RECENT CASES

ABC fails in bid to enjoin sportscaster Warner Wolf from jumping to CBS, despite Wolf's breach of right of first refusal provision in his ABC contract

American Broadcasting Companies, Inc. has experienced the agony of defeat in its action against sportscaster Warner Wolf for breach of the good faith negotiation and first refusal provisions of his ABC employment contract. Although finding that Wolf had violated the terms of his ABC contract when he agreed, in February of 1980, to work for CBS as a sportscaster and producer, the Appellate Division of the New York Supreme Court has denied ABC's claim for injunctive relief which would have restrained Wolf from working for WCBS-TV and has dismissed ABC's complaint.

The 1978 employment contract between ABC and Wolf provided for a 90 day negotiation period prior to its March 5, 1980 expiration date. For the initial 45 days of this period, ABC was to have the exclusive right to negotiate an extension of its contract for Wolf's services. If the parties did not reach an agreement regarding an extension during the 90 days, ABC would then have an additional three month "first refusal" period. During these three months, Wolf agreed not to accept any offers to work as a sportscaster or program host unless and until ABC had an opportunity to review any offer and determine whether the company wished to employ Wolf on substantially similar terms.

ABC and Wolf began negotiations in September of 1979. However, unknown to ABC, Wolf met with representatives of CBS in October of 1979. And in February of 1980, he signed two contracts with CBS. The "sportscaster" contract actually consisted of a proposed contract accompanied by an irrevocable option by which (in return for $100 paid by Wolf to CBS) CBS agreed to hold open its offer of employment to Wolf until June 4, 1980 (the date on which ABC's contractual first refusal right terminated). At the same time, Wolf signed a "producer" contract to take effect on March 6, 1980. This contract provided for the production of 16 sports programs by Wolf. An exclusivity" clause in the producer contract prevented Wolf from performing services "of any nature" other than for CBS during the two year term of the contract. Wolf's $400,000 first year salary was divided equally between the sportscaster and producer contracts.

Wolf continued to negotiate with ABC during February of 1980 without mentioning either CBS contract and without disclosing the fact that the exclusivity provision of the producer contract would preclude the extension of his employment contract with ABC. On February 22, 1980, Wolf contracted with ABC to continue working for WABC-TV during the 90 day first refusal period from March 6, 1980 through May 28, 1980. However, on May 6, 1980, when Wolf's switch to CBS was confirmed by public reports, ABC brought an action seeking to bar Wolf from working at WCBS-TV and seeking specific performance of the first refusal provision of the ABC employment contract.

The trial court issued a preliminary injunction barring Wolf's employment by CBS. However, after a prompt trial, the court dismissed ABC's complaint on the ground that Wolf had not formally accepted, in February, the CBS offer of employment as a sportscaster.

The appellate court concluded that Wolf, at CBS' instigation, had breached the first refusal provision of the ABC contract. That court called the CBS producer contract "one-half of a contrived bifurcation of the sportscaster's agreement ... its all-inclusive exclusivity provision was the mechanism utilized by CBS to obtain, prior to the expiration of ABC's right of first refusal and in avoidance of it, Wolf's commitment to become the CBS sportscaster on June 4, 1980." The appellate court said that the trial court's decision "lauded form over substance," because Wolf testified that he had never considered working for CBS as a producer only. In any event, by signing the producer contract, Wolf deprived ABC of its right to his good faith negotiations for the extension of his contract.

Nevertheless, the appellate court denied ABC's request for an injunction. The inherent difficulty in having a court supervise the performance of a personal services contract would be well demonstrated in this case since Wolf had stated his reluctance to work for ABC. And the court observed that cases in which injunctive relief has been granted in connection with a right of first refusal apparently did not involve personal services.

Reasonable restrictive covenants restraining performers and broadcasting personalities from working for competitors have been enforced. But the court called the first refusal right in the ABC contract a "three month moratorium" on Wolf's employment as a sportscaster which served more as a bargaining tool to encourage renewal of the contract rather than as a true restrictive covenant. Even if it were such a covenant, its term would be limited to the three months following the expiration of the ABC contract rather than the two year period of the CBS contract. The court therefore refused as highly inappropriate the granting of injunctive relief which would force the continuance of the strained relationship between ABC and Wolf.

