RECENT CASES

Unauthorized distribution of Kenny Rogers records and tapes is enjoined

Koala Record Company's unauthorized manufacture and sale of phonograph records, tapes and cassettes bearing the title "Kenny Rogers' Greatest" and containing the same songs as those performed on the Liberty Records album "Kenny Rogers' Greatest Hits" has been enjoined by a Federal District Court in Nashville.

The Koala materials actually contained performances recorded in the late 1960s for an album entitled "Ruby, Don't Take Your Love to Town" recorded by the group known as Kenny Rogers and the First Edition. The album was released by Warner Bros. Records, the company for which Rogers recorded at the time. The label

on the Koala materials, however, contained a drawing of Rogers as he appears today. Koala contended that it was the owner of a copyright in the performances taken from the 1969 Warner album because the Koala tapes contained the legend: "P" 1980 Koala Record Co. Koala also claimed that in 1976 it had "leased" 21 songs from Amos Productions, Inc., Rogers' production company. But only two of the 21 songs were included on the Liberty greatest hits album. And there was no evidence that the purported lease gave Koala the right to use the songs on the Liberty album in any manner it chose. Further, the Koala materials apparently were dubbed from a recording designed to be sold commercially and consequently contained distortions and a loss of tonal quality.

In a brief opinion granting the injunctive relief sought by Rogers, the court found that the labels on the Koala cassettes had "a tendency to misrepresent and deceive the public as to the origin, ownership and nature of the

defendant's product in violation of the Lanham Act." The distribution of inferior quality recordings, the unauthorized use of Rogers' name and likeness for commercial purposes, and the false designation of a current 1980 copyright also were ruled violations of the Lanham Act (I 5 U.S.C. section 1125(a)) which were likely to cause irreparable harm to Rogers, Liberty and Warner.

Rogers v. Koala Record Company, Civil Action No. 81-3139 (M. D. Tenn., June 4, 1981) [ELR 3:5:1]

FCC's elimination of cable television rules concerning distant signal carriage and syndicated program exclusivity is upheld

The order of the Federal Communications Commission repealing cable television rules on distant signal carriage

and syndicated program exclusivity (ELR 2:16:3) has been upheld by a Federal Court of Appeals in New York. Broadcasters had challenged the pending deregulation, seeking either to have the regulations reimposed, or to require the FCC to establish a retransmission consent policy.

In recounting the development of the Commission's cable policy, the court pointed out that regulation of the industry initially was hostile to the growth of cable. The FCC's distant signal rules limited the number of signals from distant stations that a cable system could transmit to its subscribers. This policy attempted to protect the audience share of local stations. The syndicated program exclusivity rules required a cable system to delete programs from distant signals when a local television station purchased exclusive exhibition rights to the program.

The court viewed these policies as "proxies" for copyright liability on the part of cable operators to broadcasters. The United States Supreme Court had ruled that cable systems were not liable under the Copyright Act for their use of copyrighted broadcast programs without the owner's consent (Teleprompter Corp. v. Columbia Broadcasting System, Inc., 415 U.S. 394; Fortnightly Corp. v. United Artists Television, Inc., 392 U.S. 390.) However, in the Copyright Act of 1976, Congress adopted a compulsory licensing system (17 U.S.C. Section 111) by which cable operators "are expressly permitted to retransmit programs without any need to obtain the consent of, or negotiate license fees directly with, copyright owners, but . . . must pay the owners a prescribed royalty fee, based on the number of distant signals the system carries."

Given the existence of the compulsory licensing system, the FCC, after considerable research, found that

deregulation of cable would have a minimal impact on broadcasting stations, and the viewing options of consumers would be increased. Hence, the FCC recommended deregulation (Report and Order, 79 F.C.C.2d 663 (1980)). The Report rejected a retransmission consent policy as contrary to the intent expressed in the compulsory licensing system of the Copyright Act.

