field. Legal protections, such as freedom of speech and ownership rights, which had initially been crafted to protect individuals and did not extend to cover corporate groups, were quickly redrafted. Herbert Schiller notes that "the expanded protection offered corporate commercial and political speech. . . can be understood best as the latest stage in the historical, judicial accommodation to and promotion of property rights in the United States."[402] Freedom of speech now extended to marketing and advertising, and corporations were now able to

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[401] Hesmondhalgh, *The Cultural Industries*, 58.
[402] Herbert I. Schiller, *Culture, Inc.: The Corporate Takeover of Public Expression* (New York: Oxford University Press, 1989), 49.

own intellectual properties, such as plays, films, etc., and be afforded the same scope and breadth of protection as an individual author, playwright, or songwriter. This is a predictable result of the close marriage of market ideals with the mechanisms necessary for cultural productions. Unlike cultural marketplaces such as Europe, where the government remains an active funder of cultural endeavors, the American marketplace has for the most part ceded the fate of cultural development to so-called free market ideals. Following these ideals, it became inevitable that corporations, which are ultimately the most powerful and significant economic engines of any thriving capitalist society, would be afforded protection equal to if not exceeding the individual, so that they could integrate themselves into the cultural marketplace and be able to make their necessary profits.

The laws governing intellectual property rights present a perfect example of how corporate interests were appeased as legislation took shape. Whereas most laws constructed to protect property and freedom of expression were initially meant to benefit individuals, many have now been extended to protect corporate entities. Take for example copyright laws. While early copyright laws in the United States afforded protection only to individual authors, recent extensions of copyright have given corporations nearly the same duration of copyright as individuals. The ninety-five year protection afforded by the Sonny Bono Copyright Term Extension Act[403] gives corporations the opportunity a long enough term of protection to see what new media will develop and determine the best way to utilize their properties to generate revenue from each new medium. The expansion of these rights has been integral to the increasing

[403] *Sonny Bono Copyright Term Extension Act*

concentration of ownership in the cultural field, as corporations have used the application of intellectual property rights as a tool to increase the profitability and scope of corporate investment in the cultural field and to deeply integrate themselves into the foundations of cultural production. As Ronald Bettig details, "the ownership of intellectual property thus permits the extension of oligopolistic control by the core firms while simultaneously perpetuating the existence of the capitalist class, for it is the members of this class who own and control the means of communication and the messages that flow through them."[404]

[404] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 42.

PART II: Intellectual Property and the Corporate Integration of Theatrical Production

As the media conglomerates began to focus more intently on software and the deployment of intellectual properties, they began to search for those properties that held the most economic potential and to form strategies for production and distribution that would best take advantage of those properties. Noted political economist Graham Murdock writes that as a result the multi-media conglomerates have "become the impresarios of culture, selecting and sifting ideas and projects offered from a variety of sources and distributing the favored few across a range of media and in variety of forms."[405] In order to maximize the return on their investment in these projects, Murdock argues that these conglomerates utilize six central strategies. The first strategy is exhaustive and thorough *consumer research*. By arming themselves with a better understanding of their audience, corporations believe that they more likely to accurately predict what products and projects will be successful and which are of high risk. The second strategy is vigorous *branding*. Murdock points out that just as the golden arches of McDonald's or a name such as Apple carry a strong presence in the marketplace of physical goods, so can brands such as NBC, Mickey Mouse, Batman, and Disney help to generate consumer familiarity in the cultural marketplace. This consumer familiarity then breeds a confidence in the quality and content of a cultural good, thereby further reducing` the risk of a cultural endeavor. The third strategy is extending the market reach of a product through *merchandising*. Repackaging a product from film, television and/or the stage to a physical commodity extends the reach of a project and raises its potential for profitability, especially if the conglomerate also owns a store from which to sell these

[405] Murdock, "Back to Work," 27.

products, as Disney, Time Warner, and Sony all do. The fourth strategy works along the same line, but rather than extending a project into merchandising, conglomerates look to *extend the project to other formats*, which is exemplified by Disney's presence on Broadway and their aptitude at converting animated films to live action musicals. The fifth strategy is to *expend nearly as much energy and capital in the marketing of a project as in its production*. This aspect of corporate production is most obvious in the film industry where a blockbuster film may have upwards of 50 percent of its budget spent on advertising. For example, in 1998 Disney spent $60 million promoting *Armageddon*, a film whose total budget was only $140 million.[406] The final strategy is to *vigorously defend intellectual properties against piracy and unlicensed copying* by taking full advantage of protection afforded by the law. This defense of property rights ensures that the corporation maintains complete control of the market for the product and that profits are maximized. This aspect of corporate cultural strategy has led to an entire subindustry, where countless lawyers and lobbyists are employed to try cases brought against rights violators, and to pressure legislators into adapting intellectual property laws to best suit corporate interests. Together these strategies have come to be known as "business synergy"[407] and are the basis for the business tactics that the media conglomerates employ in pursuing vertical and horizontal integration.

An important feature of Murdock's descriptions of the corporate approach to the production of culture is the central role that intellectual properties play in these strategies. All of Murdock's six strategies (market research, branding, merchandising, multiple

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[406] McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times*, 39.
[407] Wollman, "The Economic Development of the 'New' Times Square and Its Impact on the Broadway Musical," 449.

formats, marketing, and property defense) directly or indirectly hinge on the strength and recognizability of intellectual properties or the rights that define them. Whether those properties are used to sell a toy/book/clothing, to promote the company's name or another property, or to solidify the corporation's position in the market as a whole or within a certain demographic, much of the planning behind and ultimate success of any conglomerate's business plan in the variety of media markets relies on the ability to sell those properties.

While the media conglomerates at first focused on synergistic approaches to developing production and distribution outlets in film, television, music, and the print media it was inevitable that theatre would soon catch their attention. As McChesney has noted "the Broadway theater industry. . .which was once the locale of promoters independent of the balance of the entertainment industry, is becoming incorporated into the webs of the media giants and commercial sponsors. Stage productions fit naturally into the synergistic world of conglomerates."[408] Now, it is important to note that Broadway had always been commercial and that the entrance of the media conglomerates was not the beginning of profit-driven theatre. There has always been a corporate mentality on Broadway with interests such as the Syndicate, a group of men who came together around the turn of the twentieth century and who between 1900 and 1915 were able to take control of most of the theatrical production in the United States, looking to consolidate economic power and leverage their position in the theatrical field.[409] More recently the "Big Three," the Shubert Organization, Nederlander Producing Company of

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[408] McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times*, 45.
[409] Frick, "A Changing Theatre: New York and Beyond," 212-6.

America, and Jujamcyn Theatres, have positioned themselves as the most influential non-conglomerate companies on Broadway, and together these three organizations currently own thirty-one of the forty Broadway theatres–the organizations own seventeen, nine, and five, theatres respectively.[410] Organizations of this type have always been able to utilize their positions of power to act in a monopolistic fashion similar to the corporations, determining what shows would and would not make it onto Broadway stages and what producers would be allowed to put on shows in their theatres. Synergistic techniques had even been practiced. As was mentioned above screen-to-stage adaptations have always had their place on Broadway stages, and likewise Broadway producers have recognized the value of licensing theatrical properties to other media such as film. Along with film, literature, such as *Don Quixote* (book 1605, musical *Man of La Mancha* 1972) or *The Secret Garden* (novel 1909, musical 1991), poetry, T.S. Eliot's *Old Possum's Book of Practical Cats* (book 1939, musical *Cats* 1981) and *The Wild Party* (poem 1928, musical 2000), and even the odd rock opera, such as *Tommy* (album 1969, musical 1979) or *Jesus Christ Superstar* (album 1970, musical 1971), have served as source material for producers looking for storylines for plays and musicals. However, the economies of scale within which the media conglomerates are currently operating, and the extent to which they are willing to dedicate resources and more fully employ synergistic strategies to integrate theatrical production into the business practices, go far beyond any previous corporate practices on Broadway. Ultimately, as the corporatization

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[410] While the Shubert Organization has the most Broadway stages and another two in Washington, DC and Philadelphia, the Nederlander Producing Company owns more combined theatres when one takes into account the fifteen theatres it owns across the country and one in London. Eric Konigsberg, "Jimmy Nederlander's Endless Run," in *New York: NYmag.com*, May 24, 1999, http://nymag.com/nymetro/arts/features/851/.

of culture took hold in more media it was really only a matter of time before companies like Disney and Time Warner would have the kind of significant influence they have today on the development of commercial theatre.

The media conglomerate era on Broadway definitively began as soon as Disney recognized that entry into theatrical production would provide an opportunity to enhance their business on multiple fronts. First of all, Disney realized that entry into the theatrical field gave them a chance to expand horizontally into a medium where there was little to no competition from the other first-tier media firms, and where they had yet to test their library of their intellectual properties. *Horizontal integration* occurs when a media firm attempts to control as much of the output in a particular field as they can, with monopoly representing the ultimate form of horizontal integration. The increased market share that this type of field integration results in provides the cultural producer with increased bargaining power with suppliers and allows it greater control over the prices it can charge for its products.[411] The radio firm ClearChannel, which has accumulated over one thousand radio outlets across the country, is a classic example of a media conglomerate using horizontal integration to great effect in the American media marketplace. Whereas most horizontal integration occurs in different geographical outlets within the same medium, as was the case for ClearChannel, for Disney expansion into theatrical production was a way to use their experience with theme parks and touring shows like the Ice Capades to horizontally integrate into their business a medium that was wholly untravelled by the likes of Mickey, Simba, Ariel, Donald, and Goofy. Secondly, the unique timing of their interest in the early 1990s coincided with a period when the New

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[411] McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times*, 16.

York government was eager to revitalize Times Square. Because Times Square at that time had come to be known as much for its peep shows and XXX movies as it had for theatre and the lights of Broadway, the city was finding it difficult to attract entertainment companies to the many empty theatres in the area. Disney executives were able to look beyond the bleak picture of Times Square at that time and recall the times when The Great White Way was considered the center of American culture and entertainment. In particular, Michael Eisner, who had grown up in New York and whose love for the theatre was one of the driving forces behind Disney's initiatives on Broadway, believed that Disney could benefit from the coming revitalization of Times Square stating "I think that the Disney brand is going to be enhanced by being on 42nd Street. . . . It's a magic word and a magic place."[412] So, in 1994, Disney would make two bold moves that would begin an unforeseen and rapid transformation of commercial theatre in the United States.

The first move was to develop a stage version of its highly successful animated musical *Beauty and the Beast*. By early 1994, the animated film version of *Beauty and the Beast* had already grossed about $350 million worldwide in less than three years,[413] and Disney believed that the property had the kind of broad appeal that could lead to success on Broadway. Disney was so sure of success that they invested a then record $11.9 million in the production of the show, elevating the stakes of producing for

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[412] Frank Rose and Erin M. Davies, "Can Disney Tame 42nd Street?," in *CNNMoney.com: Fortune*, June 24, 1996, http://money.cnn.com/magazines/fortune/fortune_archive/2003/04/28/341765/index.htm.
[413] Alex Witchel, "Is Disney the Newest Broadway Baby?," in *New York Times*, April 17, 1994, http://query.nytimes.com/gst/fullpage.html?res=9802E7D6133EF934A25757C0A962958260.

Broadway and making it clear that they were in for the long haul. Along with this record investment in the production budget, Disney quickly made use of their mastery of business synergy to market the show vigorously, promoting the *Beauty and the Beast* brand wherever they could. Elizabeth Woolman provides a detailed description of how Disney uses synergy to maximize the earning potential of cultural ventures such as *Beauty and the Beast*.

> With synergy, a company makes money both by selling a particular product and by integrating it into a cyclical web of related products. Thus, a company like Disney can use one of its properties, for example the animated film *Beauty and the Beast*, to sell any number of others: *Beauty and the Beast* on video, *Beauty and the Beast*-related rides at Disneyland, *Beauty and the Beast* merchandise at Disney stores, and, now, the musical version of *Beauty and the Beast* on Broadway and on international tour. Synergy allows a company to sell itself along with any product it hawks. The Broadway version of *The Lion King*, for example, can be mentioned in any Disney film, advertised on any Disney radio station, or mentioned on any one of Disney's television programs. . . . In keeping with the application of synergy to all products, Disney musicals now help to advertise one another. As in the film version, the Broadway version of *The Lion King* features overt references to *Beauty and the Beast*, which is conveniently playing a few blocks north.[414]

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[414] Wollman, "The Economic Development of the 'New' Times Square and Its Impact on the Broadway Musical," 449.

To put it simply, Wollman said, "the film sells the musical; the musical sells the film; both sell related merchandise; producers profit from all sales."[415] For *Beauty and the Beast*, a property with a very young audience base, merchandising was particularly lucrative, as Disney was able to sell almost $10,000 worth of memorabilia at the first New York preview and soon set up a *Beauty and the Beast* boutique at Bloomingdales. Merchandise sales were successful enough that even early on in the planning of their investment on Broadway, Disney was planning on opening up a Disney Store in Times Square.[416] Despite low advance ticket sales, concerns over whether Disney would be able to sell tickets to the Palace Theater's difficult second balcony (which has terrible sightlines), critical skepticism over the fact that the play was simply a restaging of the film, and some resistance from certain sectors of the industry to Disney's presence on Broadway, Disney was certain that their show would be a success. Even if the show flopped and was unable to recoup its initial investment, Michael Eisner, then the chief executive officer and chairman of Disney, believed that *Beauty and the Beast* would still have long-term success as a theatrical property. "The way it will work, frankly, is the road, the companies of the show in Tokyo and Toronto. And high school and college productions that will be forever."[417] Eisner was keenly aware that success for Disney in the theatrical field would not be determined by a single production, but by the company's ability to extend and expose their enormous library of properties to a theatergoing public. In the end, the many concerns and skepticisms of the doubters proved unfounded, as the production's success was staggering and the impact that success has had on the field of

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[415] Ibid.: 450.
[416] Witchel, "Is Disney the Newest Broadway Baby?."
[417] Ibid.

commercial production has been enormous. When the Broadway production of *Beauty and the Beast* finally did close in July of 2007 after 5464 performances, it had grossed nearly $450 million[418] and had become the sixth longest running show in Broadway history.[419] Despite closing on Broadway, *Beauty and the Beast* continues to do brisk business for Disney Theatrical Productions. As of early 2007, *Beauty and the Beast* had grossed over $1.4 billion worldwide,[420] and that number will only keep rising as international versions of the show in Berlin and Mexico City and a tour across the Netherlands continue and Disney begins licensing the rights to the production to regional theatres and schools around the world.

While Disney had entered the realm of producing theatre with *Beauty and the Beast* in 1994, it was also expanding its empire to include theatrical ownership, allowing them to vertically integrate their involvement in the field of theatrical production. In early 1994, Frank Rich, the columnist for the *New York Times* wrote that

> development is exactly what is needed on 42d Street. . . . The sleeping 42d Street block intersecting with Broadway requires Disney-style commerce if Times Square is ever again to be the crossroads of the world. By relighting the New Amsterdam, Disney will attract more tenants to the

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[418] David Rooney, "*Beauty* sets closing date," in *Variety*, January 17, 2007, http://www.variety.com/article/VR1117957569.html?categoryid=15&cs=1.
[419] Ernio Hernandez, "Long Runs on Broadway," in *Playbill*, January 8, 2008 http://www.playbill.com/news/article/75222.html.
[420] Rooney, "*Beauty* sets closing date."

> other dark theaters on the street and more customers to the other struggling theaters throughout the Broadway district.[421]

Seeing that Times Square was ripe for a revival, Disney recognized that it could use its reputation for family entertainment and the New York government's eagerness to revitalize the neighborhood to leverage a deal with the city. Disney was able to negotiate an agreement where the company would commit $8 million to renovate and take occupancy of the 1,700 seat New Amsterdam theatre on 42nd Street, the former home of the *Ziegfeld Follies* which had fallen into disrepair and long been unused. In addition, Disney would receive $21 million in low-interest state and city loans to help finance the project in exchange for 2 percent of the theatre's gross ticket receipts.[422] The project was part of a $1.8 billion investment plan that was aimed at revitalizing Times Square and included a complex of hotels, stores, theatres, and cinemas. Not wanting to jump into the venture alone, Disney added a stipulation to their agreement that stated that they would only agree to move ahead with the New Amsterdam project if other entertainment companies guaranteed to participate as well. Despite the project showing promising initial momentum, with parties such as AMC theatres and MTV expressing interest in properties along 42nd Street, there were certain periods between when Disney signed its forty-nine year lease in December of 1994 and the project deadline of July 1995 when it looked like the entire plan would be scrapped and Disney would have to look for alternative ways of investing in Broadway theatre ownership. But, due to last minute negotiations and the late entry of Livent, the company that had recently put a revival of

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[421] Frank Rich, "Mickey Does 42nd Street," in *New York Times*, January 16, 1994, http://query.nytimes.com/gst/fullpage.html?res=9C02EED61E31F935A25752C0A962958260.

[422] Witchel, "Is Disney the Newest Broadway Baby?."

Show Boat on Broadway, into the mix, the deal finally went through as Disney officially took over control of the New Amsterdam with Madame Tussaud's as a neighbor and a thirty-two screen cineplex owned by AMC a little further down the block.[423]

Theatrical producers and owners almost immediately recognized that Disney's presence on Broadway would have significant repercussions, and were aware that Disney's capital clout and marketing machinery would pose a threat to their business. The main owners of Broadway theatres at the time, the Shubert and Nederlander Organizations and Jujamcyn Theatres, were particularly infuriated at the loans that Disney was given by the state and city. Having been repeatedly denied the same types of loans to refurbish their holdings in the Times Square area, these organizations could not believe that Disney, a company that was far from cash-strapped having just recorded revenues of over $12 billion,[424] was being given such an incentive to enter a theatrical marketplace that by their accounts was not suffering. One of the owners even likened the situation to "Wal-Mart opening in a small town, sending the local merchants into an escalating panic."[425] The owners even called upon theatrical unions to boycott Disney's presence, but were unsuccessful because the unions were in fact excited about the new work that Disney was bringing to their constituencies. In the end, the old guard owners had to begrudgingly settle for organizing a fact-finding committee that would generate proposals for loans that would help to offset the costs of maintaining the many theatres they controlled.[426]

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[423] Rose and Davies, "Can Disney Tame 42nd Street?."
[424] Ibid.
[425] Witchel, "Is Disney the Newest Broadway Baby?."
[426] Ibid.

Maurya Wickstrom describes the corporate and government vision of a new Times Square that developed through the work of Disney and New York City, as wrapping

> the images of pleasure, leisure and spectacle that were characteristic of New York in a contemporary commercial package that draws its imagery from a standardized global culture industry. The plan deftly merges entertainment with retail at this site valued for its potential earnings from retail sales as well as the advertising revenues it earns from the millions of tourists who visit it each year.[427]

The New Amsterdam was the showpiece of this plan, and Disney knew that the theatre would prove to be an invaluable tool in their integration into the theatrical marketplace. Disney had already mastered the synergistic properties of property development, deployment, and maximization in film, television, video games, and even theme parks, but the New Amsterdam was the key to expanding into the theatrical production, by guaranteeing that productions based on their ever-popular properties would have a very low barrier of entry into the marketplace. Steve Nelson notes that despite resistance from the community and the difficulty of orchestrating such a large development project,

> Disney has persevered because, finally, they aren't in the theatre business. Their business is creating venues for the sale and promotion of all things Disney: places that people will flock to no matter what is there, so long as it has the Disney imprimatur.

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[427] Maurya Wickstrom, "Commodities, Mimesis, and The Lion King: Retail Theatre for the 1990s," in *Theatre Journal* 51, no. 3 (1999): 286-7.

> In that sense, 42nd Street is cheap theme-park real estate: a place where, with subsidies and tax breaks, Disney can transform a theatrical district gone to seed into a satellite Main Street USA under the guise of urban renewal, garnering good P.R., and quality real estate, all at a tidy profit.[428]

This theme-park mentality was made clear by Disney's investment in other pieces of real estate around Times Square. The success of the New Amsterdam deal provided Disney with the impetus to invest further in the neighborhood, as the company moved to gain a foothold for some of its other properties. Soon, there was a Disney store adjacent to the New Amsterdam; the ESPN Zone, a combination dining and sports entertainment venue, opened a few blocks away; and just up Seventh Avenue a street-level studio was built for Disney-owned ABC Television.[429]

By the year 2008 it had been a little over ten years since Disney first set up shop on Broadway, and the success of the venture was undeniable. In *Beauty and the Beast* and *The Lion King* Disney has already produced two of the top ten longest running shows in Broadway history,[430] with *The Lion King* consistently selling over 90 percent of its tickets in any given week. In fact, the financial success of these two shows is such that the combined grosses of the Broadway productions and various other national and international tours and productions had surpassed $3.3 billion by 2005. Achieving such lofty financial strata is an impressive feat considering the film versions are two of the

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[428] Steve Nelson, "Broadway and the Beast: Disney Comes to Times Square," in *TDR* 39, no. 2 (Summer, 1995): 84.
[429] Wollman, "The Economic Development of the 'New' Times Square and Its Impact on the Broadway Musical," 447.
[430] Hernandez, "Long Runs on Broadway."

most successful animated films of all time yet combined to gross just over $1.6 billion.[431] Perhaps even more impressively, Disney has been able to capture the eye of the critics as much as they have the interest of popular audiences. While *Beauty and the Beast* was criticized for essentially being a staged version of the film, (studio chairman Jeffrey Katzenberg famously ordered the director of *Beauty and the Beast* Robert Jess Roth to "stage the movie"[432]), as Disney Theatrical Productions has gained more experience it has been more focused on creating productions that are designed for and better suited to the theatrical experience. Since Thomas Schumacher took over the reigns of Disney's theatrical endeavors, the shows have come to look less like theme-park style replications of movies, and now have a more independent artistic vision. Schumacher, who was responsible for the decision to bring in Julie Taymor, whose downtown credentials lent necessary credibility to Disney Theatrical Productions, to direct *The Lion King*, has made it clear that "the point is not to reproduce the movie onstage, but the same emotional connections."[433] This formula has worked well as Disney's shows have gone on to win multiple Tony Awards. *The Lion King*, for instance, went on to win six Tony Awards, including Best Musical, Best Director, Best Choreographer, and Best Scenic, Lighting and Costume Designer.[434] *The Lion King* also received significant critical praise, and

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[431] Jesse McKinley, "Fast Lane to Broadway Begins in Hollywood," in *New York Times*, September 11, 2005, http://www.nytimes.com/2005/09/11/theater/newsandfeatures/11mcki.html.
[432] Nelson, "Broadway and the Beast: Disney Comes to Times Square," 79.
[433] William Grimes, "Disney *King* For 42d Street: No Lion Suits," in *New York Times*, November 7, 1996, http://query.nytimes.com/gst/fullpage.html?res=9E04E0D81E38F934A35752C1A960958260&sec=&spon=&pagewanted=all.
[434] "*The Lion King* Tony Award Info," in *Broadway World.com*, http://www.broadwayworld.com/tonyawardsshowinfo.cfm?showname=The%20Lion%20King.

even Ben Brantley, lead theatre critic of the *New York Times*, in his review of the show says

> there has been much jokey speculation about the artistic marriage of the corporate giant and the bohemian iconoclast, which has been discussed as though Donald Trump and Karen Finley had decided to set up housekeeping. But that rich first number, in which those life-size animal figures assume a transcendent, pulsing existence, seems to suggest that these strange bedfellows might indeed live in blissful harmony.[435]

Disney has thus shown that they have not only been able to successfully establish a foothold for their intellectual properties within the theatrical marketplace, but that they are able to attract the type of talent necessary to adapt those properties to the specificities of the theatrical field and make them successful pieces on their own.

Recognizing the potential for continued success with high-quality shows, Disney continues to pour more resources into Disney Theatrical, exploring their library of properties for possible future projects and expanding into new markets. In subsequent years, Disney has brought *Aida* (2000), *Tarzan* (2006), *Mary Poppins* (2006), and *The Little Mermaid* (2008) to Broadway, with more shows in the works. But Disney has not remained the sole conglomerate on the Broadway scene. Once Disney proved that it was possible to revive intellectual properties that had already passed through media such as film, the Internet, books, DVDs, television, and even the Ice Capades, and place them as

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[435] Ben Brantley, "Cub Comes of Age: A Twice-Told Cosmic Tale," in *New York Times*, November 14, 1997, http://theater2.nytimes.com/mem/theater/treview.html?html_title=Lion%20King,%20The%20(Play)&tols_title=Lion%20King,%20The%20(Play)&pdate=19971114&byline=Ben%20Brantley&id=1125009110152.

major attractions to theatre audiences, other media conglomerates recognized that they too could expand horizontally into the theatrical marketplace. In 2005, Gordon Cox and David Rooney of entertainment magazine *Variety* reported that

> For a decade, the Mouse was the only studio with a division devoted to legit entertainment. Now DreamWorks, MGM, New Line, Universal and Warner Bros. are knocking at the stage door. Within the next five years, the Hollywood majors could account for half of Broadway's musical offerings. . . . the studios are stage-struck for the same reason they are pushing for greater control of ancillary markets around the globe: They recognize that theatrical box office is no longer their primary engine of growth.
>
> For the majors, Broadway represents opportunities similar to DVDs, remakes, sequels and vidgames: Legit can extend a studio's brand and exploit its library.
>
> Darcie Denkert, proxy of MGM on Stage, which licenses studio properties to theater, says the studio views legit as an opportunity for "a halo effect" -- freshening the library and stirring interest in expansion.[436]

In this way, media conglomerates have begun to colonize the theatrical field, seeing it as a viable place to enliven waning properties and to expand the recognition of these properties to a wider range of audiences. Properties that had once been put to rest because they were no longer able to generate significant revenue in their original media– *Legally Blonde* for instance– are now extended into pieces of theatre just as they had

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[436] Gordon Cox and David Rooney, "B'way Opens Screen Door," in *Variety*, September 1, 2005, http://www.variety.com/article/VR1117928909.html.

been revitalized previously in other media such as television and home video after their initial appearance in movie houses.

Despite the strategies and characteristics of intellectual property that media conglomerates can exploit to lower the barriers to the theatrical marketplace, their decision to invest in theatrical productions remains a challenging and somewhat risky endeavor. Producing theatre requires a completely different set of costs and much higher investment in human labor considering the relative rate of return. For an example of scale, a million dollar box office week may be a stupendous feat on Broadway, but represents an embarrassing box office draw for a movie. When Disney reconfigures old intellectual properties for distribution in a technologically reproducible medium–for instance in 2007 Disney released a "remastered" DVD version of *The Little Mermaid*–there is often minimal human labor or creative energy required. As Bettig points out, one feature of "informational and cultural products is that most of their production costs occur in producing the original version, whereas reproduction costs are relatively small."[437] But this characteristic of information products tends to be most true for those technological media where reproduction costs are low and aesthetics are more easily transferable, i.e. film to television or radio to CDs. However, when a studio develops a theatrical production, it must hire new designers and directors to develop the work for the particular aesthetic, temporal, and spatial nature of theater.[438] Even more importantly the corporation must face the costs of paying people to perform the show seven or eight times a week, all the while dealing with the combined cost and frustration of salaries,

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[437] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 93.
[438] While this is particularly an issue for the adaptation of animated films such as *The Lion King* and *Beauty and the Beast*, it is also a significant step in the adaptation of live action films such as *Mary Poppins*.

pension and health contributions, and labor agreements. For shows that run for years these costs can be astronomical, and in the end not all productions based on films or other well-known intellectual properties are successful. For instance, a 2006 production of *Lestat: The Musical*–based on the first two books of Anne Rice's *Vampire Chronicles* books and the Tom Cruise movie *Interview with a Vampire*–closed after just 33 previews and 39 regular performances[439] despite a score by the famous tandem of Elton John and Bernie Taupin.[440] The musical, which was the first venture onto Broadway by Warner Bros. Theatrical Productions, was losing over $40,000 a day and cost Warner Bros. its entire $12 million investment.[441]

So why do these media conglomerates continue to take such economic risks in a fickle medium where the failures have been as catastrophic as the successes have been monumental? The straightforward answer to this question is that if a media firm does manage to produce a successful theatrical production, there is the possibility for considerable financial rewards at a relatively low cost to the conglomerate. Those shows that do become hits, such as *Hairspray*, *Mamma Mia!*, *Spamalot*, *The Lion King,* and *Wicked*, can go on very long and lucrative runs. Furthermore, when looked at as part of an economy of scale, theatrical production is considerably less expensive than a film or

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[439] Campbell Robertson, "Proving Mortal, 'Lestat' is to close," in *The New York Times.com*, 24 May 2006, http://www.nytimes.com/2006/05/24/theater/24clos.html?ex=1306123200&en=9c69822da539b24d&ei=5088&partner=rssnyt&emc=rss.

[440] Interestingly the book for *Lestat:The Musical* was adapted from Anne Rice's *Interview with a Vampire* and *The Vampire Lestat* by Linda Woolverton who wrote Disney's stage versions of *Beauty and the Beast* and *Aida.* Richard Dodds, "Vampire Variations," in *The Bay Area Reporter Online*, 5 January 2006, http://www.ebar.com/arts/art_article.php?sec=theatre&article=74.

