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Critical Response

II

Taking It to the Next Level: *You've Got Mail*, Havholm and Sandifer

Jerome Christensen

Kevin: You're taking it to the next level. I always do that. I always take a relationship to the next level, and if it works okay I take it to the next level after that, until I can finally get to the level where it becomes absolutely necessary for me to leave.

—Nora and Delia Ephron, *You've Got Mail*, "2nd final white script, revised 2 Feb. 1998"¹

Think back to the Warner Brothers movie "You've Got Mail," nicely promoted jointly with AOL.

—Gerald Levin, chairman and CEO, Time Warner, at the news conference on CNN announcing the merger of AOL and Time Warner, 10 Jan. 2000

While driving to my office on the morning of 10 January 2000, I heard the report on NPR that the entertainment conglomerate Time Warner, under the leadership of its CEO Gerald Levin, had negotiated a merger with the leading internet service provider America Online (AOL), headed by Steven M. Case. Merger in this instance meant that Time Warner had been bought out by AOL, a company that, floating high on the dot-com bubble, then had a market valuation double that of the largest media company in the world. I stopped off in the office of a colleague who had read over a draft of an essay I'd been writing on the Time Warner merger. I passed on the news and then half jokingly added, "There's got to be a movie about this merger." Five minutes later I had an email from him with the message "There is" and a link to Timothy Noah's Chatterbox column in that morning's *Slate*.

Noah begins with the question, "Is Nora Ephron responsible for AOL's proposed acquisition of Time Warner?" He then invites his readers to consider that the massive deal had been not only anticipated but prepared by the 1998 Warner Bros. film *You've Got Mail* (cowritten and directed by

1. All quotations from the script of *You've Got Mail* are taken from this unpaginated draft, which can be accessed at <http://www.tomhanksweb.com/media/mail/ygmscript.txt>; hereafter abbreviated YGM. The Ephrons' script is based on Nikolaus Laszlo's play *The Shop around the Corner*.

Ephron), which, he speculates, could have been “an attempt to soften the ground for AOL’s latest acquisition.” Writing to deadline, Noah merely suggests a reading. “Although the film doesn’t portray AOL-the-corporation in any particular light,” he writes, “it does portray Tom Hanks, scion of another giant communications empire (in this case a Borders/Barnes & Noble-type book superstore chain) as being sweet and misunderstood, even though he puts Meg Ryan’s independent bookstore out of business!” Noah proposes this allegorical payoff: “When Ryan and Hanks finally smooch at the film’s end, you can think of it as a consummated romance; or, you can think of it as . . . a merger!” He quickly backs off from the merger option, however, confessing that he is “engaging in the same sort of paranoid logic” practiced by the technophobic journalist in the film.²

Noah’s double move, the attribution of responsibility to Ephron as co-writer and director coupled with his ritual invocation of “paranoid logic” (perhaps he feared being accused of producing what Peter Havholm and Philip Sandifer [“Corporate Authorship: A Response to Jerome Christensen,” *Critical Inquiry* 30 (Autumn 2003): 187–97] denigrate as “allegory by fiat” (p. 189)—as if there were any other kind) expresses a resistance to assigning authorial agency to the corporate organization that is in fact responsible for the film. The atavistic or (as my critics prefer) “ethical” veneration for the original, individual artist as fount of meaning is familiar enough. Yet there is more to this resistance than retro auteurism. The reluctance to acknowledge the corporate authorship of low and high cultural artifacts immunizes such activity from judgment. It is as if the legal charter that has made it possible for entertainment corporations to act as persons in the market and the legal decisions that have granted entertainment companies the citizen’s First Amendment rights to free speech in the public sphere have had the paradoxical effect of exempting the articulate commodities those persons produce from being suspected of advancing corporate objectives, whether by making a case or by managing a brand.

Is Noah’s sketch of an allegorical reading plausible? Not if we restrict ourselves to Nora and Delia Ephron’s “2nd final white revised” script, dated 2 February 1998. The script is entitled “You’ve Got Mail,” which is, of course, the familiar alert that America Online subscribers receive from their PCs

2. <http://slate.msn.com/id/1004341>

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(used by Joe Fox, the character played by Hanks) or their Macs (laptop of choice for Kathleen Kelly, played by Ryan). The alternate title “You’ve Got M@il” had been considered in January, and “You Have Mail” was apparently still a candidate when shooting began.³ When, exactly, the title was set is unclear (one source puts the date on the 30 May).⁴ All variations of the title more or less mimicked the characteristic AOL alerts. The shift from one title to another may have reflected concern about the legal status of the phrases (although none of the phrases was registered as a service mark or trademark, a distinctive or suggestive phrase may acquire trademark status without formal registration by the United States Patent and Trademark Office). The vacillation almost certainly signaled changing attitudes regarding the relationship between the Time Warner film and AOL.

Divergent attitudes toward AOL are discernable in the Ephrons’ final script. Early on a corporate defense against a possible charge of trademark infringement is adumbrated in an exchange between Kathleen, owner of the children’s bookstore *The Shop around the Corner*, and the predatory Joe Fox at a cocktail party:

Kathleen: I am your competition. Which you know perfectly well or you would not have put up that sign saying “Just around the Corner.”

