RECENT CASES

Copyright infringement suit against CBS, on account of its broadcast of a "Tony Orlando and Dawn Show" comedy skit, is dismissed for lack of substantial similarity

The distinction between an idea and its expression was the issue in a recent copyright infringement action filed against CBS on account of its broadcast of a comedy skit on the "Tony Orlando and Dawn Show." The skit was entitled "SFX: Egg Cracking," and featured Tony Orlando as an egg white and Anne Meara as an egg yolk. In the skit, the yolk and white confront anticipated separation at the hands of an unseen cook, and they speculate about what might have been. The white had "political ambitions," and dreamed of rolling on the

White House lawn on Easter Sunday. The yolk dreamed of being an egg nog at a Howard Cosell party, or even a chicken "if only we'd have stayed under mom just a few more days." The skit concludes with the yolk observing that the "most important thing" is not what happens to them, so long as they "can face it together."

Russel Gibson alleged that the "Egg Cracking" skit infringed the copyright to his lecture entitled "I am And [sic] Egg." The lecture was one-half a typewritten page in length, and was written to be delivered by a single person. It describes the plight of an egg, from the comfort of lying under a chicken, to being picked up by a "no good farmer" with a cold hand, to being put in a "little grey box with eleven strange eggs" on a freezing shelf. The egg remembers his mother's advice to be sure his sunny side is up, but he learns that it is more fun to be scrambled and "swoshed around together" with a female egg, and thus he concludes, that "Mother was wrong."

The court noted that copyright protection is available only for the expression of an idea, and not for the idea itself. In this case, the court found that the only similarities between Gibson's lecture and the CBS skit were attributing to an egg the powers of speech and feelings, the egg's experiences of lying under a chicken, in a box with other eggs and in a refrigerator, and the egg's reacting to the possibility of being cooked.

The court held that the attribution to an egg of qualities normally possessed by human beings "is of course an 'idea' and no more. The idea alone is not subject to copyright protection." The court also held that the other similarities, such as the experiences and reactions of the eggs, were "scenes a faire," that is, "sequences of events which necessarily follow from a common theme." Similarity of expression which necessarily results from the fact that a common idea is only capable of expression in stereotyped form is not copyright infringement, the court ruled.

Moreover, said the court, even if there were similarities of expression between Gibson's lecture and the CBS skit, they would be insufficiently substantial to be an infringement, in light of the substantial differences between the two. The CBS skit treated more events than the Gibson lecture. And the theme of separation which was the subject of the CBS skit did not appear in the Gibson lecture at all.

"In sum," said the court, "the only similarities between the ... material are the idea of a personified egg and of certain situations that necessarily follow from that idea. There is no substantial similarity between the expressions of the idea in the two works."

The court therefore dismissed Gibson's complaint.

Gibson v. CBS, Inc., CCH Copyright Law Reports, Para. 25,164 (S.D.N.Y. 1980) [ELR 2:8:1]

Columbia Pictures proves that Texas theater chain underreported box office receipts; theater chain president held personally liable

Columbia Pictures periodically licensed films to L.C.L. Theaters, a Texas theater chain. Believing that L.C.L. had been underreporting its box office figures to avoid rental fees, Columbia filed a breach of contract suit in Federal District Court. After hearing the distributor's evidence, the court rendered judgment for Columbia.

On appeal, L.C.L. argued that Columbia had not proved its damages. A Federal Court of Appeals, however, has disagreed. Damages need not be computed with "mathematical exactness," it held. All that is required for recovery is a "reasonable basis" for estimating a party's losses.

In the court's opinion, Columbia's evidence was "plainly sufficient" to estimate its losses. A vast amount of data was introduced at trial, including evidence that box office receipts were significantly higher on those occasions when Columbia monitored the theaters. An expert testified that such discrepancies could not have been coincidental, but indicated a constant practice of reporting low figures. The court termed the data supplied by Columbia "logical and persuasive" and sufficient to support the judgment.

Additionally, the court ruled that L.C.L.'s president could be held personally liable for his corporation's wrongdoing. He gave orders directly and approved his employees' actions. This conduct, the court reasoned, provided a basis for imposing personal liability.

