RECENT CASES

Theater owner's refusal to admit unescorted minors to showing of "Animal House" did not constitute age discrimination in violation of Michigan's Civil Rights Act

A motion picture theater owner in Ingham County, Michigan, refused the admission of four children, aged 15 and under, unaccompanied by an adult, who sought, with parental consent, to purchase tickets to view the R-rated movie "Animal House." On another occasion, two boys, who were also under 15, were admitted to see the movie with tickets purchased by their stepfather, but were asked to leave when it was observed that they were not with an adult. The minors brought an action alleging age discrimination in violation of the Michigan

Civil Rights Act, and demanded an injunction barring the theater owner from denying them admittance on the basis of age.

Section 302 of the Civil Rights Act prohibits the denial to an individual of the "full and equal enjoyment of the goods, services ... or accommodations of a place of public accommodation because of ... age," except where permitted by law. According to a Michigan Court of Appeals, which granted summary judgment to the theater owner, American Multi-Cinema, the Michigan legislature intended the phrase "except where permitted by law" to refer to common law and constitutional law as well as statutory law. Under common law, owners of movie theaters are liable for foreseeable injuries to their patrons, and are held to a duty of care toward minors which must take into account the immaturity and inexperience of young people. Thus, stated the court, "it can be argued that refusing admission of unescorted children to

motion pictures designed for mature audiences is not only permitted but may be actually required to avoid civil liability."

Placing greater restrictions on a child's access to certain materials is within a state's independent interest in and power to regulate the well-being of young people. Theaters are entitled to "discriminate," i.e., to treat a child differently than an adult, when the object is to protect the child. In determining when an unescorted minor will be refused admission, theaters generally rely on the rating system of the Motion Picture Association of America, which system was instituted, in part, in response to public demand for a method to identify films that might be unsuitable for viewing by children. American Multi-Cinema's use of an admission policy based upon the rating system "was a reasonable method of seeking to comply with the juvenile obscenity statute

and with the common law duties upon those who make entertainment available to children."

Parental responsibility for, and control of, their children is not limited by a theater's nonadmission policy. Parents still may choose what a child will view; they just may not violate the theater's rules under the rating system.

The court carefully chose not to comment on the content of the movie "Animal House" in reaching its decision.

Cheeseman v. American Multi-Cinema, Inc., 310 N.W.2d 408 (Mich.App. 1981) [ELR 3:17:1]

Utah statute prohibiting guarantee provision in percentage-of-receipts motion picture licensing agreements is upheld

Casting some light on the Utah Motion Picture Fair Bidding Act, Federal District Court Judge Bruce S. Jenkins has ruled that the Act's ban on guarantee payments in certain motion picture licensing agreements is constitutional and enforceable.

Section 4 of the Act states, "If an exhibitor is required by a license agreement to make any payment to the distributor that is based on a percentage of the theatre box office receipts the license agreement shall not require a guarantee of a minimum payment to the distributor or require the exhibitor to charge any per capita amount for ticket sales." In dismissing an action for declaratory and injunctive relief brought by Warner Bros., Inc. to prevent enforcement of the section, Judge Jenkins determined that Section 4 was not an unreasonable burden on interstate commerce and did not violate any antitrust laws.

Warners' claim that the Utah Act was preempted by the Copyright Act was rejected since "No one has appropriated a product protected by the copyright law for commercial exploitation against the copyright owner's wishes." The First Amendment was not violated, because free expression is "not in any way tantamount to a guarantee that such expression will be compensated on terms most desired by its author," stated Judge Jenkins. And Warners had not been deprived of any property without due process of law in violation of the Utah Constitution.

Section 4, by requiring a distributor to choose between a guarantee from an exhibitor or a minimum payment or a percentage of the admissions charged, was a "rational effort" to preserve and encourage competition in motion picture distribution, stated the court.

Warner Bros.,Inc. v. Wilkinson, Case No.80-0713J (C.D.Utah, December 21, 1981) [ELR 3:17:2]

U.S. Supreme Court to decide whether Los Angeles public television station seeking license renewal must demonstrate efforts to accommodate hearing impaired viewers

In 1977, Sue Gottfried, a hearing impaired individual, filed a petition to deny the license renewal applications of public television station KCET and of seven commercial television stations in the Los Angeles area. Gottfried contended that the broadcasters had failed to comply with Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination against handicapped individuals by recipients of federal financial aid, and that the

stations thereby failed to serve the public interest as required by the Communications Act of 1934.

