

INTELLECTUAL PROPERTY AT THE INTERSECTION OF RACE AND GENDER: LADY SINGS THE BLUES

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The history of the production of cultural property in the United States follows the same pattern as the history of the racial divide that inaugurated the founding of the Republic. The original U.S. Constitution excluded both black women and men from the blessings of liberty. Meanwhile, that same Constitution granted rights to authors and inventors in what is known as the Patent/Copyright Clause of Article I, Section 8.¹ This clause laid the foundation for intellectual property (“IP”) rights that have become an economic juggernaut not only in the United States, but globally.² IP rights are inextricably tied to cultural and scientific production, which influences all aspects of society. Thus, before the passage of the major civil rights amendments and acts, the provisions of Article I, Section 8 were unavailable to protect the cultural rights of early black Americans.

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1. U.S. CONST. art. I, § 8 (announcing that Congress has the power to promote the progress of science and the arts by securing, for a limited time, the rights to artistic works and discoveries as the property of the artist).

2. See, e.g., Keith Aoki, *Balancing Act: Reflections on Justice O'Connor's Intellectual Property Jurisprudence*, 44 HOUST. L. REV. 965, 975 (2007) (noting that the expansion of intellectual property in the United States has helped to “underwrite U.S. dominance in the intellectual property sector of the global economy”).