L.C.L. Theaters, Inc,. v. Columbia Pictures lndustries, Inc., 619 F.2d 455 (5th Cir. 1980) [ELR 2:8:2]

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Arbor House Publishing Company prohibited from naming novelist Ken Follett as principal author of nonfiction book which he merely co-authored

Prior to the success of his suspense novels "Eye of the Needle" and "Triple," author Ken Follett worked as an editor with a publishing company in England. In 1977, Follett became involved with a work entitled "The Heist of the Century," the true story of thieves who tunneled under the streets of Nice and removed property worth 60 million francs from a bank vault. An account of the theft was written by three French journalists under the pseudonym Rene Louis Maurice. Follett agreed to edit an English translation of the book; he pointed out to his agent that the work required would include "restructuring the story, bringing style to the writing, exploiting the drama, characterizing, and filling in gaps." Although Follett requested a copyright in his name for his "rewrite," he eventually agreed to an attribution on the title page of the book reading "Rene Louis Maurice with Ken Follett."

Arbor House, the publisher of "Eye of the Needle" and "Triple," acquired United States publication rights to "The Heist of the Century." The book was retitled "The Gentlemen of 16 July" and was scheduled for release in the fall of 1980. Arbor House's proposed authorship attribution for the book read: "by the author of TRIPLE and EYE OF THE NEEDLE, KEN FOLLETT with Rene Louis Maurice." Only Follett's name was listed on the back binding of the jacket.

Follett, William Morrow & Company, Inc., and the New American Library, Inc. (the publishers of Follett's new novel, "Key to Rebecca," also scheduled for fall 1980 release), sought to restrain Arbor House from publishing "The Gentlemen of 16 July" using the intended authorship attribution. They claimed that naming Follett as the principal author constituted a false representation and false designation of origin in violation of section 43(a) of the Lanham Act and also violated section 51 of the New York Civil Rights Law. A Federal District Court in New York City has ordered Arbor House to give equal attribution to Rene Louis Maurice and to Ken Follett, in that order, and to indicate on the cover or jacket of "The Gentlemen of 16 July" that the work is nonfiction.

The court, noting the lack of precedent relating to the question of authorship attribution, proceeded to analyze Follett's contribution to the manuscript. Follett had added a prologue and epilogue and had altered the perspective of the book from that of a flashback to a chronology of events in addition to doing considerable rewriting. He obtained authorship credit because his contribution went beyond the work generally performed by an editor. As the court commented: "Certainly the line between author and editor is unique in each instance. It turns in this instance on an analysis of sheer output, and rewriting, rather than upon creativity and concept."

In considering the appropriate attribution to be accorded Follett by Arbor House, the court rejected the contention that Follett and the holder of rights to "The Heist of the Century" had agreed to restrict the use of Follett's name in connection with the book. To the contrary, evidence indicated that at the time attribution was discussed, Follett successfully sought to have his name prominently displayed on the book's title page.

Trade practices in the publishing industry regarding attribution were also considered by the court. Arbor

House contended that a publisher has the discretion to attribute authorship to an individual who has made significant contributions to a literary work. Follett and his publishers, on the other hand, characterized his contributions as those of an editor, and editors generally do not receive authorship credit. But the court noted that even if the authorship attribution were consistent with industry practices, it would be illegal under the Lanham Act and under the New York Civil Rights Law if the actual contribution of the person designated as the author were misrepresented. Arbor House's proposed attribution was found to be an unambiguous representation that Follett was the principal author of The Gentlemen of 16 July." His name was printed in bold typeface; the subtitle "with Rene Louis Maurice" was printed in much smaller type; and Follett's name was the only one appearing on the spine of the book. Follett's work did bear "certain indicia of authorship" according to the court, but was "not sufficient to render Follett the principal author of the book" because "Authorship connotes something more than style, form and narrative approach. It includes a special element of creativity, of scope and content.... [Follett] neither conceived the framework or format of the book, nor played a substantial role in selecting the material to be included. Almost every significant occurrence, personality and theme can be traced directly to the materials from which Follett worked."

The court therefore concluded that it was misleading and literally false for Arbor House to represent Follett as the principal author of "The Gentlemen of 16 July."

Follett v. Arbor House Publishing Company, Case Nos. 80 Civ. 3087 and 80 Civ. 3447 (S.D.N.Y. July 28, 1980) [ELR 2:8:2]

Publisher of hardcover editions of "Nancy Drew," "The Hardy Boys," and "The Bobbsey Twins" books was not entitled to prevent publication of paperback editions of new stories by another publisher

The right to publish paperback editions of stories in several perennially popular juvenile series, including "The Nancy Drew Mystery Stories," "The Hardy Boys," and "The Bobbsey Twins," was not included in an agreement granting hardcover publication rights to Grosset & Dunlap, Inc., according to a Federal District Court in New York City. The court therefore ruled that the Stratemeyer Syndicate was entitled to grant such rights for future books in the series to Simon & Schuster.

