RECENT CASES

Producer of "Coming Home" wins summary judgment in copyright infringement and unfair competition action brought by author of identically titled novel

On the basis of its reading of the novel entitled "Coming Home," which was written by George Davis, and its viewing of the film of the same name, which was produced by United Artists, a Federal District Court in New York has concluded that there is no similarity between the two works. In granting summary judgment to United Artists, the court stated that an average observer would not find the slightest connection between the book and the film other than their common title and their subject, the Vietnam War. Each work does portray the effects of the war on people's lives and does involve a love triangle. But these are similarities of ideas, not of protected expression, the court held. Other similarities claimed by Davis were ruled legally insignificant as scenes a faire - "sequences of events which necessarily follow from a common theme, in this instance, elements that are common in any story about the Vietnam War." In this case, scenes included the presence of anti-war figures, instances of FBI surveillance, and a "stock" character who is patriotic upon leaving Vietnam but returns with different values.

Further, there were considerable differences between the novel and the film, such as the location of the principal action and the race, personalities and relationships among the major characters.

Davis also claimed that the use of the title "Coming Home" was a false description or representation in violation of the Lanham Act. The court ruled against Davis on this issue too, because he had submitted "not a scintilla of admissible evidence" on the issues of secondary meaning and likelihood of public confusion - the two elements which must be established in order to protect the title of a creative work.

Davis' unfair competition claims under New York law also were dismissed.

Davis v. United Artists, Inc., 547 F.Supp. 722 (S.D.N.Y. 1982) [ELR 4:18:1]

Court rules that DC Comics may register drawings of Superman, Batman and Joker as trademarks for toy dolls

Superman, Batman and Joker have prevailed in their never-ending battle for trademark registration. The Trial and Appeal Board of the U.S. Patent and Trademark Officer previously had upheld an examiner's refusal to register drawings of the DC Comics characters on the ground that the drawings were merely descriptive of the toy dolls contained in the boxes on which the drawings appeared. Further, the Board found the drawings to be "artistic renditions of the dolls" which were "functional in a utilitarian sense" and thus, again, not eligible for trademark registration.

However, the United States Court of Customs and Patent Appeals has reversed the Board's decision. The court first noted that it did not accept the Board's view that the stylized drawings of the comic book characters were pictorial representations of the toy dolls themselves. Even if it were assumed that the drawings represented the dolls and conveyed information about the appearance of the dolls - and thus served an identifying function - this would not preclude trademark registration.

DC was attempting to register the drawings as "indicators of origin" for the products sponsored by the company. And DC has engaged in considerable promotion of these characters, so that they have come to indicate a single source of sponsorship. Further, granting trademark registration to the drawings would not restrict competition in the sale of toy doll figures by diminishing any "store of common words and visual representations" which competing toymakers and the general public might use.

The court also viewed as erroneous the Board's characterization of the drawings as artistic renditions incorporating certain commercially functional "design features" of the dolls. The features in question were aesthetic, not mechanical, stated the court and therefore those features did not bar trademark registration.

In a concurring opinion, Judge Rich noted that the word "Superman" and a stylized drawing of Superman (separately or in combination) are trademarks for many different types of objects, and that one of the objects happens to be a doll bearing the trademark. While a drawing indeed may describe an object, Judge Rich agreed with the court that a drawing also is capable of source identification. A trademark design thus could be embodied in a product and marketed as such without the design being denied trademark registration, stated Judge Rich, who also agreed that the drawings were not commercially functional. There is, however, a concept of aesthetic functionality, noted Judge Rich, which will preclude trademark protection if, for example, the aesthetically functional feature is "an important ingredient in the commercial success of the product." Nevertheless, some courts have found that if secondary meaning is demonstrated, a design still may receive trademark protection. Cutting through this circle of reasoning, Judge Rich concluded that "If a design which is sought to be protected as a trademark can be demonstrated to so function, it may be protected as a trademark; it will not be said that its only function is as an aesthetically pleasing design."

