RECENT CASES

Alleged creator of juvenile awareness program depicted in documentary and docudrama "Scared Straight" did not have common law copyright in program; infringement suit against films' producers and broadcasters is dismissed

As a documentary, "Scared Straight" attracted considerable attention. It won an Academy Award and inspired a television docudrama entitled "Scared Straight - Another Story." It also attracted the attention of an inmate at New Jersey's Rahway State Prison. The inmate's name is Richard Rowe, and he claimed to be the originator of the "juvenile awareness program" that was depicted in both films. Rowe made this claim in a complaint he filed against Golden West Television

Productions and Arnold Shapiro, the producers of both films, and against CBS, the network that aired the docu-drama version. According to Rowe's complaint, he owned a common law copyright in the juvenile awareness program - a copyright that the films infringed. Rowe also alleged that his right of privacy had been infringed.

A New Jersey trial court judge dismissed Rowe's complaint. (ELR 3:7:2) The judge ruled that Rowe did not have a common law copyright in the program and that his privacy had not been invaded, because Rowe had not been mentioned, referred to or depicted in either film.

Rowe appealed the dismissal of his copyright claim, but the Appellate Division of the New Jersey Superior Court has affirmed the trial judge's decision. In a carefully considered opinion, the appellate court explained that Rowe's case was without merit for at least two reasons.

New Jersey state law does appear to afford protection to unpublished literary property if it is put in writing (or tangibly recorded in some other fashion). In his suit, Rowe claimed that the juvenile awareness program was literary property. The essence of the program was a series of sessions, conducted within the prison, in which inmates serving life sentences had face-to-face confrontations with juveniles that had had difficulties with the law. The purpose of these sessions was toshow the juveniles the harshness and brutality of prison life in the hope that the juveniles would be "scared straight." According to Rowe, these sessions were dramatizations of prison life which he had structured by instructing the inmates on what to say to the juveniles and how to say it, and by rehearsing with them. However, Rowe never scripted these sessions or tangibly recorded them in any other fashion. Thus, even New Jersey law would not classify the sessions created or rehearsed by Rowe as literary property, nor would it afford him any other protection.

Furthermore, the appellate court also ruled that even if Rowe did dramatize the sessions, and even if the sessions were a "concrete" expression of his work, his claim had to fail because New Jersey state law has been preempted by the Federal Copyright Act. Since January 1, 1978 - four months before "Scared Straight" was filmed and more than a year before it was first broadcast - federal law has provided that the protection of all literary property, unpublished as well as published, shall be governed by the Copyright Act itself. The Act expressly states that since 1978, no one is entitled to copyright-like protection under the common law or statutes of any state. Since New Jersey's state law did afford protection equivalent to that afforded by the federal Copyright Act, New Jersey's law has been preempted. Since Rowe never registered a claim for federal copyright protection, he did not and could not base his suit on federal law.

In a separate and unrelated case, eight teenagers who were depicted in the "Scared Straight" documentary filed a libel suit against Golden West, Shapiro, and WNEW-TV (which broadcast the film in the New York-New Jersey area), even though their parents had signed releases before they participated in the filming. According to news accounts, a jury has ruled against the juveniles and in favor of the producers and station, and thus that case has been dismissed as well.

Rowe v. Gold West Television Productions, 445 A.2d 1165 (N.J.Super.A.D. 1982) [ELR 4:15:1]

Philadelphia Mummer's Association did not violate right of first refusal clause in its contract with WPVI-TV when it granted right to televise New Year's Day parade to competing broadcaster

WCAU-TV in Philadelphia will be striking up the band for the traditional New Year's Day Mummer's parade as a result of a ruling by a Philadelphia Superior Court judge. The parade features elaborately costumed string bands, many of which are members of the Philadelphia New Year Shooters and Mummers Association, Inc. The event had been televised exclusively by WPVI-TV for many years. In September of 1977, WPVI and the Mummers entered into a new written agreement whereby WPVI agreed to supply $10,000 worth of advertising to the Mummers and to pay the organization $13,000 for the right to televise the parade in 1978, $14,000 for the 1979 parade, and $15,000 for the 1980 parade. The agreement also included, in Paragraph 5, a provision by which the station was granted "the first option and privilege" to renew the agreement on the same terms and conditions as "any bona fide offer" received by the Mummers.

