

## RECENT CASES

### **MGM is ordered to pay \$15,000 to the Directors Guild of America and to director Tobe Hooper for violating Guild credit size requirements in trailer advertising for "Poltergeist"**

A resounding disruption in the realm of advertising credit has been traced to certain poltergeists who were denied roles in a recently-released film. In restoring order to the fracas over director Tobe Hooper's credit in the trailers for Steven Spielberg's production of "Poltergeist," arbitrator Edward Mosk has ruled that MGM failed to accord Hooper the credit required by section 8-203 of the 1981 Directors Guild of America Basic Agreement.

Paragraph 8-203(a) of the Basic Agreement provides that a director's credit "shall be no less than 15% of the size of type used for the title of the motion, picture, but in no event less than the size and style of type for any credit accorded persons other than actors." This obligation does not apply to trailer advertising except that if the advertising gives credit for a film or camera process, such as Panavision, or if the individual producer or writer is mentioned, then "the director's name shall be mentioned."

A trailer for "Poltergeist" displays a card stating that the film is "A Steven Spielberg Production." Mosk found that the size of type on the card was approximately twice the size of the type used on the card reading "A Tobe Hooper Film." The closing titles of the trailer - which read "Story by Steven Spielberg," "Screenplay by Steven Spielberg, Michael Grais and Mark Victor," "Directed by Tobe Hooper," and

"Produced by Steven Spielberg and Frank Marshall" all are in identical size type - but, again, are about one-half the size type used for the card reading "A Steven Spielberg Production."

MGM argued that the use of the word "mentioned" in the trailer exception to the basic credit requirement was intended to distinguish this section from the parity-of-size requirement for director, writer and producer credits. According to the studio, its only obligation was to "mention" the director - and no specific type size or style was required by agreement, custom or usage.

Arbitrator Mosk determined that trailer advertising does not require any credit whatsoever to the director, but that in accordance with the overall credit policy of section 8-203(a), when such advertising does refer to an individual producer or writer, the director's name shall appear in the same type size and style. Trailers sometimes contain "oral" credits, noted Mosk. This would

explain the use of the word "mention" in this particular section as opposed to a more precise statement of credit requirements in other sections of the Basic Agreement.

Mosk concluded that while MGM did not intentionally violate the Basic Agreement, the company had damaged Hooper, because his role as the director of "Poltergeist" was denigrated by the company's failure to display his name in the same size type as that used for the producer. It therefore was ordered that all trailers used in Los Angeles and New York City be immediately changed to comply with the provisions of the Basic Agreement as interpreted by the arbitrator and that any new trailers struck also comply with the arbitrator's finding. Mosk also ordered that a full page advertisement be taken out in Daily Variety, the Hollywood Reporter and Weekly Variety "containing an appropriate expression of regret for the breach of the Basic Agreement in connection

with the issuance of trailers," and he ordered the payment of \$15,000 to Hooper and the DGA.

In a second hearing, the DGA contended that the "Poltergeist" trailer was exhibited on pay television on June 10, 1982, thereby causing additional damages to Hooper and to the Guild. The arbitrator ruled that the use of the trailer by the station was inadvertent and that the station ran it without authority from MGM. However, Arbitrator Mosk reiterated that his first order does apply to trailers used on free or pay television. Moreover, "to avoid any future conflicts," MGM was ordered to submit future paid advertising for "Poltergeist" in which there is any change in the relative sizes of the names of the director, writers or producers to the DGA prior to publication.

In the Matter of the Arbitration between Directors Guild of America, Inc. and Metro Goldwyn-Mayer Film Co.,

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relating to "Poltergeist," Before the Directors Guild of America - Producers Arbitration Tribunal (June 15 and June 22, 1982) [ELR 4:5:1]

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**Universal Studios is ordered to pay \$10,000 to Make-up Artists and Hair Stylists Local 706 for including non-local members in screen credits for "The Thing"**

The integrity of a screen credit provision in a collective bargaining agreement has been affirmed once again by Arbitrator Harold M. Somers in a proceeding brought by Make-up Artists & Hair Stylists Local 706 IATSE against Universal City Studios in connection with the movie "The Thing."