[441] "Elton John's *Lestat* to Close After Bad Reviews," in *FOXNews.com*, 24 May 2006, http://www.foxnews.com/story/0,2933,196817,00.html.

even television venture. Consider that while a $15 million dollar budget (which is what both *Beauty and the Beast* and *The Lion King* are estimated to have cost) may seem outlandish on Broadway, that number is considerably less than even some independent films. Therefore investing in Broadway is a significantly less risky venture for large conglomerates, since a $12 million loss (such as that sustained by Time Warner on *Lestat*) goes down as a relatively small inconvenience when put in the light of their multi-billion dollar economic considerations. Another factor to consider is that although the weekly box office returns of even the highest grossing Broadway production may pale in comparison to even a mediocre theatrical release–a musical at its best can generate a little over $1 million is box office receipts in a week–a show that becomes very successful may be able to generate significant revenue over a longer period. Because Broadway shows can stay open for far longer than a film can at the local cineplex, an extended run may go on for thousands of performance and gross hundreds of millions of dollars. Although per performance costs remain high due to human labor costs and the rental of space, a smash hit such as *The Lion King* that can overcome these economic hurdles ultimately makes a corporation's investment well worth it. For example, whereas the domestic release of the animated film *The Lion King*–at the time the most successful animated movie of all time– grossed over $325 million dollars,[442] as of early 2008, the Broadway version of *The Lion King* had grossed nearly $550 million.[443] Furthermore, the end of *The Lion King's* reign on Broadway is far from near, and Cox and Rooney have

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[442] LLC Box Office Mojo, "*The Lion King*," in *Box Office Mojo*, http://www.boxofficemojo.com/movies/?id=lionking.htm.

[443] League of American Theatre Producers, "Research and Information: NYC Grosses," in *Live Broadway: The League of American Theaters and Producers, The Official Website of Broadway Theater*, http://www.livebroadway.com/index.php?url_identifier=nyc-grosses-11.

even noted that the show "is headed into the $1 billion-plus stratosphere occupied by phenoms like *Cats* and *The Phantom of the Opera* -- serious money, even by Hollywood standards."[444] This number does not even take into account money that can be made from national and international tours and from non-touring productions mounted around the world.

Because of the possibility of lucrative smash hits like *The Lion King* and *Wicked*, the media conglomerates have decided that the challenges of producing theatre and apparent obstacles to profit-making are worth the risk and they continue to ramp up their involvement in the field of theatrical production. Each year, new conglomerates are getting involved, creating theatrical divisions tied to their studio holdings in the film industry[445] and looking to develop and promote works of theatre based on their libraries of properties. Here is a list of those shows that had opened or were in the works as of September 2005:

- Disney Theatrical: *Beauty and the Beast*, *The Lion King*, *Tarzan*, *Mary Poppins*, *The Little Mermaid*
- DreamWorks Animation: *Shrek*, *Catch Me If You Can*
- MGM on Stage: *Chitty Chitty Bang Bang*, *Dirty Rotten Scoundrels*, *Legally Blonde*, *The Thomas Crown Affair*, *Heartbreakers*, *Get Shorty*
- New Line: *Hairspray*, *The Wedding Singer*, *Secondhand Lions*, *Saving Grace*, *Don Juan de Marco*
- Universal: *Wicked*, *Billy Elliot: The Musical*

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[444] Cox and Rooney, "B'way Opens Screen Door."
[445] The six major film studios in Hollywood are Disney, New Line, Universal, MGM, DreamWorks, and Warner Bros.

- Warner Bros. Theater Ventures: *Lestat*
- Other movie-property musical adaptations in planning stages: *Dr. Dolittle*, *Nine to Five*, *The First Wives Club*, *But I'm a Cheerleader*[446]

Add to this, the 2005 opening of *The Color Purple* on Broadway, and a possible dance musical version of *Casablanca* and we can see, corporate media firms remain focused on developing productions based on intellectual properties from other media. As a result, corporations have become a dominant presence on Broadway stages. Table 1 (see next page) displays the audience totals and grosses of those Broadway shows that were open on the week beginning December 31, 2007 and ending January 6, 2008 and had a major corporate affiliation. At this time, there were thirty-five productions running on Broadway and these corporate –affiliated productions represent a third of those productions. Furthermore, since twelve of those thirty-five productions were straight plays, which are less appealing to corporations due to their lower economic potential,[447] and there was no corporate affiliation with those productions, that means that the conglomerates were involved in more than fifty percent (twelve out of twenty-three) of the sector of the field of theatrical production they find most desirable, musicals. To accentuate even further the impact this group of musicals had on Broadway grosses, consider that during the week between December 31, 2007 and January 6, 2008, these

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[446] Gordon Cox, "Ogres & Vampires," in *Variety*, September 11, 2005, http://www.variety.com/article/VR1117928908.html.

[447] During the seasons beginning in 2002-3 and ending in 2006-7, musicals combined to earn grosses at least five times as high as those of straight plays and in 2006-7 musicals made nine times as much as straight plays. League of American Theatre and Producers Inc., "Broadway Season Statistics at a Glance," in *Live Broadway: The League of American Theaters and Producers, The Official Website of Broadway Theater.* http://www.livebroadway.com/editor_files/detailedstats.pdf.

Table 1. Total Audience and Total Gross Earnings of Corporate Affiliated Broadway Production Open the Week Beginning December 31, 2007 and Ending January 6, 2008

Production	Corporate Affiliate	Total Aud.*	Total Gross*
*How the Grinch Stole Christmas***	EMI Music Publishing	322,903	$22 million
Hairspray	New Line Cinema and ClearChannel Communications	2,934,463	$220 million
Legally Blonde	MGM On Stage	408,079	$30 million
Mamma Mia!	Universal Music Group	3,758,448	$305 million
Mary Poppins	Disney Theatrical	839,251	$69 million
Spamalot	ClearChannel Communications	1,611,163	$134 million
The Color Purple	Warner Brothers Theater	1,306,973	$100 million
The Lion King	Disney Theatrical	7,346,173	$547 million
The Little Mermaid	Disney Theatrical	70,640	$6 million
Wicked	Universal Pictures	3,139,736	$283 million
Xanadu	Universal Pictures	113,792	$8 million
Young Frankenstein	20th Century Fox Productions	***	***

*All audience and gross totals as of 1/6/2008.[448]
** *Dr. Seuss's How the Grinch Stole Christmas* ran for two two-month limited engagements at the end of 2006 and 2007.
*** The producers of *Young Frankenstein* have decided to not report weekly grosses.[449]

twelve shows accounted for nearly half of the total grosses for all of Broadway, bringing in nearly $10 million of the $20 million earned that week.

While money made on Broadway is attractive to many corporations and the exposure that Broadway offers in unparalleled, the corporatization of theatrical

[448] All performance and gross totals from *LiveBroadway.com.* League of American Theatre Producers, "Research and Information: NYC Grosses." All corporate affiliations from the Internet Broadway Database. Broadway League, in *Internet Broadway Database*, http://www.ibdb.com/default.asp.
[449] Robertson, "*Young Frankenstein* Will Not Disclose Its Weekly Grosses."

production has also involved a change in the way theatrical producers view the national and international markets as important to their strategy of property proliferation. As David Schrader, managing director and chief financial officer of Disney Theatrical Productions has said: "It's only partly about making money in New York. . . . The benefit really comes over the long haul, if a show can do a tour that makes money nationally and internationally."[450] For the longest time, expanding into international markets in the field of theatrical production almost exclusively meant the production of international tours. But the corporatization of theatre has brought with it a shift in the way that producers approach markets outside of New York. Andrew Lloyd Webber's musicals, *The Phantom of the Opera* and *Cats* are notable for the way that their producers were able to go beyond traditional touring and take greater advantage of markets around the world. In fact, *Cats* more than any other show presaged the corporate shift on Broadway and provided conglomerates like Disney the impetus to enter the theatrical fray. Noted theatre critic Frank Rich cites *Cats* as the most influential production during his tenure at the *New York Times*. In 1998, Rich wrote that

> *Cats* is "most influential" in terms of its mega-influence on the national theatrical culture. *Cats* outlasted its critics, outlasted umpteen casts, outlasted English-speaking audiences, even outlasted the career of its principal creator, Andrew Lloyd Webber. . . . But now, 16 years after its New York opening, the new world that the American theater is entering -- the world typified but not exclusively represented by Disney -- is the one that *Cats* has made. . . . *Cats* proved as no production had before that there

[450] Cox and Rooney, "B'way Opens Screen Door."

> was an infinite tourist audience for a theatrical attraction (as opposed to, say, a circus, Las Vegas revue or Radio City Music Hall pageant) in which spectacle trumped . . . content and no English was required for comprehension, whether by young children or foreign visitors. . . .
> Most of all, *Cats* is the show that led indirectly but inexorably to Disney's arrival on Broadway a decade later by proving, first, that Broadway musicals could be marketed in a big-budget, Hollywood-style "branding" blitz (previously unknown in an industry that was suspicious of television commercials until the 1970's) and, second, that there was a huge profit to be made in exploiting animated characters on a Broadway stage.[451]

It is easy to see from Rich's comments how influential *Cats* was in developing theatre as a tourist attraction, proving a show could flourish despite skeptical criticism over the quality of the production, popularizing the spectacle that transcends the limitations of language, and revealing that branding and Hollywood-style marketing could work with theatre. *Cats* was therefore very much the ancestor of the conglomerate-produced musicals that dominate the current offerings on Broadway, as the strategies that were employed by *Cats* helped to provide a template which corporations would duplicate in hopes of achieving the same kind of financial success on Broadway as well as on a national and international scale.

Rich points out that *Cats* was important for how it changed the manner in which theatre could be produced and delivered around the world, by breaking out of the national

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[451] Frank Rich, "A Detour in the Theater That No One Predicted," in *New York Times*, October 18, 1998, http://query.nytimes.com/gst/fullpage.html?res=9D04E3DC143AF93BA25753C1A96E958260.

and international touring mode and into a mode more aligned with corporate branding and production. In Rich's mind *Cats* "anticipated the kind of national theatrical franchise . . . in which the 'interactive' theatrical experience becomes virtually indistinguishable from theme parks and theme restaurants."[452] Rich's insight here is important because it reminds us that the success of *Cats* was due partly to the fact that it proved that theatre could be established as a franchise, much like McDonald's or Starbucks, in multiple locations around the country and the world. The key to franchising in the food industry is the establishment of locations that provide identical or similar offerings. The resulting reliability and familiarity provides a sense of comfort to the consumer, and also allows for the repetition and perpetuation of the brand into whatever market in which a franchise is established. Furthermore, franchising is economically efficient as this repetition cuts down on marginal costs in areas such as marketing and the production of goods. Playwright Donald Margulies puts this franchise familiarity into the context of contemporary theatre.

> The consumer will go to McDonald's expressly for its Big Mac, go home satisfied, and make repeated return visits for the same reliable product. The fast-food culture now extends to the entertainment industry. Here the consumer has a pretty good idea what he's going to see before he sees it, and seems to prefer it that way. How else do we explain the proliferation of movie adaptations onstage and the domination of the franchise in the world of motion pictures?[453]

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[452] Ibid.
[453] Donald Margulies, "Dramatist Donald Margulies Sees the Stage in a Fresh Light," in *Los Angeles Times: CalendarLive.com*, September 23, 2007,

By setting up successful permanent installations around the world *Cats* and *The Phantom of the Opera* proved that in addition to touring, this kind of franchising of theatrical was not only viable, but was also extremely lucrative if applied to the right properties.

The formula worked well for both *Cats* and *Phantom*. By the time it had closed in London in 2002 (the Broadway production closed in 2000), *Cats* had been performed in over 30 countries to more than 50 million people and generated box office grosses in excess of over $2 billion.[454] Meanwhile, *The Phantom of the Opera*, which continues to play in New York, London, Las Vegas, Osaka, and Budapest, and to simultaneously tour the United States and Australia,[455] has been even more successful, having been seen by over 80 million people and grossed over $3.2 billion in over two–dozen countries.[456] The benefit these long-running productions of *Cats* and *Phantom* had over productions that relied solely on touring was that, while tours by nature spend a set amount of time in any one location, permanent installations could set up shop and stay open until it was no longer practical and/or profitable for the productions to keep running. This model is much more effective in maximizing the potential of global markets, because these

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http://www.calendarlive.com/printedition/calendar/cl-ca-margulies23sep23,0,3775019.story?coll=cl-calendar.

[454] Jesse McKinley, "*Cats*, Broadway's Longevity Champ, to Close," in *New York Times*, February 20, 2000, http://query.nytimes.com/gst/fullpage.html?res=9C0CE1DB1730F933A15751C0A9669C8B63&scp=1&sq=cats+musical+worldwide+gross. Matt Wolf, "*Cats* Scratches Out Last Perf in West End," in *Variety*, January 15, 2002, http://www.variety.com/article/VR1117858600.html?categoryid=15&cs=1.

[455] "*The Phantom of the Opera*: Buy Tickets," in *Andrew Lloyd Webber's Really Useful Group*, http://www.reallyuseful.com/rug/shows/phantom/buy.htm.

[456] BWW News Desk, "*The Phantom of The Opera* Becomes Bway's Longest-Running Musical, Jan. 9," in *Broadway World.com*, November 15, 2005, http://www.broadwayworld.com/viewcolumn.cfm?colid=5901. "*The Phantom of the Opera*: An Introduction to the Show," in *Andrew Lloyd Webber's Really Useful Group*, http://www.reallyuseful.com/rug/shows/phantom/fantastic.htm.

permanent installations also allowed the producers to overcome some of the temporal and spatial limitations, such as limitations in audience size and travel necessary by theatregoers to get to the theatre, that theatrical production places on the generation of revenue. Bringing the production to multiple venues for longer periods meant more seats were made available worldwide, and spreading these productions around the world meant that it would be easier and cheaper for people to travel to venues. As a result, a greater number of people were able to attend productions of *Cats* and *Phantom*, and as global recognition of the properties increased so did the potential for increased revenue.

The success of *Phantom* and *Cats* proved that getting a show up on Broadway did not have to be the end-all and be-all of corporate investment in the field of theatrical production. The conglomerates have realized that they can, as they often had for films, use their resources in numerous media to exploit the success of a Broadway show and develop global demand for a production. Once demand is established, these corporations then horizontally integrate other theatrical markets into the expansion of the property by establishing permanent productions in markets that can sustain the long-term presence of one of these productions. It may not be horizontal integration in the traditional sense of the ownership of multiple outlets of media distribution, but it is a way for the corporation to insert its brand and its properties into the awareness of a number of different cultural marketplaces. The income from these global markets may not be as focused or well-publicized as that of a Broadway show, but when combined these many ongoing productions can generate significant steady and often substantial flow of revenue for the corporation. Furthermore, the establishment of a brand, such as Disney, in these marketplaces provides a "halo-effect" for later productions to ride into town on the

coattails of previously successful productions. This advantage helps shows that have not been huge Broadway success, such as *Tarzan*, take advantage of the success that other shows, such as *Beauty and the Beast* and *The Lion King*, have already had in international markets.

The establishment of multiple permanent installations has quickly become the standard practice for the most successful Broadway shows. In early 2008, Disney was, in addition to its Broadway productions, running ongoing permanent productions at the following locations:

- *Aida* – Nagoya, Japan;
- *Beauty and the Beast* – Berlin, Germany; Mexico City, Mexico
- *Tarzan* – Scheveningen, Netherlands; Hamburg, Germany
- *Mary Poppins* – London, United Kingdom
- *The Lion King* – London, United Kingdom; Fukuoka, Japan; Hamburg, Germany; Johannesburg, South Africa; Paris, France[457]

Furthermore, Disney was also able to maintain tours of *Aida* (Germany), *The Lion King* (two simultaneous North American tours), and *Beauty and the Beast* (Netherlands).[458] Previous productions that had closed were a 1999 German-language adaptation of Disney's *The Hunchback of Notre Dame*, and a production of *The Lion King* in Sydney, Australia that later traveled to Shanghai and ran for more than one hundred performances.[459] With the combination of these international productions and Broadway

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[457] Disney Theatrical Productions, "Around the World," in *Disney on Broadway*, http://disney.go.com/theatre/index.html#aroundtheworld.
[458] Ibid.
[459] Paul Hodgins, "Broadway is Disney's World," in *OCRegister.com*, November 12, 2006, http://www.ocregister.com/ocregister/entertainment/abox/article_1351053.php.

success, Disney Theatrical Productions is well on its way to grossing over $4 billion worldwide, after only a little over 10 years of experience producing musicals..[460] Furthermore, Disney has been able to greatly extend the life of properties that had not been prominent in these markets for years and in some instances decades. Recognizing the potential of these multiple installations to not only generate more revenue, but also provide life for productions after Broadway, as has been the case for *Aida*, *Tarzan*, and *Beauty and the Beast*, this extension into other markets is now a consideration for Disney Theatrical executives at the earliest stages of production. David Schrader, for instance, notes out that "Aida' wasn't a bust. . . . What makes things work for us is the long term, the big picture. Whereas another (producer) would be counting on a show running at peak for as long as possible on Broadway, we're also involving our international partners from the early days on."[461] Disney therefore incorporates smaller theatrical markets, such as Holland, into their strategy from the beginning, and the development process of a production has come to include not only plans for opening on Broadway, but also devising a plan for how that production can easily be transferred into other markets around the world.

Disney productions are not the only ones to have successfully been transplanted to multiple permanent installations. While independent producers may continue to lack the resources necessary to invest in multiple productions, the other media megafirms with a stake in theatrical production are able to take on these extra projects, and have adopted the same strategies as Disney. In fact, the current leader of the worldwide box office is

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[460] Jesse McKinley, "*Lion King* Picks New Home to Make Room for *Mary Poppins*," in *New York Times*, November 11, 2005, http://www.nytimes.com/2005/11/11/theater/newsandfeatures/11lion.html.
[461] Hodgins, "Broadway is Disney's World."

not a Disney show, but is *Wicked*, which is affiliated with the General Electric owned Universal Pictures. During the week ending December 30, 2007, *Wicked* had an unprecedented week in the history of worldwide box office gross earning $11.2 million dollars from the combination of receipts from its productions in New York, Chicago, London, Los Angeles, Stuttgart, and Tokyo and a national tour of the United States. Along with worldwide record, *Wicked*, also broke its own weekly gross records for three prominent theatre markets by earning $1,418,363 in Chicago, $1,949,968 in Los Angeles, and $1,839,950 in New York. It also broke the single week record for a North American touring show by earning $2,291,608 in St. Louis, Missouri. [462]

While *Wicked* has the record for largest worldwide gross, *Mamma Mia!*, which is affiliated with the General Electric owned Universal Music Group, has utilized its success on Broadway and the international appeal of the music of Abba to become the leader in number of venues. Along with the long-running production that has been on Broadway since 2001, the producers of *Mamma Mia!* have established installations in the following locations: Barcelona (translated into Spanish); Berlin (in German); Essen, Germany (in German); Las Vegas; London; Moscow (in Russian); Oslo (in Norwegian); and Seoul (in Korean). Furthermore there is currently a North American tour and a European tour that is going to Athens, Belfast, Bristol (United Kingdom), Glasgow, Horsens (Denmark), and Vilnius (Lithuania.)[463] With these many different installations

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[462] Broadway.com Staff, "Wicked Smashes Records, Earning $11.2 Million in One Week," in *Broadway.com*, January 2, 2008, http://www.broadway.com/gen/Buzz_Story.aspx?ci=558627.
[463] Ltd. Littlestar, "Home Page," in *Mamma Mia! The Global Smash Hit*, http://www.mamma-mia.com/default.asp.

and ongoing tours, *Mamma Mia!* was able to reach over twenty-seven million people and gross over $1.6 billion in its first five years of production. [464]

While most corporate producers rely exclusively on New York for the launching of their properties into the theatrical marketplace, MGM On Stage is an example of one company that has adopted strategy of similar to traditional horizontal integration. Rather than spread the same property into multiple outlets, MGM On Stage has begun to enter into a variety of different markets with an assortment of properties. A subsidiary of Sony-owned Metro-Goldwyn-Mayer Studios Inc., MGM On Stage was started in 2002 to stage properties from the film library owned by MGM pictures, the largest of its kind in the world.[465] Along with Broadway productions of *Dirty Rotten Scoundrels*, *Chitty Chitty, Bang Bang* (which also ran in London), and *Legally Blonde*, MGM on Stage has produced a version of *Marty* in Boston, developed a version of former Madonna vehicle *Desperately Seeking Susan* in London, debuted *Midnight Cowboy* at the Edinburgh Festival on its way to the West End, and staged a very successful production of *Priscilla, Queen of the Desert* in Sydney, Australia.[466] The production company, with its almost bottomless resource of film properties from which to develop musicals, has optioned over thirty films. Projects in development include: *Saved!, Get Shorty*, *The Thomas Crown Affair*, *Mermaids*, *Moonstruck*, *Heart Breakers*, *Rain Man*, two productions based on

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[464] BWW News Desk, "BWW TV: *Mamma Mia!* Celebrates 5 Years on Broadway!," in *Broadway World.com*, October 18, 2006, http://www.broadwayworld.com/viewcolumn.cfm?colid=12968.
[465] "MGM to Premiere Five New Productions in the Screen-to-Stage Market for 2006-07 Season," in *MGM Media Center*, August 15, 2006, http://mgm.mediaroom.com/index.php?s=43&item=37.
[466] Edwards, "At the Broadway Box Office It's 'Hooray for Hollywood'."

Pink Panther movies, and even *Weekend at Bernie's*.[467] The fact that MGM On Stage is developing properties that either were not originally musicals or were not huge box office hits shows that as the screen-to-stage phenomenon has become more popular and economically viable, producers believe that they are now better able to distinguish between those properties that will and will not make a successful transition to the stage. This confidence in no way diminishes the risk of embarking on a theatrical production, but does mean that a more interesting range of screen-to-stage properties may soon come to populate Broadway stages.

The practices of Blue Man Group provide yet another twist on multiple permanent installations and global branding. While Blue Man Group started life as a three-man guerilla street theatre troupe, the company's remarkable success has essentially transformed the group into a global commercial enterprise. The company established their first permanent venue in 1991, when they started performing at the Astor Place Theatre in New York's East Village. Almost instantaneously their show *Tubes* became a hit, with great reviews and even better box office receipts. As their reputation grew, numerous companies looking to enter into marketing arrangements with the eminently recognizable Blue Men quickly were offering the group corporate sponsorships, putting pressure on them to expand their product and increase their exposure. The original Blue Men resisted, however, wanting to maintain control and grow the product slowly, resisted many of these overtures. When they were finally comfortable with their economic standing and found a situation that they could control, they expanded their organization to

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[467] MGM On Stage, "Home Page," in *MGM On Stage*, http://mgm.mediaroom.com/index.php?s=43&item=37. McKinley, "Fast Lane to Broadway Begins in Hollywood."

include more Blue Men and opened another production of their show in Boston in 1995.[468] Since then, the group has grown more and more rapidly, and currently Blue Man Group performs at permanent installations in Chicago, Las Vegas, Berlin, Orlando, Tokyo, and Oberhausen, Germany.[469] Whereas the Blue Men were once limited to the 298 seats at the Astor Place, they are now able to perform to thousands of people around the world on any given night. The Blue Man Theatre, a space that the Venetian casino built especially for the company, on its own seats 1,760 people, almost six times as many as the Blue Men's first home.[470] This expansion into new markets has exploded the revenue earning capabilities of the company and greatly expanded the global recognition of the Blue Man property. In 2005, the estimated annual box-office take of the then operational New York, Boston, Chicago, Las Vegas (an earlier smaller production housed at the Luxor) and Berlin productions was in excess of $125 million.[471] The expansion to Tokyo, Orlando (in the Universal Studios theme park), and Germany has even further increased the company's worldwide revenue since then, and it is estimated that the new space in Las Vegas will provide $70 million in box office gross annually.[472] While Blue Man Group claims that they have maintained control over the identity of the Blue Man and the character of their shows, it is hard to ignore that they have adopted the kinds of strategies that most cultural consumers associate with media conglomerates. Consider

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[468] Rob Walker, "Brand Blue," in *CNNMoney.com: Fortune*, April 28, 2003, http://money.cnn.com/magazines/fortune/fortune_archive/2003/04/28/341765/index.htm.
[469] Blue Man Group, "Home Page," in *Blue Man Group*, http://blueman.com/.
[470] Lola Ogunnaike, "For the Blue Man Army, Recruitment Is on the Rise," in *New York Times*, October 10, 2005, http://www.nytimes.com/2005/10/10/theater/10blue.html?pagewanted=1&_r=1&sq.
[471] Richard Ouzounian, "Blue Men vs. Blue Collars," in *Blue Man Group Boycott*, June 5, 2005, http://www.bluemanboycott.com/tstar_060505.html.
[472] Ogunnaike, "For the Blue Man Army, Recruitment Is on the Rise."

this statement made by original Blue Man Matt Goldman prior to the opening of their Orlando production: "We're here at Universal for a reason. This is a cooler, edgier kind of approach to bringing these kind of characters and this type of entertainment together and its good company, you know, it really is I mean, Shrek and Blue Man and Spider-Man, it's actually a little daunting, a little overwhelming."[473] If Blue Man Group now considers a major theme park "edgier" and "cooler" than other cultural spaces, and is excited and daunted about being placed alongside such mainstream franchises as Shrek and Spider Man, one has to wonder if the company is still able to truly represent the kind of avant garde spirit out of which Blue Man Group originally grew. Add to that Blue Man Group's less than stellar history with labor unions discussed in chapter two, and one must wonder if a company like this should be considered a viable model for experimental cultural producers looking to tap into mainstream cultural spaces to expand their audience base.

Even after the lights have gone out for a Broadway production and the last tour has come home, media conglomerates still have the ability to generate additional income from a successful show. The final stage of the production life of a theatrical property involves licensing the production to regional and community theatres as well as schools. As was mentioned in the chapter on copyright, control and licensing of the new properties that are generated from producing a musical, such as the book, score, and lyrics, can provide income for a company, long after it has been reliant on the property

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[473] "Episode 36-BLUE MAN GROUP!," in *IOACentral Radio* May 31, 2007, http://pxmedia.libsyn.com/ioacentralradio/5f21dfdf4ac76919a66615f6cf064ea2/blue_man_group.mp3.

for significant revenue. To that end, media conglomerates are beginning to take a more active role in controlling and managing their properties. In 2004, Disney Theatrical Productions began working with Music Theatre International, a theatrical agency, to license performance rights to Disney musicals to schools and professional and amateur theatres around the world.[474] David Schrader, the managing director of Disney Theatrical, points out that "because we have a toe in so many different kinds of markets segments, we're able to help move a musical along in several different directions."[475] In this way the company is continuing to profit from shows that have already closed on Broadway. The effort to provide theatres with licensed version of popular Disney shows has been quite successful, and more than one thousand high schools had signed up within the first year that a simplified version of *Beauty and the Beast* was published. Meanwhile even less successful shows are already garnering interest from regional theatres, as a new production of Broadway box office disappointment *Tarzan* will be opening at Atlanta's Theater of the Stars early in 2009, followed with performances at the American Musical Theater of San Jose, California; North Carolina Theater in Raleigh, North Carolina.; and Dallas Summer Musicals in Dallas, Texas.[476] Considering that Disney Theatrical already has similar projections for other less successful shows, such as *Aida*, it is not too hard to imagine that hits like *The Lion King*, *Wicked*, and *Mamma Mia!* will continue to generate income for the conglomerates for years to come.

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[474] Disney Theatrical Productions, "About Us," in *Disney on Broadway*, http://disney.go.com/theatre/index.html#aboutus.
[475] Hodgins, "Broadway is Disney's World."
[476] Gordon Cox, "*Tarzan Swings into Regional Theaters*," in *Variety*, January 4, 2008, http://www.variety.com/article/VR1117978472.html?categoryid=15&cs=1.

PART III: The Impact of Corporatization on the Business of Producing Theatre

Up until now the focus of this study of the corporate integration of theatre has looked at how the corporations have adapted to add theatrical production to their collection of media outlets. In particular it has focused on how the development of theatre as an outlet for the libraries of valuable intellectual properties these conglomerates hold, and which they are constantly reintroducing into the cultural marketplace to generate revenue. But just as these conglomerates have had to adapt their corporate structures to respond to the eccentricities of the theatrical marketplace, the political economic conditions of the field of theatrical production have been irrevocably altered as the corporations have brought with them an unprecedented level of capital investment and media resources. The ramped-up corporate involvement of the last fifteen years has touched every aspect of theatrical production ranging from the day-to-day operations of an IATSE worker to the artistic content that makes its way to the stage and the ways that corporations, by taking ownership of a larger percentage of all cultural production, have come to increasingly control cultural discourse. The following section of this study will look at some of the changes in the practice of making theatre in the United States that are a result of the corporatization of the field, with a particular eye on how intellectual properties and intellectual property rights have motivated the fundamental shifts the field is experiencing.

Practical Implications of Corporatization on Theatrical Production

Disney's entrance onto the Broadway stage with *Beauty and the Beast* and the renovation of the New Amsterdam instantaneously changed the stakes of producing theatre on the Great White Way. Although *Cats* and *The Phantom of the Opera* had

already established the mega-musical as a reality years earlier and theatrical producers were aware that shows could go on for extremely long runs and earn hundreds of millions of dollars, the producers of these two shows did not bring with them the immense capital backing and media resources available to a media conglomerate such as Disney. In particular, the economic stakes were raised considerably as Disney quickly asserted its might, with *Beauty and the Beast* and then *The Lion King* each setting the record for most expensive musical. Because much of the financial strength of these media conglomerates stems from their ability to draw on numerous pools of revenue, it has become virtually impossible for independent producers, who are relying solely on the success or failure of a single venture, to remain competitive. The considerable economic advantage conglomerates hold over competition from independents, provides these companies with further motivation to take on the steep learning curve of theatrical production.

Elizabeth Wollman notes that the economic advantage of the media conglomerates allows them to expand their involvement in the field in ways that are out of the reach of the average producer. "For amounts of money that are typically too steep for independent producers, corporations can not only afford to renovate theaters, but can also fill those theaters with their own properties."[477] The importance of the properties in this equation cannot be understated, because the successful extension of a property's usefulness still remains at the heart of corporate investment in theatrical production. In order to guarantee the success of said properties, the conglomerates are also able to utilize their resources in other media to maximize advertising and marketing. Wollman continues stating that

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[477] Wollman, "The Economic Development of the 'New' Times Square and Its Impact on the Broadway Musical," 448-9.

