RECENT CASES

Agreement among motion picture exhibitors to "split" rights to negotiate with distributors is a price fixing device and per se illegal under the Sherman Act, rules Federal District Court in California

A split agreement among motion picture exhibitors is a price-fixing device and illegal per se under the Sherman Act, a Federal District Court in California has ruled. In a strongly worded 95-page opinion, Judge David Kenyon found that splits - agreements by which an exhibitor is allocated a first right of negotiation with a distributor for an upcoming film - reduce competition and have no "redeeming competitive virtues."

The ruling was issued in an action brought by General Cinema Corp., the operator of one of the largest theater chains in the country, against Buena Vista Distribution Co., the principal domestic distributor of films by Walt Disney Productions. General Cinema claimed that the alleged imposition by Buena Vista of minimum film rentals based on a per capita charge for each customer constituted unlawful price-fixing under section 1 of the Sherman Act. Buena Vista filed a counterclaim featuring its contention that General Cinema had participated in illegal split agreements, and has been granted partial summary judgment on the question of liability.

General Cinema admittedly participated in many splits until April of 1977 when the United States Department of Justice announced its intention to challenge splits as per se violations of the Sherman Act. The mechanics of splits vary in different areas of the country. In some splits, the rights of negotiation are determined picture by picture; in others, a designated exhibitor negotiates for all of a distributor's upcoming pictures. The common, and critical, anticompetitive characteristic of splits is that exhibitors agree to refrain from competing against the split designee while its rights to negotiate continues. In Wilder Enterprises, Inc. v. Allied Artists Pictures Corp., 632 F.2d 1135 (4th Cir. 1980) (ELR 2:17:2), General Cinema stipulated that a split is "an agreement whereby ... exhibitors agreed to refrain from competing against each other for licenses." Compelling evidence was presented that splits are formed to suppress price competition - one of the "hallmarks" of a per se illegal price-fixing arrangement - and thereby reduce the amount of film rental received by distributors.

General Cinema argued that splits should be evaluated under the rule of reason since they impose a minimal inhibition on competition because: 1) split members do not directly fix the terms for licenses that they will offer or even agree on a guideline for terms to be offered; 2) some splits do not include all exhibitors in a given area;

3) members are free to leave the split and resume competition; 4) splits do not force distributors to license their pictures to theaters they do no choose; and 5) splits do not preclude distributors from finding alternate exhibitors if negotiations break down with the split designee. The court ruled that these factors may diminish a damage recovery, but the fact that splits may not absolutely ban all competition for film licenses does not bar the application of the per se analysis.

The court also observed that the direct fixing of prices is not a prerequisite for the application of the per se rule; that a split does attempt to include all theaters in a local market and is illegal regardless of its effectiveness; that lax or casual enforcement of the split is irrelevant; that distributors are not always permitted to license to the theater of their choice, or if they are so permitted, this is accomplished by a reallocation among split participants; and that even if full competition occurs upon the termination of negotiations with the designee, the very absence of the designee from further negotiations amounts to a substantial restraint on price competition.

General Cinema cited Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., 441 U.S. 1 (1979) (ELR 1:1:1) as authority for its contention that the rule of reason should be applied by the court. In BMI, CBS challenged, as per se illegal price-fixing, the issuance by BMI and ASCAP of blanket licenses for the use of copyrighted musical compositions. The United States Supreme Court ruled that the legality of blanket licenses could not be determined under the per se rule, because such licenses were "reasonably necessary" to avoid voluminous individual transactions in licensing copyrights. And on remand, the Court of Appeals found that the licenses did not restrain competition because the opportunity to purchase performing rights directly from the copyright owner was "fully available." A distributor's opportunity to reject a designee and solicit offers from other split members also is fully available, asserted General Cinema. But BMI did not involve a "manifest" anticompetitive purpose, noted Judge Kenyon, and therefore has little relevance to the analysis of splits.

The court proceeded to consider the anticompetitive effect of splits, despite Buena Vista's argument that their obvious restraint on price competition rendered splits per se illegal without evidence of a purpose or effect to suppress competition. Evidence indicated that splits do block the free flow of price information and competitive offers, and thereby interfere with the price mechanism. Further, a General Cinema executive had stated that competition for films would be more intense if splits were eliminated. And Disney gained approximately $2 million on six films released after certain splits ended. General Cinema did not show that the license terms in split and bidding situations would be identical. Indeed, bidding results in higher percentage of gross revenue terms, more frequent cash guarantees, and a greater number of extended engagements.