In a special concurrence, Judge Nies cautioned that a product design is not protectible as a trademark for that product without proof of distinctiveness in origin (not the distinctiveness in the sense of an unusual design). It would follow, stated Judge Nies, that recognition of a nonutilitarian product design as a trademark should be deferred until such time as the design comes to indicate a source. When this occurs, protecting the public from confusion, including confusion as to aesthetic design features, would outweigh a competitor's right to produce an imitation.

Judge Nies distinguished his concurrence from that of Judge Rich by questioning Judge Rich's premise that "the doll configuration is actually a threedimensional representation of a trademark." This premise might circumvent the requirement that one must designate the goods for which the design is a trademark in order to avoid treating a trademark as a right in gross.

According to Judge Nies, the Board also appeared to be concerned that by recognizing trademark rights in a picture of a product, the product design itself may be perpetually protected, contrary to the limited term of protection afforded designs by copyright or design patent statutes. But the mere existence of such limited rights, stated Judge Nies, is not a basis for refusing to grant trademark registration to a representation of a doll if it. is otherwise qualified for registration. And such trademark registration does not secure perpetual rights in the doll design since trademark rights are a function of distinctiveness at a particular point in time. If it is established that distinctiveness has been lost, trademark protection also would terminate.

In re DC Comics, Inc., 689 F.2d 1042 (Ct. Customs and Patent App. 1982) [ELR 4:18:2]

Copyright Royalty Tribunal's 1980 inflation adjustment of cable television royalties is upheld by Federal Court of Appeals

The Copyright Revision Act of 1976 gives cable television operators a compulsory license to retransmit copyrighted programming broadcast by conventional over-the-air television stations. in exchange, cable operators are required to pay royalty fees which are distributed to copyright owners by the Copyright Royalty Tribunal.

The original royalty schedule was set forth in the Copyright Act itself and was the result of agreements between the cable industry and program producers. Congress realized, however, that changes in the industry, experience with the new law, and inflation might well warrant modifications of the royalty rate structure in the future. Accordingly, the Copyright Act provides that in 1980, and every five years thereafter, the Tribunal is to modify the original royalty to reflect inflation and changes in the rates that cable subscribers are charged for basic service. The purpose of such modifications is to "maintain the real constant dollar level of the royalty fee per subscriber."

In 1980, the Tribunal conducted a royalty adjustment proceeding and then increased royalty fees by 21%. On the other hand, the Tribunal also increased by more than 33% the amount of gross receipts that cable systems must collect before they are required to pay royalties. (ELR 2:21:6)

Both sides appealed. Not surprisingly, the cable industry - represented by the National Cable Television Association - contended that the new rates the Tribunal had adopted were too high. On the other hand, Copyright owners - represented by the performing rights societies, the Motion Picture Association of America, and sports leagues - argued that the new rates were too low and should be adjusted more frequently. Despite the apparent dissatisfaction of all of the affected parties, a Federal Court of Appeals in Washington, D.C., has sustained the Tribunal's decision (except for what appears to have been a mathematical error in computing the exact percentage of the royalty increase).

The copyright owners had urged the Tribunal to adopt an adjustment mechanism that would modify the royalty rates every six months in light of semiannual changes in the consumer price index. According to the copyright owners, semiannual adjustments were necessary in order to "maintain the real constant dollar level of the royalty fee" as required by the Copyright Act. The Tribunal, however, declined to do so, saying that the Act gave it the power to adjust cable royalties only every five years. The Court of Appeals found the Tribunal's interpretation of its power to be reasonable. The court noted that the Act's provisions concerning cable television were the result of a compromise between cable operators and copyright owners, and thus those provisions reflect "a formula upon which opposing social and political forces have come to rest." Semiannual adjustment of rates, said the court, "could disturb the repose achieved by enactment of the legislation." The fiveyear review period affords copyright owners "rough justice" and cable operators "reasonable certainty," the court concluded.