According to their collective bargaining agreement, "Make-up Artist" screen credit may be given only if

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make-up services are performed (on live persons) by members of Local 706. The requisite screen credit was given to the Local 706 members working on "The Thing." However, Universal also included non-Local 706 members in the film's credits under the headings "Special Make-up Effects Created and Designed by" and "Special Make-up Effects Unit."

In his Expedited Decision, Arbitrator Somers noted that "Screen credit has great value not only in terms of pride but also in getting jobs. By using the term 'make-up' in screen credits for non-Local members the value of the screen credit is diluted and diminished for the Local 706 members." Universal therefore was ordered to pay \$10,000 in actual damages to Local 706 for violating the collective bargaining agreement.

Somers refused to grant an injunction against the showing of the film with the present credits, finding that such an action would be largely punitive. Moreover,

unlike the DGA arbitrator's ruling in the "Poltergeist" matter (ELR 4:5:1), Universal was not ordered to revise the credits for later showings. Somers stated that this would be only "speculatively useful and questionably significant since the damage has indelibly been done."

In the Matter of Arbitration by and between Universal City Studios and Make-up Artists & Hair Stylists Local 706 IATSE MPMO, Grievance on screen credit for the movie "The Thing" (June 23, 1982) [ELR 4:5:2]

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**Rock concert could not be enjoined as a nuisance even though public officials expected drug violations to occur**

Freedom of expression reached a high when an Ohio state court refused a request by public officials to call

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off a rock concert at the Toledo Speedway even though those officials believed that drug violations were certain to occur during the event.

The state sought to use its nuisance laws to curtail the drug activity at the Speedway. The rock concert would constitute a nuisance, argued officials, because felony drug violations had taken place during a rock concert held at the same location a year earlier.

The court held, however, that enjoining the concert as a means of curtailing illegal drug activity would be an impermissibly overbroad action. Rock concerts, said the court, are entitled to protection under the First Amendment. "Unlawful conduct of an audience (here only a small part of an audience), absent a specific intention to incite imminent lawless action, is not a sufficient justification to curtail the right of free expression."

Testimony was presented concerning the methods used by other city governments to discourage or prevent the

illegal use of drugs at rock concerts including searches of patrons, cameras, and the stationing of uniformed and undercover police officers inside the concert facility. These methods are considerably more narrow than prohibiting the event, said the court.

The court also held that the state failed to establish that the owners of the Speedway were liable for a nuisance. Ohio's nuisance law requires some degree of culpability on the part of the person against whom the injunction is sought: Here, the Speedway's owners were not liable for drug violations that may have occurred on their property at previous concerts.

The court found that "the rock concerts previously conducted on the defendants' property have not been haphazard, ill-conceived affairs. . . . It appears that great thought and effort have been effectively expended to provide to the fans of this type of entertainment an enjoyable and safe event. Moreover, . . . there is no duty

imposed under the statutes or common law that obligates the defendants, at their expense, to provide authorized personnel for enforcing the drug laws of this state.... This duty rests with the state."

State Ex Rel. Pizza v. Tom S.A. Inc., 428 N.E.2d 878 (Ohio Com.Pl. 1981) [ELR 4:5:2]

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### **Pac-Man wins preliminary injunction against distribution of allegedly infringing K.C. Munchkin home video game**

In addition to the honor, however dubious, of being named "Man of the Year" by Mad Magazine, PacMan has won a major victory in a Federal Court of Appeals over a fast-moving home video game known as "K.C. Munchkin." Atari, Inc. and Midway Manufacturing Co.

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own the exclusive United States rights in Pac-Man under a registered copyright for the PacMan audiovisual work. Atari and Midway alleged that North American Philips Consumer Electronics Corp., the developer of K.C. Munchkin, infringed their copyright and also engaged in unfair competition in violation of the Illinois Uniform Deceptive Trade Practices Act. A Federal District Court order which denied Atari's motion for a preliminary injunction has been reversed on appeal.

