

## RECENT CASES

### **Manager of "The Drifters" enjoins former member of the singing group from performing under the same name**

Charles Thomas, Elsbeary Hobbs and Doc Green, three members of the singing group "The Drifters" who originally achieved prominence in the late 1950s and early 1960s with such hit songs as "There Goes My Baby" and "Save The Last Dance For Me," resumed performing in the early 1970s under the management of Larry Marshak.

In 1976, manager Marshak, after reading about The Platters' success in protecting its name (*Five Platters, Inc. v. Purdie*, 419 F.Supp. 372 (D.Md. 1976)), urged the three to file for service mark registration covering

the mark "The Drifters." Marshak further urged them to assign to him their rights under the application. In return, he promised to continue as their manager and be vigilant in stopping others from using "The Drifters" name. The three agreed, signed the application and executed an assignment. The service mark registration was issued by the Patent and Trademark Office in 1978.

The three continued to perform together under Marshak's management until June 1979, when Green broke away and formed another group, managed by Dave Rick, also using the name "The Drifters." Marshak then brought suit against Green and Rick, charging service mark infringement, unfair competition, and dilution of the mark.

A Federal District Court in New York has ordered Green's group to cease performing under the name "The Drifters" or any variation thereof. The court's order also includes a prohibition against the use of the mark "The

Drifters" on any billboard or other promotional material and a requirement that Green's group surrender to Marshak any existing promotional material.

The court found a clear showing of likelihood of confusion. Green's group performs in the same areas as, in the same style as, and in direct competition with Marshak's group. Green himself testified that the public, in buying tickets to a concert, was likely to be confused as to which group was performing.

The court also found that the assignment of the servicemark application to Marshak had been valid. Marshak's promise to provide greater protection for the name was adequate consideration; and goodwill, which must be transferred along with the mark, was clearly transferred by the terms of the instrument itself. Further, the court separately determined that Green was estopped from challenging the validity of the mark, having

applied for the benefits of service mark registration and having received those benefits over a period of time.

The court assumed that Thomas, Hobbs and Green were the proper parties to file the application for service mark registration. Although others had at times played with the group, Thomas, Hobbs and Green were publicly recognized as part of The Drifters, because they recorded all or most of The Drifters hit records and because their pictures appeared on the covers of several albums that have been continuously available since the 1960s.

Gross receipts for concerts actually performed by Green's group totalled \$31,450. Green and Rick have been afforded an opportunity to submit evidence on their expenses, so that the court may determine a realistic figure for their profits to be awarded to Marshak.

Marshak v. Green, 505 F.Supp. 1054 (S.D.N.Y. 1981)  
[ELR 3:1:1]

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**FCC is not required to review changes in entertainment programming when licensing radio stations, U.S. Supreme Court rules**

The United States Supreme Court has upheld an FCC policy against reviewing past or proposed changes in a radio station's entertainment programming during license renewal or transfer proceedings.

Under Sections 309(a) and 310(d) of the Communications Act of 1934, the FCC must consider "the public interest, convenience and necessity" when assigning broadcast licenses. The Court concluded that neither the language nor the history of Sections 309(a) and 310(d) compel FCC supervision of format changes, and that

such supervision "would not advance the welfare of the radio-listening public, would pose substantial administrative problems and would deter innovation in radio programming." The Court's decision reverses a Court of Appeals ruling that the FCC's policy was contrary to the Communications Act. (ELR 1:21:3)

As a result of the Court's decision, the FCC will continue to rely on market forces to achieve diversity in radio programming.

The Court also found that the FCC's policy of not reviewing format changes did not conflict with the First Amendment rights of listeners, since the "fairness doctrine" of *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367 (1969), "did not imply that the First Amendment grants individual listeners the right to have the Commission review the abandonment of their favorite entertainment programs."

Justices Marshall and Brennan, in dissent, agreed with the Court of Appeals' finding that in certain circumstances, a format change would be a "substantial and material fact" in deciding whether a license renewal or transfer was in the public interest such that a hearing would be required. Justice Marshall pointed out that the "format doctrine" would be applied only in certain limited situations, that the FCC had failed to explain why its review of entertainment programming would not be as limited as its review of complaints about nonentertainment programming, and that the FCC's policy did not allow for flexibility in particular cases.

