RECENT CASES

NBC ordered not to broadcast French Tennis Open until New York court determines whether tournament's sponsor breached good faith negotiation clause in prior contract with CBS

CBS has "triumphed" in its action to prohibit the enforcement of a contract by which the organizer of the French Open Tennis Tournament granted NBC the broadcasting rights to the 1983 French Open.

In 1980, CBS contracted with the French Tennis Federation (FTF) for the exclusive United States rights to broadcast the Open. The French Open is one of the four world class tournaments. (Wimbledon, the U.S. Open and the Australian Open are the others.) And CBS televised the French event in 1980, 1981 and 1982. The

contract also granted CBS an exclusive 45-day period to negotiate for the broadcast rights to the event upon the termination of the 1980 contract. If the parties did not reach an agreement during that 45-day period, CBS was accorded a right to meet offers tendered by any third parties.

CBS and the FTF did have negotiation meetings during 1982 and these meetings continued beyond the contractually specified negotiating period. In October 1982, the FTF proposed its final offer: CBS was to pay $390,000 for the television rights to the 1983 French Open; the broadcast was to be live, or alternatively, CBS was to pay an extra $30,000; production costs were to be at least $500,000; and CBS was to agree to promote the French Open and Wimbledon as a coordinated promotional package or pay an additional $250,000. This offer was rejected by CBS.

NBC, however, agreed to pay the FTF $475,000 for the rights to the French Open and also agreed to the other terms asked of CBS.

CBS then sued the FTF for breach of contract and failure to negotiate in good faith, alleging that it was asked to promote a tournament not sponsored by the FTF, but operated by ProServ Television which is the exclusive agent for FTF, and that the intangible benefits requested by FTF guaranteed that NBC would obtain the 1983 television rights to the French Open. In particular, since NBC holds exclusive television rights to the Wimbledon tournament, the proposed alternative payment of $250,000 by CBS represented an allegedly "odious and unconscionable demand." It is highly unlikely that one network would provide advance promotion of another network's program, CBS complained. Thus in reality, NBC was granted the television rights to the French Open for $250,000 less than FTF's offer, argued CBS. A

tie-in might have been, but was not, requested for the U.S. Open which is televised exclusively by CBS.

A New York state trial court has agreed that CBS has shown a likelihood that FTF's final offer "was designed to frustrate (CBS's) right to first refusal and therefore was not a bona ride proposal." Justice Jerome W. Marks also observed the exclusive negotiation and first refusal rights to televise sporting events are essential in the broadcast industry, since "Without them a network is placed in the position of promoting an event and enhancing its value without sufficient security to prevent the future benefit from being reaped by another broadcaster." Pending an immediate trial, the status quo will be maintained by a preliminary injunction.

Justice Marks also denied NBC's motion for summary judgment on CBS's claim that it wrongfully induced breach of contract. Given that CBS had promoted and televised the French Open for three years, stated the

court, NBC must have suspected that CBS would have insisted upon receiving preferred terms for the future broadcasting of the event. Further, NBC was advised in October 1982 not to interfere with CBS's right of first refusal.

CBS, Inc. v. French Tennis Federation, New York Law Journal, p. 5, col. 3 (N.Y.Cty., Special Term, Jan. 24, 1983) [ELR 4:22:1]

Jane Fonda movie "Coming Home" not copied from book entitled "Concomitant Soldier," Federal Court of Appeals agrees

Jane Fonda's Vietnam-era motion picture "Coming Home" was not copied from a novel by Sonya Jason entitled "Concomitant Soldier," a Federal Court of Appeals

in California has ruled. In September of 1981, Federal District Court Judge Robert Kelleher ruled likewise and granted a motion for summary judgment to the defendants in Jason's copyright infringement case. (ELR 3:14:2) In addition to Fonda, the defendants included screenwriters Nancy Dowd, Robert Jones and Waldo Salt, and producers Bruce Gilbert and Jerome Hellman, all of whom testified they had never heard of Jason's book before her lawsuit.

