RECENT CASES

Copyright Royalty Tribunal's allocation of 1978 cable television royalties is upheld by Court of Appeals

The Court of Appeals in Washington, D.C., has upheld the Copyright Royalty Tribunal's allocation of cable television royalties for 1978. The decision is especially significant, because the 1978 allocation was the Tribunal's maiden effort at cable royalty distributions. (Such royalties have been collected from cable television systems only since 1978 when the current Copyright Act went into effect.) Thus, the appellate court's decision sets certain standards for the review of Tribunal allocations in the future when the amounts to be allocated are expected to greatly exceed the relatively modest $15 million or so that was collected for 1978.

Generally speaking, the court's decision affirms the Tribunal's "broad discretion" in apportioning cable royalties. It notes, for example, that the Tribunal's decisions are reversible only if they are not supported by substantial evidence or if they are arbitrary, capricious, an abuse of discretion, or otherwise in violation of the law. Judged by these standards, said the court, the Tribunal's decision concerning the 1978 royalties adequately supports and explains almost all of the allocations it made. For 1978, the Tribunal allocated 75% of cable royalties to the Motion Picture Association of America and other program syndicators, 12% to professional sports leagues and the National Collegiate Athletic Association, 4.5% to the music performing rights societies, and 3.25% to U.S. and Canadian broadcasters. The remaining 5.25% initially was split between the Public Broadcasting Service and National Public Radio, 5% to 0.25%. But in its final decision, the Tribunal reduced Public Radio's share to nothing and gave its 0.25% to the Public Broadcasting Service. (ELR 2:14:2) This was the only aspect of the Tribunal's allocation that has been reversed by the Court of Appeals. And it was reversed solely on procedural grounds, not because the court disagreed with the merits of the decision.

Appeals were taken from the Tribunal's decision by the National Association of Broadcasters, National Public Radio, professional sports leagues, the Canadian Broadcasting Corporation, and ASCAP, each one of which was dissatisfied with the share that had been awarded to it. (Some dissatisfaction was inevitable from the start, because the total amount sought by all of those who filed claims with the Tribunal for 1978 was roughly three times more than the Tribunal had available to distribute.) The court declined to be drawn into the dispute over exact percentages, however, saying that "claims of this sort are generally well beyond the expertise or authority of courts." Instead, the court considered only the broader legal arguments made by those who appealed.

The NAB made what the court described as a "host" of arguments on behalf of its members. As it had before the Tribunal itself, the NAB argued that each station was entitled to compensation for its "broadcast day as a compilation." (The 3.25% awarded to broadcasters was for local programming originated by the stations themselves, not for the compilation of programming that stations acquired from syndicators.) The NAB also argued that it was entitled to some compensation for sports broadcasts on the grounds that sporting events become copyrightable only when broadcast.

The court agreed that "NAB's general theories are well taken." That "does not get broadcasters to the promised land, however," the court added. The Tribunal had to consider the value of the interests advanced by the

NAB, and the court agreed with the Tribunal that the value of the broadcasters' contributions to syndicated programs and sporting events "are quantitatively de minimis," because viewers tune in to watch the shows themselves, not the activities of the director or cameramen. The Tribunal's award of 3.25% to television broadcasters was clearly within the "zone of reasonableness," the court ruled, and on that basis, it upheld the award.

The court also upheld the Tribunal's decision not to award commercial radio broadcasters any share of the royalties, because radio stations were unable to show the extent to which their programs were carried by cable systems, the value of their programming or that cable carriage of radio programming was harmful to radio stations.

The sports claimants objections to their 12% share were rejected on the grounds that the wide latitude that Congress gave to the Tribunal in making allocations more than supported the amount the leagues were awarded.

ASCAP's objections too were rejected on the grounds that the Tribunal's decision was not unreasonable, even if other divisions also were possible under the evidence.

In its conclusion, the court observed that "agitation" over the Tribunal's allocation of the 1978 royalties "has been somewhat overstated." The court noted that the 1978 allocation "will not displace the operation of relevant market forces in the future." And the court advised television broadcasters that they now can bargain more knowledgeably with sports teams about sharing cable royalties. Although the court acknowledged that as the size of the royalty fund grows in the future, "the dispute over how to slice the pie may be more vigorous." But, the court added, "it will also be more structured," because "The umpire has established the precedents on which the players may rely in submitting their claims."

