RECENT CASES

"WKRP in Cincinnati" episode did not infringe copyright to radio play script despite similarities

The distinction between an unprotectible "idea" and its protectible "expression" has again been the issue in a TV industry copyright infringement suit. The case was brought in Federal District Court in New York City by Salvatore Giaingrasso and Steve Peitrofesa who in 1976 wrote and copyrighted a four page script and gales proposal for what the court described as a situation comedy radio series. The proposed series featured the staff of fictional radio station "WHY-53," including its disc jockeys, news staff, engineer and owner. The script for the pilot episode involved a remote broadcast from the business premises of a station advertiser which is interrupted by an armed robber.

"WKRP in Cincinnati," which is produced by MTM Enterprises, was first broadcast by CBS in 1978. WKRP is also a fictional radio station, and features a staff of disc jockeys, a newsman, an owner, and on at least one occasion an engineer. Furthermore, one episode of "WKRP" involved a remote broadcast from the business premises of a station advertiser which is interrupted by an armed man. Giangrasso and Peitrofesa filed suit, alleging that the "WKRP" episode infringed upon the copyright to their script, and alleging that MTM and CBS had breached an implied contract with them.

The plaintiffs admitted that they never submitted their script directly to MTM or CBS, though in connection with cross-motions for summary judgment (and solely for that purpose), MTM and CBS "conceded the issue of access." However, MTM and CBS argued that the

"WKRP" episode in question was not "substantially similar" to the plaintiffs' script, and thus was not an infringement of it.

The court relied on the "abstractions test" which was first articulated by Judge Learned Hand more than 50 years ago in Nichols v. Universal Pictures, 45 F.2d 119 (2d Cir. 1930). In that case, Judge Hand wrote that in analyzing any work "...a great number of patterns of increasing generality will fit equally well as more and more of the incident is left out. The last may be no more than a general statement of what the work is about, and at times may consist only of its title; but there is a point in this series of abstractions where they are no longer protected, since otherwise the playwright could prevent the use of his 'ideas,' to which, apart from their expression, his property is never extended." Later cases have explained that this means that "the essence of infringement lies in a taking not of a general theme but in its particular expression through similarities of treatment, details, scenes, events and characterizations.

Based on these principles of law, the court in the "WKRP" case ruled that even if MTM and CBS "copied the idea of a remote broadcast interrupted by a robber with a gun, such copying is not actionable because it is only of an idea, and the handling, scenes, details and characterization used by plaintiffs and defendants in their works based on this idea are unquestionably not substantially similar."

In its opinion dismissing the case, the court detailed why the two works were not substantially similar. The court noted that in the plaintiffs' script, the armed robber wanted money, while in the "WKRP" episode, the armed man was an out-of-work radio announcer who merely wanted to get on the air to demonstrate his ability. In the plaintiffs' script, the radio announcer is so oblivious to what is going on, he does not even realize that the robber is armed or is committing a robbery. In "WKRP," the disc jockey is not only aware of what is going on, he sympathizes with the armed man and helps him escape capture by the police. Other similarities between the two were found to be nothing more than "scenes a faire," that is, scenes which would necessarily appear in programs about a certain idea. Among these were scenes in which the radio stations' advertisers do advertising pitches on the air, scenes in which guns are used and the police arrive and countdowns before the remote broadcast begins. The plaintiffs admitted that there was no literal similarity of expression in these scenes.

The plaintiffs also claimed that the characters in "WKRP" were similar to the characters in their script. On this issue, the court said, the plaintiffs would have to suffer the penalty authors must bear when they fail to develop their characters fully. "The less developed the characters, the less they can be copyrighted," the court said, quoting again from Judge Learned Hand. In this case, plaintiffs' characters were said to be mere "types" with little development beyond their positions at the station. Moreover, the characters in "WKRP" which held comparable positions were found to have different traits than those that were described by the plaintiffs in their script.

The court also dismissed the plaintiffs' implied contract claim on the grounds that such claims must be based on a direct submission. The plaintiffs acknowledged they had never made a direct submission to MTM or CBS.

