KNOWLEDGE AND COPYRIGHT IN HISTORICAL PERSPECTIVE: 
INTRODUCTION

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Knowledge is central to most human practices. Its discovery, production, adaptation, and expansion often give those who “possess” knowledge economic, political, or social advantages over those who do not. This dynamic drives the quest to protect knowledge through patents, copyright, and other forms of ownership rights while creating incentives for others to appropriate or abuse knowledge generated or controlled by others. Both the creation and abuse of knowledge have been facilitated by technological progress. This is particularly the case in the current era of digitization, when the Internet and artificial intelligence make the replication and remixing of someone else’s intellectual property easier than ever before.

The GHI’s 2018 Spring Lecture Series “Illicit Knowledge: Copyright, Piracy, and Intellectual Property in Historical Perspective” sought to contribute to the consideration of this shift by providing context through the lens of the history of knowledge, the GHI’s special research focus since 2015. In a period which has given rise to slogans like “information wants to be free,” we were particularly drawn to the questions of moral ambivalence that often arise in debates over intellectual property: what one country views as an act of industrial espionage, for example, may be seen as an act of patriotism somewhere else. The questions the lecture series aimed to address were as multifaceted as knowledge itself: Who are the actors? What are their motives? What trends can be detected over time, by sector, and in terms of different cultural influences? And how do new technologies — such as digitization — change our perception of copyright and the fair use of knowledge?

Our goal for the lecture series was to gain perspective on these issues by learning from scholars whose research touches upon discourses of intellectual property, including its benefits, its abuse, and the various forms of legal, political, and social protection it receives. In addition to covering a broad timeframe stretching from the 1960s to the present day, we wanted to address a wide array of sectors.
Industrial espionage and trade secrets were one of our target areas. Another lecture was to examine intellectual property in the fine arts or performing arts. In a third lecture we wanted to address the topic of counterfeiting and the creation of pirated goods. And lastly, due to our own background in research, we sought to address the question of intellectual property in academic publishing, which closely relates to the pressure to publish.

The essays in this special issue of the *GHI Bulletin* are revised versions of three of the four “Illicit Knowledge” lectures. Taken together, they reflect the lecture series’ topical and chronological breadth, but also its intellectual depth. The one lecture not reprinted here is that by Justin Williams, “Hip-Hop Aesthetics: Theft, Borrowing, or Artistic Practice?,” adapted from his book *Rhymin’ and Stealin’: Musical Borrowing in Hip-Hop*, published by the University of Michigan Press in 2014. This lecture explored the development of a hip-hop community that drew its musical texture from a web of cross-references, including borrowing and sampling sounds through both formal and bootleg channels. Celebrated for their creativity, many DJs and other performers nonetheless faced legal challenges to their practices that eventually led to new kinds of re-use agreements. While the lecture was one of the liveliest the GHI has hosted, replete with examples of original culture and their adaptation over multiple generations of hip-hop culture, its auditory nature did not allow for a written version that would portray the topic to the readers in a satisfactory way.

The first lecture turned essay in this thematic “forum” is Nancy Troy’s study of the cultural significance of “copying” in haute couture and the garment industry, centered around the infamous 1965 series of cocktail dresses designed by Yves Saint Laurent mimicking the abstract style of Dutch artist Piet Mondrian. As Troy argues, tensions between originality and reproduction had existed ever since haute couture emerged in nineteenth century France. Licensed copies based on a design prototype were made available immediately — particularly in the American market, where department stores provided garments for the masses. Troy describes how couture houses were eager to participate in the licensing of their designs since it enabled them to increase profit significantly when compared with selling solely to private individual clients. Yet, with further proliferation through the license and sales system, chances for cheap counterfeited knockoffs of popular designs increased and unauthorized copies swamped the markets — as was the case with Saint Laurent’s
Mondrian dresses. As Troy explains, this can be attributed in part to variations in copyright law, which in the case of couture is particularly difficult to enforce due to the brevity of the fashion cycle. In France, intellectual property rights for fashion design have traditionally been wide-ranging, but in the United States — where most of the knockoffs were produced and sold — the law has never provided copyright for garment designs. Copyrights have thus had little effect on the design and distribution of couture clothes and consequently copies and counterfeits remain an integral part of the fashion industry.