The creator of the series, their characters, and the pen names associated with each, was Edward Stratemeyer. Stratemeyer wrote approximately, 500 stories, either by himself or by hiring writers to fill in his outlines. The Stratemeyer Syndicate, a partnership organized in 1931 to succeed to Stratemeyer's interests upon his death, added dozens of works to the series. Again, such works either were written by members of the Syndicate or by writers for hire. The Syndicate retained all rights, title and interest in all of the stories.

In 1930, Grosset & Dunlap was granted the exclusive right to publish certain stories in the series; in 1931 and 1934, the Syndicate entered into similar agreements with Grosset concerning other stories. The agreements provided that Grosset was to publish specified books in a clothbound form. This provision was found by the court to preclude Grosset from publishing any paperback editions of the stories. However, conjecturing that Grosset would not have agreed to publish hardcover editions if Stratemeyer could license paperback rights to others, the court concluded that Grosset had received an implicit promise from the Syndicate that it would not grant to anyone other than Grosset the paperback publication rights to the stories covered by the 1930, 1931 and 1934 agreements. Nevertheless, Grosset's copyright ownership rights in connection with its exclusive publication license did not mean that the company was granted any copyright interest in any of the series or in any characters. Thus Grosset lacked standing to bring a copyright infringement action over paperback editions of new stories in any Stratemeyer series.

Grosset also had not become a joint copyright owner of any Stratemeyer story. Although the company had provided illustrations for certain stories, it had done so in accordance with the Syndicate's specifications, and the text and illustrations were not "inseparable or interdependent parts of a unitary whole" (17 U.S.C. section 101).

Grosset's trademark infringement and unfair competition claims were also rejected. Grosset was found to be a "mere licensee" with no property interest in any Stratemeyer trademarks, and the publication by Simon & Schuster of new Stratemeyer stories was not found to constitute a misappropriation of Grosset's marketing efforts and was not undertaken in bad faith.

The court determined that Stratemeyer was the copyright owner of each Stratemeyer story published by Grosset, and that Grosset had no right to license the publication of Stratemeyer's stories or to share in the revenues derived from licensing others to publish Stratemeyer stories which were never published by Grosset. Grosset also was not entitled to share in revenues derived from licensing rights in the characters appearing in Stratemeyer stories.

The court, in dismissing Grosset's claims, directed the company to render an accounting to the Syndicate covering essentially all of the royalties and and income received by Grosset during 1974-1979 on all Stratemeyer books printed by Grosset.

Grosset & Dunlap, Inc. v. Gulf & Western Corp., (S.D.N.Y., June 12, 1980) [ELR 2:8:3]

Federal Court of Appeals sends Marvin Webster case back to Special Master for redetermination of whether compensation awarded to Seattle Supersonics was a " penalty" prohibited by NBA collective bargaining agreement

When Marvin Webster's contract with the Seattle Supersonics expired at the end of the 1977-78 NBA season, he became a free agent and signed a contract with the New York Knicks. The current NBA collective bargaining agreement gave Seattle the right to receive compensation from New York for Webster, but the two teams were unable to agree on who or what that compensation ought to be. Accordingly, pursuant to the collective bargaining agreement, NBA Commissioner Larry O'Brien resolved the dispute by awarding Seattle Lonnie Shelton, New York's first round 1979 college draft pick, and $450,000 in cash.

Although the collective bargaining agreement gives the Commissioner "full, complete and final jurisdiction" over compensation disputes, the agreement also provides that the purpose of the compensation rule is "not to serve as a penalty, but is to ensure that a team which loses ... a player is, to the nearest extent possible, made whole for the loss of such player."

The Players Association concluded that O'Brien's award to Seattle was so excessive that it constituted a prohibited penalty, and it petitioned Federal District

Court Judge Robert L. Carter to set it aside. A Special Master was appointed, as required by the collective bargaining agreement.

The Special Master found that the Commissioner's award to Seattle had been "excessive" and would "chill the market" for free agents. Nevertheless, he refused to set the award aside, because there had been no substantial evidence that the Commissioner had intended to make Seattle more than whole, nor was the award so clearly excessive that it had to be attributed to intent or gross error.