> Entertainment conglomerates that followed Disney into theatrical production have not only begun to purchase or develop their own theatrical properties; they can also advertise and market these properties nationally with relative ease, since most own film production studios from which to borrow material, recording studios in which to record original cast albums that can be heavily hyped, and a variety of national periodicals, television studios, and radio stations from which to advertise their products.[478]

Whereas independent producers, who were slow to even take advantage of television ads, once relied on word of mouth, the national broadcast of the Tony Award, and expensive print and radio ads, corporate producers have been able to deploy a coordinated marketing blitz all at reduced costs, since they own many of the distribution outlets. Furthermore, corporate producers have been able to connect their properties to one another, as Disney did with references to *Beauty and the Beast* worked into *The Lion King*, and further take advantage of the web of properties, media outlets, and distribution channels.

What the independent producers must contend with is essentially that the place of theatre in the cultural marketplace has gone through a significant shift. Non-corporate theatrical producers, whether they were commercial or non-profit, for the longest time had been able to avoid addressing the competition of other media in the cultural marketplace. Except for the geographic proximity of mass media outlets and the recognition that theatres had to find ways to keep people from choosing television or

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[478] Ibid.

films over the theatre, corporate mass media did not have a direct impact on the business practices of most theatrical producers before the 1990s. Prior to that, Broadway was dominated by non-conglomerate producers and unions who maintained the status quo and the non-profit sector used its tax status to distinguish itself from mass media fare. But the minute that Disney recognized the potential for its properties on Broadway, theatrical producers were almost immediately forced to deal with changes in the practice of producing culture that had already been shaping other media for decades. As Frank Rich points out, "after generations of being a backwater to the big-money, mass-audience show business mainstream of movies, television and the recording industry, the American theater is no longer secluded in its own idiosyncratic world where it can be entirely the master (however erratic and self-destructive) of its own fate."[479] Now cross-promotion and cross-mediation are the norms and marketing is not limited to traditional print, radio, and television ads, but instead includes product tie-ins, merchandising, and web campaigns.

For the independent producers, perhaps the most frustrating aspect of these changes in the practice of producing and marketing Broadway shows is that the exchange of knowledge has often been a one-way street. While a conglomerate is able to enter the theatrical marketplace and learn from the past experiences of independent producers, the latter do not have the economic wherewithal to take advantage of things they have learned from watching the corporations do business. Tom Viertel, a Broadway veteran who has co-produced *The Producers* and *Hairspray*, among others, points out that

[479] Rich, "A Detour in the Theater That No One Predicted."

> Disney is a very marketing-heavy company. But their capacities to market are so specific to them that while they have borrowed from us, it has been virtually impossible for us to borrow from them. I mean, we don't own a theme park in which to give away tickets to our shows, or offer opportunities for people to see the shows at discounted prices. The synergy involved when you own a television network, several cable networks, a half-dozen theme parks and all that stuff is unimaginable from our perspective. So we watch them and we admire them, but basically it has been a one-way street, where they have taken a number of techniques that we and other independent producers have pioneered, and adapted them. . . . But we can't really do much of what they do.[480]

The impact of this one-way exchange of information is that the independent producers are often committed to a very different model of content selection. Furthermore, because these corporate investors have concerns that go beyond theatrical production, their decisions are less likely to be made from the same perspective as independent producers who are committed to a particular medium.

Graham Murdock notes that this trend has been common across all media, and that media conglomerates, with their control over the channels of distribution of culture, have "become the impresarios of public culture, selecting and sifting ideas and projects offered from a variety of sources and distributing the favored few across a range of media and in variety of forms. Reducing the risks of this enterprise requires strategies that

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[480] Wollman, "The Economic Development of the 'New' Times Square and Its Impact on the Broadway Musical," 456.

maximize the value of each product."[481] The strategies that maximize the value of products for the conglomerates most often involve the resurrection of intellectual properties that have passed out of the cultural spotlight but have potential as staged productions for popular audiences. As these retreads continue to have successful runs and corporate producers look to stake a larger claim in the field, independent producers of new works are forced into a downward spiral where they are only able to stage shows in smaller theaters where fewer tickets can be sold. With less capacity for ticket sales there is less of a chance that these will be able to recoup their costs and keep their production running for an extended period.[482] As such, independent producers of theatre are now suffering from the same concentration of production that has already made life so difficult for independents in other media around the world.

As the major media conglomerates have colonized theatrical production, their management of intellectual properties has impacted the field in ways that go beyond using theatre as a channel for the revitalization of dormant properties. One aspect of the corporate approach to the field has been their tendency to want complete control over the manifestations of their properties. Disney, whose executives are self-avowed "control freaks,"[483] and other conglomerates are in general vertically integrated, hierarchized, and extremely detail-oriented. As such, the infrastructure exists within these companies for the precise and strict management of intellectual properties. The problem with such rigid control over a property is that it is antithetical to most traditional approaches to theatrical

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[481] Murdock, "Back to Work," 27.
[482] Wollman, "The Economic Development of the 'New' Times Square and Its Impact on the Broadway Musical," 458.
[483] Rose and Davies, "Can Disney Tame 42nd Street?."

production. Aside from the odd playwright, such as Beckett, who is litigiously strict about the interpretation of text, most theatrical producers understand the role of directors, designers, and actors as interpreters and commentators. So, as the conglomerates have entered the field of theatrical production, bringing with them the business practices of large highly-structured organizations, their approaches to remuneration, contracting, and especially the attribution of intellectual property rights have quickly became a point of contention with the established theatrical organizations and unions, such as the League of American Theatres and Producers, the Dramatists Guild and the Actors' Equity Association. As a result, the behavior of conglomerates has often ruffled the feathers of many Broadway veterans who have seen the model of what they know as Broadway theatre quickly slip away.

During the early stages of production of *Beauty and the Beast*, many producers griped that Disney was allowing commercial concerns to control the artistic aspects of the show. They argued that the corporation, in order to keep costs down, had chosen to use salaried Disney staff with little to no experience staging Broadway shows, rather than hiring established Broadway talent. The same industry veterans also argued that Disney was exercising excessively tight control over the artistic direction of the piece and was not allowing the artists do their job.[484] These industry complaints pointed to studio chairman Jeffrey Katzenberg's infamous order to "stage the movie,"[485] as an example of Disney's lack of understanding of what it meant to produce on Broadway. While many of these complaints were simply cries of frustration coming from producers and theatre owners who were infuriated by the subsidy that Disney had received to renovate the New

[484] Witchel, "Is Disney the Newest Broadway Baby?."
[485] Nelson, "Broadway and the Beast: Disney Comes to Times Square," 79.

Amsterdam, there was also a justified fear that Disney might enter the field of theatrical production and try to assert its business practices in a way that would greatly change established relationships among theatre owners, producers, and the creative artists working in the field, such as directors, designers, and actors. Ironically, whereas the theatre owners and independent producers felt threatened, the actors' union actually greeted Disney with open arms. Ron Silver, then president of Equity, even declared "I'm thrilled Michael Eisner is coming in. We have very few opportunities to increase employment for our membership."[486]

For playwrights however, the appearance of the conglomerates on Broadway threatened to greatly destabilize established traditions of copyright and ownership. As Disney has entered the theatrical market, they have brought with them a Hollywood-style approach to production. This business style differs from theatrical production in that whereas playwrights, composers, choreographers, and designers work under contracts that allow them to maintain ownership of their work, in the Hollywood mode the creative staff is usually brought in under work-for-hire contracts and retain no subsidiary rights. U.S. copyright law defines work-for-hire as

> (1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, . . . if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.[487]

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[486] Witchel, "Is Disney the Newest Broadway Baby?."
[487] U.S. Copyright Office, *Circular 92: Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code*, 7.

One important feature of these work-for-hire contracts is that any copyrightable material that is produced remains in the hands of the employer:

> In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.[488]

Robert Hofler writes in *Variety* about why work-for-hire has been dominant in the film business and how it differs from traditional theatre production practices.

> Copyright ownership has long separated writing for the theater from writing for TV and movies. In theater, the writers' words are sacred. Now the screen-to-stage rush has raised new questions. In the film biz, writers are considered "schmucks with Underwoods," as Jack Warner once dismissively described them. Among other things, work-for-hire contracts allow studios to replace scribes on a project, or alter their work without their permission.[489]

Under these conditions, the corporation is able to maintain a very high level of control and as Marc Platt, the producer of *Wicked* and a former Universal executive, puts it: "when a studio develops a property as work for hire, everyone is expendable."[490] Work-for-hire therefore allows Disney, or any other conglomerate, to maintain control of their

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[488] Ibid., 114.
[489] Robert Hofler, "Toon tuners take a write turn," in *Variety*, June 26, 2005, http://www.variety.com/article/VR1117925013.html.
[490] Cox and Rooney, "B'way Opens Screen Door."

property, and in the case of producing a Broadway play or musical, also allows them to avoid paying out the royalties that producers traditionally have to pay playwrights.

Conglomerate oversight of theatrical production therefore has the potential to change the working conditions of theatrical writers, composers, and designers in a number of ways. First of all, there is the potential that corporate control of copyright will result in less freedom for creative artists. When a playwright works for a conglomerate, he or she is often developing a work that already has a production history and established audience. Therefore the corporation will tend to be heavily invested in continuity of story, character, and even visual design and is often unafraid to set limits as to how far the production can stray from previous incarnations of the property. Secondly, the writers in this model have little if any control of the property over the length of copyright and are limited in earnings to the terms of contracts signed with the corporation at the beginning of the creative process. Lastly, once they have completed the work that they are contracted for, they have no input as to how that property will evolve and how their contributions will be further adapted, which is in stark contrast to the conditions of ownership that a playwright would have under more traditional production circumstances.

While increasing conglomeration of the theatrical field will undoubtedly have a lasting impact on contracts and working conditions, producers, playwrights, and other theatre artists have not just laid down and allowed the Hollywood-production method to dominate the field. Playwrights in particular have been able to assert themselves and have been able to make the corporations see the value of adopting some of the traditional practices of producing theatre. Early on in their Broadway experience Disney was intent

on using the Hollywood model of production. For *Beauty and the Beast* and *The Lion King*, the company brought in three book writers under work-for-hire contracts, Linda Woolverton, Roger Allers and Irene Mecchi, none of whom was a member of the Dramatists Guild.[491] But as the corporate producers have become more interested in maintaining a long-term presence in the theatrical marketplace and bringing in established theatre artists to work on their shows, they have realized that they must make some concessions to their standard practices of producing culture. In particular, they would have to begin building relationships with the playwrighting community within the parameters of traditional Broadway production. The Dramatists Guild was influential in stimulating these changes. The Guild, which as a rule frowns upon work-for-hire contract, firmly believes that control of the intellectual property and subsidiary rights belong in the hands of the writer and not the producer. Recently David Lindsay-Abaire, Doug Wright and David Henry Hwang, established playwrights and members of the Dramatists Guild, negotiated with two major studios–DreamWorks for Lindsey-Abaire and Disney for Wright and Hwang–to retain their copyright on the books for the respective stage musicals *Shrek*, *The Little Mermaid* and *Tarzan*.[492] The ability of these playwrights to secure the rights to their work has important political economic implications for the theatrical field as a whole because the possibility of future royalties is a major economic impetus for playwrights to continue working. With many producers observing these negotiations and considering using work-for-hire contracts in the future, it was important for the stability of the theatrical economy and the retention of creative workers to not completely alter the foundations of traditional producing methods. John

[491] Hofler, "Toon tuners take a write turn."
[492] Ibid.

Weidman of the Dramatists Guild, recognizes the importance of the negotiations to the theatre community, as well as the fact that if they had wanted to the studios with their significant economic and cultural capital could have forced Hollywood-style production on Broadway. Weidman says that

> Everyone at DreamWorks animation, as well as the Disney representatives, deserves credit for approaching these theater deals as theater deals. . . . It wasn't surprising that movie studios would want to bring the Hollywood work-for-hire model with them when they started producing in the theater. . . . It helps when you have prominent playwrights who are eager to do the work, but who are finally unwilling to do it as work-for-hire.[493]

While the impact of the corporate business model has created direct conflicts, such as with the playwrights, there have been secondary repercussions as well. The labor disputes over the past five years, which were discussed in Chapter Two, are one good example of the ripple effect of the corporatization of theatrical production. While the corporations were not the direct target of the strikes by the musicians and stagehands, it was the momentum of escalating productions budgets and the economic challenge that independent Broadway producers and theatre owners face from the conglomerates that compelled the League to ask the unions for significant cutbacks in the number of required workers and musicians per show and for new payment structures. The theatre owners and producers recognized that if they were to stay competitive they needed a revision of the traditional working arrangements with various unions. For this reason the producers

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[493] Ibid.

and owners were willing to endure strikes and pressure the unions into changes the workers otherwise might have resisted in total. With only one in every five shows making back its initial investment and the horizontally and vertically integrated corporations better able to offset losses than independent producers, the independents recognize that they must also instill changes in the business practices of the field if they are to remain economically viable.

While the most prominent impact the conglomerates have had on business practices can be seen on Broadway, their impact can also be felt distinctly on the national and global level. Historically, successful Broadway shows have been developed into touring shows that travel across the United States and the rest of the world. This tradition continues today as tours continue to be a successful and lucrative business. Nevertheless, when the megamusical was born, with *Cats* and *The Phantom of the Opera*, and multiple permanent installations became more common across the country and around the world, a number of things changed within the field of theatrical production. There are the economic benefits I have mentioned above, as well as the branding advantages a corporation gains from making the production accessible to as many people as possible around the world. But there has also been a change in the way that an intellectual property manifests itself around the globe and the level at which theatre has been able to remain an interpretive art form.

As our culture has become more and more mediatized and we have become accustomed to exact replication in our electronic media, our live media too have been remediated so that more and more it is expected that one live performance should be identical to another. Philip Auslander argues that

> The ubiquity of reproductions of performances of all kinds in our culture has led to the depreciation of live presence, which can only be compensated for by making perceptual experience of the live as much as possible like that of the mediatized, even in cases where live event provides its own brand of intimacy.
>
> I would go so far as to argue that this desire has resulted not just in live performances that are based on or which resemble reproduced ones but also in forms of live performance that are themselves mass-produced.[494]

Considering this, the trend of live events resembling reproduced ones certainly fits the bill for corporate theatre, especially considering Disney's attempt when producing *Beauty and the Beast* to "stage the film." Whereas during the early stages of the technological media, the styles and forms of theatre were what informed film, radio, and then television, such as in Busby Berkley's musical films and early television such as *Leave It To Beaver* or *The Andy Griffith Show*, as these media developed a history, artists were able to better take advantage of their specificity and they became less reliant on older media. This shift can be seen in particular in the late 1960s and 1970s in film, when directors such as Scorsese, Coppola, Lucas, and Spielberg, who had all grown up watching films, began to develop techniques that were often only possible in that medium. As a result of the maturation of these media, remediation has begun to occur in the opposite direction, with television and film now both influencing theatrical

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[494] Philip Auslander, "An Orchid in the Land of Technology: Walter Benjamin and Live Performance," in *Cultural Work: Understanding the Cultural Industries*, ed. Andrew Beck (New York: Routledge, 2003), 163.

production. This remediation of theatre can be seen from the commercial level, with dazzling pyrotechnics and automated scenery aiming to equal the spectacle of the cinema, down to experimental stages, where the Wooster Group uses screens and video to deconstruct liveness and the act of performing. As this remediation of live performance has progressed and conditions of mass-produced live culture that Auslander discusses have become more prevalent, it is important to note how the global reach and capital resources of the media conglomerates have enabled the acceptance of reproduced live performance and played an important role in establishing it as a cultural norm.

In the case of theatrical production, the explosion of multiple permanent installations around the world, signifies not only a change in the economic practices of these corporations, but also a shift in the ways in which intellectual properties travel to different regions and across different cultures. Whereas in the past it was recognized that a film was made from a template and would be the same everywhere you viewed it, theatrical properties normally traveled across the country and around the world, from one group of interpreters (directors, actors, designers, etc.) to the next. Each group would add to the historical makeup of the play and contextualize and physicalize the language of the playscript into a live performance based on their particular cultural context. This pattern of transmission has always been one of the strengths of the theatre, as the performance of the play becomes a vessel by which a community expresses itself and shares its cultural specificity.

However the model of multiple permanent installation changes this pattern of intellectual property dissemination. In the past the producer of a successful production might also have been involved in the production of a touring show. But those

productions would only visit a community for a limited period of time, although they did have the possibility of acting as a motivator for local theatre artists to acquire the rights to the show and interpret it from their own cultural standpoint. But with multiple permanent installations, the producer of the initial venture is the producer of all the global productions, simultaneously controlling all work related to the original production. Furthermore, due to contemporary rigor in the management of intellectual properties, franchises, and brands, corporate producers and consumers judge these productions by their detailed replication of the original. In effect these productions are based on a template in the same way a film would be duplicated off of a master, and therefore do not carry the interpretive and contextual qualities that we attribute to live performance and in particular theatre. As a result theatrical performance becomes mass-produced.

The desire in these types of multiple permanent installations is therefore not to employ actors, directors, and designers who will apply their interpretive skills to the work, but rather to apply performers who will adhere to a predetermined standardized form. Using the example of the performance of the character of Ronald McDonald, Auslander argues that the exact replication is what the mass-produced performance aspires to and that if they are different

> Then the performances would have been dismal failures precisely because they . . . are instances where live performances aspires to the condition of mass art. These instances also suggest how live performance may participate in the economy of repetition, not just by being recorded and replicated, but through the mass production of the live event itself.[495]

[495] Ibid., 165.

So, even when David Schrader champions that Disney was planning a production of *The Lion King* in South Africa because "it just sounds so authentic with South African performers,"[496] the performance is still written, directed, designed, and acted to tell the same story from the same point of view, using the same visuals and language as the original Broadway show, because for Disney it is less about telling the story of *The Lion King* and more about successfully controlling and exploiting the economic possibilities of the intellectual property in as many realms as possible.

Another example of an ingenious stroke of mass-produced live performance is the evolution of Blue Man Group into an international brand. What began as street performance by three people, original Blue Men Chris Wink, Matt Goldman, and Phil Stanton, critiquing the art movements of the 1980s has expanded to multiple locations around the world and made its way into television advertisements for Intel and Wimbledon. But it took even the original three members of Blue Man Group some time to realize the value of their non-descript blue personae. Even when Penn Jilette, one half of the famous magician duo Penn and Teller who saw *Tubes* early in its history, exclaimed to the Blue Men "Oh, my God! You guys can do what Teller and I can never do! You can clone yourselves!"[497] the original Blue Men failed to realize immediately that not only could they mass-produce their performance, but they could also mass-produce themselves. Only when one of the original three injured himself and the understudy went on for the first time after over twelve hundred performances, did Wink, Goldman, and Stanton realize that it could really be anyone under that bald cap and blue makeup as long as they performed the detailed routine as it was meant to be performed.

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[496] Hodgins, "Broadway is Disney's World."
[497] Walker, "Brand Blue."

Since that first understudy there have been approximately forty different Blue Men in performances from New York to Las Vegas to Germany and to cities across the country where Blue Man Group's two rock concerts have traveled. But outside of the original three Blue Men, Stanton, Wink, and Goldman, it is rare for any of the other Blue Men to get press for his or her performance. Goldman, in an interview done just prior to the opening of the Orlando production, has even said that "the guys who play the Blue Men have to be a very special type of personality, because the fact that they have the Blue makeup on and they're anonymous these are guys who are acting because they want to be actors, not because they want to be stars."[498] Because the whole idea of Blue Man Group productions is to perpetuate the same character over and over through numerous different actors, the Blue Man has become much like Ronald McDonald in Auslander's example, judged by his adherence to audience expectation and not for individual interpretation or innovation. These numerous performances ultimately erase the labor of the legions of Blue Men who have followed in the founders' footsteps, as the mass reproduction of the alter egos of these original three results in the funneling of all accolades and potential for economic prosperity back to Wink, Stanton, and Goldman. In this way, the Blue Man character is a focused example of how the field of theatrical production has changed due to the political economic impact of corporatization. Furthermore, the Blue Man is in many ways the symbol of how the impetus for revenue maximization and vertical and horizontal integration is leading to homogenization and mass-production in an art form that had long been the province of interpretation, individuation, and individual expression.

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[498] "Episode 36-BLUE MAN GROUP!."

Ownership. . .Ideology

My consideration of intellectual property and the corporatization of the field of theatrical production thus far has focused on how and why the conglomerates chose to enter the theatrical field and the changes that resulted. But there remains a question to be considered when looking at how intellectual property has driven the corporatization of the theatrical field, and that is the question of ideology. In *Culture Inc.* (1989), which almost twenty years after being published remains one of the most important critiques of the corporatization of American culture, Herbert Schiller simply states that "the entire arena of national life is now the locale of corporate perspectives, expressed in an enormous variety of outlets and channels, recreational and otherwise."[499] Schiller thus asserts that when considering the role of corporatization in any medium, we must remember that amidst all the questions of aesthetics and economics we should constantly remind ourselves how important ownership of the means for production and distribution is to the ideology disseminated via a medium. Nicholas Garnham, in his own interpretation of the contemporary state of culture, reaffirms Schiller's concern, stating that "cultural distribution, not cultural production, that is the key locus of power and profit. It is access to distribution which is the key to cultural plurality. The cultural process is as much, if not more, about creating audiences or publics as it is about creating cultural artifacts or performances."[500] Lastly, Ronald Bettig, noting the increasing gap

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[499] Schiller, *Culture, Inc.: The Corporate Takeover of Public Expression*, 46.
[500] Nicholas Garnham, "Public Policy and the Cultural Industries," in *Capitalism and Communication: Global Culture and the Economics of Information* (London: Sage Publications, 1990), 161-2.

between the wealthy and the poor, explains that when looked at through the lens of political economy

> Ownership and control of the means of communication also significantly augment the ideological power of this class [the wealthy]. . . . Ultimately, the effects of concentrated ownership of the means of communication and of the messages themselves are the same: high barriers to entry in the "marketplace of ideas" and a narrow and limited range of informational and cultural works.[501]

Looking at these three viewpoints on the corporatization of culture it becomes apparent that as corporations look to exploit their intellectual properties, they are also using their media outlets to control the evolution of cultural production, and to steer symbolic production in a manner that matches their corporate mission. The ability to control the dissemination of ideology through cultural production and distribution allows these corporations to exploit and enhance ideological predispositions within our society. Schiller points out that

> The heavy public consumption of cultural products and services and the contexts in which most of them are provided represent a daily, if not hourly, diet of systemic values, spooned out to whichever public happens to be engaged. "The typical film from which investors anticipate a profit," writes film analyst Thomas Guback, "may be art or non-art, but it is always a commodity." The same can be said for Broadway musical comedies, best-selling novels, and top-of-the-chart records. They are

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[501] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 1-2.

> commodities and ideological products, embodying the rules and values of the market system that produced them. Multi-million dollar investments in film, theatre, or publishing can be relied upon to contain systemic thinking.[502]

In particular, the packaging and transmission of the corporate message is meant to reaffirm the notion that corporations should be allowed to participate in the field of cultural production just as individuals are and should be afforded the same freedoms and protections. Therefore when considering the ideological impact of the conglomeration of new media and new markets, vertical and horizontal integration of media and media outlets are important strategies because they allow for not only the production of messages but also the communication of those messages to local, national, or global audiences. [503]

The ideological impact of these corporate strategies on the theatrical field is therefore not a surprising feature, especially when considered in relation to the trends guiding the development of the other major mass media, such as television, film, and radio production. The major contrast between the ideological conditions of theatre and the technological media is their different origins and histories. Whereas the technological media were been born out of and came to maturity during the era of the cultural industries, when corporatization and consolidation have for the most part been the norm, theatre, as an older medium with pre-historic roots in ritual, has a lineage that often leads it to be considered as free from the effects of contemporary cultural and political economic conditions. While society has come to know film through the studio system of

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[502] Schiller, *Culture, Inc.: The Corporate Takeover of Public Expression*, 33.
[503] Ibid., 30.

the early twentieth century or the rise of the Internet as dominated by corporations such as Microsoft, Apple, Yahoo!, and Google, theatregoers and theatre-lovers tend to consider theatrical production more nostalgically and historically through prominent artistic groups and individuals or touchstone works. The study of the theatrical field centers on its millennia-long history and the study of its form, with Shakespeare, the Greeks, or *A Chorus Line* and boardrooms or bottom lines are not the first things that come to mind when considering what drives the evolution of the medium. Unfortunately, this tendency to glorify traditional figures, forms, and productions and remain focused on previous eras of bountiful and diverse theatre often obscures the reality of the contemporary conditions of theatrical production. Furthermore, a view of theatrical production that is so rooted in nostalgia and regret is not proactive enough to motivate the kind of cultural investment and resistance necessary to prevent a medium such as theatre from being totally overcome by the imperatives of corporate interests. As Michael Curtin and Thomas Streeter write, all media, including theatre "are not a pre-given 'thing' out there, but are themselves a politically constituted set of institutions that develop in response to a complex array of forces."[504] So, it therefore becomes essential that as corporate interests further envelop theatrical production, theatrical scholars and producers remain keenly aware of how the medium is developing in relation to other factors in the cultural marketplace and which individuals and companies are the controlling interests within the field.

Viewing the ideology of theatrical production from a complex political economic perspective is particularly important because on the surface it could be argued that the

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[504]Curtin and Streeter, "Media," 226.

integration of theatrical production into the media conglomerates simply represents a shift in ownership. Since many forms of theatre, such as Broadway, have always been commercial, the conglomerate intervention could be seen as merely a shift in the scale of the owners of these commercial ventures, and it could be said that the fear of a shift in content is unwarranted. But in fact the shift to corporate theatre has far more pervasive implications and has a decided impact on the ability of commercial theatre to act as a space for the presentation of new works and for original contributions to American culture. Consider these statistics: Of the thirty-three productions that opened on Broadway during the 1995-1996 season only six were original works.[505] Three years later during the 1998-1999 season, only ten new plays were produced, which was less than half of the twenty-two that premiered a decade earlier in 1978-1999. This drop off is even more significant when compared to the 1979-1980 season when an all-time high thirty new plays were produced.[506] Another low point came during December of 1999, when, for the first time in its history, Broadway went for almost a month with no productions of new works running on its stages, and in 2002-2003 the total number of new plays produced during the Broadway season had declined to five.[507] Elizabeth Wollman points out that the financial successes of revivals and screen-to-stage

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[505] Peter Marks, "Broadway's Producers: A Struggling, Changing, Breed," in *New York Times*, April 7, 1996, http://query.nytimes.com/gst/fullpage.html?res=9C05E5D91339F934A35757C0A960958260&sec=&spon=&pagewanted=1.

[506] Robin Pogrebin, "Nary a Drama on Broadway; Straight Plays Are Thriving, but Elsewhere in Manhattan," in *New York Times*, December 28, 1999, http://query.nytimes.com/gst/fullpage.html?res=9E0DE5D91E39F93BA15751C1A96F958260.

[507] Bruce Weber, "Theater's Promise? Look Off Broadway," in *New York Times*, July 2, 2003, http://query.nytimes.com/gst/fullpage.html?res=9C02E0DB123AF931A35754C0A9659C8B63&sec=&spon=&pagewanted=1.

productions make it difficult for producers to assume the risks of putting on new plays and musicals and have encouraged this trend away from original work. Wollman states that, "as it is difficult to lure audiences away from spectacle, it is hard to argue with the market for nostalgia. Statistics on Broadway seasons from 1984 to 2000 indicate that it is often the seasons that offer the fewest new productions that make the most money."[508] Peter Marks of the *New York Times* notes that because of the increased staging of films and reliance on nostalgia and familiarity as a box office draw, the art of producing commercial theatre "is now a Broadway business centered on staging revivals: call it playremaking."[509]

Considering the corporatization of theatre as a part of this trend away from original work on Broadway and within the national and global cultural marketplaces puts it within a more nuanced context, where corporate-controlled systems have come to dominate symbolic production and dissemination. To put the place of theatre within this context, consider Herbert Schiller's argument that

> Through all the political and social changes of the last fifty years, the private corporate sector in the American economy has widened its economic, political, and cultural role in domestic and international activities. Moreover, this consolidation of corporate power has taken place alongside a parallel decline in the influence of once important forces

[508] Wollman, "The Economic Development of the 'New' Times Square and Its Impact on the Broadway Musical," 457.
[509] Marks, "Broadway's Producers: A Struggling, Changing, Breed."

> in American life–independent farmers, organized labor, and a strong urban consciousness.[510]

One could argue that in accordance with Schiller's thinking, independent producers of theatre could be placed alongside independent farmers and organized labor. Just as farmers, unions, and the urban identity have been weakened due to corporate cultural homogenization, independent theatrical producers have suffered for producing cultural goods that are local and community-specific during an era when pan-cultural, and mass-produced culture has come to be the norm. Before the corporatization of culture, theatre had always been a localized experience that was defined by in part by the geographical and cultural circumstances of its audiences. As a result, the theatrical field as a whole has had a longer and more ideologically diverse history than the technological media. The technological media on the other hand have always operated as part of cultural industries, having been developed by large companies with the capital resources to research new technology, and therefore have always been dominated by the particular ideological preferences of those companies. So, despite the fact that theatre was incorporated into the conglomeration strategies of the media megafirms at a later date than the technological media, theatrical production has more fully felt the impact of that corporatization on its diversity.

The direct impact of corporate investment on ideological diversity in theatrical production can currently be felt as the successful corporate Broadway shows have come to occupy an increasingly large percentage of Broadway stages. Frank Rich argues that

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[510] Schiller, *Culture, Inc.: The Corporate Takeover of Public Expression*, 3.

the new version of commercial theatre and its control of Broadway poses a very real ideological threat to the diversity of American theatrical production.