The Court of Appeals conducted an extensive analysis of the appearance and operation of these "electronic arcade maze-chase" games. Essentially, PacMan consists of a fixed maze, a central character known as the "gobbler," four pursuit characters known as "ghost monsters," several hundred evenly spaced pink dots and four enlarged pink dots known as "power capsules." Players use a "joy stick" to guide the gobbler through the maze. Distinctive musical sounds comprise the audio

component of the game. K.C. Munchkin also employs a player-controlled central character, pursuit characters and power capsules, and also requires a player to direct the gobbler through a maze to avoid capture by monster characters. Sounds also accompany K.C. Munchkin but they are not similar to those played in the arcade form of Pac-Man.

The Court of Appeals first noted the "axiom" of copyright law that the protection granted to a copyrightable work extends only to the particular expression of an idea. Thus, Copyright protection does not extend to games as such. However, the "repetitive sequence of a substantial portion of the sights and sounds" of a video game called "Scramble" was held copyrightable as an audiovisual work in the recent case of Stern Electronics, Inc. v. Kaufman, 669 F.2d 852 (2d Cir. 1982) (ELR 3:22:5). In conducting its analysis of the protectable forms of expression in PacMan, the court interestingly

referred to the scenes of *scènes a faire* approach which may be used when an infringement claim arises in a literary context. *Scènes a faire* are "stock literary devices" which are indispensable in the treatment of a given topic. The court found that certain expressive matter in Pac-Man should be treated as *scènes a faire* and "receive protection only from virtually identical copying." The maze and scoring table are standard game devices, and the use of dots is a standard scoring device. K.C. Munchkin's maze design, scoring table and "dots" were sufficiently different from those used in Pac-Man to preclude a finding of infringement, the court determined.

However, the "substantial appropriation of the PacMan characters" was the factor which required reversal of the District Court's decision not to issue an injunction. Pac-Man's audio component and the concrete artistic details of the visual presentation constituted the copyrightable expression of a game "idea." In particular, the "gobbler,"

and "ghost monster" characters were wholly fanciful creatures. In the court's view, "North American not only adopted the same basic characters but also portrayed them in a manner which made K.C. Munchkin appear substantially similar to Pac-Man." The K.C. Munchkin "gobbler" is similar to the Pac-Man gobbler in size and shape, has a V-shaped "mouth," gobbling action, and disappears upon being captured. The K.C. Munchkin ghost monsters contain even more significant visual similarities - they are "virtually identical" to their Pac-Man counterparts, the court said. The Court of Appeals noted that the District Court had focused on certain differences in detail between the games, but "ignored" the more obvious similarities which would lead an ordinary observer to conclude that North American had copied Atari's game.

Another somewhat unusual factor considered by the court was that video games - unlike an artist's painting -

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appeal to "an audience that is fairly indiscriminating insofar as ... subtle differences in artistic expression." In the intensity of video game competition, minor differences in detail are more likely to be overlooked.

In concluding that Atari and Midway were likely to succeed on their copyright infringement claim the court also pointed to the fact that retailers promoting K.C. Munchkin often described the game by referring to Pac-Man - an indication that certain observers viewed the games as similar and that K.C. Munchkin had captured the "total concept and feel of Pac-Man."

Irreparable injury was shown by the fact that Atari had committed over \$1.5 million to the licensing, development and promotion of its home video version of Pac-Man and that by late 1981, the company already had orders for the game in excess of one million cartridges with a sales value over \$24 million. This substantial investment would certainly be jeopardized by the

marketing of K.C. Munchkin, particularly in view of the "short-lived" nature of video games. Therefore, pending the development of further facts at trial, the court ordered the District Court to enter a preliminary injunction against North American Philips' continued infringement of Atari and Midway's copyright.