General Cinema also cited Greenbrier Cinemas, Inc. v. Attorney General, 511 F.Supp. 1046 (W.D.Va. 1981) (ELR 3:14:4). In Greenbrier, an exhibitor challenged the Justice Department's announcement in 1977 that all splits are per se illegal. In a narrow holding, the court ruled that the Charlottesville split would be evaluated under the rule of reason. However, Judge Kenyon discounted the significance of Greenbrier, since the parties in that case had agreed that no evidence would be presented regarding the purpose or effect of splits on competition or price. The court had also failed to suggest any procompetitive benefits of splits that might have justified the application of the rule of reason rather than the per se rule.

Judge Kenyon then reviewed the procompetitive benefits of splits as set forth by General Cinema, although he noted that it would be "difficult to imagine procompetitive benefits of sufficient importance to outweigh the anticompetitive aspects of splits." Among the advantages cited were: greater lead time for advertising; greater scheduling flexibility; less paperwork; less risk that an exhibitor will be without a picture to screen on a certain date; assurances to the distributor of the outlets and play times of its choice; and protection of smaller, independent theaters.

Generally, any asserted benefits of splits must truly promote competition, rather than the convenience or financial gain of the exhibitor or distributor, said the court. In BMI, the blanket licensing program enhanced the operation of a competitive free market system for licensing musical compositions. Restraints on competition cannot be justified merely on the theory that a less competitive system functions better than a competitive system. The court found that General Cinema's justifications for splits did not promote competition in the licensing of films, but rather reflected the "imperfections" and "inequities" of a system of competitive bidding.

Splits also do not provide procompetitive benefits as a matter of law because they are agreements among competitors. Such "horizontal" restraints have long been viewed as "naked restraints of trade with no purpose except stifling of competition." General Cinema attempted to show that distributors have consented to, or participated in, splits. But this did not establish that any distributor imposed a split on exhibitors. And any such "vertical" agreement would still be per se illegal due to the resulting restraint on price competition.

In concluding its analysis of alleged procompetitive benefits of splits, the court found that it was not clearly shown that splits provide more lead time than other methods of distribution. Bids usually are solicited well in advance of release in order to provide adequate time for advertising and exploitation. Distributors and exhibitors both have "ample incentive" to engage in efficient licensing procedures in order to insure sufficient exploitation. The purported benefit of a flexible run is minimal, because a playing time commitment is a standard license provision in split as well as non-split situations. Furthermore, distributors with a non-split licenses may choose to adjust playing times if it is in their best interests. Savings in transaction costs were not shown to be substantial. Satisfying a distributor's preference for a theater by reallocating rights of first negotiation does not promote competition. In all, stated the court, the film industry is not exempt from the burdens of competition, including risks and uncertainties in licensing.

General Cinema's concern for smaller independent exhibitors who might go out of business under nonsplit licensing allegedly due to the resulting higher prices for films, was viewed by the court as an admission of the company's purpose to suppress competition.

General Cinema also had argued that the rule of reason should apply because Buena Vista "acquiesced," "consented," and "participated" in splits. Although weak, the evidence presented did create a question of fact regarding such participation, but the question was found immaterial to the issue of liability. Buena Vista's damages may be reduced due to its alleged participation in splits. But proof on the issue of damages differs significantly from proof of harm to competition.

General Cinema then cited the case of United States v. Loew's Inc., CCH Trade Cases para. 70,347 (S.D.N.Y. 1962), in which the court stated that splits with the consent of both the distributor and exhibitor are proper. Judge Kenyon found Loew's "entirely unpersuasive authority" for making Buena Vista's consent or participation relevant to the legality of the split. The statement in Loew's was dicta, as the legality of splits was not a direct issue in the case, and no explanation was offered as to how the consent or participation of distributors influenced the effect of the split on competition. For even if "no distributor ever sought competing offers from more than one exhibitor, and no exhibitor ever came forward to compete against another exhibitor, that split would nevertheless restrain competition, because firms in an industry cannot by unanimous agreement waive the rules of competition imposed by the Sherman Act."