Judge Carter, however, reversed the Special Master and vacated the Commissioner's award (see ELR 1:22:3). Judge Carter found that the compensation awarded to Seattle for Webster had been more than double the compensation that had been awarded to San Francisco for the loss of Rick Barry only one month earlier, even though the Commissioner himself had described Barry as a "superstar" and as the most important member of the San Francisco team.

The NBA and Seattle then appealed Judge Carter's ruling. A Federal Court of Appeals now has reversed Judge Carter in part, and has sent the case back to the Special Master so that he may redetermine whether the compensation was a prohibited "penalty" under the collective bargaining agreement as the Court of Appeals has just construed it.

The Court of Appeals agreed with Judge Carter (and the Players Association) that the District Court had the authority to determine whether the award was a penalty. In this regard, the Court of Appeals held that the Special Master had erred in concluding that the Commissioner's award could be set aside only if the Commissioner abused his discretion. In other words, the "abuse of discretion" standard gave the Commissioner more authority than he was meant to have, under the collective bargaining agreement.

On the other hand, the Court of Appeals agreed with the NBA that the Commissioner has some latitude to determine the appropriate amount of compensation. Therefore, the Court of Appeals did not agree with Judge Carter that a compensation award would be a prohibited penalty if the "relative worth of the compensation exceeds the value of the lost player" by more than an "insignificant" amount. According to the Court of Appeals, the excess must be significant" in order for an award to be a penalty. And the Court of Appeals suggested that it would be fair to conclude that "an award becomes a penalty when it exceeds the fair value of the player by approximately 20% to 25%."

Although Judge Carter had found that the award to Seattle for Webster had exceeded Webster's value by a "significant" amount, the Court of Appeals pointed out that the collective bargaining agreement provides that this determination is to be made by the Special Master; the District Court is to determine only whether the Special Master's finding is clearly erroneous. Therefore, the Court of Appeals sent the matter back to the Special Master so that he could say whether the value of the award exceeded Webster's value by a significant amount, using approximately 20% to 25% as a guideline for "significant."

In re Robertson Class Plaintiffs, Case No. 79-7668 (2d Cir., June 11, 1980) [ELR 2:8:4]

Federal Court of Appeals approves Federal Communications Commission's deregulation action allowing cable television systems to carry network programs that are aired by local broadcast stations

One of the problems in the regulation of cable television has been reconciling the differences between cable operators and over-the-air broadcasters. The Federal Communications Commission's "blackout" rules have been one major point of disagreement, and were the subject of a recent lawsuit brought by a television broadcaster.

When the FCC first issued regulations governing cable television it did so with the notion that the livelihood of many television stations, particularly those in small markets, is dependent upon their network affiliations. Consequently, the FCC's rules were designed to protect these local stations' network revenues. For example, the Commission had ruled that when cable television companies carry broadcast signals, they must blackout all network programming already under contract to local over-the-air stations.

Upon reconsideration, the Commission reversed its position in favor of a rule which enables cable systems to increase their program offerings. The FCC order permits cable operators to carry network programming regardless of whether local over-the-air stations carry the same programming. However, in the event that cable carriage of certain signals creates an "inappropriate result," special relief may be obtained. For instance, if a local station is able to prove that its financial health is dependent upon the deletion of certain cable-carried programming, the FCC may still order a blackout of the signals.

At issue in a suit brought by the Spartan Broadcasting Company was the Commission's departure from its earlier policy requiring a cable company to prove that it should not be subject to blackout rules. In 1978, the Commission shifted the burden of proof to require broadcast stations to demonstrate the necessity for a blackout under the FCC's provision allowing "special relief" for "inappropriate results."

Spartan Broadcasting had contended that the Commission adopted its 1978 rule without adequate notice. The Federal Court of Appeals has disagreed, however, finding that the Commission's previous rulings and public reports concerning the carriage of cable signals served to adequately "warn" interested parties of the possibility of further action. Government agencies need not make public every precise regulation contemplated, the court reasoned. Further, the FCC was within its administrative authority to overturn policies after considering new developments in the cable and over-the-air television relationship.

Spartan Broadcasting Co. v. Federal Communications Commission, 619 F.2d 314 (4th Cir. 1980) [ELR 2:8:5]

Singer Janis Ian is not personally liable for alleged defamatory remarks made to a New York Times reporter

The Appellate Division of the New York Supreme Court has dismissed a libel suit against singer Janis Ian for her allegedly defamatory statements during an interview with a New York Times writer. The subject of the interview and an article which later appeared in the Times was another singer, Phoebe Snow. The story contained a statement by Ian that Snow's "record company and her manager and her lawyer all screwed her at once."