Joe: The entrance to our store is around the corner. There is no other way to say it. It’s not the name of our store, it’s where it is. You don’t own “around the corner.” [YGM]

Kathleen naively inflates her standing by calling herself Joe’s competition, perhaps out of pride (mistaking the business for the personal) or prejudice (misunderstanding the value of professional growth). During the narrative she will progress to the realization that she is stronger bonded to him than she ever was as an independent proprietor. As if outfacing a potential lawsuit, Joe interprets Kathleen’s remark as an implicit accusation of trademark piracy and mounts the rebuttal that she has no property right in “around the corner”—a descriptive phrase that, like generic phrases such as, say, “You Have Mail” or “You’ve Got Mail,” belongs to the “linguistic commons” and therefore cannot be owned.⁵

Earlier in the script there is a scene among the clerks in *The Shop around*

3. See <http://us.imdb.com/Title?0128853>

4. See <http://www.darkhorizons.com/1998/youhave/youhaven.htm>

5. This is the language of the appeals court as it ruled in favor of AT&T’s defense against America Online’s suit accusing it of trademark infringement; see *America Online, Incorporated v. AT&T Corporation*, United States Court of Appeals for the Fourth Circuit, 28 Feb. 2001, p. 13. AOL commenced its action on 22 December 1998, four days after the opening of *You’ve Got Mail*.

the Corner, when the elderly Birdie is asked whether she has had cybersex. To the unlikely question she gives an unlikely answer:

Birdie: I tried to have cybersex once but I kept getting a busy signal.

Christina: I know, I know. One Saturday night I was really depressed about not having a date, so I thought, no problemo, I'll go on line and I won't be lonely, but I couldn't get on, there were hundreds of thousands of people who didn't have dates trying to get on.

[(MORE) You have to wonder which is harder, getting a date or getting on line when you don't have a date.] [YGM; my brackets]

The joke is not only that the busy signal betrays the cyberpromise of immediate sexual gratification but also in the wry allusion to the notorious difficulties that AOL subscribers then chronically suffered trying to get on-line. The joke is developed fully only in the script, however. In the film, perhaps as a courtesy to an AOL now tightly integrated with the project, Christina's response is muffled, and the final epigram is omitted.

Joe and Kathleen are in pursuit of something much purer than cybersex. And neither has to wait to get on line. Late in the story Joe praises the potency of the AOL phrase:

Kathleen: We only know each other—oh God, you're not going to believe this—

Joe: Let me guess. From the Internet.

Kathleen: Yes.

Joe: You've Got Mail.

Kathleen: Yes.

Joe: Very powerful words. [YGM]

The viewer's readiness to credit that observation is in part owed to Joe's superior knowledge, which duplicates the viewer's own perspective on the action; in part due to an awareness of the force that the common phrase does have in almost everyone's lives and in part owed to a somewhat distant invocation of the increasingly pervasive corporate presence of America Online in American society. The finished film welds those parts together by making the link between the Warner Bros. film and the corporate fate of AOL explicit, by signaling that the corporate affiliation is the very condition for the existence of the narrative, by intimating that the generic acquires its distinctive force primarily through corporate mediation, and by demonstrating that the power of the AOL slogan is enhanced through its partnership with Time Warner.

If the particular allegory of the merger—AOL acquiring Time Warner—that Noah floats is missing from the Ephron text, the script nonetheless

signals an allegorical intention on behalf of Time Warner. For although Starbucks and Zabar's are given their proper names, the bookstore chain is not. Most reviewers identified the chain as a thinly disguised Barnes and Noble. Both the script and the film name it "Fox"—name it and (when Joe takes his young aunt and young brother to The Shop around the Corner), even spell it out: "F-O-X." Havholm and Sandifer stress the seamlessness of *Batman's* system of signification, which, they argue, faithfully reflects the signs established in the Batman comic books.⁶ But on their own testimony no representation of *Time* appears in the DC comics, as it dramatically does during the first appearance onscreen of Vicki Vale. That's no surprise. Rights issues aside, to have represented the cover of Henry Luce's newsmagazine within the world of Gotham would have violated the comics' carefully contrived displacement of everyday reality. Havholm and Sandifer cannot have it both ways; either the continuity of the narrative world is their premise or it is not. And if, as the whole tendency of their critique argues, it is, then a flagrant break with that continuity is significant. The fractural sign of Time on Knox's desk signifies in a different way from other signs (cape, mask, buckle) in the cinematic text. That a fictional magazine, identified by the scholarly duo as *Vue*, which had been associated with Vale in a 1954 issue of *Batman Comics*, is subjected to deformation and appears in the 1989 movie as a real magazine named *Time* drastically shifts the level of signification and solicits an allegorical interpretation.⁷ *Fox* performs the same operation

