BUSINESS AFFAIRS

CBS Tests its Clout: Network asks producers to get "direct" music performance licenses from composers and publishers; ASCAP and BMI blanket licenses may not be renewed

by Lionel S. Sobel

Quietly and without fanfare, CBS has adopted a new policy for its licensing of music performance rights - a policy that may revolutionize the television-music business. In a marked departure from industry custom, CBS is now asking television producers to obtain the right to perform music contained in network programs directly from composers and publishers.

Since the birth of commercial television more than 30 years ago, CBS itself has obtained music performance licenses from ASCAP and BMI. So have ABC and NBC and all independent television stations. Now however the television-music business is in a state of flux, largely as a result of recent decisions in separate antitrust lawsuits filed against ASCAP and BMI by CBS and local television stations. CBS's new music licensing policy may be only a small change in the overall way in which programs are produced for network broadcast. But it is a change of major concern to composers and music publishers. Indeed, the CBS policy may well result in a revitalization of the Composers & Lyricists Guild of America or even in the affiliation of composers with the Writers Guild of America.

The seeds of CBS's new policy were sown by federal court decisions - including a decision of the United States Supreme Court - in a case filed by the network against ASCAP and BMI more than 13 years ago. (ELR 1:1:1, 1:24:1) Although CBS has held blanket licenses from ASCAP since 1929 when it took one for a radio station, CBS alleged that blanket licenses constitute price fixing, boycotting and tying, all in violation of the Sherman Antitrust Act. The allegation did not catch ASCAP and BMI completely by surprise, since it had been made before, even by the United States Department of Justice. But earlier suits filed by the Justice Department had been settled with Consent Decrees, by which ASCAP and BMI have abided ever since.

Blanket licenses

ASCAP has been granting blanket licenses since it was formed in 1914, and BMI since it was formed in 1940. A blanket license authorizes music users to perform any or all of the compositions in the ASCAP or BMI repertory, as many or as few times as the user chooses, in exchange for a single, usually annual, fee. The amount of the fee does not vary with the number of compositions used or their popularity. And therein lies the rub. CBS does not use all or even a significant fraction of the more than four million songs in the ASCAP and BMI catalogs. (NBC once figured that it uses only some 2,200 songs a year.) Furthermore, most of the music used by CBS is music that is composed especially for network series, and thus is not popular music unless television itself makes it so.

CBS has concluded that its music expenses would be less if it individually licensed the particular songs used in its programs rather than all four million offered by ASCAP and BMI. ASCAP and BMI, however, issue only blanket licenses. They do not grant licenses on a per-composition basis. This then was the basis for CBS's antitrust suit.

After a dozen years of litigation, CBS lost the case. The courts held that the blanket licenses issued by ASCAP and BMI do not violate the Sherman Act. Although CBS did lose, the reason it lost must have given the network some consolation. The courts ruled that ASCAP's and BMI's blanket licenses are not illegal because performance licenses for individual compositions are available directly from composers and music publishers. This is true not only as a matter of law, said the courts, but also as a matter of economic fact. CBS had argued that composers and publishers have never issued performance licenses - even though they legally could - and would not do so in the future. But the courts found otherwise. CBS had not given itself enough credit, the courts said. The network had simply assumed that composers and publishers would not deal directly with it. But expert economic testimony convinced the courts that CBS does indeed have enough bargaining clout to get performance licenses directly from composers and publishers for any music to be broadcast on its network. And thus, the courts held that CBS simply does not have to take blanket licenses from ASCAP and BMI, if CBS chooses not to.

CBS testing the waters

CBS is now testing the waters, seeing whether the courts were correct in finding that it has enough bargaining power to get licenses directly from composers and publishers. CBS began doing so shortly after it lost its case in 1981. At that time, CBS's last blanket licenses had expired and new ones had not yet been negotiated. Uncertain what they might cost, CBS decided to see whether it could get performance licenses directly from composers in those cases where CBS itself was the program producer, and thus would be the composers' employer.

At first, it looked to CBS as though the courts had been wrong about the network's supposed bargaining power. According to Harry Heitzer, CBS's Business Affairs Vice President for Music Operations, composers did not like the deal CBS was then proposing, and they were not agreeing to it. However, after negotiations with composers, their agents and their lawyers, CBS found that at least some composers would agree to issue direct performance licenses. And CBS made deals with those composers for CBS-produced programs.

The essence of those deals was this. The composers granted CBS an option to acquire television performance rights in exchange for a fee to be agreed upon if the network exercises the option. If after 60 days of negotiations, no agreement is reached, the amount of the fee will be arbitrated in Los Angeles and at CBS's expense.

The arbitrator will decide what the "competitive market value" of the performance right is, and that is the fee CBS will pay.

The reason CBS asked only for an option to acquire performance rights was that CBS did renew its ASCAP and BMI blanket licenses for a term that will not expire until December 31, 1985. Thus, until the end of 1985, CBS does not need performance licenses directly from composers. Thereafter, CBS will need direct licenses only if it does not renew its ASCAP and BMI blanket licenses. According to Mr. Heitzer, CBS has not yet decided whether it will renew its blanket licenses. It may, but wants to be prepared should it decide not to.

Fee arbitration system

The reason CBS is using a fee arbitration system - rather than negotiating the option price now - is that neither the network nor the composers it is dealing with are anxious to commit themselves at this time to a price that may not be paid until 1986 or even later. Currently, there is no "competitive market" for direct, per-composition performance licenses, though by 1986 there may be. And no one wants to establish financial precedents in a vacuum.

Last summer, CBS realized that its blanket licenses would expire in only a few years. CBS had made direct license option agreements with more than a dozen composers hired for CBS-produced programs. And the network concluded that the time had come to do something about music rights in script development deals it was making with outside producers. Since the direct license option had worked well - at least from CBS's point of view - for its in-house projects, CBS decided to propose the same thing to outside producers.

The deal CBS is now proposing to television producers is this. Producers are being asked to warrant and represent that they "have licensed" or "have the right to license," directly from composers and publishers, the network performing rights to the musical compositions in the programs the producers are developing. CBS agrees that it will not require producers to actually furnish direct performing licenses so long as it has blanket licenses from ASCAP and BMI. However, if CBS does not renew its blanket licenses, producers agree to furnish direct licenses when notified by CBS to do so. Once CBS gives such notice, it will broadcast the program "in reliance upon the warranty and representation" made by the producer that the producer had licensed, or had the right to license, network performance rights.

CBS proposal to producers

CBS's right to broadcast the program does not depend on an agreement being reached on the direct license fee CBS is to pay. Rather, CBS is proposing that once it gives notice that the producer must furnish a direct license, the producer and the composer and publisher will "negotiate in good faith" for 60 days on the fee to be paid for the direct license. If they agree on a "fee acceptable to CBS," the network will reimburse the producer for that fee (in addition, of course, to the license fee to be paid to the producer for the non-music portions of the program). If no fee is agreed upon in 60 days, then CBS is proposing that the amount of the fee be determined by an expedited arbitration, to be conducted at CBS's sole expense in Los Angeles, under the rules of the American Arbitration Association. The arbitrator is to set the fee in accordance with the "competitive market value" of the network performing rights in the music. The composer and publisher of the compositions in question are to be parties to the arbitration, as well as CBS and the producer. And CBS agrees to reimburse the producer the amount of the fee set by the arbitrator. In order to make composers and publishers parties to all this, producers agree to include in their own agreements with composers and publishers whatever provisions are necessary to do so.

Mr. Heitzer acknowledges that when this proposal was first made to producers, they resisted it. Mr. Heitzer says that producers' response in essence was "Don't bother me. I don't understand and don't want to." But, says Mr. Heitzer, once producers checked with their composers, and found that their composers do not object to CBS's direct license option scheme, producers themselves stopped resisting. Producers are however being very cautious not to get caught between their obligations. to their composers and their obligations to CBS, Mr. Heitzer acknowledges.

No standard language

In an interview for this article, Mr. Heitzer noted that the specific language of the proposal being made to producers is in no way "standard." Every producer has its own concerns, and in the deals CBS has made so far, the details have varied. Some producers have asked that the names of potential arbitrators be inserted in the contract, rather than unnamed members of an American Arbitration Association panel. CBS has agreed to this. Others have asked that a three-member arbitration panel be used, one member to be appointed by CBS, another by the producer, and the third by the composer and publisher. CBS has agreed to this too. Mr. Heitzer emphasized that the mechanics of the arbitration scheme are not of concern to CBS. Nor does CBS care what agreements are made between producers and composers or publishers. The network's only concern is that it not have to go to court every time it wants buy performance rights for music contained in programs it already has purchased or paid to develop.