The FCC denied the petition on the ground that no specific violations of Commission standards had been alleged. The Commission's action with respect to the commercial stations was upheld by a Federal Court of Appeals in Washington, D.C., but the court remanded the challenge to KCET's license renewal to the FCC for further consideration.

Judge Skelly Wright agreed that the Rehabilitation Act imposes an obligation to serve the hearing impaired on public television stations such as KCET that receive financial assistance from federal agencies. While it is not the agency responsible for enforcing the Rehabilitation Act, the FCC must consider a public broadcaster's obligation under Section 504 in determining whether granting an application for license renewal would serve the public interest, convenience and necessity, stated Judge

Wright. Pending interpretive guidelines from the Department of Education, the FCC may choose among various means of implementing Section 504, such as issuing a short-term license to KCET. But the Commission may not ignore the policy set forth in the Rehabilitation Act, he ruled.

In turning to the obligations of the commercial stations, the court pointed out that Section 504 imposes a legal obligation only on recipients of "Federal financial assistance." The licenses received by the commercial stations to broadcast on the public airwaves, although valuable, are not the type of financial aid contemplated by Section 504. Nevertheless, in view of the policy expressed in the Rehabilitation Act, the FCC may require commercial stations to accommodate the needs of approximately 13 million hearing impaired viewers as part of the stations' general obligation to serve the public interest. The court noted that the FCC would be the appropriate authority

to define this obligation, presumably in a rulemaking proceeding.

Chief Judge McGowan concurred in the court's decision regarding the license renewals of the commercial stations but questioned the imposition of any obligation on noncommercial stations prior to an FCC rulemaking and prior to the issuance of the Department of Education guidelines relating to rights of access of the hearing impaired to television programs. Judge McGowan concluded that KCET, as well as the commercial stations, had no notice during their expired license terms of what was expected of them with respect to "the wholly laudable, but technically complex, objective of providing access for the hearing impaired."

The Supreme Court recently agreed to hear KCET's appeal of the Court of Appeals' decision.

Gottfried v. Federal Communications Commission, 655 F.2d 297 (D.C. Cir. 1981) [ELR 3:17:2]

FCC determination that cable operators are not required to carry scrambled pay-TV signals is upheld

Federal Communications Commission regulations presently require cable television systems to carry certain designated signals, including those of local conventional television stations (47 C.F.R., sections (76.57-63)). The carriage of scrambled subscription television signals is not mandatory, however, and several STV licensees petitioned the FCC to institute rulemaking proceedings to eliminate the distinction between conventional and STV signals and to require cable carriage of STV signals. Comments in support of the petition were submitted by the Motion Picture Association of America, Inc., the

National Basketball Association and the National Hockey League. The FCC's refusal to institute rulemaking has been upheld as neither "arbitrary, capricious or an abuse of discretion" by the Federal Court of Appeals in Washington, D.C.

In responding to the petition, the FCC had noted that there was no evidence that cable carriage was essential to the economic success of STV, that the transmission of "scrambled" signals would impose more of a burden on cable operators than the transmission of conventional signals, and that STV service generally is purchased by only a fraction of cable subscribers although all subscribers would be required to bear the cost of STV signal carriage. The FCC determined that it was best left to STV operators and cable system operators to bargain for cable carriage of STV signals.

The petitioners also had argued that the Commission's current rules require the carriage of all local television

broadcasting, whether broadcast as STV or conventional signals. In denying this claim, the Commission pointed to its consistent policy during the past 12 years of not applying cable carriage requirements to STV signals.

The court concluded that the FCC had adequately explained the basis of its order denying the petition for rulemaking.

WWHT Inc. v. Federal Communications Commission, 656 F.2d 807 (D.C.Cir. 1981) [ELR 3:17:3]

First Amendment did not authorize uninvited entry by television reporters into home where animal safety investigation was being conducted

An investigator for a county Humane Society in upstate New York cagily notified three local television stations

of the issuance of a search warrant authorizing him to enter a house and remove any animals which were not being cared for properly. Several photographers and reporters accompanied the investigator during his search, despite the homeowner's expressed objections to their presence. Reports on the story were broadcast on two evening news shows.

A Monroe County Court has granted summary judgment to the homeowner in her action alleging abuse of the search warrant by the investigator and trespass by the television stations' employees. The court noted that "the right to speak and publish does not carry with it the unrestrained right to gather information. News people have no special First Amendment immunity or special privilege to invade the rights and liberties of others."