In their appeal, the cable operators argued that the Tribunal had used wrong data in calculating the amount by which inflation exceeded royalty fees, and that had the

Tribunal used the data suggested by them, the Tribunal would have found that royalties had kept pace with inflation. The court disagreed, however, finding that the Tribunal had used a "reliable and reasonable method" in determining that royalties had not kept up with inflation.

The cable operators also argued that the Tribunal had failed to consider the effect of local rate regulation on subscriber rate increases. But the court agreed with the Tribunal that the evidence showed any such effect to be minimal. Rate increases by unregulated cable systems were only 3% greater than those of regulated systems, apparently because more than 95% of the rate increases requested by regulated cable systems were in fact granted.

Cable operators further contended that the Tribunal failed to give it credit for the fact that the number of subscribers had increased - and thus the revenue base on which royalties are paid had grown - because cable systems have offered pay-TV channels to their subscribers. The Tribunal and the court discounted this factor, however. Both concluded that this "lifting" effect was offset by relatively low basic service rates (on which royalties are calculated) which cable systems offer almost as a "loss leader" to attract subscribers who are charged relatively high rates for payTV services (on which royalties are not calculated).

The Court of Appeals did agree with the cable operators that the Tribunal apparently made a mathematical error in calculating the percentage by which inflation had exceeded cable rate increases. The court remanded this point to the Tribunal. The Tribunal thereafter amended the rate structure it had adopted in 1980 so that the new rates have been increased 18.35% (rather than 21%).

National Cable Television Association v. Copyright Royalty Tribunal, 689 F.2d 1077 (D.C.Cir. 1982); 1980 Adjustments of the Royalty Rate for Cable Systems, 47 Fed.Regis. 44728 (October 12, 1982), CCH Copyright Law Reports, para. 13,056 [ELR 4:18:2]

Copyright Royalty Tribunal adjusts cable television royalty rates in response to FCC's repeal of distant signal carriage and program exclusivity rules

No sooner had the dust settled around the Copyright Royalty Tribunal's cable royalty inflation adjustment proceeding (see ELR 4:18:2), than the Tribunal kicked up an even larger cloud by increasing cable royalty rates still further. The Tribunal's latest rate hike came in response to the FCC's repeal of its distant signal carriage and program exclusivity rules. Until those rules were repealed, they prohibited cable systems from carrying more than a certain number of distant signals (that is, signals broadcast by television stations located in cities outside the cable system's own market), and they barred cable systems from carrying syndicated programs that were broadcast by local television stations. The FCC repealed those rules in 1980. (ELR 2:16:3) The effective date of their repeal was delayed, however, pending appeals. The following year, a Federal Court of Appeals upheld the FCC's decision to repeal the rules (ELR 3:5:2), and eventually the United States Supreme Court declined to hear their case.

The rules thus became history. When they did, however, their demise triggered provisions of the Copyright Revision Act of 1976 which said that if the FCC amended either of the rules, the Copyright Royalty Tribunal was authorized to adjust the cable royalty rates "to assure that such rates are reasonable in light of the changes to such rules." In 1981, the Tribunal initiated a proceeding to make such an adjustment.

The original cable rates were not those that would have resulted from marketplace conditions, the Tribunal found. Instead, the Tribunal noted that the original rates were a "legislative compromise," they were "arbitrary," and they were intended to require only a "minimum payment" by cable operators. In an effort to prove what marketplace royalties for distant signals would be, copyright owners offered evidence based on actual transactions in the broadcast market and in national and regional cable sports markets. Though the Tribunal found this evidence to be "helpful," it concluded that the analogies were not perfect, because broadcast and cable sports programmers have control over the specific content of their programs, while cable operators do not control the content of the distant signals they retransmit. Therefore, the Tribunal looked for "guidance" to the marketplace analogies offered by the copyright owners, but then made a "downward adjustment" to account for the differences between those markets and the market for distant signals. Having done so, the Tribunal concluded that 3.75% of gross receipts is a reasonable rate for each distant signal carried by a cable system which the system was prohibited from carrying when the FCC's distant signal carriage rules were in effect.