In June of 1980, the Mummers accepted WCAUTV's offer to televise the parade in return for the payment of $100,000 per year for three years. And shortly thereafter, WCAU and the Mummers brought an action for declaratory relief against WPVI contending that the WPVI agreement was void and unenforceable.

The lower court found that WPVI had failed to exercise its first refusal option during the two months after the station received notice from WCAU of the offer which the Mummers planned to accept (or of the filing of their lawsuit), and thus WPVI had no right to televise subsequent parades.

On appeal, Superior Court Judge Beck determined that Paragraph 5's "first option and privilege to renew" constituted a right of first refusal clause by which the Mummers, during the term of the clause, were obligated to offer television rights to the parade to WPVI on the terms of any bona fide offer from a third party which the Mummers decided to accept. The difficulty with the WPVI agreement, however, was that the term of the first refusal clause was not established in the agreement.

The court concluded that either January 1, 1980 -the last date mentioned in WPVI's contract - was intended as the termination date of the agreement, in which case the Mummer's obligation to give notice expired on that date or no later than two months thereafter; or that the agreement was so vague as to the termination date as to be null and void. In either event, WPVI did not possess a viable right of first refusal on June 19, 1980 when the

Mummers received the WCAU offer, and the Mummers were free to contract with WCAU.

CBS Inc., v. Capital Cities Communications, Inc., 448 A.2d 48 (Pa. Super. 1982) [ELR 4:15:2]

FCC may consider "renewal expectancy" as a factor in comparative broadcast license renewal proceedings

When conducting broadcast license renewal hearings, the FCC engages in a comparative weighing of pro-renewal considerations against anti-renewal considerations. In the case of Cowles Broadcasting, the licensee operating on Channel 2 in Daytona Beach, Florida, the Commission determined that there were four considerations weighing against Cowles' renewal application:

Cowles' illegal move of its main studio; the involvement of several related companies in mail fraud; the company's ownership of other communications media; and its relative lack of managementownership integration. The FCC concluded, however, that Cowles' past performance record was "superior" and therefore granted the license renewal. A Federal Court of Appeals reversed this decision (ELR 1:10:7) on the grounds that the Commission had inadequately investigated the anti-renewal factors and that the process engaged in by the FCC of weighing these factors against the company's past record was unclear. The court questioned whether the FCC had effected an irrebuttable presumption of license renewal, contrary to the full-hearing requirement of the Communications Act.

On remand, the FCC, after a thorough analysis of the anti-renewal considerations, again ruled that Cowles rather than Central Florida Enterprises was entitled to the Daytona license. This decision has been affirmed by the Court of Appeals. The court agreed with the FCC that an incumbent licensee is entitled to some degree of renewal expectancy in a comparative hearing. As understood by the court, the new policy is that "renewal expectancy" is to be a factor weighed with all the other factors, and the better the past record, the greater the renewal expectancy "weight." This approach will benefit broadcast consumers, declared the court, in three ways: (1) a challenger's "paper proposals" may not match an incumbent's proven performance, in which case replacing an incumbent might deprive the community of acceptable service; (2) the likelihood of renewal will encourage licensee investments to insure quality service to the community; and (3) comparing incumbents and challengers as if they were both new applicants might result in a haphazard restructuring of the broadcast industry detrimental to the public interest.

The renewal expectancy formulation was applied appropriately in the Cowles proceeding and did not "degenerate" into the dreaded irrebuttable presumption, stated Judge Wilkey. The Commission examined, with great specificity, Cowles' community orientation and reputation and the amount of programming devoted to local topics, and found a "substantial" record of service. A thorough investigation then was undertaken of the mail fraud issue and the studio move. In all, Cowles' conduct neither consistently broke the Commission's rules nor disserved the community. In concluding the "weighing" process, the FCC found that while Central did possess an advantage in terms of diversification and integration, this did not outweigh Cowles' meritorious record even when balanced with the anti-renewal factors.

The court then stated that it was encouraged in its expectation that the FCC will continue to apply this new renewal standard correctly by a recent decision which denied, on comparative grounds, the renewal application of an incumbent radio station licensee. In Application of Simon Geller and Grandbanke Corp., FCC Docket Nos. 21104-5 (June 15, 1982), the incumbent was denied any renewal expectancy due to a poor program record.

The court did take the opportunity to warn the Commission to recall that the renewal expectancy must not be invoked if doing so would be harmful to the public interest. Apparently, this caveat was directed to the fact that an incumbent television station licensee has never been denied renewal in a comparative challenge despite the filing of many such challenges.