The broadcasters' contentions that the compulsory licensing system was established as an adjunct to existing cable regulations, and that the Copyright Act would not prohibit a retransmission consent policy, were unsuccessful.

Professional sports leagues claimed that the FCC did not consider the effect of deregulation on sports programming. But no evidence was presented "that the number of sports broadcasts by home clubs [was] reduced in the existing areas of high cable penetration, or would be reduced in the future."

The FCC's action was not arbitrary and capricious, because voluminous economic studies were conducted. It was further determined that the expansion of cable would not threaten the basic nature of free television and that deregulation was in the public interest.

News reports indicate that the broadcasters intend to petition the U.S. Supreme Court to overturn the FCC's action.

Malrite T.V. v. Federal Communications Commission, Case No. 865, Docket NO. 80-4120 (2d Cir., June 16, 1981) [ELR 3:5:2]

Public TV station ordered to televise "Death of a Princess"; class action libel suit against film's producers is dismissed

Television station KUHT-TV, which is owned and operated by the University of Houston, has been ordered for the second time to televise the controversial PBS program "Death of a Princess." The order was issued by a Federal District Court in Houston following a three day trial. Earlier, the same court had issued a preliminary injunction requiring the station to broadcast the program in May of 1980, as originally scheduled. (ELR 2:15:3) But the University immediately obtained an order from a Federal Court of Appeals vacating the District Court's order, on condition that the station tape the program for possible broadcast at a later date. United States Supreme Court Justice Lewis Powell refused to overturn the Court of Appeals' order, and thus KUHT-TV did not have to televise "Death of a Princess" as originally ordered, though it did tape the program as required.

Although KUHT-TV purchased the right to televise the program, along with some 285 other public television stations that are members of the Public Broadcasting Service, the station's administrator, who was a University of Houston vice president, decided not to show the program because of "strong and understandable objections" to it by the government of Saudi Arabia. From evidence introduced at trial, the District Court concluded that the station's administrator also was influenced by the fact that the University of Houston had previously entered into a "lucrative contract" with the Saudi Arabian royal family to instruct a princess whom he believed to be a distant cousin of the woman whose death was the subject of "Death of a Princess." In addition, the University receives substantial contributions from oil companies.

The lawsuit was filed by KUHT-TV viewers and subscribers who alleged that the station's decision not to

televise the program infringed their 1st Amendment ights. They and the court acknowledged that the programming decisions of privately owned television stations may not be attacked in court on constitutional grounds. The University of Houston, however, is a state university. As such, the viewer contended, KUHT-TV is a governmental entity whose actions are controlled by the constitution.

The principal issue in the case was whether KUHTTV is a "public forum." The "public forum" doctrine grew out of attempts by state and local governments to limit speech-like activities on government owned property. In a series of U.S. Supreme Court decisions, the high court struck down such efforts where the property in question was deemed to be a "public forum." These same cases held that public forums are places that are controlled by governments and are appropriate for the communication of views on issues of political and social significance.

"There is no question that KUHT-TV is precisely such a place," the court ruled in finding that the station is a public forum. As such, a decision by the station not to show a program violates the 1st Amendment, so long as there is a willing speaker and a willing listener. The court rejected KUHT-TV's claim that it was an unwilling speaker in this case. Instead, the court found that the producers of "Death of a Princess" were the "speakers," and it was clear, said the court, that "they wanted it to be 'heard.'"

The court denied that it was attempting to "thrust itself into the business of operating a television station." And it also emphasized that the case does not involve a privately owned and operated station. However, because the court found that KUHT-TV is a publicly owned station, and because its decision not to show "Death of a Princess" violated the 1st Amendment rights of its viewers, the court ordered the station to televise the program

within 30 days. The University of Houston appealed that order, and the case is now pending before the Court of Appeals.