ABC contended that it lacked an adequate remedy at law since Wolf's services were unique and the company had invested a great deal in promoting him to the public based on the apparent security of its contractual first refusal right. The court suggested that once Wolf commenced working for CBS, ABC might then assess the possible damages resulting from his departure. However, ABC, in concentrating its efforts on securing Wolf's continued services, had failed to submit any proof on the issue of damages at trial. The court refused to remand the matter to take such proof and noted that ABC had ample time to seek recourse in a new action at law.

In a concurring opinion, Judge Kupferman stated that he would have ordered the issuance of an injunction and adherence to the terms of the employment contract, but only for the contract concerning Wolf's services during the 90 day first refusal period. He concluded that this contract had released Wolf from any obligations to ABC on and after June 4, 1980.

Judge Murphy in his dissent stated that he too would have granted ABC the relief sought noting that Wolf's services were described as "unique" in the CBS producer contract and that the damage to ABC in terms of lower ratings would be difficult to prove. Further, although the ABC contract did not prohibit Wolf from working for other television stations if he did not honor the first refusal provision, such a covenant could be implied in order to effectuate the contract. He concluded that ABC should have been given the opportunity to match the combined sportscasterproducer contract and that Wolf's employment should have been enjoined if he rejected an appropriate offer from ABC.

American Broadcasting Companies, Inc. v. Wolf, 430 N.Y.S.2d 275 (App.Div. 1980) [ELR 2:14:1]

Copyright Royalty Tribunal issues final decision concerning allocation of 1978 cable television royalties

The Copyright Royalty Tribunal has issued its "Notice of Final Determination" concerning the allocation of copyright royalty fees paid by cable television systems during 1978. The Tribunal's final allocations among competing claimants for the $14.7 million fund are virtually identical to those announced by the Tribunal in the "summary statement" it issued last July. (ELR 2:7:2) The only allocations that were changed were those to the Public Broadcasting Service whose share was increased from 5% to 5.25%, and to National Public Radio whose share was decreased from 0.25% to nothing. The following allocations remain unchanged:

- 75% to the Motion Picture Association of America, the Christian Broadcasting Network, and other program syndicators.
- 12% to the Joint Sports Claimants and the National Collegiate Athletic Association.
- 4.5% to the Music Performing Rights Societies.
- 3.25% to United States and Canadian Broadcasters.

The 3.25% allocation to broadcasters was in consideration for local programming originated by television stations themselves.

The National Association of Broadcasters also had sought an additional allocation to television stations for non-local programming originated by others, on three theories. First, the NAB contended that a station's "broadcast day" was a "compilation" under the Copyright Act having value that was independent from the value of the programming "compiled." Second, the NAB argued that where stations were the exclusive licensees of syndicated programming in their geographic areas, they were the copyright owners of the exclusive rights licensed to them in those areas. And third, the NAB argued that television stations were the copyright owners of the vast majority of sports programming, rather than the teams or leagues.

The Tribunal rejected all three of these contentions. the Tribunal found that the legislative history of the 1976 Copyright Act indicates that Congress did not intend broadcasters to receive cable television royalties for their broadcast days, or as exclusive licensees of syndicated programming. Similarly, the Tribunal found that the legislative history of the 1976 Act "compels the award of cable royalties for sports programming to the sports leagues," and not to the television stations broadcasting such programming, unless a particular contract between a station and a team or league specifically provides that cable royalties are to be distributed to the station.

The owners of copyrights to characters such as Bugs Bunny, Miss Piggy, Kermit the Frog, Superman, and Bozo the Clown also sought a share of the cable royalties. Their claims were rejected by the Tribunal on the grounds that Congress did not contemplate the awarding of royalties "to the copyright owners of individual components of programs." The Tribunal noted that approval of the claims of the owners of characters might well require an award of cable royalties to the authors of screen plays and novels that were made or adapted into programs. Although music is also a component of programs, music licensing arrangements were found to be unique and distinguishable from the licensing of characters; and in any event, the Act's legislative history clearly indicates that Congress intended the music performing rights societies to share in cable television royalties.

The performing rights societies were the only claimants that were unable to agree among themselves concerning the allocation of royalties within their group. (The MPAA, CBN and other syndicators were able to agree concerning the allocation of their 75% share among themselves, as were the Joint Sports Claimants and NCAA concerning the allocation of their 12%.) As a result, the Tribunal was required to determine the allocation of the performing rights societies' 4.5% among ASCAP, BMI and SESAC. In making the allocation among those organizations, the Tribunal considered five factors: total license fee revenues received by each; local television revenues received by each; television and radio performance credits received by each; jukebox royalty fees earned by each; and public broadcasting and educational license fees received by each. On the basis of these factors, the Tribunal determined that 54% of the music societies' share of cable television royalties should be awarded to ASCAP, 43% to BMI and 3% to SESAC.