6. Since Havholm and Sandifer chose to magnify a footnoted mention of producer Jon Peters's role in the making of the film in order to mount a critique of my essay, I'll take this opportunity to reverse the lens to reduce the point to its appropriate scale and restore it to its fitting location. I welcome the clarification of Peters's involvement. My claim that Peters made changes "right up until the last minute" was based on Nancy Griffin and Kim Masters's comment on Tim Burton's reaction to Peters's interference: "He was ultimately pleased with *Batman's* climax, but he doesn't recommend that kind of last-minute hysteria" (Nancy Griffin and Kim Masters, *Hit and Run* [New York, 1996], p. 172). Those were "substantive changes," but Havholm and Sandifer are right to correct my conclusion that those changes were made "up to the last minute before the opening." That inference should have been deleted from the final version of the article, where it introduced a mistake on the back of a verbal redundancy. Only a forced reading of the essay would conclude that my argument on behalf of *Batman* as a corporate allegory suggests, let alone requires, an auteurist claim on behalf of Peters, however. On the contrary, my claim is that the only intention that matters is Warner's corporate intention, which is impersonated by Steve Ross, as MGM was once impersonated by Irving Thalberg or Universal by Lew Wasserman. Peters's involvement is immaterial and of marginal interest, which is why he inhabits a footnote.

7. I take on board the *Vue* sign as a courtesy, because its association with Vicki Vale in *Batman Comics* in February 1954 and October 1954 did not in fact perform the symbolic work of indicating that she was working for Time, Inc. that Havholm and Sandifer assert. In the first reference that they adduce, Vale is identified as "a reporter for a picture weekly," not *the* picture weekly, the latter of which would have connected her to *Life*, which was the "only" picture weekly at the time, according to Havholm and Sandifer (p. 193). In the second reference, the "weekly" is dropped, as Vale's employer is identified as "*Vue*, the famed picture magazine" (p. 193). By giving the picture magazine the name *Vue*, which is "obviously" much closer to the name of the biweekly picture magazine *Look* than it is to *Life*, the writers seem to have deliberately distanced Vale from

in *You've Got Mail* but this time by introducing into a seamlessly realistic world a conspicuous, apparently arbitrary invention.

For the reader or viewer who knows something about Time Warner (an audience segment with special but not occult knowledge), choosing the name of Fox for a corporation that is aggressively invading New York City should invoke Fox Broadcasting, just as the multimarried, cynically predatory, dynastically determined head of the bookstore chain should invoke Rupert Murdoch. By 1988 there had been a history of conflict between the two entertainment companies. The antagonism between Murdoch and Ted Turner (on the Time Warner board in 1998) goes back at least to an *X-Files* episode entitled "Wetwired," which aired on 10 May 1996, in which Fox Mulder traces the source of signals provoking people to murder to videotapes of cable news broadcasts—a clear dig at CNN.⁸ In 1996 Fox News filed a \$2 billion lawsuit "less than 18 hours before the first of two shareholders meetings . . . to vote on Time Warner's purchase of Turner Broadcasting."⁹ In November of that year Time Warner Cable of New York won its suit against the City of New York to prevent the city from compelling the company to carry Fox News as part of its cable programming.¹⁰ The companies would patch up relations briefly in 1999, but not before the Warner Bros. movie tweaked the Time Warner rival in time for Christmas in 1998.

So far as the script goes, then, there is plausible evidence that Ephron has embedded an insider's allegory. But a reading of the script alone provides no persuasive evidence of corporate allegory in the strong sense: that the film is an intentional form managed by a corporate enterprise to address distinct audiences in order to achieve one or more business objectives. In the finished film, however, released on 18 December 1998, it is a different story. Before the credit there appears the familiar Warner Bros. logo, a family crest projected against the sky, with the subscript "A Time Warner En-

association with the Luce publication. At best, *Vue* is a composite of *Look* and *Life*. The distance from Time is so remote as not to count as a connection at all. I cannot find any merit in the claim by Havhom and Sandifer that it is "obvious that Vale works for the Gotham analogue of Time, Inc." (p. 193). Moreover, because the question of ethics has been raised, I should add that it is less than candid for a pair of scriptolaters such as Havholm and Sandifer to pass silently over the fact that in the Hamm-Skaaren draft of the script Vale is associated with no magazine at all. When she first meets Knox and mentions that she has been in Corto Maltese, the script direction reads: "she pulls out a sheet of COMBAT PHOTOS" (H. Sam Hamm and Warren Skaaren, *Batman*, 6 Oct. 1988, http://dailyscript.com/scripts/batman_production.html). Not only is there no link between Vale and Time, Inc. in *Batman Comics*, there is no genetic link between the appearance of *Time* in the film and the script.

8. I am indebted to Michael Szalay both for pointing out the pervasive use of corporate allegory in the Fox series and for calling my attention to the specific episode that mocks CNN.

9. Farrell Kramer, AP, 1996, <http://www.kernel.uky.edu/1996/fall/1010/news82f.html>

10. See *Time Warner Cable of New York v. City of New York*, United States District Court for the Southern District of New York, 6 Nov. 1996, <http://www.nyls.edu/cmc/uscases/timewnyc.htm>

ertainment Corporation” (fig. 1). In a seamless optical transition the skyey background is replaced by a field of blue (fig. 2). Then the “camera” pulls back from the logo to reveal what appears as a computer screen (fig. 3). I



FIGURE 1.



FIGURE 2.