The Court of Appeals decision is only two typewritten pages in length and incorporates Judge Kelleher's 1981 opinion "by reference." (That decision was published at 526 F.Supp.774.)

The Court of Appeals did emphasize, as Judge Kelleher "aptly" pointed out, that Jason's evidence had shown no more than a "bare possibility" that the defendants had access to her book. A "bare possibility" of access is insufficient to require a trial, the court held. Furthermore,

even if access were assumed, the appellate court ruled that there was no substantial similarity between the movie and Jason's novel "under the standards announced ... in Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp., 562 F.2d 1157 (9th Cir. 1977)."

For these reasons, the Court of Appeals affirmed Judge Kelleher's dismissal of Jason's suit.

Jason v. Fonda, Case No. 81-5973 (9th Cir., Feb. 8, 1983) [ELR 4:22:2]

Unauthorized licensing of Hopalong Cassidy films results in damage award of $1.3 million for infringement of copyrighted books on which films were based

"Hopalong Cassidy" has recovered a copyright infringement award of approximately $1.3 million - an amount well beyond the dreamt-of gains of Hopalong's frontier desperado opponents, and one of the highest amounts ever awarded in a copyright infringement action.

As described in earlier reports on this matter (ELR 3:24:8; 2:21:2), William Boyd, who played the lead role in the Hopalong Cassidy films, obtained an exclusive license in 1947 from the Mulford Trust to 23 Hopalong Cassidy films. The films were based on the books written by Clarence E. Mulford. Boyd also obtained the exclusive television rights to the books. Mulford's trust, which owned the renewal copyrights in the Hopalong books, had licensed to one Dr. Brown the right to distribute the Hopalong films outside of the United States for theatrical use only. However, in 1973, a company known as Filmvideo acquired Brown's rights in the

films, Filmvideo proceeded to remove 17 negatives from a storage laboratory and, in 1975, began to license Hopalong films for United States television use at prices equivalent to about 30% of the prices charged by Boyd.

When Filmvideo sued Boyd in New York in an attempt to prevent him from enforcing any rights in the Hopalong films, Boyd filed a counterclaim against Filmvideo for copyright infringement. Judge Werker of the Federal District Court in New York, in dismissing Filmvideo's action, found that the Mulford trustees held valid renewal copyrights in the 26 Hopalong books which provided the storylines and characters for the 23 Hopalong films. Judge Werker held Filmvideo liable for copyright infringement and enjoined Filmvideo's further unauthorized licensing of the Hopalong films.

Judge Consuelo B. Marshall, of the Federal District Court in California, recently has ruled on the issue of damages arising from Judge Werker's finding of

infringement. Judge Marshall ruled that each unauthorized contract granting television rights in the Hopalong films constituted one infringement for each film licensed. Thus, 192 separate acts of infringement were found. Judge Marshall elected to use the statutory rate of damages of $5,000 per infringement, for a total award of $960,000 plus interest from the commencement of the action at the rate of 7% per annum, plus as yet undetermined attorneys' fees. The award was rendered against Filmvideo, TV National and Maurice A. Zouary the President of both companies, jointly and severally. It was found that Zouary met all of the conditions for imposing personal liability on a corporate officer. Zouary participated personally in manufacturing the infringing copies of the films, used the corporate defendants to carry out the deliberate infringement, was the dominant influence in determining policies of the corporations,

and derived substantial benefit from the unauthorized licensing of the films.

Judge Marshall also enjoined the defendants from further use of the 23 Hopalong films for viewing in general or on television or homeviewing via cassette within the United States.

William Boyd Enterprises v. TV National Releasing Corporation, Case No. CV 77-1742 (C.D.Cal., Oct. 18, 1982) [ELR 4:22:2]

Unauthorized prepublication use by The Nation magazine of excerpts from memoirs of former President Gerald R. Ford was copytight infringement

The unauthorized publication of excerpts from the unpublished draft of former President Gerald R. Ford's

memoirs infringed Ford's copyright, a Federal District Court has ruled.