In an unrelated case involving "Death of a Princess," a class action libel lawsuit was filed against the program's producers, PBS, and others, on behalf of an alleged class of "nearly one billion persons" who were said to include "followers of the Islamic faith throughout the world" and "Americans who are committed to a respect for world and Islamic traditions." The complaint alleged that the program was "insulting and defamatory" to the Islamic religion, and that as a result, all Muslims were defamed by its broadcast. Damages of $20 billion were sought.

The lawsuit has been dismissed by a Federal District Court in San Francisco, on two grounds. The court ruled that the law of defamation protects individuals, and that the group on whose behalf the suit was filed was so

large that the program could not have defamed any of its individual members. The court noted that if it were to permit an action for so large a group, it "would render meaningless the rights guaranteed by the First Amendment to explore issues of public import." The court also ruled that since the program did not appear to say anything that was libelous per se, special damages would have been necessary. The complaint, however, did not allege that any of the class members had incurred special damages.

Barnstone v. University of Houston, 6 Media Law Reporter 2281 (S.D.Tex. 1980); Khalid v. Fanning, 506 F.Supp. 186 (N.D.Cal. 1980) [ELR 3:5:2]

Actors' Equity violated federal labor laws by requiring higher dues from non-resident alien members

A Federal Court of Appeals has granted a National Labor Relations Board petition for enforcement of the Board's order (reported in ELR 1:7:1 and 1:22:8) requiring Actors' Equity to cease its practice of maintaining a separate, discriminatory dues structure for non-resident alien members temporarily admitted to the United States to perform in theatrical productions. The assessment of nonuniform dues without any reasonable basis violated the National Labor Relations Act, ruled the court. The Board's remedy of requiring Actors' Equity to repay past overcharges in dues paid by nonresident aliens from April of 1976 to the present was correct, the court held.

Equity, in addition to the arguments presented before the NLRB's Administrative Law Judge, contended that the NLRB did not possess jurisdiction over the non-resident aliens because the NLRA protects American workers only. But the court pointed out that the

applicable provisions of the NLRA did not specify American citizen employees as opposed to non-resident aliens.

National Labor Relations Board v. Actors' Equity Association, 644 F.2d 939, CCH Labor Law Reports para. 12,657 (2d Cir. 1981) [ELR 3:5:3]

Fess Parker's action against Twentieth Century-Fox will proceed to trial rather than arbitration

In April of 1964, Fess Parker, renowned for his starring role in the television series "Davy Crockett," entered into a joint venture agreement with Arcola Pictures Corporation and Twentieth Century-Fox. The joint venture, known as "The American Tradition Company," was to produce and distribute a film television series

entitled "Daniel Boone." In addition to setting forth the contributions and rights of the parties, the agreement provided that in the event of a controversy regarding Fox's statements of participants profits, the dispute would be submitted to an accounting firm.

Parker and Arcola eventually brought an action against Fox alleging various claims, including: fraud, based on Fox's structuring of the joint venture so that the realization of net profits was unlikely; breach of contract, due to Fox's improper participation in the production, syndication and distribution of a spin-off television series, in violation of the joint venture agreement, entitled "Young Dan'l Boone"; imposition of a constructive trust on profits withheld by Fox from the Daniel Boone series; and rescission of the joint venture agreement.

Fox responded to the action with a petition to compel arbitration, claiming that an accounting would resolve the issues raised by Parker and Arcola, and that the joint

venture agreement set forth an appropriate controversy-resolution procedure.

A California Court of Appeals has upheld a trial court ruling that the controversy-resolution provision of the joint venture agreement was too narrow to encompass the issues raised in the complaint. The Court of Appeal notedorth an appropriate controversy-resolution procedure.

A California Court of Appeals has upheld a trial court ruling that the controversy-resolution provision of the joint venture agreement was too narrow to encompass the issues raised in the complaint. The Court of Appeal noted that at some point during the litigation an accounting of the profits of the series might be required, but the timing and the scope of such accounting would be subject to the court's determination, rather than that of an accounting firm. The court capped its decision by observing that an allinclusive, standard arbitration clause

could have been inserted in the joint venture agreement, if the parties had so intended.