> The only antidote to this new commercial theater, which has more in common with the values of special-effects American movies and network television than did even old Broadway at its most commercial, remains the nonprofit theater of Off Broadway and resident theaters nationwide. As has been true since the 70's, the most exciting new plays originate in such companies -- but now they are ghettoized there. Nonprofit theater hits like *How I Learned to Drive*, *Wit* and *The Dying Gaul* -- which once might have moved to Broadway (and from there, possibly, to the road), as *Glengarry Glen Ross, Driving Miss Daisy* and *Angels in America* once did -- now remain in small houses for their entire runs. An occasional *Side Man* notwithstanding, they rarely transfer to Broadway and their only hope for national dissemination is if they are mounted in new productions by local companies around the country.[511]

As companies like Disney, MGM, and Time Warner have forced these more risky and ideologically-challenging productions off of Broadway stages and replaced them in the public eye with musical movie rehashes and family-friendly fare, they have also made it more difficult for these shows to attain the national exposure necessary to prompt licensing by theatres across the country. By not getting the national recognition and momentum that a commercial Broadway run can provide it is less likely that a smaller regional company that does not produce original works will consider these more

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[511] Rich, "A Detour in the Theater That No One Predicted."

ideologically diverse works for their own seasons. Furthermore, by not attaining the national exposure that Broadway provides, these new works are much less likely to be adapted into lucrative film or television versions. The ability of Disney to successfully license even its less successful shows, such as *Aida* and *Tarzan*, to hundreds of theatres, is proof that a Broadway run can prove to be the impetus for the lucrative extension of an intellectual properties life. Graham Murdock argues that ultimately, the business synergy strategies that bring more commercial shows to stages across the country will be harmful to the range and quality of productions because they "are more likely to increase plurality rather than diversity. There may be more cultural products in circulation but they are likely to be variants or spin-offs of a limited set of master templates."[512]

As independent producers are pushed out of the market, and original works are prevented from reaching the grandest stage, privatization will ultimately limit and control the range of cultural fare that cultural consumers are offered. As Raymond Williams notes, with the onset of corporatization

> The consequent transformation of the situation of the cultural producer, in some of the major modern cultural forms, is clearly of great importance. It is a familiar case of one of the basic contradictions of modern capitalism, in which increasingly socialized forms of production are defined and limited by privately appropriated forms of ownership and control.[513]

Considering that as a cultural medium theatre is a social practice, the contradiction to which Williams refers logically impacts the field of theatrical production. As

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[512] Murdock, "Back to Work," 28.
[513] Williams, *The Sociology of Culture*, 117-8.

corporations make their presence felt on Broadway and across the nation through tours and multiple permanent installations, the practice of producing theatre has expanded to include more cultural workers and require higher levels of financial investment. This increased socialization of producing theatre has also resulted in limitations by the corporate producers who are now in the position of hiring workers and whose money is invested in the process of production. Whereas the social practice of theatre has always been one of its strengths and the collaborative work ethic has been one of its most valuable assets as a cultural form, under contemporary conditions theatre's characteristics as a social practice allow private owners more leverage and the ability to control the means of production as well as the content and style of the final output. Frank Rich provides an example of this trend by stating that the difference between early megamusicals such as *Cats* and the corporate megamusicals is that shows like *The Lion King* bring not only a corporate sensibility to the practice of creating theatre but also to the work itself. Rich argues that in this way *The Lion King* is further differentiated from *Cats* in that, whereas *Cats* was produced by a group of individuals specifically as an original piece for theatre, *The Lion King* was developed simply as the theatrical incarnation of an intellectual property that has and will continue to manifest itself in any market where Disney can sell it.[514] This point is a reminder of how important intellectual property and their deployment is to the development of the field of theatrical production and resulting ideological shifts.

Critical to understanding the role that intellectual properties play in the proliferation of corporate ideology in the field of cultural production is how, as symbolic

[514] Rich, "A Detour in the Theater That No One Predicted."

carriers, these properties have the capacity to act as vehicles for ideology. Because controversial material, such as a Michael Moore film, tends to have a limiting effect on the range of audience that will show interest in a cultural product, the most valuable properties, in sheer economic terms, are those that have pan-cultural marketability and appeal to the largest audience possible. Inasmuch as this is true, these pan-cultural properties will also be the least charged politically, and therefore the least divisive. Furthermore, these properties will most likely reaffirm cultural norms and are not meant to provoke lively dialogue, discourse, or controversy, because to do so would alienate potential audience/customers. Just consider some of the examples used in this analysis so far. *Cats* and *The Lion King* use animals to tell human stories full of recognizable stereotypes. Blue Man Group lost its anti-commercial edge years ago and current productions, such as *Tubes*, are apolitical spectacles with characters stripped of personality, opinion, or ideological stance. Broadway movie remakes, such as *Legally Blonde*, *Dirty Rotten Scoundrels*, or *The Wedding Singer*, are rehashes of properties that were unlikely to stir up controversy and are based on humorous and relatively innocuous stereotypes, such as the ditzy blonde, the scheming con man, or the out-of-luck and downtrodden but comical musician. Even those properties that did have a political or grotesque edge in their Hollywood incarnations, found their Broadway iterations stripped of all that might seem unappealing. The Broadway production of *Hairspray* lacked the incisive irony and inherent social critique that is the trademark of John Waters's filmic work. Meanwhile, the Broadway *Producers* with Matthew Broderick and Nathan Lane, was safe and comfortable when compared to the grotesque humor and performances of Zero Mostel and Gene Wilder that made the 1970s film version so much more intriguing

and at points disturbing. The most notable difference between the stage versions of these properties and their film incarnations was that both stage plays lacked the social misfit, the creep, that charged the action of the movies. In *Hairspray*, that character was Tracy Turnblad's mother, Edna, played by the famous transvestite Divine, and in *The Producers* that character was Mostel's discomfiting Max Bialystock. Both of these characters were creepy, offbeat, and unusual enough to keep the audience on their toes and make the circumstances of the storylines that much more outrageous. With that creepiness and social dysfunction gone, each piece became much less rich and interesting as a cultural experience.

As a result of this desire for safe marketable properties, the ideological content of the theatrical fare on Broadway and across the country is likely to continue to suffer from the corporate presence. Likewise, Times Square and other theatrical centers will feel the impacts of this ideological pacification, as the conglomerates look to create spaces that are as clean and safe as the properties they hope to sell to audiences in the United States and abroad. As these environments become more controlled and managed they have the potential to become as homogenized as malls and theme parks across the country. Corporations cannot have their finely groomed properties damaged by association with areas that are considered dangerous and unclean, as 42nd Street once was, and are willing to invest tremendous amounts of money to ensure that they can control all aspects and perceptions of their valuable properties.

While the conglomerates have often looked to manipulate the field of theatrical production in a way that benefit their interests, by producing works based on their

intellectual properties and literally changing the landscape of theatrical production they have also looked to exploit those aspects of the theatrical field that can enhance the image and reputation of their individual properties as well as their corporations on the whole. Thinking back to the notion that smaller theatres will want to stage their own productions of *The Lion King* or *The Color Purple* once their licensing rights are available, brings us back to the high culture status of theatre and American theatre as a museum piece. The restaging of a play or musical is a recognition that the work has entered the greater canon of American culture. It may not mean that the play will stand alongside a Shakespearean classic or enter drama and literature curricula across the country, but it is a tacit acknowledgement that the work has attained a certain cultural standing. For conglomerates like Disney and Time Warner, the development of a theatrical production therefore not only revitalizes dormant intellectual properties and creates new revenue streams, it also helps elevate that property's cultural status and places it within the same cultural discourse as canonical works of theatre.

In this way, the deployment of these intellectual properties takes advantage of some important characteristics of cultural goods. First of all, the legitimate culture with which the media companies wish to associate their properties is defined not by any inherent aesthetic characteristics, but by educative practices that are meant to reassert dominant ideologies. Bourdieu notes that the maintenance of cultural hierarchies relies on educative indoctrination to develop a

> Disposition to *recognize* legitimate works, a propensity and capacity to recognize their legitimacy and perceive them as worthy of admiration in themselves, which is inseparable from the capacity to recognize in them

> something already known, i.e. the stylistic traits appropriate to characterize them in their singularity . . . or as members of a class of works.[515]

The fact that such a disposition must be taught and does not stem from any inherent natural properties of a cultural good means that this legitimacy is a social construction. Bourdieu elaborates on this constructedness, noting that

> The opposition between legitimate and illegitimate, imposing itself in the field of symbolic goods with the same arbitrary necessity as the distinction between the sacred and the profane elsewhere, expresses the different social and cultural valuation of two modes of production: the one a field that is its own market, allied with an educational system which legitimizes it; the other a field of production organized as a function of external demand, normally seen as socially and culturally inferior.[516]

Three questions therefore arise: who is in charge of setting the standards of legitimacy? What do they have to gain from such ideological demarcations? And where does theatre reside within cultural hierarchies of legitimacy?

In order to answer the question of who establishes the parameters of legitimate culture, we must remember that American theatre is situated within the particular political economic circumstances of an unapologetically commercial cultural landscape. Considering the importance of economic capital to such a landscape and the lack of government subsidy to correct market failures, it becomes clear that it is those sectors of

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[515] Bourdieu, *Distinction: A Social Critique of the Judgement of Taste*, 26.
[516] Pierre Bourdieu, "The Market of Symbolic Goods," in *The Field of Cultural Production: Essays on Art and Literature*, ed. Randal Johnson, trans. Randal Johnson (New York: Columbia University Press, 1993), 130-1.

society with the means to assert significant economic capital that have the capabilities to shape the field of cultural production and determine which works are legitimate and which are not. These sectors, which in the United States tend to be made up mostly of college-educated, white, upper or upper-middle class individuals, have been taught a certain disposition of legitimacy that places hallowed highbrow cultural forms such as opera and philharmonic music above more simplistic, popular, illegitimate media such as film, television, and gaming. One of the key features of this legitimizing disposition is that those people who are educated to develop such cultural perspectives tend to consider themselves in a position of critical privilege, seeing themselves as holders of exclusive interpretive knowledge. This exclusivity tends to have two consequences: 1) that this knowledge is passed down within the social class to assure that the next generation is able to attain the same critical disposition of legitimacy, and 2) that in order to retain the exclusive positioning of the social class as a whole, the spreading of this cultural disposition to other classes is rarely encouraged and in fact is used as a tool for demarcating cultural difference. These conditions of the cultural marketplace are a significant contributor to the museumification of theatre because the maintenance of these critical dispositions as superior and privileged promotes a perpetuation of the status quo and the valorization of canonical and established works.

In considering what the standard-bearers of legitimate culture have to gain from this system, it is important to remember the different forms of capital at work in the field of cultural production. While economic capital has been the main focus of much of this study and cultural capital is important when considering the abilities of individual theatre producers to make a living, the discussion of legitimate culture highlights the significance

of symbolic capital in the field of cultural production. If theatre or any other art form comes to be considered legitimate, then affiliation with that art form carries with it a certain symbolic importance. As a result, those individuals and corporations who are already well-endowed with economic capital look to associate themselves with these legitimate cultural forms in the hopes of accumulating symbolic capital to supplement their position of economic strength. In highbrow cultural forms such as opera, the value of symbolic capital can be seen in the enormous individual donations made by high-sociey A-list donors to such institutions as the Metropolitan Opera or Metropolitan Museum of Art in New York. These donors have allowed these institutions to exist despite their inability to be self-sufficient in the cultural marketplace, and are an important factor in allowing these highbrow legitimate forms to almost exist outside the influence of commerce. Similarly, through donations and sponsorship programs, corporations look to cultural production as an arena within which they can accumulate symbolic capital and attach an air of altruism to their public image. Affiliating themselves, as corporations such as William Morris and many others have, with legitimate culture, is particularly effective because these forms, by seemingly transcending commercial concerns, are considered more beneficial to the public good and thus bestow upon these companies significant symbolic capital. For this reason those parties responsible for providing the precious capital necessary for theatrical production tend to be particularly invested in elevating theatre to a legitimate art from, because as theatre becomes increasingly highbrow, their strength in economic capital will be further supplemented by increased symbolic capital for being associated with a legitimate form of culture.

The challenge that theatre faces within these legitimizing practices is that while it has been able to attain a standing above the least considered cultural forms, it has not exceeded a certain "middlebrow" status and fully ascended to the elite ranks of highbrow culture such as opera. In "Middlebrow Anxiety," (2003) David Savran hypothesizes that as theatre in the United States developed throughout the course of the twentieth century the medium was unable to escape the contradictory logic of trying to create art through a commercial model.[517] Broadway has remained an overtly commercial endeavor, experimental stages have retained their elite appeal but reach too small an audience base, and the lack of government subsidy and donor-interest in the non-profit regional theatre has left that model subject to the material conditions of the cultural market. For this reason, theatre since the middle of the twentieth century, has never completely descended to the status of popular culture, but has also been unable to become as economically transcendent as the donor-driven elite cultural forms. Recognizing theatre as middlebrow is useful for the way in which it highlights the fact that although an increasingly smaller portion of the general public attends theatre, theatrical producers must still create works with appeal to a larger swath of possible audiences than high cultural forms that do not concern themselves with profitability. Bourdieu writes that

> Middle-brow art is the product of a productive system dominated by the quest for investment profitability; this creates the need for the widest possible public. It cannot, moreover, content itself with seeking to intensify consumption within a determinate social class; it is obliged to

[517] Savran, "Middlebrow Anxiety," 19-24.

> orient itself towards a generalization of the social and cultural consumption of this public.[518]

Theatre can therefore never be completely highbrow because it necessitates reaching a more generalized audience, and by their natures, audiences at highbrow cultural events tend to come from a very specific portion of the social spectrum. Nevertheless, theatrical audiences at non-commercial venues, such as experimental and non-profit regional theatres, continue to be predominantly white, college-educated, and upper-middle class, and except for their relative economic status have more in common with the elite audiences of highbrow culture than they do with the consumer of popular culture. So, although these non-profit theatres are not attracting the wealthiest class, they are attracting the next best thing, and this characteristic coupled with the literary nature of the dramas they produce, are representative of their unattainable aspirations to be considered legitimate high culture free of the influence of the market.

Although the aspirations of theatre audiences and producers in the non-profit realm to ascend to legitimacy are seemingly fruitless under contemporary cultural and economic conditions, they do accord theatre with a level of status that, although not as elevated as highbrow culture, certainly exceeds that of popular cultural products such as movies and televisions shows. In contemporary American culture, as theatre continues to aspire to become a legitimate form of culture, film and television, despite their much broader and more massive audiences, remain the youthful, frivolous, little brothers of more stoic and established culture looking to gain respect through affiliation. Corporate executives are keenly aware of how audiences perceive legitimate and illegitimate

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[518] Bourdieu, "The Market of Symbolic Goods," 126.

culture, particularly in this era of marketing overload and demographic hyperanalysis, and along with recognizing that they can improve their public image through donations and sponsorship, have come to realize that audience perceptions of legitimacy and symbolic capital can affect the valuation of a particular property in each medium. A quote from Mark Kaufman, Executive Vice President of Production and Theatre at New Line, is telling in this regard: "A Broadway show is a prestige piece, a chance to have your name on a quality project."[519] The fact that an upper-level executive of a major media conglomerate would make such a statement reveals that corporations look to the production of theatre not only for its possible financial ramifications but also for the assignment of "prestige" and cultural clout to their intellectual properties. This understanding of theatre as a medium in which lowbrow properties can be afforded greater cultural legitimacy is also distinctly visible in *Variety's* repeated use of the slang term "legit" to substitute for theatre on Broadway or anywhere else in the country.

Considering this corporate belief that even if theatre is not fully a "legitimate" form of culture it does legitimizing ramifications for intellectual properties the question arises: how does this legitimacy help these properties generate revenue and inspire these corporations to undertake the risky proposition of theatrical production? One of the more direct reasons is that when a show like *The Lion King* is playing on Broadway at the same time as the newest play of an established playwright such as Edward Albee or Tom Stoppard or alongside a revival of a canonical work such as *West Side Story*, it can begin to inhabit a place of cultural significance it could not when playing in the cineplex alongside *Terminator 2* or *When Harry Met Sally*. The corporations are keenly aware of

[519] Cox and Rooney, "B'way Opens Screen Door."

the power of product placement, and this geographical juxtaposition along with cultural association helps "legitimize" the piece of theatre and likewise generates respect for the intellectual property. A "halo effect" can also result when this legitimacy and cultural credibility is extended to manifestations of these works in other media, giving them a cultural standing that expands audience possibilities and as a result enhances possible revenue streams.[520] To ensure that the theatrical community sees their investment in "legitimate" culture as sincere, the media conglomerates have been increasingly careful to enlist artists with theatrical experience, such as Julie Taymor for *The Lion King* or *De La Guarda* co-creator Pichon Baldinu for *Tarzan*, to lend credibility to their productions.[521] This desire for credibility has also been a prime motivation in the studios move to more frequently follow the theatrical model for the allocation of intellectual property rights to playwrights and book writers rather than focus on work-for-hire contracts. Recognizing that having playwrights, designers, actors, and musicians on their side will benefit them financially in the long run, the corporations do not wish to alienate or make enemies with the veteran members of the theatrical community, who by asserting their cultural and in some cases symbolic capital and pledging their support to some productions and not others, still play an important role in deeming what is more legitimate theatre and what is not.

An additional benefit of attaining the status of "legitimate" culture is that wealthier cultural consumers are willing to spend significantly more for this type of culture than they are on less prestigious forms of culture. Once again, Bourdieu's study of taste and distinction is informative in regard to this trend, as it addresses the tendency

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[520] Ibid.
[521] Ibid.

of the dominant class to be willing to spend significantly more on legitimate culture. In Bourdieu's French example, the median price paid for a theatre ticket by commercial employers and industrialists is on average twice as much as what teachers pay. The teachers, who have a lower income, tend to attend inexpensive avant-garde theatre (our Off- and Off-Off Broadway) while the industrialists attend the expensive boulevard theatre (our Broadway). In this way,

> Through the price they are willing to pay for access to a work of art, or more precisely, through the relationship between the material cost and expected "cultural" benefit, each fraction expresses its conception of what specifically makes the value of the work of art and of the legitimate way of appropriating it. . . . For the certified or apprentice intellectuals, activities such as theatre-going, visits to exhibitions or "art" cinemas, performed with a frequency and regularity which take away any "extra-ordinary" quality, are in a sense governed by the pursuit of maximum "cultural profit" for minimum economic cost. . . . They expect the symbolic profit of their practice from the work itself, from its rarity and from their discourse about it. . . . For the dominant fractions a 'night out' at the theatre is an occasion for conspicuous spending. They 'dress up to go out' (which costs both time and money), they buy the most expensive seats in the most expensive theatres just as in other areas they buy 'the best there is'; they go to a restaurant after the show.[522]

[522] Bourdieu, *Distinction: A Social Critique of the Judgement of Taste*, 269-70.

So, whereas the intellectual may be seeking to gain symbolic capital by attending and attaining enrichment from attending theatre, the members of dominant class instead wish to assert their economic capital and show that they have the capability to exercise their resources to purchase the most expensive seats to the most validated and legitimized cultural experiences. A 1966 study of the demand for theatre tickets published in *The Review of Economics and Statistics* reinforced Bourdieu's conclusion stating that "as incomes advance, individuals buy a higher 'quality' night at the theatre by paying more for tickets, going to more expensive and presumably better restaurants, and transporting themselves in easier ways to Times Square."[523] The relationship between cheaper intellectual theatre and the expensive boulevard theatre in the example of French theatre and the statistical findings about Broadway in the 1960s can homologously be applied to the perception of attending movies or watching television versus attending theatre in the United States. The historical legitimacy of theatre as a cultural form draws to it an upper/upper-middle class audience with the economic capital to pay the increasing ticket prices for American theatre. Despite the dramatic rise in the price for Broadway tickets in recent years–the average individual seat can now exceed $100 and premium tickets can be as much as $400– many productions still manage to sell almost all if not all of their tickets. Over the same period the cost for movie tickets has increased at a much slower rate. This is because Broadway theatre, and even the less expensive Off-Broadway and non-profit regional theatres, while still middlebrow forms of culture that are subject to the whims of the cultural marketplace, are afforded the recognition that they are more legitimate than popular culture forms such as television and films. This relative

[523] Thomas Gale Moore, "The Demand for Broadway Theatre Tickets," in *The Review of Economics and Statistics* 48, no. 1 (February 1966): 80.

legitimacy encourages the conspicuous spending of the economically capable, whether they are wealthy locals looking for a night of entertainment, corporate employees looking to impress clients with tickets purchased via expense accounts, or tourists who are willing to spend those few extra dollars on a unique cultural experience. It is only sensible for the media conglomerates to take advantage of the financial implications of social circumstances such as this. In this way they are able to not only directly reap the economic rewards of entering theatrical production–that of course requires them to produce a show that is successful–but also hope that the "halo effect" will result in similar economic windfalls for these intellectual properties in other realms.

Along with the direct monetary consideration of investing in theatrical production, the ramifications of looking to mine the economic resources of the conspicuous spending dominant class impacts the media conglomerates ability to direct theatrical development. The individuals who are willing to expend the money necessary to go see a Broadway show will tend to predominantly come from the upper/upper-middle class, although it does come somewhat from the middle-middle class, the only class with such readily available disposable income. The 1966 study points out that as income increases at lower levels of per capita wealth "expenditures on non-theatre activities, such as dining out, transportation, baby sitters, and so forth increase noticeably but spending on tickets goes up by less."[524] But among the higher bands of income, "we can predict a proportionate growth of attendance on Broadway, a rise in the price of tickets bought, and a larger jump in the amount spent on complementary goods. One result of the desire to buy better quality seats as people become richer is that the higher

[524] Ibid.: 81.

priced tickets become relatively more popular."[525] This trend means that Broadway theatres can charge almost $100 for an average ticket without fear of losing the wealthy audience. Furthermore producers can charge three or four hundred dollars for premium tickets for corporate account holders and the exclusive superrich class. In both cases, rather than acting as a deterrent, the high price functions as an attraction. For the upper class individuals with the economic means to pay for such a ticket, it symbolizes the legitimacy and exclusivity of the theatrical experience and provides part of the justification for the expense.

The value of attracting this type of audience, beyond the obvious economic rewards of high ticket prices, is that the members of this dominant class are also the curators of American culture. The individuals in this class make the private donations and run the foundations and corporations that administer grants that keep non-profit theatre alive, and are also the individuals that populate the boards of those media conglomerates that increasingly invest in and shape commercial theatre ventures. In this way, their economic capital allows them to shape how these different areas of theatre evolve. All of these factors considered together point to the fact that not only is this class interested in consuming "legitimate" culture, but they are also the standard-bearers for legitimate culture as they have much invested in the ramifications of the ideological assessment of culture. Schiller asks

> What is the significance of this awesome concentration of private cultural power? For one thing, it means that only the richest groups, nationally and internationally, can afford to own the media-informational companies.

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[525] Ibid.

> What follows from this is that these holdings are the means for transmitting the thinking and the perspectives of the dominant, though tiniest, stratum of the propertied class, not only in news but also in entertainment and general cultural product.[526]

Understanding these conditions, the media conglomerates are using theatre to not only make money off of the people who have the most of it, but by searching out their cultural approval make it more possible that their intellectual properties and perhaps their company will be elevated in the hierarchies of cultural legitimacy.

Attaining this position can have long-lasting political economic ramifications as not only do these firms get to participate in the cultural marketplace, but they also begin to have more of an impact on what is deemed legitimate and what is not, an enviable position for any cultural producer. In fact, Disney's success over the last decade has resulted in one change in the theatrical field that may signal that the parameters of legitimate culture are in fact shifting in the favor of the corporations. While theatre critics for the longest time had the power to affect the success of failure of shows with their reviews, theatre historian Ken Mandelbaum argues that the public is less and less influenced by critical opinion, and that many corporate productions have been able to survive critical scorn that would have doomed shows in earlier eras. Mandelbaum says that "there has never been a bigger divergence between crucial opinion and public opinion. In my entire lifetime, probably never in the history of musicals have shows gotten such bad reviews and been so wildly popular."[527] Whereas in the past a bad

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[526] Schiller, *Culture, Inc.: The Corporate Takeover of Public Expression*, 40.
[527] Wollman, "The Economic Development of the 'New' Times Square and Its Impact on the Broadway Musical," 452.

review could be the death knell for a show, this trend, which started with *Cats* other megamusicals in the 1980s, has gotten to a point where now even a panned show, such as *Footloose*, can go on for an extended run of performances. The main tool that the conglomerates have deployed to great effect in countering the impact of critical review has been branding. By utilizing their resources across all media to market a new production and its brand identity in a Hollywood-style blitz before the show even opens, corporate producers are able to establish enough word-of-mouth momentum and property recognition that an extremely negative review is less able to slow down ticket sales and lessen the number of sold out performances, an important barometer of highly successful shows. The Internet's ability to give everyone a forum to voice their opinion, has also contributed to the diminishment of the critic as a monolithic determiner of what cultural works are good and bad, and what culture is legitimate or illegitimate.

Nevertheless, it remains too soon to determine whether this shift in the importance of the critic in determining the fate of a show in fact reinforces corporate productions as legitimate theatre or not. On the one hand, the shift could point to the acceptance by the consuming public of corporate productions alongside the classics of Western theatre, whether the enclave of critics think so or not. This new acceptance of these corporate amusements as something more than base entertainments could even have a trickle down effect on the kinds of culture that audiences demand of theatres across the country, commercial or not. Frank Rich asks "if the new generations of theatergoers coming up now are . . . weaned on the esthetics of *Lion King* and *Riverdance*, will they want the same limited theatrical diet when they become the new audience pool for the Roundabout Theater Company of the Goodman Theater in Chicago or Arena Stage in

Washington?"[528] However, on the other hand it could be a sign that corporate theatre production is having the opposite effect and may be moving theatre out of the purview of legitimate culture completely, making it an expensive version of theme-park styled entertainment. Elizabeth Wollman points out that

> While it is perhaps good news that record numbers are flocking to commercial theaters in New York, as well as to see the national and international tours often spawned from Broadway productions, it must be remembered that showing people their favorite films live on stage, no matter how innovative the adaptation, is not necessarily going to create life-long theatergoers. The approach could just as easily lower the national standards of what is expected from all theatrical production.[529]

Either way, this shift in the impact of critical opinion is yet another sign that corporatization has indelibly moved the field of theatrical production into a period of transition and uncertainty.

Since the media conglomerates are after all corporate entities with bottom lines and shareholders to answer to, and theatre does provide an opportunity to extend intellectual properties and generate revenue, the motivation for the production of theatre by media conglomerates will always remain to make the most money possible. Perhaps the most important impact that corporatization will have on the theatrical field is whether theatres will remain spaces for the generation of new ideas and ways of thinking and

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[528] Rich, "A Detour in the Theater That No One Predicted."
[529] Wollman, "The Economic Development of the 'New' Times Square and Its Impact on the Broadway Musical," 459.

expressing. Media firms for the most part see theatre as a place to expand upon an existing property rather than a place to investigate a new property, and corporations such as Disney and Time Warner seem committed to exploiting the theatrical field as a secondary market for the redeployment of their intellectual properties. Frank Rich puts these conditions of the theatrical marketplace into historical context stating that

> At this point, as I recall, a drama critic ritualistically reminds readers that the theater is a fabulous invalid, destined to rise once more from its deathbed. But our theater, a bigger business than ever as measured in dollars, is hardly dying. The real question about a theater overrun by cartoon characters and scripted by marketers is what, over the long haul, will be its quality of life.[530]

For many, the question of corporatization in the theatrical field comes down to a question of art versus commerce. Will the longstanding commercial aspects of Broadway production finally come to completely inhibit the production of original works on American stages, with theatres simply becoming one of many stops that intellectual properties take in their lifetime? Or, will theatre continue to generate discourse and be the origin point for important social and political commentary? Jack Viertel, a veteran Broadway producer and member of Jujamcyn Theatres, remains unsure.

> Whether art needs to survive on Broadway is a good question. I am not sure it does need to for anybody but people like me who want it to survive. I think as a business, it may not need to. . . . You simply might not be able to do it anymore. And the question that everyone has to answer in his or

[530] Rich, "A Detour in the Theater That No One Predicted."

> her own way is, does it matter if there is no real quality art on Broadway? It matters to me because I work on Broadway and that's what I'm interested in. But it may not matter in the long run.[531]

In fact, it could even be argued that the distinction between commercial cultural production and "art" is an artificial differentiation considering the capitalistic nature of the American cultural marketplace, where economic concerns ultimately outweigh all others. In either case, the corporatization of the theatrical field has already had a significant impact on the modes of production, business practices, and ideological potency of the theatrical field. Considering the increasing ubiquity of these changes, it will be interesting to see how artists, producers, and audiences will assert themselves in response to the corporate presence and its continued impact on the evolution of the form and content of theatre in the United States.

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[531] Wollman, "The Economic Development of the 'New' Times Square and Its Impact on the Broadway Musical," 459-60.

Chapter 5.
Vanishing Commodities and Culture as a Durable Good

By looking at questions of authorship and the deployment of intellectual properties by media conglomerates, it becomes clearer that changing interpretations of intellectual property have had an impact on theatre at the level of the individuals and individual productions that make up the field of theatrical production. On this scale, intellectual property can be considered concretely, as a playscript, the staging of a show, or a franchise property. But in order to complete this study of the impact of the rise of intellectual property rights on the field of theatrical production, we must step back from the specific impact of intellectual property on the field and consider how the shaping of the concept of intellectual property will affect the future development of theatrical production. In particular, we must consider how the trends that have pushed intellectual property to such a prominent position within cultural discourse influence theatre's economic status relative to other media.

As we have seen thus far in this study, the political economic processes that have determined the parameters of intellectual property are a result of legal precedents, market mechanisms, and social predispositions that play a strong role in overall cultural development. But the alignment of these political economic factors in the case of intellectual property is particularly telling of cultural shifts that have led our society to question traditional ideas of what it means to create and own culture and how cultural production fits into the logic of contemporary capitalism. Call it what you like, postmodernism, postindustrialism, post-Fordism, the methods of producing culture, the shape that culture takes and the media by which culture is conveyed have changed

significantly, and as a society we continue to struggle with the best ways to adapt our cultural structures in a way that optimally suits the needs of this era. The deployment of intellectual property rights is a part of that adaptation.