Federal Communications Commission v. WNCN Listeners Guild, U.S.Sup.Ct. No. 79-824 (March 24, 1981)  
[ELR 3:1:2]

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## **"King of the Gypsies" by Peter Maas did not libel Gypsy family, Federal District Court rules**

In his book "King of the Gypsies," author Peter Maas described the activities of National Gypsy Crime Investigators, Inc. as a "fraud," and he cited reports that the corporation was formed to extort money from other Gypsies. The incorporators of NGCI, a Gypsy clan known as the Adams family, claimed that the purpose of their corporation was to inform the public about the criminal activities of "renegade" Gypsies. The Adams alleged that Maas' statements in the Bantam Books paperback edition of his work, libeled the NGCI and its individual incorporators.

A Federal District Court in Texas has granted summary judgment to Maas and Bantam on the grounds that NGCI and the Adams were public figures at least "for the purpose and context of the allegedly defamatory

passages," and that they had failed to establish that the alleged libel was published with actual malice or in reckless disregard of the truth.

The court observed that NGCI voluntarily advertised and publicized its work and that the corporation's activities and Maas' report about the corporation were matters of "legitimate and substantial interest."

Further, NGCI had been sued in Louisiana by fellow Gypsies and a permanent injunction was granted in that case prohibiting any further extortion or harassment by the Adams or NGCI. NGCI's involvement in litigation did not of itself transform the corporation from a private person to a public figure (*Time, Inc. v. Firestone*, 426 U.S. 448), but the court pointed out that where by reason of practices and activities voluntarily undertaken one becomes the target of enforcement proceedings against those same activities other courts have held that

the party so acting becomes a "public figure" regarding that enforcement.

The court imputed the corporation's public figure status to the Adams. The evidence presented showed that NGCI was an alter ego for its incorporators.

In concluding that the Adams had failed to demonstrate actual malice, the court noted that Maas sought verification of the charges against NGCI from independent sources including the New York City Police Department and the FBI. Although Bantam Books did not independently verify Maas' allegations, its reliance on the editing and verification by Viking Press, the hardcover publisher, and on the reputations of Viking and Maas did not amount to reckless disregard of the truth. Furthermore, it was not shown that either Maas or Bantam had any suspicion or reason to suspect that the published statements were not true.

Adams v. Maas, Case No. 76-B-217 (S.D.Tex., Feb. 26, 1981) [ELR 3:1:2]

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**Music publisher's blanket license was an illegal tying arrangement and unauthorized attempt to license not-for-profit performances**

A music publisher's practice of issuing blanket licenses for the not-for-profit use of liturgical songs during religious services was an unlawful extension of the publisher's statutory rights and also constituted an illegal tying arrangement in violation of the antitrust laws, a Federal District Court in Illinois has held.

F.E.L. Publications marketed its copyrighted compositions via an Annual Copy License, which provided that a purchaser would pay \$100 for a one year license for the right to make an unlimited number of copies of FEL

compositions and "to perform the music and/or text at not-for-profit performances for purpose of worship and/or classroom use." Licenses could also be obtained for one time use of a composition for a minimum charge of \$10. The License barred the sale of copies of music or text. And a church seeking to use any of the 1,400 compositions controlled by FEL was not permitted to deal directly with the authors or composers who had assigned their copyrights to FEL.

When FEL attempted to enjoin the allegedly unlicensed use and distribution of copies of its compositions by priests and laymen in Chicago, the Catholic Bishop of Chicago argued that the License was an abuse of FEL's copyright. The District Court agreed, noting that the Copyright Act of 1909 grants a copyright owner the exclusive right to perform his work in public for profit. But "the singing of hymns in a Catholic mass or other religious service is a not-for-profit performance." The

attempt to license such performances was an unauthorized extension of the scope of FEL's copyrights.

And because a user had to pay for permission to use all of FEL's compositions in order to obtain the right to use about 25 or 30 "blockbuster" songs, the License was a tying arrangement which violated the Sherman and Clayton Acts. As distinguished from the blanket license arrangement which was upheld in *Columbia Broadcasting System, Inc. v. American Soc. of Com posers, Authors and Publishers*, 607 F.2d 543 and 620 F.Supp. 930, FEL did not allow the licensing of individual compositions from a copyright owner. FEL's License was compared by the court to tying practices in the motion picture industry which were ruled illegal in *United States v. Paramount Pictures*, 334 U.S. 131.

The misuse of its copyrights constituted "unclean hands" on the part of FEL, precluding an award of equitable relief, the court ruled.