Shortly after the Tribunal announced its final decision, the National Association of Broadcasters filed a petition for review with the Federal Court of Appeals in Washington, D.C. The NAB also made a motion for a stay of the distribution of the 1978 royalties, pending the outcome of its appeal. The Tribunal granted the NAB's motion for a stay and ruled that it would not distribute any of those royalties until the appeal was concluded. Thereafter, however, the Tribunal decided that it would distribute a portion of the $14.7 million fund, because the NAB's appeal, and those filed by several other parties after the NAB appealed, do not involve the entire fund.

All of these proceedings concern the allocation of cable television royalties paid by cable systems during

1978 only. The Tribunal has just taken the first steps required by the Copyright Act to determine the allocation of royalties paid by cable systems during 1979.

Copyright Royalty Tribunal, Notice of Final Determination, 45 Fed.Reg. 63026 (September 23, 1980), CCH Copyright Law Reports, Para. 20,083; Stay Order, CCH Copyright Law Reports, Para. 20,087 [ELR 2:14:2]

Florida musicians are found to be independent contractors rather than employees of a symphony orchestra

A Florida appellate court has ruled that the musicians in the Florida Gulf Coast Symphony were independent contractors rather than employees, reversing an agency order of the Florida Department of Labor and Employment Security.

The symphony's control over the musicians, as manifested in its "right to fire" and in the interdependent relationship between the symphony and the musicians, was the basis for the agency's decision. However, the performance contract between the parties only provided that a musician could be terminated if he did not maintain membership in the American Federation of Musicians; the symphony did not have the right to terminate services without cause or proper notice. And the parties had agreed that the contract might be canceled by either party upon notice. The court therefore found that the cases relied on by the agency, in which employees could be fired at any time without cause and without liability, were not relevant to the musicians' situation and that the termination provision of the performance contract did not establish an employer/employee relationship.

Further, the fact that the symphony depended upon the musicians' services in order to stay in business did not of itself demonstrate such a relationship.

The court noted that the following facts indicated that the musicians were independent contractors in dealing with the symphony: "the musicians are engaged in a distinct occupation; are considered [by the symphony] to be independent contractors; spend more than two-thirds of their time in activities over which [the symphony] has no control whatsoever, are responsible for the manner in which the musical effects are achieved; supply their own instruments; receive the bulk of their income from sources other than [the symphony]; are paid on a per job basis, and are free to pursue other job opportunities in the music field at their discretion."

An agency finding that the symphony conductor was an employee was also reversed due to insufficient notice that the conductor's status would be an issue at the hearing.

The agency's order approving a jeopardy tax lien and jeopardy assessment against the symphony therefore was set aside.

Florida Gulf Coast Symphony, Inc. v. Department of Labor, 386 So. 2d 259 (Fla.App. 1980) [ELR 2:14:3]

Radio station's use of the phrase "I Love You" in promotional slogan did not constitute trademark infringement

Who loves Milwaukee? According to a Federal Court of Appeals in Wisconsin, radio stations WOKY and WISN in Milwaukee both were entitled to proclaim their devotion to the city.

WISN had been licensed by M.B.H. Enterprises, Inc., a promotion company, to conduct an "I Love You Milwaukee" campaign involving the use of billboards, newspapers and bumper sticker advertising similar to campaigns the company organized for radio stations in other cities. MBH had registered the words "I Love You" with the U.S. Patent and Trademark Office as a service mark for entertainment services in the nature of radio programs and personal appearances by disc jockeys. WISN conducted its campaign from December of 1976 until June of 1979. In March of 1979, WOKY began stating its love for Milwaukee via broadcasts and billboards. MBH sought to enjoin WOKY's activities in an action alleging trademark infringement, trademark disparagement and unfair competition. A Federal District Court ruled, however, that WOKY was entitled to summary judgment (ELR 1:20:4), because the station had not used the words "I Love You" to identify its services or to cause confusion deliberately with another station and therefore was entitled to a fair use defense under 15 U.S.C. Section 1115(b)(4).