Central Florida Enterprises, Inc. v. Federal Communications Commission, 683 F.2d 503 (D.C.Cir. 1982) [ELR 4:15:2]

Smuggled Tintoretto masterpiece may not be forfeited to federal government until purported owner is afforded opportunity to show that he sought to prevent illegal activity

An individual claiming that he purchased the Tintoretto painting "The Holy Family with Saint Catherine And Honored Donor" in a second-hand shop in Moscow in 1948 will be entitled to present his allegations of ownership in a forfeiture proceeding.

Isaac Silberberg, an Israeli national, asserted that he purchased the painting, suspecting that it was valuable but not aware of its authorship, for approximately $20,000 in rubies. The painting is now valued at about $500,000. In 1979, Silberberg decided to sell the painting and made arrangements through Raymond Vinokur, an art dealer, to ship the painting to the United States.

The FBI then entered the picture. An investigation revealed that the masterpiece was stolen from the Dresden Gallery of Art in East Germany at the close of World War II. The painting reputedly was taken to the Soviet Union and later transported to Israel. When the Tintoretto arrived in the United States, it was stated in the customs declaration that the painting was not for resale and had a value of $500. However, in negotiations with an FBI agent posing as an art dealer, Vinokur offered to sell the painting for $250,000. Vinokur pleaded guilty to filing a false customs declaration. The government obtained possession of the painting and began a forfeiture proceeding in rem. A Federal District Court granted summary judgment for the government, but this decision has been reversed on appeal.

The government had argued that because the painting was freely transferred from Silberberg to Vinokur, and was not stolen from the owner, the forfeiture did not deprive Silberberg of due process rights under the Fifth Amendment. But the court of Appeals noted a second exception to the rule that an owner's innocence is no defense to a claim of forfeiture. This exception occurs when an owner proves "not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property." This exception was suggested in dicta by the United States Supreme Court in Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 666 (1974). But the dicta is "in accord with the policy and history of civil forfeiture in this country," stated Judge Richard J. Cardamone, There was an arguable claim that Silberberg was not involved in or aware of the smuggling of the Tintoretto into the United States. Silberberg also alleged that he did all that "reasonably could be expected" to prevent the proscribed activity, because he was assured by Vinokur that customs regulations would be followed and agreed to reimburse Vinokur for any required duties. These factual issues precluded the granting of summary judgment, concluded the appellate court, because absent a hearing, the forfeiture might violate the Fifth Amendment.

United States of America v. One Tintoretto Painting, Docket No. 82-6021 (2d Cir., Oct. 15, 1982) [ELR 4:15:4]

New Jersey Supreme Court upholds Casino Control Commission ruling denying Atlantic City casino's application for a license due to casino's association with unqualified individuals

When the Boardwalk Regency Corporation applied for a license to operate a casino in Atlantic City, New

Jersey's Casino Control Commission ruled that Boardwalk Regency's application would be denied unless Clifford and Stuart Perlman were removed from positions of control in the Caesars World organization. Boardwalk Regency is a part of Caesars' "corporate hierarchy." The Commission determined that the Perlmans had not met the statutory licensing requirement of demonstrating, by clear and convincing evidence, their good character, honesty and integrity. An appellate court upheld the Commission's ruling (ELR 3:17:4) but eliminated the requirement that the Perlmans disengage themselves from their nongaming interests located outside of New Jersey as a condition of granting the license to Boardwalk Regency.

The New Jersey Supreme Court has reinstated the Commission's original condition regarding the nonNew Jersey, non-gaming interests of the Perlmans. The court questioned whether any distinction should be made between gaming and non-gaming subsidiaries, and stated that "The question remains, in either instance, whether the presence of either Perlman in the Caesars World Incorporated corporate structure carries with it the opportunity for them to exert their personal influence in the operation of Boardwalk Regency. In the non-gaming as well as the gaming setting that question must be answered in the affirmative." In all, the divestiture of the Perlman's non-gaming interests bore a rational relationship to the state's legitimate interest in preventing them from exerting corporate power and influence over Boardwalk Regency, concluded Judge Clifford.