Jay Cooper, a partner in the Beverly Hills firm of Cooper, Epstein & Hurewitz, has represented composers and producers in negotiations with CBS. His clients are among those who have agreed to the CBS proposal (with a three-member arbitration panel, each party to appoint one member). Nevertheless, Mr. Cooper himself is not entirely satisfied with CBS's direct license option scheme. At a presentation made last month to the Los Angeles Copyright Society, Mr. Cooper asked rhetorically how arbitrators would determine the "competitive market value" of network performance rights. The amount actually received by composers and publishers from ASCAP and BMI for network performances of their music is not an accurate measure of its "value," he said. The reason it is not, is that at the present time, such rights are licensed by ASCAP and BMI, and all of their administrative costs are deducted before the balance is distributed to composers and publishers. Thus, the amount composers and publishers receive is only the net after expenses. If, however CBS decides to license directly rather than through ASCAP and BMI, composers and publishers themselves will have to bear the administrative expenses now paid by ASCAP and BMI. Clearly the "value" of network performances would have to include those administrative expenses.

Composers' concerns

In a later interview for this article, Mr. Cooper also expressed concern that composers whose music is used on television will be limited to a flat, one-time fee, and will not receive the per-use royalties they now enjoy. Composers share Mr. Cooper's concern, and a number of sources have advised that several composers recently made a presentation to the Writers Guild of America, asking that the WGA represent them in collective bargaining with the networks and studios. The WGA reportedly is giving the matter consideration (though this could not be confirmed directly with the WGA by press time).

It appears that composers may indeed have reason to be concerned about the CBS plan. At the present time they have no recognized guild or union. The Composers & Lyricists Guild, which did bargain collectively with producers some years ago, has not done so recently. And there is no collective bargaining agreement in effect for composers now. While many producers are probably using composer employment contracts that are similar if not identical to the old Composers & Lyricists Guild contract, that very contract contains a pitfall for composers if blanket licensing is replaced by direct licensing.

The Guild contract provides that music composed under its terms is deemed to be music "composed for hire." Under the Copyright Act, the copyright to music composed for hire belongs to the producer, not the composer. Thus, as a matter of copyright law, producers using Guild contract forms already have the right to grant performing licenses to CBS without further consent from their composers. The Guild contract does provide that composers retain the right to collect the composer's share (usually 50%) of the performance royalties distributed by ASCAP or BMI, even though the producer owns the copyright. But the contract assumes that ASCAP and BMI will in fact be distributing performance royalties. If ASCAP and BMI ever stop doing so, the contract says nothing about the composer's right to share in performance royalties paid directly to producers. Even if it is assumed that the composer's share remains the same, and the producer has to pay it instead of ASCAP or BMI, another potential problem may arise. When ASCAP and BMI negotiate performance fees, they are concerned solely with the interests of their composers and publishers. Producers on the other hand may have a conflict of interest: network license fees paid for music performance rights will have to be shared with composers, while license fees paid for the non-music portions of a program may not have to be shared at all or only at a lesser rate. This then raises the question of how CBS intends to negotiate music performance fees.

Fee negotiations

The CBS arbitration proposal is merely an interim measure, one that will be used only until 1986.

Thereafter, if CBS decides not to renew its blanket licenses, CBS will negotiate the amount of direct license fees at the same time it negotiates the license fee it will pay for the non-music portions of programs. In fact, the music performance fee will be negotiated separately from the balance, so everyone concerned will be able to see precisely how much is being paid for music rights in particular.

Even if composers' and publishers' administrative expenses become part of the overall music fee, CBS expects its total music costs to be less than the blanket license fees it has been paying to ASCAP and BMI. The reason that it thinks so is that it believes the administrative and monitoring costs attributable to network broadcasts are relatively small. Monitoring, for example, would be quite easy, because all of CBS's more than 200 affiliates broadcast the same network programming on the same day and at the same time. Thus, only one

CBS station need be monitored, not 200. CBS believes that most of ASCAP's and BMI's administrative and monitoring expenses are incurred in licensing and monitoring nightclubs, retail stores and other widely scattered music users who pay relatively small blanket fees to begin with.

BMI's view

Edward Chapin, BMI's resident counsel, takes issue with CBS's view that network blanket license fees in effect subsidize the monitoring and licensing of small music users. Furthermore, Mr. Chapin believes that if CBS decides not to renew its blanket licenses, and decides to rely on direct licensing instead, the network will wind up paying more for music than it does now. Although BMI is aware that CBS has been asking producers to obtain direct licenses, Mr.Chapin says that CBS's actions are not having any effect on BMI's operations, nor has BMI done any contingency planning in light of CBS's direct licensing proposals.

The extent to which CBS will succeed with its direct licensing proposal remains to be seen. Though some producers have agreed to it, it appears that others have not, at least not yet. No effort was made to survey all of the major television production companies for this article, but at least one of the majors said it has not agreed to CBS's proposal and does not plan to. Insofar as the majors are concerned, one industry "custom" may impede CBS's efforts to get agreements for direct licensing and especially fee arbitration: major television production companies frequently produce network series for years without ever signing formal contracts. Deal memos and correspondence are often the only written reflection of the "agreement" between the majors and the networks. Unless specific mention of music performance rights is made in future deal memos, CBS will not acquire music performance rights by implication, because industry "custom and practice" has been for the networks to acquire performance rights themselves from ASCAP and BMI, not directly from composers or through producers.

Preexisting music

CBS also may find that producers of programs that use preexisting music - that is, music originally composed for some purpose other than television broadcast - may be unable to make the representations and warranties CBS is requesting. When a producer hires a composer to write music for a particular program, the producer deals directly with the composer or with the composer's agent or lawyer. All are experienced in the television business, and though they may not like the direct license concept or the fee arbitration plan, they at least will understand it and be able to evaluate it. On the other hand, when producers use preexisting music in their programs, they must deal with music publishers for whom television is only one customer - and a customer that may not be fully understood at that.

Ron Gertz, the president of the Clearing House, Ltd. in Hollywood, predicts that publishers of preexisting music will not agree to grant performing licenses in exchange for an amount to be set in arbitration. Mr. Gertz has a good deal of experience in this area, because the Clearing House is an agency that represents motion picture and television producers in their dealings with music publishers. (Producers need synchronization licenses in order to be able to record music on the sound tracks of their programs or movies. Movie producers also need performing licenses, because motion picture theaters do not have blanket licenses from ASCAP and BMI.)

Publishers of pre-existing music will refuse to grant performance licenses, Mr. Gertz says, even though doing so may cost them a sale. The reason Mr. Gertz is so confident this will happen is that he has seen such publishers lose sales over seemingly smaller issues, such as the actual value of television synch rights. Mr. Gertz also notes that musical copyrights often are split up among so many different people that it is sometimes virtually impossible to contact them all or get them to agree on the terms of any particular license.

Pre-existing music may cause problems for CBS for another reason as well. Synch right fees for a worldwide, five-year television license usually are in the relatively modest three-figure range. As a result, it is not unheard of for a producer to deliver a television program for broadcast even before all of the synch license contracts are signed. Producers do so knowing that the network or independent television station has a blanket performing license, and thus no infringement will occur because of the broadcast itself. If however CBS does not renew its blanket licenses, and instead relies on producers to get direct performing licenses at the same time producers get synch licenses, producers will have to be even more careful about music licenses than they are now - perhaps more careful than they can be, as a practical matter.

ABC, NBC and the independents

ABC and NBC are aware of CBS's new music policy and are studying the issue themselves, though they have not yet decided - at least publicly - whether they will follow suit.

Hovering in the background behind CBS's new policy - though legally unrelated to it - is the Buffalo Broadcasting case (ELR 4:19:2, 4:9:1). That is the case in which independent television stations made the same antitrust allegations against ASCAP and BMI which were made by CBS in its earlier case. But the independents won in the District Court, even though CBS lost. The District Court concluded that independent stations do not have the bargaining clout enjoyed by CBS and thus do not have the ability to side-step blanket licensing which, according to the District Court, does violate the antitrust laws. ASCAP and BMI have appealed to the Federal Court of Appeals in New York City, and oral argument is scheduled to be heard this summer.