Atari, Inc. v. North American Philips Consumer Electronics Corp., 672 F.2d 607 (7th Cir. 1982) [ELR 4:5:3]

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**Harcourt Brace Jovanovich is denied recovery of \$65,000 advance paid for Barry Goldwater's memoirs, because publisher failed to provide editorial assistance to Goldwater and his co-author**

In January 1977, Harcourt Brace Jovanovich entered into a contract to publish the memoirs of Barry

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Goldwater. HBJ agreed to pay Goldwater and Stephen Shadegg, the authors of the memoirs, a „remarkably high" advance of \$200,000. It paid \$65,000 at the time the contract was signed, and was to have \$75,000 on delivery and acceptance of the completed manuscript, and the balance of \$60,000 on publication. The contract required the authors to deliver "to the publisher on or before October 1, 1978, One copy of the manuscript of the work as finally revised by the author and satisfactory to the publisher in form and content." When the completed manuscript was submitted to HBJ in September 1978, the company declared that it was unacceptable and demanded the return of the \$65,000 advance. The book ultimately was published by William Morrow & Company, for an advance of \$80,000, in the fall of 1979 under the title "With No Apologies" and became a best-seller.

Recently, Judge Griesa of the Federal District Court in New York rejected HBJ's claim that it was entitled to terminate the contract and obtain the return of the advance paid to Goldwater and Shadegg. In an unsigned bench opinion containing his Findings of Fact and Conclusions of Law, Judge Griesa found that HBJ did not have an "absolutely unfettered license to act or not to act in any way it wishes and to accept or reject a book for any reason whatever." HBJ was aware that Goldwater and Shadegg expected that the publisher would provide editorial assistance on the manuscript, but such assistance was not given. As the writing progressed, the project editor did comment, unfavorably, to the authors' agent about the initial seven chapter draft. But in Judge Griesa's view, it was "clear that the editorial work which is required must consist of some reasonable degree of communication with the authors, an interchange with the authors about the specifics of what the publisher desires;

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about what specific faults are found; what items should be added; what organizational defects exist, and so forth." However, HBJ's project editor "did not perform any editorial work, either directly with the authors or indirectly [through their agent]. . . . [She] made no attempt to communicate with Shadegg or Goldwater in order to offer the kind of opinions, suggestions, or comments which had been solicited. . . ."

HBJ had had reservations about Shadegg's participation in the project despite being informed of his extensive literary and journalistic experience. Apparently it was anticipated that Shadegg would be replaced or that a third writer would be brought in to re-do the work. Nevertheless, when the manuscript was submitted to Morrow, Morrow's editor found Shadegg to be creative, cooperative and responsive to suggested changes. The Morrow editor went through what Judge Griesa characterized as a "normal editorial process." And only about

one percent of the material in the published book consisted of additions to the manuscript HBJ had rejected.

Judge Griesa concluded that publishers have an implied obligation to engage in "appropriate" editorial work in order to allow an author "the reasonable opportunity to perform to the satisfaction of the publisher." He did not find it necessary to determine the full extent of the editorial work required since in this case, no editorial services were offered and the evidence further indicated that there was no "desire or intention on the part of the HBJ people to edit. The evidence indicates a desire to have another writer and a lack of a bona fide commitment to abide by the contract."

HBJ had breached its contract with Goldwater and Shadegg, stated Judge Griesa, by "willfully failing to engage in any rudimentary editorial work" and therefore was not entitled to rely on the "satisfactory form and content" clause in its contract with the authors.

Also rejected was HBJ's claim that the book contained no "revelatory" material. The book did contain valuable and interesting factual material, conversations and judgments about public figures, stated the court.

HBJ had cited the case of *Random House v. Gold*, 464 F.Supp. 1306 (ELR 1:3:3) aff'd. *men.* 607 F.2d 998 (2d Cir. 1979) in support of its position. But it was pointed out that in *Gold*, a publishing contract containing a "satisfactory in form and content" clause similar to the HBJ contract also required the publisher to act in good faith, which HBJ had failed to do.