FEL's claims of interference with prospective economic advantage and unfair competition were also dismissed.

(An earlier ruling in this proceeding was reported in ELR 1:5:4.)

F.E.L. Publications, Ltd. v. Catholic Bishop of Chicago, CCH Copyright Law Reports, Para. 25,223 (N.D. Ill. 1981) [ELR 3:1:3]

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### **Court enforces arbitrator's award reinstating Metromedia employee to position as technical director of TV station**

A 25-year employee at Metromedia's WTTG-TV in Washington, D.C., was demoted from technical director to technician for disciplinary reasons. The stage

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employees union (IATSE Local 819) challenged that action, believing the station had acted improperly. Following grievance procedures, the dispute was submitted to arbitration. The arbitrator held that under the terms of the collective bargaining agreement, demotion was not a proper disciplinary action and ordered the employee reinstated to his position as technical director. The television station's action in federal court to vacate that order has been dismissed.

The arbitrator had reasoned that the collective bargaining agreement is silent as to the right to demote; and he held that when a contract does not address the right to demote, it should be deemed that the employer bargained away that right, because demotion affects seniority rights - they are lost upon demotion. "If discipline is the desired result, a progressive system of warnings is more appropriate as employee rights are not destroyed permanently." The arbitrator reached this conclusion

even though he found that "disciplinary action was justified" because the employee had not performed his duties as technical director. Ironically, the arbitrator ruled that justified disciplinary action "could have included discharge" - which would have, it seems permanently destroyed seniority rights also.

The court refused to set aside the arbitrator's order because the order "drew its essence from the agreement." The arbitrator clearly focused on the provisions of the collective bargaining agreement in resolving the grievance, and his decision was based upon an interpretation of those provisions. "It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his," the court said.

Metromedia, Inc. v. IATSE, CCH Labor Law Reports,  
Para. 12,619 (D.D.C. 1980) [ELR 3:1:3]

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### **FCC denies license renewal application of two Mississippi radio stations; affirmed by Court of Appeals**

Senior Circuit Judge Bazelon of the U.S. Court of Appeals in Washington, D.C. has, with some reluctance, written an opinion affirming the Federal Communication Commission's denial of a radio broadcasting company's application for license renewals for WSWG-AM and WSWG-FM in Greenwood, Mississippi.

Before WSWG was acquired by the broadcasting company, it featured top forty programming. In its 1969 application for assignment, the broadcasting company proposed changing the format to "primarily Negro, contemporary, Rhythm and Blues," affording a service not

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previously available to the large black population of the City of Greenwood. In its 1970 license renewal application, the station committed itself to specified amounts of weekly "non-entertainment" programming, reiterated its commitment to the black community, and pledged itself to continue its Rhythm and Blues format. In March 1971 the station notified the FCC that it had changed its format from Rhythm and Blues to Country and Western, explaining that it had lost \$20,000 in 1970 and the change was necessary if the station was to economically survive. At the same time, the station dismissed one full-time and two parttime black announcers and replaced them with one full time and one part-time white announcer.

The FCC investigation in this case was prompted by a citizens group consisting of the three black former employees, the pastor of a predominantly black church in Greenwood, a black businesswoman and a coalition of

civil rights organizations in Greenwood. The FCC did not dispute the station's discretion to change its format. Rather, the FCC considered the format change only insofar as it was evidence of the station's lack of veracity in dealing with the Commission.

The court sustained the Commission's findings that there existed a substantial shortfall in the amount of time the station devoted to "non-entertainment" broadcasting, finding an 80% variation in "public affairs" programming, when only a 15% variation is considered substantial. Because the broadcasting company failed to make a good faith effort to carry out the programming representations it proposed in its 1970 application, the Commission found a lack of candor in the station's dealings with the FCC. Further, the broadcasting company made no serious attempts to comply with the FCC's affirmative action requirements. Although the Commission failed to delineate which of the various transgressions was

conclusive to its determination that the license renewal application should be denied, the Commission has broad discretion in its choice of remedies and sanctions, and thus the court did not find the denial to be arbitrary or capricious.

Before determining the merits of the appeal, Judge Bazelon wrote an introductory discussion of his version towards what he termed FCC "behavioral regulation," noting that the danger of this scheme is the risk it imposes to cherished First Amendment freedoms. He cites the reader to Bazelon, *The First Amendment and the "New Media" - New Directions in Regulating Telecommunications*, 31 Fed. Commun. L.J. 212-13 (1979). The FCC has recently announced that it will no longer regulate the amount of nonentertainment programming broadcast by radio stations (ELR 2:22:6) and is considering other proposals for the further deregulation of the communications media.

