RECENT CASES

Trial required to determine whether Universal's "Battlestar Galactica" is substantially similar to Fox's "Star Wars," Federal Court of Appeals rules

"Battle of the Titans." If it were not already the title of a movie, that phrase would be a perfect description for a monumental copyright infringement suit now being fought by Twentieth Century-Fox and Universal Studios. Appropriately, their legal battle swirls around epic war films: Fox's "Star Wars" and Universal's "Battlestar Galactica." At issue in this case is Fox's charge that "Battlestar" is an illegal knock-off of "Star Wars" and thus infringes its copyright.

The suit was filed by Fox in 1978 in Federal District Court in Los Angeles, and has been to the Court of

Appeals twice though it has not been to trial, yet. In 1980, District Judge Irving Hill granted Universal's pre-trial motion for summary judgment, ruling that "Battlestar" was not substantially similar to "Star Wars" as a matter of law. In fact, after viewing the two movies, as well as a montage of earlier science fiction films, Judge Hill concluded that "Battlestar" and "Star Wars" were "substantially" and "vastly" different. (ELR 2:10:1)

Fox immediately appealed. The Court of Appeals also viewed the two movies but has reached a different conclusion than had Judge Hill. In the opinion of the Court of Appeals, whether "Battlestar" and "Star Wars" are substantially similar "is a close enough question that it should be resolved by way of a trial." The appellate court emphasized that it has not said the two films are substantially similar - but merely that "reasonable minds could differ." For this reason, said the court, summary judgment should not have been granted.

Though Fox has every reason to be pleased with the appellate court's ruling, the opinion itself is something of a disappointment for copyright lawyers and others who may wonder what, if anything, Fox's victory means for future cases. The decision is less than six typewritten pages in length, including footnotes, and offers no guidance whatsoever on what should be considered in determining whether one movie is "substantially similar" to another. This is now the second time in this very case the Court of Appeals has passed up an opportunity to provide such guidance. Early in the lawsuit, Universal believed that its best defense might be a strong offense - and it filed a counterclaim against Fox alleging that Fox's "Star Wars" was itself an infringement of "Silent Running," a science fiction film Universal had released in 1972. Judge Hill dismissed Universal's counterclaim, however, in response to a motion for summary judgment made by Fox. The Court of Appeals affirmed that ruling in a two and one-half page opinion which merely said that its own review of "Star Wars" and "Silent Running" satisfied it that Judge Hill had correctly concluded as a matter of law that those two movies were not substantially similar. (ELR 3:3:3) Thus, the Court of Appeals' two decisions in this case suggest that the court is uncertain how to define "substantial similarity" in words but knows it when it sees it.

Twentieth Century-Fox Film Corp. v. MCA, Inc., No. CA 80-5868 (9th Cir., January 11, 1983) [ELR 4:19:1]

ASCAP and BMI enjoined from issuing blanket licenses to local television stations as of February 1984

In accordance with his earlier opinion in the Buffalo Broadcasting case, (ELR 4:9:1), Judge Lee Gagliardi of the Federal District Court in New York City has issued a permanent injunction restraining ASCAP and BMI from granting blanket music performing rights licenses for syndicated TV programs to local television stations. The effective date of the recently-signed judgment is February 1, 1984. Prior to that date, local television stations may obtain interim blanket licenses on the same terms and conditions as licenses presently in effect. This means that local stations which operated under ASCAP and BMI licenses in 1980 will be required to pay the same fees the stations were obligated to pay in 1980. In ASCAP's case, this will reduce the total yearly fees paid by the stations to about $36.7 million from previously anticipated 1982 fees of $44.9 million. Local stations which did not have an ASCAP or BMI license during 1980 also were granted a rate reduction from the 1982 license fee they otherwise would have been obligated to pay.