The television stations had argued that they were entitled to a qualified privilege which would excuse a certain degree of intrusion, to be measured against the

public interest in a newsworthy event. But the court found this test "too vague and subjective" in view of the importance of protecting an individual's right to bar uninvited entry into his or her home. The fact that the owner was suspected of criminal conduct did not excuse the stations from liability. The stations did not have any role in assisting the investigation and the possibility that a newsworthy event was occurring did not, of itself, open the home to public scrutiny.

Quoting a stirring statement in which William Pitt avowed the need to defend the sanctity of even the frailest cottage against the forces of the King of England, the court concluded that "There is no consent that I am aware of, whether created by law or by custom, which permits television cameras to enter where the sovereign may not."

Anderson v. WROC-TV 441 N.Y.S.2d 220 (N.Y.Sup.Ct. 1981) [ELR 3:17:3]

$6.5 million judgment awarded to record companies in Wisconsin action against alleged tape pirate is upheld on appeal

A judgment of more than $6.5 million dollars, including $1 million in punitive damages, awarded to several record companies in their nine-year-old action against an alleged tape pirate has been affirmed by a Wisconsin appellate court.

A variety of arguments raised by Economic Consultants, Inc., doing business as E-C Tape Service, and David Heilman, were rejected by the court, including the claim that a prior adjudication in a California proceeding barred the record companies' action. A & M Records

had sued E-C Tape in a California court and was awarded a judgment of some $130,000 in 1976. However, none of the record companies in the Wisconsin matter was a party to or controlled the California suit, and the issue of damages to any record company other than A & M was not litigated or determined in that suit.

It was also argued that the Recording Industry Association of America, Inc. (RIAA) had directed the actions in California and Wisconsin and was the real party in interest. The fact that the RIAA paid certain litigation expenses and might be reimbursed for such costs from any judgment did not establish that the RIAA controlled the litigation or nor did it establish privity between A & M and the Wisconsin plaintiffs.

E-C Tapes also contended that the record companies failed to prove their claim of unfair competition because the pirated recordings had been abandoned by their nonproduction or nonsale by the companies. The court

observed that "Nonuse of the recordings alone does not constitute abandonment." However, the trial court had required the record companies to demonstrate that the pirated recordings were for sale through normal commercial channels at the time of the piracy. It was found that 96% of the recordings were so available, and damages had been based upon 96% of the E-C Tapes catalog.

Also upheld was a trial court finding denying a deduction from the damages awarded of the expenses incurred by E-C Tapes in its piracy operation.

Mercury Record Productions, Inc. v. Economic Consultants, Inc., Case No. 80-1106, (Wisc.App., Oct. 27, 1981) [ELR 3:17:3]

Grant of New Jersey casino license on condition that major stockholders of Caesars World divest themselves of any interest in licensee is upheld

The New Jersey Casino Control Commission granted a casino license to the Boardwalk Regency corporation conditioned upon the divestiture by Stuart and Clifford Perlman of any interest in the corporation. The Pearlmans also were required to dispose of their interests in Caesars World, Inc. and Caesars New Jersey, Inc., the parent company of Boardwalk Regency. After extensive hearings, the Commission determined that it lacked clear and convincing evidence that the Perlmans possessed the good character, honesty and integrity required of a licensee by the Casino Control Act. The Perlmans' long-term relationship with an individual who allegedly associated with organized crime figures was particularly significant to the Commission.

A New Jersey appellate court has upheld the Commission's decision. In the court's view, even if it were assumed that the Perlmans' associations with unsuitable parties was unknowing or innocent, the brothers had been insensitive to the potential impact of those associations on the casino industry and on the confidence and trust of the general public in "the credibility and integrity of the regulatory process and of casino operations."

It was argued that the Casino Control Act was unconstitutionally vague. But the court noted that a casino's key employee easily could determine what conduct would be likely to result in disqualification. And the Perlmans possessed "sophisticated knowledge of the casino gaming industry and long-time experience with its standards and regulations." Further, the Nevada Gaming Commission, eight years earlier, had advised the Perlmans of their associates' unsuitable reputation.

It should be pointed out that the administrative decision was partially modified by the court in that the Perlmans will not be required to divest themselves of non-New Jersey nongaming subsidiaries of Caesars World.