If Buffalo Broadcasting is reversed, CBS will be the only television broadcaster seeking direct licenses (unless ABC and NBC decide to do likewise). CBS may well have enough bargaining power to get direct licenses all by itself, though it may find that the complexity of different licensing systems for different networks and independent stations is so great that it becomes more expensive than blanket licensing.

On the other hand, if Buffalo Broadcasting is affirmed, there is little doubt that CBS will succeed with its direct licensing plans, and that the other networks will adopt similar plans. Legally, the Buffalo Broadcasting case has nothing to do with network broadcasting. It only concerns the licensing of music by independent stations for use in syndicated and locally produced programs. Nevertheless, if as a result of Buffalo Broadcasting, television producers must get performing licenses directly from composers and publishers for the syndicated broadcast of their programs, producers will find that they may as well get direct performing licenses for network broadcasts of their programs as well, at the same time.

Whether this "brave new world" envisioned by CBS and the independent stations is any less expensive for them remains to be seen. It will however create more work for business affairs executives, agents, and lawyers. It would be selfish though to say it is a good thing, solely for that reason.

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[ELR 5:1:4]

RECENT CASES

Georgia Supreme Court rules that ABC and NCAA did not agree on contract language regarding superstation broadcasts of college football games; thus, order enjoining WTBS broadcast of NCAA games is reversed

When ABC was engaged in negotiations with the National Collegiate Athletic Association for free over-the-air broadcast rights to live NCAA football games during the 1982 through 1985 seasons, ABC, on several occasions, expressed concern about the NCAA's selection of the Turner Broadcasting System to televise a "Supplementary Series" of college football games. In ABC's view, the NCAA had agreed to limit the presentation of a Supplementary Series to cable. or pay over-the-air television. Turner planned to televise the series free over-the-air on Atlanta broadcast station WTBS - a "superstation" whose signal is distributed by satellite to cable systems throughout the United States.

ABC protested the Turner agreement and conditioned its acceptance of the NCAA's proposed contract on the understanding that ABC's right to telecast the NCAA games was exclusive with the exception of a cable or pay over-the-air presentation of the Supplementary Series. In other words, ABC understood there would not be any local, live, over-the-air broadcasts of college football of the type planned in Atlanta by WTBS. The NCAA did not agree to this construction of its proposal, but the parties subsequently signed a contract with the understanding that "each party would preserve its differing position on whether the contract language allowed the presentation over WTBS."

The execution of the contract did not end the disagreement between ABC and the NCAA, and ABC eventually brought an action seeking to restrain the NCAA from allegedly breaching the contract. The trial court found that the NCAA-ABC contract prohibited the NCAA from authorizing free over-the-air broadcasts of the Supplementary Series (ELR 4:10:1). The trial court therefore granted an interlocutory injunction restraining Turner's broadcast of the Supplementary Series for the

1983 season and enjoining the NCAA from contracting with Turner or any other superstation for the free over-the-air broadcast of the Supplementary Series for the 1983 through 1985 seasons.

The Supreme Court of Georgia has concluded that there was no "meeting of the minds" on the part of ABC and the NCAA as to any restrictions on the presentation of the Supplementary Series, because there was no agreement on what was intended by the contract language. Hence, since ABC and the NCAA had no agreement relating to the Supplementary Series, ABC had no contractual rights on which injunctive relief could be based, the state Supreme Court said, in reversing the trial court's injunction.

Cox Broadcasting Corp. v. National Collegiate Athletic Association, 297 S.E.2d 733 (Ga. 1982) [ELR 5:1:9]

Federal Court of Appeals upholds dismissal of antitrust action filed by independent documentary producers against the television networks

A Federal Court of Appeals has affirmed the dismissal of an antitrust action brought by independent producers of television public affairs documentaries against the three major television networks and their owned-and-operated television stations in New York City. The producers had sought triple damages of $78 million against each network and also had requested an injunction restricting or prohibiting the networks' in-house production of documentaries, or prohibiting the networks from refusing to purchase documentaries from independent producers as a matter of network policy.

The producers contended that the networks, which produce almost all documentaries in-house, have combined with their owned-and-operated stations and with their affiliates to restrain access to the market for documentaries. It was argued that although affiliation agreements do not obligate an affiliated station to buy its network's documentaries, the fact that the television industry operates through network affiliation agreements, along with the practice of in-house production, means that "as a practical matter," independent producers cannot obtain a national audience for their documentaries.

The producers also alleged that each network has monopolized or has attempted to monopolize the relevant market for documentaries in violation of section 2 of the Sherman Act. The relevant market, according to the producers, is comprised of the networks, as the sellers, and the affiliates, as the buyers, of programs.

In a brief per curiam decision, the Court of Appeals affirmed the dismissal of the producers' case "substantially for the reasons stated by (District) Judge Duffy in his detailed discussion ... in his opinion" (see ELR 2:17:3).

Levitch v. Columbia Broadcasting System, Inc., 697 F.2d 495 (2d Cir. 1983) [ELR 5:1:9]

Stipulated settlement ends lawsuit filed by talent agency challenging Screen Actors Guild franchise fee policy

The Screen Actors Guild has settled a class action lawsuit filed by Talent Representatives, Inc., by agreeing to end its practice of collecting fees from agents and sub-agents as a condition for obtaining a SAG franchise or for representing SAG members. Another term of the settlement, which was approved recently by a Federal District Court in New York, provides that SAG will return all franchise fees and sub-agent fees paid to SAG by certain specified agents during the period from June 1978 to June 1979. Agents licensed for a shorter period of time prior to the filing of the complaint may be entitled to receive as much as one-half of all franchise fees paid to SAG during a stipulated period. Counsel fees of $60,000 were awarded to Talent Representatives' lawyers, of which SAG may have to pay $50,000.

The stipulated settlement notes that if a determination is made in the pending case of Talent Representatives, Inc. v. American Federation of Television and Radio Artists that franchise fees may be collected in connection with the franchising of talent agents to represent entertainment union members, the stipulation in the SAG matter will not prohibit SAG from reinstating franchise fees "on a lawful basis."

Talent Representatives, Inc. v. Screen Actors Guild, Inc., Case No. 81 Civ. 3491 (S.D.N.Y., Feb. 2, 1983) [ELR 5:1:10]

CBS denied summary judgment in defamation action brought by student housing landlord; jury must determine if fair report privilege was abused by video portion of CBS news report about landlord's suit against college newspaper reporter

On March 21, 1980, WCAU-TV, a television station operated by CBS in Philadelphia, broadcast a news report concerning a lawsuit that had been filed by Amrit Lal against Ellen Sands, the editor of the student newspaper at West Chester State College. Sands had written an article for the newspaper in which she described "serious problems" existing at a house which was owned by Lal and leased to West Chester students. Lal claimed that his civil rights had been violated and sought a preliminary injunction to bar the publication of the article. However, the article appeared in the student newspaper prior to the date scheduled for a hearing on Lal's petition. A reporter for WCAU attended the hearing, visited and filmed the house in question, and conducted interviews with the parties. Lal then sued CBS for defamation, alleging that WCAU's news report had been broadcast "to sensationalize, exaggerate and totally imply a false misleading impression of (Lal's) character, person and community status."

Federal District Court Judge Luongo has ruled that the news report was capable of a defamatory meaning, and thus he has refused to grant summary judgment to CBS. Judge Luongo noted that the broadcast might be interpreted as portraying Lal as a slumlord or it may leave viewers with the impression that he was an "unscrupulous landlord." A jury must determine whether a defamatory meaning was conveyed to viewers, or whether, as CBS argued, the broadcast simply reported on a legal matter involving Lal. Further, the fact that CBS fairly and accurately summarized the tenant complaints reported by Sands did not relieve CBS of liability for broadcasting what may have been an untrue description of the leased premises, because under Pennsylvania law, "one who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it." Since a question of fact was raised as to the truth of the underlying alleged defamation, summary judgment was not available to CBS.