Buffalo Broadcasting Company, Inc. v. American Society of Composers, Authors and Publishers, Case No. 78 Civ. 5670 (S.D.N.Y., Jan. 4, 1983) [ELR 4:19:2]

The Platters win injunction barring former member of the group from performing under group's name

"The Platters," the name of the musical group which first became popular in the mid-1950s, is a service mark registered in the U.S. Patent and Trademark Office and in a number of foreign countries. Since 1967, The Five Platters, Inc., the exclusive owner of "The Platters" name and mark, has actively enforced its rights by sending over 100 cease-and-desist letters to protect unauthorized performances of groups under that name and by commencing about 40 different lawsuits. The latest action by The Five Platters, Inc., was a suit filed against one of its own former members, Tony Williams, the group's original lead singer, who has been permanently restrained by a New York court from performing under the name "The Platters" or any derivation of that name.

Williams was one of the original shareholders of The Five Platters, Inc., a corporation organized in California in 1956. Soon after its incorporation, the company entered into an employment agreement with each of the five members of the group. Under those agreements, the performers acknowledged that "the name The Platters is the sole and exclusive property of the Corporation."

In 1967, Williams sold all of his shares in the corporation to Personality Productions, Inc. The purchase price for Williams' shares was approximately $15,000, of which $5,000 was paid upon execution, another $5,000 over a period of a year, and Williams' debts to Personality of about $5,000 were written off. The agreement also provided for the assignment to Personality of Williams' interest in two songs, "One In A Million" and "You'll Never Know."

The agreement regarding this purchase specifically referred to Williams' previous employment contract with The Five Platters, Inc., and provided that "it is hereby expressly acknowledged again by Williams that the name The Platters is now owned exclusively by a corporation known as 'The Five Platters, Inc.'" Williams agreed that he would not "under any circumstances use the name The Platters or any derivation thereof in connection with any public appearances which he may make as a performer of musical compositions," though he was permitted to refer to himself "as having formerly been a member of The Platters."

Commencing about 1967 and continuing until recently, Williams had been billed about 60 times in public performances under the names "Tony Williams and The

Platters" or "Tony and Helen Williams and The. International Platters," without requesting or receiving authorization from The Five Platters, Inc.

The Five Platters, Inc. filed suit in New York court, as a third party beneficiary to Personality's purchase agreement with Williams, alleging breach of contract and seeking to permanently enjoin Williams from further violating the terms of the agreement.

Williams alleged a variety of technical improprieties in connection with the incorporation of The Five Platters, Inc., his employment agreement with The Five Platters, Inc., and the purchase agreement with Personality, together with allegations of fraud, duress and other defenses, and counter-claims for violation of the New York civil rights law and sections of New York's general business and criminal statutes. After a court trial, all of these defenses and counterclaims were rejected in the court's extensive written findings of fact and conclusions of law.

Williams was permanently enjoined from offering his services or holding himself out as "The Platters" or using any name embodying "The Platters" or any derivation thereof, though he may still refer to himself as having formerly been a member of The Platters.

The Five Platters, Inc. v. Williams (Case No. 8071/72 N.Y. Sup. Ct., July 14, 1982) [ELR 4:19:2]

U.S. Supreme Court declines to hear National Football League's appeal from decision declaring its cross-ownership rule a violation of the antitrust laws

The National Football League's cross-ownership rule has become a thing of the past - the casualty of an antitrust suit filed against it by the North American Soccer League. The U.S. Supreme Court has declined to hear the NFL's appeal from a decision of the Federal Court of Appeals in New York which held that the rule unreasonably restrained trade in violation of the Sherman Act. Justice Rehnquist voted to grant the NFL's petition for certiorari, and even took the unusual step of writing an opinion explaining why he did so. However, the NFL fell short of the four votes that are necessary for the Supreme Court to grant a hearing.