Again noting the suppression of competition and reduction in the terms of film licenses that occurs with all splits, the court declared that it would not evaluate the legality of splits on a case-by-case basis at trial. Thus, at trial, Buena Vista will be required to demonstrate the existence and duration of the various splits, and the extent of the damages caused by each without having to demonstrate the competitive harm of each split.

General Cinema Corporation v. Buena Vista Distribution Co., Inc., Case No. CV78-3284 (C.D.Cal., Feb. 5, 1982) [ELR 3:21:1]

Georgia's anti-blind bidding act is upheld as constitutional

Motion picture distributors have suffered a set back in their efforts to have the state of Georgia's Competition Act declared unconstitutional. The Georgia Act requires the submission of bids for the right to exhibit a motion picture to be delayed until a trade screening of the movie is conducted in the state.

Paramount Pictures filed suit contending that the Act violated the Georgia state constitution's guarantee of free expression. This guarantee has been interpreted by a Georgia court as prohibiting any interference, no matter how slight, with free expression. Paramount argued that the bidding delay violated this standard.

However, Fulton County Court, after considering both the state constitution and the somewhat less restrictive standards in the U.S. Constitution, has denied Paramount's motion for summary judgment, and has ruled that the Act does not violate the Georgia constitution or the First Amendment. Judge Isaac Jenrette found that the Act is "content-neutral" and has only an incidental effect, if any, on free expression. In view of the state's legitimate interest in preventing unfair and deceptive acts and unreasonable restraints of trade in the motion picture industry, a slight delay in the distribution of a film would be minimal and constitutional, stated the court.

The court also ruled that the Act did not violate the due process clause of the Georgia constitution because it is neither arbitrary nor discriminatory, and because it bears a reasonable relation to the legislative purpose of encouraging fair competition in the licensing of motion pictures by eliminating "the unfairness of exhibitors buying a pig in a poke."

Paramount Pictures Corporation v. Busbee, Case No. C-77087 (Ga.Sup.Ct., Feb. 3, 1982) [ELR 3:21:3]

Producers of "Bonanza" and "The High Chaparral" lack standing to raise antitrust claims in connection with the sale of syndication rights, Federal District Court rules

Though the Cartwrights never moseyed around the Ponderosa discussing antitrust implications of television syndication sales, times change, and in 1981, Aurora Enterprises and Xanadu Productions, the producers of the television series "Bonanza" and "The High Chaparral," brought an antitrust action against NBC and National Telefilm Associates, the purchaser of the syndication rights to the programs. The producers claimed that NBC and NTA conspired to "block book" "Bonanza" and "Chaparral" with other programs. That is, they alleged that in order to obtain a license to show the two programs, licensees were required to buy exhibition rights for other, less desirable, programs. It was further argued that the license fees charged for "Bonanza" and "Chaparral" were diminished as a result of this practice, thereby reducing the producers' royalties.

Entering the showdown, a Federal District Court in California has ruled that while the elements of a block booking claim were present, the producers lacked the requisite standing to sue. Xanadu and Aurora relied on the closely analogous case of Mulvey v. Samuel Goldwyn Prod., 433 F.2d 1073 (9th Cir. 1970), cert. denied 402 U.S. 923 (1971), in which a producer was found to have standing because his films were within the "target area" affected by Goldwyn's block booking practices. But Judge Tashima concluded that Mulvey had been overruled by the U.S. Supreme Court in Brunswick Corp. v. Pueblo Bowl-O-Mat., Inc., 429 U.S. 477 (1977). Brunswick affirmed the principle that an "antitrust injury" under section 4 of the Clayton Act may be inflicted only on competitors of the tied product or on purchasers in the market for the tied and tying products. As the 9th Circuit has stated: "Competitors in the tied product market are injured if they cannot offer their products on an equal basis with the distributor of the tying product. Buyers are injured because they forego choices among products and services, and the public is harmed by the adverse effects on the market for the tied product." The loss alleged by the producers did not meet the Brunswick standard, stated the court.