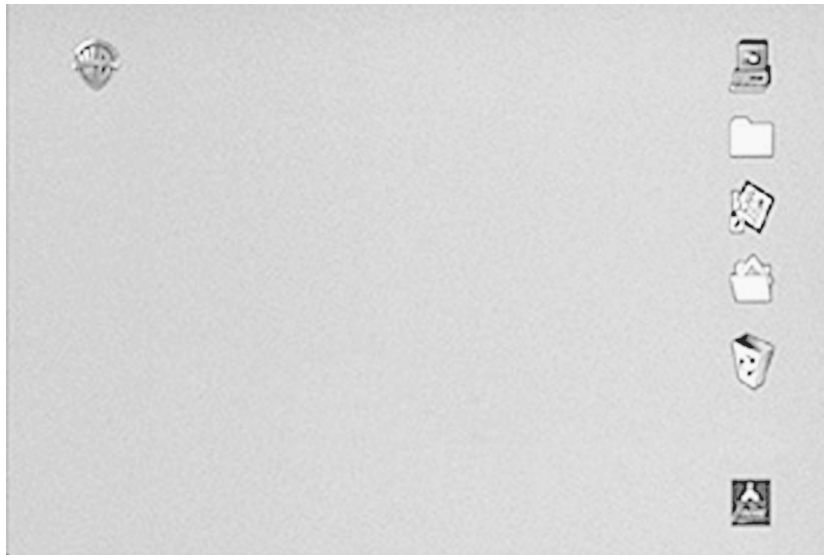


FIGURE 3.

say “appears as” because it is not quite accurate to say that this is the image of a computer screen. There is no border to the blue field; all that makes it resemble a computer screen is an array of images of icons: in the upper left corner is the Warner Bros. logo; on the right is a column of generic desktop icons; in the lower right corner, on a direct diagonal with the WB logo is the logo of AOL. Because there is no perceptible difference between the motion picture screen and the computer screen, it seems appropriate to say that the two screens have merged. WB and AOL share, not divide, exactly the same screen real estate. The seamlessness of the connection is represented in the credit sequence, which begins with “A Lauren Shuler Donner Production” appearing on the blue field, followed by a mouse point, followed in turn by a click that triggers an animation sequence which begins in outer space and then gradually closes in on the Upper West Side of New York before it dissolves from a computer generated to a filmed image of an apartment building.

The pairing of the corporate logos precedes any other credit as well as the introduction of the pair of unlikely lovers. A logo is not just another visual image; federally registered and legally protected, each logo claims corporate ownership of the commercial space it occupies and graphically asserts an unambiguous, inalienable corporate identity. While a writer can refer to a logo in a script with impunity, the logo itself cannot be reproduced without someone having secured the right to do so. The coexistence of the

logos on the merged screen is, therefore, not a mere fiction; it attests to a formal relationship between the corporate persons Warner Bros., a Time Warner subsidiary, and AOL that exists in the world of contracts as well as on the screen. The opening screen shots brandish the Warner logo as the source of the message that this film about sending and receiving messages is and situate AOL in the position of both receiver of the message (reading the screen left to right) and partner in a marketing communication to the viewer (apprehending the screen as a whole). The credit sequence that superintends the scripted narrative raises Ephron's scattered references to AOL to a new level by framing her romance as a message from one corporation to another, a message that projects a new brand identity.

The appearance of the paired logos establishes the identities of corporate characters prior to the appearance of the human characters and forges an allegorical connection. That connection would have looked different in 1998 when Time Warner still dwarfed AOL than it would to Noah subsequent to the merger in January 2000, when a bloated AOL had acquired the media giant. On balance, Joe fits best with Time Warner; he runs a large diversified business (books, yes, but cappuccino, coffee mugs, and various other knick-knacks, too) and whose revenue, as he spitefully points out to Kathleen, beggars that of Shop around the Corner. Kathleen, the addressee of the single most important message in the film, Joe's "Should we meet?" is, like AOL, an independent, and, like AOL, she is all about interface and customer service. What she has that Joe wants is a customer base: about 20 million for AOL at the time, somewhat less for Shop around the Corner.

That does not mean that Noah is wrong in his essential premise that *You've Got Mail* softened the ground for the merger, only that there was more ground to cover than he noticed and that the softening of it was a complicated process. As Jim Hu and Dawn Kawamoto reported on 9 February 1999, during 1998 Time Warner was doing the softening of the ground because as had "long been rumored," Time Warner was "in the market for a major Internet acquisition." After the announcement on 10 January 2000 that AOL had acquired the larger, more profitable, and more diversified company, it was natural to think that AOL had softened up its target in order to close the deal, but in fact, as Gerald Levin realized, the job had been started by *You've Got Mail* in 1998. Hu and Kawamoto report that

in a conference call about quarterly earnings just last week, CEO Gerald Levin said the company would use its existing assets, instead of cash or stock, as currency in future joint ventures or combinations. While Levin was vague on specifics about those investments, a media industry source said Time Warner may look to use its "soft money"

currency—free promotion and distribution via its holdings, which also include the WB television network, Warner Music, and Turner Entertainment Networks—in exchange for a stake in an Internet company. It appears Time Warner is not willing to pay cash or trade its stock for Internet companies, largely because of their high valuations.¹¹