The Tribunal also found that in light of the repeal of the FCC's syndicated exclusivity rule, the original statutory cable royalty rate no longer provided "reasonable" compensation to copyright owners. The Tribunal noted, for example, that Tulsa television station KOKI testified that 80% to 85% of its programming is duplicated by distant signals that Tulsa cable systems now import for their subscribers. Because cable penetration in Tulsa is close to 50%, the importation of these distant signals has reduced KOKI's audience by one-third and thus has made it difficult for KOKI to sell syndicated programming to advertisers. KOKI estimated that distant signal importation has reduced its revenues by 30% to 35%.

The impact of distant signal importation on stations such as KOKI has had an impact in turn on program producers who have found that such importation reduces the prices stations are willing to pay for syndicated programming. The Tribunal heard conflicting testimony concerning whether distant signal carriage enabled television stations carried by cable to increase their advertising revenue and thus pay greater licensing fees. A witness for the National Cable Television Association quoted Ted Turner as saying that his Atlanta superstation WTBS has been paying from 100% to 1400% more for programming because of its national audience. But a studio executive testified that WTBS pays only slightly more than would be justified by its Atlanta market alone. And the Tribunal decided that it had no basis for concluding that program producers are being compensated for distant signal audiences. The Tribunal therefore increased the royalty rate for distant signals that contain syndicated programs that cable systems were prohibited from carrying when the FCC's syndicated exclusivity rule was in effect. The new rates range from .599% of gross receipts for the first such signal in a top-50 market to .089% for the fifth such signal in a second-50 market.

Copyright owners asked the Tribunal to make the effective date of the new rates July 1, 1981, to reflect the June 25, 1981 effective date of the repeal of the FCC rules. Cable operators on the other hand requested a July 1, 1983 effective date in order to give them sufficient time to "adjust to the new rates." The Tribunal adopted neither request. Instead it made the effective date of the new rates January 1, 1983, and a Federal Court of Appeals in Washington, D.C., denied the

NCTA's motion for a stay. However, in the closing hours of the 97th Congress, the House and Senate passed a bill which postpones the effective date of the new rate for distant signal carriage until March 15, 1983. (The syndicated program duplication date remains January 1st, however.)

The new rates represent very substantial increases in the royalties payable for the signals in question (which, however, is not all signals carried by cable systems, because cable operators could carry many signals even under the now-repealed FCC rules). As a result, many cable operators are expected to drop distant signals and some reportedly have done so already. While satellite and microwave retransmitters that deliver distant signals to cable systems are naturally upset by this development, cable program networks stand to gain by it, because as distant signals are dropped, the cable channels they formerly occupied will have to be filled with something - and original cable programming is an obvious choice.

Adjustment of the Royalty Rate for Cable Systems, 47 Fed. Regis. 51246 (November 19, 1982); CCH Copyright Law Reports, para. 13,057; National Cable Television Association v. Copyright Royalty Tribunal, Case No. 82-2389 (D.C. Cir., Dec. 14, 1982) [ELR 4:18:3]

Cancellation of the broadcast of "Death of a Princess" by two public television stations in Texas and Alabama is upheld as a valid exercise of stations' programming discretion

In July 1977, a Saudi Arabian princess and her commoner lover were executed for adultery. The circumstances leading to the execution were examined in a docu-drama entitled "Death of a Princess." The program was part of a series entitled "World" which was acquired by the Public Broadcasting System with funding from 144 public television stations. The station operated by the Alabama Educational Television Commission (AETC) and KUHT-TV, a public television station licensed to the University of Houston, proposed to broadcast "Death of a Princess" on May 12, 1980.