Judge Pashman, although concurring with the majority opinion in part, dissented from that part of the affirmance of the Commission's order regarding the participation by the Perlmans in non-New Jersey subsidiaries of Caesars World. Judge Pashman stated that he would have remanded the case to the Commission for a factual finding on the Perlman's ability to control Boardwalk Regency via corporate positions in other Caesars World subsidiaries. Since the original ruling by the Commission, the Perlmans sold all their stock in Caesars World and resigned as officers in the parent companies of Boardwalk Regency. If the evidence were to reveal that the Perlmans actually were no longer able to exercise control over Boardwalk Regency, they would not have to be individually qualified in order for Boardwalk Regency to obtain a license, noted Judge Pashman.

In re Boardwalk Regency Corporation Casino License, 447 A.2d 1335 (N.J. 1982) [ELR 4:15:4]

Spectator injured by foul ball during New York Yankee game is denied recovery because team

exercised reasonable care by providing screening for home plate area

Out of the sparse crowd of 21,392 spectators attending a New York Yankee doubleheader at Yankee Stadium on the evening of July 21, 1977, David Clapman became the unfortunate victim of a foul ball which struck him in the left eye. As a result of being hit by the ball, Clapman lost the sight in his eye. He brought an action against the ball club, the City of New York (which owns Yankee Stadium) and the architect of the ballpark alleging that these parties negligently constructed and designed the stadium by failing to extend the protective metallic mesh screen surrounding the home plate area to the area behind the Yankee dugout near first base where Clapman's seat was located. A New York court has dismissed Clapman's action on the ground that the defendants had met their duty of care to ballpark spectators.

The court pointed out that prior to 1975, the application of the assumption of risk doctrine would have served as a complete bar to Clapman's action without regard to the degree of care exercised by the owners of the ballpark. In 1975, New York enacted a comparative negligence rule (CPLR 1411) which provides that assumption of risk may not bar recovery totally but may diminish the amount of any recovery. However, in a recent ruling. Akins v. Glens Falls City School District (53 N.Y.2d 325), New York's Court of Appeals, in a 4-3 decision, declared that CPLR 1411 does not apply when a spectator is injured in the course of a baseball game. The court in Akins declared that an owner of a ballpark "is not an insurer of the safety of its spectators." The owner's duty is to exercise "reasonable care under the circumstances" to prevent injury to those in attendance. This does not mean that the entire playing field must be screened, particularly since many spectators prefer an unobstructed view of the game. The Akins court, possibly in order to reach the same result as in baseball injury cases decided by New York courts before the enactment of CPLR 1411, stated that the proprietor of a ballpark "need only provide screening for the area of the field behind home plate where the danger of being struck by a ball is the greatest. Moreover, such screening must be of sufficient extent to provide adequate protection for as many spectators as may reasonably be expected to desire such seating in the course of an ordinary game."

Clapman never attempted to change his seat to a screened area. And he was in a position to see the pitcher and batter despite his claim that his view was obstructed by "negligently supervised" vendors. Judge Wallace R. Cotton therefore concluded that the court was obligated to dismiss Clapman's complaint.

Clapman v. City of New York, N.Y.Sup.Ct., New York Law Journal, p. 13, col. 4 (Nov. 24, 1982) [ELR 4:15:5]

Wells Fargo is denied registration of a stagecoach symbol for use in connection with restaurant services due to objections of prior user of symbol

Stagecoach Properties, Inc., has beaten Wells Fargo to the draw in a showdown over the use of a stagecoach symbol in connection with restaurant services. In 1974, Wells Fargo sought registration of two symbols - a rendering of a stagecoach and of a stagecoach bordered by a stylized diamond - to promote its employee restaurant services. Whoa, cried Stagecoach Properties, claiming prior use, dating from October 1960, of a stagecoach symbol for motel and restaurant services. Stagecoach's mark consisted of a picture of a Western stagecoach pulled by four horses. The words "Wells Fargo Lines" appeared in small print on the side of the stagecoach. Stagecoach had obtained service mark registration for the term "Stagecoach Inn" in 1968.

The Trademark Trial and Appeal Board denied Wells Fargo's application for registration on the alternative grounds that (1) Wells Fargo's marks were confusingly similar to Stagecoach's previously used, unregistered marks, and (2) that they were confusingly similar to Stagecoach's registered Stagecoach Inn service mark. This decision was upheld by a Federal District Court and has been affirmed, on the first ground, on appeal.