Snow's manager, Steven Rand, responded to publication of the article by filing a libel suit against both the Times and Janis Ian. Rand claimed that the defamatory statements injured his reputation in the entertainment industry and the legal profession.

A transcript of the Ian interview showed that the singer had supported her objected-to remarks with factual examples of Rand's performance of his managerial duties. But these factual references never appeared in the published article. Rand had argued that since Ian's remark was published without factual support it amounted to a "mixed opinion" which is actionable under defamation law.

The court has found that Ian's remark was not a "mixed opinion," but rather was a "pure opinion." As a "pure opinion," Ian's remark is constitutionally protected. A key to the court's holding was the notion that it would be unfair to hold Ian liable for merely voicing her opinion of Rand's managerial abilities. She exerted no editorial influence over the article, and thus had no power to insure that her factual examples would be printed.

In addition, Rand had disputed the accuracy of Ian's facts supporting her opinion. The court noted that if these facts were indeed proven incorrect, Ian could be liable for the false statements. However, the court ruled that any cause of action for slander had expired under the one-year statute of limitations.

Rand v. New York Times Co. (N.Y.S.C. App. Div., Case No. 7692, March 1980) [ELR 2:8:5]

The buyer of chips of the "Bicentennial Bell" is entitled to jury trial in his defamation suit against Westinghouse Broadcasting

In 1976, England presented a "Bicentennial Bell" to the United States in commemoration of its 200th birthday. A New Jersey man, Monroe Hanish, approached the

British foundry which cast the bell and offered to purchase metal shavings collected in the tuning process. Hanish proposed to sell the individual chips from the bell to the public as souvenirs of the Bicentennial Celebration. All proceeds were to go to the Muscular Dystrophy Association. The foundry agreed to Hanish's plan and sold him the shavings.

Four months after Hanish acquired the chips, the foundry brought suit seeking to prevent him from proceeding with his sales scheme. It was alleged that Hanish was planning to retain the proceeds from sales of the shavings rather than turn them over to charity. This, the foundry claimed, violated the terms of the agreement.

At issue in a subsequent case filed in Federal District Court by Hanish himself was a Pennsylvania television station's report concerning the suit filed by the foundry. In a defamation action, Hanish claimed that the Westinghouse Broadcasting Company's Philadelphia outlet had erroneously reported that the foundry's lawsuit was based on the fact that Hanish had sold the shavings for profit. In reality, the foundry had alleged that Hanish planned to sell the items for profit.

The court has rejected Westinghouse's contention that Hanish's claims do not state a cause of action for defamation, and has ruled that Hanish is entitled to present his case to a jury.

In reaching this conclusion, the court first determined that the station's news broadcasts were "capable of a defamatory meaning." That is, Hanish's reputation could conceivably be damaged as a result of the reports that he had sold the bell's shavings for profit.

The court also found that it is a jury's role to determine whether the station's broadcasts were "substantially fair and accurate" reports of the foundry's action. The court acknowledged the existence of a common law privilege of reporting judicial proceedings, but explained that this privilege is not absolute. If a broadcaster airs unfair and inaccurate reports, the privilege is lost. Hanish, the court said, is entitled to a jury determination of his claim that the station acted negligently in preparing its reports, and thus, presented viewers with an inaccurate account of his legal dispute with the foundry.

Finally, the court found no merit in Westinghouses contention that Hanish is a public figure and must therefore show malice on the part of the station. The mere fact that Hanish is the subject of press attention for his fund-raising activities does not alter his status as a private citizen, the court reasoned. As a private citizen, Hanish is not required to show that the station acted with malice in broadcasting defamatory material.

Hanish v. Westinghouse Broadcasting Company, 487 F.Supp. 397 (E.D.Pa. 1980) [ELR 2:8:5]

Briefly Noted:

Sports.

When Houston Oilers player Ken Spain was injured during the 1972 football season, a dispute arose over the team's obligation to continue paying his salary. The Oilers refused to pay Spain while he was unable to play, and Spain brought suit. A Federal District Court determined that pursuant to the terms of every National Football League Standard Player Contract, the dispute was to be resolved by arbitration. On appeal, Spain argued that the Oilers had waived their right to arbitration by taking three years and eight months to file a reply to Spain's initial suit. The court agreed, finding that the Oilers' delay was "unreasonable" and "excessive," and that Spain was therefore entitled to present his case in court.