*Harcourt Brace Jovanovich, Inc. v. Goldwater*, Case No. 79 Civ. 4863 (S.D.N.Y., Feb. 23, 1982) [ELR 4:5:4]

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**New York Times' unauthorized use of photograph on the cover of its magazine section did not violate New York Civil Rights Law; but suit is allowed to proceed against photographer**

Just before turning to the crossword puzzle, most readers of the New York Times' Sunday magazine section at least briefly notice the cover of the publication. On one occasion the cover displayed a photograph of Clarence W. Arrington, a young black financial analyst. The photograph, which was taken without Arrington's consent, showed him walking along a street in New York City. The cover also contained a reference to the magazine's feature article, entitled "The Black Middle Class: Making It," which was a commentary on the growth of the black middle and professional class. Arrington's name was not mentioned in the article. But he claimed that he had been subjected to "public scorn and ridicule" by the

publication of his photograph principally because readers might believe he shared or exemplified the position of the article's author, which is that the black middle class ". . . has been growing more removed from its less fortunate brethren."

Arrington sued the Times, Gianfranco Gorgoni (a freelance photographer who took the cover picture), Contact Press Images, Inc. (a photographic agency), and Robert Pledge (Contact's president). The lawsuit alleged the violation of sections 50 and 51 of New York's Civil Rights Law and invasion of Arrington's common law and constitutional right of privacy.

Section 50 of the New York Civil Rights Law reads: "A person, firm or corporation that uses for advertising purposes, or for purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person ... is guilty of a

misdemeanor." Section 51 provides that a violation of section 50 may be actionable in a civil suit.

The trial court found that sections 50 and 51 did not support Arrington's action since his picture was published in connection with an article of general interest, and that the Times alone was "responsible for the publication [and placement] of the picture." However, Arrington was granted leave to amend his complaint to assert non-section 50 claims against the Times, most notably a "right to be left alone" right of privacy claim. The Appellate Division deleted the leave to amend, finding no support for the existence of a common law right of privacy claim in New York.

Most recently, the New York Court of Appeals has upheld the determination that the New York Times has no liability to Arrington. But that court has refused to dismiss the action against the photographer and his agents.

Judge Fuchsberg noted that sections 50 and 51 which were enacted approximately 80 years ago in response to the case of *Roberson v. Rochester Folding Box Co.*, 171 N.Y. 538, were drafted narrowly to cover only the circumstances of *Roberson*, namely the unauthorized commercial use of an individual's name or likeness. The Legislature's refusal to enlarge the scope of the statute may have been occasioned by its sensitivity to the competing constitutional values of free speech and free press. New York courts have followed suit, relying on the First Amendment to defeat section 50/51 claims even in casts where "the dissemination of news and views is carried on for a profit or [when] illustrations are added for the very purpose of encouraging sales of the publications."

In this case, the New York Times cover photograph, which depicted a middle class man of "good taste and attire," bore a "real relationship" to the feature article.

The cover did not reprint any of the opinions contained in the article which Arrington disclaimed as his own, and the article itself did not mention Arrington. Arrington's disagreement with the article's purportedly negative assessment of the black middle class was not cognizable under sections 50/51, Judge Fuchsberg ultimately concluded, because the court was just not in a position to rule on the value judgments involved in such a dispute over a social issue. Arrington's "inability to vindicate a personal predeliction for greater privacy may be part of the price every person must be prepared to pay for a society in which information and opinion flow freely."

However, an action against the photographic defendants, "operating independently from the publisher," was found to be available to Arrington under sections 50 and 51 for the alleged nonconsensual sale of the photograph. The fact that the sale was to "a publisher of news and articles on matters of public interest" would not, in

and by itself, have clothed these defendants with the publisher's immunity from the reach of sections 50/51."

Arrington's constitutional right to privacy claim was rejected on the ground that no state action was involved.

Judge Fuchsberg also noted that assuming, without deciding, that a "false light" invasion of privacy claim were cognizable in New York, Arrington's claim did not meet the Restatement of Torts' requirement that the publication be "highly offensive to a person of ordinary sensibilities." Judges Jasen, Gabrielli and Jones, while concurring in the court's opinion, found Judge Fuchsberg's discussion of the false light issue unnecessary for the resolution of the issues raised on appeal.