However, Judge Luongo did note that CBS may be entitled to the privilege of fair report as to its summary of the newspaper article, because the article was found to be part of the judicial proceedings reported on by WCAU. But Lal argued that the video which presented views of the interior of the house abused any qualified privilege of fair report. Judge Luongo again found that an issue of fact was present. The video obviously was not part of the judicial proceeding, so the jury must decide whether "the juxtaposition of the video and the summary of the judicial proceedings destroy(ed) the objectivity of the broadcast. If so, the privilege would be lost . . . ," the judge said.

Judge Luongo also ruled that a jury must determine whether CBS acted with actual malice. It was assumed, only for purposes of CBS's summary judgment motion, that Lal was a public figure. In the court's view, Lal's affidavit created a question of fact as to the truth of the matters reported in the CBS broadcast. If Lal's allegations were taken as true, it could be found that the CBS reporter, who had visited the premises, must have known that some of the statements in the ensuing broadcast were false.

CBS was granted summary judgment on Lal's claim of trespass, because a tenant with the right of possession of the premises had granted permission for the film crew to enter.

Lal v. CBS, 551 F.Supp. 356 (E.D.Pa. 1982) [ELR 5:1:10]

Artist's copyright infringement action against MGM is dismissed, but further proceedings are ordered to determine artist's right to exhibit paintings and drawings based on characters from "The Wizard of Oz"

The principle that "a derivative work must be substantially different from the underlying work to be copyrightable "may be stated easily, but it requires a certain wizardry in its application, as is shown by a case involving the depiction of characters from "The Wizard of Oz" on a series of collectors plates.

A whirlwind of litigation revolves around MGM's issuance of a license, in 1976, to the Bradford Exchange to use characters and scenes from MGM's movie in a series of collectors plates. At Bradford's invitation, artist Jorie Gracen entered a competition to select a designer for the series. Gracen proceeded to make a painting of Dorothy, as played by Judy Garland. The painting was based on photographs from the movie and on Gracen's recollection of the movie. Bradford offered Gracen a contract to do the series, but she refused the offer, and another artist, James Auckland, was engaged to do the series.

Gracen, however, obtained copyright registration certificates on her painting and on her drawings of other characters in the movie, and in 1978, she sued MGM, Bradford, Auckland and the manufacturer Of the plates, alleging that Auckland's painting of Dorothy was a "piratical copy" of her painting. MGM and Bradford filed a counterclaim alleging that Gracen had infringed the copyright on MGM's movie by exhibiting her drawings to prospective clients.

A Federal District Court granted summary judgment against Gracen on her copyright infringement claim, and on the counterclaim, holding that Gracen could not copyright her painting and drawings because they were not original, and that Gracen was liable for $1,500 in damages for infringing MGM's copyright.

Judge Posner of the Federal Court of Appeals in Chicago did not proceed directly to the question of originality, since, in his view, the District Court's emphasis on this issue may have been misplaced. Rather, Judge Posner noted that even if Gracen's painting and drawings had enough originality to be copyrightable as derivative works, Gracen was not entitled to copyright them unless she had obtained permission from MGM to use the source materials from the movie on which the paintings and drawings were based.

MGM had licensed Bradford to use its copyright in the series of plates, but had not expressly authorized the company to copyright the derivative works thus created. However, since Bradford possessed the apparent authority to copyright the series of plates, a genuine issue of material fact was found to exist as to whether the scope of Gracen's implied license from Bradford included the right to exhibit, if not copyright, her painting and drawings. Thus, in toto, the grant of summary judgment on MGM's counterclaim was ruled erroneous.

Returning to Gracen's claims, Judge Posner pointed out that MGM denied authorizing Bradford or Gracen to copyright derivative works based on the movie. However, since the District Court did not address the issue of the scope of the license issued by MGM, Judge Posner went on to consider the question of the originality of Gracen's painting and drawings.

As applied to derivative works, the purpose of the originality requirement is to prevent overlapping claims, that is, "to assure a sufficiently gross difference between the underlying and derivative work to avoid entangling subsequent artists depicting the copyrighted work in copyright problems." In this case, the difference between the appearance of Judy Garland as Dorothy in the movie stills provided to Gracen and Gracen's painting of the character was not sufficiently different to allow Gracen to copyright her painting, stated Judge Posner, even if Gracen had been authorized by Bradford to do so.

The District Court judgment dismissing Gracen's complaint therefore was affirmed, while the judgment on MGM's counterclaim was vacated and the case remanded for further proceedings.

Gracen v. The Bradford Exchange, 698 F.2d 300 (7th Cir. 1983) [ELR 5:1:11]

Bookstore owner's unlicensed use of the name "Batcave," and use of Batman and Green Arrow characters on advertising material, may constitute copyright and trademark infringement, rules Federal Court of Appeals

A Federal District Court's oversight in not recognizing the "almost unmistakable association" between the comic strip hero Batman and his secret hideout, the Batcave, has resulted in the reversal of a decision in which a bookstore owner had been granted summary judgment in an action brought by DC Comics Inc. for unfair competition and trademark and copyright infringement (ELR 4:11:4). Without the aid of a cape, mask or Batmobile, Judge Ralph K. Winter ruled that the District Court's resolution of several issues of material fact was "singularly inappropriate," because the District Court apparently had relied in large part on an unsworn statement by the bookstore owner as to his good faith use of the Batman mark.

Reel Fantasy's chain of bookstores sold comic magazines, and at least one store displayed the Batman insignia. The District Court had found that no confusion was likely to result from the store's use of the name "Batcave." But a determination as to likelihood of confusion involves such factual variables as the strength of the mark in question. The District Court stated that the trademark "Batman" did not extend to "Batcave" because "Bat" has not acquired a secondary meaning which would automatically link any word it modifies with the Batman character. This ignored DC's evidence suggesting that the Batcave is an integral part of the Batman stories and is thus strongly associated with the Batman mark, noted Judge Winter.

Further, the issue of whether Batcave customers might believe that the bookstores are operated by the parties responsible for creating or publishing Batman comic books remains to be resolved, as does the question of Reel Fantasy's motive in adopting the Batcave name.

The District Court also had ruled that Reel Fantasy's use of DC's comic book characters on its advertising flyers was a fair use. Section 107 of the Copyright Act lists four factors pertinent to a fair use defense, which factors also are issues for the trier of fact. Since the flyers were of a commercial nature and may have been part of the alleged "overall appropriation of DC's property in the Batman character," Judge Winter refused to rule as a matter of law that a fair use defense would succeed.

DC Comics Inc. v. Reel Fantasy, Inc., 696 F.2d 24 (2d Cir. 1982) [ELR 5:1:11]

Quarterback Jack Thompson must arbitrate payment dispute with Cincinnati Bengals, Federal District Court rules

Jack Thompson (a.k.a. the "Throwing Samoan") is a quarterback for the Cincinnati Bengals. Thompson is not, however, a member of the National Football League Players' Association (NFLPA), the union which represents the players.

The NFL players' strike of 1982 began on September 21, 1982. During the strike, Quarterback Thompson informed the Bengals that they had breached his contract by failing to pay him. According to Thompson, since he was not a member of the NFLPA, the Bengals were not excused from their obligation to issue his paychecks during the strike. As a result of the Bengals' "breach" of his contract, Thompson claimed he was free to negotiate with the Michigan Panthers of the rival United States Football League.

Both sides filed lawsuits. The Bengals then obtained a temporary restraining order preventing Thompson from playing for the Michigan Panthers. Thereafter, the Bengals applied to the court for an order requiring Thompson to arbitrate the question of whether he was entitled to be- paid during the strike. The Bengals argued that both the 1977 NFL Collective Bargaining Agreement and the Standard NFL Players' Contract called for arbitration of nonjury grievances.

Thompson opposed arbitration on two grounds. First, Thompson argued that Paragraph 21 of the Standard NFL Players' Contract provided for arbitration according to the procedures set forth by any Collective Bargaining Agreement "in existence" at the time the dispute arose. Since Thompson's dispute with the Bengals arose during the September 1982 strike, there was no Collective

Bargaining Agreement "in existence," because the 1977 Collective Bargaining Agreement had terminated. Thus, according to Thompson, his duty to arbitrate had likewise terminated.