The producers also alleged that a violation of the Sherman Act had occurred in 1966 when NBC conditioned its purchase of the network exhibition rights to "Chaparral" on the purchase of syndication rights to the program. In 1972, the FCC prohibited network acquisition of syndication rights. But Xanadu claimed that the terms of its contract with NBC were still being enforced and that NBC therefore was engaged in a continuing illegal course of conduct. The claim was barred by the statute of limitations, ruled the court, since any wrongdoing by NBC must have terminated no later than 1973 when the FCC's policy went into effect.

The court rejected Xanadu's arguments in support of a tolling of the statute. The statute of limitations for antitrust actions is indeed tolled during the pendency of any civil or criminal antitrust case brought by the United States and for one year thereafter, if the causes of action are substantially similar. According to Xanadu, the antitrust action filed against the networks by the Justice Department in 1972 served to toll the statute. The court rejected this argument as well, however, because even assuming that Xanadu's claims were substantially similar to those of the government, the government's case against NBC was concluded more than one year before the filing of Xanadu's action.

Xanadu further argued that NBC fraudulently concealed facts pertinent to Xanadu's claim by inaccurately reporting syndication revenue earned by "Bonanza" and "Chaparral." But Xanadu did not adequately explain how inaccurate profit statements would conceal a claim.

And any coercion allegedly applied by NBC with respect to the sale of syndication rights along with the network exhibition rights "must have been evident to [Xanadu] in 1966, when the 'Chaparral' contract was signed." Thus, a claim based on such coercion was barred as well.

A third cause of action alleged that NTA had agreed to syndicate programs licensed by NBC so as to minimize competition with programming on the NBC network. The court dismissed this claim (with leave to amend) because it was not clear whether there was a continuing agreement between NTA and NBC to divide the television programming market, whether actions were taken to effect such an agreement, or how any conspiracy or agreement inflicted antitrust injury on the producers, particularly since NTA does not itself exhibit "Bonanza" or "Chaparral."

A claim that NTA and NBC attempted to monopolize television production, distribution and programming in violation of section 2 of the Sherman Act also was dismissed as were nine separate state law claims.

Aurora Enterprises, Inc. v. National Broadcasting Company, Inc., 524 F.Supp. 655, 1981-2 CCH Trade Cases, para. 64,350 (C.D.Cal. 1981) [ELR 3:21:3]

Photographer's reuse of nude photos of 10-year-old Brooke Shields did not violate release agreement or New York Civil Rights Law, but photographs may not be licensed to pornographic magazines

Is a Brooke in a bathtub more embarrassing than a Brooke in a blue lagoon? Not according to a New York judge, who has ruled that model-actress Brooke Shields was not entitled to restrict Garry Gross from licensing and reusing photographs he had taken when Shields was 10 years old.

The photographs portrayed the unclothed youngster in various poses in a tub. Justice Greenfield noted that the release signed by Shields' mother authorized the use of the photographs in the broadest possible terms and in a form acceptable under Sections 50 and 51 of the New York Civil Rights Law. The release did not restrict the use of the photographs to publications issued by Playboy Press, the sponsor of the session. Other photographs of Shields which were taken by Gross subsequently appeared in a variety of publications, "indicating a general practice to reuse photographs for other than the original sponsor." Further, Shields had not objected to such reuse or to the display of blowups of the photographs in the window of a Fifth Avenue store.

Shields contended that as a 16-year-old, she was embarrassed at the current use of the pictures, in particular because of their appearance in publications of "dubious respectability." But Gross claimed that he had not licensed the use of the photographs to such publications.

Judge Greenfield ruled that Shield's "personal embarrassment and anticipation of the reaction of her friends is not tantamount to irreparable harm." The court took notice of the suggestive nature of the films in which Shields has appeared and of the image of Brooke cultivated by her mother which the court described as that of a "unique compound of innocence and sexuality."

However, Judge Greenfield did restrain Gross from licensing the photographs to pornographic magazines or those magazines appealing to a predominantly prurient interest.