In re Boardwalk Regency Casino License Application, 434 A.2d 1111 (N.J.App.Div. 1981) [ELR 3:17:4]

CBS radio series "Your Dollars" did not infringe or unfairly compete with radio series entitled "Your Dollar's Worth"

The airing of a CBS consumer affairs radio series called "Your Dollars" has prompted a marketing director for a midwest bank to "fight back" by filing a lawsuit against CBS for infringing upon and unfairly competing

with his own radio series entitled "Your Dollar's Worth." The banker failed to get his money's worth in court, however, as a Federal District Court in Illinois has denied his request to enjoin the CBS series.

In 1974, Alan Eirinberg, who at the time was Senior Vice President of Marketing for Exchange National Bank in Chicago, conceived an idea for providing a public relations service for financial institutions throughout the country. The idea contemplated a series of recorded radio programs containing two and one-half minute discussions of consumer-oriented information recommending ways for listeners to stretch their dollars in inflationary times. The same year, Eirinberg entered into twelve, six-month licensing agreements with banks located in various states and cities, including Exchange National in Chicago.

Exchange National entered into an agreement with CBS for the broadcasting of Eirinberg's "Your Dollars

Worth" on WBBM-AM in Chicago. WBBM, owned and operated by CBS, is a 50,000 watt clear channel station that, depending upon atmospheric conditions, can reach almost all 48 contiguous states. "Your Dollar's Worth" had also been broadcast on eight other radio stations sponsored by banks in cities from Honolulu to Baltimore.

A series entitled "Your Dollars" was first broadcast over the CBS Radio network, including WBBM in Chicago, on January 4, 1975, one week before WBBM's first broadcast of Eirinberg's "Your Dollar's Worth" program sponsored by Exchange National. The focus of "Your Dollars," as advertised by CBS, was "on how money is made, how to keep it, conserve it and stretch it further, as well as on business news and market trends."

In June of 1975, Eirinberg's "Your Dollar's Worth" went off the air. CBS's series went off the air in October of 1975. However, in 1979, CBS resumed broadcasting

"Your Dollars," with William S. Rukeyser as the anchorman, on WCBS/Newsradio 88, a CBS owned and operated radio station in New York. In 1980, Marshal Loeb, managing editor of Money Magazine, became anchorman, and beginning in January of 1981, "Your Dollars with Marshal Loeb" began broadcasting on the CBS Radio Network.

In refusing to enjoin CBS from broadcasting "Your Dollars," the court said it found no evidence of confusion as to the source of either radio series during the period between January and June of 1975 when both "Your Dollars" and Eirinberg's "Your Dollars Worth" programs were being broadcast on WBBM. Further, the court actually determined that the two programs were not in competition with each other.

The court drew a distinction between the ways in which CBS's program and Eirinberg's program were marketed. CBS marketed its series to radio advertisers

for national broadcasts. Eirinberg and Exchange National primarily marketed their show for local broadcast and local distribution. CBS marketed "Your Dollars" as part of its "News and Public Affairs Package." Advertisers purchased advertising time for the package, not specifically for the "Your Dollars" series. Advertisements for which no specific time had been requested were broadcast in random order during the package broadcasts.

By contrast, Eirinberg and Exchange National marketed their show primarily to banks and savings and loan associations. The court found no evidence that an advertisement for a bank or savings and loan has ever appeared during a broadcast of any CBS "Your Dollars' show from 1975 to the present.

The court also found that the title "Your Dollar's Worth" was merely descriptive of the content of the radio programs and that Eirinberg failed to establish a

.,secondary meaning" linking the program to its source in the listeners' minds.

Eirinberg v. CBS, Inc., 521 F.Supp. 450 (N.D.Ill. 1981) [ELR 3:17:4]

Bodybuilding contest was entitled to register the mark "Mr. Olympia" despite objection by the U.S. Olympic Committee

When the International Federation of Body Builders applied to register the name "Mr. Olympia" as a service mark for the presentation of muscle building contests, the United States Olympic Committee strongly protested. In support of its opposition to the application, the Olympic Committee, owner of the registered mark "Olympic," stated that the name "Mr. Olympia" might

falsely suggest a connection with the Olympic Games, or that the bodybuilding contests were promoted, sanctioned or sponsored by the Olympic Committee. The Committee pointed out that in some issues of Muscle Builder Magazine, the term "Olympia," rather than "Mr. Olympia," was used in announcing or promoting bodybuilding contests.