The interplay between intellectual property rights and commodification is important to this study of theatrical production because of the ways that these rights have contributed to and are emblematic of society's increased tendency to view culture as ownable property. The goal of this chapter is to ask how the commodification of culture has shaped Americans' conception of intellectual property and how that commodification has subsequently affected the field of theatrical production. Two hundred years ago, most of today's most prominent media did not exist, and of the media that did exist as forms of entertainment, with the exception of written texts or illustrations, most of those could only be consumed in live performances. Today however, cultural production usually results in recordable, reproducible, and electronically deliverable works. Culture now has a durability it did not have for millennia and as capitalism has extended more and more into cultural life, the process of commodification that turns durable goods into objects with exchange value has accelerated and become more pervasive in the cultural field. Likewise, as culture has become more durable, society has also come to see culture as something that can be owned as property by either the cultural producer or consumer. The copyright, trademark, and patent laws that make up intellectual property rights have all developed out of and in response to this propertization of cultural products, and as such the commodification and propertization of culture have extended not only to the physical durable products of cultural work but also to the ideas and expressions that are the foundation of cultural production.

Because the work done in developing intellectual property is the origin point for the actual durable cultural goods that are produced and sold, the manner in which these property rights are shaped and exploited by different cultural producers is an important starting point for understanding how commodification and propertization play a role in shaping the political economic conditions of the field of cultural production. As the cultural industries have expanded and adapted to best take advantage of this increased commodification, they have not only played a larger role in the production of culture, but also have used their economic and political capital to help develop the parameters for cultural production in their favor. As a result, they have been able to argue for property rights that protect their investment in the production of durable cultural goods.

This chapter considers how theatrical producers, who possess relatively less economic and political capital than producers of durable cultural goods, such as the corporate media conglomerates, are at an economic disadvantage in as much as the main commodity they produce is ephemeral. By looking at the composition of intellectual property rights and the way in which they affect the configuration of cultural production, this chapter shows how theatrical producers are limited in their ability to tap into the full economic potential of the burgeoning cultural marketplace. Furthermore, this chapter also considers the ways in which theatrical producers have responded to limitations, some of which are inherent to the work they produce and some of which are the result of political and legislative processes, and developed strategies that attempt to best take advantage of the commodification of culture in order to make theatre an economically viable part of the field of cultural production

Capitalism, Commodification, and the Propertization of Culture

In considering the role that capital and capitalism have played in motivating societal upheavals and transformations, David Harvey points out that

> Capital is a process and not a thing. It is a process of reproduction of social life through commodity production, in which all of us in the advanced capitalist world are heavily implicated. Its internalized rules of operation are such as to ensure that it is a dynamic and revolutionary mode of social organization, restlessly and ceaselessly transforming the society within which it is embedded.[532]

It was due to this relentless and ceaseless transformation of society that, as the United States grew dramatically in population, wealth, military might, and technology over the last two hundred years, industrial capitalism played an increasingly important role in determining the development of American society. Since cultural life is an important part of the operation of any society, it also makes sense that cultural life would be unable to exist outside of and free of the influence of such a capitalist logic. Although the field of cultural production had often operated on the fringes of markets before the rise of capitalism, as it had when patronage was a predominant means of financing cultural production,[533] it was almost inevitable that as capitalism expanded, the field of cultural production, like any aspect of the public sphere, would more greatly feel its influence. As Harvey so eloquently puts it "precisely because capitalism is expansionary and imperialistic, cultural life in more and more areas gets brought within the grasp of the

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[532] Harvey, *The Condition of Postmodernity: An Enquiry Into the Origins of Cultural Change*, 343.
[533] Hesmondhalgh, *The Cultural Industries*, 50.

cash nexus and the logic of capital circulation."[534] This expansion of the logic of capitalism into new realms of the public sphere is perhaps most visible in the rise of the cultural industries, and introduction of capitalistic modes of production and distribution into the cultural field. In "The Culture Industry," Horkheimer and Adorno point out the important role that the industrialization of capitalist cultural production has played in commodifying creative works: "The culture industry can pride itself on having energetically executed the previously clumsy transportation of art into the sphere of consumption, on making this a principle, on divesting amusement of its obtrusive naïvetés and improving the type of commodities."[535] While Horkheimer and Adorno's sarcastic tone in this quote is revealing of their particular bias concerning the value of cultural commodification, their analysis nevertheless remains cogent as it highlights how the cultural industries have been able to accelerate the process of cultural commodification. The organizational changes that developed out of the rise of the cultural industries have subsequently resulted in increased commodification in the field, a shift from social to private consumption, the propertization of cultural goods, and an emphasis by producers on the productivity of cultural labor and durability of cultural goods. Together these not so subtle developments have played an important role in the operation and constitution of the field of cultural production. Furthermore, theatrical production, as a subset of that field and as an older medium, has been particularly affected by these changes and their political economic implications.

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[534] Harvey, *The Condition of Postmodernity: An Enquiry Into the Origins of Cultural Change*, 344.
[535] Horkheimer and Adorno, "The Culture Industry: Enlightenment As Mass Deception," 135.

As the expansion of capitalism has brought the field of cultural production further within the purview of market economics and industrial organization, the increased commodification of cultural products has had perhaps the most significant impact in the way that individuals consume culture and integrate it into their daily lives. Marx begins *Capital, Volume 1* by noting that "the wealth of societies in which the capitalist mode of production prevails appears as an 'immense collection of commodities;' the individual commodity appears as its elementary form."[536] As the field of cultural production has become increasingly influenced by expansion of the logic of capital into the field, it has also come to follow this model of an "immense collection of commodities," with digital downloads of music, DVD libraries, heavily-marketed video games, and best-selling books dominating cultural discourse. Marx continues, stating that "the commodity is, first of all, an external object, a thing which through its qualities satisfies human needs of whatever kinds."[537] What is most important to take away from this quote is the idea that a commodity is an external object, a separate thing that can be quantified and even more importantly assessed for its exchange and surplus value. This externalization is particularly significant because of the role the commodification of culture has played in making the process of cultural consumption a private rather than social experience.

Returning to the important role of the cultural industries, it is informative to look at the historical development of the commodity as new media have arisen. While the origins of the commodification of culture can be traced back to the invention of the Gutenberg press and the beginning of the mass reproduction of the written word, as new technologies and new recording techniques have developed–such as film, audio and video

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[536] Marx, *Capital: A Critique of Political Economy, Volume 1*, 125.
[537] Ibid.

tapes, and more recent digital formats–an increasing number of forms of cultural production have been able to be developed into commodities. Simon Frith has presented the history of music as an example of the different stages of evolution of that cultural commodity

> Writing the history of entertainment in terms of storage and retrieval clarifies the effects of technology, a point I can best illustrate with the example of music. Music (an obviously time-based medium, existing only as it is experienced) has been through three broad storage stages. Initially it was "stored" in the mind and body of a person (and in his or her musical instrument). . . . Following the invention of printing, music could, in a second stage, be stored easily too in the form of notes, in the score. . . . In the third stage, following the invention of the phonograph, music came to be recorded, stored as sound on a "carrier" which became in its evolving forms (phonogram, record, cassette tape, compact disc) the basic musical commodity.[538]

So, as the development of new technologies and recordable media enables new commodity forms, culture that could once only be experienced live can now be captured, stored, and reproduced, just as a widget can be designed, developed, and reproduced in a factory. Considering the commodification of culture from this perspective, one can see how just as industrialization and modernization changed society's conception of work and leisure, so too did the technological and social developments of the nineteenth and twentieth century change our patterns of cultural consumption. One important aspect of

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[538] Frith, "Entertainment," 204-5.

this industrialization has been the technological innovations that have led to new media of the twentieth century. Mechanical, electronic, and then digital reproduction have made it possible for cultural products to be duplicated more easily and advances in telecommunications have made it easier than ever to get culture to consumers. No longer do you have to travel to a museum or theatre for your cultural experience, you can simply walk into your living room and turn on your radio or television or log onto your computer. These innovations have been deployed by the cultural industries to dramatic effect and have played a role in cultural development by acting as important accelerants to the capitalization and subsequent commodification of culture.

Prior to the invention of film, audio recording, television, and the Internet, the consumption of culture, with the exception of printed texts and illustration, occurred mostly via live performances in predominantly communal settings: theatres, concert halls, museums. But by the turn of the twenty-first century going out to see a show, concert, or even a movie had come to be considered an exception to the rule, as we now experience more of our culture through televisions, DVD players, iPods, home stereos, or on the Internet than in venues with large gathered audiences. In the span of little over a hundred years, Americans have gone from being a society of consumers of live culture in public settings to one of private viewing and the individual experience of packaged culture. This transition has had a particularly strong influence on older pre-technological media, which for millennia were produced for and experienced within communal settings. As Herbert Schiller notes,

> Speech, dance, drama (ritual), music, and the visual and plastic arts have been vital, indeed necessary, features of human experience from earliest

> times. What distinguishes their situation in the industrialist-capitalist era, and especially in its most recent development, are the relentless and successful efforts to separate these elemental expressions of human creativity from their group and community origins for the purpose of selling them to those who can pay for them.[539]

As these expressions of creativity have been separated from their group origins, culture and entertainment may remain social activities, but only inasmuch as cultural consumers share common consumption interests. Just think of the famous Monday morning post-*Sopranos* water cooler chats. In a case such as this, consumers were not watching the *Sopranos* together, but rather were having a conversation about the experiences of what they had watched the night before, at which time they were apart from one another. *The Sopranos* therefore becomes a social entertainment because it brings people together, but not in the actual experience of the cultural product. Simon Frith notes that "what is going on here is a shift in the meaning of entertainment from a description of a particular sort of social experience to the articulation of a certain kind of individual market choice."[540] The social connection therefore does not occur as the result of the communal experience of a simultaneous event–or in the words of Benjamin of the experience of the same "aura"–but rather through the consumption of a common cultural commodity.

The rise of this type of cultural commodity is of particular importance to the study of theatrical production because while theatre remains ontologically a communal and ephemeral medium with only vestigial commodities of any duration, the political economic conditions of the field of cultural production now favor media that produce

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[539] Schiller, *Culture, Inc.: The Corporate Takeover of Public Expression*, 31.
[540] Frith, "Entertainment," 210.

commodities that can be easily reproduced and distributed to individual consumers. Furthermore, as the increased importance of intellectual property has encouraged a certain approach to capital investment in the field of cultural production, as can be seen by the approaches taken by the media conglomerates as they invest on Broadway, there are two features of the field of cultural production under capitalism that impact the ability of theatrical producers to remain economically viable in the contemporary cultural landscape: how productive is it for investors to expend capital on labor and resources on theatrical production? And how does the propertization of cultural goods impact a medium whose product, due to its ephemeral nature, is unownable?

Productivity

As capitalist modes of production came to be more ubiquitous within the cultural field, cultural producers came to be more concerned with the productivity and profitability of their endeavors. The concept of productivity can be traced back to early political economists, such as Adam Smith, John Stuart Mill, and Marx, and the concept has a very specific meaning and origin in the discourse of political economy, and in particular within critiques of the capitalist system. In *Capital, Volume 1*, Marx wrote that

> Capitalist production is not merely the production of commodities, it is, by its very essence, the production of surplus-value. The worker produces not for himself, but for capital. It is no longer sufficient, therefore, for him simply to produce. He must produce surplus-value. The only worker who

> is productive is one who produces surplus-value for the capitalist, or in other words contributes towards the self-valorization of capital.[541]

Surplus-value is the difference between a commodity's exchange-value (the amount an object can be sold for) and use-value (the amount in labor and material an object costs to produce). Simply put, surplus-value determines the amount of profit that a capitalist can make from selling a product. These monetary profits are key to the persistence of a capitalist system, because it is through the earning of profits that the capitalist is able to accumulate more capital. Marx further clarified the importance of surplus-value when discussing productivity noting that

> Since the immediate purpose and the authentic product of capitalist production is surplus-value, labour is only productive, and an exponent of labour-power is only a productive worker, if it or he creates surplus-value directly, i.e. the only productive labour is that which is directly consumed in the course of production for the valorization of capital.[542]

It becomes clear from Marx's explanation that the productivity of labor specifically and of any capitalist venture generally is related to whether or not the capital expended in the process of creating a commodity is less than the amount of capital that can be accumulated via the profits that are made when that commodity is sold. Marx stated this most succinctly in the *Economic Manuscripts of 1861-1863*

> Productive labour, therefore, is labour which — in the system of capitalist production — produces surplus value for its employer or which converts

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[541] Marx, *Capital: A Critique of Political Economy, Volume 1*, 644.
[542] Ibid., 1038.

> the objective conditions of labour into capital, and their owners into capitalists, hence, labour which produces its own product as capital.[543]

Furthermore, the productivity of labor is judged not only by whether surplus-value is created but also by how much surplus-value is created since the goal of the capitalist is ultimately to accumulate as much capital as possible.

Political economists address the concept of productivity of labor in the capitalist system most frequently when discussing situations where laborers are employed to create a material commodity with sufficient surplus-value to be useful to a capitalist. For early political economists, certain types of labor were considered problematic, because the product of that labor resulted in insufficient or non-existent surplus-value and that labor was therefore deemed to have been deployed unproductively. Adam Smith presented the example of the menial servant as an unproductive laborer in *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776). Smith pointed out that while a manufacturer produces for the capitalist a product that lasts for some time and can be sold, the wages expended on a menial servant result in no durable commodity. According to Smith the labor of the menial servant

> Does not fix or realize itself in any particular subject or vendible commodity. His services generally perish in the very instant of their performance, and seldom leave any trace or value behind them for which an equal quantity of service could afterwards be procured. . . . In the same class must be ranked, some both of the gravest and most important, and

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[543] Karl Marx, "A Contribution to the Critique of Political Economy," in *Collected Works: Karl Marx and Friedrich Engels*, vol. 31, (New York: International Publishers, 1989), http://www.marxists.org/archive/marx/works/1863/theories-surplus-value/ch04.htm.

> some of the most frivolous professions: churchmen, lawyers, physicians, men of letters of all kinds; players, buffoons, musicians, opera-singers, opera-dancers, etc.[544]

While the description of players, buffoons, musicians, opera-singers, and opera-dancers as frivolous professions makes it pretty clear in what regard Smith personally held the performing arts, this passage from *Wealth of Nations* nevertheless reveals the challenge faced by theatrical producers in a capitalist cultural marketplace. In a system driven by capital, commodities, and durable goods, the creation of an ephemeral product is an unproductive use of labor and resources, because its production consumes more resources than its exchange value can justify. As a result the laborers involved in the creation of such an ephemeral product are at a distinct economic disadvantage because their labor will be valued less by those individuals in possession of capital. John Stuart Mill contributed a similar opinion on the productivity of creating live performance in his *Essays on Some Unsettled Questions of Political Economy* (1844).

> The skill of Madame Pasta, and the building and decorations which aid the effect of her performance, contribute in the same way to the enjoyment of the audience, namely, an immediate way, without any intermediate instrumentality. The building and decorations are consumed unproductively, and Madame Pasta labours and consumes unproductively; for the building is used and worn out, and Madame Pasta performs, immediately for the spectators' enjoyment, and without leaving, as a

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[544] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, edited by Edwin Cannan, (London: Methuen and Co., Ltd., 1904), http://www.econlib.org/library/Smith/smWN.html.

> consequence of the performance, any permanent result possessing exchangeable value.[545]

Mill's point here is that, although the performance of Madame Pasta does have momentary value in as much as it can provide immediate enjoyment to an audience, its lack of permanence or reproducibility means that a good portion of the capitalist's investment will be exhausted completely and will not result in any quantifiable surplus value by which the capitalist can accumulate more capital. To counterpoint his examination of the performing arts, Mill discusses how a cotton laborer's skills and tools are not only the product of productive labor but are also productively consumed because the end result of their consumption is a product, cotton or textiles. These products can then be sold at a price higher than the cost of producing them, meaning that they possess the surplus value a capitalist covets. Mill ultimately comes to the conclusion that the tools and skills of the performer are the products of productive labor but are ultimately unproductively consumed, and that the labor of a performer is "exerted and expenditure incurred, directly and exclusively for the purpose of enjoyment, and not calling into existence anything, whether substance or quality, but such as begins and perishes in the enjoyment."[546]

Marx further detailed the limited role that the unproductive laborer can play in a developed capitalist society and described how difficult it is for the unproductive laborer to play a significant role in a marketplace dominated by the production of material goods.

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[545] John Stuart Mill, "On the Words Productive and Unproductive," in *Essays on Some Unsettled Questions of Political Economy*, (London: Longmans, Green, Reader, and Dyer Co., 1874), http://www.econlib.org/library/Mill/mlUQP3.html.
[546] Ibid.

> To the extent that capital conquers the whole of production . . . it is clear that the unproductive labourers, those whose services are directly exchanged against revenue, will for the most part be performing only personal services, and only an inconsiderable part of them (like cooks, seamstresses, jobbing tailors and so on) will produce material use-values. That they produce no commodities follows from the nature of the case. For the commodity as such is never an immediate object of consumption, but a bearer of exchange-value. Consequently only a quite insignificant part of these unproductive labourers can play a direct part in material production once the capitalist mode of production has developed.[547]

It follows that if unproductive laborers do not produce commodities, giving the buyer of labor power (the capitalist) less reason to purchase that labor, the unproductive laborers would have a harder time selling their labor-power than the productive laborer.[548] For this reason, workers involved in the production of culture have found that it behooves them economically to increase their productivity by finding a physical medium that allows them to give durability to the ideas and expressions they create. For instance Marx has pointed out that "A writer is a productive labourer not in so far as he produces ideas, but in so far as he enriches the publisher who publishes his works, or if he is a wage-labourer for a capitalist."[549] In this example the writer is productive because his ideas can be put into book form and made into a commodity that allows the publisher (the capitalist in this example) to generate surplus-value.

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[547] Marx, "A Contribution to the Critique of Political Economy."
[548] Ibid.
[549] Ibid.

The example of the writer producing a book for the publisher is where the structure of copyright and intellectual property laws comes back into play with regard to this political economic analysis of culture in general and theatre more specifically. As industrial and then post-industrial capitalism have become more pervasive and prominent driving forces in the production of culture over the course of the last century and a half, the ease with which capitalists have been able to convert the labor of cultural workers into commodities and thus generate surplus-value has been key to the economic ascension of certain media. In particular, the ascension of the cultural industries and the technologization of culture brought about by the new media of the twentieth century have helped the field of cultural production develop from a realm where the majority of labor and resources was expended unproductively to one of the most profitable sectors of the American economy. Whereas Smith, Mill, and Marx, writing in the eighteenth and nineteenth centuries, were correctly critical of the ability of most forms of cultural production to result in products with enduring surplus-value, the twentieth and twenty-first centuries have seen capitalists increasingly attracted to the production of culture by the potential for cultural works to generate enormous surplus-value.

Yochai Benkler explains how, taking cues from their predecessors in the production of physical goods, the controlling interests in the cultural industries developed methods of producing culture that would maximize efficiency and economic profitability.

> Hollywood, the broadcast networks, and the recording industry were built around a physical production model. Once the cultural utterances, the songs or movies, were initially produced and fixed in some means of storage and transmission, the economics of production and distribution of

> physical goods took over. Making the initial utterances and the physical goods that embodied them required high capital investment up front. Making many copies was not much more expensive than making few copies, and very much cheaper on a per-copy basis. These industries therefore organized themselves to invest large sums in making a small number of high production-value cultural "artifacts," which were then either replicated and stamped onto many low-cost copies of each artifact, or broadcast and distributed through high-cost systems for low marginal cost ephemeral consumption on screens and with receivers. . . . Because of its focus around capital-intensive production and distribution techniques, this first stage might best be thought of as the "industrial information economy."[550]

In order to maintain the productivity and economic profitability of these systems, two important conditions needed to be maintained. First, cultural producers recognized the need to control the market for their works, and secondly they needed to find a way to protect the now easily reproducible creative work that they had required such a high initial investment. Benkler notes that this restructuring of the cultural field "required an effort to manage demand for those products that were in fact recorded and replicated or distributed, so as to make sure that the producers could sell many units of a small number of cultural utterances at a low per-unit cost, rather than few units each of many cultural utterances at higher per-unit costs."[551] Copyright laws have developed–in no small part

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[550] Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedoms* (New Haven: Yale University Press, 2006), 31-2.
[551] Ibid., 32.

due to the influence of the entertainment industries–to provide the type of protection cultural producers need to establish and maintain the kind of cultural market that Benkler describes. As Frith emphasizes, copyright law has as a result become "the basis of property rights in the entertainment business and therefore the basis of entertainment as a capitalist industry."[552] As producers in the cultural field continue to look for ways to maximize the productivity of cultural labor, they will continue to look to technology to lower costs and increase the speed of production, reproduction, and distribution. But since technological advances are harder to control and more difficult to predict, they will also continue to lobby for adjustments to be made to copyright and other intellectual property rights, such as the Digital Millennium Copyright Act, that will increase the surplus-value of the commodities they produce. Later on in this chapter I will discuss how the relative lack of economic and political capital of theatrical producers– when compared to the interests of the dominant firms in the cultural industries–puts them at a disadvantage in effecting change in the legal discourse concerning cultural production, and how this affects productivity in the theatrical field. But before moving on to that area of consideration, the focus of this chapter will now shift to an examination of how the deployment of these intellectual property rights have developed a paradigm in which cultural products have come to be attributed the same qualities as physical goods.

Propertization

As intellectual property rights have become established mechanisms by which cultural producers can increase productivity and manipulate the demand for their work, they have similarly played a role in promoting the belief that cultural goods are inherently

[552] Frith, "Entertainment," 206.

ownable forms of property. However, the impression that creative works are the sole property of their creators is in fact an artificial construct that has developed out of the arbitrary legal structures of American society. Nevertheless, as the artificial and arbitrary nature of intellectual property rights has receded and these rights have become cultural norms, they have been progressively absorbed into an American social consciousness that is framed by the market principles and ownership foundations of capitalism.

As I have discussed in previous chapters, information goods, such as cultural products, tend to act as public goods because, as Michael Carrier explains,

> Information is nonexclusive and nonrivalrous. Nonexclusivity prevents owners from excluding others from the possession of information. Nonrivalrousness magnifies this danger because one person's consumption does not diminish the amount of the good for others to consume–that is, multiple persons can use information without depleting it.[553]

In this sense, as commodities, cultural goods do not have the physical limitations or progressive depletion that more traditional commodities, such as food, automobiles, or computers, have, and as such cannot be claimed as any individual or company's sole property. When you finish a cup of coffee it is gone forever, but when you finish a book or finish listening to a song, the information therein has not been exhausted and remains available to subsequent consumers. If there is a concern with regard to the durability of cultural commodities it has only to do with the consumption and depletion of the physical

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[553] Michael A. Carrier, "The Propertization of Copyright," in *Intellectual Property and Information Wealth: Issues and Practices in the Digital Age*, ed. Peter K. Yu, vol. 1: Copyright and Related Rights (Westport, CT: Praeger Publishers, 2007), 350.

media, the actual paper, optical disk, or audio tape, by which intellectual property and information is delivered. As long as an information good is continually present in some deliverable medium, whether that is a record, DVD, or a hard drive, then its ability to be consumed without loss remains. Consider for example *Hamlet*. Since being penned by Shakespeare around 1600, the play has been printed and published millions of times and has also been recorded in both audio and video versions. While the many physical iterations, books, audio tapes, video discs, etc., have come and gone due to the aging, loss, or destruction of the deliverable media, the information that makes up the story has persisted, never becoming more scarce despite having been experienced/consumed by countless individuals.

Copyright laws function as protection for cultural producers and the commodity product of their work, by creating artificial exclusivity and giving cultural producers the ability to own and limit access to goods that are not inherently ownable. This right to exclude has become a critical aspect of the expansion of capitalism into the cultural field because it provides producers with the ability to appropriate rewards from cultural goods, a necessary condition–for better of for worse–for encouraging investment in cultural production. There are two ways in which the exclusivity of copyright helps protects cultural producers. First of all, through the threat of legal action and punishment, copyright law discourages so called "free riders" who may be tempted to reproduce cultural products and make a profit without having incurred the high initial costs of producing culture. Secondly, the exclusivity provided by copyright law creates an economy of scarcity for cultural products, by eliminating nonrivalousness. This scarcity allows cultural producers to generate profits by charging prices in excess of their

marginal costs, allowing for the generation of surplus-value and providing incentive for capital investment in the cultural field.[554]

In order to maintain this incentive for capital investment as cultural production develops and expands, it has followed that as new media have become important parts of the cultural marketplace, copyright law has had to be modified in order to ensure that cultural producers retain control of copying and that cultural goods remain scarce and therefore valuable. As new media have become big business and cultural producers with the economic and political means have begun to influence the development of legislation, the scope of what is covered by copyright has expanded to be more inclusive of the technological media. Whereas copyright once only applied to books, maps, and charts, today copyright protects motion pictures, computer programs, sound recordings, and architecture. Although revisions have been made to copyright laws that expand protection to the new media of the twentieth century, the conceptual structure of copyright has not been altered. The same type of protection that had been afforded to the publishers of books, maps, and the other media for which the laws had originally been crafted has simply been given to producers of content for film, radio, television, and the Internet. So, despite the changing nature of our culture, as new forms of media have been brought under the auspices of older copyright legislation, the laws have remained framed around the "copy-right" for book publishers which had been the initial intent of eighteenth century intellectual property rights in England and America. One complication that arises when adjusting copyright law in this way is that the manner in which culture is produced and consumed has changed greatly with the appearance of

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[554] Ibid., 350-1.

these new technologies. As the laws were adjusted to cover more media, they became less specific to the ontology of any one medium and therefore open to a more broad interpretation. The resulting unspecific and often vague nature of the legal language of intellectual property rights has allowed for a shift in society's understanding of the ownability of cultural products. Furthermore, this ever farther-reaching expansion and reconsideration of what is property and what can be owned has contributed to the increased propertization of the products of creative cultural work.

The way in which intellectual property rights have hastened the propertization of cultural goods is best understood by considering the capitalist system's relentless need to commodify those objects that fall outside the spectrum of capital valuation. As David Harvey writes "wherever capitalism goes, its illusory apparatus, its fetishism, and its systems of mirrors come not far behind."[555] The artificial structures of intellectual property rights are one way in which capitalism has been able to expand into the field of cultural production by stripping creative goods of their public benefit, eliminating their value as inexhaustible and nonexclusive public goods. By emphasizing cultural goods as exchangeable commodities, intellectual property rights have reshaped the social understanding of how cultural works should be produced, distributed, and consumed by society. Rather than simply managing commerce by providing artificial short-term exclusivity and scarcity, intellectual property rights contribute to the perception that a play, movie or piece of music in fact has the same characteristics of limited access and exhaustibility as tangible property, such as a car or home. This distinction between tangibility and intangibility continues to play an important role in determining the

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[555] Harvey, *The Condition of Postmodernity: An Enquiry Into the Origins of Cultural Change*, 344.

parameters of the copyrightability of intellectual property. Furthermore, as the parameters that contribute to the propertization of creative cultural work becomes more complete and pervasive the artificiality of these laws becomes less apparent to cultural consumers, ultimately allowing for the essentializing of those legal structures within cultural discourse. Michael Carrier notes that judicial precedents have helped accelerate this process, and by "continually strengthening copyright, the courts have characterized it as a type of property. Companies have emphasized this trend even more strongly. . . . In short, the discussion of scope and duration builds on forceful assertions that copyright is absolute property."[556] Because the duration of copyright protection has gone from a few decades to more than a lifetime, the extreme duration of intellectual property rights no longer simply acts as a tool for providing temporary exclusivity, but connotes that the economic benefit of the work should inherently revert to a sole owner for as long as he/she lives. Bettig argues that the expansion of the duration and scope of copyright law is symptomatic of the need to perpetuate the integrity of intellectual property within capitalism. Otherwise, he argues, "the premises of artificial exclusivity upon which the concept of intellectual property is based will be exposed as transparent, thereby highlighting the contradictions of the capitalist system, which is forever trying to obscure the artificial premises upon which it functions."[557]

The initial motivation for the development of the artifice of intellectual property rights was to promote and incentivize intellectual and artistic endeavors by providing

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[556] Carrier, "The Propertization of Copyright," 345-6.
[557] Ronald V. Bettig, "Concentration in the Copyright Industries," in *Intellectual Property and Information Wealth: Issues and Practices in the Digital Age*, ed. Peter K. Yu, vol. 1: Copyright and Related Rights (Westport, CT: Praeger Publishers, 2007), 379.

artists and inventors with the means to make a living. But Ronald Bettig argues out that under current conditions

> This notion is dubious at best. Capitalists would not invest in the culture industry unless they could profit from it. But human beings were highly creative long before the creation of the institutions of patents and copyrights some 500 years ago. Economic reward is not essential to human creativity. . . It is the division of labor that produces the distinction between the "artists" and everyone else.[558]

In fact, it remains to be seen whether copyright and the propertization of cultural work in fact promotes creative work and many scholars, including Benkler, Carrier, and Bettig, are skeptical about the efficacy of this type of cultural promotion. One widely held belief amongst economists and political economists studying the impact of intellectual property rights is that the creative impulse is in fact an inevitable feature of society and that property rights do little to promote the efficient development of culture and only act to perpetuate capitalist models of cultural production. Benkler argues that

> From the perspective of a society's overall welfare, the most efficient thing would be for those who possess information to give it away for free– or rather, for the cost of communicating it and no more. On any given day, enforcing copyright law leads to inefficient underutilization of copyrighted information. However, looking at the problem of information production over time, the standard defense of exclusive rights like copyright expects firms and people not to produce if they know if their

[558] Ibid., 380.