On April 3, 1979, The Nation, a weekly magazine, published an article, derived almost exclusively from the memoirs, which set forth Ford's account of the events leading to the pardon of former President Nixon, and presented Ford's views on various politicians and events. Victor Navasky, the editor of The Nation, knew that Ford's book, A Time to Heal, was due to be published within the next few weeks in book form by Harper & Row and the Reader's Digest Association, and that Time magazine had obtained republication excerpt rights. But Navasky sought to justify his use of the material as "fair use," contending that Ford's account of the Nixon pardon was "hot news."

District Judge Richard Owen stated that the socalled "hot news" concerning the pardon had been the subject of detailed testimony by President Ford in an

appearance before a Congressional committee in 1974. The "revelations" of the Ford memoirs "were not such news, 'hot' or otherwise, as to permit the use of author Ford's copyrighted material," Judge Owen ruled.

Moreover, the article was published for profit, and the Nation took what was essentially the heart of the book - "far in excess of what was necessary to satisfy any conceivably legitimate news reporting purpose." The effect of the Nation's use was to cause the cancellation of the Time prepublication agreement, thereby diminishing the value of the copyright. (Time had agreed to publish excerpts from the memoir on April 23rd in order to coincide with the commencement of the shipment of the hardcover books on April 24th and the scheduled June 6th publication date.) While historical facts and government memoranda appearing in the book were not copyrightable, the Nation was not interested in this material

alone, but in the "totality" of Ford's interpretation of, and reflections upon, the facts and memoranda.

The court found that three separate exclusive rights were infringed by the article: the right to produce the copyrighted work in copies; the right to license the preparation of derivative works based on the copyrighted work; and the right of first distribution of the copyrighted work to the public. The publishers were awarded $12,500, the balance of the amount due on the Time agreement, and such further amounts for lost profits as may be determined. Attorneys' fees were denied, however, because under the Copyright Act, an award of attorneys' fees is not available where as yet unpublished memoirs have been copied.

Harper & Row, Publishers, Inc. v. Nation Enterprises, Case No. 80 Civ. 0856 (S.D.N.Y., Feb. 17, 1983) [ELR 4:22:3]

Penthouse magazine story describing sexual activities of a fictional Miss Wyoming was "pure fantasy" that did not defame Kimberli Pring, Miss Wyoming of 1978; Federal Appeals Court reverses $14 million judgment

Query: What would you call a magazine article which describes an act of fellatio performed by a Miss Wyoming named "Charlene" with her coach on stage during the finale of the Miss America pageant, which act was broadcast on national television and caused the coach to levitate? A jury called the article libelous and awarded $14 million in damages to Kimberli Jayne Pring, who was Wyoming's representative in the Miss America pageant in 1978. (ELR 3:11: 1) A Federal Court of Appeals called the Penthouse article "repugnant in the extreme,"

"a gross, unpleasant, crude, distorted attempt to ridicule the Miss America contest and contestants" with no redeeming features, but has found that it was a "pure fantasy" and ordered the trial court to set aside the verdict of the jury and to dismiss the action.

The appellate court agreed that the jury could have found that the article was about Pring, but noted that it was "impossible to believe that a reader would not have understood that (the allegedly defamatory) portions were pure fantasy and nothing else . . ." Two other incidents depicted in the article also were fantasies which could not reasonably have been understood as statements of actual fact about Pring or actual events in which she participated, the court ruled. The test was not whether the story was characterized as "fiction" or "humor," stated the court, but whether the charged portions in context described actual facts about Pring. In this case, the incidents charged were "impossible" and no

more than "rhetorical hyperbole." And while Penthouse may have diverged from prevailing standards, the First Amendment still applied to protect the publication.