The Tribunal recently completed Phase I of the 1979 allocation. Its final determination for 1979 is expected sometime later this year. (ELR 3:20:4)

National Association of Broadcasters v. Copyright Royalty Tribunal, Case No. 80-2273 (D.C.Cir., April 9, 1982) [ELR 3:24:1]

Independent producers may copyright works commissioned by the United States government

A television series entitled "Equal Justice Under Law," which was commissioned by the Administrative Office of the United States Courts, produced by WQED-TV in Pittsburgh, and broadcast over the PBS network, was entitled to copyright protection, according to a Federal Court of Appeals decision which upholds a District

Court ruling dismissing an action brought by M.B. Schnapper and the Public Affairs Press (ELR 1:10:3).

Schnapper had alleged that both the old and new copyright laws would not permit the registration of a work commissioned by the government, or the subsequent assignment of the copyright in the commissioned work to the government. He contended that the series was in the public domain and that he was entitled to publish the screenplays of the films. (While it was stated that the copyright in the series had not been assigned to the government, and that no government agency has any copyright interest in the films, the Court of Appeals proceeded on the assumption that an assignment took place.)

The court noted that the Copyright Act of 1909, which was in effect when the series was copyrighted in 1976, states that "No copyright shall subsist ... in any publication of the United States Government." Cases under the old law apparently were inconclusive regarding the eligibility for copyright of Governmentcommissioned works. But, using the legislative history of the Copyright Act of 1976 to interpret a provision which the new law was intended to replace, the Court of Appeals determined that section 8 of the 1909 Act did not prohibit granting copyright protection to some Government-commissioned works.

Furthermore, section 105 of 1976 Act provides that "Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment. . . ." A work of the United States is one prepared by a government employee as part of that person's official duties. The production of the "Equal Justice Under Law" series was not an instance in which the commission and purported assignment served as an alternative to having the work produced "in-house," nor were the production arrangements a ,'subterfuge" to avoid placing the series in the public domain, The court therefore concluded that neither the old nor the new copyright law prohibited copyright registration of the series.

Schnapper also argued that he had a constitutional right to reprint the screenplays of the films. The producer, however, noted that the denial of copyright protection might diminish or end its revenue from sales of rights to publishers or foreign distributors. The court declined to recognize a right to a compulsory license for the republication of the scripts in book form. Even if WQED, the copyright holder, were offered a royalty or other payment by Schnapper, the First Amendment protects "the right of the speaker to remain silent," that is, to control the dissemination of its work, the court ruled. (In an interesting note, the court pointed out the relationship between an author's right to remain silent and an author's right to limit the subsequent use of his or her work to protect his or her artistic reputation.

The court concluded that granting copyright protection in the series would not deprive any interested viewers of access to the films, and that no First Amendment interests conflict with acknowledging a copyright in a Government-commissioned work.

The United States Supreme Court recently declined to hear the case.

Schnapper v. Foley, 667 F.2d 102, 212 USPQ 235 (D.C.Cir. 1981) [ELR 3:24:2]

Action claiming infringement of common law copyright in script of the 1937 film "A Star is Born" was not part of a conspiracy to restrain the licensing of the film for television exhibition

In 1979, a Federal Court of Appeals declared that the 1937 film "A Star is Born" is in the public domain and that Classic Film Museum, in attempting to license the film for television broadcast, did not infringe the common law copyright held by Warner Bros., Inc., in the underlying, unpublished screenplay (ELR 1:14:3).

A Federal District Court in Maine now has ruled on Classic's argument that Warner wrongfully asserted its copyright infringement claim as part of a conspiracy to prevent Classic from licensing prints of "A Star is Born." Classic contended that this conspiracy, which allegedly included RKO General (the proposed licensee) and an insurance underwriter (which declined to issue errors and omissions coverage for the film) was an act of unfair competition in violation of section 1 of the Sherman Act.

However, the court has dismissed Classic's action on the ground that there was no agreement between Warner and anyone else to restrain Classic's licensing of the film. Warner acted unilaterally in asserting exclusive rights to the film on the basis of its common law copyright in the underlying literary work, stated the court. Warner had not unlawfully attempted to prolong the term of the expired statutory copyright in the film, and although Warner's claim was unsuccessful, it was not frivolous or sham.