MBH argued on appeal that WOKY had used its slogans as service marks to identify itself. The contention was raised again that WOKY had acted in bad faith and was not entitled to a fair use defense due to the station's knowledge, and presumable intent to benefit from, the WISN promotion campaign. MBH further argued that because the words "I Love You" and similar phrases were symbolic and not relevant to the description of radio services, and had no direct relationship to these service, WOKY's use infringed MBH's registered service mark.

The Court of Appeals found that WOKY's slogans did impart information to the public. WOKY apparently meant to convey that the station liked Milwaukee and its residents and sought to present itself as the "voice of the community" it served.

However, the Court expressed its reluctance to allow MBH to appropriate the exclusive commercial use of such a common phrase despite the fact that MBH had succeeded in registering the phrase as a service mark. And the court concluded by noting that MBH had presented no evidence to show any likelihood that consumers would become confused concerning the source of WOKY's services because the WOKY call letters and frequency accompanied all advertisements.

M.B.H. Enterprises, Inc. v. WOKY, Inc. Case No. 801210 (7th Cir., October 15, 1980) [ELR 2:14:4]

Federal Court of Appeals rules that attorney F. Lee Bailey may have violated ethical rules when he

entered into publishing contract to write book about Patricia Hearst trial before trial was concluded

Attorney F. Lee Bailey, while representing Patricia Hearst during her trial for bank robbery, signed a contract with G.P. Putnam to write a book concerning the Hearst trial. The contract was made contingent upon Ms. Hearst's agreement not to write about her experiences for 18 months subsequent to the publication of Bailey's book. Two days after her conviction, Ms. Hearst signed a covenant acknowledging Bailey's book contract and agreeing to refrain from publishing any account of her experiences for the designated time. However, neither Ms. Hearst nor her father knew that Bailey had negotiated or contracted during the trial to write a book.

Thereafter, in a motion for habeas corpus, Ms. Hearst declared that before trial she was told only that Bailey would write a book about her, that the book rights were part of the fee arrangement, that she did not understand the effect of the covenant she signed, and that she did not support such a book. Her father stated that he had not considered book rights to be part of the fee arrangement for Bailey's services of the trial. Ms. Hearst contended that her Sixth Amendment right to the assistance of counsel was violated "when Bailey pursued his own interest in publication rights, rather than her interest in acquittal."

A Federal Court of Appeals has vacated a Federal District Court decision denying Hearst's motion and has remanded the matter for a hearing on Hearst's allegation that there existed an actual conflict of interest which adversely effected certain elements of the defense conducted by Bailey. Among the examples cited by Hearst as alleged deficiencies in her defense were Bailey's failure to seek a continuance or change of venue on the ground of pretrial publicity so that public interest would not cool and competing authors would not get the jump on him, and to take advantage of the publicity value of a trial in a media center such as San Francisco. Hearst also claimed that the decision to put her on the witness stand, where she pied the Fifth Amendment 42 times in the presence of the jury, was a means to get her story on the public record in order to avoid attorney-client confidentiality.

The Court of Appeals noted that Hearst's claims raised "serious questions as to whether Bailey and, to the extent of his participation, Johnson, have been guilty of conduct unbecoming members of the bar." Although Bailey did not acquire publication rights from his client, the covenant signed by Hearst was characterized by court as an "interest in publication rights," in apparent violation of the American Bar Association's Code of Professional Responsibility Disciplinary Rule 5-104(B) which reads: "Prior to conclusion of all aspects of the matter giving rise to his employment, a lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which he acquires an interest in publication rights with respect to the subject matter of his employment or proposed employment."

At the time when Hearst signed the covenant, Bailey was still representing her. Further, if proved, Hearst's allegations might show that Bailey and Johnson fraudently misled the Hearsts in violation of ABA disciplinary rules and the California Rules of Professional Conduct.

The Court of Appeals therefore suggested that on remand, Bailey and possibly Johnson as well, be issued an order to show cause as to why they should not be disciplined on the cited grounds.

(Hearst's sentence for bank robbery was commuted by President Carter; however, the case is not moot because the District Court retains the power to vacate Hearst's conviction.)

United States of America v. Hearst, Case No. 78-3612, (9th Cir., October 17, 1980) [ELR 2:14:4]

Materials copyrighted by a private party may be subject to disclosure under the Freedom of Information Act provided that the copyright owner's interests are presented

Copyrighted photographs taken at the scene of the assassination of Dr. Martin Luther King, Jr. were agency records of the FBI subject to the disclosure provisions of the Freedom of Information Act, according to a Federal Court of Appeals in Washington, D.C. However, due to the failure to join Time, Inc., the copyright owner of the photographs, as a party to the action, the matter was remanded to the Federal District Court for further proceedings.

