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Pink Pirates: Contemporary Women Writers and Copyright

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Under a Pink Flag

Madeleine Monson-Rosen

In *Under the Black Flag*, the 1925 collection of pirate biographies notable for its influence on William Burroughs and Kathy Acker, Don Carlos Seitz relates the story of seventeenth-century pirate captain James Mission, who prefigured the French Revolution as well as the pink pirates described in Caren Irr's text. Mission's men, according to Seitz (and Defoe, whose history Seitz adapted), rejected the black flag for the white, founded the commune Libertatia on the Madagascar coast, held all property communally, and sailed the Atlantic, freeing slaves and adopting them into their African utopia while they plundered French, British, and Spanish vessels. Necessity compels Mission to declare war on every nation that would close its borders to him, yet he and his men are humane and gracious to all whom they encounter in battle.¹

This delightful, though apocryphal, history offers a literary precedent for the pirates invoked in *Pink Pirates*. But Irr is less concerned with the maritime variety of pirate than with constructing a history and genealogy for a piracy related to the now more ubiquitous variety: the scourge of the information economy and pillager of intellectual property. Irr's pirates are far from fearsome. In many cases, they remain committed to ideologies of domesticity, maternal affection, and the preservation of community. However, Irr's pink pirates share with Captain Missions's both an illegitimate relationship to property and the commitment to a commons.

The pink pirates are less individuals than they are figures for the creative commons, a generative, feminine space created both in relief by the inability of women authors to hold copyright on their own work through the late nineteenth century, and in positive space by the utopian vision of a commons characterized by democracy, fair use, and communal property, and often symbolized by domestic space and traditional

knowledge. Irr argues that women writers, pink pirates whether they claim that status or not, create this commons both in their writings and in their relationship to copyright legislation.

Two methodologies inform Irr's work. The first reads the complex and constrained relationship between women and copyright extending from the first legislation granting copyright to authors (Britain's Statute of Anne), to the current double standard in copyright that benefits men and masculinist ideologies of property ownership. The second interprets the "association of feminism with literary piracy" in the work of contemporary women writers, establishing an analogy "between a purportedly female creativity and the literary pirate's extralegality[...]. This pink pirate represents the endurance of creativity outside the bounds of the law" (2).

This association between femininity and extralegality gives rise, in *Pink Pirates*, to some paradoxical and provocative assertions: the intellectual property of women always has an unstable relationship to copyright law, and so the tenacious efforts of some women to protect that intellectual property have a piratical character even when that property becomes normative and commercial. Barbie, for instance, offers an interesting case study: created by a woman, and therefore pink, yet contributing to restrictive, sexualized, and idealized notions of femininity. Attacks, literal or figurative, on Barbie also have a piratical character, in part because they are subject to vigorous prosecution as violations in copyright. So both Barbie's creator, Ruth Handler, and artist Paul Hansen (creator of the art work "Big Dyke Barbie") have a pink and piratical cast. A similar paradoxical case involves a novel manuscript based on the life of sixteenth-century female pirate Grania O'Malley, written by a female author, and then appropriated and published by female employees of the Little, Brown Company, to whom the original manuscript had been submitted. Irr's reading highlights the ways in which the professionalization of women, especially in the publishing industry, pits female piratical practice against itself. The would-be authors in this case turned to the court, rather than to informal associations and female social networks, as earlier women authors whose authorial rights were less secure had done for both the dissemination of writing and the attribution of authority, or, as women writers in the contemporary period will, to invoking the commons, and a piratical practice, in order to critique proprietary individualism.

Irr's history begins with the passage of the Statute of Anne in 1710, a signal moment in the shift from the patronage system of literary production to the market model, which requires contracts between author-owners, printer-publishers, and reader-consumers. According to Irr, the mainstream reading of the Statute of Anne — that it provides a monetary incentive to be the sole creator of a work — has been called into question by various copyright historians, including those who see other steps in the literary production process, such as the printing and distributing of texts, as equally if not more important than the invention of proprietary authorship. Women authors, Irr notes, deferring to the work of Catherine Gallagher on female

authorship in the literary marketplace, proliferated during the eighteenth century despite being technically prohibited from signing publishing contracts by the principles of coverture.² These women sometimes capitalized on their extralegal status by negotiating or renegotiating publishing contracts. Alternately, women authors take advantage of archaic models of textual production, such as circulating manuscripts among friends prior to publication, thus creating a common space of textual sharing before taking the books to market. Feminist legal scholarship, Irr argues, revives this model of the commons as an alternative paradigm for distribution of intellectual resources. Intellectual property held commonly rather than privately detaches “authorship from ownership.” The feminist critics of copyright who will inform Irr’s analysis “describe creativity as a socially embedded, transformative use of a repertoire of texts available to a network of contributors. While disassembling Anglo-American copyright, in other words, feminist legal scholars have reanimated the commons that is the precondition of intellectual property.” The Statute of Anne becomes a “sort of pirate flag”:

Even while codifying copyright, it raises an alarm that points to the existence of a concomitant pink piracy. In a pattern that we will come to recognize as typical of pink pirate discourse, the proper name of an exceptional queenly authority (Anne) has been folded into a myth that keeps the dominant gendered ideology of writing alive. At the same time, in its defensive insistence on a single form of authorship, the Statute of Anne indirectly gestures toward the back channels of a nonproprietary pirate practice. (23)

From Anne, Irr surveys the history of women and copyright in the U.S. through the nineteenth century, highlighting the significant contributions made not only to letters, but also to copyright law, by figures such as Susanna Rowson and Harriett Beecher Stowe, both blockbuster authors officially prohibited from holding the copyright to their own work (Irr has personally surveyed hundreds of contracts issued to women authors by the Houghton company between 1840 and 1900). The function of this history is to set the scene for the four twentieth-century novelists of whom Irr offers readings as exemplars of piratical practice and as visionaries of a pink commons.

The nineteenth-century women writers whom Irr surveys in the first chapter provide a basis for thinking about the ways in which copyright legislation has always been gendered, and how, even in literary forms dominated by women, women writers often find themselves on the wrong side of the law. This antagonistic relationship is constitutive both of women’s literary practice and the law that attempts to contain it. While women typically sign publishing contracts in their own names, circumstances often complicate their relation to intellectual property. Fanny Fern, a prolific and

successful author, could require that her husband sign a prenuptial agreement ensuring that she maintained copyright on her publications, but still needed him to file suit against a plagiarist on her behalf.

Irr's opening chapters offer a persuasive account of the ways in which, from 1710 through the first half twentieth century, the tension between women's writing and copyright are constitutive both of the legislation governing intellectual property and of a separate, extralegal system of creation and circulation. In addition to creating an alternate history of authorship, this section of *Pink Pirates* contributes to the shifting conversation on print culture, which, after the contributions of iconoclastic historians such as Adrian Johns and N. Katherine Hayles, has to consider piracy itself as a significant formative influence on the literary marketplace.³

As she moves into discussion of the contemporary novelists who represent the main case studies of the book, however, Irr takes up the literary work and the related legislation in discrete sections. While throughout the nineteenth century women writers as figurative pirates and privateers play an instrumental role in the development of copyright law, Irr treats law and literature in the second half of the twentieth century as relatively separate discourses, having little tangible to say to each other. In one instance, Irr even appears to apologize for linking the two, suggesting that the work of Kathy Acker, work which has been the subject of various legal proceedings, is insignificant when considered alongside intellectual property and First Amendment case law:

Although Acker's wild writings and literary experiments with a post-human, fully sexualized world seem unlikely to reorient expert legal discussions any more than do those of any other literary figures, her challenging writings certainly encourage those who study them to bring to their discussion more vivid ways of imagining territories of writing that are neither obscene nor owned. For interested parties at the edge of copyright reform, they might suggest that a language of the commons may need spicing up — may need more Maya Angelou and less Angela Davis. (132)

In fact, Acker's books were banned in Canada for some time, on the basis of customs law adapted from the antiporn legislation authored by Andrea Dworkin and Catharine MacKinnon. Irr pairs her discussion of Acker's *Pussy, King of the Pirates* with a pornography case, *Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema Ltd.*, whose opposing sides "largely mirror feminist debates about pornography" (112). Of course Acker has herself been the subject of these debates. Nicola Pitchford's study *Tactical Readings* vigorously argues that feminism's pornography conflict, that is, what constitutes a tolerable limit on explicit speech and representation, is precisely a conflict about postmodern works like those of Kathy Acker as well as more