Classic Film Museum, Inc. v. Warner Bros., Inc., 1981-82 CCH Trade Cases, Para. 64,362 (D.Me. 1981) [ELR 3:24:3]

Unauthorized screenings of movie videocassettes in prisons constitutes copyright infringement

The showing of videocassette tapes of feature motion pictures and other audiovisual works to prison inmates by correctional authorities without approval from the copyright owner constitutes copyright infringement, according to an opinion issued by the Attorney General of California.

In response to a request for a ruling on this issue by California's Director of Corrections, the opinion noted that the screenings were "public" performances within the meaning of section 106 of the Copyright Act, and were not a "fair use" of the copyrighted material. Although a prison is not open to the general public, a screening for inmates meets section 101's definition of a public performance as a performance "... at any place where a substantial number of persons outside of a normal Circle of a family and its social acquaintances is gathered. . . ."

The opinion questioned the applicability of the fair use doctrine, since the videocassettes admittedly were being shown for entertainment purposes without any creative "input or embellishment" by the users. In any event, a fair use defense would not be available since the works were not being used for instruction and were being used in their entirety, thereby diminishing the copyright owner's potential licensing income. Videocassettes generally are rented to institutional users for $200 to $600 which includes the right to an unrestricted number Of screenings. Individuals may obtain the same cassettes for a fee of $40 to $100. The lower fee reflects the fact that an individual user is restricted to home use of the cassette he or she purchases. If institutional users were able to purchase the cassettes at the lower rate, it would destroy a significant market for the copyright owner, the Attorney General concluded.

Opinion of the Attorney General of California, No. 81-503 (Feb. 5, 1982) [ELR 3:24:3]

"Little Miss U.S.A." beauty pageant infringed trademark of "Miss U.S.A." pageant, rules Federal District Court in Georgia

A Federal District Court in Georgia has permanently enjoined the use of the name "Little Miss U.S.A." to describe a beauty pageant for girls aged 2-12. As in the case of Miss Universe, Inc. v. Miss Teen U.S.A., Inc., 209 U.S.P.Q. 699 (ELR 3:12:7), the court found that the use of the "Little Miss" name was likely to be confused with the "Miss U.S.A." mark which has been "firmly affixed in the minds of consumers" as the title of the pageant sponsored by Miss Universe. The court acknowledged that while the pageants are structured along the same general lines, the classes of potential contestants for each pageant do not overlap, advertisers are not likely to consider the Little Miss pageant as a substitute for the Miss U.S.A. pageant, and television viewing audiences for the pageants would not be substantially the same. Nevertheless, the court concluded that the likelihood that the general public would believe that the two pageants have the same sponsor outweighs the differences between the two marks and the manner in which the marks are presented to the public. Further, the use of such words as "U.S.A." "Miss," or "U.S." in connection with beauty pageants by others was not shown to have diluted the strength of the "Miss U.S.A." mark.

One interesting aspect of the Little Miss pageant is that contestants are encouraged to sell advertising space in the pageant's souvenir program. And it is at the level of door-to-door solicitation of advertisers and sponsors -

among consumers who may be less sophisticated than national advertisers - that the Miss U.S.A. pageant's "enviable image" may be impaired by a mistaken association between the pageants, stated the court.

Based upon its finding that Little Miss U.S.A., Inc. was liable for trademark infringement, unfair competition and deceptive trade practices, the court made permanent its previously-issued preliminary injunction restraining the further use of the "Little Miss" name, and ordering the destruction of any material bearing an infringing designation.

Miss Universe, Inc. v. Little Miss U.S.A., Inc., 212 U.S.P.Q. 423 (N.D.Ga. 1980, 212 U.S.P.Q. 425 (N.D.Ga. 1981) [ELR 3:24:4]

Full time period of network produced shows must be used in determining compliance with limits on in-house production established in recent consent decree

Would a news magazine program entitled "52 Minutes" be as highly rated as the eight minute longer program presently broadcast? The "missing" eight minutes represents time devoted to non-program material such as commercials, Political announcements, news updates and station breaks. A dispute as to whether these "extraneous" minutes should be included in calculating the amount of entertainment programming produced in-house by the three major networks came to the attention of a Federal District Court in California.