Time, Inc. purchased the photographs in question from photographer Joseph Louw and subsequently submitted copies of the photos to the FBI for use in investigating the King assassination. Time was advised by the FBI of an FOIA request by Harold Weisberg. Time stated that Weisberg could view the photos but that any reproduction of the photos would violate it's copyright. Weisburg learned that Time charged $10 per print of each photo as opposed to a $.40 per print cost under an FOIA request. He successfully pursued his FOIA claim to obtain the copies from the FBI, at the District Court level.

On appeal, the Government contended that the photos were not agency records subject to disclosure because the copyright owner was a private party. The Government cited SDC Development Corp. v. Mathews, 542

F.2d 11 16 (9th Cir. 1976), in which the FOIA was held unavailable in connection with the disclosure of copies of medical reference data because the material did not "directly reflect the structure, operation or decision-making functions of the agency," and because the materials also were readily disseminated to the public so that the danger of agency secrecy was not present. However, in Weisberg, the photos would be relevant to an evaluation of the FBI's performance in investigating the King assassination and would not be disclosed, except in response to an FOIA request. Therefore, public access to such material may not be circumvented by the assertion of a third party claim, ruled the Federal Court of Appeals, upholding the District Court decision.

The Court of Appeals acknowledged, without discussion the Government's contentions that the photos were specifically exempted from disclosure by statute (the

Copyright Act), or alternately, as privileged or confidential commercial information.

The Court of Appeals concluded that the presence of Time in the action was required under the Federal Rules of Civil Procedure. In the absence of Time, a District Court decision would not prevent a later action by Time challenging the government's right to duplicate the photos. This would subject the FBI "to a substantial risk of incurring ... inconsistent obligations." Although the parties and Time itself could have, but did not, include Time in the action, the District Court had "an independent responsibility to assure the just and final resolution" of the dispute by joining Time if feasible.

Other issues raised by the parties to be determined on remand include the significance of fact that only 3 of the 107 photos were registered for statutory copyright protection and the extent to which disclosure of the photos would be required by the fair use doctrine since

Weisberg intended to use the photos for scholarly purposes.

Weisberg v. Dept. of Justice, CCH Copyright Law Reports, Para. 25,169 (D.C.Cir. 1980) [ELR 2:14:5]

Copyright infringement claims are dismissed because toy manufacturer's windup Disney figures lacked originality necessary for copyright protection and because competitive games and dolls were not substantially similar

Windup plastic figures, manufactured by Durham Industries, of the Disney characters Mickey Mouse, Donald Duck and Pluto did not infringe Tomy Corporation's similar windup dolls because Tomy's dolls lacked "the element of originality that is necessary to support a valid copyright," according to a Federal Court of Appeals in New York. Tomy was entitled to a derivative copyright on any "original aspects" of its windup toys, provided such original aspects were "more than trivial" and that any protection afforded Tomy's dolls would not "affect the scope of any copyright protection in that preexisting material."

The court noted that "the mere reproduction of a work of art in a different medium" will not meet the originality requirement for copyrightability, and that manufacturing skill does not constitute the requisite originality. However, Tomy's figures were found to be indistinguishable from "the prototypical Mickey, Donald and Pluto, authored by Disney and subsequently represented by Disney or its licensees in a seemingly limitless variety of forms and media." Further, if Tomy's derivative copyright were to be recognized, Disney licensees, such as Durham, would be unable to manufacture the character dolls without infringing Tomy's rights. Disney's right to copy its own creations would thereby be impermissibly impinged upon, stated the court.

Tomy's copyright infringement claims against Durham with respect to five other sets of toys also were dismissed by the court for failure to prove infringement. Although Durham may have had access to the games and dolls allegedly infringed, the Durham toys were not substantially similar in artistic expression to those copyrighted by Tomy. The games involved resembled each other only in their mechanical aspects; Tomy did not specify the "sculptural features or artistic elements independent of the utilitarian aspect of the games which would qualify for copyright protection." The decorative aspects of the games concededly had not been infringed. Tomy's Mini-Winder dolls also had not been infringed by Durham, because the idea of a walking or crawling doll and the mechanisms for such motions could be copied freely. And the Durham and Tomy dolls were not substantially similar since "the total effect of the image conveyed to an ordinary observer by the accused dolls [was] quite distinct."

and toys, there was little likelihood of consumer confusion or palming off. The District Court decision dismissing Tomy's claims for unfair competition as well as for copyright infringement therefore was upheld. With respect to the Disney characters, the court also noted that Tomy could not "achieve by an unfair competition claim what it failed to achieve under its copyright claims."