> products will be available for anyone to take for free. . . . This defense of exclusive rights is limited by the extent to which it correctly describes the motivations of information producers and the business models open to them to appropriate the benefits of their investments. If some information producers do not need to capture the economic benefits of their particular information outputs, or if some businesses can capture the economic value of their information production be means other than exclusive control over their products, then the justification for regulating access by granting copyrights or patents is weakened.[559]

Considering that people have been creating culture for millennia and intellectual property rights and even capitalism are only a few centuries old, it is clear that there have always been ways to survive and even flourish economically from the production of culture without the need to impose artificial exclusivity on works that could be distributed as public goods. Musical artists, such as Jonathan Coulton, who developed a musical career mainly through the social networking site MySpace, and the band OK Go, which won an MTV Music Video Award for a video first released on YouTube, have shown that it is possible to develop an income-generating following by utilizing the multimedia communicative possibilities of an open telecommunications environment such as the Internet to subvert the traditional production models of the music industry.[560] Even already established acts, such as the English group Radiohead, are seeing the value in

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[559] Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedoms*, 37.

[560] Clive Thompson, "Sex, Drugs and Updating Your Blog," in *New York Times*, May 13, 2007, http://www.nytimes.com/2007/05/13/magazine/13audience-t.html?pagewanted=print.

offering their music to the public for free, or are allowing consumers to pay what they think is appropriate.[561] Many of these artists are more concerned with exposure and the ability to generate touring revenue, and as a result are more flexible about property rights and strict control of the distribution of the content they create. This flexibility has begun to undermine even the most established models of cultural production, such as those deployed by dominant music publishers such as Sony, Bertelsmann, and EMI. Ever since digital reproduction of music became more accessible to consumers in the late 1990s, and the fear of illegal reproduction had become rampant in the industry, these music publishers adamantly championed the use of digital rights management (DRM) software, which prevents and/or limits copying of digital files, to limit access to all of the music in their property libraries and were threatening legal action to even the most innocuous of violators of their copyright. But by early 2007 the publishers, under the weight of sagging sales, finally began to change their approach to music distribution when EMI removed DRM software from its music files.[562] Soon thereafter the other major music publishers began one by one to be less insistent on the use of DRM software, as the approach to controlling and owning individual songs and albums rapidly shifted, and the major publishers realized that in order to maintain their position in the market they had to respect the demands of the consumers to be able to have control over the commodity they were purchasing.

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[561] Josh Tyrangiel, "Radiohead Says: Pay What You Want," in *Time*, October 1, 2007, http://www.time.com/time/arts/article/0,8599,1666973,00.html.
[562] Jeff Leeds, "EMI to Drop Digital Locks in Web Sales," in *New York Times*, April 3, 2007, http://www.nytimes.com/2007/04/03/technology/03music.html?_r=1&oref=slogin.

Michael Carrier points out that this type of market shift should not be considered an aberrant anomaly, and suggests that copyright is often only needed for very particular forms of cultural production to remain profitable.

> Although certain works, such as large-budget motion pictures, might not be created absent copyright protection, many others would. For many works, noncopyright–based incentives such as lead time, network effects, and sales in advance of entering the market are more important catalysts for creation. Further questioning the need for copyright, many forms of creative expression–such as fashions, new words and slogans, jokes, magic tricks, and the food industry–have flourished in the absence of protection.[563]

The problem that has arisen over time is that the promotion of creative work through copyright and artificial exclusivity has come to be seen as an increasingly essentialized notion in the discourse of contemporary cultural production. Considering that there is a dearth of statistical proof showing the merits of perpetuating intellectual property rights, it remains very possible that rather than providing for the survival of the artists and driving the creation of works that benefit the public, the only outcome of establishing cultural products as ownable and controllable property is the granting of increased control and profits to the corporate media oligarchy. Nevertheless, because this model of cultural promotion is now so deeply rooted in United States legal structures–dating all the way back to the Constitution–it will continue to play an important role in the establishment of

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[563] Carrier, "The Propertization of Copyright," 351.

legal precedents, and the concept of culture as property will no doubt remain ubiquitous for the foreseeable future in economic, legal, and cultural discourse.

Tangibility, Ephemerality, Productivity, Theatre

Because it appears that intellectual property rights are here to stay, despite potential inherent flaws, it becomes that much more important to consider how the legal structures that define them promote certain types of cultural production over others. Perhaps the parameter for copyright protection that is most influential when considering how theatrical production in particular is uniquely affected by intellectual property rights is fixation in a durable good. As I discussed in chapter one, the lack of durability of the theatrical commodity is problematic when considering its value within capitalist systems, and that is in large part due to the inability of the ephemeral vanishing commodity to be fixed in a durable form. Methods of fixation, such as celluloid, VHS tapes, cassettes, and floppy disks, have been developed for films, music recordings, television and radio shows, web pages, etc. allowing them to be made into durable and vendible commodities. As these physical media for fixation have been developed, it has made it more profitable for investors to enter the cultural marketplace, because whereas making culture had previously proven to be an unproductive capital investment, cultural commodities can now be made utilizing the same modes of production used in making cars and refrigerators. It has followed that these capitalist interests have wanted the protection of copyright to help enhance the value of these cultural commodities. Ronald Bettig explains the role that copyright places in the process of fixing cultural works to tangible media.

> A motion picture can be bundled with a private, tangible good: for example, when placed on a videocassette. Serving an additional customer requires the assembly, taping, and distribution of an additional prerecorded videocassette, but the motion picture itself does not have to be reproduced. The nature of information goods to have high fixed costs and relatively low reproduction and distribution costs is the primary reason that copyright protection is required. . . . Copyright protects an owner's exclusive rights to authorize any copying or derivative works so that fixed costs can be recovered and profits made.[564]

These exclusive rights are important because they give the capitalist monopoly control over the distribution of the tangible version of the cultural product, thereby allowing him/her to maximize surplus-value and make cultural labor more productive. Furthermore, creative commodities afford the capitalist with the possibility of a continual stream of revenue because they are easily reproduced and are durable over time. Richard Caves in *Creative Industries* (2000) points out that even after the initial deployment of a creative commodity

> the owner of a durable creative good can store and retrieve it periodically, to beguile new consumers or refresh the golden memories of others. That access to reuse over time parallels the creative product's status as a proprietary public good at any point in time. The owner can–more or less simultaneously–pursue its rents among a number of distinct markets. Those markets may be fenced off by national or other boundaries, or

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[564] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 93-4.

> separated by transforming or repackaging the product in a way that differentiates it from the core creative good or its other embodiments.[565]

Because of this intrinsic durability and resulting value, the creative good that can be fixed and easily reproduced has quickly become as important a commodity in the larger economy as it has within the cultural marketplace. This value is why corporate cultural producers have been so active in the extension in the scope and duration of copyright laws and why those laws have been extended to cover motion pictures, audiovisual works, sound recordings, and why debates continue to take place over how cultural products of the digital age will be protected. As these forms of cultural production have become more profitable via fixation and copyright protection, investment has increased in these sectors of the marketplace and they have come to dominate American cultural production. These investors have at the same time actively influenced the legislative development of intellectual property laws to protect the commodities they produce and to ensure their future prosperity. The result has been tremendous growth over the last hundred years in those cultural sectors that have been able to take advantage of the economic possibilities of commodifiable culture, and the development of legislation that perpetuates the growth of this portion of the field of cultural production.

The importance of the ongoing discourse surrounding intellectual property and theatre is closely connected to this notion of what can and cannot be ownable, how one perceives culture as valuable, and how those perceptions are manifested legally and economically. Traditional property rights (i.e. the ownership of land, a home, a car, or other physical objects) are more readily understood and enforceable because they protect

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[565] Richard E. Caves, *Creative Industries: Contracts Between Art and Commerce* (Cambridge, Mass.: Harvard University Press, 2000), 271.

the individual's rights to own something concrete and easily delineable. But the assets that are quickly becoming propertized in the formulation of intellectual property rights do not necessarily translate to a concrete, tangible object. This raises critical questions as to how the law has and will continue to develop to protect these cultural commodities. You can own, feel, and see a car, house, or piece of property, but what does it mean to own a film, choreography, or piece of theatre? Where does a cultural commodity begin and end? Are there components within each cultural product that can be isolated and owned separately? Does an author own words or sounds or images when they are otherwise uttered and interpreted? In the end the answers to these questions are shaped by our cultural perception of the distinction between the work of art as a social practice and the work of art as a commodity, an object. Raymond Williams has discussed how this dichotomy affects cultural theory, and his comments on that debate ring true when considering cultural goods in the fields of cultural and theatrical production.

> Of course it is at once argued that the work of art *is* an object: that various works have survived from the past, particular sculptures, particular paintings, particular buildings, and these are objects. This is of course true, but the same way of thinking is applied to works which have no such singular existence. There is no *Hamlet*, no *Brothers Karamazov*, no *Wuthering Heights*, in the sense that there is a particular great painting. There is no *Fifth Symphony*, there is no work in the whole area of music and dance and performance, which is an object in any way comparable to those works in the visual arts which have survived. And yet the habit of treating all such works as objects has persisted because this is a basic

> theoretical and practical presupposition. But in literature (especially in drama), in music and in a very wide area of the performing arts, what we permanently have are not objects but *notations*. . . . If we suppose that what is produced in cultural practice is a series of objects, we shall, as in most current forms of sociological-critical procedure, set about discovering their components. . . . We then isolate certain features which we can so to say recognize *in component form*, or we ask what processes of transformation or meditation those components have gone through before they arrived in this accessible state. [566]

Because most cultural production has historically been a social project requiring the inseparable contributions of numerous individuals, it is very difficult if not impossible to break works down into definable objects that when put together reconstitute the whole of the cultural work. For this reason, the discourse surrounding intellectual property rights and creative works is conflicted over the same problematic distinction between objects and social practices that Williams is addressing, and is one of the reasons why the language in copyright and other intellectual property laws continues to struggle to give concrete and indefatigable definability to these inherently abstract products of creative work.

Despite the fact that these questions about the ability to own culture remain unresolved, intellectual property laws nevertheless continue to be cobbled together to suit the changing cultural and economic landscape. An important facet of the development of

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[566] Raymond Williams, "Marxist Cultural Theory," in *Media and Cultural Studies: Keyworks*, ed. Meenakshi Gigi Durham and Douglas M. Kellner (Malden, Mass.: Blackwell, 2001), 164.

intellectual property as a part of our capitalist system is that whomever has sufficient economic and/or political capital can play a prominent role in the development of intellectual property legislation. Over the past thirty years in particular, intellectual property legislation has been affected by the lobbying of the few companies and organizations within the culture industries that have sufficient resources and influence to have the laws shaped to protect their particular interests. The Telecommunications Act of 1996,[567] which reallocated phone system ownership and significantly deregulated the radio industry, and the Digital Millennium Copyright Act (DMCA),[568] which criminalized the development of software to subvert DRM mechanisms and increased punishment for copyright infringements via the Internet, both passed through Congress speedily, despite protests from groups concerned about the impact these bills would have on the free flow of information in our culture. The ability of these bills to pass so quickly was due in part to the coalescence of interests in the industries with those of congressmen on Capitol Hill. Simon Frith has noted that

> the entertainment industries are particularly dependent for their profitability on laws that restrict the uses to which a work may be put and define those which must be licensed by the copyright holders. A recurring problem for the entertainment industry, then, is how to rewrite copyright law to take account of changing circumstances.[569]

Producers of intellectual property recognize that if they are to protect their economic standing they must actively engage in shaping the legislative parameters of intellectual

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[567] *Telecommunications Act of 1996*, *U.S. Statutes at Large* 56 (1996): 110.
[568] *Digital Millennium Copyright Act*, *U.S. Statutes at Large* 112 (1998): 2860-918.
[569] Frith, "Entertainment," 206.

property in a way that maximizes the profitability of their products. For this reason, media conglomerates such as Viacom, Time Warner, and Disney and industry organizations such as the Motion Picture Association of America and the Recording Industry Association of America actively lobby when new laws are being debated in Congress, because they realize that they have the opportunity to protect their interests and enhance the value of their products. Furthermore, recognizing that the copyright laws are comprised of vague and debatable language and that there are numerous gray areas that existing legislation does has yet to specifically address, these companies and organizations have been quick to file suits that protect their interests.

Over the past thirty years there are numerous examples of corporations using the courts to set legal precedents that they believe will benefit their businesses in the long run. One prime example of the importance of such cases took place in 1976 when Universal and Disney, worried about the impact that home videotape machines such as the Betamax would have on the exclusivity of their intellectual properties, filed suit against Sony Entertainment and home taper William Griffiths. The suit claimed that by recording a show off of the television using his videotape machine, Griffiths had violated copyright law and that by developing the technology to allow such recording Sony was also responsible. Sony would win the initial case, but the issue carried on for more than seven years, as the decision was reversed by the court of appeals, and then reversed back by the Supreme Court in 1984, which decided that in the case of home recording Disney and Universal were not able to prove that their businesses were harmed and that private use of VCRs were protected under fair use. The case had the desired effect, though, as legislation was written during the course of the case that provided some protection for

media conglomerates and established a market for videotape machines and rentals that the media firms were soon able to control economically.[570] This suit, along with subsequent suits by the Recording Industry Association of America against Napster over peer-to-peer file sharing of copyrighted material[571] and Viacom's suit against Google for allowing copywritten material to be broadcast over YouTube,[572] have allowed dominant publishers and producers to further cordon off the music, movies, and books they develop from unfettered public consumption and use this restricted access to reap maximum profits from their initial investments.

The legislative process that shapes the breadth and definition of intellectual property has attempted to outline what types of cultural products will be protected as much as how those products will be protected. The imperfect solution that legislators have used to determine how intellectual property should be delineated as a concrete and ownable commodity has been to recognize those products that result from creative work based on their tangibility and fixation in a physical medium. The 1976 revision of United States copyright law states that

> Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced,

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[570] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 158-81.
[571] Matt Richtel, "Appellate Judges Back Limitations on Copying Music," in *New York Times*, February 13, 2001, http://query.nytimes.com/gst/fullpage.html?res=9B03E7D61E31F930A25751C0A9679C8B63&scp=5&sq=napster+recording+industry+association&st=nyt.
[572] Miguel Helft and Geraldine Fabrikant, "WhoseTube?; Viacom Sues Google Over Video Clips on Its Sharing Web Site," in *New York Times*, March 14, 2007, http://select.nytimes.com/search/restricted/article?res=F50A15F83A550C778DDDAA0894DF404482.

> or otherwise communicated, either directly or with the aid of a machine or device.[573]

The tangibility of a creative work is a critical aspect of the development of intellectual property as a legal and economic concept because it provides the courts with a parameter by which to define what is and what is not a protected cultural commodity. The choice of tangibility as a tool for determining what types of cultural goods are and aren't protected by copyright makes sense considering the economic frame of capitalism in the United States. As Ronald Bettig points out

> When it comes to the domains of information and culture, the logic of capital drives an unending appropriation of whatever tangible forms of intellectual and artistic creativity people may come up with, as long as this creativity can be embodied in a tangible form, claimed as intellectual property, and brought to marketplace.[574]

Considering this trend and the fact that American copyright laws originated from statutes written to protect the unauthorized reproduction of books, it becomes clearer that contemporary copyright legislation has developed not to protect creative expression, but rather the tangible and marketable products of such a creative act. In fact, the Copyright Act of 1976 is clear in laying out specific definitions for what it means when something is either "created" and/or "fixed" as a cultural product.

> A work is "created" when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that

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[573] U.S. Copyright Office, *Circular 92: Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code*, 8.
[574] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 34.

> has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.[575]
>
> A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is "fixed" for purposes of this title if a fixation of the work is being made simultaneously with its transmission.[576]

Using these definitions, a creative work is only afforded protection under the law once it is "fixed" in a tangible medium. Furthermore it is only viewed as having been "created" once said fixation has taken place. This creation and fixation in a tangible medium, whether it is the typing of a story on a computer or the filming of a movie scene with a video camera, provides for automatic copyright protection, whether the author has registered the work with the Copyright Office of the Library of Congress or not. In fact many authors only register their works when they plan to file suit for a violation of their copyright.[577]

The challenge for theatre within this legal framework lies in the importance of being able to fix a cultural product in a tangible medium. The expression that results

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[575] U.S. Copyright Office, *Circular 92: Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code*, 3.
[576] Ibid.
[577] Vaidhyanathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity*, 24-5.

from the "creation" of theatrical performance cannot be fixed in a tangible medium, since theatre, and other cultural forms that center on live performance, are by their nature ephemeral and unable to be fully recorded or reproduced. To put this condition of theatrical production in a more complete context, let us return to Frith's history of music through storage and retrieval and start to reconsider the political economic place of the theatrical experience. Frith has argued that music has progressed from being stored in the mind of the performer to the page of the score and then subsequently to carrier technologies such as records, tape, and optical discs. Each of these stages of progression can be associated with the development of technologies, such as the printing press and phonograph, which allowed for new methods of fixation. As such, the experience of listening to music has been able to be stored more completely and with higher fidelity as time has passed. This progression has allowed for the ownership of the commodity of music to be more clearly defined and has strengthened the legal position of music publishers and producers who wish to protect and profit from their intellectual property.[578]

In *Liveness* (1999) – one of the most thorough investigations of the question of the place of live performance in relation to our technological media-centric society – Philip Auslander has pointed out that "when live performances are fixed through writing, recording, or documentation, only the underlying text is protected against unauthorized usage, not the live performance as a text."[579] So, if we compare theatre to the historical development of the musical commodity, the theatrical commodity remains in the era of the score, where only portions can be sufficiently recorded, reproduced, and resold (the

[578] Frith, "Entertainment," 204-5.
[579] Auslander, *Liveness: Performance In a Mediatized Culture*, 135.

text, partial video recordings, scores, etc). Playwrights can profit from their plays and designers may be able to protect their scenic creation, but for the actors and directors, the intellectual work that they do remains unfixed and irretrievable under the auspices of copyright law. Auslander has further noted that our cultural marketplace has developed in such a way that "live performance is excluded from copyright protection because of the belief that, as an unfixed mode of cultural production, it cannot be copied and therefore lies outside the economy of reproduction."[580] The importance of theatre lying outside our economy of reproduction comes from the functionality of copyright within the cultural marketplace. Because of theatre's specific temporality and the ability of theatrical producers to limit viewing through ticketing and the box office, theatrical production affords the producer with the scarcity and exclusivity that copyright laws artificially generate. For this reason the fact that live performance laid outside of the scope of copyright protection was not significant before the twentieth century. Reproduction of cultural products up to that point remained a relatively small aspect of the cultural economy since books were the only significant form of culture mechanically reproduced for mass consumption. But as reproduction came to more media during the twentieth century and culture became further commodified and propertized, it quickly became apparent that being able to fix a work in a tangible medium would increase its value, allowing the producer to extend the life of a cultural product and increase its revenue generating capacity. The resulting commodification of culture and increased propertization of creative work is one reason why contemporary discourse surrounding intellectual property is so much more complex than the debates regarding copyright in the

[580] Ibid., 136.

eighteenth and nineteenth centuries. Furthermore, this is how the concept of intellectual property has shaped the cultural economy, impacted the development of hierarchies of cultural valuation, and affected the economic possibilities of theatre as a medium.

An important aspect of parsing out theatre's place within the discourse of intellectual property lies in analyzing how "liveness" provides theatre with value in the cultural marketplace and what role copyright laws play in that valuation. The ephemerality of live performance has always been and will always remain an important part of the theatrical tradition. Artists in the theatre often speak of the viscerality of the performer-audience connection, the uniqueness of the fleeting moment of performance, and the ghosts and memories of the stage. Furthermore, within theatre and performance studies, ephemerality is a central point of study for those interested in the aesthetics and phenomenology of the theatrical experience. One of the most invested studies and explorations of the value and importance of the ephemerality of live performance comes from Peggy Phelan in her book *Unmarked* (1996). In *Unmarked*, Phelan argues that the ephemerality of performance is not just an important part of the live experience but in fact marks it as a site of resistance to the dominant capitalist paradigm, the culture of commodification, and the economy of reproduction. Phelan has written that

> performance's only life is in the present. Performance cannot be saved, recorded, documented, or otherwise participate in the circulation of representations: once it does so, it becomes something other than performance. To the degree that performance attempts to enter the economy of reproduction it betrays and lessens the promise of its own

> ontology. Performance's being, like the ontology of subjectivity proposed here, becomes itself through disappearance.[581]

Phelan continues, noting that performance "clogs the smooth machinery of reproductive representation necessary to the circulation of capital"[582] due to its ontological non-reproductivity. For Phelan, this ephemerality marks performance as essentially anitcapitalist, and as a result any attempt to integrate performance into the economy of reproduction will fail as the performance's invisibility allows it to "elude regulation and control."[583]

Much of Auslander's *Liveness* directly addresses Phelan's work and questions the veracity of her claims about performance's place as a site of resistance, and its relation to legal conditions. Auslander has noted that

> Copyright law shares with some performance theorists the premise that live performance exists only in the present and has no copy, that it is constituted by an ontology of disappearance: that is why it is not protected under copyright laws. To copyright law, an undocumented performance is less than invisible: in as much as it has no copy, it was never created; it does not exist at all. As we have seen, even performance that has been fixed through reproduction is not actually governed by copyright – only the rights in the underlying texts and the right to reproduce the fixation are protected. . . . It is fair to say, then, that because live performance cannot be copyrighted, it escapes ownership, commodification, and other

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[581] Phelan, *Unmarked: The Politics of Performance*, 146.
[582] Ibid., 148.
[583] Ibid.

> processes of regulation within a reproductive capitalist economy. Whether that makes performance a site of meaningful resistance to that economy is more problematic. If performance may be said to slip through the legal net of copyright, it does so because that net was designed specifically not to catch it. Whatever resistance performance's ontology of disappearance may enable has been allowed it by the very cultural and political discourses it is said to resist.[584]

Auslander's comments are useful and important because of how they describe where intentionality comes into play when considering the place of performance/theatre in relation to copyright laws. One of the problems with Phelan's argument is the subjectivity that she ascribes to performance. According to Phelan, performance itself resists capitalism, is able to "attempt to enter the economy of reproduction," and can betray its own ontology. Phelan is not talking about how performers are doing these things but rather how performance itself is resisting and opposing. But the conditions that copyright laws address encompass the actions of individuals and groups and the products of their labor, not the ontology of an artistic phenomenon. Furthermore, laws are not developed outside of the influence of special interests and those in possession of economic and political capital; they are the result of discussion, negotiation, and compromise between individuals and economic and political institutions. Take the choice of tangibility as the defining characteristic of the copyrightable property. While tangibility may seem a logical choice for establishing the boundaries of copyright considering the inherent characteristics of commodities and the cultural marketplace, it

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[584] Auslander, *Liveness: Performance In a Mediatized Culture*, 150-1.

nevertheless remains an arbitrary and artificial parameter that is established and maintained by laws. These laws are the product of a legislative process that evaluated the cultural marketplace and decided that the interests of cultural producers and the cultural marketplace would be served best by establishing tangibility as the primary parameter of copyright eligibility. This is why it is important to remember that the lack of protection afforded to live events does not stem from performance eluding and resisting the control of the capitalist economy of reproduction, but rather is at least partially a result of the priorities of those people responsible for shaping intellectual property rights. Performance remains unprotected not because of ontological oppositional characteristics, but rather because those people with the money, power, and influence to make the arbitrary decision as to which cultural commodities are protected by intellectual rights and which are not have not made theatre a focus of their lobbying efforts. By remaining more focused on providing a spectatorial spirit of resistance and opposition to the performance event, the performance theorist sells short the importance of the social, economic, and political circumstances of that event, and is unequipped to reflect upon how such a performance amidst those circumstances will ultimately impact the producers and consumers of that creative work.

So, what is the result of the absence of protection for live performance in the development of intellectual property rights? As Auslander states,

> Live performance's temporal evanescence does remove it from the purview of copyright law. Even when performances are recorded, the underlying text is copyrighted but not the *performance* of the text. Therefore, it is fair to say that performance *qua* performance has so far

> escaped legal definition as a cultural commodity and is unregulated to that extent.[585]

But, according to the logic of capitalism, all aspects of cultural life will increasingly be brought within the purview of capital circulation and it would seem inevitable that someone will find a way to fit the ephemeral experience of live performance within the scope of copyrightable commodification. There is of course no clear and simple explanation as to why such an expansion of copyright has yet to occur, and it is also uncertain how the protection of live performance as a commodity would affect the political economic standing of producers of theatre. Nevertheless, as the logic of capital continues to drive the voracious expansion of intellectual property rights, there may yet come the day when theatrical and other live performances are protected by copyright just as more easily recordable, tangible media are today. Undeniably, such a legal precedent will have a significant effect on the political economy of theatrical production.

The Possibilities of Theatre as a Commodity

"Theater is hard. We live in a world of commodity objects and theater is not a commodity object."[586] This quote from Tony Kushner is and is not true. Considering the many challenges facing theatrical producers and the difficult political economic conditions of the cultural marketplace, one can definitely argue that working in the theatre is hard. But the second part of Kushner's quote is a little more uncertain. We certainly live in a world of commodity objects, and the theatrical performance is not a commodity object in that it is ephemeral and not an object. But theatre does have

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[585] Ibid., 161.
[586] Liza Weisstuch, "*Angels* Director Takes Flight," in *Harvard University Gazette*, April 7, 2005, http://www.hno.harvard.edu/gazette/2005/04.07/07-kushner.html.

exchange value since a fee can be charged for access to the theatrical event and therefore does have the capacity to generate surplus value for the theatrical producer–even if the inherent unproductive nature of performance makes it more difficult than other cultural endeavors. The ticket may be the commodity object, but the content to which it provides access is what generates the value. Furthermore, there are certain objects, playscripts, musical scores, video recordings, that come out of theatrical production that have been commodified. Kushner, as a playwright who receives licensing fees for the use of his scripts, most of all should be aware of the possibility of theatre resulting in commodity objects.

The remainder of this chapter examines just how it is possible to generate revenue from theatrical commodities and looks at examples of theatrical producers who profit from the limited ways in which the protection of intellectual property rights and the commodification of culture provide earning potential for theatrical producers. These theatrical producers have adapted to new modes of distribution of cultural works to maximize the economic possibility of certain theatrical commodities, even if they are only the artifacts that remain after the live performance has evanesced. Along with methods of exploiting these commodities, this chapter will address how theatrical producers have attempted to best exploit the economic, symbolic, and political capital they do have in an attempt to make the practice of creating theatrical works a more productive expenditure of resources and cultural labor.

Despite the ontological dilemma presented by the ephemerality of live performance, theatre does in fact have a number of characteristics that make it valuable as a medium by which to turn intellectual property into a saleable commodity. In fact,

the ephemerality of theatrical performance is a characteristic of the medium that is valued by owners of intellectual property. Oliver Gerland points out that despite claims to the contrary, performance is not the opposite of a capitalist economy that circulates cultural objects. In fact, Gerland argues, "copyright owners have long been attracted to performance precisely because it is evanescent. The fact that it leaves no visible trace has made this method of disseminating compositions an excellent way to profit from them while protecting against piracy."[587] In this way the inherent ephemerality of theatre precludes the need to create the artificial exclusivity that most copyright laws are engineered to provide, as it is impossible to completely reproduce the theatrical commodity. In fact, Nicholas Garnham[588] and Ronald Bettig,[589] both list the box office mechanism as one way that cultural producers limit the tendency of creative works to act as public goods. The ability to control the theatrical commodity through a mechanism as simple as a box office has probably been in no small way an important motivator for those media conglomerates who have recently entered into the field of theatrical production. Considering the challenges they face protecting their property during an era where pirated DVDs and CDs abound, illegal copying and downloading via peer-to-peer

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[587] Oliver Gerland's piece in *Theatre Journal* is an intriguing investigation into the interpretation of performance in copyright law and how the term "to perform" complicates copyright law, particularly as it conflates the actions of an individual and the broadcasting of information via technological means. While it does not specifically address the difference between tangibility and ephemerality within the political economic parameters discussed in this work–Gerland's article is aimed at developing a new methodology within performance studies–it does reveal how copyright laws establish multiple meanings for performance and how that creates complications within the legal system as well as compelling implications for how performance can be studied. Oliver Gerland, "From Playhouse to P2P Network: The History and Theory of Performance under Copyright Law in the United States," in *Theatre Journal* 59, no. 1: 94.
[588] Garnham, "Contribution to a Political Economy of Mass-communication," 245-6.
[589] Bettig, *Copyrighting Culture: The Political Economy of Intellectual Property*, 81-2.

networks flourishes, and digital rights management is driving away customers, it is not all that surprising that the simplicity of controlling access to a localized and temporally-specific live performance would make theatre a valued method of content delivery. But compared to the cost-benefit ratio of reproducing a film or rebroadcasting a television show, the iterative expenses required to keep a theatrical production running from night to night and week to week are much higher and the possible audience much smaller. These characteristics mean that no matter how easy it is to protect intellectual property in the theatrical field or how elegantly simple the box office mechanism is for defeating the characteristic of creative work to act as a public good, theatrical production remains a relatively expensive endeavor, and therefore not a very productive use of labor or investment of capital.

The relative expense of theatrical production and the evanescence of the primary commodity of theatrical production, the live performance, does not mean that there are not artifacts and objects that result from the process of producing theatre that result in commodifiable intellectual properties. The most valuable of these intellectual property commodities are undoubtedly the written notations of the language and/or music created for a theatrical production. Because theatrical tradition is so heavily invested in the restaging of successful works, these notations, whether they are the playscript of a drama or the book, lyrics, and music of a musical, provide for a lucrative licensing economy within theatrical production. Simon Frith points out that

> the most significant source of income in the entertainment industry is not the manufacture and exchange of good to individual customers for cash (though this is obviously important) but the fee income from licensing the

> rights to various uses of the property (including the right to put it on a carrier–a record, a tape–to be sold to the public on an individual basis).[590]

As was discussed in the chapter on authorship, among all theatrical producers playwrights have been most capable of taking advantage of the economic benefits of licensing their contributions to the production process. Under early United States copyright laws playscripts were protected as publications akin to books, and as such were unable to be copied without consent of the playwright. However it was not until 1856 that the playwright was afforded copyright over performances of his/her script.[591] In fact, unpublished plays were not protected under copyright laws until that time and could be performed by anyone.[592] Since 1856, playwrights have not only been able to control publication of the actual script, as book writers and novelists do, but are also able to control any performances of their work, as long as they still hold the copyright. This protection has enabled playwrights and publishers, such as Samuel French and Dramatists Play Service, to establish a market based on the licensing of playscripts that is in many ways the foundation of theatrical production in America because all theatrical productions, except plays still in development or in the public domain, fall under its jurisdiction.