In 1976 and 1980, in response to antitrust actions brought by the Justice Department, the three networks entered into Consent Decrees which established limits on the amount of in-house programming the networks were entitled to schedule. United States v. CBS Inc., 1980-81 CCH Tirade Cases, Para. 63,594) (ELR 2:11:1). The purpose of the action was to increase independent producers' access to network time. Thus, NBC was limited to broadcasting 2 1/2 hours per week of in-house produced programming during prime-time hours, 8 hours per week in daytime hours, and 11 hours per week in fringe hours.

When the networks submitted the required reports for the first compliance period (September 1980 through February 1981), the Justice Department objected, claiming that the amount of in-house programming was improperly reported. For example, ABC reported an average of 12.9 hours per week of inhouse production, using a "net" counting procedure. That is, ABC deducted the non-program "extraneous" minutes. If the full time period for which each program was scheduled had been counted, ABC's inhouse production would have amounted to 18.4 hours. The networks contended that they were authorized to exclude non-program material because the description of the compliance reporting form set forth in the consent decree requires a listing of the number of "Minutes per week" of in-house programming.

The court disagreed, finding that the circumstances surrounding the formation of the consent decree supported the government's position. The 2 1/2 hour limit on NBC's prime-time broadcasting represented approximately 10% of the 22 undiscounted hours of prime time available. The agreements reached with CBS and ABC also were based on percentages of undiscounted prime time hours. When the networks described their programs during the course of negotiations with the government, they measured time periods by hour or half-hour units, in line with industry custom. Further, stated the court, the purpose of the consent decrees certainly would be better served by counting full time periods, in order to make increased time available to in-dependent producers.

United States v. CBS Inc., 1981-2 CCH Trade Cases, Para. 64,227 (C.D.Cal. 1981) [ELR 3:24:4]

Judicial review of male engineer's claim that NBC's refusal to guarantee his reinstatement after child-rearing leave violated Title VII must await ruling by EEOC

Robert Batsche, an audio engineer with NBC, has alleged that the company's maternity/child rearing leave policies violated Title VII of the Civil Rights Act of 1964 by illegally discriminating against male employees.

According to the collective bargaining agreement between NBC and the National Association of Broadcast Engineers and Technicians, Local 11, female employees were entitled to a six-month leave of absence without pay for maternity reasons with full reinstatement privileges. However, in 1979, NBC adopted a new policy covering all leaves of absence for "personal business." Under the policy, which was applicable to all employees for medical or nonmedical purposes, reinstatement is available upon the expiration of a leave only if an appropriate opening exists at the time.

NBC granted Batsche's request for a six-week personal leave to care for his newborn child, but noted that his job would not be guaranteed. Batsche claimed that NBC's female employees still were being granted leaves under the NABET agreement, contrary to NBC's position that all employees have been treated in a sex-neutral manner since 1979.

Batsche proceeded to file a Title VII claim with the Equal Employment Opportunity Commission and a lawsuit for declaratory and injunctive relief. A Federal District Court in New York City has denied jurisdiction of the action on the ground that a right-to-sue notice has not yet been issued by the EEOC. Since the claim presented was the same as that pending before the EEOC, and since Batsche had alleged no act of retaliation by NBC prompted by the filing of his claim, injunctive relief would require premature determination of the likelihood of success of the merits of the claim, and would violate Title VII's emphasis on resolving charges of discrimination through voluntary negotiation, stated Judge Lowe.

The court noted that even if jurisdiction were assumed, Batsche had failed to show a likelihood of success on the merits, or irreparable harm, since he was not prohibited from taking a child rearing leave.

Batsche v. National Broadcasting Co., Inc., Case 82 Civ. 0024 (S.D.N.Y., January 27, 1982) [ELR 3:24:5]

Bose Corporation wins $115,000 judgment against Consumers Union because article in Consumer Reports disparaged Bose loudspeakers

In a decision of interest - and concern - to all who write critical reviews, a Federal District Court in Boston has awarded Bose Corporation more than $115,000 in damages in a judgment against Consumers Union, because an article in a 1970 issue of Consumer Reports magazine incorrectly stated that the article's author had heard instruments "wander about the room" when he tested the Bose 901 loudspeaker system. Instead, the article's author had heard the instruments wander "along the wall." Thus, in a preliminary decision rendered last year, the court ruled that Consumers Union had published the article knowing it to be false, because, said the court, its author knew that the article did not accurately describe the effects he had heard during the test. (ELR 3:11:7) According to the court, "A statement that attributes such grotesque qualities as instruments wandering about the room could have no effect other than to harm the reputation of the product." (The court failed to explain why it would have been less "grotesque" for instruments to wander across the wall.)