Leflore Broadcasting Company v. FCC, 636 F.2d 454  
(D.C.Cir. 1980) [ELR 3:1:4]

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**Court denies television station's request to copy and televise video tapes received in evidence in criminal trial showing pre-rape conduct of kidnapper and his victim**

KSTP-TV of Minnesota sought to copy and televise three hours of video tapes received in evidence in a criminal case concerning the kidnapping of the wife of a clergyman. The defendant, an electronics expert, had recorded some nine hours of tape of his relations and conversations with his victim during her captivity in his home, including repeated sexual rapes committed on the woman. Scenes of the rapes themselves were not

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admitted into evidence; scenes which were admitted in evidence, and which were sought by the station, recorded conduct preliminary to the actual sexual acts, and showed the blindfolded victim lying on a blanket on the floor, her hands and feet bound. The court denied the station access to the tapes, stating their release "can serve little, if any, purpose."

"It should be made clear that there is no 'fair trial-free press' or First Amendment issue here," said the court. The court distinguished *United States v. Myers*, 635 F.2d 945 (2d Cir. 1980) (ELR 2:24:2), which recognized a presumption in favor of copying evidence that has been admitted in a trial, and allowed a television broadcaster access to the Abscam tapes. The Myers case involved the alleged wrongdoing of elected public officials - information necessary to maintain informed consent for sustaining a free and democratic society. Here, no public interest is served by the release of the

tapes, depicting as they do the humiliating and degrading predicament into which the victim was forced by her captor, the court ruled. The court also questioned the Myers court's requirement that there be compelling and extraordinary circumstances in order to overcome the presumption in favor of public access. The court in Myers appeared to raise the common law right of access to First Amendment dimensions, while the U.S. Supreme Court, in *Nixon v. Warner Communications*, 435 U.S. 589 (1979), implicitly rejected this notion, said the court.

The case then does not present a conflict between a First Amendment right and the right of privacy, said the court, but a conflict between the victim's right of privacy and "something less than a First Amendment interest."

The victim's right of privacy must prevail, concluded the court. All of the information in the tapes was already made available to the public and the media; there was

"scant value to the public of any additional information inherent in the video tapes.;" Release of the tapes for public dissemination, said the court, would infringe upon the precious privacy rights of the unfortunate victim, and "would lend the court's approval to the commercial exploitation of a voice and photographic display catering to prurient interests without proper public purpose or corresponding assurance of public benefit."

Application of KSTP Television, 504 F.Supp. 360 (D.Minn. 1980) [ELR 3:1:4]

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### **Contempt citation against television reporter for refusing to reveal sources is upheld**

When called to testify before a Commission on Judicial Conduct, Walter Roche, a reporter for station WBZ-TV

in Boston, refused to reveal information regarding confidential sources he had consulted when preparing an investigative report on certain local judges. Roche stated that his sources were among the potential witnesses already scheduled to testify.

The order of a single judge on the Suffolk County Supreme Judicial Court holding Roche in civil contempt has been upheld by the entire court. The court found that compelling Roche to testify would not result in the identification of otherwise unidentifiable sources, because those sources would be revealed eventually without Roche's assistance during the testimony of other witnesses. And the order to testify was not "oppressive, unnecessary or irrelevant." The Commission was seeking to use Roche's interviews to reveal inconsistent statements made by witnesses. Roche was not questioned in "retribution" for his news story, stated the court.

In the Matter of Roche, 411 N.E.2d 466  
(Mass.Sup.Jud.Ct. 1980) [ELR 3:1:5]

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### **Blanket and comprehensive liability insurance policy did not cover copyright infringement**

The defendant in two lawsuits concerning wrongful video taping of motion pictures and television programs, and their eventual distribution for profit in the Fiji Islands, tendered the defense to his insurance company, General Insurance Company of America. General undertook to defend him under a reservation of rights to cease defending. General then filed an action to determine whether it owed the insured a duty to defend. It won a judgment declaring that it had no such duty under the insurance policy. And Washington Court of Appeals has affirmed.