Thompson also argued that the question of whether a non-union member was entitled to be paid during a strike was not a proper subject for arbitration. According to Thompson, the Bengals brought their lawsuit against him under paragraph 3 of the Standard NFL Players' Contract (which prevents players from playing for other football teams) and both the 1977 and the 1982 Collective Bargaining Agreements specifically excluded Paragraph 3 disputes from the duty to arbitrate.

Judge Spiegel of the Federal District of Ohio has ruled in favor of the Bengals and has ordered arbitration. Judge Spiegal reasoned that there was a Collective Bargaining Agreement "in existence," because the Standard NFL Players' Contract itself specifically recognizes that any Collective Bargaining Agreement is deemed to be "in existence" during its "stated term." The "stated term" of the 1982 Collective Bargaining Agreement is from July 16, 1982 through September 31, 1987, and thus the effective date of the 1982 Collective Bargaining Agreement predated the strike. Thus, the arbitration provision contained in the Agreement was in effect. In addition, the court ruled that the question of the Bengals' obligation to pay a non-union player during a strike was simply a question of contract interpretation and thus was not a paragraph 3 dispute excluded from arbitration by the 1977 and 1982 Collective Bargaining Agreements. As a result, the court concluded that arbitration was proper.

According to news accounts of the Thompson-Bengals arbitration, the arbitrator has ruled that Thompson could not quit the Bengals and sign with the Michigan Panthers of the USFL because of his claim that he had not been paid during the football strike. Apparently, Thompson informed the Arbitrator that he had been paid during the strike. As a result, it appears that the "Throwing Samoan" will not be joining the rival United States Football League after all.

Cincinnati Bengals, Inc. v. Thompson, 553 F.Supp. 1011 (S.D. Ohio 1983) [ELR 5:1:12]

FCC's denial of license renewal to San Diego radio station KDIG is upheld by Federal Court of Appeals

In 1971, the FCC renewed the broadcast license of West Coast Media, the owner of FM radio station KDIG in San Diego. At the time, because West Coast was undergoing financial difficulties, the Commission adjusted its news, public affairs and nonentertainment program requirements with the expectation that the station would increase the amount of such programming during the renewal period. However, in 1974, an Administrative Law Judge found that the station had not met its promised programming commitments and that the station's financial problems did not excuse its continued non-compliance with FCC programming requirements. Nevertheless, the ALJ granted West Coast a one-year renewal due to the inexperience of the company's owners. The FCC however denied the one-year renewal, concluding that "the record indicates the licensee made initial proposals to the Commission which it did not then intend to effect, that with the passage of time the licensee did not make sincere efforts to carry out its proposals, and that it did not convincingly demonstrate that resources were not available to allocate to nonentertainment." KDIG broadcast virtually no nonentertainment programming during its initial renewal term.

A Federal Court of Appeals has upheld the Commission's ruling. West Coast had argued that the Commission's conclusion that the company did not intend to fulfill its programming promises constituted a finding of misrepresentation. But misrepresentation was not designated as an issue in the renewal hearing. The court stated that the FCC most likely was "imprudent" in referring to West Coast's intent, but that the circumstances of the case demonstrated that West Coast was not improperly denied notice. The FCC focused on West Coast's "lack of reasonable and good faith efforts" to fulfill its commitments, and not on findings of misrepresentation.

The court also rejected West Coast's claim that it was entitled to the benefit of an FCC policy excusing programming shortfalls on the basis of a licensee's financial difficulties. However, said the court, West Coast had made its program promises with the knowledge that

KDIG was losing money, and no significant worsening of the station's financial situation was shown. The record did suggest that KDIG programming suffered because more resources apparently were going to the company's station in Orange, California.

This case may be the first in which a license renewal was denied because of a promise-versusperformance failure. Fines or short-term renewals are generally the sanction in such cases. But license denial was not inappropriate in this case, stated the court. There was substantial evidence that West Coast did not make good faith efforts to meet its programming proposals. Since the Commission's conclusion was not unsupported, arbitrary or capricious, its ruling was affirmed.

West Coast Media, Inc. v. Federal Communications Commission, 695 F.2d 617 (D.C.Cir. 1982) [ELR 5:1:13]

IRS strikes out in attempt to revoke tax-exempt status of amateur baseball organization

"Play ball!" in Hutchinson, Kansas, signals the beginning of baseball games for teams fielded by the Hutchinson Broncos, the American Legion, the Little League, or the city's youth baseball camp. Hutchinson Baseball Enterprises, the owner of the amateur Broncos, allows the other teams free use of a field leased to Hutchinson Baseball by the city. It also provides Bronco team members to serve as coaches and instructors for the youth groups.

In 1975, the Commissioner of Internal Revenue notified Hutchinson Baseball that it did not qualify for tax-exempt status under section 501(c)(3) of the Internal Revenue Code. This ruling was reversed by the Tax

Court which stated that the term "charitable" in the exemption was to be construed in its generic sense and was not limited to the classifications set forth in the statute. The Tax Court found that Hutchinson Baseball was organized and operated exclusively for the purpose of advancing recreational and amateur athletics for the community and thus did qualify as a 501(c)(3) organization (ELR 1:16:7).

On appeal, the Commissioner argued that the Tax Reform Act of 1976 amended the relevant section by extending its exemption to those organizations purporting to "foster national or international amateur sports competition. . . ." However, in the Commissioner's view, Congress did not intend that the promotion of amateur sports, by itself, would be a qualifying charitable purpose. Rather, according to the Commissioner, an organization seeking tax-exempt status would have to undertake instructional activities so as to qualify as an educational organization or associate itself with a recognized charitable activity such as reducing juvenile delinquency.

A Federal Court of Appeals has rejected the Commissioner's argument and has agreed with the Tax Court that Hutchinson Baseball's goals were within the broad meaning of the term "charitable" and that the organization qualified for the exemption. The fact that the predominant activity of Hutchinson Baseball was the operation of the Broncos did not impair the exemption, stated the court, since the Broncos are an amateur team which is engaged in the furtherance of proper charitable purposes.

Hutchinson Baseball Enterprises, Inc. v. Commissioner of Internal Revenue, 696 F.2d 757 (10th Cir. 1982) [ELR 5:1:13]

Television station could not arbitrarily refuse to air retailer's commercials, but jury award of $50,000 for breach of contract is reduced to $17,500 by Federal Court of Appeals

In 1977, Sam's Style Shops, a discount womens clothing store, designed a television advertising campaign in which it compared its price for certain garments with the price charged by a named competitor. A sales representative for WDSU, the Cosmos Broadcasting station in New Orleans, agreed to air 12 commercials of 30 seconds each for a price of $2,400. The agreement stated that the commercial material provided by Sam's advertising agency would be subject to station approval and that the station had the right to reject such material. If the agency did not furnish satisfactory material 24 hours prior to telecast time, the agreement could be terminated by either party without penalty. Sam's first commercial was screened for the station's management. Although it was of broadcast quality and was not obscene, WDSU management found the commercial to be unsuitable, since the station purportedly could not verify Sam's pricing claims. WDSU management also said the commercial might confuse or deceive viewers.

Sam's brought an action against Cosmos for breach of contract and was awarded $50,000 in damages by the jury. A Federal District Court judge had denied Cosmos' motion for summary judgment verdict on the ground that the agreement did not allow the station to reject the commercial unless it had a reasonable basis, in accordance with objective standards prevailing in the television industry, for doing so. (ELR 3:11:8)

On appeal, Cosmos argued that the language of the television air time agreement set forth a "postestative" condition under Louisiana law, namely, that Cosmos would not incur a contractual obligation to Sam's until

WDSU actually screened a commercial and accepted it for broadcast. Until that point, Cosmos asserted that it had the right to reject any particular ad submitted for any reason or for no reason at all. A Federal Court of Appeals has disagreed, however. It has ruled that the agreement did not give station management "an absolute and arbitrary right to reject a commercial after it has agreed to accept such advertisements." If the agreement were interpreted as Cosmos suggested, the station would not have been obligated to Sam's at all. Cosmos still would be entitled to reject a proposed commercial that was unfittingly libelous, obscene or unlawful.

The Court of Appeals also upheld the trial court's charge to the jury in which Cosmos was given the burden of demonstrating that its decision to refuse the commercial was reasonable and in accord with industry standards.