Wells Fargo had claimed that it first used the stagecoach symbol in 1918 to promote employee lunchrooms. While such "in-house" use may be sufficient to establish trademark rights, evidence was not presented in this case of actual use of the mark to promote restaurant services prior to Stagecoach's use. Wells Fargo also was unsuccessful in its claim that the company's use of the stagecoach symbol for banking services established priority in this proceeding. The fact that the words "Wells Fargo Lines" appeared in Stagecoach's mark did not demonstrate a deliberate attempt by Stagecoach to exploit Wells Fargo's commercial goodwill. The Board found that this use was derived from a general history of the American West. Despite the fact that another of Stagecoach's symbols - a stagecoach in an oval - was strikingly similar to a mark used by Wells Fargo for banking services, the Court of Appeals stated that the District Court could have concluded that the Board's finding of no unclean hands on the part of Stagecoach was not overcome by this evidence of similarity.

Wells Fargo & Company v. Stagecoach Properties, Inc., Case No. 81-4175 (9th Cir., Aug. 24, 1982) [ELR 4:15:5]

Briefly Noted:

Cable Television.

A cable television service operating exclusively within the bounds of a 400-unit apartment complex has been ruled a public utility subject to regulation by the township of Meridian, Michigan. Therefore, the service may not continue to operate without a franchise issued pursuant to the township's cable communications ordinance, a Court of Appeals in Michigan has concluded. The court found that a lower court erred in granting summary judgment to the owner of the apartment cable service. The service was not a "mere device for the enhancing of the effectiveness of television antennas." It was a true cable television service comparable to the service offered by the company holding a franchise to operate in the township. The appellate court also reversed a lower court ruling that it lacked equitable jurisdiction to enforce compliance with the ordinance because it provides criminal penalties. The Court of Appeals determined that the operation of the unfranchised cable service was a continuing infraction and that criminal sanctions would not provide an adequate remedy at law. Further, the determination of damages, based on the fees that the township might receive if its franchisee were permitted to offer its services to the tenants of the apartment complex, would be speculative at best.

Charter Township of Meridian v. Roberts, 319 N.W.2d 678 (Mich.App. 1982) [ELR 4:15:6]

Antitrust.

Sports Form, a company which disseminates horse racing information to bookmakers in Nevada, entered into an agreement with UPI to purchase three news wire services which supply horse racing and general sports information. Sports Form subsequently contended that UPI refused to sell its horse racing newswire separately and that the company's insistence on selling the three wire services as a package was an illegal tying arrangement. A Federal District Court determined that Sports Form had represented to UPI that it wished to purchase the same services UPI provided to Sports Form's principal competitor and that Sports Form therefore was estopped from claiming that the contract with UPI was one of adhesion or that a tying arrangement was involved. A Federal Court of Appeals has affirmed the District Court's denial of a preliminary injunction, because it found that Sports Form had failed to demonstrate that it would prevail on the merits of its claim.

Sports Form, Inc. v. United Press International, Inc. Case No. 81-5647 (9th Cir., Aug. 27, 1982) [ELR 4:15:6]

Theater Condemnation.

The city of Concord denied a use permit to the owner of an outdoor movie theater who sought permission to install three additional outdoor theater screens on his property. Concord did so on the ground that the proposed expansion was contrary to a redevelopment plan. The fact that city officials were aware that the property would soon be the subject of a condemnation proceeding did not entitle the theater owner to additional condemnation damages based on an improper precondemnation denial of the use permit, a California Court of Appeal has ruled.

Redevelopment Agency of the City of Concord v. Contra Costa Theatre, Inc., Case No. 1 Civ. 51799 (Cal.Ct.App., Aug. 17, 1982) [ELR 4:15:6]

First Amendment.

The California Supreme Court has declared unconstitutional a Santa Clara County ordinance prohibiting nude entertainment in any public place other than a concert hall, theater or similar establishment "primarily devoted to theatrical performances." Ordinances regulating nude dancing have been upheld in very limited circumstances, most typically, when the ban extends to performances in establishments serving alcohol. Santa Clara's ordinance was not so limited and therefore infringed upon protected free speech rights, ruled the court. Thus, the county was barred from enforcing the ordinance. Judge Richardson, in a strong dissent, stated that he would have continued to follow the court's decision in Crownover v. Musick, 9 Cal.3d 405 (1973), in which it was held, alternatively, that (1) because nude dancing ordinances regulate conduct, not speech, they enjoy no First Amendment protection and (2) even if some protected "communicative element" may exist, substantial government interests justify the regulation or prohibition of nude dancing. Judge Richardson noted that the United States Supreme Court has not yet conclusively ruled on the constitutionality of nude dancing bans. And in this case, several "substantial and demonstrable" interests on the part of the state and of Santa Clara County appeared to justify the regulations imposed by the county on the commercial exploitation of female nudity in a nontheatrical setting.