The policy provided blanket liability, comprehensive liability, and personal injury liability coverage. Under the blanket liability and comprehensive liability provisions of the policy, the company was obligated to pay for the defense of any action concerning the insured's potential liability for "bodily injury," or "property damage." The policy defined property damage as "physical injury to or destruction of tangible property." Under the personal injury provisions of the policy, "personal injury" is defined as including "publication or utterance of a libel or slander ... or a publication or utterance in violation of an individual's right or privacy; except publications or utterances in the course of or related to advertising, broadcasting or televising activities conducted by or on behalf of the named insured."

"Copyrights are generally defined as intangible property," said the court. Thus, General was under no duty to defend the actions under the blanket liability or

comprehensive insurance provisions. Nor was General under a duty to defend under the personal injury provisions. Personal injury coverage was limited to the specific conduct delineated in the policy; and none of those forms of conduct was asserted against the insured in the lawsuits brought against him.

General Ins. Co. of America v. Chopot, 623 P.2d 730 (Wash.App. 1981) [ELR 3:1:5]

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**Court orders parties claiming right to advertising campaign to enter into buy-sell agreement and awards damages for infringement of copyrighted ad campaign**

In order to resolve a lengthy dispute over the right to market a broadcast advertising campaign consisting of

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commercials featuring a child's voice, Dealer Advertising Development, Inc. and Barbara Allan Financial Advertising, Inc. entered into an agreement concerning the "Timmy" commercials. The agreement provided that the concept, copy and master tapes of the commercials would be jointly owned by DAD and by Barbara Allan. The agreement also established geographical exclusivity for purchasers of the commercials, and specified that Barbara Allan would retain exclusive custody and possession of the original Timmy master tapes. However, the parties continued to disagree, both about the Timmy commercials and about a follow-up advertising campaign which also used children's voices.

A Federal District Court in Michigan has concluded that the agreement between DAD and Barbara Allan was unworkable and has directed the parties to enter into good faith negotiations for the sale by one party of all its right, title and interest in the Timmy series to the

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other, or by both to a third party. If a buy-sell agreement were not executed within 90 days, the court stated that it would then enter findings and order appropriate relief with respect to alleged breach of the DAD-Barbara Allan agreement.

The court also ruled that Barbara Allan had infringed DAD's copyrighted follow-up campaign. Errors in DAD's copyright registration certificate, such as listing the state of incorporation incorrectly, did not affect the validity of the copyright, since the court held, there was no intent to deceive Barbara Allan, the Government or the public. Substantial similarity was found in the format, style, concept and text of the two companies' campaigns. The court therefore enjoined Barbara Allan from further infringement of DAD's copyright, ordered Barbara Allan to deliver to the court all materials used in connection with its infringing follow-up campaign and awarded DAD \$5,000 in lieu of actual damages.

The court did not examine the merits of DAD's common law unfair competition and misappropriation claims since these claims were found to involve the same acts and the same relief as the copyright claims already considered.

Dealer Advertising Development, Inc. v. Barbara Allan Financial Advertising, Inc., CCH Copyright Law Reports, Para. 25,218 (W.D. Mich. 1979) [ELR 3:1:5]

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### **Briefly Noted:**

#### **Cable Television.**

No binding contract was created between Minneapolis Cablesystems and the City of Minneapolis when the City Council adopted a resolution awarding the cable

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company a franchise, because the resolution specifically stated that the terms of the franchise would be "subject to final approval" by the cable company and by the City Council. For reasons which were not disclosed in the decision of the Minnesota Supreme Court, the City Council never approved the proposed franchise ordinance negotiated between Minneapolis Cablesystems and the city attorney. Instead, the City Council rescinded its original resolution and adopted an ordinance granting another cable company the franchise. Although the court acknowledged that "unusual facts" surrounded the City Council's action, it held that the original resolution "left the city the option to veto any proposed ordinance prior to its final adoption."

Minneapolis Cablesystems v. City of Minneapolis, 299 N.W.2d 121 (Minn. 1980) [ELR 3:1:7]

## **Use Tax.**

A Missouri company that produces filmed commercials shown in Missouri motion picture theaters must pay that state's use tax on the cost of the physical films themselves, the Supreme Court of Missouri has ruled. The company's laboratory work was done in Colorado, California or Illinois, and the use tax was assessed on the charges of those labs, including charges for services rendered by the labs on the company's films. The production company won a partial victory however, because in some cases it was billed and taxed for lab work that was done on films that were canceled before the prints were returned to Missouri. In those cases, the court held, no use taxes were due, because the state's use tax applies only to tangible personal property actually used in that state.