Sheilds v. Gross, New York Law Journal, November 16, 1981 [ELR 3:21:4]

Provisions in Movie Studio Grips' collective bargaining agreement concerning claim and waiver of holiday, vacation and severance pay did not violate California Labor Code

The collective bargaining agreement between the Motion Picture Studio Grips, Local 80, and the Association of Motion Picture and Television Producers, Inc., contains claim and waiver provisions relating to the payment of holiday, vacation, and severance pay. Holiday and vacation benefits become payable on March 15 of the year following the year in which services are performed. Severance benefits are payable within either 90 days or 180 days after termination. In the motion picture industry, grips often are employed for varying time periods by several employers. Upon each termination from employment, union members become eligible for the specified payments. The agreement provides that any claims for payment of holiday, vacation or severance pay which are not presented to the Producer within 365 days after the qualifying date are deemed to be waived. Upon waiver, the funds are retained by members of the AMPTP as their own. Over the last few years, approximately $200,000 in withheld funds have been deemed forfeited.

In their suit to recover the forfeited funds, the Grips focused on the contention that the claim and waiver provisions of the collective bargaining agreement violated California labor law. Section 201 of the California Labor Code does provide that "the wages earned and unpaid at the time of [an employee's] discharge are due and payable immediately." But it has been held that section 201 does not apply when the parties to a collective bargaining agreement specify that a particular form of compensation is payable on certain dates and under defined terms and conditions. This policy recognizes that under section 8(d) of the National Labor Relations Act, vacation, holiday and severance pay are mandatory subjects of negotiation between an employer and a union. Conditioning payment on the presentation of a claim after the arrival of an eligibility date does not amount to a forfeiture upon termination, the court held. Rather, the provision serves to place the burden of timely collection on the union member.

A California Court of Appeal therefore affirmed the dismissal of the union's action which was entered after the trial court sustained, without leave to amend, the AMPTP's demurrer to the union's second amended complaint.

Motion Picture Studio Grips, Local 80, International Alliance of Theatrical Stage Employees v. Association of Motion Picture and Television Producers, Inc., Case 2 Civ. No. 62373 (Cal. Ct. App. Feb.5, 1982) [ELR 3:21:5]

Record distributor's use of incorrect copyright notice did not breach licensing agreement or constitute copyright infringement

The technical accuracy and adequacy of the copyright notice appearing on a creative work remains an issue with respect to infringement claims arising prior to January 1, 1978 - the date when the less stringent notice provisions of the 1976 Copyright Act went into effect.

In 1976, Fantastic Fakes, Inc., a company producing "sound alikes" which are rerecordings of popular records, entered into a licensing agreement with Pickwick International, by which Pickwick was granted the right to distribute records and tapes produced from master recordings made by Fantastic. The agreement required Pickwick to include a copyright notice on all recordings and tapes which was to have read, "P 1973 (or year first registered) by Fantastic-F, Inc." Pickwick, however, proceeded to use a notice reading, "P-Pickwick International, Inc. WARNING: Unauthorized reproduction of this recording is prohibited by federal law and subject to criminal prosecution." As a result, Fantastic brought an action alleging that the distribution of copies of its works with an improper copyright notice constituted a breach of the licensing agreement and copyright infringement. The alleged acts of infringement occurred in 1977 and continued through August of 1978.

A Federal Court of Appeals in Atlanta has ruled that Pickwick's use of its own name as copyright proprietor did not breach an implied condition of adequate notice in the licensing agreement and did not impair the validity of Fantastic's copyright. Section 406(a) of the 1976 Copyright Act, which would govern any continuing infringement by Pickwick, provides, in part: "Where the person named in the copyright notice on copies of phonorecords publicly distributed by authority of the copyright owner is not the owner of the copyright, the validity and ownership of the copyright are not affected." The 1909 Act does not contain a comparable provision; it required notice sufficient to inform the public of the existence of the copyright, the time of commencement, and by whom the copyright is claimed.

Generally, courts have avoided finding that a copyright has been forfeited due to a technically defective notice if the purpose of the notice requirement has been met. In view of the policy expressed in case law and in the 1976 Copyright Act, the Court of Appeals found that the copyright appearing on the material distributed by Pickwick "clearly notified the public of the existence of a claim of copyright." Pickwick did not claim a copyright interest in the licensed material and was fully aware of Fantastic's ownership. Fantastic did not show that anyone attempted to license Fantastic's material from Pickwick. And Pickwick agreed to correct the defective notice on its inventory.