Giangrasso v. CBS, 534 F.Supp. 472 (E.D.N.Y. 1982) [ELR 4:8:1]

ABC and Geraldo Rivera win case in which they were accused of misappropriating an "exclusive story" concerning "true cause" of Elvis Presley's death

Directly or indirectly, the death of Elvis Presley has provoked a seemingly endless string of lawsuits, many of them involving disputes over property (or property-like) rights to the singer's name, likeness, performances or life story. Recently, ABC and Geraldo Rivera won what appears to be one of the most peculiar of these cases - one in which the plaintiff claimed that ABC and Rivera breached a contract with him by misappropriating his "exclusive story" concerning the "true" cause of Presley's death.

The plaintiff in the action was one Larry L. Sellers. In June of 1978, Sellers met with Rivera (then an investigative reporter "occasionally" employed by ABC) and told him that he, Sellers, had an "exclusive story" concerning Presley's death. However, before Sellers would reveal the details of his story, he insisted that Rivera sign an agreement that guaranteed Sellers would own the copyright to the story and that required ABC to publicly credit him with uncovering the "true cause." In return, Sellers agreed not to give the story to any other network or reporter. Rivera signed the contract, and Sellers told his story.

According to Sellers, cortisone was prescribed for Presley for three years before his death. Sellers believed that Presley's doctor and bodyguard replaced the cortisone with placebos, thus causing a collapse of the singer's cardiovascular system which resulted in his death. Alternatively, Sellers said that Presley may have been suffocated by either the doctor or the bodyguard. Sellers hypothesized that the doctor and bodyguard murdered Presley in order to prevent him from seeking repayment of a $1.3 million loan he had made to them for the construction of a racketball center.

Not surprisingly, Rivera told Sellers that he could not use such a story unless it were verified, and Rivera suggested that Sellers investigate the matter further and contact him if he obtained verification. Sellers later called Rivera's wife to say that he had uncovered proof of his theory, but he refused to describe to her the nature of his evidence. That was the last time Sellers contacted Rivera or ABC concerning his story.

Nine months after Rivera signed Sellers' contract, Rivera and producer Charles Thomsen decided to do a feature story about Presley's death. They conducted a two-month investigation and determined that Presley had died from an interaction of prescription drugs rather than from cardiac arrhythmia as officially listed. ABC broadcast an hour-long special based on the Rivera-Thomsen investigation and a number of follow-up stories as well. In none of these did ABC suggest that Presley had been murdered by a withdrawal of cortisone or suffocation.

Nevertheless, Sellers filed suit, alleging that ABC and Rivera had misappropriated his exclusive story, had breached their contract with him and had infringed his copyright. A Federal District Court in Georgia dismissed the case in response to ABC and Rivera's motion for summary judgment, and that dismissal has been affirmed by a Federal Court of Appeals.

On appeal, Sellers contended that there were disputed facts concerning the precise scope of his "exclusive story," and thus summary judgment should not have been granted. Sellers contended that he had also told Rivera that Presley might have died from an interaction of prescription drugs and that the singer's doctor had been grossly negligent in overprescribing drugs for Presley. The appellate court reviewed a transcript of

Sellers' meeting with Rivera and noted that Sellers never specifically mentioned the doctor's alleged negligence, and that Sellers' sole reference to the possibility that Presley may have died from a drug interaction was made in passing and appeared to have been nothing more than background information. Nevertheless said the court, "Assuming without deciding that Sellers did present these additional theories to Rivera...they are so vague and uncertain as to be unenforceable as a matter of law."

The Court of Appeals ruled that under New York law, a vague or indefinite contract will not be enforced. Here, the court determined that Sellers' references to the possibility of a drug overdose, the doctor's negligence and the cover-up of the cause of Presley's death were "at best" broad, general statements. They were not substantiated except by references to previously published books and newspaper articles. The court said that Sellers' theory that Presley was murdered by a withdrawal of cortisone

"May well have been specific enough to give rise to an enforceable agreement." That theory, however, was not used by Rivera or ABC. The idea they may have used was neither specific enough to support a contract, nor novel or unique enough to support a misappropriation or copyright claim, the court ruled.