"Death of a Princess" was critical of many aspects of Saudi religious, cultural and political life and the Saudi government voiced its strong objections to the program. In fact, AETC was advised by an Alabama contractor that the broadcast of the program might endanger American citizens in the Middle East. As a result, AETC and KUHT-TV decided to cancel the broadcast of "Death of a Princess."

The cancellations were challenged by subscribers and viewers of the stations. The viewers contended that their

First Amendment rights were violated when the stations denied them an opportunity to view "Death of a Princess" on public television. A Federal District Court in Alabama granted summary judgment for AETC. Muir v. AETC. But a Federal District Court in Texas reached a different conclusion; that court ordered the University of Houston to broadcast the program, upholding that KUHT was a "public forum" and that it could not deny access to speakers-namely, the producers of "Death of a Princess"-in the absence of a substantial basis to justify such a prior restraint. Barnstone v. University of Houston, 514 F.Supp. 670 (S.D.Tex. 1980) (ELR 2:15:3; 3:5:2)

A Court of Appeals panel affirmed the District Court's decision in Muir, holding that AETC's refusal to broadcast the program was a legitimate exercise of its statutory authority as a broadcast licensee and was protected by the First Amendment. Another panel of the court, following the decision in Muir, reversed the District Court decision in Barnstone. The two cases then were consolidated and reheard en banc. The resulting Court of Appeals decision, albeit with two concurring and three dissenting opinions, again affirmed the Muir decision and reversed the Texas court's judgment in Barnstone.

Judge James C. Hill first observed that although AETC and KUHT are "public" broadcast licensees, both stations possess the same programming discretion as do commercial licensees. Judge Hill noted that there has been a consistent effort by Congress, in regulating broadcasters, to accommodate the First Amendment interests both of viewers and of licensees. The FCC has determined that in order to best serve the public interest, licensees have the sole right and independent responsibility to select programming. While state instrumentalities are subject to First Amendment constraints not applicable to private licensees, this does not lessen a public television station's statutory rights and duties in connection with programming, or give individual viewers a greater right to influence a public licensee's programming discretion, ruled the court.

The court also noted that public television stations are not "public forums" and are not required to provide a right of access to viewers. On appeal, the viewers of AETC and KUHT argued that even if the public did not have a right of access, the stations were public forums to the extent that their programming decisions could not be based on the "communicative impact of a program." This was an "untenable" contention, declared Judge Hill.

The viewers' argument that the stations had engaged in governmental censorship by choosing to cancel a scheduled program also proved unsuccessful. "The First Amendment does not preclude the government from exercising editorial control over its own medium of expression," concluded the court. Editorial control, particularly in broadcasting, necessarily involves making programming decisions which may be characterized as "politically motivated" but which result from the licensee's obligation to serve the interests of its community. The decision to cancel the scheduled broadcast of "Death of a Princess" was as much an editorial decision as the initial scheduling of the program, and was not censorship by the stations. If the states of Alabama and Texas had sought to prohibit the exhibition of the film by another party, a question of censorship indeed would have arisen. This, however, was not the case with which it was presented, stated the court. Further objections to the stations' programming judgments will have to be raised by the viewers with the FCC.

In a concurring opinion, Judge Rubin expressed the view that the nature of the activity engaged in by the governmental body determines the First Amendment strictures placed on the action taken by that body. Thus, "If the state is conducting an activity (such as sponsoring a student newspaper) that functions as a marketplace of ideas, the Constitution requires content neutrality." But if the state is performing a specific function, such as running a general interest television station, the decision to cancel one program is acceptable if undertaken "in order to prevent hampering the primary function of the activity." Judicial intervention might be required if the station had a policy of curtailing viewer access to ideas by favoring one political party or by broadcasting racially or religiously discriminatory views. Judge Rubin found support for his distinction in the various opinions written in Board of Education v. Pico, 102 S.Ct. 2799 (1982) (ELR 4:16:5).