Parker v. Twentieth Century-Fox Film Corporation, 2 Civ. No. 59661 (Cal.App., May 6, 1981) [ELR 3:5:3]

Federal Court of Appeals upholds FCC decisions that Senator Kennedy was not entitled to television time to respond to President Carter during 1980 election campaign

Political broadcasts are regulated in part by provisions of the Federal Communications Act and by FCC rules and policies. Among the best known of these laws are the "equal opportunities" rule, the federal candidate "access" rule, and the "fairness doctrine." Each time a federal election is about to occur, candidates seek to

exercise their rights to the fullest under these laws. And the Presidential campaign of 1980 was no exception. During the Democratic Party primaries, two television appearances by then-President Jimmy Carter triggered requests for air time by Senator Edward Kennedy. Both requests were denied. Complaints to the FCC followed, as did appeals to the courts. In two rulings issued last year, but just recently published, the Federal Court of Appeals in Washington, D.C., has affirmed FCC decisions that Senator Kennedy was not entitled to the television time he sought.

In Kennedy for President Committee v. F.C.C., the Court of Appeals upheld the FCC's denial of the Committee's request for an equal opportunity to respond to statements made by then-President Carter during a news conference broadcast by the major television networks on the eve of the 1980 Presidential primary in New Hampshire. The Kennedy Committee contended that

Carter used the news conference to advance his candidacy and that he had made "inaccurate" statements about Senator Kennedy's views on certain issues. The Court of Appeals found that the telecast of the news conference was exempt from the equal opportunity requirements of Section 315(a) of the Communications Act as "on-the-spot-coverage of a bona fide news event." Coverage of arguably "political" news events was exempted from the section since it was believed that "an overly-broad statutory right of access would diminish rather than augment the flow of information to the American public."

The FCC is only required to consider "whether or not the broadcaster intends to promote the interest of a particular candidate in presenting coverage of a news event." And the Kennedy Committee presented no evidence that the networks lacked "good faith journalistic

judgment" or favored Carter's candidacy in determining that the press conference was newsworthy.

Kennedy for President Committee II involved a press conference and a speech by then-President Carter on the subject of the economy which were broadcast four days before the 1980 Illinois Presidential primary.

The FCC had affirmed its Broadcast Bureau's decision that neither Section 312(a) (7) nor the fairness doctrine entitled Kennedy to free responsive time when time apparently was available for purchase.

The Court of Appeals, again upholding the FCC, reviewed the relationship between Sections 315(a) and 312(a)(7) and noted that while Section 315(a) sets forth a right of equal opportunity when there has been a prior "use" of broadcast facilities by another candidate, Section 312(a)(7) is not dependent upon prior use. Section 312(a)(7) requires a broadcaster to provide reasonable access to a candidate or to sell the candidate time at the

prescribed rates. It is not another equal opportunity provision.

The fairness doctrine claim of the Kennedy Committee was also denied. It was found that the particular controversial issue involved was not identified, that there was no evidence that the broadcasters had failed to present contrasting viewpoints on the economy, and that Senator Kennedy was not a "unique and singularly qualified" representative of those disputing Carter's economic strategy.

Kennedy for President Committee v. Federal Communications Commission, 636 F.2d 417 (D.C.Cir. 1980), 636 F.2d 432 (D.C. Cir. 1980) [ELR 3:5:4]

High Society Magazine recalled by court order, because of sexually explicit article about Tarzan and Jane

The July 1981 issue of High Society Magazine, which contained an article entitled "Monkeying Around with Tarzan and Jane," has been recalled, and any further distribution of the magazine has been enjoined, pursuant to an order issued by a Federal District Court in New York. The article depicted Tarzan and Jane engaged in explicit sexual activities and conversation. Edgar Rice Burroughs, Inc., whose predecessor popularized the Tarzan and Jane characters, had not authorized High Society's use of the characters. The company alleged causes of action for trademark infringement, unfair competition and dilution of the Tarzan trademark. Burroughs' generally followed a practice of prohibiting its

licensees from portraying the Tarzan and Jane characters engaged in illicit sex.