The NFL's cross-ownership rule would have prohibited the owners of teams in that league from owning a team in any other major league sport. NFL owners who already owned teams in other leagues would have had to sell those teams. At one time, four NFL team owners also owned North American Soccer League teams. Fearing that it might lose those owners, the NASL sued the NFL alleging that the cross-ownership rule was an unlawful conspiracy to deprive the NASL of a necessary competitive resource - sports entrepreneurial know-how and capital. Early in the case, the NASL won a preliminary injunction barring the NFL from adopting the rule, pending a trial. (ELR 1:2:5) But the NFL won at trial. (ELR 3:4:3) The Court of Appeals then reversed, agreeing with the NASL that the cross-ownership ban would deprive it of a "significant segment" of the market for potential professional sport team owners. (ELR 3:20:3)

In Justice Rehnquist's written opinion explaining why he voted to hear the case, he said he "seriously" doubted that the NFL's cross-ownership ban was an unreasonable restraint of trade. "Participation in the league gives the owner the benefit of detailed knowledge about market conditions for professional sports, the strength and weaknesses of the other teams in the league, and the methods his co-venturers use to compete in the marketplace," he explained. "It is only reasonable that the owners would seek to prevent their fellows from giving these significant assets, which are in some respects analogous to trade secrets, to their competitors." Justice Rehnquist also noted that the rule limited NFL team owners only narrowly. "They are not prohibited from competing with the NFL in areas of the entertainment market other than professional sport. An owner may invest in television movies, rock concerts, plays or anything else that suits his fancy." However, he concluded, "The antitrust laws do not require the NFL to operate so as to make it easier for another league to compete against it."

Because Justice Rehnquist's opinion was a dissent from the Supreme Court's vote not to hear the case at all, the opinion is not binding on other courts.

National Football League v. North American Soccer League, No. 81-2296 (U.S.Sup.Ct., December 6, 1982) [ELR 4:19:3]

Playboy Enterprises is awarded six-figure judgments for unauthorized use of its Playboy and Rabbit Head trademarks

A bunny insignia on your pocket may not mean that you are truly a playboy at heart, according to a recent Federal Court of Appeals ruling. The court upheld a District Court decision that Baccarat Clothing, Inc., infringed the Playboy and Rabbit Head trademarks by using counterfeit labels bearing these marks on approximately 20,000 pairs of jeans without authorization from Playboy Enterprises, Inc. The District Court had awarded Playboy $12,750 in damages based on the revenue which Playboy would have received had the infringing sales been licensed at the standard Playboy royalty rate of five per cent. But the Court of Appeals boosted the award to $120,000.

The appellate court pointed out that "an award of little more than nominal damages would encourage a counterfeiter to merely switch from one infringing scheme to another. . . ." Judicial penalties might become nothing more than a cost of doing business, particularly if the damages were merely a reasonable royalty on the goods sold, rather than serving as a deterrent to future infringing activities. Protecting the public from confusion as to the source of goods also requires economic disincentives to trademark infringement, stated the court.

Playboy had shown at trial that Baccarat made a profit of at least six dollars per sale, or total profits (on 20,000 sales) of $120,000. The Court of Appeals therefore concluded that the District Court had abused its discretion by not granting Playboy an accounting Of Profits since any other remedy would result in Baccarat's unjust enrichment.

Playboy also was awarded reasonable attorneys' fees, because Baccarat was not an innocent infringer. The company had engaged in "blatant" and premeditated infringing activities, the court said, thereby justifying the award of attorneys' fees.

In a similar though unrelated case, Playboy Enterprises also has recovered an award of approximately $335,000 plus costs and attorneys' fees from P.K. Sorren Export Company. A Federal District Court in Florida found that Sorren's purchase, from Grenadier Knitwear and Rolex, Inc., of shirts bearing Playboy's rabbit head emblem infringed Playboy's Rabbit Head and Playboy design trademarks because Grenadier and Rolex were not authorized to sell such shirts. Sorren also sold genuine Playboy products. The court concluded that by dealing in both counterfeit and genuine clothing, the company was engaged in conduct likely to lead the public into believing that the counterfeit shirts originated from or were associated with Playboy, to dilute the distinctiveness of the Playboy marks and to damage Playboy's reputation and good will.