Levin's approach is clear: you soften the ground by soaking it with soft money. But what Hu and Kawamoto do not report is that Time Warner had already concluded phase one of Levin's soft money strategy. In the fall of 1997 Ephron and Donner approached AOL about using the company's familiar slogan as the title of the film. Almost certainly as a result of the increased integration of identifying marks of its service in *You've Got Mail*, on 20 April 1998 AOL filed twice with the U.S. Patents and Trademarks Office to register "You Have Mail" as a trademark. That filing was followed by four others in May: for "You've Got Mail," for the graphic of the mailbox, and so on. The flurry of filings is evidence of a desire to seek protection of phrases and images that AOL had long ignored but which it now recognized were going to escalate in value as a result of the motion picture and therefore would become targets for predatory competitors. By filing for trademark protection AOL also increased the justification for Time Warner to license the trademarks from AOL, an agreement that not only enabled Time Warner to begin promotion of the movie but that provided some corroboration that AOL owned those signs.¹² That Time Warner did license the trademarks we know; but when the licensing agreement was reached is obscure.¹³ Despite speculation regarding the magnitude of AOL's expenditure to acquire an unprecedented amount of screen real estate in a Hollywood feature film, we lack any evidence that AOL paid anything to Warner Bros. to place its product in the motion picture.¹⁴ Given Levin's remarks about

11. Jim Hu and Dawn Kawamoto, "Is Time Warner Next in Merger Mania?" CNET News.Com, 9 Feb. 1999, <http://news.com.com/2100-1040-221449.html>

12. AOL's concern was warranted. Just after the release of the film AT&T began using "You Have Mail," "Buddy List," and the mailbox logo "in connection with its email service. AOL was upset, and filed suit in federal court alleging various trademark and unfair trade competition" ("Summary of *America Online v. AT&T*," *Tech Law Journal*, n.d., <http://www.techlawjournal.com/courts/aolvatt/Default.htm>. AOL eventually lost its suit on appeal).

13. We can hope that these obscurities, like others in the relations between the two corporations in the two years leading up to the merger will be cleared up by at least one of the three books about the merger said to be in production. See David D. Kirkpatrick, "Race to Tell AOL Time Warner Story," *New York Times*, 12 Aug. 2002, p. C1, and Alec Klein, *Stealing Time: Steve Case, Jerry Levin, and the Collapse of AOL Time Warner* (New York, 2003).

14. In November 1998 Wired News quoted a comment by Evan Neufeld, "practice director for online advertising strategies at Jupiter Communications," that "you could typically see a deal like this in the US \$3 to 6 million range." But Neufeld "cautions that much of the value of the deal could exist only on paper: AOL gets brand placement in the film; in return, Warner Bros. gets

soft money, it seems unlikely that AOL paid a dime. Time Warner did get some advertising for the movie on the AOL portal in exchange for advertising the internet company in the film. From an AOL perspective the deal was an advertising swap—similar to the kind of deal that AOL regularly engineered before the merger (not wholly unlike those currently under investigation by the SEC) and one that was also practiced among the divisions of Time Warner before and after the merger. Indeed, the cashless advertising swap was in form if not in magnitude similar to the nontaxable stock swap by which the merger would eventually be accomplished.

Yet the barter was incidental to the main deal from the perspective of Time Warner. For what AOL received from Time Warner's promotion of its brand in *You've Got Mail* was wholly incommensurable with whatever paltry millions might have been tendered as cash or written off as in kind payment for product placement. The film was not a vehicle for exchanging dollars or passing along soft money; the film *was* the soft money that Levin lavished on AOL to impress Steve Case with the power of his company to generate market value. And Case must have been impressed. Here is the stock chart for December 1998:

AOL Prices from 12/01/98 through 12/31/98

Date	Volume	Ask/High	Bid/Adj.	Close
12/01/98	94,666,000	22.50	20.40	22.46
12/02/98	39,627,200	22.68	21.78	21.87
12/03/98	50,710,000	22.50	20.87	21.00
12/04/98	44,594,000	21.96	21.20	21.93
12/07/98	27,724,800	22.43	21.93	22.40
12/08/98	42,242,400	23.00	22.18	22.59
12/09/98	38,679,600	23.46	22.64	23.23
12/10/98	38,613,200	23.46	22.01	22.48
12/11/98	32,947,600	23.04	22.10	22.98
12/14/98	32,811,200	22.68	22.09	22.25
12/15/98	38,867,600	23.31	22.65	23.21
12/16/98	68,135,600	24.32	23.62	24.06
12/17/98	43,837,600	24.92	24.00	24.68
12/18/98	49,604,800	26.25	24.90	26.15
12/21/98	72,788,800	29.84	27.06	29.12
12/22/98	90,378,800	31.09	28.62	30.70

heavy promotion through AOL's online properties" (<http://www.wired.com/news/culture/0,1284,16046,00.html>). The day before the film was released Paul Farhi, reported in the *Washington Post*, that "no money changed hands" (*Washington Post*, 17 Dec. 1998.)