High Society, swinging away, argued that although Burroughs owned literary rights in the Tarzan works, the company could not preempt all uses of Tarzan, the mythical jungle hero. It was also contended that the article was satire and parody, and that it was protected as contemporary social commentary based on a newsworthy character. To no avail.

The court found that the magazine's conduct was a "willful, knowing trespass on the plaintiffs rights in a most distasteful and crude manner, and was likely to cause confusion, mistake, and deception among readers. The names Tarzan and Jane have achieved a secondary meaning, ruled the court, largely through Burroughs' efforts and expenditures." Readers probably would believe that Burroughs had licensed High Society's use of the trademark, and this would dilute the "distinctive,

wholesome" quality fostered by Burroughs, impugn the Tarzan character and injure Burroughs' business reputation and goodwill.

Edgar Rice Burroughs, Inc. v. High Society Magazine, Inc., Case No. 81 Civ. 3788 (S.D.N.Y., June 22, 1981) [ELR 3:5:5]

CBS does not have to give defendants in criminal prosecution the entire transcript of unbroadcast material used to prepare "60 Minutes" report

In March of 1981, CBS, in compliance with a Federal Court of Appeals order, submitted a full transcript of interviews which were used in preparing a "60 Minutes" report on fast-food franchises to a Federal District Court in New Jersey for in camera examination (ELR 2:22:1).

The District Court was conducting a trial based upon a grand jury indictment charging the principals of Wild Bill's Family Restaurants, the primary target of the "60 Minutes" report, with fraud and conspiracy in the operation of the company. When the District Court obtained the CBS material, which also included reporters' notes and film out-takes, court ruled that certain statements in the interviews would materially aid the defendants. Pursuant to Brady v. Maryland, 373 U.S. 83, the court therefore turned the material over to the defendants before trial. The Federal Court of Appeals in Philadelphia has now ruled that the District Court erred in so doing because the court had not made the threshold determination that the CBS material would be admissible as evidence in the trial. The court stated that material held by a third party is subject to subpoena under rule 17(c) of the Federal Rules of Criminal Procedure only to the extent that a court, after a private review, finds that it

might be admissible to impeach the testimony of a witness during the trial. The District Court order releasing all of the CBS material to the defendants therefore was reversed.

A separate and independent ground for reversal, according to the Court of Appeals, was that the defendants had not overcome the federal common law qualified privilege of the media. As set forth in United States v. Criden, 633 F.2d 346, cert. denied sub nom. Schaffer v. United States (Jan. 20, 1981, ELR 2:22:1), it must be demonstrated that a party has made an effort to obtain the information from other sources, that the only access to the information is through the journalist and his or her sources, and that the information sought is crucial to the claim. The identities of witnesses in the Wild Bill case were available from the witness list, and these witnesses had not yet been given an opportunity to testify.

In a concurring opinion, Judge Seitz affirmed a very limited right in the District Court to review the CBS material in order to prepare for trial, but rejected any implication that the court had an obligation, similar to that imposed upon prosecutors by Brady, to disclose possible exculpatory material to a defendant, Judge Seitz emphasized that such material only need be produced when nondisclosure would deprive a defendant of a fair trial, a circumstance he found was not present in the Wild Bill case.

United States v. Cuthbertson, Nos. 81-1467, 81-1470 and 81-1485 (3d Cir., May 29, 1981) [ELR 3:5:5]

Trial required in libel suit against Newsday based on republication of Pulitzer Prize winning articles in book form by New American library, though claims against NAL, reporters and editors all dismissed

A series of articles entitled "The Heroin Trail" which appeared in Newsday, a Long Island newspaper, in 1973, referred to Mahmut Karaduman as a participant in drug smuggling activities in Turkey. The series was written by three Newsday reporters after a 13 month investigation and was awarded a Pulitzer Prize. New American Library republished the articles in book form in 1974. Karaduman brought an action for libel in 1975, claiming that the reference to him in the Newsday series was false and that the sources purportedly interviewed by the reporters would not confirm their statements.