Playscripts have become the dominant artifact of theatrical production for a number of reasons. First are the questions of authorship and ownership that were addressed in chapter three. Secondly, because playscripts (as well as lyrics and music) are easy to archive, reproduce, and do not require additional technology to view, they are

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[590] Frith, "Entertainment," 207.
[591] *Act of August 18, 1856*, *U.S. Statutes at Large* 11 (1856): 138.
[592] Gerland, "From Playhouse to P2P Network: The History and Theory of Performance under Copyright Law in the United States," 79.

manageable and easily distributable cultural commodities. Lastly, the traditions of developing theatrical productions out of written texts has allowed for the ascendancy and perpetuation of the dominant literary theatre in the United States, which looks to these scripts as the points of inspiration from which all theatrical creativity develops. Within this production model, publishers act as representatives for the playwrights, charging a fee for the purchase of copies of the scripts (for actors, directors, stage managers, etc.), setting licensing fees for each performance of the script (whether box office receipts are collected or not), and/or collecting royalties (usually somewhere between 3 and 10 percent)[593] on any gross box office receipts collected by the theatre company licensing the script. Playwrights can also receive royalties and fees if a cultural producer who wishes to create a derivative work or transfer their work into another medium, such as when a studio wishes to make a play such as *Proof* into a film licenses the work. Similar structures exist for musicals, where the book writer, lyricist, and composer receive fees and royalties when their works are restaged, adapted, or transferred into another medium.

Because scripts, lyrics, and music are the only real theatrical commodity of economic consequence (outside of the performance itself) and the royalty structure is the only economic mechanism that provides theatrical producers with remuneration after the end of performances, contractual agreements that provide licensing and royalty rights to contributors other than just the playwrights, lyricists, and composers, are becoming more and more common. In lieu of intellectual property rights, these contractual agreements allow theatrical producers other than playwrights to receive the same kind of enduring compensation for their contributions to a successful production. In this way the other

[593] Gardner, "Curtain Is Rising on N.Y. Theater Revenue Disputes."

members of the collaborative practice of creating theatre are able to stake a claim to having played a role in the development of a work, since most of the proof of their work is lost at the final curtain. As a result, most directors of new musicals on Broadway now demand language assuring they will receive subsidiary royalties on any future productions is in their working contract. In fact, during the *Einhorn v. Mergatroyd Productions* case, Barbara Hauptmann and Pam Berlin of the Society of Stage Directors and Choreographers issued a statement affirming that

> The SSDC believes that in those cases where the director and possibly the choreographer have played a fundamental, even critical role in the creation of the success of the play, they should be entitled to participate in the income generated from productions that would not likely have occurred without their artistic imprint on the original, authoritative production.[594]

Some producing companies have even looked into creating contractual language that would guarantee them a percentage of any future royalties. In 2006, the Eugene O'Neill Theater Center in Waterford, Connecticut considered instituting a policy that would impose such a royalty structure on any plays presented there, only to be thwarted by an Internet backlash by playwrights who threatened to boycott the center. After realizing it had perhaps gone too far, the center decided to avoid the impending public relations nightmare and abandoned the proposed contractual changes. [595]

The relative success of directors, choreographers, and even some actors, such as Nathan Lane upon his return to *The Producers*, in receiving royalties and/or subsidiary rights for their contributions to a production, is significant in considering the political

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[594] Ibid.
[595] Ibid.

economy of theatrical production because it has challenged the privileged position of the playwright in the theatrical field, threatened to greatly affect the economic potential of his or her work, and caused instability of the valuation of the playscript as a commodity. Under this developing production model, it is no longer the "genius" of the playwright as embodied by the playscript that is considered the only remunerable and durable product of the production process. Other theatrical producers who collaboratively contribute to the production of theatre, are being recognized within the theatrical community for the value of their cultural labor. The directors, choreographers, and producing companies, which are not afforded by law the intellectual property rights necessary to create the artificial exclusivity that provides economic durability for their contributions, are initiating their own form of market correction and through contractual agreements are finding ways to economically benefit despite a blind spot in the commodifying logic of capitalism.

For the playwrights, this represents a disconcerting shift in the functioning of the field. As more theatrical producers are guaranteed royalties and subsidiary rights, producing companies, looking to compensate for the loss of revenue, are pressuring playwrights to lower their royalty percentages so that there are enough funds to attract high-profile directors with a track record of economic success. Ralph Sevush of the Dramatists Guild of America argues that "producers are the employers. . . . The director's compensation should be coming from them. Whether or not they are sufficiently successful, however, doesn't mean they should be turning to authors, who are more easily picked off one at a time."[596] The reason that producers are turning to the playwrights to

[596] Ibid.

make up this financial difference is that due to their legal standing under labor law as independent contractors and not employees, playwrights are not allowed to act collectively and therefore have a relatively weak bargaining position. Ironically, the playwrights' status stems from the fact that they are copyright holders and they license the use of their work rather than get paid for specific labor. They are not afforded the same legal protection under the National Labor Relations Act as other theatrical employees, such as stagehands, designers, and actors, who are allowed to unionize. This legal standing ultimately prevents playwrights from collective bargaining for a standard contract for all playwrights or being able to legally strike, and also distinguishes playwrights from television and film writers who are recognized as employees because the production companies retain copyrights. Having recognized the challenges that playwrights face as independent contractors, the Dramatists Guild, which is limited in the ways it can represent playwrights, has tried to improve working conditions by lobbying for legislative changes that would provide playwrights with the same legal protection as other employees in the field of theatrical production. One of the Guild's most significant recent lobbying actions was an attempt to receive a Congressional exemption from the anti-trust laws that prevent playwrights from being able to act as a group.

The Dramatists Guild's Attempts at Legislative Activism

Between 2002 and 2005, the Dramatists Guild, working in concert with some of the more senior and respected members of Congress, attempted to get legislation passed that would "modify the application of the antitrust laws to permit collective development and implementation of a standard contract form for playwrights for the licensing of their

plays."[597] The initial bill, titled The Playwrights Licensing Relief Act of 2002, was introduced by Senators Orrin Hatch of Utah (himself a lyricist with an interest in intellectual property rights) and Charles Schumer of New York in a hearing held on the Elizabethan Stage of the Folger Shakespeare Library in Washington, D.C. Along with the statements of the two senators, testimony was made by Stephen Sondheim, Marsha Norman, Alfred Uhry, and John Weidman, who at the time was the president of the Dramatists Guild. The Senators and four theatre artists argued that like other workers in the field of theatrical production, playwrights should be able to collectively bargain with producers over minimum licensing fees and royalty rates.

The legislation was an attempt by the Dramatists Guild to gain a legal bargaining position from which they could renegotiate the Approved Production Contract (APC), which Guild members had used in negotiations with theatrical producers on Broadway since 1985. Despite the fact that the contract had been created outside of the purview of federal labor regulations, the producers had agreed to its use and it had become an industry standard. The Guild had also developed a process of certification by which it could determine whether the Guild member's contractual terms met the minimum standards of the APC. If the contract did not meet the terms, either the contract had to be renegotiated between playwright and producer, or the playwright could resign from the Guild and accept the uncertified contract. Producers argued that these stringent terms made the APC, which had been structured as a suggested contract, into mandatory terms

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[597] "Playwrights Licensing Antitrust Initiative Act of 2005," in *The Orator.com*, http://www.theorator.com/bills109/hr532.html.

of agreement akin to a collectively bargained union contract.[598] The playwrights argued that their inability to revise the conditions of the agreement for the twenty-first century cultural marketplace made it difficult for playwrights to make a living and that producers were exerting pressure on young writers with so called "take-it or leave-it" contracts, which forced script changes and lower royalties and licensing fees. The producers on the other hand argued that the APC had developed into just such a "take-it or leave-it" contract, and that a standard contract that forced producers to play an unestablished playwright the same as a big-name writer, such as Sondheim, was an unfair economic imposition on their business practice, especially since the legality of said contract under antitrust laws could be drawn into question.

After this initial submission of the bill during the 107th Congress died in committee, three subsequent submissions, one in the Senate and two in the House under the new title "The Playwrights Licensing Antitrust Initiative Act," also failed to pass during the 108th and 109th Congresses.[599] Each new iteration of the bill was submitted by senior members of Congress with high visibility, such as Patrick Leahy, Ted Kennedy, Barney Frank, and Henry Hyde, and further testimonies were made both for the bill–by Arthur Miller, Wendy Wasserstein, as well as Sondheim and Norman again–and against the bill–by Gerald Schoenfeld chairman of the Shubert Organization and League of American Theatres and Producers, and the producer Roger Berlind. After the fourth submission failed to become law, no further attempts were made at obtaining antitrust

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[598] Senate Committee on the Judiciary, *S. 2349: The Playwrights Licensing Antitrust Intitiative Act: Safeguarding the Future of American Live Theater*, 108th Cong., 2nd sess., April 28, 2004.

[599] For the complete language of the bill, which was the same in all its iterations, see Appendix III.

exemption for playwrights. Nevertheless, the arguments made in favor of and against application for this exemption provide a clear example of not only the difficult position that playwrights are in with regards to their labor status, but also how the relative lack of economic and political capital of theatrical producers makes it difficult for them to enact the type of legislative change necessary to alter the political economic conditions of the cultural marketplace.

The main challenge that the playwrights faced in stating their case was convincing the members of Congress that the economic fate of young, up-and-coming playwrights was so dire that an exemption from antitrust laws should be made that would allow playwrights to act collectively. Overcoming Congress's disinclination to provide exemptions to antitrust law was particularly difficult in this case because the economic gain that the exemption would provide was ambiguous. In his statement, Senator Leahy even stated, "I always worry about creating any kind of an antitrust exemption. I am reluctant to do so. I think Congress made a very bad mistake, incidentally, in creating one for baseball. I think we have had some real problems as a result. I think we ought to get rid of the darned thing."[600] Nevertheless, the statements made by the Senators and Representatives made it clear that they were cognizant of the economic challenges that playwrights were facing, especially in light of the economic pull of Hollywood. In the 2002 hearings, Senator Schumer commented that

> In a marketplace increasingly dominated by large corporations, individual playwrights need to be able to stand together to collectively negotiate contracts. . . . Every day, the stage loses talented authors to television and

[600] Senate Committee on the Judiciary, *S. 2349: The Playwrights Licensing Antitrust Intitiative Act: Safeguarding the Future of American Live Theater*.

> to the movies, where the economic rewards are greater and more certain and where writers enjoy significant legal protection.[601]

Marsha Norman, who teaches at Julliard, pointed out that an increasing number of the top playwrighting fellows that graduate from that institution are going directly into film and television and not attempting theatrical careers. Norman also pointed to a number of mid-career playwrights, such as Warren Leight, who wrote *Sideman* then moved on to *Law and Order*, Aaron Sorkin, who had written *A Few Good Men*, gone to television, and written *The West Wing* (but returned to Broadway in 2007 with *The Farnsworth Invention*), and *Six Feet Under* writer Alan Ball, as examples of more established playwrights who turned to the West Coast for greater economic prosperity and certainty. [602] Even Schoenfeld, as the voice of the producers, acknowledged that playwrights were turning to the movies and television for employment, but did not agree that it was due to the pressure that the Guild claims producers are exerting on young playwrights. "Candidly, I don't know of any playwright that has abandoned the theater under the circumstances that have been described by the Guild. They leave the theater because the advantages financially are much greater in television and in movies."[603] In fact, Schoenfeld argued, because of the way the Guild deploys the APC, "if there are any restraints upon the production of plays and musicals, they are imposed by the Guild and

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[601] Robert Hofler, "Bill Dramatizes Playwrights' Effort," in *Variety*, April 10, 2002, http://www.variety.com/article/VR1117865208.html?categoryid=15&cs=1.
[602] Marsha Norman, "Testimony of Marsha Norman, Vice-President of the Dramatists Guild of America," in *United States Senate: Committee on the Judiciary*, April 28, 2004, http://judiciary.senate.gov/testimony.cfm?id=1160&wit_id=3354.
[603] Senate Committee on the Judiciary, *S. 2349: The Playwrights Licensing Antitrust Intitiative Act: Safeguarding the Future of American Live Theater*.

its members and not by the producers or the venue operators."[604] This comment from Schoenfeld points to one of the difficulties the playwrights had in making their case. From the outset the playwrights were faced with a hard sell because of the reluctance of Congress to accommodate antitrust exemptions. Furthermore, the playwrights' testimony was mainly conjectural and anecdotal rather than statistical in nature, and while both sides agreed that the flight of talented writers from the theatre to other media was harmful to the future of theatre, it was unclear a) whether the outdatedness of the APC and/or the actions of the theatrical producers had caused that flight and b) whether the antitrust correction would actually affect change in the theatrical field.

During the entire process, the importance of intellectual property was always apparent as both sides used the playwright's protection under copyright laws to support their argument. The playwrights argued that their designation as an independent contractor denies them certain rights afforded to other workers in the theatrical field. Wendy Wasserstein said that

> From the stage hands to the actors to the musicians, the directors, the choreographers, the hair stylists, the ticket sellers, to the press agents, all are represented by unions and all are able to bargain collectively.
>
> But, ironically, those of us who are the fundamental creators are not able to collectively protect our words.[605]

Ironically though, at the same time that Wasserstein argues that the same creative aspect that affords playwrights copyright and allows them to function as independent contractors should give them the right to organize, she contends that the film and television industry

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[604] Ibid.
[605] Ibid.

is flawed because although those writers can organize they cannot protect their creative work. Wasserstein stated

> The other thing is that, artistically, the difference between writing for theater and film or television, which is all wonderful, has to do with intellectual property, so that no word of a play can be changed without our permission. Once you start writing film or television, it is completely different. I think what we are talking about here is when those lines get blurred.
>
> To me, the Dramatists Guild and that fundamental right of ownership of the intellectual property of your work is what makes playwriting into the art form that it is. And the pressure to lose that right, I really think will fundamentally not only affect young playwrights, but it will fundamentally change the art form.[606]

The problem here is that Wasserstein is essentially arguing that playwrights should have it both ways. One the one hand she makes the case that playwrights should be allowed to benefit from copyright and retain their status as self-determining independent contractors, while on the other she contends that playwrights should also fall under the purview of labor laws that are designed to protect employees who are subject to the desires and compulsions of their employers. Roger Berlind reasserted that distinction, stating that "the bottom line is that authors are not our employees. They own their works and we merely license the right to produce. If authors act in concert to dictate terms, they would

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[606] Ibid.

be committing something akin to antitrust violations. A blanket exemption would be unwarranted."[607]

Berlind's comment here is particularly useful because it begins to break down the discussion in the terms of market relations. Under the conditions of capitalism, the playwright is given copyright and independent contractor status so he or she can bring his commodity to market and through negotiations extract the highest possible exchange-value. The most important benefit of being a commodity producer rather than a wage laborer is that you own the product of your own labor. Rather than getting paid a set rate for your labor you have the capacity through your negotiations with purchasers in the market to extract as much value as possible from the commodity you have generated and to earn for yourself surplus-value. The question that ultimately arises for playwrights in the current cultural market is whether the surplus-value one can earn from selling a play to a theatrical producer will consistently exceed the wages one can earn working in Hollywood, and whether it is worth it to forgo copyright for a more reliable economic situation.

The argument that the producers continued to be leading towards through all of this debate was that the flight of writing talent to the West Coast is a result less of a flaw in the structure of the labor regulations as they apply to the theatrical field than a failure in the theatrical market to generate the kind of demand that results in livable wages for the playwrighting community. The goal of this legislation was to act as a market correction and to enable the playwrights to work outside the purview of the National Labor Relations Act to establish a stronger bargaining position and increase the

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[607] Ibid.

exchange-value they can earn from their work. But as Berlind pointed out, "producers are independent contractors. Authors are independent contractors. Producers do not have and shouldn't have an organization that promulgates minimum acceptable terms, leaving authors in a take-it-or-leave-it position with no other options. Neither should authors have such a crude advantage.[608] This clarification of the impact such a market correction would have is important because the distinction between copyright holders acting as independent contractors and employees being able to organize extends beyond theatre and film extends to any field of creation or invention. Schoenfeld, pointing out that the exemption for playwrights could set a dangerous legal precedent that would empower all independent creators to organize, noted that "if [the playwrights] are granted exemption, then all inventors, researchers, painters, novelists and creators of literary property other than employees for hire would also be entitled to exemption."[609] As a result, the bill possibly could have implications in a number of important creative fields and destabilize economic models to a much greater extent. Not only would creative contractors in a variety of fields be able to organize, but the legal distinction that prevents companies from colluding would also dissolve. Ultimately these repercussions would have a fiscal impact that would far exceed the monetary gains the bill would provide playwrights, making passing of a seemingly harmless exemption a much more perilous endeavor. The precedent the passing of the bill would establish was probably central to Congress's decision to ultimately prevent this bill from being enacted into law, despite the repeated, concerted, and public efforts of such senior members to pass the legislation.

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[608] Ibid.
[609] Ibid.

The inability of these senior members of Congress to gain an exemption from antitrust laws for playwrights is also important when considered in juxtaposition with recent legislation that has passed through Congress and had a great impact on the cultural marketplace. For instance, the Telecommunications Act of 1996 relaxed regulation on radio ownership so that the same company could now own up to eight stations in a single market. This new law eliminated regulations that had been put in place back in the 1930s due to limits in the frequencies that radio and television could be broadcast across and had been seen as a method for promoting diversity of programming. Corporate media companies were well aware that this deregulation would change the face of the radio market and worked to help fast-track the act through Congress. Once the Telecommunications Act of 1996 went into effect and the regulations were removed, companies such as ClearChannel and CBS, went on buying sprees taking control of the majority of the media outlets across the country.[610] The result was a drastic decrease in the number of companies with a stake in radio ownership, and in the seven years following the passage of this law the number of commercial channels had increased by 5.4 percent while the number of radio station owners had decreased by a stunning 34 percent.[611] Looking at the impact of the Telecommunications Act of 1996 and its role in creating an oligopoly in American radio, one must wonder why the Telecommunications Act was able to pass through the House and Senate while antitrust concerns held up the Playwright Licensing Antitrust Initiative Act in its various manifestations. The most

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[610] McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times*, 75-6.

[611] George Williams and Scott Roberts, "Radio Industry Review 2002: Trends in Ownership, Format, and Finance," in *Federal Communications Commission: FCC.gov*, September 2002, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A20.doc, 3.

likely answer is that despite the symbolic capital that names such as Stephen Sondheim, Wendy Wasserstein, and Arthur Miller may bring to the playwrights' cause, that capital is negligible in comparison to the might in political and economic capital that large-scale media conglomerates can bring to Capitol Hill. Even one of the largest most influential non-conglomerate companies in the theatrical field, such as Schoenfeld's Shubert Organization, pales in comparison to behemoths such as Disney, News Corp., or Time Warner, which make campaign contributions, have staffs full of lobbyists and lawyers, and are much better placed not to only take advantage of new legislation, but also to ensure that new legislation develops in a way that benefits them as much as possible.[612] This all ultimately comes back to these companies' ability to accumulate enormous amounts of capital as a result of the production of high-profit, easily reproducible and distributable commodities and/or the control of media outlets that command top dollars from advertisers. The unfortunate reality for theatre producers is that their commodity is unable to accumulate capital at the same rate and the audiences they reach are too small to generate the kind of ad revenue that would allow theatre as a medium to blossom as radio, television, and film have. This situation is one of the most daunting challenges theatre producers face in trying to keep up with the other media because contemporary laws and market parameters aren't structured to benefit maximally the type of live, limited-audience performances that define theatre.

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[612] For a detailed description of the many different ways that the politics of communication and cultural production are influenced untowardly by corporate interests see Robert McChesney's *Rich Media, Poor Democracy*, especially the introduction and Part I: Politics. McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times*.

Royalties in the Non-Profit Realm

It is not only individual theatre artists, such as playwrights and directors, who are looking to royalties as a way of extending the economic life of theatrical commodities. As I mentioned in chapter two, an important method that many non-profit theatres have adopted in the face of funding challenges has been co-productions or enhancement deals with commercial theatrical producers. These deals have the potential to bring large lump sums of cash to theatres that otherwise may be struggling stay afloat. But it is not only the initial lump sum that makes these types of deals so tempting to non-profit theatre producers. For the most part, these deals usually include a royalty structure that guarantees the non-profit a source of income long after the production has left its stage. The two most famous examples of just how beneficial this royalty structure can be are *A Chorus Line* and *Rent*. Over the course of *A Chorus Line*'s original fifteen-year Broadway run, the Public Theater, which is where the show premiered, earned over $20 million in royalties.[613] Likewise, *Rent*, which was presented at the New York Theatre Workshop in 1996, later moved on to Broadway and up until its closing in 2008 earned the workshop millions in royalties.[614] These two productions are perfect examples of how valuable these types of contractual agreements can be to non-profit theatres that are normally reliant on ticket sales and donations, two sometimes fickle sources of income.

Chapter two discussed the challenge of relying on donations and box office for theatrical revenue and the maintenance of healthy working capital. Ticket sales ebb and

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[613] Jeremy Gerard, "Roundabout's Broadway Expansion Draws Catcalls From Competitors " in *Bloomberg.com*, May 29, 2007, http://www.bloomberg.com/apps/news?pid=20601088&sid=ajmkiCTH7R8U&refer=muse.

[614] Robertson, "Nonprofit Show, But Money's Riding On It."

flow based on production quality, reviews, and the unpredictability of audience response. Meanwhile, donations can flood a theatre during a fundraising initiative, then inexplicably slow down to a trickle just when the theatre is most in need of funds. Tied to this problem of sporadic revenue is the inability to stretch out theatrical productions over a longer period of time due to their temporal specificity and ephemerality. If a non-profit theatre is staging a licensed or public domain script, as most do, once a production completes its scheduled run and possible extension, that show is no longer a source of revenue. The theatre has no rights to residual intellectual property that can be mined for income in another medium, nor is there the ability to fix that performance in a tangible, durable, deliverable format that could be sold after closing for any real income (videos of stage productions have historically sold poorly due to the challenge of capturing the entire theatrical experience through a camera). These co-productions and enhancement deals, and the increased likelihood of a commercial run, therefore provide non-profits with another possible stream of income to help balance out the times when ticket sales are low, donations are short, and the working capital necessary to run a non-profit theatre is in short supply. Along with working with commercial producers, some non-profits make royalty agreements with playwrights working on new plays in their theatres. While many playwrights see this as an unfair practice, and believe that this practice forces playwrights to give up earnings they deserve, the non-profits see it as risk compensation for taking the extra time and committing the extra resources necessary to develop a new play. For the non-profit it is also a way to provide for long-term income as these subsidiary rights agreements can last for five to ten years after the premiere of a play and earn the theatre tens or even hundreds of thousands of dollars. The Seattle Repertory

Theatre, which premiered *The Heidi Chronicles*, earned three hundred thousand dollars from subsequent productions of Wendy Wasserstein's Pulitzer Prize-winning play (albeit not until after some courtroom drama over whether the director or theatre should receive the rights).[615]

Between enhancement deals, co-production, and collecting royalties from developing a play, non-profits have found a way to extend the limited window during which they can earn revenue from their investment in any one production. However, recent studies by TCG show that relying on royalties as a source of revenue may in the future prove to be an uncertain if not totally unreliable endeavor. *Theatre Facts 2005*, a report on the annual survey done by TCG of its member theatres, revealed that between 2001 and 2005, average royalty income declined every year, from over $37 thousand to just under $15 thousand. Ironically this was not due to a decline in the staging of new productions as more new works (283) were staged in 2005 than at any time in the preceding five-year period and over that time period there was a 7% increase in the number of new plays produced. As a result of the increase in new properties and decrease in royalty income, the royalty earned per property fell from a high of $17, 171 in 2001 to a low of $4,699 in 2005. During the same period, royalty expenses also declined at a rate below inflation as theatres were paying less to playwrights to put on plays,

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[615] Hilary De Vries, "New Paths for Regional Theaters," in *New York Times*, September 3, 1989, http://query.nytimes.com/gst/fullpage.html?res=950DEEDA123CF930A3575AC0A96F948260&sec=&spon=&pagewanted=all.

meaning that for both theatres and playwrights, the playscript was becoming a less and less valuable commodity.[616]

In *Theatre Facts 2006*, TCG reported a slight rebound, with earned royalties increasing and the average per property recovering to $11,769 during 2006.[617] TCG's analysts argue that the diminishment in royalty income could have resulted from a combination of many factors and might not signal a long-term decline. One possibility was that a dwindling of audiences simply meant lower box office receipts and as a result lower royalties, which are paid out as a percentage of box office. The other possibility was that a few high-earning properties may have run their course and no longer factored into the market for plays, leaving a perceptible void in the overall accumulated revenue.[618] The hope is that the continued growth of the number of new properties will result in increased royalty income in the near future and that 2001-2005 was a statistical anomaly. If it is not, royalty income, which appeared to be an increasingly viable way for theatre's to supplement box office and donation income, may become less of a significant factor in the economic equations of non-profit theatres. Worst of all, that would be one more reason for theatres to be disinclined to develop new works, from which they could gain royalties, and instead continue to focus on public domain works, such as Shakespeare or Chekhov or works which may have royalty costs but guarantee a

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[616] Zannie Giraud Voss et al., *Theatre Facts 2005: A Report on Practices and Performance in the American Not-for-Profit Theatre Based on the Annual TCG Fiscal Survey* (New York: Theatre Communications Group, 2006), http://www.tcg.org/tools/facts/.

[617] Voss et al., *Theatre Facts 2006: A Report on Practices and Performance in the American Not-for-Profit Theatre Based on the Annual TCG Fiscal Survey*

[618] Voss et al., *Theatre Facts 2005: A Report on Practices and Performance in the American Not-for-Profit Theatre Based on the Annual TCG Fiscal Survey*

certain level of box office revenue, including audience favorites such as *A Chorus Line* or *Death of a Salesman*.

As the almost complete commodification of American culture has made cultural production a productive endeavor and altered society's perception of creative works as ownable property, theatrical producers have found themselves in an unenviable position of distinct economic disadvantage in the cultural marketplace. The cultural economy, not surprisingly, has taken shape in a way that favors media and creative labor that will be productive. As in any market within a capitalist system, cultural producers now look to employ creative labor that will be productive and will provide a durable, vendible commodity that will have a high surplus-value and allow them to accumulate more capital. It is additionally important in the production of culture that the product be easily reproducible and distributable for mass consumption since the unit costs of these mass-reproduced commodities will remain low, allowing an investor to recoup the unavoidably high costs for creating the initial work. Considering these political economic conditions, it becomes clear why Smith, Mill, and Marx all argued that the performing arts rank among some of the least productive uses of capital. While they may provide for leisure and audience enjoyment, they inherently leave behind no tangible product of exchangeable value. The product of the collaboration between producing companies, actors, directors, and designers is an ephemeral and vanishing commodity that cannot be reissued or re-released, and must be recreated on a nightly basis. The artifacts that do remain – scripts, director notations, designer sketches, video archives – provide only a fraction of the complete theatrical experience and are vestigial remnants of the actual

goal of the production. The theatrical production process thus ultimately lacks the type of vendible cultural commodity that can benefit cultural producers over the long term because current copyright legislation provides protection for and creates a market only for those intellectual properties that can be manifested in tangible form. To exacerbate the dilemma of theatrical production, those corporations and individuals that profit most from the system of cultural commodification are in turn able to play an important role in shaping what sectors of the field of cultural production benefit most from intellectual property and copyright protection. Unlike the corporate megafirms that produce music, films, and television, most theatrical producers find it difficult to amass the political and economic capital sufficient to influence the legislative processes that determine what shape the cultural economy will take. In the end, the theatrical community finds itself situated in a marketplace where intellectual property rights are of increasing importance in the determination of the profitability of cultural production. This new trend in the field of cultural production along with the relative unproductivity of theatrical production and the ephemeral nature of the theatrical commodity come together to create a challenging and disadvantageous set of economic conditions that portend ever more difficult circumstances for success and development in the field of theatrical production.

Chapter 6.
Conclusion: Valuing Theatrical Production

This study began considering the question of theatre's place in American culture with respect to other media, and in as many ways possible it has focused on that dynamic. To that end, the impact of continually evolving cultural trends, such as the perception of authorship, corporatization, and commodification of culture, on the producers, distributors, and consumers of theatre, has provided an important–before this study, too infrequently used–frame with which to approach the field of theatrical production. By comparing the state of the theatrical field to conditions in other media, my analysis has been able to bring to light the significant role political economic conditions have played in determining the path along which the theatrical field has developed and will continue to do so. Looking at the field of theatrical production in this way has revealed that as the cultural marketplace becomes increasingly competitive and centralized, the capital investment necessary to create culture increases, and the stakes of cultural production continue to be raised, theatrical producers will find their work increasingly more difficult, especially as audiences continue to prefer to be drawn to other media due to their accessibility, and lower prices.