Universal Images, Inc. v. Missouri Department Of Revenue, 608 S.W.2d 417 (Mo. 1980) [ELR 3:1:7]

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### **Obscenity.**

Statistical evidence concerning the number of people who have seen the movie "Deep Throat" in Houston was relevant evidence of "contemporary community standards" in that area, the Texas Court of Criminal Appeals has held. The trial court therefore committed reversible error when it excluded such evidence in a prosecution based on the sale of an allegedly obscene movie entitled "Oversexed Secretary."

Keller v. State of Texas, 606 S.W.2d 931 (Tex.Crim.App. 1980) [ELR 3:1:7]

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## **Libel.**

An award of punitive damages in favor of a Florida exercise studio against a local newspaper for a story which falsely connected the studio with certain mortgage litigation has been reversed by a Florida Appellate Court. The standard of proof for punitive damages - bad faith or a reckless disregard for the truth or falsity of the story - was not met in this case. The court did not believe the story was so egregious as to warrant more than a retraction and an award of compensatory damages. The newspaper had printed a retraction pursuant to a 1979 Florida law which, in cases brought for "publication or broadcast in a newspaper, periodical or other medium" of a libel or slander, limits recovery to actual damages if a timely retraction is made within ten days of receiving notice from one planning to take legal action.

Cape Publications, Inc. v. Teri's Health Studio, Inc., 385 So.2d 188 (Fla.App. 1980) [ELR 3:1:7]

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## **Libel.**

The Restatement (Second) of Torts rule (Section 568A) that the broadcasting of defamatory matter by means of television is libel, not slander, is the law of Alabama, the Alabama Supreme Court has held, apparently for the first time. Television station WALA-TV of Mobile, Alabama was sued by the stockholders and employees of a public relations firm who charged that the station's accusations of political corruption had subjected the firm to public ridicule. Because the advertising firm did not allege special damages, the trial court dismissed the action. The Supreme Court found that the broadcasts in question could be characterized not only

as libel, but as libel per se, because they directly tended to prejudice one's profession, trade or business. Since an action for libel per se does not require any allegation or proof of special damages, the court reversed the dismissal. By design or oversight, the public relations firm only alleged punitive damages and this requires proof of malice. The court said that the presence of malice is a question peculiarly suited for a jury determination and for that reason found the trial court to have correctly denied the television station's motion for summary judgment.

Gray v. WALA-TV, 384 So.2d 1062 (Ala. 1980) [ELR 3:1:7]

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**Previously Reported:**

The following cases have been published: Twentieth Century-Fox Film Corp. v. Dunnahoo, CCH Copyright Law Reports, Para. 25,225 (2:20:3); Film video Releasing Corp v. Hastings, CCH Copyright Law Reports, Para. 25,222 (2:21:2); Amusement & Music Operators v. Copyright Royalty Tribunal, 636 F.2d 531 (2:17:7), the United States Supreme Court has denied a Petition for Certiorari filed by the Amusement and Music Operators Association; MCA Inc. v. United States, 502 F.Supp. 838 (2:20:7); Chartwell Communications Group v. Westbrook, 637 F.2d 459 (2:19:1). [ELR 3:1:8]

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## NEW LEGISLATION AND REGULATIONS

### **Income from sale of radio and tv rights to sports events is tax free to tax exempt organizations, though rental of athletic facilities may be taxable**

In a series of related Revenue Rulings, the Internal Revenue Service has ruled on the tax status of income received by tax exempt organizations that sell radio and television rights to their games and rent their athletic facilities to others. The tax status of such income arose, because tax exempt organizations are taxable on their "unrelated business income" just as though they were not tax exempt at all.

In Revenue Ruling 80-294, an organization which was tax exempt under Section 501(c)(6) of the Internal Revenue Code conducted athletic tournaments. The organization was formed to promote interest in its

particular sport, to elevate the standards of the sport as a profession, and to sponsor and conduct tournaments for the encouragement of its members. It obtained financial support primarily from the sale of television rights to its tournaments, though other support was derived from membership dues, apprentice programs, annual conventions, penalties and fees.