In dissent, Judge Breitenstein observed that while he considered levitation, dreams and public performance as fiction, "fellatio is not." The article's reference to acts of "sexual deviation and perversion" performed by a "Miss Wyoming," who was identified by the jury as Pring, was defamation of character outside the protection of the First Amendment, stated Judge Breitenstein. Penthouse did not present the article as fiction and had not used the standard disclaimer of any reference to a living or dead person. Therefore, in Judge Breitenstein's view, Penthouse could not avoid the responsibility for an "irresponsible and reckless" statement of fact by relying on the fantasy used to embellish the fact.

Pring v. Penthouse International, Ltd., 695 F.2d 438 (10th Cir. 1982) [ELR 4:22:3]

Unsupervised licensing of Pied Pipers service mark by original user resulted in abandonment of mark, rules Trademark Trial and Appeal Board; new user's registration remains in force

The registration of the service mark Pied Pipers issued to orchestra leader Warren Covington, has been upheld by the Trademark Trial and Appeal Board of the Patent and Trademark Office.

Clark Yocum sought to cancel Covington's registration, asserting ownership and prior use of the mark for the services of a four-member vocal group originally formed in 1940. The group, which consisted of Yocum, Jo Stafford, Charles Lowry and John Huddleston, was

associated with the Tommy Dorsey orchestra until 1942 and made a number of successful recordings, often as backup to Dorsey's then star vocalist, Frank Sinatra. After 1942, the group continued to perform and record with occasional changes in participating vocalists, and to do film, television and radio shows under the Pied Pipers name until 1967. At some point in the mid-1940s, the group purportedly agreed that each member would have an equal one-fourth interest in the group and that such interest would revert to the remaining members on the demise of any member. Replacement members thus would serve as employees rather than as joint owners of the group and its name. The Trademark Board questioned the existence of this undocumented, unsubstantiated agreement, but stated that Yocum's interest and use of the Pied Pipers service mark nonetheless was well-established.

In 1967, Yocum was no longer physically capable of performing with a singing group. He continued to receive royalties from previous recordings, and served in a "quasi-managerial" position by seeing employment for other vocalists to perform under the Pied Pipers name. However, during the period from 1967 to 1973, Yocum engaged in activities which led the Trademark Board to conclude that there was a break in the chain of continuous use of the Pied Pipers mark necessary to prove priority over Covington. The break caused the mark to lose service mark significance.

In 1970, Yocum claimed that the Pied Pipers mark was being used without authorization in connection with the recording of a Jo Stafford-RCA special record for Readers Digest. RCA made payments of $300 and $400 to Yocum to settle his claims of name ownership. But Yocum made "no inquiry of what was being recorded, and what arrangements were being used, and made no

request to monitor the sessions." Yocum explained that he failed to exercise a mark owner's supervisory role because he received late notice of the RCA recording project and because he did not wish to impede Ms. Stafford's recording. But in 1967, Yocum had entered another "uncontrolled licensing arrangement" without the extenuating conditions surrounding the RCA incident. In 1967, Lee Gotch agreed to pay Yocum five percent of the gross income derived from Gotch's vocal group in return for using the Pied Pipers name. The agreement contained "no hint of supervision, quality control or performance standards."

The Trademark Board ruled that the instances of inadequately controlled licensing were sufficient to work an abandonment of the service mark that negated any priority of use Yocum may have established, and they "divested the Pied Pipers mark of origin-indicating significance" as to Yocum.

Given this finding, and the minimal commercial activity engaged in by the Pied Pipers group in the years 1967 to 1973 which resulted in a lack of "trade visibility," it was plausible for Covington to assume in 1973 that the name was legitimately available for registration as a service mark for his own orchestra, the Board concluded. It therefore dismissed Yocum's petition to cancel Covington's registration which remains in force.