Morris v. Municipal Court, Case No. S.F. 24347 (Cal., Oct. 18, 1982) [ELR 4:15:6]

Copyright.

A New York state court has dismissed an indictment charging an individual with the unauthorized recording of sound in connection with the alleged manufacture and sale of videotapes of films such as "Raiders of the Lost Ark," "The Empire Strikes Back," "Star Wars," and various Disney films. The applicable sections of the state's Penal Law were not ruled unconstitutional per se as they may be applied to tapes fixed prior to January 1, 1978. But the application of the statutes was constitutionally impermissible in this case, ruled Judge Michael J. Dontzin. The tapes in question were fixed subsequent to January 1, 1978, the effective date of the 1976 Copyright Act. Thus, New York's statute would be protecting the same rights as does the federal Copyright Act in violation of the Supremacy Clause of the United States Constitution. Nevertheless, stated Judge Dontzin, the items seized remained contraband, and thus the court refused to order the return of the tapes to the defense since the tapes may be turned over to federal authorities.

People v. Greenfield, New York Law Journal, P. 13, col. 1, Nov. 16, 1982 [ELR 4:15:6]

Sports.

Failure to provide adequate protection to spectators at a hockey game "constituted a dangerous condition that presented a foreseeable risk of injury," according to a Court of Claims in New York. Eleven-year-old Thomas Benjamin was struck and injured by an errant puck while watching a hockey game at the State University of New York's Romney Arena. Thomas brought suit, alleging that "the State negligently failed to provide adequate protection for the safety of spectators seated in the arena . . ." by leaving unprotected areas in front of the players' benches. The state argued that "due care required it only to provide protective seating behind the goal where the danger was the greatest." The court rejected the State's argument, relying upon Thomas' expert witness, who testified that "in similar facilities, it was the usual and customary practice to protect the area around the players' bench. Absent such protection, it was the usual and customary practice to restrict seating to an area without the zone of danger." Finding the State negligent, the court rejected the State's assertion that Thomas had assumed the risk of injury by moving from his assigned seat in the more protected area behind a goal to a sideline seat. "When he (Thomas) took his seat in the protected area on the sidelines' he had the right to assume that every reasonable care had been taken for his safety."

Benjamin v. State, 453 N.Y.S.2d 329 (N.Y.Ct.Cl. 1982) [ELR 4:15:7]

Previously Reported:

The United States Supreme Court has declined to hear the following cases: Roy Export v. CBS (4:1:1); Cooper v. Mitchell Brothers (4:1:5); Atari v. North American

Philips (4:5:3); Twin City Sportservice v. Charles 0. Finley & Co. (4:6:5); and Amusement and Music Operators Assn. v. Copyright Royalty Tribunal (4:13:6).

Decisions in the following cases have been published: Burroughs v. MGM, 683 F.2d 610 (4:4:1); Universal City Studios v. Film Ventures International, 543 F.Supp. 1134 (4:3:1); Maressa v. New Jersey Monthly, 445 A.2d 376 (4:6:4); Resorts International v. NJM Associates, 445 A.2d 394 (4:6:4); Harry Fox Agency v. Mills Music, 543 F.Supp. 844 (4:7:1); Kamakazi Music v. Robbins Music, 684 F.2d 228 (4:7:3); NAACP v. FCC, 682 F.2d 993 (4:7:6); Associated Film Distribution Corp. v. Thornburgh, 683 F.2d 808 (4:9:2); Besig v. Dolphin Boating and Swimming Club, 683 F.2d 1271 (4:11:7); and WGN Continental Broadcasting v. United Video, 685 F.2d 218 (4:13:3).[ELR 4:15:7]

NEW LEGISLATION AND REGULATIONS

California statutes are amended to comply with Federal Copyright Act of 1976

Certain provisions of California state law relating to copyright protection have been revised in order to correspond with the Federal Copyright Act of 1976.