The Service had previously ruled (in Rev. Rul. 58-502, 58-2 C.B. 271) that the tax exempt status of a similar organization, which conducted tournaments and derived incidental support from the sale of radio and television rights to those tournaments, was not affected by the sale of those rights. In its current Ruling, the Service reasoned that sponsoring tournaments directly promotes the interests of those engaged in the sport by encouraging participation. Furthermore, the amount of income, whether large or small, received for broadcasting rights does not determine whether the tournament furthers the

purposes of the organization. Thus, the Service ruled that the sale of broadcast rights will not adversely affect the organization's exempt status even if the sale of those rights is its primary source of support.

Revenue Ruling 80-295 involved an organization that was a national governing body for amateur athletics and was exempt under Section 501(c)(3) of the Internal Revenue Code. The organization sponsored a number of programs in various amateur sports and derived substantial income from the sale of television and radio rights to an independent producer, who then contracted with a commercial network to broadcast those same events. The Service held that the broadcasting of these athletic events promoted the various amateur sports and fosters interest in the organization's sports program, and therefore was not an unrelated trade or business. Therefore, the sale of broadcasting rights to those events was not taxable income to the organization.

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In Revenue Ruling 80-296, the Service ruled that the sale of broadcasting rights by a regional collegiate athletic conference which is exempt under Section 501(c)(3) did not result in unrelated trade or business income to the organization. The Service reasoned that income from paid admissions to college and university athletic events, regardless of the number of people or amounts paid, is not taxable income because the events themselves are related to the educational purposes of the colleges and universities involved. Hence, exhibition of the games on radio or television before a much larger audience has a substantially similar educational purpose and the sale of those broadcasting rights is similar to the sale of tickets for admission. Therefore, income from the sale of those broadcasting rights is not taxable.

Revenue Ruling 80-297 dealt with two situations. One involved a school exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. For a

ten week period during the summer, the school operated a tennis club to which the general public paid fees in order to use the tennis courts and dressing rooms of the institution. The club's net income was used for the exempt purposes of the school. The second situation involved the same facts, except that during the ten week period, the educational institution made the facilities available to an unrelated individual for a fixed fee. The Service held that in each situation the school was engaging in an "unrelated trade or business," because furnishing tennis facilities was not substantially related to the educational purposes of the school. There is an exception however for the mere rental of real property if it is done without providing substantial services. Thus, the Service held that where the school did more than just furnish its facilities - that is, where it actually operated a tennis club using its own employees, the activity was an unrelated business, and the income from it was taxable. However,

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where the school merely furnished its facilities - and the individual lessee provided the employees and the services - the income was not taxable.

In Revenue Ruling 80-298, the Service ruled that a university's lease of its stadium to a professional football team is an unrelated trade or business and the income is therefore taxable. The university permitted a professional football team to use its stadium for practice during several months of the year. Under the agreement, the university provided light, heat, water, maintenance of the playing surface, grounds maintenance, rooms, linen, stadium security and crowd and traffic control. The Service held that the activity was not substantially related to the university's educational or charitable purposes. The Service also ruled that the income was more than mere rents from real property because substantial services were performed by the university. Therefore,

the income derived from the lease was held to be taxable income from an unrelated trade or business.

Rev. Rul. 80-294, I.R.B. 1980-44, 9; Rev. Rut'. 80-295, I.R.B. 1980-44, 10; Rev. Rul. 80-296, 1 R.B 1980-44, 10; Rev. Rut. 80-297, I.R.B. 1980-44, 11; Rev. Rul. 80-298, I.R.B. 1980-44, 13 [ELR 3:1:6]

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## DEPARTMENTS

### **In the Law Reviews:**

A Barometer of Freedom of the Press: The Opinions of Mr. Justice White, 8 Pepperdine Law Review 157-187 (1980)

Order in the Court - Freedom in the Newsroom by Fred W. Friendly, 20 Judges Journal 14-17, 47-48 (1981)

The Supreme Court and Press Fashions by Robert Mason, 22 William and Mary Law Review 259-279 (1980)

Gannett v. Depasquale and Richmond Newspaper v. Virginia: Reopening Courtroom Doors and Constitutional Windows by Sarah G. Reznick, 10 Capital University Law Review 101-128 (1980)

The Art Investment Contract: Application of Securities Law to Art Purchases, 9 Fordham Urban Law Journal 385-429 (1980-81)

Gag Orders, Exclusionary Orders and Protective Orders: Expanding The Use of Preventive Remedies to Safeguard a Criminal Defendant's Right to a Fair Trial by

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Dov Apfel, 29 American University Law Review  
439-484 (1980)  
[ELR 3:1:8]