Sellers v. ABC, 668 F.2d 1207 (llth Cir. 1982) [ELR 4:8:2]

Writer wins $500 "unjust enrichment" judgment against Reader's Digest because it used topic of article writer had submitted, though not article itself

Movie and television producers are not the only ones to whom ideas and manuscripts are submitted. Magazines receive such submissions as well. And recently, the Reader's Digest found itself the target of an infringement, misappropriation and unjust enrichment suit of the sort that so commonly plague producers. What is more, Reader's Digest lost the case, though the modest amount of the award - $500 - and the unique facts of the case make it appear that the court's decision will not become a noted legal landmark.

The facts of the case are an almost poignant story in themselves. The plaintiff was Rosella Werlin, described by the court as "a working journalist for over fifty years" and the author of "hundreds of articles that have been published in various newspapers and magazines throughout the United States." Reader's Digest was not among the magazines that had published Werlin's work, though from 1970 to 1978 she had submitted several articles and ideas to it, all of which the Digest politely declined. Nevertheless, it encouraged her to submit any future work for its consideration. In l978, Werlin wrote an article that was published in a monthly newspaper known as Houston's Legal Advocate. The article was entitled "Rina: A Child Whose Problems Changed Many Lives," and it focused on the story of the Bas Mitzvah ceremony of a young girl named Rina Cahana who was afflicted with Down's Syndrome. Shortly after the article was publised by the Legal Advocate, Werlin sent a copy of it to Reader's Digest, hoping that the Digest would want to reprint it. The Digest does in fact reprint articles that have been published elsewhere previously. It also publishes original articles. As of 1978, the Digest Paid $450 a printed page for previously published articles and $2600 to $3500 for original articles. Sometimes, the Digest asks writers to rewrite articles that are not suitable in their original form, and on occasion it agrees to pay such writers a $500 "kill fee" if it decides not to use the article even after the rewrite. Reader's Digest also paid a $250 "spotters fee to writers who submitted useable articles if the Digest decided to use the topic but have a staff member write an entirely new article on that topic.

In Werlin's case, the Digest liked her topic but not her article. It therefore had a staff editor write an entirely new article about Rina Cahana. In order to do the article, the staff editor spent eight days interviewing the Cahana family and their friends and one of Rina's teachers. He also read background material on Down's Syndrome provided to him by the Digest's research staff. The editor's article was published by the Digest, and, eventually, the Digest sent Werlin a $250 check as her "spotter's fee." Werlin never cashed the check. Instead she sued, alleging that the Digest had infringed the copyright to her article, had misappropriated her idea and been unjustly enriched by its use of her idea.

Although the Digest editor did not deny reading Werlin's article, he testified, and the court found, that he did not take anything from it in writing his own article - except the topic. However, said the court, the topic was nothing more than an unprotectible idea, and thus the Digest's use of the idea was not copyright infringement. Moreover, Werlin's copyright did not give her the exclusive right to the facts in her article either. Although the Digest article and her own contained many of the same facts, the court found that there was no similarity between the pattern of Werlin's article and that of the Digest article. Although there was word-for-word similarity between two short phrases in the two articles, the court found that the phrases in question were not material to Werlin's article, and thus it held that the duplication involved was so de minimis that it did not amount to copyright infringement.

The court also rejected Werlin's misappropriation or unfair competition claim because it ruled that Reader's Digest did not gain access to her idea as a result of a fiduciary or confidential relationship, and because there was no evidence that the Digest's use of her idea diminished its value to her.

Werlin also asserted a quasi-contract or unjust enrichment claim. And it was on this claim that she realized her success. The court ruled that Werlin's article idea was "novel" insofar as Reader's Digest was concerned, because even though it had been published in the Legal Advocate, it was not seriously suggested that the Digest would have come across it if Werlin had not mailed a copy to the Digest herself. Since Werlin had developed her idea into a full article, the idea was "concrete." Furthermore, it was not denied that the Digest actually appropriated Werlin's idea in order to develop an article of its own. Finally, the court emphasized that "over a period of nearly a decade," the Digest had "encouraged" Werlin to submit articles and ideas for its consideration in the hope that "she might one day produce something useable for the magazine." Given these facts, the court expressed its "view" that "this is a classic case of unjust enrichment." The court acknowledged that Reader's Digest had not acted in bad faith. But said the court, to permit the Digest to refuse to pay any compensation to Werlin would be "to permit an injustice of the most fundamental sort." (In so ruling, the court made no mention of the fact that the Digest had sent Werlin $250 long before she ever filed suit.)