The court noted that Playboy's trademarks are "strong" marks, entitled to broad protection. While Playboy is a suggestive mark - in more ways than one - the rabbit head design mark is "purely capricious and arbitrary" with a strong secondary meaning. Further, both marks are well-known and widely associated with Playboy products. The marks used by Sorren were very similar, at first impression, to the Playboy marks, and the products involved were identical golf-type shirts.

Sorren's argument that it was not in competition with Playboy because Sorren's sales were geared to tourists and wholesale exports was unavailing. Sorren's outlets were the type where potential consumers would expect to find authentic Playboy products, noted the court.

Most significantly, there was substantial evidence that Sorren's copying was intentional, thereby creating a prima facie showing of likelihood of confusion.

In addition to damages, which in the court's discretion were calculated at two times the profits earned by Sorren from the sale of counterfeit goods, Playboy was awarded an injunction barring Sorren's unauthorized activities. The court refused to allow Sorren to deduct from its gross sales a proportionate share of overhead expenses, because this may be done only if it is shown that sales of infringing goods actually increase a company's total expenses. But in this case the infringing sales, which took place over four years, constituted less than two percent of Sorren's combined sales for one year. Playboy was not awarded damages apart from an accounting for Sorren's profits because the company did not demonstrate that it would have made any of the sales which Sorren made or that Sorren would have purchased authentic rabbit head design shirts from Playboy or its licensees had they not acquired counterfeit shirts. However, the court did double the profits award on the ground that Playboy most likely suffered greater harm to its goodwill and reputation than it was able to demonstrate or quantify and that Sorren's profits probably were greater than shown by its incomplete records.

Playboy Enterprises, Inc. v. Baccarat Clothing Co., Inc., 692 F.2d 1272 (9th Cir. 1982); Playboy Enterprises, Inc. v. P.K. Sorren Export Company, Inc., 546 F.Supp. 987 (S.D.Fla. 1982) [ELR 4:19:3]

Dissimilarities between young woman and fictional character in novel result in dismissal of woman's defamation suit against author and publisher

When a fictional work is claimed to be defamatory, the court is required to determine whether the description of the fictional character is so similar to the real person claiming to be defamed that a reader of the book who knows the real person could reasonably link the two, a New York appellate court has ruled. The court was considering an action brought by Lisa Springer, a college tutor, against Robert Tine, the author of the novel "State of Grace" and against The Viking Press, the publisher of the book. In a 10-page chapter of the book, Tine, who had been a close friend of Springer's for four years, explicitly described, the sexual relationship between an Italian industrialist and his mistress, Lisa Blake.

Lisa Springer based her action upon Tine's use of the first name "Lisa," the book's statement that Blake once lived on 114th Street, where Springer actually lives, and upon her alleged physical similarities with the fictional Lisa.

In ruling that the complaint did not state a viable cause of action, the court observed that Springer's similarities with Blake were in large part superficial, while "the dissimilarities both in manner of living and in outlook are so profound that it is virtually impossible to see how one who has read the book and who knew Lisa Springer could attribute to Springer the lifestyle of Blake." The court recalled the case of Lyons v. New American Library, Inc., 78 A.2d 723 (ELR 2:15:2), in which the publisher and author of a fictional account of the search for the killer known as "Son of Sam," were found not liable to an upstate sheriff who claimed that he was the subject of a defamatory reference in the work. In that case, the combination of the fictional character of the book and the sheriff s admission that he did not participate in the actual police investigation resulted in the dismissal of the action.

Springer's cause of action under sections 50 and 51 of New York's Civil Rights Law also was dismissed since the novel did not use her name, portrait or picture.

Judge Kupferman, in dissent, stated that it could not be determined as a matter of law that the material in question was not "of and concerning" Springer. The portrayal was defamatory and the only issue was identification. The dissimilarities stressed by the court were "the very basis" for Springer's allegations of defamation, noted Judge Kupferman.