After weighing the facts, the Trademark Trial and Appeal Board of the Patent and Trademark Office has dismissed the opposition to the registration of the "Mr. Olympia" mark. The Board noted that bodybuilding is not an Olympic event as is weightlifting, and that bodybuilding is not an athletic contest, but more of a theatrical event. "Mr. Olympia" "projects the connotation that the winner of the bodybuilding contest has achieved the pinnacle of success in his field or the height of Olympia, where the gods dwell, rather than an association with the Olympic Games," stated the Board. Further, despite

the opportunity for the public to assume an association between the Olympic Committee and the bodybuilding organization during the 15-year history of the Mr. Olympia contests, there was no evidence of actual confusion with the Olympic Games.

United States Olympic Committee v. International Federation of Body Builders, 210 U.S.P.Q. 128 (TTAB 1981) [ELR 3:17:5]

Author maintained status as a private figure for purposes of a libel action although the commercial exploitation of her name and likeness formed the basis of a right of publicity claim

The publication in May of 1980 of a picture of a nude woman, incorrectly identified as Jackie Collins, in the

magazine Adelina and the publication of Collins' name on the cover of the magazine under the heading "In the Nude from the Playmen Archives," has been ruled an invasion of Jackie Collins Lerman's right of publicity by a Federal District Court in New York. (A previous finding that the publication invaded Lerman's privacy in violation of sections 50 and 51 of the New York Civil Rights Law was reported in ELR 2:18:7.)

In granting summary judgment on her right of publicity claim, the court found that the name and persona of novelist and screenwriter Lerman was commercially valuable, that Lerman had exploited her name and likeness in marketing her books, and that Chuckleberry and Publishers Distributing Corporation, the publisher and distributor of the objectionable issue of Adelina, used Lerman's [non-] likeness for purposes of trade.

Lerman's extensive efforts at self-exploitation notwithstanding, the author was ruled a private figure for

purposes of her libel claim. PDC argued that Lerman's discussion of sexuality in interviews regarding her books made Lerman a public figure "for the limited purpose of promoting, publicizing and selling sex." Adelina's "Archives" article purportedly dealt with the sexual liberation of actresses in American films - a subject which involved a minimum of controversy and newsworthiness, observed the court. Lerman had not written about, or thrust herself to the forefront of, a significant public controversy. And she had never modeled or appeared nude on stage or screen, and had never been photographed in the nude.

As a private figure, Lerman was required to establish that Chuckleberry, the republisher of photographs which were published originally in the Italian magazine Playmen, had or should have had substantial reasons to question the accuracy of the article (citing Karaduman v. Newsday, Inc., 51 N.Y.2d 531, ELR 3:5:5). The court

concluded that factual questions existed as to Chuckleberry's right to rely on the research of the original publisher. It was pointed out that Chuckleberry re-used the cover of the May of 1980 issue of Adelina in advertisements appearing in issues of the magazine which were released after Lerman's action was commenced.

PDC, however, neither knew nor had notice of the alleged defamation in the May of 1980 issue and was granted summary judgment on this point.

Lerman v. Chuckleberry Publishing. Inc., 521 F.Supp. 228 (S.D.N.Y. 1981) [ELR 3:17:6]

Briefly Noted:

Sports Injury.

Rawlings Sporting Goods' failure to warn potential users of the company's football helmets that the helmet would not protect against brain injuries was found grossly negligent by a Texas jury. The jury awarded $1.5 million in compensatory and exemplary damages to a high school football player who suffered permanent brain damage due to an injury incurred when he collided "head to head" with a teammate during a team practice. The helmet, rather than deflecting the blow and absorbing the shock of the collision, apparently caved in, resulting in the injury. An appellate court, upholding the jury's decision, noted that Rawlings was aware that 20 to 40 football deaths occur each year due to subdural hematomas but "made a conscious business decision not to warn of this grave danger" thereby exposing the athlete to an unreasonable risk of harm.

Rawlings Sporting Goods Company, Inc. v. Daniels, 619 S.W.2d 435 (Tex.App. 1981) [ELR 3:17:7]

Sports.

In 1961, William Goldman orally agreed to acquire four season tickets each year to University of Nebraska varsity football games for Robert Kully, who paid for the tickets annually when they were acquired. When Goldman refused to obtain tickets for Kully for the 1979 season, Kully brought an action to enjoin Goldman from withholding the transfer of the tickets. The trial court found that an implied trust existed and ordered Goldman to obtain tickets for Kully's use for all future seasons of the football team's home games for Kully's use.