However, the Court of Appeals did not allow the $50,000 damages award, finding that the District Court had erred in not granting a new trial or remittitur on the damages issue. Sam's had presented a witness who testified that the proposed commercials would have increased Sam's gross sales in New Orleans by over $200,000, resulting in a ratio of projected sales to advertising expense of 100 to 1 - a "staggering return," according to the court. Cosmos questioned many aspects of the marketing survey conducted by the witness, and the court agreed that the evidence was speculative and did not support the jury verdict. The court stated that the maximum amount a reasonable jury might have awarded, without taxing the court's "sense of proportion," would have been $17,500 - approximately the cost of the commercials plus six times their cost as lost profit. The appellate court therefore ordered the matter remanded for a new trial on the issue of damages unless

Sam's agreed to accept a reduction in damages to the sum of $17,500.

Sam's Style Shop v. Cosmos Broadcasting Corporation, 694 F.2d 998 (5th Cir. 1982) [ELR 5:1:14]

Canadian court rules that Ontario Board of Censors may not censor or prohibit the exhibition of films in the absence of statutory guidelines

In April 1982, the Ontario Board of Censors denied an application submitted by the Ontario Film and Video Appreciation Society seeking approval for public showings of the film "Amerika." The Board based its ruling on the film's explicit portrayal of sexual activities. However, the Supreme Court of Ontario has quashed the ruling as "an interference with the freedom of expression of the applicant. . . ."

The court noted that the Ontario Theatres Act of 1980 grants to the Board the power to censor or prohibit the exhibition of any film shown to the public or for profit in Ontario, and requires that all films be submitted to the Board for approval. The Film Society argued that these provisions amounted to a prior restraint of expression in violation of the guarantee of the right to freedom of expression contained in Canada's Charter of Rights and Freedoms which is a part of the country's new Constitution. Under the Charter, the right to freedom of expression is subject only to "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The Theatres Act does authorize the Board to make regulations concerning the exhibition of films, but the Board has not promulgated any such regulations. Rather, the Board distributes a document entitled "Standards for Classification and/or Censorship of Films." The booklet sets out descriptions of the type of material that would be classified as "general," "adult entertainment," or "restricted," as well as the type of material that might be subject to deletion.

In determining the validity of the Board's ruling, the court first noted that some prior censorship of films may be "demonstrably justifiable." However, the provisions of the Theatres Act were not "reasonable," since a film-maker might be denied his or her only means of self-expression. Further, the "standards" issued by the Board were without legal force. Thus, the Board essentially was free to restrict expression without limitation.

The court did not rule that the censorship scheme of the Theatres Act is invalid, but that the sections purporting to allow the censorship of films may be "of no force or effect." The sections may be rendered operable by the passage of regulations pursuant to legislative authority or by the enactment of statutory amendments imposing reasonable limits and standards on the Boards's authority.

In the Matter of the Theatres Act ... between Ontario Film and Video Society and Ontario Board of Censors, In the Supreme Court of Ontario (March 25, 1983) [ELR 5:1:14]

Video programs may be copyrighted, but substantial similarity of expression - not merely ideas - is necessary to prove infringement

The interplay between an unprotectable idea and its copyrightable expression was the issue in a case in which the "Meteors" video game showed its mettle when confronted by a copyright infringement action brought by Atari, the manufacturer of the competing "Asteroids" game. Amusement World, which is the distributor of Meteors, challenged Atari's copyright on the ground that Atari had filed with the Copyright Office a videotape of a display screen sequence of its game rather than the printed circuit board which embodies the game's computer program. But the copyrighted "work" was the visual presentation of the Asteroids game, and this visual presentation was declared copyrightable as an audiovisual work and as a motion picture by a Federal District Court in Maryland. The circuit board merely served to fix the work in a tangible medium. The submission of a videotape of one game sequence was a reasonable means of providing "alternative identifying material" given the bulkiness and cost of submitting an actual video game. Atari was not attempting to copyright an idea of a video game involving asteroids, but rather the unique design features of its game, the court ruled.

While finding that Atari was entitled to copyright Asteroids because the idea of the game was sufficiently general so as to permit more than one form of expression, the court found that Meteors was not substantially similar to and not an infringing copy of Asteroids. The similarities between the games were found to be inevitable given the format of a game involving a space ship battling killer rocks and the technology of the video game medium. Certain forms of expression must appear in any version of a video space chase game, and these similarities do not constitute copyright infringement because they are part of an uncopyrightable idea. In this case, the overall "feel" of Asteroids and Meteors was quite different. Thus, although Amusement may have taken Atari's idea, copyright protection was unavailable and injunctive relief was denied.

In another video game copyright case, Williams Electronics, the manufacturer of the coin-operated electronic video game "Defender," has defeated International, the producer of a game entitled "Defense Command," whose characters, shape, size, color, manner of movement and interaction with other symbols were identical to those of Williams' Defender. A Federal District Court found that Artic infringed Williams' computer program copyright and the audiovisual copyrights in Defender's attract and play modes.

On appeal, Artic contested the validity of the game's copyright by claiming that the attract and play modes did not meet the statutory requirement of fixation. Artic pointed out that the game generates new images each time the attract or play mode is displayed. A Federal Court of Appeals in Chicago has rejected this view, however, noting that "The fixation requirement is met whenever the work is sufficiently permanent or stable to permit it to be . . . reproduced or otherwise communicated for more than a transitory period." The original audiovisual features of Defender do repeat themselves over and over; and many aspects of the display remain constant from game to game regardless of player interaction with the machine. Further, there is no player participation in the attract mode which is displayed repetitively without change.

Artic also argued that there could be no copyright protection for the ROM (Read only Memory) - the memory devices which store the data of a computer program - because they are utilitarian objects or machine parts. But Williams was protecting its artistic expression of original works "fixed" in the ROM devices, observed the court.

Concerning the alleged infringement of Defender's computer program, the parties did agree that a computer program can be the subject of a copyright as a literary text. But Artic argued that a computer program copyright would be infringed only if an unauthorized copy of the program text were made. In Artic's view, a "copy" must be intelligible, and be intended as a medium of communication to human beings. This argument also was rejected. The court ruled that infringement of a computer program is not limited to copying of the program text but also may occur by the duplication of a computer program fixed on a silicon chip.

While affirming the District Court decision granting an injunction to Williams, the Court of Appeals did remand the matter for further proceedings on the question of whether Artic's conduct was "willful and deliberate." A finding of willfulness was not required in order for the District Court to issue the injunction, but Artic's intent may affect the amount of damages available to Williams. The District Court's statement that Artic acted willfully might bind Artic when damages are determined without affording the company an opportunity to present rebutting evidence, the appellate court concluded.

Atari, Inc. v. Amusement World, Inc., 547 F.Supp. 222 (D.Md. 1981); Williams Electronics, Inc. v. Artic International, Inc., 685 F.2d 870 (3d Cir. 1982) [ELR 5:1:15]

Judgment denying copyright infringement claim of licensee for Paddington Bear merchandise is reversed; derivative sketches of bear were sufficiently original for copyright protection, and verbal licensing arrangement may have been memorialized in writing as required by Copyright Act

Paddington Bear has emerged, at least partially, from a thicket of litigation sown by the parties in a copyright infringement action involving the use of a likeness of the fictional character. In 1975, Paddington and Company, Limited, a British corporation holding all rights to a series of childrens books featuring Paddington Bear, granted Eden Toys exclusive North American rights to produce and sell a number of Paddington products. At some point between 1975 and 1977, Ivor Wood, the illustrator of the Paddington Bear books, drew a series of sketches for use by Eden and its sublicensees. In 1978, one of the sublicensees, the C.R. Gibson Company, produced a design for gift wrap that included seven drawings of Paddington Bear; the drawings used the Ivor Wood sketches as "a point of departure." In 1980, Eden sued Florelee Undergarment Co., alleging that Florelee's sale of a nightshirt featuring a bear "identical in almost all respects" to one of the Gibson drawings of Paddington Bear, infringed Eden's rights under the Copyright Act and the Lanham Act.

A Federal District Court rejected Eden's copyright claims on the grounds that the Gibson drawings lacked the originality required for copyright protection (ELR 3:24:6). The District Court concluded that the Gibson copyright was invalid because the changes to the Wood drawings made by Gibson were too insignificant to qualify the Gibson drawings as "original works" under the Copyright Act. However, a work which makes a non-trivial contribution to an existing work may be copyrighted as a derivative work "even though it would infringe the original copyrighted work if it were created without the permission of the owner of copyright in the underlying work." In this case, the Gibson variations of the Wood sketches included changed proportions in Paddington Bear's hat, the elimination of individualized fingers and toes, and the overall smoothing of lines. And these changes were found to be original and substantial enough to deserve independent copyright protection by a Federal Court of Appeals.