Yocum v. Covington, Cancellation No. 12,430 (U.S. Dept. of Commerce, Patent and Trademark Office, Trademark Trial and Appeal Board, Nov. 29, 1982) [ELR 4:22:4]

Georgia Supreme Court recognizes descendible right of publicity barring unauthorized distribution of bust of Dr. Martin Luther King, J r.

A descendible right of publicity, distinct from the right of privacy, does exist under Georgia law, according to the Supreme Court of Georgia. The court had been asked by a Federal Court of Appeals to explain Georgia state law on the right of publicity in order to assist the Court of Appeals in resolving a case brought by the Martin Luther King, Jr. Center for Social Change. The Center's case is against American Heritage Products, Inc., a company that was distributing an unauthorized memorial bust of the civil rights leader. A Federal District Court in Georgia had enjoined American Heritage from using the Center's name in advertising and marketing the busts, and from using portions of Dr. King's copyrighted speeches. But the District Court had declined to enjoin American Heritage's alleged violation of Dr. King's right of publicity on the ground that Dr. King did not commercially exploit this right during his

lifetime (ELR 3:7:5). On the basis of the Georgia Supreme Court's response to its certified questions, the Court of Appeals has reversed the District Court's ruling on this issue.

The Georgia Supreme Court noted that the state has recognized the right of privacy since 1905 when the court issued its opinion in the leading case of Pavesich v. New England Life Ins. Co., 122 Ga. 190. Furthermore, the appropriation of another's name and likeness, without consent and for the financial gain of the appropriator, is a tort in Georgia "whether the person whose name and likeness is used is a private citizen, entertainer, or as here, a public figure who is not a public official."

The right of publicity has been ruled inheritable and devisable by the Georgia court because absent these features, the economic value of the right would be diminished (even during the life of the celebrity) because of

the prospect that his or her untimely death might terminate further profitable commercial use. The Georgia court also ruled that it is not a prerequisite for descendability that the celebrity or public figure commercially exploit the right of publicity during his or her lifetime. A statement to this effect in Hicks v. Casablanca Records, 464 F.Supp. 426 (S.D.N.Y. 1978) (ELR 1:1:5), which has been followed subsequently in other right of publicity cases, was characterized as dicta by the Georgia court. But the court refused to put "a premium on exploitation" by singling out for protection only those entertainers and athletes who take commercial advantage of their fame.

In a special concurrence, Judge Weltner objected to the court's characterization of the Center's interest as a "right of publicity." Judge Weltner would have responded to the certified questions by stating that "The complaint in this case states a claim upon which relief

can be granted." This would avoid potential First Amendment concerns which might arise in a right of publicity case when the "watershed" of financial gain by the allegedly infringing party is less apparent than in the case of American Heritage. Judge Weltner presented the example of such potential violators of the right of publicity as a child who wins a $25 art fair prize for creating a bust of Dr. King, or the local newspaper which prints a photo of the child's creation. Rather than rely on the presence or absence of financial gain as a means of establishing a cause of action, Judge Weltner stated that the principle of unjust enrichment would be a more effective tool for responding to a community's interest in restraining unconscionable conduct, in this case and others, while leaving the right of free speech "uncluttered and uncompromised" by the "impediments" of indeterminate rights of publicity and privacy and by considerations of inter vivos exploitation.

Martin Luther King, Jr. Center for Social Change, Inc. v. American Heritage Products, Inc., 694 F.2d 674 (11th Cir. 1983), 296 S.E.2d 697 (Ga. 1982) [ELR 4:22:4]

Federal Communications Commission repeals "three-year holding rule" for broadcast licenses

In an action taken "to eliminate unnecessary regulation," the Federal Communications Commission has announced the deletion of Rules 73.3597(a) through (d) which comprise the "three-year rule." The rule required a hearing to be scheduled when a broadcast licensee applied for a license assignment or transfer prior to completing a three-year holding period, unless extenuating circumstances were present or a waiver petition was granted.