The Supreme Court of Nebraska has reversed the lower court's decision and has dismissed the action on

the ground that there was no item or interest in existence which could be the subject of a present trust, and that a promise unsupported by consideration would not give rise to a continuing annual trust. Goldman did not have a contract which bound the University to sell him tickets. Thus, there was no enforceable property right. And "it appears to be the universal rule that mere expectancies cannot be held in trust," stated the court.

A dissenting judge would have partitioned Goldman's rights to renew the four season tickets, finding consideration in the mutual promises exchanged and recognized by the parties for 17 years.

Kully v. Goldman, 305 N.W.2d 800 (Neb. 1981) [ELR 3:17:7]

Previously Reported:

The United States Supreme Court has declined to hear an appeal by the National Association of Broadcasters and the National Football League from a Federal Court of Appeals decision upholding the FCC's elimination of cable television rules concerning distant signal carriage and syndicated program exclusivity. The FCC's action was previously reported at ELR 2:16:3, and the Court of Appeals' decision, in a case known as Malrite TV v. Federal Communications Commission, was previously reported at ELR 3:5:2.

A 3-judge panel of a Federal Court of Appeals in Atlanta reversed a District Court order in Barnstone v. University of Houston (ELR 3:5:2) requiring a public television station to televise the controversial docu-drama, "The Death of a Princess." (660 F.2d 137 (5th Cir. 1981)) However, the full Court of Appeals has

ordered a rehearing in the case, as well as in a similar case known as Muir v. Alabama Educational Television Commission, 656 F.2d 1012 (5th Cir. 1981).

The California Supreme Court has agreed to hear an appeal from the dismissal of an eminent domain action by the City of Oakland against the Oakland Raiders (previously reported at ELR 2:3:3). A Court of Appeal decision had affirmed the dismissal. (123 Cal.App.3d 422) But that court's decision was vacated automatically, under California law, when the Supreme Court agreed to hear the case. In a separate action that also arose from the Raiders' desire to move to Los Angeles, a Federal District Court ruling that the National Football League is not a single economic entity (for the purposes of an antitrust suit by the Los Angeles Coliseum Commission against the NFL) has recently been published, though the ruling itself was made in July 1981. Los Angeles Memorial Coliseum Commission v. National

Football League, 519 F.Supp. 581 (C.D.Cal. 1981). No final judgment has been reached in the case as yet, because despite the court's ruling, the jury was unable to reach a verdict. A retrial is anticipated. Earlier rulings in this case have been reported at ELR 2:17:5, 2:3:3 and 1:9:6.

The decision of the California Court of Appeal in Mann v. Columbia Pictures, in which it was held that Warren Beatty and Robert Towne did not take ideas for their movie "Shampoo" from an outline written by a retired manicurist (ELR 3:14:1), has been published. 126 Cal.App.3d 57 (l981). However, the court has granted Mann's petition for reconsideration, and thus has the case under submission again.

The following cases have been published: Warner Bros., Inc. v. American Broadcasting Companies, Inc., 523 F.Supp. 611, affd., 654 F.2d 204 (3:7:1); Groucho

Marx Productions v. Day and Night Company, 523 F.Supp. 485 (3:12:2).
[ELR 3:17:7]

NEW LEGISLATION AND REGULATIONS

New California statute requires athletes' agents to obtain license from state labor commissioner

Talent agencies operating in California have been licensed by the California Labor Commissioner for more than 20 years. By law, talent agencies were defined as those who obtain employment for "artists." And "artists" was defined as actors, actresses, musicians, directors, writers and others who work in movies, television, the theater, radio "and other entertainment enterprises." When California's talent agency law was first enacted, it

was unusual for professional athletes to be represented by agents, and that may be why references to athletes and sports teams are conspicuous by their absence from the law. Since then, of course, it has become common for athletes to be represented by agents, but until recently, no license was required of athletes' agents.

California has now adopted a law, effective January 1, 1982, requiring "athlete agencies" to register with the state Labor Commissioner. "Athlete agency" is broadly defined to include anyone who solicits an athlete to enter into a contract authorizing the agent to negotiate on the athlete's behalf with a professional sports team, or as anyone who for a fee attempts to obtain employment for an athlete with a professional sports team. The only ones excluded from this definition - and who therefore do not need licenses - are employees of professional sports teams themselves and California lawyers when they are acting as legal counsel.