The fact that Eden did not register either the Wood copyright or the Gibson copyright until after Florelee's alleged infringing acts occurred would not preclude Eden from recovering for infringement of the copyrights prior to the date of registration. (However, the delay in registration will prevent the company from claiming either attorneys' fees or statutory damages, noted the court.)

The District Court also had ruled that Eden was not the exclusive licensee of the right to produce images of Paddington Bear on adult clothing at the time the allegedly infringing garments were sold by Florelee in 1979. Eden claimed that it was operating under an informal understanding with Paddington that gave Eden the exclusive North American right to produce any Paddington Bear product except books and records and a few other items, and that this understanding was formalized in a 1980 amendment to the 1975 licensing agreement.

Under the Copyright Act of 1976, an exclusive license is not valid unless there is a written note or memorandum of the transfer. But this note or memorandum need not be made at the time when the license is initiated, stated the appellate court. The requirement may be satisfied by the copyright owner's later execution of a writing which confirms the agreement. In view of the apparent agreement between Paddington and Eden, "it would be anomalous to permit a third party infringer to invoke this provision against the licensee." On remand, the District Court was asked to make findings on the issue of whether Paddington in fact had granted Eden an informal license to sell items of adult clothing, and later confirmed that license in a writing signed by Paddington. Eden then would be entitled to sue, in its own name, for infringement of any Paddingtonowned copyrights used without authority on adult clothing. In the absence of an informal understanding, or of a memorialization of such an understanding, Paddington would have to be joined as a plaintiff in the action, stated the court.

The District Court ruling granting summary judgment to Eden on its Lanham Act claim was affirmed. Florelee's nightshirt bore the legend "Fred Original." As the District Court noted, "There is no doubt about the falsity of Florelee's copyright notice," because the "Fred Bear" image was a thinly disguised copy of the Gibson drawing, possessed no originality, and was likely to mislead consumers.

Eden Toys, Inc. v. Florelee Undergarment Co., Inc., 697 F.2d 27 (2d Cir. 1982) [ELR 5:1:16]

Libel action filed one year and two days after shipment of 30,000 copies of book "Love Signs" was barred by statute of limitations

A Federal Court of Appeals in California has affirmed the dismissal of an action for libel brought by the Fleury family against Linda Goodman, the author of "Love Signs," and against her publisher, Harper & Row. In doing so, the appellate court held that under California's Uniform Single Publication Act, "publication occurs at the time of actual communication of the libel, not the date on the cover of the newspaper, magazine or other printed matter."

The release date for "Love Signs" was November 9, 1978, and on that date, the book was available for distribution to the public. In fact, by November 14, 1978, 30,000 copies of the book had been shipped from a warehouse to dealers. Although Ms. Goodman selected

December 25, 1978 as the publication date for "Love Signs," a single, integrated publication already had occurred by November 14th. Thus, the libel action which was commenced on November 16, 1979 was barred by California's one-year statute of limitations. Continued printings in 1979 of the first hardcover edition of the book were part of the single, integrated publication, stated the court.

There was no evidence that a copy of "Love Signs" had been received in California, where the Fleury family lived, by November 16, 1978. But California has rejected a rule which would delay the accrual of a Iv cause of action until communication of the libel in the place of the plaintiff's residence. Furthermore, the statute of limitations will run on a libel action even if the plaintiff does not realize he or she has been defamed.

Since all of the evidentiary facts as to the date of accrual of the cause of action were presented without material dispute, the District Court was correct in ruling on the statute of limitations issue as a matter of law, concluded the Court of Appeals.

Fleury v. Harper & Row, Publishers, Inc., 698 F.2d 1022 (9th Cir. 1983) [ELR 5:1:17]

Proposed change in Marine Corps League band award certificate would result in "dilution" of distinctiveness of John Philip Sousa Band Award, Federal Court of Appeals rules

Some time ago, a dispute arose between The Instrumentalist Company and the Marine Corps League and United States Marine Youth Foundation concerning the use of the name and likeness of John Philip Sousa on music awards. The dispute resulted in a lawsuit in which a Federal District Court enjoined the League's use of a "Semper Fidelis" music award certificate which bore a likeness of Sousa on the front and the composer's name and biography on the back. The court found that the certificate violated the Illinois Anti-Dilution statute, because the Instrumentalist's John Philip Sousa Band Award had acquired "an uncontroverted distinctiveness," and because the similarity between the "Semper Fidelis" award and the Instrumentalist award had the potential effect of "diluting" the distinctiveness of the Instrumentalist's Sousa Award (ELR 3:9:4).

The case was then settled with a Consent Decree in which the League was permanently enjoined from using the Semper Fidelis Award for Musical Excellence or any other band award that could be classified as "confusingly similar" to the John Philip Sousa Band Award. Appended to the decree was an approved certificate which contained no reference to Sousa on its face but did contain a quote from a Sousa biography on its back. The League also was ordered to submit any proposed awards or certificates to the court for approval before marketing them to participating high schools.

Subsequently, the League sought to modify the approved certificate by adding the name and seal of a new cosponsor of the award - the John Philip Sousa Memorial Foundation - to the face of the certificate. Approval for this modification was denied, because the court found that the proposed change would result in a certificate "confusingly similar" to the certificates distributed by the Instrumentalist Company.

A Federal Court of Appeals has affirmed and has ruled that the District Court was not required to limit its analysis of the similarity of the certificates to a "side-by-side, eyeball to eyeball" comparison of the John Philip Sousa Band Award and the proposed Semper Fidelis award, as argued by the League. Rather, the District

Court correctly considered the manner in which the League planned to use Sousa's name, image or likeness and properly referred to its original Memorandum and Order when applying the "confusingly similar" test of the Consent Decree. Under traditional trademark infringement law, courts do conduct a visual inspection of the two products to determine whether there, is a likelihood that consumers will select the product of an alleged infringer believing that it is "related to" the trademark product. But this is not the case under the Illinois Anti-Dilution statute. Confusing similarity under the Illinois statute occurs when there is a "dilution of the distinctive quality of the (plaintiff's) mark by its association with the defendant's product." Hence, the context in which the name and likeness of Sousa was used was relevant to a determination of "confusing similarity."

The District Court had suggested that joining the John Philip Sousa Memorial Foundation as a cosponsor of the award and adding the seal of the Foundation to the face of the certificate might have provided a means for an "end run" by the League around the terms of the Consent Decree. And the evidence presented by the League to support the inclusion of the Foundation's name and seal on the award was found insufficient by the District Court'. The Court of Appeals therefore ruled that the District Court had not abused its discretion in denying the League's motion to modify the Semper Fidelis Band Award certificate.

The Instrumentalist Co. v. Marine Corps League, 694 F.2d 145 (7th Cir. 1982) [ELR 5:1:17]

Jockey entitled to a hearing prior to being denied access to New York racetracks, rules New York Court of Appeals

The New York Court of Appeals has ruled that the New York Racing Association violated due process when jockey Lazaro Saumell was denied access to Association-owned Aqueduct, Belmont and Saratoga racetracks without a presuspension hearing on a claim of misconduct.

The trial court had enjoined the Association and the New York State Racing and Wagering Board from taking any action interfering with Saumell's rights under his Board license until he had a hearing. The court noted that the Board had not issued any charges against Saumell, and that neither the Board nor the Association had held a presuspension hearing as required under state law and under the due process clause of the Federal Constitution.

The Appellate Division modified the trial court decree by deleting the provision which would have permitted the Association to proceed with a hearing. The Appellate Division noted that the continued suspension of Saumell by the Association in the absence of Board action infringed on the Board's licensing authority.

The Association stated that Saumell was excluded from its racetracks on the basis that he allegedly was in possession of an illegal electrical shocking device during a race in violation of Board regulations. Saumell was not advised of the charge against him until 20 days after the incident. Subsequent investigation by the Board and by the Nassau County District Attorney did not result in either disciplinary action or an indictment.