12/23/98	110,757,200	35.12	33.50	34.57
12/24/98	27,463,200	34.75	33.87	34.15
12/28/98	102,285,600	39.93	34.87	39.28
12/29/98	72,880,000	39.87	36.75	38.50
12/30/98	111,528,000	38.50	33.50	36.95
12/31/98	152,473,600	40.00	35.75	40.00 ¹⁵

AOL's stock had been steadily rising during October and November of 1998; it increased ten dollars on a twelve dollar price in the space of seven weeks. And then the stock hovered around twenty-two dollars from November until, well, until 21 December, the first Monday after the opening of *You've Got Mail* on 18 December, when the stock spiked fourteen points in ten days. And it's not just the increase in price that's impressive. Look at the trading volume. There were other busy days during the fall, but nowhere was there the sustained level of trading that we see at the end of the month.¹⁶ *You've Got Mail* was soft money—lots of it—that went right into the portfolios of the shareholders in time for the holidays; and it was, of course, a special gift for Steve Case. Please multiply his holding of 20,000,000 shares by fourteen. It's a wonderful message. Nothing personal, just business.

After that spike the stock settled down until March, when it renewed its astonishing climb to the peak it reached in early January 2000, just in time for the conclusion of the merger. Now, I'm not arguing that *You've Got Mail* caused that spike in December of 1998 or even that Levin planned it. It's enough for me to solicit your belief that Case and Levin could have believed that the film caused the sudden climb. It's enough that you can tender the belief that those insiders, such as Steve Case, and would-be insiders—itchy institutional portfolio managers or the day-trading wise guys—who saw the film and, signaled by the credits, decoded the barely veiled allegory of corporate romance and could have come to believe any number of things that would have accrued to AOL's benefit. They could have believed that the film signaled a corporate intent to complete a merger that would raise the stock even more; or they could have believed the signal of a merger would be enough to raise the stock value for a time whether or not the merger ever took place; or they might have believed that others would believe the stock value of AOL would leap in response to the film and therefore bought stock themselves in order to be the mythical first one in. We'll never know what

15. AOL Personal Finance Forum, keyword: Stocks. Unfortunately, the first book about the merger to appear, Klein's *Stealing Time*, not only fails to mention *You've Got Mail* at all but, in developing its history of the merger, moves directly from spring 1997 to spring 1999, skipping the year 1998 altogether.

16. Time Warner stock, consistently on the rise during the second half of 1998, enjoyed a bump that correlated with the release of *You've Got Mail*.

any one or two or thousand or million stock purchasers actually believed, which is why we speak of what the market thinks, fears, hopes. It is not the inference of an amorphous market psyche that is at stake here but the suasive evidence of a determinate corporate intention that was legible in the film and that could have made it credible to astute students of corporate art that *You've Got Mail* was used as soft money in order to achieve a specific corporate objective—thereby proving Time Warner's value to AOL by vividly demonstrating how it could dramatically increase AOL's value to its shareholders.

By the time Levin publicly talked about using soft money to buy an internet company in February 1999, Time Warner had already munificently bestowed such money on AOL. Time Warner, not Levin. For it is just as likely that Levin inferred the corporate strategy after he perceived its plausible success as it is that he deliberately planned that course of action. Levin has certainly never said that he plotted the strategy, and those who have read either Connie Bruck's *Master of the Game* or transcripts of Levin's press conferences know that the "visionary" CEO was neither shy about taking credit nor reluctant to spread the blame when deal-making credit was swamped by postdeal debit. Like Ephron, Levin was an agent of a corporate intention that he could impersonate but for which he was not solely responsible. At his press conference the opportunistic Levin proved that he, like his mentor Steve Ross, was a gifted practitioner of the methodology of cultural studies that Havholm and Sandifer contemptuously dismiss. There was a discernable pattern of corporate success that impelled him with the force of corporate strategy. Canny exploitation of the ambiguous but real, preposterous but suasive traffic between cultural signs and market value had made big things happen for him and for the imperial corporation he served. There was every reason to think it would work again. Still, if my story is to be believed, it needs to be explained why the merger did not occur in January 1999. It could be argued that *You've Got Mail* succeeded too well. Indeed, the case could be made that the whole enterprise backfired, for by jacking up the stock value of AOL, Time Warner had elevated it to a level that completely changed the basis on which negotiations could be conducted. Whatever the prospects for acquisition were early in 1998, after *You've Got Mail*, Time Warner could not hope to buy AOL at its January valuation. So AOL bought Time Warner the following year. That looks ironic.

But it is only ironic if you believe Levin's public statement that it was in fact his objective to acquire an internet company. The fact was that the soft money approach—which came down to buying a major corporation with free advertising—did not sound ludicrous when Levin formulated it only because the idea of Time Warner, which was still wallowing in the debt that

it had taken on in the last merger, spending the kind of real money it would take to acquire a robust internet company was ridiculous on its face.¹⁷ As Paul Farhi, who reported on the Time Warner connection for the *Washington Post* in 1998–99, suggested to me, it is likely that Levin’s press conference in February 1999 was a head fake designed to plant the impression that Time Warner was in an acquisitive disposition while, having deterred hostile moves, the company could ready itself to be acquired, exploiting the merger to move to another level where its debt would be absorbed in the greater whole. That strategy would be completely consistent with Levin’s deal-making model, the Time Warner merger engineered by Steve Ross in 1989. By the time that Levin and Case “met cute” in September 1999 at a Global Business Dialogue that they cochaired, not only had the marketing principle been proved, it had also been “proved” that AOL would hold and even increase its value. After the meeting and a romantic trip Case and Levin made to China together, it was only a matter of a few months before the Levin flip was accomplished, and Steve Case, assuming the Tom Hanks role, contacted shopgirl Levin and said, “I think this would be an extraordinary merger, a merger of equals.”¹⁸ With that call the merger was assured, and Noah’s reading of *You’ve Got Mail* as persuasively anticipating AOL’s acquisition of Time Warner would become not only inevitable but right.