The three-year rule was adopted in 1962 to combat trafficking in broadcast licenses and to avoid the possibility that frequent station sales might cause programming deterioration. But as the number of broadcast stations has increased and the broadcast industry has become more profitable, the FCC noted that maintaining the three-year rule might create deterioration in service since the rule restricts a station from attaining its "higher valued use." The Commission pointed out that the rule "prohibits a willing buyer ready to pay the market price from taking over the station, while forcing the seller to continue operation of a facility it no longer desires or cannot support." The public therefore might not receive the improved service a new owner with added capital might provide.

The Commission also once held the view that unrestricted speculative investments in broadcast stations might increase station prices so that only wealthy

individuals or businesses could buy stations. High station prices conceivably might lead to a decrease in the quality of programming and an increase in commercialization in order to recover the funds invested. But the three-year rule's "artificial" restriction on station sales did not have the effect of reducing station prices, stated the Commission, and "has not been a boon to the entry into broadcasting of those of lesser means." The Commission is attempting to increase diversity of ownership by expanding entry opportunities in the broadcast industry. And the marketplace will now regulate any attempt by a licensee to attempt to recoup investment costs through overcommercialization.

The FCC's proposal to eliminate the three-year rule received favorable public comment. However one person who opposed the elimination of the rule cautioned that those seeking a quick profit on an investment in a broadcast station are not likely to be concerned with the

quality or amount of public affairs programming presented, since such public interest programming bears little relationship to realizing a profit on resale. It also was noted that increased trading in stations might enable conglomerates to acquire substantial holdings, "thereby decreasing diversity in station ownership," particularly if combined with the relaxation of the Commission's "seven-station rule."

The FCC concluded that the purchase and rapid resale of broadcast properties is not per se contrary to the public interest for "even a speculator can provide an important economic service to the industry and responsive programming to the audience."

While it has eliminated the three-year rule, the Commission has not repealed Rules 73.3597(e) and (f) which prohibit the holder of a construction permit from obtaining a profit on the transfer or assignment of the permit. The Commission stated that profiting from the transfer

of a construction permit is contrary to the letter and spirit of sections 301 and 304 of the Communications Act. Further, a one-year holding period after the commencement of operations has been imposed on those station owners who have obtained their construction permits through a comparative hearing.

Federal Communications Commission, Amendment of the Commission's Rules Regarding Applications for Voluntary Assignments or Transfers of Control, BC Docket No. 81-897, 47 Federal Register 55924 (Dec. 14, 1982) [ELR 4:22:5]

Suit against MGM by debenture holders is dismissed because distribution of corporate stock has not resulted in actual damage to them

In 1980, Metro-Goldwyn-Mayer, Inc., divided its business into two separate corporations - one to operate the company's hotel holdings and one to operate a film production company. MGM transferred all of its assets in the film business to a new corporation - Film Co. - in exchange for all of the stock in the new corporation. This stock then was distributed to MGM shareholders.

The holders of unsecured debentures issued by Metro-Goldwyn-Mayer prior to 1980 complained that the restructuring of the company's operations resulted in a decline in the market value of their debentures. Further, they alleged that the distribution of the Film Co. stock rendered this asset unavailable to meet MGM's obligation to its debenture holders. They contended that this distribution was a fraudulent transfer without consideration, and that the transfer breached the corporation's fiduciary duty to not act intentionally to prejudice its unsecured creditors.

A California appellate court has affirmed the dismissal of the creditors' complaint. The court noted that MGM had received the stock of Film Co. in exchange for assets transferred to the company. If the stock had been retained, it would have been an asset which was available to satisfy the obligation owed to the debenture holders. However, even though the Film Co. stock distribution may at some point provide the basis for a complaint by the creditors, the creditors have not as yet asserted that they suffered any actual damage from MGM's alleged breach of duty. It was not alleged that Hotel Co. failed to pay the interest on the debentures or failed to pay the required amounts into a sinking fund. If the obligation to the debenture holders is not met at some future time, a less speculative determination as to the nature and scope of relief - necessary would then be appropriate, concluded the court.