Fantastic also had argued that Pickwick's right to distribute its material was conditioned upon the use of the copyright notice set forth in the licensing agreement. Due to Pickwick's failure to use this notice, the company was not authorized to manufacture and distribute Fantastic's material, and thereby was liable for copyright infringement, according to Fantastic. But express words of condition were not used in the agreement. Further, courts often have found an implied condition which protects the rights of a licensor in the situation which occurs when a licensee has failed to affix a particular copyright notice to a work. The implied condition is that a licensee is required to protect the rights retained by the licensor. The use of an improper notice therefore would mean that the licensee was acting without the authority of the copyright owner in distributing the copyrighted material. Hence, the copyright owner was not responsible for the negligent omission by its licensee and did not forfeit its copyright. Working through the implied-condition-of-adequate-notice routine has been eliminated under the 1976 Copyright Act, which provides in sections 405(a)(3) and 406(a) that an omission or error in a copyright notice will not invalidate the copyright "if the notice has been omitted in violation of an express requirement in writing that, as a condition of the copyright owner's authorization of the public distribution of copies or phonorecords, they bear the prescribed notice."

The Court of Appeals found that the District Court's discussion of Fantastic's implied condition argument was incomplete, but chose not to remand the matter for further findings because of its conclusion that adequate notice did appear on the Pickwick material.

Fantastic Fakes, Inc. v. Pickwick International, Inc., 661 F.2d 479 (5th Cir. 1981) [ELR 3:21:5]

Media may be required to agree to Bench-Bar-Press guidelines in order to attend pretrial hearings in criminal cases, Washington Supreme Court rules

Media representatives attending a pretrial suppression of evidence hearing involving an attempted murder charge against the reputed girlfriend of a "Hillside Strangler" suspect were required by the court to sign an agreement to abide by Bench-Bar-Press guidelines. The guidelines are a set of principles suggesting means of protecting an accused's right to a fair trial while preserving freedom of speech and the press. Due to the media coverage of the charges, the defendant had requested that the hearing be closed to the public in order to avoid the likelihood that prospective jurors would receive information about the evidence discussed at the hearing. The court chose instead to require media personnel to sign the guidelines.

The Bellingham Herald refused to sign and left the courtroom, claiming that it would be subject to contempt proceedings if it published reports on the hearing. The Herald then challenged the court's authority to restrict attendance at the hearing. The Supreme Court of Washington has upheld a trial court's finding that the order did not involve a prior restraint on free speech. Cited were the recent cases of Gannett Co. v. DePasquale, 443 U.S.

368 (1981) (ELR 1:10:6), in which the United States Supreme Court found that a trial judge has "an affirmative constitutional duty to minimize the effects of pretrial publicity in order to safeguard the due process rights of the accused."

The lower judge's order "was a good faith attempt to accommodate the interests of both defendant and press," said the Washington court. The remedy of contempt was unlikely since the guidelines express a moral commitment and are not obligatory. And since the Washington Supreme Court, in Federated Publications, Inc. v. Kurtz, 94 Wash.2d 51 (1980), found that a court has the authority to exclude all of the public, including the media, from a courtroom, the court ruled that trial judges have the power "to impose reasonable conditions upon attendance."

Federated Publications, Inc. v. Swedberg, 633 P.2d 74 (Wash. 1981) [ELR 3:21:6]

Briefly Noted:

Taxes.

Paramount Pictures has lost an appeal to the California State Board of Equalization concerning Paramount's deduction of taxes it paid to a foreign country. The Board has held that the foreign taxes in question were not deductible, because they were imposed on income rather than receipts. Section 24345 of the California Revenue and Taxation Code provides that foreign taxes generally may be deducted, unless they are taxes on income or profit. In a similar case involving MCA, the Board of Equalization and a California Court of Appeal ruled that taxes paid in foreign countries on account of royalties and film rentals earned there were taxes based on "income," and as such, not deductible for California tax purposes. (ELR 2:23:2) The same legal principle was applied by the Board in Paramount's case.

Appeal of Paramount Pictures Corporation, California Tax Reports, para. 206-433 (State Board of Equalization 1981) [ELR 3:21:7]

Torts.