Apparently sensing the novelty of its ruling, the court added that it did not purport to hold that any time the Digest uses an article topic suggested by an outside author it is legally obliged to compensate the author. Rather, said the court, "The Court has decided only the case before it; its holding is confined to the facts of the case before it."

The parties had stipulated that if the court found for Werlin on her quasi-contract claim, it should award her such damages as are "proper, equitable, and just under all the circumstances." Given that authority, the court determined that $500 - the amount of the Digest's "kill fee" in 1978 - would be proper, equitable and just under the circumstances, and that is the amount it awarded her. The court did not explain why the $250 "spotter's fee" would have been inadequate, or for that matter, why more wasn't necessary to avoid "injustice."

Werlin v. Reader's Digest Association, 528 F.Supp. 451 (S.D.N.Y. 1981) [ELR 4:8:3]

Home Box Office affiliate obtains injunction barring sales of MDS receiving devices,

The distribution of pay-television signals by over-the-air broadcast has tempted the unscrupulous to intercept those signals with unauthorized receivers. They do so in order to avoid paying monthly fees, apparently without realizing or without caring that such fees are the only source of income for those who provide pay-TV services in the first place. Electronics dealers and hobbyists-turned-businessmen have catered to, and even encouraged, those willing to intercept pay-TV broadcasts by offering to sell them unauthorized receivers in both assembled and kit form. Many of those who sell unauthorized receivers have done so in the belief that there is no law prohibiting their activities. In fact, the law's ambiguity on this issue did lead one court to rule that the interception of HBO transmissions intended for affiliates was not a violation of the law. Orth-0-Vision v. Home Box Office, 474 F.Supp. 672 (S.D.N.Y. 1979) (ELR 1:11:6) This decision, which was issued in a case that HBO won anyway on other grounds, has never been followed. On the other hand, there have been several cases in which courts hive held that the unauthorized interception of pay-TV signals is illegal, and that those who sell unauthorized receivers violate the law as well. (ELR 2:9:4, 2:12:5, 2:19:1, 3:10:5) In another such case, an HBO -affiliate in Denver has just won a preliminary injunction barring the sale of unauthorized receivers.

The plaintiff in this most recent action was American Television and Communications Corporation (ATC). It distributes HBO programming by means of microwave broadcasts over a Multipoint Distribution Service. ATC's subscribers pay a monthly fee and are provided with a microwave antenna and down converter. The defendants in the case admitted that they advertised and sold microwave antennae, down converters, and instructions for receiving ATC's signals without paying its monthly subscription fee. They contended, however, that it was lawful for them to do so.

Such federal law on this issue as exists is found in section 605 of the Communications Act which provides that it is illegal to receive broadcasts which are not "for the use of the general public." According to the defendants, ATC's microwave broadcasts are for the use of the general public, and thus it is not illegal to receive them.

The court disagreed. It ruled that Congress intended that certain broadcasts could be limited to only designated receivers, and that Congress gave the Federal Communications Commission authority to designate those frequencies on which limited broadcasts could be made. The FCC has in fact determined that MDS signals are among those that may be limited, and that the unauthorized interception of such signals is in violation of section 605.

The court noted that unless the defendants were enjoined,ATC would suffer irreparable injury, because it would be unable to determine how many Denver area residents were using unauthorized equipment to receive ATC's signals. The court rejected the defendant's contention that ATC could protect itself by bling its signal. Adding scramblers to ATC's system would merely provide the defendants with another product to sell-unauthorized descramblersthe court observed, and would add substantially to ATC's costs and thus to the costs of its paying subscribers. The court also concluded that the equities favored ATC, and that the public interest favored the protection of pay-TV service from those who would not pay, so that the cost to legitimate subscribers is reduced.