Fox v. MGM Grand Hotels, Inc. 187 Cal.Rptr. 141 (1982) [ELR 4:22:6]

Motown Records is subject to personal jurisdiction in New York in case arising out of production of Diana Ross album

Motown Record Corporation's activities in providing promotional material to its distributor in the New York area and in supplying courtesy copies of new recordings to radio stations and critics in New York were among the factors resulting in a ruling by a Federal District Court in New York that Motown is subject to the long-arm jurisdiction of the court under N.Y. Civ. Prac. Law section 302(a)(1).

The ruling by District Judge Conner has been made in an action brought by The Chic Organization, Ltd. Under

a 1979 agreement, Chic was to furnish the services of two individuals to produce a record album for Diana Ross, who was under exclusive contract to Motown. Chic was granted artistic control over the recording process, including the manner in which the album would be recorded and the material that would be included. The album, "Diana," was produced and released, but Chic eventually sued Motown, alleging that the company did not honor an option granted to Chic in the agreement and that Motown improperly withheld certain royalty payments due Chic.

In a motion to dismiss the complaint for lack of personal jurisdiction, Motown pointed out that it is a Michigan corporation with. a principal office in Los Angeles and does not have any offices or personal property in New York. Further, the parties stipulated that the agreement was entered into in California and was to be governed by California law. And while Motown sells

several million dollars' worth of record albums and tapes in New York, it is not the direct seller of the merchandise. Rather, nonexclusive distributors purchase the records "f.o.b." at manufacturing plants in Michigan, California or New Jersey.

The court agreed that Motown was not "doing business" in New York so as to subject the company to general jurisdiction on any cause of action whether or not it arose from the company's activities within the state. However, the court did find that the activities undertaken in New York by Motown and its agents in connection with the performance of the Chic agreement were sufficient to establish personal jurisdiction over Motown as to Chic's claims. Two Motown employees were present in New York to assist with the recording for about 45 days. The services of these employees, while not required under the agreement, were "substantial and purposeful" acts in furtherance of the agreement.

Also, under the agreement Motown had agreed to bear the costs of making the recording, and eventually paid a total of more than $ 1 00,000 to three New York recording studios for production, remixing and mastering work. The fact that Chic chose the recording studios did not obviate Motown's involvement with the recording process. Judge Conner noted that Ms. Ross lives in the New York area for a large portion of each year, and found it "incredible that Motown did not envision the possibility, if not the probability that recording work for which it was financially responsible under the agreement, would be accomplished in New York." Finally, when "Diana" was on the market, Motown attempted to stimulate sales, by providing radio stations, distributors and retail stores in New York with free samples of the album and other promotional material such as T-shirts and displays. This "solicitation" was counted as an additional contact with the state.

Motown's motion for an order dismissing the complaint for lack of personal jurisdiction therefore was denied.

The Chic Organization, Ltd. v. Motown Records Corporation, Case No. 82 Civ. 3456 (S.D.N.Y., Feb. 8, 1983) [ELR 4:22:6]

Briefly Noted:

Insurance.

Legal fees incurred by the National Hockey League in the defense of lawsuits arising from a post-game altercation between certain Boston Bruin hockey players and New York Ranger fans were not meant to be included in the $25,000 deductible clause in the League's general liability insurance policy, a New York court has ruled.

The deductible clause related solely to damages on account of bodily or personal injury for which the League might become obligated. The insurance company therefore was ordered to reimburse the League for about $15,000 in legal fees paid in defense of the spectators' actions.

National Hockey League v. Ambassador Insurance Co., New York Daily Journal, p.6, col.2 (N.Y.Cty.Ct., Feb. 18, 1983) [ELR 4:22:7]

Gambling.