After ruling that Consumers Union had disparaged Bose's loudspeakers, the court conducted a trial on the extent of Bose's damages. Apparently, prior to the Consumer Reports review - which the court acknowledged contained some complimentary statements about the Bose 901 - the 901 had received the best reviews which ever had been given to a loudspeaker. As a result, Bose projected that 1970 sales of the 901 would be 150% of

1969 sales. In fact, from January to April of 1970, sales of the Bose 901 were 155% of sales for the same months of 1969. However, following publication of the Consumer Reports review in its May 1970 issue, sales for the balance of 1970 were "only" 120% of sales for the corresponding months of 1969. The court found that if Consumer Reports had not published its disparaging article, Bose's sales for the balance of 1970 would have been at least 155% of its 1969 sales. And thus, the court calculated that Bose sold 1,098 fewer speaker systems in 1970 than it otherwise would have.

The court reduced the number of lost sales by 25% - to 824 systems - because Bose had introduced a new, less-expensive speaker system that siphoned off some sales that would have gone to the 901, and because some sales were lost due to a statement in the Consumer Reports review - which Bose did not prove to be false - which said that the 901 required a great deal of power.

Bose's net profit on the 901 was $129 per unit. And thus the court awarded it more than $106,000 in lost profits. The court also awarded an additional $9,000 to compensate it for the value of the time that Dr. Bose spent visiting Bose dealers throughout the United States in an effort to overcome the effects the Consumer Reports review had on Bose's business.

Bose Corporation v. Consumers Union, 529 F.Supp. 357 (D.Mass. 1981) [ELR 3:24:5]

Paddington Bear licensee wins case against similar Fred bear, but victory based on trademark law only, not copyright law

One of the more easily satisfied prerequisites in an action for copyright infringement is that the party bringing the action must be the owner of the copyright, its assignee or an exclusive licensee. A Federal District Court in New York City recently had occasion to consider whether an exclusive licensee did indeed possess the requisite status to sue an alleged infringer.

In 1975, Paddington and Company Limited granted Eden Toys, Inc. an exclusive license to manufacture a line of toys and juvenile clothing and accessories displaying Paddington Bear - a popular character in a series of children's books. Eden proceeded to develop a gift wrapping paper containing images of Paddington Bear. Eden registered, as a derivative copyright, the silkscreen print which was created to produce the design for the gift paper. In 1979, when Eden discovered that Florelee Undergarment Company was manufacturing women's shirts imprinted with the picture of a bear called "Fred" which closely resembled the Paddington Bear, Eden brought an action for Copyright and trademark infringement.

The court rejected Eden's claim. One ground for the decision was that Eden never possessed a license to develop gift wrap paper for an adult market. The fact that Paddington had not challenged Eden's action did not authorize the overreaching and apparently infringing use of the Paddington character. A 1980 amendment to the Paddington-Eden agreement by which the scope of the licensed products was extended to include all merchandise except books, tapes and records also did not serve to validate Eden's previously registered copyright in the gift wrap artwork. Further, since Eden was not an exclusive licensee for Paddington products sold in the adult markets in which Florelee sold its products, Eden lacked standing to enforce Paddingion's copyright.

Eden's copyright was invalid for the additional reason that the images on the silkscreen artwork were "strikingly similar" to "prior manifestations" of the Paddington Bear and therefore lacked the originality required for copyright protection.

Florelee was found liable for violating section 43(a) of the Lanham Act, however, because consumers were likely to be confused as to the origin of the bear images on the Florelee shirt and those on Eden's products. the "Fred" image on the shirts was "neither original nor copyrightable" and because of the similarities between Fred and the Paddington Bear, consumers might purchase Fred garments to "complement their other Paddington Bear possessions." Florelee also was enjoined from using a copyright notice reading "Fred original" in conjunction with a bear image.