Donald Engel, Esq., a member of the ELR's Advisory Board, has commented that the Arrington case is extremely important on several grounds. In his view it confirms the "emerging" New York holdings that there is no common law right to privacy in the State of New York

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and that an action for violation for the right of publicity may be brought in that state only under sections 50 and 51. Mr. Engel believes that the protection accorded by the court to an article of general interest would be extended to the contents of a book, motion picture or television presentation. The distinction made by the court between the publisher's protected position and the potential liability of intermediate commercial users and suppliers may well mean that motion picture and television producers and distributors will not be liable, even though commercial suppliers of special effects and other independent contractors may be.

Arrington v. The New York Times Company, No. 22  
(N.Y., April 7, 1982) [ELR 4:5:5]

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**New York Times is denied summary judgment in libel action brought by a former New Jersey state official because reporter's failure to verify identity of official accused of receiving "payoffs" may constitute "actual malice"**

On June 2, 1969, a story in the New York Times reported that during a debate in the then-pending New Jersey gubernatorial primary campaign, one of the candidates had referred to an indicted labor union leader's testimony concerning payoffs made in 1959 to leading state officials, including the Attorney General Ronald Sullivan, the Times reporter, identified Arthur J. Sills as New Jersey's Attorney General in 1959. In fact, Sills was not appointed to this position until 1962. Sills contended that in mis-identifying him, the Times had recklessly accused him of the commission of a crime. A New York trial court has refused to grant summary

judgment to either party and has ordered the matter to proceed to trial.

Sullivan testified that when he was preparing the story in which the "payoff" charge appeared, another reporter identified Sills as the state's Attorney General in 1959. Sullivan, however, did not check a published list of all state officials or the newspaper's morgue. A copy reader noticed the error, which appeared in the city edition of the paper, and the reference to Sills was deleted in subsequent editions.

Judge Greenfield noted that the "partial immunity" afforded to the press by *New York Times v. Sullivan*, 376 U.S. 254, protects journalists from lawsuits for defamation by public officials if the published "falsehoods" involve a matter of opinion, a fair report of a third party's views or even an untrue report if the publication is not made with actual malice, that is, with knowledge of its falsity or with reckless disregard for whether the report

was false or not. Yet, "While a publication is not required to be a guarantor of the truth of the facts it asserts, it is still not privileged to blind itself to those truths which are staring it in the face."

"Actual malice" does not involve subjective feelings of ill will or a desire for vengeance. Sills had claimed that about one year prior to the publication of Sullivan's story, he and Sullivan had had an altercation during which Sullivan told Sills, "I will get you . . ." However, this prior hostility was not by itself a basis for recovery.

The failure to conduct a thorough investigation of the payoff statement also did not by itself establish bad faith. A standard which would require a newspaper to explore the "truth" of statements supplied by a credible source might have a chilling effect on publication. Rather, the standard for recovery, as stated in a leading New York case, *Chapadeau v. Utica Observer Dispatch, Inc.*, 38 N.Y.2d 196, is that a publisher has acted in a

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"grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties." After reviewing other cases dealing with press liability, the court "distilled" certain guiding principles which should prove helpful in assessing future public figure libel actions. The principles include the following:

"The press is not required to make its own independent verification of charges of wrong doing asserted by some third person, but those charges must not be inherently improbable and must appear to come from some informant claiming to have knowledge of the facts; there must be adherence to at least the minimal standards of professional journalism, and slipshod and careless reporting which fails to meet those minimal standards may give rise to liability if there has been a failure to check basic facts; the duty to check out the accuracy of facts increases as the possibility for harm to be caused by

inaccurate reporting increases ... ; the 'hot news' story may impose lesser requirements for a thoroughgoing check of accuracy; the responsibility of the newspaper for accuracy, or at least for minimal checking of verifiable facts, increases when the source of the alleged inaccuracy is the author of the story himself, rather than a report of what some outside person may have stated ... ; the requirement for checking the accuracy of reported facts increases with the ease with which those facts may be verified ... ; a statement of fact which is a matter of record, and can be readily checked out by reference to an available and objective source, can be expected to be availed of under the most minimal standards of journalistic professionalism; when serious issues of fact are raised as to whether or not such minimal standards had been met ... and facts are raised which could support an inference of gross irresponsibility, summary judgment is not warranted."