Durham Industries v. Tomy Corp., CCH Copyright Law Reports, Para. 25,184 (2d Cir. 1980) [ELR 2:14:6]

Wilful and wanton misconduct necessary for student to recover for injuries inflicted by fellow student in high school basketball game

An Illinois appellate court has ruled that wilful and wanton misconduct, not just ordinary negligence, must be shown to allow recovery for injuries sustained as a result of the breach of a safety rule in a physical education class basketball game.

A high school student was injured when he allegedly was kicked by a fellow student while playing basketball in a required high school gym class. The injured student sued in tort on the theory that the defendant student was negligent by failing to participate in the basketball game in accordance with the National Federation of State High School Association safety rules which were in effect. The defendant argued, however, that the plaintiff s claim failed to state a cause of action since it was predicated upon ordinary negligence and not wilful and wanton misconduct.

The trial court agreed with the defendant and dismissed the claim. An Illinois appellate court has affirmed.

According to that court, Illinois case law does not support the plaintiff's contention that proof of ordinary negligence will sustain an action for injury to a player when the violation of a safety rule is involved. Rather, the court found the standard of conduct to be "willfulness or a reckless disregard of safety where an injury to a player occurs in an athletic competition involving bodily contact."

Moreover, the court found "no merit" in the plaintiff's argument that those cases which hold that golfers owe a duty of ordinary care to other golfers were controlling. The court explained: "... participants in bodily contact games such as basketball assume greater risks than do golfers and others involved in non-physical contact sports. Because rule infractions, deliberate or unintentional, are virtually inevitable in contact games, we believe the imposition of a different standard of conduct is justified where injury results from such contact."

The appellate court thus concluded that the trial court's dismissal was proper since the complaint was grounded on ordinary negligence.

Oswald v. Township High School District No. 214, 406 N.E.2d 157 (Ill.App. 1980) [ELR 2:14:6]

Briefly Noted:

Copyright.

A Federal District Court in New York City has transferred a copyright infringement suit to New Orleans, on the grounds that the convenience of the parties and witnesses would be served by doing so. The suit was filed in New York by Walter Williams, a creator of the popular "Mr. Bill" cartoon character, against Vance DeGeneres, a former associate of Williams' who claims that he too contributed to the creation of Mr. Bill. The suit seeks to determine ownership of the copyright to "Mr. Bill." DeGeneres lives in New Orleans and does not have occasion to travel to New York where Williams now lives. In support of his motion for change of venue, DeGeneres filed an uncontested declaration that he does not have the financial ability to litigate in New York. In addition, the court found that it appears that all material witnesses in the case reside in Louisiana, and all of the relevant events occurred in New Orleans. For these reasons, the New York court transferred the case to Louisiana.

Williams v. DeGeneres, CCH Copyright Law Reports, Para. 25,192 (S.D.N.Y. 1980) [ELR 2:14:7]

Copyright.

Unauthorized duplication of copyrighted musical sound recordings constitutes copyright infringement, even if royalty payments were tendered by the infringer, a Federal District Court in Massachusetts has held. This is so even if the sound recordings in question were produced prior to the effective date of the Sound Recording Act of 1971 which prohibits unauthorized duplication of sound recordings, because even prior to that date, unauthorized duplications infringed the copyrights to the underlying musical compositions. In this case, the court ordered that almost 2,000 pirated tapes seized from a retail store pursuant to a search warrant be delivered to the U.S. Marshal for destruction.

U.S. v. 1,934 Stereo 8-Track Tape Sound Recordings, CCH Copyright Law Reports, Para. 25,194 (D.Mass. 1980) [ELR 2:14:7]

Tax.

A Federal Court of Appeals has affirmed a Tax Court decision that an artist may not deduct either the value of paintings donated to charitable organizations as a business expense or the value of portraits donated to charitable organizations as a charitable deduction. The artist's deductions were limited to his actual out-of-pocket expenses.

Maniscalco v. Commissioner, 80-2 USTC Para. 9717 (6th Cir. 1980) [ELR 2:14:7]

Tax.