Mario Daniels’ essay on the intertwined relationships between technology transfer, industrial espionage, and the geostrategic interests of nation-states in the late twentieth century explores the controversial practice of Japanese technology transfers in the 1980s, which — as Daniels points out — mirrors present-day debates about a potential U.S.-China technology war. He prompts us to pay attention to the underlying geostrategic controversy in which many nations — in East Asia and elsewhere — have seen the acquisition and absorption of foreign technology through legal and/or illegal methods as a form of pursuing development. The United States, on the other hand, has seen its exclusive control over technological knowledge as indispensable to its hegemonic position and thus as a central issue of national security. Daniels stresses that Cold War strategies of preventing the USSR from obtaining American technology via transfers from Western European allies were at the root of the United States’ rigid interpretation of intellectual property rights protection. Simultaneously, narratives of technology theft by Japanese firms, who had evolved into strong competitors particularly in the global automotive and semi-conductor markets, fed into concerns about American economic decline and a possible end to its exceptionalism. According to Daniels, the so-called “betrayal” of the United States’ benevolent role in creating the post-WWII system for its Western allies eventually caused the U.S. government to implement strict intellectual property rights and restrictions on foreign investment.

The last essay in our series, by Peter Baldwin, analyzes how the latent conflict between knowledge transfer and the protection of scholarly intellectual property has created an ambivalent stance towards open-access publication in the current academic world. Baldwin begins by discussing the historical distinction between the “moral rights” that copyright protection provides — “those of attribution and

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integrity” — and the “economic rights” — that is, the right to profit from the propagation of a particular work. In the present day, however, he notes that with most scholarship being conducted by employees of universities and other research institutes, it would be more useful for them to see their salaries, rather than royalties, as compensation for the intellectual property they create. Academics, he argues, should continue to assert their moral rights to their work but jettison their economic rights and instead embrace open-access publication. In the digital era, when page capacity is no longer a constraint, he calls for academics — particularly in history and the humanities — to reimagine the pipeline for disseminating research and shift towards forms of publication that do not allow entrenched journal publishers to profit from the largely uncompensated labor of peer reviewers and editorial boards. Provocatively, he suggests that U.S. university libraries should also reinvent themselves by canceling expensive journal subscriptions, cooperating to digitize their book collections en masse for access from a single portal, and repurposing their space after shrinking their print collections. Even more provocatively, he argues this can be accomplished within the budgets already devoted to university library spending. If academic researchers are willing to change the practices they use to disseminate knowledge, he concludes, they will cultivate larger audiences “outside the academic bubble” who seek access to research at minimal expense and thus produce far broader benefits than the current system, which largely entrenches existing hierarchies of prestige and profit.

These three contributions, and the lecture series as a whole, illustrate the iterative process of creating knowledge and the usefulness of taking a historical perspective on this process. Over the course of the lectures, we learned how the development and dissemination of intellectual property by designers, artists, corporate researchers and university scholars leads to the creation of new forms of knowledge even as attorneys, lobbyists, publishers, librarians, and other actors develop and negotiate legal, political, and cultural barriers that structure access to intellectual property. As the lectures demonstrated, the creation of knowledge, its adaptation, abuse and of course its protection are at the center of current debates in all areas of our society, from international politics to academia to culture and the arts. Regardless of the sectoral and thematic focus, these debates lead to one central question: can and should knowledge and intellectual property still be protected in the digital age? And if so, how? Our hope is that the diverse audiences that joined us for the original lecture
series and our readers in the *Bulletin* will profit from the insights from the history of knowledge offered here.

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