recognizable types of pornography.⁴

Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema Ltd., and related case law in which the copyright on the image of the cheerleader is protected from ostensible illegitimate use in pornographic films and publications, confuse, Irr suggests, questions of form and content in ways that feminists should be worried about. Instead of simply protecting copyright from infringement, cases such as this ensure that “sexual content — understood as embodied, feminine, pornographic, and commercially confusing — stands at the periphery of legitimate expression; it is controlled and dominated by law because its ‘value’ is in question while its subordination to property rights, especially copyright, is not” (112). “Embodied, feminine, pornographic, and commercially confusing” are of course all terms that could apply to Acker’s fictions. But instead of bringing the two subjects into conversation, Irr repeatedly keeps the legal canon separated from the literary. The result is a discussion that takes place in two different registers, and thus shies away from making strong claims about the ways in which feminist fiction might contribute to bringing about a real, and not just symbolic, pink commons that has the potential to reform intellectual property relations.

Acker, whose later fiction was increasingly occupied with pirates, and Leslie Marmon Silko, whose later novels share an interest in illegal and illicit property relations — in *Almanac of the Dead* this includes smuggling and gun-running, and *Gardens in the Dunes*, discussed in the final chapter of *Pink Pirates*, is concerned with bio-piracy — contribute the most paradigmatic vision of pink piracy in this study. The book’s other two subjects, Ursula K. LeGuin’s 1977 science fiction novel *The Dispossessed* and the works of Andrea Barrett, are concerned with alternate approaches to intellectual property. For LeGuin, this concern takes the form of a juxtaposition. In the universe of her novel one planet supports an anarchistic civilization, a colony of a neighboring, capitalist planet. In Barrett’s work, different types of knowledge constitute alternate approaches to intellectual property: indigenous, cultural, communal knowledge; scientific knowledge produced collaboratively; and women’s traditional, domestic knowledge. The “spaces” invoked by these alternate properties — the scientific community, the home, the virtual repository of cultural memory — are all sites of the pink commons. For Irr, Acker and Silko imagine the pirates who will populate this virtual space.

In the end, Irr follows Silko, who, Irr argues, endorses a “middle position” symbolized by the botanical hybrids of the novel. *Gardens* places itself “between those who romanticize authentic, static tradition and those who celebrate the unregulated flux and flow of appropriation” (138). In Irr’s reading, “Silko’s novel certainly does not exemplify a postmodern free-for-all in which all appropriations are equally meritorious or legitimate and no differentiations between fair and unfair use are made.” And Irr’s image of the pink piratical commons is by no means an unregulated free-for-all, an unrestricted marketplace like that created by Acker’s pirates. Irr’s

piratical commons, like Silko's, "prioritizes meeting basic human needs" (157), not, one guesses, the more outrageous needs of Acker's perverse protagonists.

In her conclusion, Irr once again narrates a history, and the conclusion complements the introduction. Where the introduction offered a survey of the history of women and copyright law, the conclusion traces the concept of a commons through the history of visions of the state. And as with the introduction, whose synthesis of the legal and the literary offers a compelling and convincing narrative of their constitutive and sometimes oppositional relation to each other, so the conclusion offers a survey of philosophical texts, from the *Republic* and More's *Utopia*, through Hobbes and Locke with a detour into Melville, and concluding with Hardt and Negri's *Empire*, in order to show that any exercise in thinking the state has also required thinking the commons. This history, along with its counterpart in the introduction, offers the most forceful demonstration of the overarching claims of the book: that the commons is a historically gendered space, that female creativity has always taken place outside the law, and that a rearranging (a "rejiggering" in Irr's term) of property relations can precipitate a rearranging of social relations.

Notes

1. Don C. Seitz, *Under the Black Flag: Exploits of the Most Notorious Pirates* (New York, Courier Dover, 2002).
2. Catherine Gallagher. *Nobody's Story: The Vanishing Acts of Women Writers in the Marketplace, 1670-1710* (Berkeley, U of California P, 1994).
3. Adrian Johns. *The Nature of the Book* (Chicago, U of Chicago P, 1998); Katherine Hayles. *Writing Machines* (Cambridge, MIT P, 2002).
4. Nicola Pitchford. *Tactical Readings: Feminist Postmodernism in the Novels of Cathy Acker and Angela Carter* (London, Bucknell UP, 2002). See page 151 and following for a discussion of Acker's Canadian censorship.