Judge Kupferman's approach appears similar to the one taken by a California appellate court in Bindrim v. Mitchell, 91 Cal.App. 3d 61 (1979) (ELR 1:4:1). Donald S. Engel, Esq., a member of the ELR Editorial

Advisory Board, has noted that some members of the libel bar in New York view Springer as a repudiation of Bindrim. Mr. Engel does not take this position but does suggest that the standard used by the Springer court is far more favorable to publishers and authors than Bindrim.

Springer v. The Viking Press, New York Law Journal, p.1, col.6 (Jan. 5, 1983) [ELR 4:19:4]

Exhibitor's antitrust claims against Columbia Pictures lacked factual support; thus award of summary judgment to Columbia on its breach of contract claim is upheld

When Portland exhibitor Tom Moyer shifted his scheduled showing of Columbia Pictures' "Close Encounters of the Third Kind" to a smaller theater than his exhibition contract specified, Columbia responded by opening the film in a theater run by Larry Moyer and also brought a breach of contract claim against Tom Moyer. Columbia refused to deal with Tom Moyer after the scheduling conflict and instead licensed Larry Moyer to show almost all of its first-run movies in the Portland area.

Tom Moyer's next encounter with Columbia was a counterclaim for damages and injunctive relief under section 1 of the Sherman Act and sections 4 and 6 of the Clayton Act. A Federal District Court granted summary judgment to Columbia. The court upheld a magistrate's finding that Moyer had not supported his claims of concerted refusal to deal or of a group boycott (ELR 2:22:4). This decision has been upheld on appeal.

The Court of Appeals noted that Columbia had sound justification for its refusal to deal with Tom Moyer on the basis of the "Close Encounters" episode. In Columbia's view, Larry Moyer had the next best available facilities in the area. And, even assuming that there was some type of "conspiracy" between Columbia and Larry Moyer, there was no showing of any anticompetitive purpose or effect. Tom Moyer was the only party likely to suffer from any conspiracy, and his system-wide grosses and profits had increased each year; the profits from the Portland market declined only four per cent from July 1979 to February 1980. Columbia never was under any obligation to accept bids from Tom Moyer, and Tom Moyer remains free to bid for the films of other distributors.

The Court of Appeals also affirmed the District Court decision that Tom Moyer lacked standing to challenge an alleged tying arrangement between Columbia and Larry Moyer.

Columbia Pictures Industries, Inc. v. Moyer, Case No. 81-3134 (9th Cir., Nov. 18, 1982) [ELR 4:19:5]

California court has jurisdiction over Florida-based National Enquirer reporter and editor in libel action brought by Shirley Jones and Marty Ingels

The First Amendment does not impose a stricter standard for establishing jurisdiction over nonresident media personnel in a libel action than the traditional principle that there be such minimal contracts with the state that ". . . the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice,'" a California appellate court has ruled. The court therefore held that out-of-state service of process on lain Calder, the editor of the National Enquirer, and on John South, a writer for the periodical, was proper in an action brought by entertainers Shirley Jones and Marty Ingels.

Jones and Ingels contended that an article concerning them, which was published in the October 9, 1979 issue of the Enquirer, was untrue and libelous. Calder and South are residents of Florida. Process was served on them in Florida by mail. They appeared specially and moved to quash service on the ground that the court lacked personal jurisdiction. A Los Angeles Superior Court judge granted this motion, noting that Calder and South had stated that they did not have an office, engage in business or own assets in California and that they purportedly had not traveled to California when performing reporting services in connection with the article. The court determined that Calder's and South's contacts with California were insubstantial, and, further, that in a defamation action "First Amendment considerations should be weighed in the balance of fundamental fairness in resolving whether a state can compel a nonresident defendant to appear and defend an action."

The appellate court agreed with Jones and lngels that the application of any special First Amendment test was improper. However, even under traditional jurisdictional concepts, California could not exercise general jurisdiction over Calder and South, because their activities in the state were not "extensive, wideranging, substantial, continuous or systematic." Nevertheless, a basis for exercising jurisdiction in this libel action was sufficiently alleged since "The intent to cause tortious injury within the state where the tort actually occurs is generally a sufficient basis, without more, for the exercise of in personam jurisdiction."