Eden Toys v. Florelee Undergarment Co., Inc., 526 F. Supp. 1187 (S.D.N.Y. 1981) [ELR 3:24:6]

Distribution of Tolkien character figurines was not enjoined because secondary meaning and consumer confusion as to source were not demonstrated

Frodo, Bilbo Baggins, Gandalf, Gollum, and friends would probably agree that they fared better in Middle Earth than in a Federal District Court in Delaware. The elves, wizards and dwarfs populated J.R.R. Tolkien's books, The Hobbit, The Lord of the Rings and The Silmarillion. Superior Models, Inc. manufactures miniature metal figurines depicting Middle Earth characters, and the figures bear the names of characters created by Tolkien. In 1978, Tolkien Enterprises claimed that it had acquired the exclusive right to license the use of the names and places popularized in Tolkien's books, and it advised Superior to cease its allegedly unauthorized sales of the miniature figures. Superior brought an action seeking a declaratory judgment that it had not infringed

Tolkien's rights. Superior also charged Tolkien with violating the antitrust laws and with tortious interference with Superior's relationships with its distributors. Tolkien, in turn, alleged that Superior was violating the Lanham Act and charged the company with unfair competition and deceptive trade practices.

In a less than enchanting opinion, Judge Steel of the District Court has denied Tolkien's claim of trademark infringement on the ground that the company failed to establish a secondary meaning in the character names or the likelihood of consumer confusion as to the source of the figurines.

In order to establish secondary meaning, Tolkien had presented a 1977 survey which revealed that a high percentage of college students could identify the names "Baggins," "The Lord of the Rings" and "Hobbit." But the survey did not disclose any evidence of confusion concerning the source or sponsorship of the figurines, noted the court. A similar survey also was found insufficient to demonstrate consumer confusion in American Footwear Corp. v. General Footwear Co., 609 F.2d 655 (ELR 1:21:1), involving rights to the use of the word "bionic." The fact that considerable publicity efforts were undertaken in November 1978 to coincide with the release of the film version of "The Lord of the Rings" did not establish that the character names had acquired a secondary meaning prior to their initial use by Superior in the period January to July 1978.

The court refused to grant summary judgment on Superior's antitrust claim because the parties disagreed on the appropriate definition of the relevant market, and this definition is significant in an attempted monopolization claim.

A second opinion in the case was issued two months after the initial opinion in response to a motion for reargument. The court originally had granted summary judgment to Tolkien on Superior's tortious interference allegation, finding that there was no evidence that Tolkien had acted in bad faith in asserting its rights to the exclusive use of the names of the Middie Earth characters. After reargument, however, Judge Steel determined that further proceedings will be required on the question of whether Tolkien's threat of litigation to protect its rights was made with a good faith belief in the merits of its claim.

Most significantly, in the revised opinion, Judge Steel rejected Tolkien's claim that the court had erred in failing to find that the Tolkien character names were fanciful and distinctive, thereby eliminating the need for proof of secondary meaning. Tolkien had proceeded on the basis that secondary meaning was an essential element in the case, apparently on the assumption (without conceding the point) that some of the character names were used in ancient mythology and were in the public domain. However, it was "too late for this point to be raised," stated the court.

Further, imitation by Superior of the figurines and names, was not, of itself, sufficient to establish secondary meaning or to raise an issue of fact precluding summary judgment. Imitation may corroborate a finding of intentional infringement only when other proof of secondary meaning has been established, concluded the court.

Superior Models, Inc. v. Tolkien Enterprises, 211 U.S.P.Q. 587 and 211 U.S.P.Q. 876; 1981-2 CCH Trade Cases, Para. 64,157 (D.Del. 1981) [ELR 3:24:6]

CBS documentary "Guns of Autumn" did not defame Michigan hunters or club to which they belonged

Two documentary films broadcast by CBS News in 1975 did not defame the Michigan United Conservation Clubs, a Federal Court of Appeals has ruled. The MUCC, an organization of game hunters, had alleged that the documentaries portrayed hunting unfavorably and gave a false impression of American hunters. But the Court of Appeals upheld a lower court judgment (ELR 2:5:3) in which it was found that "The Guns of Autumn," and "Echoes of 'The Guns of Autumn,'" were not "of and concerning" the MUCC or its individual members.