Spain v. Houston Oilers. Inc., 593 S.W.2d 746 (Tex.Civ.App. 1980) [ELR 2:8:6]

High School Athletics.

The recruiting of promising young athletes is not confined to the collegiate level. High schools, eager to build and maintain successful athletic programs, have also become involved in recruiting. One regulation which was invoked in an effort to curtail this practice has been upheld by a Federal, Court of Appeals in Louisiana. A suit was filed against the Louisiana High School Athletic Association alleging that a "transfer rule" interfered with the First Amendment freedom of religion and denied equal protection of the laws. The rule prohibits a student from competing in interscholastic athletics for one year if he attends high school outside his home district. In the greater New Orleans area, there is only one Lutheran high school. There are no junior high or elementary schools in that district. Consequently, any student who chooses to attend the Lutheran school is ineligible for competition for one year. The court acknowledged that the transfer rule does impose a burden on those desiring a religious education. However, given the compelling state interest in regulating interscholastic athletics, and the slight interference with religious freedom, the court found the regulation to be constitutional.

Walsh v. Louisiana High School Athletic, Association, 616 F.2d 152 (5th Cir. 1980) [ELR 2:8:6]

Cable Television.

The rapid growth of cable television has raised numerous problems for local legislators. One concern has been the desire to foster competition among cable systems. A Boulder, Colorado ordinance restricting the growth of an area cable system was invoked for precisely this purpose. When Community Communications Company, Inc. (CCC), the operator of a local cable system, revealed its plans to expand, the city of Boulder responded by enacting an "emergency ordinance." The regulation restricted CCC from expanding for three months while other cable companies submitted proposals for serving the city. CCC sought an injunction in Federal District Court, claiming that the city's ordinance violated antitrust laws. The court agreed, finding that Boulder had attempted to interfere with CCC's lawful business. While the promotion of competition among cable companies is certainly desirable, the city's method of achieving this goal was held improper. The court found the direct and immediate effect to be a restraint of trade, and thus a violation of antitrust principles.

Community Communications Company, Inc,. v. City of Boulder, Colorado, 485 F.Supp. 1035 (D.Colo. 1980) [ELR 2:8:6]

Employer Liability.

A Florida Court of Appeals has found that the Mutual Broadcasting System and one of its owned-and-operated radio stations cannot be held liable for an agreement allegedly breached by one of its employees. Generally, an employer is responsible for the acts of its employees. But in this case, one of the station's talk show hosts had received money in exchange for his promise to promote a product. While the radio personality might be personally liable for breaching his agreement, the court found that his acts were not "in furtherance of his employer's business" and were outside the scope of his employment. Therefore, Mutual and its station could not be held responsible.

Friedman v. Mutual Broadcasting system, Inc., 380 So.2d 1313 (Fla.App. 1980) [ELR 2:8:7]

Contracts.

In exchange for advertising time, a Tennessee barter company provided promotional ads, merchandise and other services to an Oklahoma radio station. At the conclusion of their contract, the radio station terminated the deal. A problem arose, however, over 6000 radio spots still owed. The barter company claimed that a contract provision stipulating that the spots were "valid until used" entitled it to the airtime. A Federal District Court, however, has disagreed with the company's interpretation of the clause. The court stated that in the absence of a provision specifying the period of time allowed for performance, a "reasonable time" will be implied. The three-year contract term, the court found, was a "reasonable time" for the barter company to have used its advertising time. Therefore, the station was under no obligation to continue to provide radio spots after the termination of the contract.

William B Tanner Company, Inc. v. Plains Broadcasting Company, Inc., 486 F.Supp. 1313 (W.D.Okla. 1980) [ELR 2:8:7]

Warranty and Disclaimer.

A defective package of film precipitated a recent dispute between an Ohio television production company and the Eastman Kodak Company. The production company purchased Kodak film to shoot a project. But when the film was developed, it was discovered that the rolls were defective. It was necessary to reshoot the entire project. The production company filed suit in Federal District Court, claiming that Kodak had breached its warranty that the rolls of film were fit for use. As a result, the company said, it should be awarded damages. Kodak contended that damages were not in order, and that its obligation was limited to the replacement cost of the defective film. In the court's opinion, Kodak had indeed limited its liability by printing a clear and conspicuous disclaimer on the film package. Also persuasive to the court was evidence that the buyers of the film were experienced commercial photographers familiar with the film industry custom of limiting liability to the cost of replacing defective products.