Judge Garwood's concurrence noted that some subjectivity in station program selection "is part and parcel of the operation of conventional (not pure 'open forum') governmental television stations..." To grant individual viewers the right to require a station to broadcast a particular program might transform the station, unwillingly, into an open forum.

In dissent, Judge Frank M. Johnson characterized the majority opinion as an erroneous grant to state authorities of unlimited discretion to determine the content of public television, restricted only by FCC regulations. But the law "has never condoned censorship in the name of editorial discretion," declared Judge Johnson. In his view, public television stations are subject to judicial review of the effect of their actions on First Amendment interests. In particular, since the FCC does not distinguish between private and public broadcasters in its regulations, "it provides no protection from the kind of state censorship alleged in these cases." First Amendment rights may be enforced even within the context of a highly discretionary function, noted Judge Johnson, who also cited Board of Education v. Pico. Censorship by a state funded television station would call for even greater scrutiny than the regulation of student reading material. Such scrutiny is required as much for an individual "act of suppression" - the cancellation of "Death of a Princess" - as for censorship which appears to be a state policy or practice.

Judge Reavley in dissent, stated that public television stations are required to meet First Amendment standards of neutrality. He would, however, grant more latitude to such stations in choosing programs, even on the basis of substantive content, than Judge Johnson would appear to endorse. Only if the broadcast decision were based upon viewpoint alone, aside from any opinion as to program value or effect, would Judge Reavley find court action justifiable.

Muir v. Alabama Educational Television Commission, 688 F.2d 1033 (5th Cir. 1982) [ELR 4:18:4]

Briefly Noted:

First Amendment.

A Phoenix, Arizona ordinance requiring that viewing areas of booths in which coin operated devices are located be visible from a continuous main aisle of an arcade has been upheld as a reasonable non-content based regulation of the operation of arcades. The city alleged that the ordinance was passed in response to complaints that the display of adult films in video centers was causing sex-related criminal activity. The court noted that the ordinance did not prohibit the arcade operator from showing any film or regulate the manner in which films may be shown. The First Amendment rights of arcade patrons also were not infringed, concluded the court.

Ellwest Stereo Theatres, Inc., v. Wenner, Case No. 80-5732 (9th Cir., July 23, 1982) [ELR 4:18:6]

Scholastic Sports.

"The right of a student to participate in interscholastic athletics is one that is entitled to the protections of procedural due process" under the New Hampshire State Constitution and the New Hampshire Interscholastic Athletic Association (NHIAA) must therefore support its decisions by findings of fact based on the evidence before it, the Supreme Court of New Hampshire concluded. Robert Duffley, a high-school senior, had withdrawn from his sophomore year early in the first semester pursuant to doctor's orders. Anticipating problems with his elgibility to participate in high-school sports during his senior year under certain NHIAA rules, Duffley sought a ruling from the NHIAA granting such eligibility. The NHIAA decided to allow Duffley to participete only during the first semester of his senior year. No reason was given for denying Duffley eligibility for the second semester. After unsuccessful appeals to the NHIAA executive council, Duffley filed a petition in the Superior Court, seeking equ table and injunctive relief. Duffley alleged "violation of his due process rights ... and that the defendant had acted arbitrarily and capriciously in arriving at its decision, which was unreasonable and unlawful." After a hearing on the merits, the Superior Court dismissed Duffley's petition. Duffley appealed to the Supreme Court of New Hampshire which has found that Duffley's procedural due process rights had been violated because "throughout these apparently proforma proceedings the defendant found no facts and gave no reasons for its decision denying the plaintiff eligibility to participate in interscholastic athletics during the second semester of the 1981-1982 school year."

Duffley v. N.H. Interscholastic Ass'n, 446 A.2d 462 (N.H. 1912) [ELR 4:18:6]

Trademark Infringement.