But while this study has addressed these many aspects of theatrical production, one important characteristic of cultural production that acts as a constant undercurrent to political economy and that this study has yet to explicitly address is the question of value. Whenever one considers why or why not people are choosing to patronize, invest in, and champion a certain medium, value and values, whether explicitly stated or not, come into play, as they determine what culture people consume, what projects investors contribute

to, and what works are valorized by critics. Although it has not been directly addressed, the importance of value[619] is evident throughout this study. The attribution of ownership is related to how Western culture views the author and values his/her contributions through the allocation of intellectual property rights. Corporations have entered the theatrical field because they see that the value of their franchises can be increased through exposure on stage. The theatrical commodity even suffers a crisis of value, as copyright laws increase the legal standing and economic value of tangible, durable commodities. As it becomes apparent that value so clearly permeates the discussion of intellectual property rights in theatrical production, so too we can see how it influences all aspects of the political economy of theatrical production. Theatrical workers are able to earn wages and negotiate contracts with employers at rates that are established by the value that is attributed to their work. Audiences will pay ticket prices that they believe equal the value of the theatrical experience, and the ability of producers to fill theatre seats is influenced by the number of people who believe that theatre is a more valuable way to spend their leisure time than another medium or form of entertainment. Funding, of all these examples, is perhaps the most directly related to a specific type of valuation. Congress and state legislators determine the value of theatre to American culture and allot resources to theatrical projects based on that determination. When theatre is deemed

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[619] This final chapter will address the importance of value in the field of cultural production, as well as the difficulty in coming to any specific conclusions as to how groups and populations value culture. The problem is that the value of cultural products can only be definitively be considered through the specific monetary value attributed to them or in small transactions. Nevertheless, the various ways in which people value culture is importance in shaping the development of culture. In particular, shifts in the ways Americans value culture have had a profound effect on theatrical production and therefore considering the impact of value and values on the theatrical field play an important part in coming to conclusions about the state of theatrical production.

less valuable less money is allotted. When it is more valuable more money is allotted. In these ways, it becomes clear that the idea of value is really at the core of any political economic analysis. Furthermore, because political economy is able to address the complicated relationship between straightforward economic or monetary value–how much a ticket costs, or how much it costs to put on a show–and the more nuanced notions of how different people and members of different classes and social formations ascribe value to sectors of the field of cultural production differently, political economy can get at the root of why our society values cultural forms as it does.

However, there is a problem with trying to understand and determine value. Value, even in its most concrete monetary forms, remains a completely subjective construct of social relations. In his discussion of exchange-value and surplus-value, Marx notes that

> The commodity-form, and the value-relation of the products of labour within which it appears, have absolutely no connection with the physical nature of the commodity and the material relations arising out of this. It is nothing but the definite social relation between men themselves which assumes here, for them, the fantastic form of a relation between things.[620]

Marx's use of the word fantastic is an eloquent way of describing the complex and completely subjective nature of value. It highlights that while a value can be agreed upon between individuals, that that value is nothing more than the product of the human imagination. As such the products of cultural work have no inherent value that is definitively applicable. Nor is the valuation of any specific cultural good exactly the

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[620] Marx, *Capital: A Critique of Political Economy, Volume 1*, 165.

same for all the members of any population great or small. In fact, according to Marx, value is determined through the transaction of the buyer and seller, as exchange-value is not fixed, but rather comes to being as a product of the social act of negotiation.

> Value . . . does not have its description branded on its forehead; it rather transforms every product of labour into a social hieroglyphic. Later on, men try to decipher the hieroglyphic, to get behind the secret of their own social product: for the characteristic which objects of utility have of being values is as much men's social product as is their language. [621]

So, in a sense, since deciphering of the social hieroglyphic of value beyond the scale of the individual transaction is so difficult, any analysis to determine the value of any good or product for an entire society or even a portion of that society is limited in its ability to definitively determine the value of a cultural good.

The inability to attribute value with any specificity is exacerbated in the case of the study of culture. While the value of a widget is more likely to be related directly to its utility, the "charismatic" nature of cultural products and their connectedness to habitus and taste make it virtually impossible to definitively ascertain how groups value cultural works. Bourdieu asserts that

> The "charismatic" ideology which is the ultimate basis of belief in the value of a work of art and which is therefore the basis of functioning of the field of production and circulation of cultural commodities, is

[621] Ibid., 167.

> undoubtedly the main obstacle to a rigorous science of the production of the value of cultural goods.[622]

For the sociologist of culture looking to comparatively ascertain how groups of individuals value cultural products, value therefore must be recognized for its sometimes elusive and unspecific character. Nevertheless, as one studies cultural production, it is important to keep value in the equation, even if it has to be through the careful use of generalization to come to some conclusions about how different forms of culture are valued throughout society. Within this frame, the conception of value as a social hieroglyphic is a powerful and useful metaphor for the study of culture in the twenty-first century. With the expansion of capitalism into virtually every corner of the cultural field and the commodification of culture seemingly complete, being able to translate the social hieroglyphic of cultural value proves an invaluable asset in analyzing a consumptive culture based on individual market choice, product customization, and the acquisition and ownership of cultural goods. Furthermore, as the production of culture becomes increasingly expansive, the double layer of complexity of the media as social practice and value as social hieroglyphic is a useful foundation for analyzing the interplay between economic factors, political dispositions, and the "charismatic ideology" of cultural products.

Who Values Theatre, How, and Why: Questions not Answers

The valuation of media in contemporary society has been transformed by their maturation into cultural industries, which are deemed valuable and successful as much

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[622] Bourdieu, "The Production of Belief: Contribution to an Economy of Symbolic Goods," 76.

for their ability to produce commodities that have a reasonable price and are of sufficient quality to generate a profitable demand as they are for producing works that express and/or inform the cultural life of society. One prominent side effect of this maturation, which has been spurred on by and has spurred on the commodification and corporatization of culture and helped shape our notions of authorship, has been that the ownership of cultural goods by the consumer has become an important factor in the valuation of culture. Consumers are now eager for their cultural products to take shape in a form that they can own and experience more than once (a DVD or CD or digital file). As a result, experiences that require payment for each iteration, such as theatre and movies viewed in cinemas, may benefit from the value of the scale of their presentation, but are challenged by their relative lack of durability for the consumer.[623] In addition, it is becoming clear that the auratic authenticity of live performance, which has been directly impacted by commodification and the economy of reproduction, is losing its cultural import and political economic significance. Philip Auslander argues that

> Live performance has been pried from its shell so that all performance modes, live and mediatized, are now equal–none is perceived as auratic or authentic; the live performance is just one more reproduction of a given text or one more reproducible text. . . . This situation would represent the

[623] It is important to note that the idea of the durability for the consumer is different from the durability of the cultural producer, because whereas a film is durable for a producer as it is able to be reproduced and shown on many screens, the experience of viewing a movie is less durable for the consumer who must pay for each time they view a movie in a cinema. The consumer can have a film in more durable form, such as a DVD, but the experience of viewing that DVD at home is a scaled down version of the full cinematic experience. Attempts by consumers to try to close this experiential gap are evident in the increasingly elaborate preparation of home cinemas, which are aimed at making the viewing experience at home as close as possible to the experience in the cinema.

> historical triumph of mechanical reproduction that Benjamin implies: aura, authenticity, and cult value have been decisively routed, even in live performance, to the very site that seemed the last refuge of the auratic.[624]

As the importance of the auratic has diminished and the gap between live and mediated experiences has closed, theatre has lost one its differentiating assets and become a much less interesting entertainment option for cultural consumers for whom the authenticity of the auratic is less valuable.

As the reproduction of texts, either live or mediatized, has become the norm, reproducible properties have increased in value and have the potential to provide certain cultural producers a disproportionate amount of cultural and symbolic capital. The playwright, for instance, is elevated within the theatrical community and in the eyes of society at large, as the author of theatre and likewise as the owner of the most valuable vestigial commodity of theatrical production, the playscript. Similarly, the debate over director's copyright exemplifies how the movement to take advantage of the economic, symbolic, and cultural advantages of intellectual property can impact the valuation of different types of cultural work. The recent push to break collaboratively-created cultural works down into portions whose rights can be exclusively owned by an individual or a corporation represents an attempt by individuals to stake a claim to the product of their labor that not only has a certain value in the short term, but is valuable enough to merit the benefits of exclusivity and scarcity that copyright provides.

The normalizing of the reproduction of culture has also affected the interchangeability of live and mediatized performance. Auslander notes that

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[624] Auslander, "An Orchid in the Land of Technology: Walter Benjamin and Live Performance," 165.

> The ubiquity of reproductions of performances of all kinds in our culture has led to the depreciation of live presence, which can only be compensated for by making the perceptual experience of the live as much as possible like that of the mediatized, even in cases where the live event provides its own brand of intimacy.[625]

While Auslander's argument that reproducible media are influencing live media is certainly hard to refute, the totality of that transition is debatable. There still remain theatrical experiences where the intimacy of the performer-audience relationship provided by live performance is valuable and irreplaceable. For instance, in community theatre, where there is often a familiarity and relationship between performer and audience that precedes the event, the intimacy of the liveness makes that theatrical experience more valuable to both the performer and audience in a way that mediated culture cannot. Nevertheless, as the experiential gap between the live and the mediated closes, those intellectual properties that are deployable across different media provide for significant economic possibilities for those owners of large libraries of the right type of franchises and properties. The different media therefore become valuable for being able to convey content that will sell, particularly if that content can be regenerated from previously successful ventures. Under this mode of cultural production, the corporate megafirms have come to value theatre as an outlet by which they can extend the life of their intellectual properties, and the field has begun to lose its stature as a place where original culture can be nurtured and prosper. This is why Broadway is generating fewer economically-risky original productions in recent years and has become the home of the

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[625] Ibid., 163.

second-coming for successful films, from *The Lion King* to *Legally Blonde* to *The Graduate*, which may have the potential of duplicating their success from the screen on the stage. In this way theatre is losing its value as a medium that contributes original cultural works and enriches cultural discourse.

As these shifts in the field of cultural production have begun to influence the theatrical field, the question arises: how do changing valuations of cultural works come to affect the ontology and cultural standing of theatrical performance? Peggy Phelan makes clear the challenges that live performance of all kinds face in an increasingly mediatized and capitalized culture, and points out that "the pressures brought to bear on performance to succumb to the laws of reproductive economy are enormous. For only rarely in this culture is the 'now' to which performance addresses its deepest questions valued."[626] But Phelan still believes that liveness is important and that there is hope for theatre and other ephemeral cultural forms because

> Performance honors the idea that a limited number of people in a specific time/space frame can have an experience of value which leaves no visible trace afterward. . . . Performance's independence from mass reproduction, technologically, economically, and linguistically, is its greatest strength. But buffeted by the encroaching ideologies of capital and reproduction, it frequently devalues this strength.[627]

While I have pointed out in previous chapters that there are problems with Phelan's arguments with regards to how they address material relations, her ascertainment of what makes the live ephemeral experience a worthwhile endeavor nevertheless remains

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[626] Phelan, *Unmarked: The Politics of Performance*, 146.
[627] Ibid., 149.

invaluable. Phelan reminds us that while the spatial and temporal limitations and fleeting nature of live performance may seem like flaws when considered within an economy of efficient and cost-effective reproduction, these characteristics are in fact what make the experience of live performance distinct from the dominant forms of culture. This characteristic of theatre is important because distinctiveness is one quality that can ascribe value to a cultural product. Consider how the distinctive experience of watching film for the first time gave that medium value around the turn of the twentieth century and how its differentiation from the dominant cultural form at the time, theatre, made its experience value. Theatrical producers must take hold of the value of the distinctiveness of live experience and recognize that although the desire for social group experiences may be diminishing in this age of mediated culture there remains a demand for the experience that theatrical productions and other live performances can provide.

The ability of theatrical producers to recognize the strength of the ephemerality of live performance, and to reestablish the value of that strength in our culture is critical to the fate of theatrical production in the United States. Can theatre come to be valued again for its ability to contribute to cultural discourse? Is there a possibility for popular theatrical productions to exist that are not solely the products of corporations more interested in the extension of their intellectual properties than the production of important new works? Can non-commercial theatres use the vitality of the live experience to reconnect with audiences who would rather flock to television, films, and the Internet, or will they remain a haven for the small population of educated, upper/upper-middle class, cultural aficionados? These questions all come down to whether theatrical producers will be able to adapt to and remain flexible in the face of a rapidly changing culture where

technological developments, the ascendancy of new media, and intense market pressures change how cultural experiences are valued.

Considering these conditions, where choices abound and valuation operates on many different levels, cultural producers have to attract audiences by making the experience they provide entertaining, memorable, and "worth the price of admission." Thus, the challenge is really determining what audiences consider to be "worth the price of admission," and that determination relies on coming to a better and more complete understanding of how consumers view theatre and why they are or are not coming to see shows. A recent article that discussed a TCG conference aimed at increasing theatre attendance considered, made it clear that the one of the main reason people don't attend theatre is that they don't see the value in it. In citing a speech given by Kevin McCarthy, a speaker at the conference who specializes in arts participation, the article notes that

> It's important to recognize that it's not cost or inconvenience that keeps everyone away, [McCarthy] said. "For people who are not predisposed, or alienated," he remarked bluntly, "the arts are worthless at any price." For reluctant theatregoers, it's attitudes (grounded in upbringing, social reference points, personal tastes, past arts experiences) that must be addressed. It will be necessary either to change their perception about what theatre has to offer them or—more radically still—to change what is offered.[628]

This imperative for change returns us to the flexibility and adaptability of theatrical producers in the contemporary cultural marketplace. Theatrical producers must

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[628] Nicole Estvanik, "Bringing Up the House," in *Theatre Communications Group*, September 2006, http://www.tcg.org/publications/at/Sept06/conference.cfm.

recognize that they are still operating within the political economic conditions of the cultural marketplace and must adapt their marketing and productive practices to best take advantage of the most valuable assets of theatrical production. Rather than producing what they know and love and hoping that audiences show up, can theatre producers come to a better understanding of what will draw audiences back to theatre in greater numbers? To this point, it remains to be seen whether theatrical producers can adapt and have a significant impact on the development of the field of cultural production. Conglomerate productions on Broadway are not really contributing anything of value to our culture, as the rehashing of a previously released property is greatly limited in its ability to contribute new original ideas. Neither can the commitment to constantly restaging already produced works in more or less the same manner on stage across the country enhance theatre's contributions to cultural discourse. These plays, such as those by the Greeks, Shakespeare, and Beckett, which were once new, vital, and valuable lose their potency with every iteration, especially since so many of those iterations lack a true reinvestigation or reinvestment in the possibilities of the work. Approaching theatrical production in this manner and just attaching the label of liveness in the hopes of attracting an audience for whom that liveness might be valuable will not be enough to counter the marketing machines behind conglomerate cultural production, the expensive spectacle of film and television, or the pervasiveness and accessibility of the Internet. Although it is a very valuable characteristic of theatre, the ephemeral nature of performance in and of itself is not enough to reinvigorate the field of theatrical production. Theatrical production must undergo dramatic changes that in part take advantage of the inherent value of live performance, but that also develop new ways of

presenting theatre to cultural consumers and new ways of contributing to cultural discourse. As the quote from the TCG article states, theatre must take radical steps to not only reshape the perception and valuation of theatre within society but also to change what theatre as a medium and social practice has to offer our culture.

Unfortunately, producers in the theatrical field really who do wish to change what theatre offers has to offer are faced with a foreboding cultural landscape where theatre has already lost its cultural significance and where the technological media hold a dominant position in the field of cultural production. Philip Auslander argues that

> Cultural economy holds that at any given historical moment, there are dominant forms that enjoy much greater cultural presence, prestige, and power than other forms. Nondominant forms will tend to become more like the dominant ones but not the other way around. At present, television is the dominant cultural form. Since television usurped the theatre's position in the cultural economy, theatre has become more like television. But has television gone on to become more like theatre-as-television? . . . If the cultural prestige of live performance were to increase in the future, a kind of back-and-forth exchange among different cultural forms might well occur. That seems unlikely, however. Currently, mediatized forms enjoy far more cultural presence and prestige – and profitability – than live forms. In many instances, live performances are produced either as replications of mediatized representations or as raw materials for subsequent mediatization. As I have argued here, any

> change in the near future is likely to be toward a further diminution of the symbolic capital associated with live events.[629]

If Auslander's predictions hold true, and there is an eerie certainty in much of what he has to say, then theatre will continue to remain mired in culturally irrelevance, especially as more people come to see it either as an elite form of culture not in tune with their cultural and social experiences or as an amusement that is just one of the many rides taken by those who view American culture as a theme park. The champions and proponents of theatre as a vital part of American culture clearly have their work cut out for them.

Theatrical Production, Political Economy, Praxis

As the many questions that this study has raised come to a head, it is important to consider what role a critical political economic approach to the field of theatrical production can play in informing any changes that the theatrical field may undertake. To that effect, the notion of praxis, which is a foundational aspect of both theatrical production and critical political economy, provides individuals who are either creating or studying theatre with a way to incorporate knowledge of the material relations of the field of theatrical production into their work. For millennia, theatre artists have translated theoretical conceptualizations into practical applications for the stage, bringing their abstract understanding of the medium into the concrete world of actual production. From Aristotle's *Poetics* to Brecht's *Verfremdungseffekt*, theory has played an important role in shaping the work of theatre artists, who have used it to inform their creative process. In the same way, critical political economists charge themselves with taking the analytical

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[629] Auslander, *Liveness: Performance In a Mediatized Culture*, 162.

work they do in deciphering fields and applying it back to those fields in a way that can inform others and affect change. This can be seen as readily in Marx's *Communist Manifesto* (1848) as it can be seen in the lobbying work of Robert McChesney. This dissertation fits squarely into both of these traditions of praxis, with the ultimate hope that a political economic understanding of the field of theatrical production will both help to inform theatrical producers how to better integrate their works into the highly competitive cultural marketplace of the twenty-first century and inform the field of theatrical studies as to the importance of this type of analysis and the type of field understanding it can generate.

For the theatrical producer, understanding political economy should be considered less of an intriguing addition to their comprehension of the theatrical field, and more of an imperative for the survival of their individual work and the medium of theatre as a whole. The theatre artist who works oblivious to the impact that labor negotiations, funding legislation, and evolving intellectual property rights has on his/her work, will have little control over his/her own destiny and in effect contributes to the stagnation of the medium and the idealization of theatre as art free of the impact of the market. While some theatres and organizations, such as TCG, are aware of and look to educate the field about political economic conditions, far too many are willing to perpetuate old models of production and are subject to the whims of the cultural market. This prevailing passivity is one reason why theatre, by staying so much the same, has not developed as a cultural form as other media have over the last hundred years. For those interested in maintaining theatre as a museum piece, this stagnation and perpetuation of the status quo is just fine. But for those interested in reinvigorating theatrical production and reempowering

theatrical producers, awareness of the political economic machinations of cultural production is paramount.

For the theatre scholar, this work serves another, although not completely dissimilar, purpose. As I noted in chapter one, the study of theatre has for too long been shaped by its academic roots in disciplines not methodologically equipped to study theatrical production as a complex social practice. So, despite a recent trend towards interdisciplinarity and the adoption of methodologies from other fields, the study of theatre remains incomplete and unbalanced, with a heavy focus on the aesthetics of the medium and the study of the phenomenon of performance. Because political economy is one of the neglected areas, the study of theatre suffers from an idealized view of the field of theatrical production that rarely recognizes the importance of material relations of production, distribution, and consumption in affecting the state of the field. If those people who study theatre most closely and most intensively are unable to see how political economy influences the growth or non-growth of theatre as a medium, how can they expect theatrical producers to understand the perilous conditions of producing culture in the twenty-first century and correct theatre's path of development as one of many competing media in the contemporary cultural marketplace. In this context, this study could be considered a wake-up call to the entire field of theatre studies, which through in-depth analysis and rigor makes clear the blind spots that scholars have neglected for far too long.

Theatre: Ancient Taste, Museum Piece, Living Organism?

I would like to finish with a quotation from Neal Stephenson's *The Diamond Age* (1993), a piece of science fiction that takes place somewhere near the year 2050.

Stephenson has written a number of well-received novels, including *Snow Crash*, *Cryptonomicon*, and *The Baroque Cycle*, and has a keen understanding of the intricate interplay between science and technology, and how that interplay has affected both cultural and social development during different periods of history and how it will continue to do so in the future. *The Diamond Age* in particular is about learning through technology, cultural factions, and a world where technology has divided and separated rather than bringing together people of different class, ethnicity, and religious belief. In addition, *The Diamond Age* speculates about how technologies that allow for interactivity and virtual reality may fundamentally change cultural experience. To clarify just how different this culture is from the present day, Stephenson describes for us an old theatre, which in this culture of heightened reality is merely a relic of a long-gone era.

> The Parnasse had been built by Europeans back when they were serious and unapologetic about their Europeanness. The façade was classical: a three-quarter-round portion on the street corner, supported by Corinthian columns, all done in white limestone. The portico was belted by a white marquee, circa 1990, outlined by tubes of purple and pink neon. It would have been easy enough to tear it off and replace it with something mediatronic, but they enjoyed hauling the bamboo ladders out from the set shop and snapping the black plastic letters into place, advertising whatever they were doing tonight. Sometimes they would lower the big mediatronic screen and show movies, and Westerners would come from all over Greater Shanghai, dressed up in their tuxedos and evening gowns, and sit in the dark watching *Casablanca* or *Dances With Wolves*. And at least

> twice a month, the Parnasse Company would actually get out on stage and do it: become actors rather than ractors for a night, lights and greasepaint and costumes. The hard part was indoctrinating the audience; unless they were theatre buffs, they always wanted to run up on stage and interact, which upset the whole thing. Live theatre was an ancient and peculiar taste, roughly on par with listening to Gregorian chants, and it didn't pay the bills.[630]

This last sentence is a particularly chilling forecast of the future of theatre in an increasingly mediatized culture. If an author such as Stephenson, whose novels have sold millions to acclaim from both the critics and popular audiences, predicts such a dire future for theatre in his speculative fiction of the not-so distant future, what does that say about the condition of theatre as a cultural form and for the regard in which it is held by cultural consumers?

In 1989, Zelda Fichandler was quoted about her involvement in the establishment of Arena Stage and the development of the non-profit regional theatre system. Fichandler said that "being nonprofit doesn't describe us; our work describes us. We are still a part of commerce. . . . We made the revolution. We've pulled the wagon up the hill; our long *Mother Courage* journey is over. The next generation will be about evolution. The theater is a living organism that must change. That is both encouraging and sad."[631] If theatre is

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[630] Neal Stephenson, *The Diamond Age, or, A Young Lady's Illustrated Primer* (New York: Bantam Books, 2003), 117. Some of the words in this quote, such as mediatronic and ractors, may seem to be typos but are actually words created by Stephenson to help better describe the world he is creating. For instance, ractors are a type of cultural worker in *The Diamond Age*. They are the performers that create the characters that users can interact with during virtual reality and other mediated experiences.

[631] De Vries, "New Paths for Regional Theaters."

to remain a vital part of American culture and not an "ancient and peculiar taste" that doesn't pay the bills, both theatrical producers and theatre scholars must recognize that as a cultural form and medium theatre is becoming less of a living organism and more of a museum piece that does not contribute in a noticeable way to the development and enrichment of American culture. Too few people attend the theatre and too many of those that do value the experience of a performance consider it an amusement along the lines of a theme park and not as a site for cultural enrichment. Perhaps through a reassertion of the importance of live performance as part of cultural life at the local as well as global level theatre can rediscover that vitality. Or perhaps through a reinvigoration of the importance of theatre at the community level, where the relationship between audience-performer extends beyond the performance and therefore enriches the intimacy and immediacy of the live experience, can make the theatrical experience more valuable and worthwhile to its participants. Even if both of these assertions of the value of theatre were to come true their greater impact on the theatrical field and its place in the field of cultural reproduction will remain uncertain for a long time, especially as the technological media extend their reach and pervasiveness in American society. What will remain a certainty is that the political economic conditions of the American cultural marketplace will continue to make it increasingly difficult for the development of original works of theatre, and it is unlikely that those conditions will change in theatre's favor any time soon.

Appendices.

Appendix I.

"The Author's Bill of Rights":
Suggested Contract Language from The Dramatists Guild of America[632]

If your rights as an Author are to be protected, you should always have a written contract with your Producer. The following eight points are fundamental, and language protecting those rights should appear in all your contracts with Producers. You will also want to educate yourself further in specifics, and consult with an attorney as appropriate to fully protect your rights and interests.

ARTISTIC INTEGRITY. No one can make changes, alterations, and/or omissions in your script without your prior consent. This is called "script approval". You should never permit this provision in your contract to be diluted by phrases such as "such prior consent not be unduly or unreasonably withheld", or by settling for "consultation" rather than "approval" of such changes."

OWNERSHIP OF INTELLECTUAL PROPERTY. You own the expression of the ideas embodied in your script. You should grant your Producer only a particular license for a particular production, not general rights to produce your script in many arenas. If you so choose, however, you may grant a Producer specific rights (Future Options, Subsidiary Rights) for carefully delineated periods of time in specific venues. However, only you should have the right to formulate contracts for all other productions and uses of your script.

APPROVAL OF PRODUCTION ELEMENTS. You have the right to select the cast, designers, choreographers, conductors and director (including replacements) for your

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[632] The Dramatists Guild of America, "The Author's Bill of Rights."

production. This is called “artistic approval”. Together, you and the Producer will also confer on other elements of the production (i.e. costumes, advertising, etc.).

OWNERSHIP OF INCIDENTAL CONTRIBUTIONS. You own all contributions made by other participants in the production to your script. You do not owe anyone any money for these contributions unless you have a written agreement providing for such payment.

SUBSIDIARY RIGHTS. In the first instance, you own not only your script, but also the rights to all exploitations of your script. If you agree to grant your Producer a monetary share of subsidiary rights (motion pictures, television, stock, amateur, etc.) from future exploitation of your script, you should grant it only after the aforementioned Producer has presented your script for an agreed upon number of performances. Any grant of subsidiary rights should only be for a limited period of time, and should generally be limited to income received by you from a well-defined geographic area (e.g. the United States and Canada).

FORMULA FOR RESOLVING DISPUTES. If you and your Producer disagree, you both agree to arbitrate the dispute, and not to litigate.

ASSIGNING YOUR RIGHTS. Your Producer cannot assign or license the rights acquired by him or her in the contract with you to a third party without your prior written consent.

DIRECTOR/DRAMATURGE AGREEMENTS. Although a director or dramaturge may work with you over time to shape your script, such development never makes that person an “Author” unless they have actively collaborated with you as an author. No director or dramaturge should have a right of first refusal for productions after the initial production by them, or be entitled to receive a percentage of your income from future productions.

Appendix II

Relevant Selections from United States Circular 92: Copyright Law of the United States of America and Related Laws[633]

§ 101 · Definitions (Excerpted)

"Copies" are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "copies" includes the material object, other than a phonorecord, in which the work is first fixed.

A "derivative work" is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a "derivative work".

A "joint work" is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

To "perform" a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

A "work made for hire" is—

(1) a work prepared by an employee within the scope of his or her employment; or

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[633] *Circular 92: Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code*, June 2003), § 101.

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

§ 102 · Subject matter of copyright: In general

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

(1) literary works;
(2) musical works, including any accompanying words;
(3) dramatic works, including any accompanying music;
(4) pantomimes and choreographic works;
(5) pictorial, graphic, and sculptural works;
(6) motion pictures and other audiovisual works;
(7) sound recordings; and
(8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

§ 106· Exclusive rights in copyrighted works

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly;

§ 201 · Ownership of copyright

(a) Initial Ownership.—Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are co-owner of copyright in the work.

(b) Works Made for Hire.—In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

(c) Contributions to Collective Works.—Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

Appendix III.

The Playwrights Licensing Relief Act / The Playwrights Licensing Antitrust Initiative Act[634]

The following bill was introduced to the two houses of Congress four separate times under the following names:
S. 2082 [107th]: Playwrights Licensing Relief Act of 2002
S. 2349 [108th]: Playwrights Licensing Antitrust Initiative Act of 2004
H.R. 4615 [108th]: Playwrights Licensing Antitrust Initiative Act of 2004
H.R. 532 [109th]: Playwrights Licensing Antitrust Initiative Act of 2005
All four bills died during committee sessions and none were enacted into law.

A BILL

To modify the application of the antitrust laws to permit collective development and implementation of a standard contract form for playwrights for the licensing of their plays.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Playwrights Licensing Antitrust Initiative Act of 2005'.

SEC. 2. NONAPPLICATION OF ANTITRUST LAWS.

(a) In General- Subject to subsection (c), the antitrust laws shall not apply to any joint discussion, consideration, review, action, or agreement for the express purpose of, and

[634] "Playwrights Licensing Antitrust Initiative Act of 2005."

limited to, the development of a standard form contract containing minimum terms of artistic protection and levels of compensation for playwrights by means of--

(1) meetings, discussions, and negotiations between or among playwrights or their representatives and producers or their representatives; or

(2) joint or collective voluntary actions for the limited purposes of developing a standard form contract by playwrights or their representatives.

(b) Adoption and Implementation- Subject to subsection (c), the antitrust laws shall not apply to any joint discussion, consideration, review, or action for the express purpose of, and limited to, reaching a collective agreement among playwrights adopting a standard form contract developed pursuant to subsection (a) as the participating playwrights sole and exclusive means by which participating playwrights shall license their plays to producers.

(c) Amendment of Contract- A standard form of contract developed and implemented under subsections (a) and (b) shall be subject to amendment by individual playwrights and producers consistent with the terms of the standard form contract.

SEC. 3. DEFINITIONS.

In this Act:

(1) ANTITRUST LAWS- The term `antitrust laws' has the meaning given it in section (a) of the first section of the Clayton Act (15 U.S.C. 12), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section applies to unfair methods of competition.

(2) PLAYWRIGHT- The term `playwright' means the author, composer, or lyricist of a dramatic or musical work intended to be performed on the speaking stage and shall include, where appropriate, the adapter of a work from another medium.

(3) PRODUCER- The term `producer'--

(A) means any person who obtains the rights to present live stage productions of a play; and

(B) includes any person who presents a play as first class performances in major cities, as well as those who present plays in regional and not-for-profit theaters.

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