Nevada law requires the state's Gaming Commission to collect a quarterly casino license fee based on a percentage of the licensee's assessed gross revenue. The Commission adopted regulations which provide that an

unpaid "marker" may be excluded by the licensee in determining gross revenue, and set out criteria for evaluating whether a credit instrument is indeed issued for gaming purposes. The State Gaming Control Board conducted an audit of the Desert Inn for the period 1974-78. The audit resulted in an assessment of additional fees based on the face amount of certain unpaid markers which were deemed "irregular." The state claimed that under the Commission's regulations, it was entitled to include markers taken by a licensee in violation of the licensee's internal control systems or agency regulations in the assessment of a licensee's gross revenue. The Desert Inn failed to rebut the presumption that the markers were issued for non-gaming purposes. The Nevada Supreme Court has upheld a lower court order granting partial summary judgment to the state and upholding the validity of the applicable regulations.

Summa Corporation v. State Gaming Control Board, 649 F.2d 1363 (Nev. 1982) [ELR 4:22:7]

Previously Reported:

A New York County Surrogate Court has designated the New York Public Library as interim custodian of the archives and manuscripts of the late composer Igor Stravinsky, pending the appeal of a decision concerning the sale of those papers. (ELR 4:9:3). Estate of Igor Stravinsky, New York Law Journal, Jan. 31, 1983, pg. 6 col. 4.

The United States Supreme Court has declined to hear an appeal from the New Jersey Supreme Court decision in the Matter of Boardwalk Regency Corporation Casino License, previously reported at ELR 4:15:4.

The following cases have been published: Bill v. Superior Court, 187 Cal.Rptr. 625 (4:16:1); Bose Corp. v. Consumers Union, 692 F.2d 189 (4:16:4); Twentieth Century-Fox v. MCA, 696 F.2d 689 (4:19:1); Silberman v. Georges, 456 N.Y.S.2d 395 (4:19:6).
[ELR 4:22:7]

DEPARTMENTS

In the Law Reviews:

Hastings College of the Law has published Volume 5, Number 1, of Comm/Ent. A Journal of Communications and Entertainment Law. Copies of the issue are available for $6.50 each directly from Hastings whose address is 200 McAllister Street, San Francisco, California 94102. The current issue contains the following articles:

Control of and Access to, On-Line Computer Data Bases: Some First Amendment Issues in Videotex and Teletext by HenryBeck, 5Comm/Ent 1(1982)

Federal Preemption of State Obscenity Law Applied to Broadcasting by Williams Hanks and Steve Coran, 5 Comm/Ent 21(1982)

Divorce in the Entertainment Industry,: Some Special Problems by Ovvie Miller, 5 Comm/Ent 43 (1982)

Feature Film Secured Financing: A Transactional Approach for Lender's Counsel by Robert G. Weiss and Alan G. Benjamin, 5 Comm/Ent 75 (1982). This article also appears in 15 Uniform Commercial Code Law Journal 195 (1983), published by Warren, Gorham & Lamont, 1633 Broadway, New York, N.Y. 10019.

Cable Television Secured Financing by Robert G. Weiss and Alan G. Benjamin, 5 Comm/Ent 95 (1982). This article also appears in 100 Banking Law Journal 165 (1983), published by Warren, Gorham & Lamont, 1633 Broadway, New York, N.Y. 100 1 9.

People ex rel. Gow v. Mitchell Brothers: California Gropes for a Civil Obscenity Standard by Peter F. Frost, 5 Comm/Ent 109 (1982)

Mississippi's Prohibition of Alcoholic Beverage Advertising: A Constitutional Analysis by Charlotte K. Ito, 5 Comm/Ent 127 (1982)

Copyright Infringement: An Argument for the Elimination of the Scenes a Faire Doctrine by Don M. Tamura, 5 Comm/Ent. 147 (1982)
[ELR 4:22:8]