In this case, the inaccuracy was found to be material and reporter-originated. While restating its refusal to require the Times to make an independent verification of the truth of a third party's statement, the court suggested that the newspaper could be found to have had an obligation to make a minimal check of the accuracy of Sullivan's identification of Sills. The court declared that "To state as a fact that which one does not know to be a fact, may well constitute gross irresponsibility and reckless disregard of the truth." Sullivan's actions with respect to his article would be a matter of fact particularly apt for jury resolution, concluded the court.

Sills v. New York Times Company, Index No. 2683/72  
(N.Y. Sup.Ct., April 5, 1982) [ELR 4:5:6]

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## **Entertainer Rick James waived right to arbitrate contract disputes rules California Court of Appeal**

An action for breach of contract against entertainer Rick James will proceed in Los Angeles Superior Court, because James was found to have waived a contractual arbitration provision by acting in bad faith and attempting to delay the resolution of the action.

The arbitration provision appeared in a 1972 contract between James and Stanley Joel Weisman, a solicitor in Ontario, Canada. James became indebted to Weisman for some \$12,000 and 10% of James' gross compensation, as consideration for money and services provided to James by Weisman. In June of 1973 the parties entered into another written agreement indebting James to Weisman in the amount of \$6,500 and 10% of James' gross compensation. Weisman had also loaned James

\$18,500, and provided him with \$7,500 in legal services.

In 1979, when Weisman filed an action in Los Angeles to recover the sums allegedly owed by James, James moved to dismiss the action on the ground that he was not a resident of California. Weisman demonstrated, however, that James had substantial contacts with the state. James' solely owned company, Stone City, is a California corporation with its principal place of business in Los Angeles. And James recently had filed a petition for divorce in Los Angeles Superior Court alleging that he had been a resident of Los Angeles for at least three months prior to the filing of the petition.

James next demanded that the dispute with Weisman be resolved by arbitration. The trial court denied his petition to compel arbitration and this decision has been upheld on appeal. The appellate court noted that James had not asserted a right to arbitration until about 15

months following Weisman's initial demand, and only after his unsuccessful attempt to transfer tile action on the basis of misrepresentations of fact. Judge Hastings also found it significant that James was not willing to stipulate to personal jurisdiction over him by the Ontario courts or the Ontario Arbitration Panel. According to Judge Hastings, this was an indication that James was not willing to cooperate in an arbitration proceeding in the event that Weisman agreed to drop his action in California, and it was "evidence that James was in fact trying to delay a hearing on the merits."

The fact that Weisman incurred monetary expenses in furtherance of the litigation demonstrated sufficient prejudice to Weisman to support the order denying arbitration, the court ruled.

Weisman v. Johnson, Case 2 civ.6232 (Cal.Ct.App., June 30, 1982) [ELR 4:5:7]

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**Briefly Noted:**

**Libel.**

Referring to a landlord as a "slumlord" is not strictly defamatory under the "innocent construction" rule, an Illinois appellate court has ruled. In an appropriate context, the term "slumlord" "can be construed to mean a person who owned buildings in a poor and dirty neighborhood, or that a person was a "landlord in a slum." The ruling was issued in a case brought by a landlord against CBS and others, alleging that they had defamed him by referring to him as a "slumlord." Under the "innocent construction" rule, allegedly libelous statements must be taken as a whole, and if capable of any innocent construction, the statement is not defamatory.

Rasky v. CBS, 431 N.E.2d 1055 (Ill.App. 1982) [ELR 4:5:7]

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### **Libel.**

A New York appellate court has upheld a lower court ruling (ELR 2:23:6) that a description of campus life at Ithaca College, which appeared in a book published by Berkley Publishing Corporation, was not libelous per se. The description did not refer to the institution itself or to its academic offerings, and did not state that the college condoned the private social activities of its students, including purported drug and alcohol use. In the absence of an allegation of special damages, there was no viable cause of action for defamation, and the order granting

the defendants' motion for summary judgment was affirmed.