Karaduman's cause of action based on the Newsday publication was dismissed as time-barred by the statute of limitations.

The action against NAL also was dismissed. The Newsday series dealt with matters of public concern, and although Karaduman was a private individual, he was required to demonstrate that the alleged libel was published with gross irresponsibility. NAL was entitled to rely, however, on Newsday's research particularly in view of the absence of litigation in connection with the Newsday publication. And no evidence was presented to suggest gross irresponsibility on the part of NAL.

The remaining issues concerned the liability of Newsday and its employees for the allegedly libelous republication. Under New York law, "the original publisher of a defamatory statement [is not] automatically liable for subsequent republications of the statement by others." The court found that the Newsday reporters were not

involved at all in the republication. Newsday's managing editor assisted NAL, but it was not shown that he had failed to act responsibly, or had any reason to doubt the truthfulness of the statements in the series. In the absence of tortious conduct by its employees, neither the doctrine of respondeat superior nor the doctrine of vicarious liability would provide a basis for Newsday's liability.

In a cloud of dust, the court then split on the question of Newsday's corporate liability for the republication. Three members of the Court of Appeals would have granted summary judgment to Newsday, finding that the newspaper had no reason to suspect that the reporters may have consulted untrustworthy sources. Judge Gabrielli stated that if a reporter's allegedly "guilty knowledge" were imputed to a newspaper, the "intolerable burden" of rechecking every story before permitting republication might be imposed on the management of

the newspaper. He concluded that "the interest of society in protecting the reputation of individuals may be adequately served by a rule which imposes liability for a newspaper's corporate decision to license republication only when it is shown that the corporate agents who participated in the decision acted in a grossly irresponsible manner' by ignoring or failing unreasonably to become aware of facts that would alert a careful publisher to refrain from acting without further inquiry."

However, four members of the court ruled that there were triable issues of fact which precluded the granting of summary judgment to Newsday. Judge Jones stated that if the reporters had acted with gross irresponsibility in their investigative activities, Newsday, which was directly responsible for their conduct, might be liable to Karaduman. The potential liability apparently would be based on Newsday's acknowledged participation, however limited, in the republication by NAL, along with the

possibly grossly irresponsible investigative reporting which, according to Judge Jones "would carry forward to all publication of material based thereon."

Karaduman v. Newsday, Inc., 435 N.Y.S.2d 556 (N.Y. 1980) [ELR 3:5:5]

Time magazine's reference to an FBI report on alleged crime figure was entitled to fair report privilege

A Federal Court of Appeals in Pennsylvania has ruled that under Pennsylvania common law, publishing an account of an official proceeding - even when the proceeding contains allegedly defamatory statements - falls within the conditional "fair report privilege" of the press. (The court attempted to predict Pennsylvania law in the

absence of a state statute or authoritative case law.) Under the privilege, the press does not need to establish the truth of the substance of the statement reported and will not be subject to liability if its report is fair and accurate and is not published solely to cause harm to the party defamed.

Time magazine published an article in March 1978 concerning the suspected criminal activities of thenCongressman Daniel J. Flood. The article summarized certain FBI materials which referred to the possible organized crime connections of Philip Medico, an associate of Flood. The court, upholding the granting of summary judgment to Time, stated that although Time had summarized a non-public government report, the magazine nevertheless was entitled to the protection of the fair report privilege.

Medico contended that the privilege would not apply to an investigative report which never led to his arrest or

criminal prosecution. But the privilege has been acknowledged in a case involving a television news broadcast which reported on the filing of a civil complaint that contained defamatory accusations. (Hanish v. Westinghouse Broadcasting Co., 487 F.Supp 397 (E.D.Pa. 1980), ELR 2:8:6) The court reasoned that a Pennsylvania court would likely find that FBI files were at least as "official" as the pleadings in a civil case.