For the purpose of determining jurisdiction, the court presumed that by participating in the publication of the article, Calder intended to cause injury to Jones and Ingels in California and that such injury occurred. Thus a valid basis existed for California's exercise of jurisdiction over Calder with respect to the causes of action alleged in the complaint. South's writing and reporting activities in connection with the Jones/Ingels piece also may have produced a tortious effect in California. In addition, South had other contacts with the state. He had gathered information which appeared in the article during at least one visit to California and by telephone calls made to contacts in the state. South also called Ingels to read the actor the article in question prior the its publication - a call which allegedly caused Ingels to suffer emotional distress and physical illness. South therefore had sufficient minimum contacts with California to justify the jurisdiction by a California court in this lawsuit, concluded the appellate court.

South and Calder contended that they performed the allegedly tortious acts as an employee and officer, respectively, of the National Enquirer, Inc., and were not subject to jurisdiction because they were acting on behalf of the Enquirer and not in a personal capacity. The court concluded otherwise however, noting the general rule that everyone who takes a responsible part in an allegedly defamatory publication is liable for the defamation.

The finding of minimum contacts did not of itself dictate that the California court had jurisdiction. The court balanced the inconvenience to media defendants in having to defend in California against the interest of the allegedly defamed parties in suing locally. It was noted that in the present case, much of the evidence was in California; the causes of action arose in the state; and California is the residence of Ingels and Jones and also is the residence of two persons who furnished material appearing in the article. The state's interest in avoiding multiple litigation also would be served by assuming jurisdiction. The National Enquirer, Inc., did not contest jurisdiction. Hence, Calder and South would most likely be required to appear in California in any event as witnesses in the proceeding against their corporate employer. If California did not assume jurisdiction over Calder and South, an action might then be brought against them in Florida, resulting in multiple litigation and possibly conflicting decisions.

In all, it was found fair and reasonable to subject Calder and South to the jurisdiction of the California courts.

Jones v. Calder, 187 Cal.Rptr. 825 (Cal.App. 1982) [ELR 4:19:5]

Artists were not defamed by their recognizable portrayal as attackers of art in an allegorical painting entitled "The Mugging of the Muse"

Where are you now that we need you, Mona Lisa?

A $60,000 libel judgment against artist Paul Georges has been reversed by a New York appellate court. Georges' work "The Mugging of the Muse" depicted an attack by three males armed with knives upon a woman draped in a red cloth. A blue-wigged cherub and a non-descript dog observed the scene against a "crepuscular background of purplish hue." The legally objectionable aspect of the piece was that two of the assassins wore masks which seemed to resemble artists Jacob Silberman and Anthony Siani. Silberman and Siani were one-time friends of Georges, but the three ended their relationship after an artistic dispute. The artists claimed that Georges' painting held them up to ridicule and scorn and that they had been equated with muggers and robbers and accused of criminal conduct.

The court assumed that a picture is the equivalent of a writing for purposes of a libel complaint. It was noted that the resemblance between the masks and the two artists was more than coincidental and that they were the persons depicted by Georges. But the picture was "no more than rhetorical hyperbole," stated the court - an obviously allegorical and symbolic expression of critical opinion. A reasonable person would not find that the picture accused Silberman and Siani of actively participating in a crime.

Further, there was no proof that the artists were damaged. Extreme embarrassment is not a cognizable injury. And the fact that Georges may have intended to assure that Silberman and Siani would be recognized did not exceed appropriate comment or indicate actual malice.

The matter should not have gone to the jury, concluded the appellate court in dismissing the complaint.

Silberman v. Georges, New York Law Journal, p. 12, col. 2 (Dec. 13, 1982) [ELR 4:19:6]

Briefly Noted:

Copyright Infringement.