Marion Audiovisual Productions, Inc. v. Eastman Kodak Company, 487 F.Supp. 371 (N.D.Oh. 1980) [ELR 2:8:7]

Obscenity Regulation.

A Hawaii film exhibitor objected to provisions of a Honolulu ordinance which required all public shows to be licensed. The regulation permitted the refusal, suspension or revocation of licenses when an exhibitor had shown "obscene, indecent or immoral" material to the past. A Federal District Court has relied on a recent U.S. Supreme Court decision to conclude that the ordinance is indeed unconstitutional. The court's ruling was based on the doctrine of prior restraint. Any regulation which restricts the showing of films which have not yet been found obscene is a form of prior restraint and is impermissible, the court held.

Yuclan Enterprises, Inc. v. Arre, 488 F.Supp. 820 (D.Ha. 1980) [ELR 2:8:7]

Obscenity Regulation.

A Federal District Court in Utah has struck down a Salt Lake City ordinance as an impermissible restriction on free expression. In part, the regulation permitted the revocation of business licenses following criminal convictions. Pursuant to this provision, Salt Lake City officials moved to revoke a theater owners license after several company employees were convicted on obscenity charges. The theater owner claimed that the ordinance was an unconstitutional prior restraint of free speech, and the court agreed. A prior restraint exists when material to be exhibited in the.future is suppressed because of the content of past material. Prior restraints, however, are not automatically unconstitutional. The court noted that some laws authorizing restraints of obscenity might be permissible. For instance, an ordinance which requires a court to promptly determine the "suitability" of a film for public viewing may well be judged constitutional. However. the court has ruled that this particular ordinance required no examination of content, and thus resulted in the suppression of all material.

Sunflower Entertainment v. Salt Lake City Corp., 485 F.Supp. 777 (D.Ut. 1980) [ELR 2:8:7]

Libel.

A libel action by the Unification Church against the NeW York Times for publication of three articles which referred to intelligence documents released by the House Subcommittee on International Organizations was properly dismissed upon motion for summary judgment, held the Court of Appeals of NEW York. The intelligence documents indicated that the Unification Church was organized for use as a political tool by a former director of the Korean Intelligence Agency. The court concluded that the newspaper articles are, as a matter of law, "fair and true" accounts of the intelligence reports released by the subcommittee, and, as such, are privileged under Section 74 of the New York Civil Rights Law.

Holy Spirit Association for the Unification of World Christianity v. New York Times Company, 424 N.Y.S.2d 165 (1979) [ELR 2:8:7]

Workers' Compensation.

A "freelance jockey" who sustained injuries when he fell from a horse during a race at Portland Meadows Race Track is an independent contractor, not an employee, within the meaning of Oregon's Workers' Compensation Act, and therefore is not entitled to full compensation for his injuries, an Oregon Court of Appeals has held. However, the court allowed the jockey in this case interim compensation because his claim was not timely denied by the employer.

Bell v. Hartman, 604 P.2d 1273 (Or.App. 1980) [ELR 2:8:8]

DEPARTMENTS

In the Law Reviews:

"Comm/Ent - A Journal of Communications and Entertainment Law," published by Hastings College of the Law, published the following articles in its latest issue:

California Taxation of Literary Properties by Frank M. Keesling and Alex M. Brucker, 2 Comm/Ent 263-286 (1980)

Journalists and Tape Recorders: Does Participant Monitoring Invade Privacy? by Kent R. Middleton, 2 Comm Ent 287-331 (1980)

The Ban on Broadcast Cigarette Advertisements by Kim C. Cranston, 2 Comm/Ent 333-377 (1980)

Public Service Announcements: Out with Monotony and In with Diversity by Don Lively, 2 Comm/Ent 379-394 (1980)

Reynolds v. NFL: An Unsettling Requiem for the Rozelle Rule by Roderick M. Thompson, 2 Comm/Ent 395-442 (1980)

Book Review of The Deskbook of Art Law by Leonard D. DuBoff, reviewed by Jonathan Novak, 2 Comm/Ent 471474 (1980)

Copies of the issue, Volume 2, Number 2, are available for $6.50 each from Comm/Ent, 198 McAllister Street, San Francisco. California 94102.
[ELR 2:8:8]