Ithaca College v. Yale Daily News Publishing Co., Inc.,  
445 N.Y.S.2d 621 (App.Div. 1981) [ELR 4:5:7]

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### **Copyright.**

Upon proof of infringement, a copyright owner is entitled to an injunction against further unauthorized copying, the owner's choice of actual or statutory damages, reimbursement of costs of suit and reasonable attorney's fees, a Federal District Court in Michigan has ruled. BMI had successfully brought suit against a Michigan lounge owner for the unauthorized use of BMI's copyrighted composition "Blue Suede Shoes." BMI elected to receive statutory damages which gave the court the

discretion to award between \$250 and \$5,000 per infringement, depending upon the circumstances of the infringement. The court found that since the lounge owner had ample notice that BMI held the rights to the infringed song "Blue Suede Shoes," the lounge owner was an intentional infringer. The court therefore awarded BMI \$1,500 per infringement, totalling \$ 15,000.

Broadcast Music, Inc. v. Gary Marshall, No. 77-40087  
(E.D.Mich., May 19, 1982) [ELR 4:5:7]

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## **DEPARTMENTS**

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

Government and Copyright: Merely a Matter of Administrative Discretion by Alan J. Hartnick, 4/2 Communications and the Law 3 (1982)

The Right of Publicity: Resurgence of Legal Formalism and Judicial Disregard of Policy Issues by Kipp Rogers, 16 Beverly Hills Bar Association Journal 65 (1982)

A Critical Appraisal of *Snepp v. United States*: Are There Alternatives to Government Censorship? by Howard C. Anawalt, 21 Santa Clara Law Review 697 (1981)

Case Note: Entertainment Law: An Injunction Restricting an Actor's Right of Publicity and First Amendment Rights is Against Public Policy: *KGB, Inc. v. Giannoulas*, 21 Santa Clara Law Review 845 (1981)

The Writer and the Revenue by B.E.V. Sabine, 1981  
British Tax Review 361 (1981)

Protest Boycotts as Restraints of Trade under the Sherman Act: A Proposed Standard by Francis M. Allegra, 30 Cleveland State Law Review 221 (1981)

Case Comment: *Snepp v. United States* by Frederick W. Whatley, 30 Cleveland State Law Review 247 (1981)

The Constitutionality of the FCC's Television-Cable CrossOwnership Restrictions by Bert W. Rein, John C. Quale, James R. Bayes and John S. Logan, 34 Federal Communications Law Journal 1 (1982)

Offensive Personal Product Advertising on the Broadcast Media: Can It Be Constitutionally Censored? by Gary W. Shinnars, 34 Federal Communications Law Journal 49 (1982)

Television and the Hearing Impaired by Julie Heldman,  
34 Federal Communications Law Journal 93 (1982)

Of Common Carriage and Cable Access: Deregulation  
of Cable Television by the Supreme Court by Andrew  
Nimelman, 34 Federal Communications Law Journal  
167 (1982)

Violence in Professional Sports: Is it Part of the Game?  
by Richard B. Harrow, 9 Journal of Legislation 1 (1982)

Some Perspectives on Art, Organizational Behavior and  
Democracy by Lee G. Cooper, 11 Performing Arts Re-  
view 1 (1981)

Blind Bidding: or What Should be Playing at the Bijou?  
by Ira J. Statfeld, 11 Performing Arts Review 27 (1981)

Investigating the Effectiveness of Promotional Efforts in Arts Organization by Lee G. Cooper, 11 Performing Arts Review 62 (1981)

After the First Sale: The Commercial Resale and Rental of Phonorecords by Jonathan C. Sapirstein, 11 Performing Arts Review 70 (1981)

Fiduciary Aspects of the Personal Manager's Relationship with a Performing Artist by Sanford Jossen, 11 Performing Arts Review 108 (1981)

No Longer the Only Game in Town: A Comparison of the Nevada and New Jersey Regulatory System of Gaming Control by Alvin J. Hicks, 12 Southwestern University Law Review 583 (1981)  
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