Time's publication also satisfied an underlying rationale for the fair report privilege - that of serving a legitimate public interest in learning about the important subject of organized crime. The public's "need to know" does not outweigh personal interests in privacy so as to justify the reporting of any defamatory matter in any government file. However, in this case, the information published by Time involved the possible wrongdoing of a public official.

While declining to decide any First Amendment issues, the court anticipated the eventual recognition by the United States Supreme Court of a constitutional privilege of fair report for official acts and proceedings involving matters of public interest regardless of whether they contain defamatory statements. In Landmark Communications, Inc. v. Virginia, 435 U.S. 829, the Supreme Court held that the report of a proceeding which was closed to the public was entitled to First Amendment protection. And several lower federal court opinions also have expressed considerable "solicitude" for the press when reporting on official proceedings.

The court concluded that Time had not abused its privilege of fair report, because it was not alleged that the article was published for the purpose of harming Medico, and the article did not unfairly or inaccurately describe the FBI report.

Medico v. Time, Inc., 643 F.2d 134 (3d Cir. 1981) [ELR 3:5:6]

Briefly Noted:

Sports.

The Commonwealth Court of Pennsylvania has held that high school students do not have a constitutionally protected property interest in participating in interscholastic high school sports, even though they might receive athletic scholarships to college. The court therefore ruled that the "due process" rights of the members of a high school football team were not violated by an athletic association order requiring the team to forfeit games and a playoff berth because the team had used a

player who was academically ineligible under association rules.

Adamek v. Pennsylvania Interscholastic Athletic Association, 426 A.2d 1206 (Pa.Cmwlth. 1981) [ELR 3:5:7]

Obscenity.

A restaurant owner was charged with violating a local law prohibiting topless dancing. He filed a motion to dismiss on grounds that a law prohibiting all topless entertainment is unconstitutional on its face. The court agreed and held the anti-topless law overbroad and unconstitutional because nonobscene topless dancing is a constitutionally protected form of expression under the 1st Amendment. "Although the protection afforded to nudity by the 1st Amendment is minimal, a State or a

local governing body ... cannot totally restrict topless dancing under all circumstances," the court ruled.

People v. Wehnke, 436 N. Y. S.2d 137 (City Ct. 1981) [ELR 3:5:7]

Libel.

A Federal District Court in Mississippi has granted Hustler Magazine's motion for summary judgment in a libel action, on statute of limitations grounds. The court held that a "cause of action for libel in a mass distributed publication accrues when the periodical is substantially distributed to the public ... consistent with the policy of the single publication rule to prevent the endless tolling of the statute of limitations."

Wildmon v. Hustler Magazine, Inc., 508 F.Supp. 87 (N.D.Miss. 1980) [ELR 3:5:7]

Previously Reported:

The following cases have been published: National Subscription Television v. S & H TV, 644 F.2d 820 (3:2:6); Post Newsweek Stations-Connecticut v. Travelers Insurance Company, 510 F.Supp. 81 (2:23:1); United States v. Columbia Pictures Industries, Inc., 507 F.Supp. 412 (2:18:6); F.E.L. Publications v. Catholic Bishop of Chicago, 506 F.Supp. 1127 (3:1:3). [ELR 3:5:7]

DEPARTMENTS

Book Review:

"Producing Theater - A Comprehensive Legal and Business Guide" by Donald C. Farber

Most law books are treatises solely about the law or collections of forms with little if any commentary. In the entertainment industry, where knowing the business may be as important for a lawyer as knowing the law, both of these kinds of books leave substantial gaps for the newcomer. New York lawyer Donald Farber set out to remedy this situation, insofar as the business of theatrical stage plays is concerned, with a book that blends analysis of "the law" with a discussion of business practices, and illustrates both with standard contractual provisions

he has used in his own practice. He has succeeded in his efforts.