Havholm and Sandifer dismiss my claim that *Batman* attests to corporate planning with the logic chop that “since the movie can attest corporate planning with respect to the merger only if it is indeed the corporate allegory Christensen claims it to be, it becomes, in that sentence, allegory by fiat” (p. 189). My argument is not quite so Longinian as all that. The verb I employed was *attest*, not *prove*. *Attest* was carefully chosen in order to comply with the legal context of the case of *Paramount v. Time Warner* and argue, not decree, that the film could have been used as evidence in that case to defend the ostensibly irresponsible performance of the Time Inc. board. I did supply other concrete evidence of the allegory. The most explicit piece of evidence is the inserted image of *Time* magazine, which, despite their strenuous manipulations of the history of the comic book and the script, Havholm and Sandifer are unable to wish away. If, however, I ask myself, “Is the insertion of *Time* an instance of ‘allegory by fiat?’” I must, in good faith, answer, “Obviously.” Either somebody ordered that the magazine be

17. Time Warner investors, who were burned in the earlier merger, were regarded as being opposed to enormous expenditures for overpriced internet companies. See the comments of David Simons, managing director of Digital Video Investments, reported by Hu and Kawamoto.

18. “In the Money,” CNN, transcript number 00011001FN-104, 10 Jan. 2000. Perhaps there was an omen for AOL Time Warner in Case’s choice of a phone call rather than an email to ask his question, “Do you want to merge?”

used or somebody arbitrarily placed it on the set. Whoever did it was nonetheless not *responsible* for the corporate allegory because he or she was acting in full compliance with a corporate intention; he or she, immunized by the rule of limited liability, was, like Nora Ephron, an instrument for the corporate authorship of the film.¹⁹

The other piece of evidence I offered was the opening of *Batman*, attended by Steve Ross and Richard Munro and followed up by a telephone call from Ross to studio head Mark Canton. That too is an example of allegory by fiat, except that we know whose fiat it was: Steve Ross's. Havholm and Sandifer prefer to account for the credit that Ross lavished on Canton by referring to the stupendous weekend gross (which, by the way, could not have been counted when Ross placed his call on Saturday evening). They trumpet that explanation as if they were wielding a newly sharpened Occam's razor. It is not, however, a razor they wield, but a shoehorn. The one-size-fits-all box office explanation cannot account for the single most conspicuous incident of that decisive weekend: the attendance of Munro at the screening with Ross. Munro did not need to be in the theater to learn about the boffo box office. He was hardly inclined to go; he had not attended a movie for ten years. But he *was* there to see the movie and, in the presence of Ross, to read the text. The money mattered, of course, but as the history of that peculiar merger reveals, cash value was never crucial, or Time Inc. would have struck a better deal. "Allegory by fiat" is just another way of describing the charismatic Ross's creation of a customer for Time Warner by arranging that Munro be present at the creation of a new, powerful brand identity. To accomplish that demonstration Ross represented Time Warner; he did so on behalf of an intention that did not belong to him but to the corporation that aggrandizes individual aspirations and actions for its own ends and that had already presupposed the inclusion and eventual subordination of Time, Inc.

Money matters, of course. But what is money? According to Levin there is hard money and soft money—and the latter, which includes motion pictures and other forms of advertising is, he attested, a medium of exchange preferable to cash. If readings in the history of the global operations of mul-

19. As for poor Mr. Finger. I really can't take responsibility for his unhappy life, his early death, his posthumous deprivation of credit, or for the predatory practices in the comic book and film businesses that result in similar "unfortunate consequences." I didn't give Finger credit because the motion picture didn't. And I didn't rehearse the credits for all the other marvelous contributions made by script assistant, best boy, cameraman, and caterer because Warner Bros. put those credits on the screen. I expect that Havholm and Sandifer's real grievance is with Bob Kane, who, by their account, got plenty of the credit that might have gone to Finger and who gets the only DC-related credit from Warner Bros.: "Based on Batman Characters Created By Bob Kane." I hope my ethical critics can be persuaded to point their Finger where it belongs.

tinational and of the merger mania of media conglomerates in the late decades of the twentieth century teach us anything it is that to charge that reasoning is circular does not disconfirm aggressive arguments for investment or merger or diversification or takeover that are backed by sufficient political, cultural, or financial capital. Scenario thinking worked for Shell and Time Warner as it had worked for the National Security Council because it was devised to absorb all contingencies into a feedback loop. In the case of AOL and Time Warner, the initial affiliation of the companies involved a deal in which AOL agreed to advertise a Time Warner film that advertised AOL and suggested a possible merger. That promotion raised AOL's market value by inducing stock purchases based on the belief that the stock would ascend to a new level due to others' purchases made in the belief that the stock would ascend to a new level. And that bubblicious increase in stock value created AOL as a customer for the purchase of Time Warner, which was acquired when, in payment for an utterly illusory share of power in the merged company ("See, our name comes first!"), AOL returned to Time Warner shareholders an incommensurate portion of the value that *You've Got Mail* had created. That value, the very concept of value, promulgated by Case and Levin was, it turned out equally illusory.²⁰ Three years later, after all the machinations and promotions, stock rising and stock falling, Levin is gone, and Case as good as gone. It turns out that the only thing of value associated with *You've Got Mail* that persists is *The Shop around the Corner*—not the store owned by Kathleen Kelly but the film made by Ernst Lubitsch, who had the good fortune to work for Paramount in the thirties, not Warner Bros. in the nineties.