The Tax Court has denied a deduction for home office expenses for an actress, model and demonstrator who used a room of her dwelling to conduct a search for employment. This room was not exclusively used for such purposes, and since the Internal Revenue Code requires exclusive use in order to obtain a deduction, the deduction was denied.

Weiner v. Commissioner, 80(10) CCH Standard Federal Tax Reports, Para. 7859(M) [ELR 2:14:7]

Tax.

The Internal Revenue Service has ruled that a non-profit organization formed to develop, promote and govern sports for individuals under 18 years of age by organizing state and local competition, promulgating rules, organizing officials, presenting seminars, and distributing newsletters is tax exempt as a charitable and educational organization.

Rev. Rul. 80-215, 80(10) CCH Standard Federal Tax Reports, Para. 6714 [ELR 2:14:7]

Libel.

The drug related death of an unnamed teenage boy inspired the publication of a newspaper article entitled

"Parent Should Be A 'Real Person.'" The article contained the writer's opinion regarding teenage problems with alcohol and drugs and what should be done in the schools and in the home to help solve problems. In a libel action brought by the parents of the deceased teenager, an appellate court in Illinois held that the article was not defamatory, as a matter of law. Read as a whole, the article was found to be susceptible to an "innocent construction." In addition, the court dismissed the parents' cause of action for intentional infliction of emotional distress, finding no conduct ,so outrageous" and "so extreme" as to go beyond all possible bounds of decency.

Galvin v. Gallagher, 401 N.E.2d 1243 (Ill.App. 1980) [ELR 2:14:7]

Previously Reported:

The United States Supreme Court has agreed to hear H.A. Artists & Associates v. Actors Equity Association (2:11:3), but has denied petitions for certiorari in Morseburg v. Balyon (2:9:6) and Hoehling v. Universal City Studios (1:24:4).

The Internal Revenue Service has issued a notice of its nonacquiescence in Hutchinson Baseball Enterprises, Inc., 73 T.C. 144, a case which held that a non-profit semi-professional baseball team could be a tax-exempt organization. (ELR 1:16:7).

The Internal Revenue Service has ruled that payments made to an American author while resident in a foreign country by a foreign publisher in exchange for rights to the author's writings constitute "earned income" which qualifies for the "foreign income exclusion." In doing so, the IRS has corrected an anomaly (reported in ELR

1:13:5) which previously permitted artists, but not writers, to exclude payments received from foreign sources in exchange for their work. As a result of this latest IRS ruling, artists and writers are now treated alike under the "foreign income exclusion" provision of the Internal Revenue Code. Rev. Rul. 80-254; I.R.B. 1980-38, 15; 80(10) CCH Standard Federal Tax Reports, Para. 6783.
[ELR 2:14:7]

In the Law Reviews:

The most recent issue of Comm/Ent, A Journal of Communications and Entertainment Law, contains the following articles:

Cable Television and Copyright: Legislation and the Marketplace Model by Stuart N. Brotman, 2 Comm/Ent 477487 (1980)

Towards a Right of Biography: Controlling Commercial Exploitation of Personal History by Erik D. Lazar, 2 Comm/Ent 489-544 (1980)

Media Cross-Ownership: National Citizens Committee for Broadcasting v. FCC by H. Thomas Hicks, 2 Comm/Ent 545-577 (1980)

Malpractice on the Sidelines: Developing a Standard of Care for Team Sports Physicians by Morley Pitt, 2 Comm/Ent 579-600 (1980)

Comm/Ent is published by Hastings College of the Law, 198 McAllister Street, San Francisco, CA 94102.

The American Bar Association has published a monograph entitled "Sorting Out the Ownership Rights in Intellectual Property: A Guide to Practical Counseling and Legal Representation," consisting of papers presented at a meeting of the ABA's Section of Patent, Trademark & Copyright Law. Among the papers published in the monograph are the following:

Copyright-Rights and Contracts by Raymond D. Weisbond.

Print Media and Pictorial, Graphic and Sculptural Works by Donald S. Engel.

Music and the Stage by 1. Fred Koenigsberg.

Audio-Visual Works and the Copyright Law by Peter F. Nolan.

Copies of the monograph may be ordered from Michele Kukowski at the American Bar Association, 11 55 East 60th Street, Chicago, 111. 60637; phone (312) 947-4000.[ELR 2:14:8]