The owners of the Codfathers restaurant in Kennebunkport, Maine won't be serving up movies with their lobsters any longer, because they have been found liable for copyright infringement as a result of their unauthorized exhibition of video cassette copies of several copyrighted films. The copyright owners were awarded injunctive relief and damages, assessed at the minimum statutory rate of $250 for each of the infringing performances, amounting to $5,250. Attorneys fees and investigative fees totalling $5,335 also were awarded.

Paramount Pictures Corporation v. Sullivan, 546 F.Supp. 397 (D.Me. 1982) [ELR 4:19:6]

Cable TV.

A Federal District Court in Indiana has upheld an Indianapolis ordinance regulating the granting of cable television franchises and the construction and maintenance of cable television systems. Omega Satellite Products, a cable television company servicing apartment complexes in Indianapolis, had laid a co-axial cable along a public way without city permission and in violation of city code. When the city learned of the illegal cable during a street inspection, it ordered Omega to remove the cable while reminding Omega of its right to apply for a cable franchise and permission to lay cable along a public way under the Indianapolis Code. Omega brought suit against Indianapolis for injunctive relief and damages. Omega argued that the Indianapolis Code provision which requires a franchise whenever a cable system needs access to public ways to lay cable was an unconstitutional restriction on its First Amendment rights. The court disagreed with Omega, holding that "when a cable television operator uses the public ways to lay his coaxial cable and deliver his message, disruption to the streets, alleys and other public ways of the defendant necessarily occurs. Accordingly, some form of local government permission must precede such potentially disruptive use of the public way." Of importance to the court was that under existing technology, Omega could have serviced its customers without laying cable by installing earth stations atop each individual apartment complex Omega served, thus eliminating Omega's need to comply with the Code. The court refused Omega's motion for a preliminary injunction and ordered a trial on the merits of the action.

Omega Satellite Products v. City of Indianapolis, 536 F.Supp. 371 (S.D.Ind. 1982) [ELR 4:19:7]

Tax.

The income from certain unincorporated foreign film distributors, which were organized pursuant to an agreement between MCA and Paramount Pictures Corporation, has been ruled taxable as partnership income rather than corporate income by a Federal Court of Appeals. The court therefore reversed a ruling of the District Court (ELR 2:20:7) which had upheld the government's position that the distributors were properly characterized as corporations. If the organizations were corporations, the income received would have been taxable to MCA and Paramount in the year earned. On the basis of finding that the distributors are partnerships, MCA will be entitled to a refund of an assessed deficiency of $868,170 since the income earned by the partnerships becomes taxable "only when repatriated in the form of dividends."

MCA Inc. v. United States of America, Case No. 80-5510 (9th Cir., Aug. 27, 1982) [ELR 4:19:7]

Previously Reported:

The Federal Communications Commission has released a staff report entitled "Measurement of Concentration in Home Video Markets." The report was prepared by the FCC in connection with its proceeding concerning the elimination of rules prohibiting the ownership of cable TV systems by the major television networks. ELR 4:10:2. Information may be obtained from Jonathan Levy of the FCC at (202) 653-5940. Copies of the report itself may be ordered directly from the FCC's duplicating contractor, Downtown Copy Center, 11 14-21st St., N.W., Washington, D.C. 20037; (202) 452-1422. A brief synopsis of the report appears in the Federal Register at 47 Fed.Reg. 40 (Jan. 3, 1983).

The following cases, which were reported in previous issues of the Entertainment Law Reporter, have now been officially published: Buffalo Broadcasting v. ASCAP, 546 F.Supp. 274 (4:9:1); Univ. of Oklahoma v. NCAA, 546 F.Supp. 1276 (4:11:2); Univ. of Pittsburgh v. Champion Products, 686 F.2d 1040 (4:11:5); New South Media v. FCC, 685 F.2d 708 (4:11:6); Groucho Marx Prod. v. Day and Night Company, 689 F.2d 317 (4:12:1); Welch v. Mr. Christmas, 454 N.Y.S.2d 971