Epilogue

On 23 June 2003, I conducted a telephone interview with Nora Ephron, director and cowriter (with Delia Ephron) of *You've Got Mail*. Ms. Ephron kindly agreed to answer questions regarding the making and marketing of the motion picture. Ephron said that she and Delia Ephron were solely responsible for introducing the AOL theme in the original script. After making the initial decision to remake *Shop around the Corner* employing electronic messaging, the choice, as she saw it, was between AOL and an invented service. This was about the time that Microsoft was in the process of launching a competing messaging service, but Ephron saw the use of

20. Here's just one example of the line Case incessantly spun at the time of the merger: "But there is another reason why this merger is so important, and it is not its size, it is really the company's potential for innovation and creation of new value and new choice for consumers" (In the Money News Conference, 10 January 2000). As events would soon prove, "innovation" meant little, "choice" meant less, and "value" meant nothing at all.

AOL, a smaller, independent, user-friendly company, as something of an anti-Microsoft gesture. Ephron made the initial contact with AOL. Her contact was Judy Corman, an employee of the now-defunct public relations firm Robinson-Lehrer, who handled PR for AOL. The producer Lauren Shuler Donner was also involved in securing AOL. When Microsoft got wind of the project during preproduction in the fall of 1997 it made a bid to be the service of choice (they wanted to market the film with ads of Hanks and Ryan using MSN) and offered to make a contribution of 2-300,000 dollars to a children's literacy program if they were to be included. Ephron and Schuler turned Microsoft down, but suggested to AOL that it make a similar contribution, which it agreed to do. That was the only money involved in the deal. Subsequent to the agreement AOL offered to review the scripts and provided technical assistance to assure that the look and feel of the computer images featuring the AOL service would be authentic.

According to Ephron, at no point in the production process was either Warner Bros. or Time Warner actively involved in the planning of AOL's participation in the project. Under the direction of the studio heads Robert Daley and Terry Semel, Warner Bros. operated without interference from New York, and even at Warner Bros. *You've Got Mail* was "under the radar" until the signing of Hanks and Ryan as stars gave the project more presence in the Warner Bros. lineup.

Ephron denied that she had intended any reference to Fox Broadcasting in the name of the bookstore chain. Joe Fox, she said, had been a close friend of hers and a well-known figure in New York literary circles. At the time of the film, Fox was deceased, but his son owned and operated a Fox bookstore in Princeton, New Jersey.

Although Ephron insisted that neither she nor anyone involved in the production of *You've Got Mail* had any intention to use the film in order to advance any corporate objectives, she agreed that the film probably did assist in the gradual movement to the merger. (In an email communication of 1 July 2003, Donner, however stated her conviction that "neither of those large corporations were influenced by our movie.") She suggested that one of the effects of the motion picture may have been to mitigate some of the bad feeling that lingered between Bob Pittman, second in command at AOL, and his former employers at Time Warner, thereby facilitating the merger. When I mentioned Levin's "soft money" statements in January 1999, she informed me that Jerry Levin "took a bigger interest in the movie than others at Warner did." She called my attention to the comment about the film that Levin made at the news conference announcing the merger (see second epigraph above) as evidence that Levin regarded the film as significant to the deal. She added that, given Levin's interest in the film, it was hard to

believe that at some time during the crucial one-on-one conversations between Levin and Case in fall 1999 the two men did not speculate on who was who in relation to *You've Got Mail's* main characters. Indeed, though Ephron expressed strong skepticism regarding the value of "synergy" (at Warner, she mentioned, synergy "usually meant you had to use a musician you didn't want"), she did somewhat ruefully admit that despite any absence of intention on her part, the contribution of *You've Got Mail* to the advancement of the merger could be cited as an example of synergy actually operating.

When I asked who was responsible for including AOL in the opening credits, Ephron did not at first know what I meant. When I called her attention to the simulation of the computer screen with the Warner Bros. logo in the top left corner and the AOL logo in the bottom right corner, she denied that the AOL logo was actually there. When I insisted that it was indeed clearly legible in the videotape that I had consulted, she fell silent and then said that she did not know it was in the credits or how it got there. (Shuler Donner, whose producer's credit appeared on the screen with the paired logos, either did not understand or refused to understand the question regarding the decision to include the AOL logo. She attributed all relations between the film and the merger to "coincidence.") At the conclusion of our conversation Ephron commented, "If I had thought that the movie would contribute to the merger, I would have taken out the references to AOL."