The court noted that the individual MUCC members who claimed that they were defamed as members of the Michigan sports hunters community, had not alleged that they were shown, described or identified in either film, or that the films related to them in any personal individual capacity. Moreover, the films did not refer to any individual hunters as MUCC members. Therefore the

MUCC's claim that it was defamed as an organization was rejected by the court.

Michigan United Conservation Clubs v. CBS News, 665 F.2d 110 (6th Cir. 1981) [ELR 3:24:7]

Briefly Noted:

Theaters.

The roar of construction equipment has stilled the last echoes of the star-studded recitals which were held recently to protest the proposed destruction of the Helen Hayes and Morosco Theaters in New York City in order to make way for a 50-story hotel center. The theaters had been found eligible for inclusion in the National Register of Historic Places. Thus, the Advisory Council on Historic Preservation was required to review the relationship between the theaters and the hotel project in order to determine the effect of the construction on "the quality of human environment." But the Council, the City of New York and the New York State Advisory Council on Historic Preservation agreed that there were no feasible alternatives to the demolition of the theaters. An action claiming that this agreement may have been reached as a result of improper political influence was dismissed by a Federal District Court in New York after lengthy, dramatic proceedings. The dismissal was upheld by a Federal Court of Appeals; the United States Supreme Court refused to intervene; and the legends must live on in our hearts and not on 45th Street.

Natural Resources Defense Council, Inc. v. The City of New York, Docket No. 82-6026 (2d Cir., Feb.26, 1982) [ELR 3:24:7]

Labor Relations.

The question of whether producer David Merrick was required to demonstrate "just cause" when terminating the employment of an understudy in his production of "42nd Street" was subject to arbitration, a Federal District Court has ruled. At an arbitration proceeding, which Merrick failed to attend, it was found that the termination had occurred without just cause, and Merrick reportedly was ordered to pay $2,200 to actress Leila Martin. The court found that the arbitrator possessed the authority to rule on the "just cause" issue since the dispute "drew its essence" from the collective bargaining agreement between Actors Equity Association and the League of New York Theaters and Producers. Merrick, although not a League member, did not contend that he was not bound by the collective bargaining agreement. And since he had voluntarily waived his right to appear before the arbitrator, he was not entitled to have the issue redetermined in federal court, stated Judge Pierre N. Leval.

Merrick v. Actors Equity Association, Case No. 81 Civ. 4407 (S.D.N.Y., March 17, 1982) [ELR 3:24:7]

Arbitration.

A claim by two members of the Writers Guild of America against David Merrick for breach of his agreement to pay them for writing a screenplay was brought to arbitration by the Guild pursuant to the 1977 Theatrical and Television Basic Agreement. The arbitrator denied the claim. Merrick then filed an action alleging malicious prosecution, abuse of process and prima facie tort on the part of the Guild for its role in bringing the arbitration claim. The Guild sought to compel arbitration of Merrick's action, but its petition was denied by a Los Angeles trial court on the ground that tort claims do not fall within the arbitration provisions of the Basic Agreement. This ruling has been reversed by the California Court of Appeal, however. The court noted that the fact that a tort may be involved does not preclude arbitration if the matter in dispute involves the underlying bargaining agreement. Since the present action "has its roots in the relationship between the parties which was created by the collective bargaining provisions of their agreement," the parties were ordered to proceed to arbitration.

Writers Guild of America, West, Inc. v. Merrick, Case No. 62697 (Cal.Ct.App., Mar. 25, 1982) [ELR 3:24:8]

Copyright.

A Federal Court of Appeals in New York has upheld a lower court ruling that the copyrighted Hopalong Cassidy books, written by Clarence Mulford, did not fall into the public domain when the copyrights in the movies derived from the books were not renewed (ELR 2:21:2). All television, broadcasting and radio rights in the movies, which were made and copyrighted by Paramount Pictures, were reserved to Mulford pursuant to a 1935 licensing agreement with Prudential Studios Corporation. The lower court finding that the exhibition of the movies would infringe the copyrights in the books, and its order enjoining the use, sale or licensing of the movies was affirmed, except that portion of the order directing the delivery of prints and tapes of the movies to the administrator of Mulford's estate.

Filmvideo Releasing Corp. v. Hastings, Case No. 81-7236 (2d Cir., Dec. 11, 1981) [ELR 3:24:8]