Kabushiki Kaisha Hattori Tokeiten, also known as K. Hattori & Co., the distributor of Seiko brand watches, clocks and other electronic products, has obtained a preliminary injunction barring the use of the Seiko name on tennis racquets and other sporting goods manufactured by Seiko Sporting Goods USA, Inc. The court noted that Hattori has used the Seiko mark in the United States since 1949 and has an annual advertising budget in excess of $20 million. A large part of the company's advertising and promotional efforts are expended on the sponsorship of sporting events, including tennis matches. Although the mark was being used on a non-competing product, Seiko Sporting Goods' use of the Seiko name was found likely to cause consumer confusion as to the source of the tennis racquets. Further, the sporting goods company had not adopted the Seiko mark and trade name in good faith, but rather to capitalize on widespread public recognition of the Seiko name, and to make a profit "by palming off an inferior tennis racquet as a Seiko product," the court found.

Seiko Sporting Goods USA, Inc., v. Kabushiki Kaisha Hattori Tokeiten, 545 F.Supp. 221 (S.D.N.Y. 1982) [ELR 4:18:6]

Sports Promotion.

The Louisiana State Athletic Commission's granting of a "tentative date" to Super City Boxing Productions, Inc., for the promotion of a boxing contest created a property interest in that date for Super City, entitling Super City to judicial review of any subsequent Commission action affecting that date, according to the Court of Appeal of Louisiana. Super City, a licensed fight promoter, had received tentative permission from the Commission to promote a live championship fight between Sean O'Grady and Claude Noel on September 16, 1981. When Super City experienced difficulty promoting the fight because another promoter was advertising closed-circuit television coverage of the Sugar Ray Leonard/Tommy Hearns right, Super City complained to the Commission because a local regulation precludes the Commission from permitting more than one event in the same locale on the same date. After hearings were conducted, the Commission decided to revoke Super City's right to promote a fight on September 16, because no plans or arrangements had been submitted to the Commission in furtherance of the September 16th promotion, and a promoter may not sit on a tentative date. Super City petitioned for an injunction from the Civil District Court of Orleans, contending that its statutory period within which to file such plans or arrangements had not yet expired. The court concluded that the Commission had acted arbitrarily, capriciously, and in abuse of discretion in revoking Super City's right to the date, and enjoined the local promotion of the closed-circuit telecast of the Leonard/Hearns fight on September 16th. The Commission appealed, alleging that "since Super City had only received a 'tentative date' for a proposed boxing contest and had no 'permit' from the Commission to promote a specific match, it had no legitimate claim of entitlement or property interest sufficient to trigger an adjudicatory hearing or reviewable order." The Court of Appeal disagreed, holding that "the Commission's oral granting of a 'tentative date' of September 16 created a property interest in Super City." The Court of Appeal therefore affirmed the trial court's injunction.

Super City Boxing v. La. State Athletic Com'n, 411 So.2d 1098 (La.App. 1982) [ELR 4:18:7]

Cable TV.

Owners of backyard utility easements are indispensable parties to an action seeking to expand those easements for the installation of television cable, because the homeowner's interest in the use of their land will be affected by the court's judgment and a complete determination of the controversy is impossible without them. Consolidated Cable Utilities, Inc., was granted a cable television franchise in 1969 to serve Elgin and Aurora, Illinois. Local ordinances required that much of Consolidated's cable be placed underground through backyard easements reserved for gas, electric and telephone service. After door-to-door canvassing of homeowners failed to produce unanimous consent permitting Consolidated to install television cable through the backyard easements, Consolidated successfully filed suit against the cities and local utility companies, winning access to many of the backyard utility easements. The utility companies appealed to the Appellate Court of Illinois, contending that the lower court determination was in error for proceeding without the homeowners. The Appellate Court agreed, finding that when an "easement is reserved for gas, electric and telephone service, the plain meaning of the reservation does not include other unnamed services." An action brought to expand such easements "requires that all owners of land over which the easement runs ... be made parties. The question of whether or not Consolidated has a right to use the property should not be decided in a forum that excludes the actual owners of the property."