American Television and Communications Corp. v. Western Techtronics, Inc., 529 F.Supp. 617 (D.Colo. 1982) [ELR 4:8:6]

Briefly Noted:

Tax.

Expenses incurred in producing master sound recordings quality for investment tax credit under the Internal Revenue Code, a Federal Court of Appeals has ruled in a case brought by EMI and Capitol Records. The court's decision was rendered in a brief, three-paragraph "per curiam" opinion which merely said that a recording company's right to investment tax credit for master tape expenses was "squarely controlled" by similar cases that have arisen in the movie industry, including Bing Crosby Productions v. United States, 588 F.2d 1293 (9th Cir. 1979) (ELR 1:2:1). Those cases held that movie producers are entitled to investment tax credits for the expenses they incur in producing movies. According to the court, "no principled distinction can be drawn between" the movie industry cases and record industry cases, and thus the court affirmed a District Court order in favor of EMI and Capitol.

EMI North American Holdings v. United States, No. 81-5655 (9th Cir., April 28, 1982) [ELR 4:8:6]

Sports.

The Georgia Supreme Court has held that Georgia state courts do not have authority to review decisions of football referees because those decisions do not present "judicial controversies." The court's decision reversed a trial court order requiring the replay of the last seven minutes of a game between Osborne and Lithia Springs High Schools-a game that determined which of those schools would qualify for the playoffs. Apparently, it was not disputed that a referee had imposed an improper penalty that may have affected the outcome of the game. The trial court had concluded that the players on the losing team had a "property right" in the game being played according to the rules, and that the referee's failure to correctly apply those rules denied the losing players this property right and equal protection of the law. The Georgia Supreme Court ruled otherwise, however. It held that high school football players have no such protectible property, and furthermore, were not denied equal protection by the referees' error.

Georgia High School Association v. Waddell, 285 S.E.2d 7 (Ga. 1981) [ELR 4:8:6]

Sports.

A 19-year-old woman who had hoped to enter this year's Golden Gloves boxing competitionbut was denied permission to enter the tournament because she is a woman-also has been denied the preliminary injunction she sought from a Federal District Court in Michigan. The woman contended that she had been discriminated against in violation of the Equal Protection Clauses of the United States and Michigan Constitutions and the Michigan Civil Rights Act. The court disagreed, however, for two reasons. First, it found that the "men-only" rule in question was adopted by the Amateur Boxing Federation which is an entirely private organization. Thus the court found that enforcement of that rule did not involve "state action" and thus did not violate the Equal Protection Clauses of either constitution. Second, the court found that even if state action had been present, the rule would not have violated the equal protection clause, because the law permits genderbased classifications in connection with contact sports.

Lafler v. Athletic Board of Control, 536 F.Supp. 104 (W.D. Mich. 1982) [ELR 4:8:7]

Labor Relations.

When broadcast engineers employed by the American Broadcasting Company and the National Broadcasting Company brought an action under the Fair Labor Standards Act (FLSA) seeking an award of unpaid overtime compensation for overseas work, ABC and NBC claimed that the action actually was being brought by the engineers' union, the National Association of Broadcast Engineers and Technicians (NABET). The Portal-toPortal amendments to the FLSA, which were enacted in 1947, bar a union or any third party from bringing such an action. The amendments were passed in order to prevent large group actions from being brought on behalf of employees who have no real involvement in the subject matter of the lawsuit. NABET did undertake certain activities in connection with the engineers' claim, such as notifying its membership of the filing of the action and corresponding with NBC on the matter. But a Federal District Court in Washington, D.C., has found such activities to be insufficient to constitute actual representation by the union which is prohibited by the amendments. The court also found that the employees' FLSA rights were not waivable and were independent of the collective bargaining process. The networks' motion for summary judgment therefore was denied.