As noted in the Legislative Counsel's Digest accompanying AB 3483, the federal law contains a specific provision preempting any state law which grants a legal or equitable right that is equivalent to any of the exclusive rights within the scope of copyright, whether published or unpublished. Prior to January 1, 1978, state law regulated the copyright of unpublished works of authorship. Accordingly, Sections 14700 et. seq. of the California Business and Professions Code have been repealed; and Section 980 of the Civil Code has been amended. Civil

Code section 980 provides protection to original works of authorship not fixed in any tangible medium of expression. Section 980 also protects the authors of sound recordings initially fixed prior to February 15, 1972. The preemptive provisions of federal law will not affect such works until February 15, 2047. (The exclusive ownership of sound recordings does not prevent others from independently rerecording the songs contained on previously copyrighted sound recordings. It merely prohibits unauthorized duplication of such recordings themselves.)

Section 981 of the Civil Code also has been amended to provide that an original work of authorship not fixed in any tangible medium of expression in which several persons are jointly concerned, is owned by them in equal proportion.

Section 982 of the Civil Code retains the requirement that when a work of fine art is transferred, the right to reproduce it continues to belong to the artist "unless the right has passed into the public domain or is expressly transferred by a document in writing in which reference is made to the specific right of reproduction, signed by the owner of the rights conveyed or that person's duly authorized agent."

California Assembly Bill No. 3483, California Statutes of 1982, Chapter 574 [ELR 4:15:3]

DEPARTMENTS

Book Note: Legal and Business Aspects of the Magazine Industry 1982

This 586-page volume of materials was compiled for distribution in connection with a program conducted last spring in New York City by the Practising Law Institute. It contains outlines, checklists, sample contracts, as well as statutes, regulations and cases, on a wide variety of topics, including acquiring publishing rights, the editorial concerns of a magazine attorney, printing agreements, direct mail promotion of subscriptions, subscription fulfillment, magazine distribution, the protection of titles and formats, advertising issues, and the purchase and sale of magazines. The book is available directly from the Practising Law Institute, 810 Seventh Avenue, New York, N.Y. 10019, at a cost of $30. [ELR 4:15:7]

In the Law Reviews:

Character Merchandising and Fictitious Characters (a comparison between US and British law) by Allison

Coleman, 4 European Intellectual Property Review 285 (1982)

Program of Video Game: Protection in France of Author's Copyright by Christian Le Stanc, 4 European Intellectual Property Review 293 (1982)

Atlantic City in Transition by Martin B. Danziger, 6 Seton Hall Legislative Journal, Issue 1, pg. ix (1982)

The New Jersey Casino Control Act: Creation of a Regulatory System by R. Benjamin Cohen, 6 Seton Hall Legislative Journal 1 (1982)

Casino Gambling: The Elements of Effective Control by Michael A. Santaniello, 6 Seton Hall Legislative Journal 23 (1982)

Whose License Is It Anyway?: The Evaluation of the Suitability of a Corporation for a Casino License by Guy S. Michael, 6 Seton Hall Legislative Journal 41 (1982)

The Role of Legalized Gaming in New Jersey as a Stimulus for Tourism and Urban Redevelopment: A Regulator's Viewpoint by Barbara Paulus Lampen, 6 Seton Hall Legislative Journal 55 (1982)

Junkets: Regulation of Casino Marketing Under the Casino Control Act by John M. Donnelly, 6 Seton Hall Legislative Journal 71(1982)

The Atlantic City Experience: Casino Gambling as an Economic Recovery Program by Michael Hawkins, 6 Seton Hall Legislative Journal 85 (1982)

The Regulation of Academic Standards in Intercollegiate Athletics by Ron Waicukauski, 1982 Arizona State Law Journal 79

NCAA Rules and Their Enforcement: Not Spare the Rod and Spoil the Child; Rather Switch the Values and Spare the Sport by Burton F. Brody, 1982 Arizona State Law Journal 109

The Enforcement Procedures of the National Collegiate Athletic Association: An Abuse of the Student-Athlete's Right to Reasonable Discovery by David K. Miller, 1982 Arizona State Law Journal 133

Defamation, Advertising and Gertz: Public Controversy and Media Access by Richard F. Faerber, 1982 Arizona State Law Journal 151

Antidilution Statutes: A New Attack on Comparative Advertising by Nancy S. Greiwe, 72 Trademark Reporter 178 (1982)
[ELR 4:15:7]