In order to obtain a license, it is merely necessary to make a written application on a form provided by the Labor Commissioner, pay a filing fee, and post a $10,000 surety bond. Although no test is required, the application must be accompanied by affidavits from at least two "reputable residents" who have known or been associated with the agent for two years stating that the agent "is a person of good moral character," or if the agency is a corporation, that it "has a reputation for fair dealing." In addition, the Labor Commissioner is authorized to investigate the character and responsibility of the agent before issuing a license.

Athlete agencies must obtain the approval of the Labor Commissioner for the forms of contracts they enter into with athletes, and the Commissioner is authorized to withhold approval for proposed contract forms that are "unfair, unjust, and oppressive" to the athlete. The contract must contain a provision close to the athlete's

signature warning the athlete that signing the contract may jeopardize his or her amateur standing. In addition, the contract must provide that disputes between the agent and the athlete concerning their contract shall be referred to the Labor Commissioner for determination (unless an alternate method of arbitration is provided for pursuant to player association requirements).

Athlete agencies are required to file a schedule of their fees with the Labor Commissioner and are required to maintain certain books and records. They are prohibited from publishing false or misleading information, and from making false promises or representations.

Before an agent may contact or communicate with an athlete who is enrolled in school, the agent must file a copy of the agent's registration certificate with the school. And if a contract is entered into between the agent and the athlete, the agent must file a copy of it with the athlete's school within five days.

Any contract entered into by an athlete with an unlicensed agent, or with an agent who failed to file a copy of his license or a copy of the contract with the athlete's school as required, is void and unenforceable. In addition, it is a misdemeanor to violate any provision of California's new athlete agency law, punishable by a fine of not less than $1,000, imprisonment for as much as 60 days, or both.

California Athlete Agencies Act, Chapter 929 of the Acts of the 1981-1982 Regular Session, adding Sections 1500 to 1547 to the California Labor Code (September 29, 1981) [ELR 3:17:5]

DEPARTMENTS

In the Law Reviews:

The F.C.C.'s Allocation of Television Licenses: Regulation with Inadequate information by Allen Parkman, 46 Albany Law Review 22 (1981)

The FCC and Minorities: An Evaluation of FCC Policies Designed to Encourage Programming Responsive to Minority Needs, 16 Columbia Journal of Law and Social Problems 561 (1981)

Access and Pay Cable Rates: Off-Limits to Regulators after Midwest Video II?, 16 Columbia Journal of Law and Social Problems 591 (1981)

Copyright in Collections of Facts: A Theory for the Protection of Nonfiction Literary Works by Robert C. Denicola, 81 Columbia Law Review 516 (1981)

The Collapse of Consensus: Effects of the Deregulation of Cable Television, 81 Columbia Law Review 612 (1981)

Snepp v. United States: The CIA Secrecy Agreement and the First A mendment, 81 Columbia Law Review 662 (1981)

Direct Broadcast Satellites: A Piece of the Video Puzzle by Charles D. Ferris, 33 Federal Communications Law Journal 169 (1981)

Deregulatory Options for a Direct Broadcast Satellite System by Mike Hammer and John Lyons, 33 Federal Communications Law Journal 185 (1981)

The Promising Future of Direct Broadcast Satellites in America: Truth or Consequences? by Patrick Cole, 33 Federal Communications Law Journal 221 (1981)

Direct Broadcast Satellites: Ownership and Access to the New Technology by Daniel L. Appleman, 33 Federal Communications Law Journal 245 (1981)

Political Abuse of Olympic Sport: DeFrantz v. United States Olympic Committee by Jeffrey M. Marks, 14 NYU Journal of International Law and Politics 155 (1981)

A Practical Guide to the Protection of Artists through Copyright, Trade Secret, Patent, and Trademark Law by Richard L. Stroup, 3 Comm/Ent 189 (1981)

Big O v. Goodyear: The Case for Trademark Disparagement by Sheila Dolan, 3 Comm/ Ent 227 (1981)

Access to Preliminary Hearings: Is California's Closure Law Unconstitutional? by Janice Fuhrman, 3 Comm/Ent 245 (1981)

Gannett v. De Pasquale: A Judicial Aberration? by Susan Freya Swift, 3 Comm/Ent 273 (1981)

Lorimar Productions Inc. "Dallas" TV Characters in South Africa: Their Merchandising Rights? by Dr. J.R.

(1981)

[ELR 3:17:7]