Consolidated Cable Utilities v. City of Aurora, 439 N.E.2d 1272 (Ill.App. 1982) [ELR 4:18:7]

DEPARTMENTS

In the Law Reviews:

The Media in the Courtroom: Attending, Reporting, Televising Criminal Cases by Paul Marcus, 57 Indiana Law Journal 235(1982)

Unscrambling the Broadcasting Status of Over-the-Air Subscription Television, 1982 Brigham Young University Law Review 695 (1982)

Deference to Federal Circuit Court Interpretations of Unsettled State Law: Factors, Etc., Inc. v. Pro Arts, Inc., 1982 Duke Law Journal 704 (1982)

The Colorado Supreme Court's Developing Defamation Guidelines: Colorado Enters the Quagmire by Michael W. Anderson and Jeffrey S. Pagliuca, 59 Denver Law Journal 627(1982)

Some Observations on the Swinging Courthouse Doors of Gannett and Richmond Newspapers by Richard M. Schmidt, Jr., and Gregory M. Schmidt, 59 Denver Law Journal 721 (1982)

The Common Law Right to Inspect and Copy Judicial Records: In Camera or On Camera, 16 Georgia Law Review 659 (1982)

The Public Access Doctrine in Copyright Law by Christine L. Hansen, 47 Missouri Law Review 561 (1982)

Cable Television: Should Candidates for Federal Elective Office Have an Affirmative Right of Access to Your Cable Television Channels? by Vera Pardee, 13 Southwestern University Law Review 287 (1982)

The First Amendment and the Secrecy State: Snepp v. United States by Jonathen C. Medow, 130 University of Pennsylvania Law Review 775 (1982)

Gottfried v. FCC: The Public Interest Standard and Broadcaster Responsibility to the Hearing-Impaired, 130 University of Pennsylvania Law Review 957 (1982)

Addressing the Reprographic Revolution: Compensating Copyright Owners for Mass Infringement by Rosalind S. Kurz, 15 University of Michigan Journal of Law Reform 261 (1982)

More Protection for the Press: The Third Circuit Expands the Fair Report Privilege by David Marburger, 43 University of Pittsburgh Law Review 1143 (1982)

The Betamax Case: Another Compulsory License in Copyright Law by Marshall A. Leaffer, 13 University of Toledo Law Review 651 (1982)

Interlocutory Injunctions in Libel Actions by Robert Martin, 20 University of Western Ontario Law Review 129 (1982)

Trademarks as Speech: Constitutional Implications of the Emerging Rationales for the Protection of Trade Symbols by Robert C. Denicola, 1982 Wisconsin Law Review 158 (1982)

Law and Contemporary Problems, which is published by Duke University School of Law in Durham, North Carolina, has devoted its current issue to a symposium entitled "Current Issues in Entertainment and Sports Law." It contains the following articles:

Foreward by J. Phillip Carver and David Lange, 44 Law and Contemporary Problems 1 (1981)

In Defense of the Unauthorized Use: Recent Developments in Defending Copyright Infringement by Thomas R. Leavens, 44 Law and Contemporary Problems 3 (1981)

The Law of Libel and the Art of Fiction by Vivian Deborah Wilson, 44 Law and Contemporary Problems 27 (1982)

The Loan-Out Corporation in Tax Planning for Entertainers by George G. Short, 44 Law and Contemporary Problems 51 (1982)

The Paramount Decrees Reconsidered by Michael Conant, 44 Law and Contemporary Problems 79 (1981)

Judicial Review of Labor Agreements: Lessons from the Sports Industry by John C. Wiestart, 44 Law and Contemporary Problems 109 (1981)

Recognizing the Public Domain by David Lange, 44 Law and Contemporary Problems 147 (1981)
[ELR 4:18:7]