Arrington v. National Broadcasting Company, Inc., 531 F.Supp. 498 (D.D.C. 1982) [ELR 4:8:7]

NEW LEGISLATION AND REGULATIONS

FCC deregulates over-the-air subscription television

The Federal Communications Commission has deleted four of its rules for over-the-air subscription television (STV) stations, and in so doing has virtually deregulated that industry. The rules in question were those that previously (1) restricted STV to communities that had four other conventional television stations; (2) required STV stations to broadcast at least 28 hours per week of conventional programming; (3) required STV operators to lease-rather than sell-decoders to their subscribers; and (4) required STV applicants to ascertain the "needs and interests" of their communities with regard to subscription television.

The "compliment of four" rule - restricting STV to communities that already had four other conventional television stations - originally was adopted by the FCC in 1968 when over-the-air subscription service was first authorized. The purpose of the rule, as well as several others adopted at that time, was to assure that conventional "free" television programming would continue to exist. A companion rule, for example, provided that only one STV station would be authorized for each community, no matter how many conventional stations already serviced that community.

As interest in pay television grew, however, the FCC decided to review its STV rules. In 1977, the FCC initiated a proceeding for that purpose and determined that STV would not squeeze out conventional television programming. Instead, the FCC found that STV would stimulate the use of unused UHF channels. Thus, in 1979, the FCC eliminated its "one-to-acommunity" rule.

For much the same reason, the FCC now has deleted its "compliment-of-four" rule. This rule had prevented STV operations in communities which, because of their small size, did not have four conventional television stations. There are 133 such communities in the United States comprising 25% of all TV households. The FCC has determined that deleting this rule will allow STV to operate in these communities without squeezing out or blocking the development of conventional stations.

The "28-hour" rule also was intended to ensure the availability of conventional, free programming by requiring STV stations to broadcast at least 28 hours of such programming. Now, however, the FCC no longer sees the need for regulations protecting conventional programming. The FCC noted that even if STV stations begin broadcasting pay-TV programming 24 hours a day, free programming will still, be available from conventional stations in every community.

The FCC previously required STV operators to lease, rather than sell, decoders to their subscribers. The FCC believed that such a rule was necessary to protect consumers from equipment obsolescence and possible cessation of STV service. Now the FCC is persuaded that the advantages of allowing STV operators to sell decoders outweigh the protection provided by its "lease only" rule. The advantages of selling decoders are financial, for STV operators and their subscribers alike. Apparently, the cost of purchasing a decoder may be no greater than the rental fees subscribers would pay over a two or three year period. Thus, long term subscribers may eventually " save" the full cost and more of their initial purchase. Furthermore, the revenues received by STV companies from the sale of decoders will provide them with working capital without the interest expense incurred when such capital is borrowed. Presumably, a portion of these savings will trickle down to subscribers as well, in the form of lower subscription fees than would have been necessary had STV companies borrowed their working capital. Some STV operators opposed the elimination of the "lease only" rule on the grounds that the sale of decoders will aggravate an already serious piracy problem. Others opposed it on the grounds that decoder obsolescence is still a problem requiring consumer protection. The FCC did not dispute that both of these problems may exist On balance, however, it decided that STV operators should not be restricted from making changes in their business practices in response to the "requirements of the marketplace."

Since 1969, applicants for STV authorization have been required to survey their communities' STV "needs and interests" and to advise the FCC how they intended to satisfy such needs. The FCC has now concluded that the "operation of the marketplace" will determine whether STV operators are meeting the needs and interests of the communities they serve, and thus the "costly, time-consuming burden" of doing an ascertainment survey is no longer necessary.

Subscription Television Service, 47 Federal Register 30069 (FCC 1982) [ELR 4:8:4]

FCC adopts interim rules for Direct Broadcast Satellites

Almost 40 years ago, Arthur C. Clarke forecast direct space-to-earth transmissions in an article in Britain's Wireless World. Today, Clarke's future - and his prediction - have arrived, and broadcast satellites exist. At the present time, these satellites are used to distribute television programming to local broadcast stations and cable systems. As a technical matter, however, it is also possible to use satellites to broadcast directly to home television receivers, eliminating the "middleman" station or cable system altogether.