(4:12:3); Cher v. Forum International, 692 F.2d 634 (4:13:1); Eastern Microwave v. Doubleday Sports, 691 F.2d 125 (4:13:2). WGN Continental Broadcasting v. United Video, 693 F.2d 622 (4:13:3); Aurora Enterprises v. NBC, 688 F.2d 689 (4:14:1); BMI v. Fox Amusement, 551 F.Supp. 104 (4:16:7); Zoslaw v. MCA Distributing, 693 F.2d 870 (4:17:1); Baker v. IATSE, 691 F.2d 1291 (4:17:5).
[ELR 4:19:7]

DEPARTMENTS

Book Note:

Cable Production: What Every Arts Organization Needs to Know

Last spring, Volunteer Lawyers for the Arts sponsored a two-day conference on the legal and business aspects of cable production. The conference was organized around a realistic hypothetical in which a small theater is approached by an independent producer who wants to tape the theater's summer productions for sale to a cable company. In order to explore the issues raised by the hypothetical, more than two dozen experts participated in panel discussions on the status of Cultural Cable, Making a Deal, Negotiating a Contract, Budgeting, Financing a Deal, and Creative Considerations. The conference was transcribed and has been edited by Robert Karl Manoff into a 109-page book entitled "Cable Production: What Every Arts Organization Needs to Know." The book is now available from Volunteer Lawyers for the Arts.

Though cultural organizations and others who program for cable-TV have suffered some setbacks since the conference was held - especially with the demise of CBS Cable - most are still optimistic. Those that are, and lawyers who may be asked to represent them, will want to read the conference transcript. In it are answers to such questions as: Who programs culture on cable? What do they buy and how much do they pay for it? How do you structure a deal? Should you go for up-front money or for a share of the profits? What should you do about distribution, subsidiary uses, and creative control? What is a window and how far should you open it? Should you co-produce, prelicense or presell to raise the money? What should you look for in a marketing pattern?

To order, send $7 ($6 for the book plus $1 for postage and handling) to Volunteer Lawyers for the Arts, 1560 Broadway, Suite 711, New York, N.Y. 10036; phone (212) 575-1150. [ELR 4:19:7]

In the Law Reviews:

Determination of Public Figure Status in Libel Actions, 6 American Journal of Trial Advocacy 204 (1982)

Judicially Created Defenses to the Unauthorized Use of Trademarks by Jonathan Binnie, 2 Northern Illinois University Law Review 87 (1981)

Television in the Courtroom: Von Bulow and The Jazz Singer by Richard W. Power, 25 Saint Louis University Law Journal 8l3(1982)

The Federal Regulation of Radio and Television Newscasts by James A. Albert, 34 University of Florida Law Review 309(1982)

The Problems of "Reasonable Access" to Broadcasting for Noncommercial Expression: Content Discrimination, Appellate Review, and Separation of Commercial and Noncommercial Expression by William E. Lee, 34 University of Florida Law Review 348 (1982)

Copyright Ownership of Joint Works and Terminations of Transfers by Harold See, 30 University of Kansas Law Review 517 (1982)

Havalunch v. Mazza: The Scrambling of Constitutional and Common Law Defamation Analysis in West Virginia by W. Martin Harrell, 84 West Virginia Law Review 849 (1982)

The Obscenity Defense Denied: The Rise of a Rational View of Copyright, 9 Western State University Law Review 83 (1981)

Encouraging Delinquency in the American Home: Sony's Contributory Infringement of Copyrights by Charles A. Harwood, 18 Willamette Law Review 673 (1982)

The following articles appear in the Volume 12, Number 3, Fall 1982, issue of The Journal of Arts Management and Law, published by the Helen Dwight Reid Ed. Foundation, 4000 Albemarle St., N.W., Washington, D.C. 20016; phone (202) 362-6445:

Hot Art: A Reexamination of the Illegal International Trade in Cultural Objects by J.H. Merryman with A.E. Elsen, page 5

Making Money: Real Estate Strategies for the Arts by Joan Jeffri, page 32

The Growing Problem of Involuntary Superstations by Stephen M. Tigerman, page 51
[ELR 4:19:8]