Owners and occupiers of hockey rinks owe a duty to exercise ordinary care for the safety of spectators at hockey games, according to an Illinois Appellate Court. The court thus upheld a substantial jury verdict awarded to a spectator at a Chicago Cougars hockey game who was seated in the balcony when a deflected puck overshot the protective glass panels and struck him in the head, causing serious injuries. The court distinguished the general non-liability rule usually applied in baseball cases, because "there are fundamental differences in the way baseball and hockey are played and the dangers incident to the games." The court found the Chicago Cougars hockey team solely liable, because they expressly agreed to assume the responsibility of protecting the crowd by the terms of their lease with the Amphitheater. However, the court found "no rational basis for imposing a legal duty upon the WHA (World Hockey Association) to protect spectators at hockey games between its member teams."

Riley v. Chicago Cougars Hockey Club, Inc., 427 N.E.2d 290 (Ill.App. 1981) [ELR 3:21:7]

Trademarks.

Columbia Pictures has successfully opposed the proposed registration of the name "Clothes Encounters" as a trademark for use in connection with the merchandising of clothing. Columbia has licensed its mark "Close Encounters of the Third Kind" for T-shirts, perfume and various articles of merchandise and clothing for children. And the Trademark Trial and Appeal Board of the Patent and Trademark Office found that the two marks were virtually identical in sight and sound. Consumers would likely believe, mistakenly, that clothing bearing the proposed mark originated with, was approved by, or was in some way associated with Columbia Pictures. The argument that "Clothes Encounters" was being used in a humorous manner did not excuse the conflicting use, ruled the Board.

Columbia Pictures Industries v. Millen, 211 USPQ 816 (1981) [ELR 3:21:7]

NEW LEGISLATION AND REGULATIONS

Copyright Office issues regulations specifying acceptable locations for placement of copyright notices on published works

Though the current Copyright Act was signed into law in 1976, and became effective on January 1, 1978, the Copyright Office of the Library of Congress is still in the process of issuing regulations to explain and fine-tune the Act. One such regulation, which had been awaited for some time, specifies the proper location to place copyright notices on published works. Such notices are required by section 401 of the Act. Generally, the notice consists of the familiar symbol consisting of the letter "c" enclosed in a circle, or the word "copyright" itself, along with the year of first publication and the name of the copyright owner. According to section 401 of the Act, the notice must be affixed to published works in a location which gives "reasonable notice of the claim of copyright." Section 401 also directed the Register of Copyrights to pre scribe by regulation specific positions for copyright notices that will satisfy this requirement. The Register of Copyrights has now done so.

The regulations indicate that the copyright notice for motion pictures may be located with or near the title; with the cast, credits, and similar information; at or immediately following the beginning of the film; or at or immediately preceding the end of the film. Copyright Office comments which were published when the new regulation was issued indicate that a notice located at the end of a movie will be adequate, even if a commercial is broadcast immediately before the movie's end and thus before the notice.

A special rule was adopted for television commercials and other audiovisual works lasting sixty seconds or less. Because of the very brief duration of such works, the notice need only appear to the projectionist or broadcaster when preparing the film for performance; it need be seen by the audience itself.

Copyright notices for books may appear on the title page or the page immediately following it; on either side of the front or back cover; on the first or last page of the book; or on any page between the front page and the first page of the main body, or the last page of the main body and the back page, provided there are no more than 10 such pages.

The notice on periodicals may appear anywhere the notice on a book may appear, and also may appear as part of or adjacent to the masthead or on the page where the masthead appears.

The notice on published music may appear anywhere the notice on books or periodicals may appear, and also may appear on the first page of the music.

The regulation also specifies the locations where copyright notices may appear on contributions to collective works, machine-readable works such as tapes and discs, and pictorial, graphic and sculptural works.

The regulations, as well as the Copyright Act itself, emphasize that the locations specified in the regulations are merely "examples" of proper locations and are not an exclusive list of all legally proper locations.

Methods of affixation and positions of the copyright notice on various types of works, 37 Code of Federal Regulations section 201.20; 46 Federal Register 58307

(December 1, 1981); CCH Copyright Law Reports, para. 12,040 & 13,049 [ELR 3:21:6]

DEPARTMENTS

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