In 1980, the Federal Communications Commission initiated a proceeding to study whether authorizing direct broadcast satellites (DBS) would serve the "public interest." Now the FCC has decided that they well might Accordingly, the FCC has adopted interim rules for licensing and operation of direct broadcast satellites, thus making DBS service a possibility as early as 1986.

The rules are considered "interim" because they are conditioned on the outcome of the next Regional Administrative Radio Conference which will convene in Geneva in July 1983. The Conference will plan the orbit and frequencies for direct broadcast satellites in the Western Hemisphere.

The FCC has allocated a portion of the broadcast spectrum for DBS use, has set DBS license terms at five years, and has adopted what it called a "flexible regulatory approach" to the manner in which DBS operators may provide service. Thus, DBS operators will be permitted to experiment with the nature of the service they offer. Some may elect to become common carriers that will lease their channels to those with programming. Other DBS operators may become broadcasters, choosing the programming that they themselves will offer. The FCC has indicated that DBS systems will be classified according to the nature of their operations. Those who operate as common carriers will be regulated under the provisions of the Communications Act applicable to common carriers, such as those requiring public access, while DBS systems, that operate as broadcasters will be subject to provisions applicable to broadcasters such as the fairness doctrine and equal time rules.

The FCC decided not to restrict the ownership of DBS systems or control of DBS channels, because it believes sufficient competition should exist among DBS systems and between DBS and other sources of programming to prevent abuses. It did say, however, that if concentration of control appeared to be a problem in particular areas, it would consider those situations on a case-by-case basis.

The FCC also declined to impose technical standards on DBS transmissions beyond those required by international agreements.

The establishment of DBS service was not without controversy. Conventional broadcasters oppose DBSThey argued that DBS conflicts with the FCC's long standing policy favoring local broadcasting. They also argued that DBS will jeopardize local conventional broadcasting. The FCC, however, said that it had no way to predict what effect DBS would have on conventional broadcasting. On the other hand, the FCC noted that DBS could prove very valuable by providing television service to remote areas, by providing additional channels throughout the country, and by providing new kinds of service such as high-definition television, stereo sound, teletext, dual-language sound tracks and nonentertainment services. Thus, the FCC concluded that in the absence of evidence that DBS will have an adverse effect on conventional broadcasting, it should not bar the development of DBS on the basis of speculation concerning harm it might do.

Direct Broadcast Satellites, 47 Federal Register 31555 (FCC 1982) [ELR 4:8:5]

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Copyright: No Fair Use Excuse for Sony's Home Videorecording Infringement by M. Kathryn Webb, 21 Washburn Law Journal 679 (1982)

The Unauthorised Commercial Exploitation of the Names and likenesses of Real Persons (a comparison of

British and American law) by Allison Coleman, 4 European Intellectual Property Review 189 (1982)
[ELR 4:8:7]

Book Notes:

Lindey on Entertainment and the Arts: Agreements and the Law by Alexander Lindey.

Newly expanded to three volumes, this is the second edition of a widelyused set that first appeared in 1963. It is primarily a collection of contract forms for use in virtually every segment of the entertainment industry including books, magazines, newspapers, plays, artworks, photographs and advertising, as well as motion pictures, television, radio, music and sound recordings. In addition to forms, however, these volumes also include helpful legal and business commentary and key case summaries. Published by Clark Boardman Company, Ltd., 435 Hudson Street, New York, N.Y. 10014; phone (800) 221-9428, in N.Y.S. (212) 929-7500 collect. The entire set costs $210; a 10% discount is offered to those who enclose payment with their order. [ELR 4:8:8]

Independent Publishing: Contracts and Finance in the 1980's, edited by Paul Kleyman.

This 20-page booklet was published by the Bay Area Lawyers for the Arts for the lay reader including authors, self-publishers and small book companies. Printed in a magazine-like format, it consists of a dozen articles describing the author-publisher contract, book-selling, arbitration and mediation of disputes, and the structuring of financial investments in publishing ventures. Also includes a bibliography. Cost is only $3.50 per copy plus $1.00 for mailing. Order directly from the Bay Area Lawyers for the Arts, Fort Mason Center, San Francisco, CA 94123; phone (415) 775-7200. [ELR 4:8:8]