Producing Theater covers the acquisition of literary properties, the organization of production companies, and raising money. The book also explains the principal features of current collective bargaining agreements in the industry, for actors, directors, stage managers, ticket sellers and others. And it reviews theater licensing agreements between production companies and theater owners. The book will be especially valuable to those without extensive experience in the field, because it specifies the current "going rate" - or the range within which the going rate falls - for a wide variety of services and facilities. The focus of the volume is on Broadway and New York Off-Broadway productions, though much of the material is equally applicable in other venues. One subject not covered, however, is the legal issues involved in mounting an "Equity Waiver" production.

Producing Theater is published by Drama Book Specialists, 150 West 52nd Street, New York, N.Y. 10019; phone (212) JU 2-1475. Price: $17.95. [ELR 3:5:7]

In the Law Reviews:

Loyola Law School of Los Angeles has just published the inaugural issue of the Entertainment Law Journal. Priced at $10 per copy, issues are available from the Business Manager, Loyola of Los Angeles Entertainment Law Journal, 1440 West 9th Street, Los Angeles, CA 90015. The first issue contains the following articles:

Authors' Rights in the Electronic Age: Beyond the Copyright Act of 1976 by Barbara Ringer, 1 Entertainment Law Journal 1 (1981)

Summary Judgment Practice in Intellectual Property Cases: Part One: Copyright by Arthur Stanley Katz, 1 Entertainment Law Journal 7 (1981)

Recording Contract Negotiation: A Perspective by Jay L. Cooper, 1 Entertainment Law Journal 43 (1981)

Campaigning in the Electronic Age: The Regulation of Political Broadcasting During the 1980 Elections by Stuart N. Brotman, 1 Entertainment Law Journal 79 (1981)

Injunctions Unjust Restraint on Entertainers in California, 1 Entertainment Law Journal 91 (1981)

Record Piracy and Modern Problems of Innocent Infringement: A Comparative Analysis of United States

and British Copyright Laws, 1 Entertainment Law Journal 113 (1981)

The Copyright Royalty Tribunal: Achieving Equilibrium Between Cable and Copyright Interests, 1 Entertainment Law Journal 147 (1981)

The Right of Publicity in California: An Overview, 1 Entertainment Law Journal 165 (1981)

California Entertainment Law Directory, 1 Entertainment Law Journal 177 (1981)

Hastings College of Law has published another issue of its CommlEnt, A Journal of Communications and Entertainment Law. Priced at $6.50 each, issues are available from Comm/Ent, Hastings College of Law, 198

McAllister St., San Francisco, CA 94102. The most recent issue contains the following articles:

Morseburg v. Balyon The High Court Grants Royalty a Reprieve: Constitutional Challenges to the California Resale Royalties Act by Bob Jones, 3 Comm/Ent 1 (1980)

Public Broadcasting and the Compulsory License by John J. Timmel, 3 Comm/Ent 25 (1980)

The New Copyright Law, Public Broadcasting, and the Public Interest: A Response to "Public Broadcasting and the Compulsory License" by Eric H. Smith and James F. Lightstone, 3 Comm/Ent 33 (1980)

Report of the Copyright Royalty Tribunal on "Use of Certain Copyrighted Works in Connection with

Noncommercial Broadcasting" by the Copyright Royalty Tribunal, 3 Comm/Ent 41 (1980)

Universal v. Sony: Is Home Use in Fact Fair Use? by Judith Barkan, 3 Comm/Ent 53 (1980)

Functional Works of Art: Copyright, Design Patent, or Both? by Joan Paul, 3 Comm/Ent 83 (1980)

Theatrical Motion Pictures and the Law: A Comprehensive Bibliography of Law-Related Materials by Frank G. Houdek and James L. Gunderson, 3 Comm/Ent 117 (1980)
[ELR 3:5:7]