The Court of Appeals has concluded that while the Association does retain its common law right to exclude licensed persons from its premises in the best interest of racing, the exclusion in this case involved such substantial rights that a prior hearing was required, particularly since the Association conceded that its action excluding

Saumell constituted "state action." Therefore, the Appellate Division order was affirmed except for its elimination of the provision permitting the Association to proceed with a hearing.

In the Matter of Lazaro Saumell v. The New York State Racing Association, Inc., New York Law Journal, p. 24, col. 5 (N.Y., March 2, 1983) [ELR 5:1:18]

Briefly Noted:

High School Sports.

The Arizona Interscholastic Association has a policy which prevents boys from playing on girls' interscholastic volleyball teams even though girls are permitted to play on boys' athletic teams. A Federal District Court found that the rule did not violate the equal protection clause because there is a legitimate and important government interest in attempting to assure equality of opportunity for girls in Arizona interscholastic sports and in "redressing past discrimination." The policy has been upheld by a Federal Court of Appeals which has ruled that due to a boy's undue physiological advantage, there would be fewer athletic opportunities for girls if boys were allowed to compete for positions on the girl's volleyball team. The fact that there are other alternatives for equalizing athletic opportunities for girls did not invalidate the policy.

Clark v. Arizona Interscholastic Association, Case No. 82-5132 (9th Cir., Dec. 2, 1982) [ELR 5:1:18]

Labor Relations.

A theater operator's refusal to rehire a movie projectionist who had filed unfair labor practice charges against the company has been ruled a violation of sections 8(a)(3) and 8(a)(4) of the National Labor Relations Act by a Federal Court of Appeals. The court, however, reversed the Board's finding that Royal Development Co. violated section 8(a)(1) of the Act which makes it an unfair labor practice for an employer to interfere with employees in the exercise of their rights to engage in concerted activities for the purpose of collective bargaining. The dispute arose when the projectionist, acting on his own, raised complaints about the scheduling of work. No other employees raised similar complaints, and the projectionist union chose not to become involved in the matter. Further, although the collective bargaining agreement was unclear as to the proper grievance procedures, it appeared that the employee in question circumvented the union by presenting his complaints to company employees. Thus the court ruled that the employee was not engaged in collective bargaining activities. In so ruling, the court rejected the doctrine of NLRB v. Interboro Contractor, Inc., 388 F.2d 495 (2d Cir. 1967), in which a sole employee's attempt to enforce the provisions of a collective bargaining agreement was deemed to be for concerted purposes.

Royal Development Co., Ltd. v. National Labor Relations Board, Case Nos. 81-7638 and 81-7736 (9th Cir., Feb. 22, 1983) [ELR 5:1:18]

Cable Television.

A Florida state appellate court has held that a gratuitous provider of unrequested services is not entitled to payment for those services on a "quantum meruit" theory. Americable Associates succeeded to a contract to provide cable television services for the Naranja Lakes Condominium Association at a fixed rate for twenty-five years. The contract provided that the parties would negotiate terms for additional cable services as they became available. Without negotiating terms as provided in the contract, Americable officiously conferred upon the Association the ability to receive additional channels on its cable system. When the Association refused to pay for the additional channels, Americable brought a quantum meruit action to recover the reasonable value of the enhanced cable television services, The lower court held for the Association, and Americable appealed. Finding that the evidence established no "meeting of the minds" with respect to the additional cable services, the appellate court rejected Americable's appeal, noting that "to hold otherwise would put Americable in the position of being able to enhance cable TV services and subsequently seek additional payment on a quantum meruit theory facts." The court concluded, "In our view, no unfair enrichment occurs on these facts."

Hermanowski, Etc. v. Naranja Lakes Condominium, 421 So.2d 558 (Fla.App. 1982) [ELR 5:1:19]

Adult Enterprises.

In September 1981, the City of Corona adopted an ordinance defining "sex material" and restricting sellers of such material to certain commercial zones. Helen Ebel, who had opened an adult bookstore in Corona in July 1981,. was informed that she would have to move the bookstore. In response, Ebel filed an action against the city, alleging that the zoning ordinance violated her free speech, due process, just compensation and equal protection rights under the First and Fourteenth Amendments. A Federal District Court denied Ebel's motion for a preliminary injunction to restrain city officials from enforcing the zoning ordinance. But the District Court's order has been vacated by a Federal Court of Appeals, which has directed the District Court to issue the preliminary injunction pending a trial. The Court of Appeals found that there were sufficiently serious questions going to the merits of Ebel's claims to require a trial. As distinguished from the Detroit zoning ordinance which was upheld in Young v. American Mini Theaters, 427 U.S. 50 (1976), the Corona ordinance does not contain a "grandfather clause" permitting existing facilities to continue. Furthermore, Ebel's bookstore is the only existing adult bookstore in Corona, while there were about 40 adult bookstores which met the terms of the Detroit ordinance. Ebel also had presented evidence that the real purpose of the ordinance was to obstruct the exercise of her First Amendment rights.

Ebel v. City of Corona, Case No. 82-5056 (9th Cir., Feb. 1, 1983) [ELR 5:1:19]

Copyright Infringement.

A Federal District Court in New York has issued a directed verdict holding Kos Records, and J. David Goldin (doing business under the trade names Radio Yesteryear and Radiola Records) liable for copyright infringement because of their unauthorized distribution of records containing Arch Oboler's radio play series "Lights Out Everybody." The court awarded Oboler and his exclusive licensee $33,000 in damages, $15,000 in punitive damages due to the "egregious" nature of the matter, and attorney's fees, and enjoined the further unlicensed distribution of the records.

Oboler v. Goldin, Case No. 80 Civ. 3339 (S.D.N.Y., Feb. 7, 1983) [ELR 5:1:19]

IN THE NEWS

California legislature considers bill to give "right of publicity" to celebrities' heirs

A committee of the California Senate has approved a bill that would enable a person's heirs to "prohibit, recover damages for, and authorize "the commercial use of that person's name, photograph or likeness for a period of 100 years following the person's death. The bill, SB 613, was introduced last February by state Senator William Campbell and has the support of SAG and AFTRA. To be enacted, the bill must be passed by the full California Senate and by the state's Assembly. SB 613 is designed to legislatively overrule the decisions of the California Supreme Court in Lugosi v. Universal Pictures, 25 Cal.3d 813 (1979), and Guglielmi v. Spelling-Goldberg, 25 Cal.3d 860 (1979) (ELR 1:18:1), which held that a celebrity's "right of publicity" dies with the celebrity. [June 1983] [ELR 5:1:19]

New California statute requires employers of writers and artists "for hire" to provide employee benefits

The California legislature has enacted a bill requiring employers of writers and artists who create "works made for hire" to provide benefits that are required by law for conventional "employees." In the past, many writers and artists who were commissioned to create "works made for hire" were considered independent contractors rather than employees. As independent contractors, they were not provided workers compensation or unemployment benefits, as employees are. The new law amends California's Labor Code to extend these benefits to writers and artists whose work is done on a "for hire" basis. Under the federal Copyright Act of 1976, the copyright in "works made for hire" belongs to the employer rather than to the writer or artist, and this was said to be the rationale for the new California law. [June 1983] [ELR 5:1:19]

Federal Court of Appeals upholds decision that NCAA's football television plan violates antitrust laws

A Court of Appeals in Denver has affirmed a District Court ruling that the NCAA's television plan violates federal antitrust law. The case was filed by the Universities of Oklahoma and Georgia (ELR 4:11:2). The Entertainment Law Reporter will report the details of the appellate court's ruling as soon as a copy of its decision has been obtained. [June 1983] [ELR 5:1:19]

Jury awards $5.9 million to mother in suit against Phil Donahue show

A jury in Denver, Colorado has awarded Willow Lynn Cramlet $5.9 million in her suit against Phil Donahue's production company, Multimedia Program Productions Inc. The suit stemmed from a 1980 broadcast of "Donahue on Today" during which Cramlet's ex-husband, Wayne Anderson, was interviewed about child-snatching. When Cramlet and Anderson were divorced in 1979, Cramlet was given custody of their young son, but after one of Anderson's visits, he did not return the boy to her. Cramlet later saw her ex-husband on the Donahue show and asked the show's staff for assistance in locating Anderson and their son. The staff refused, however, saying that Anderson had been given a pledge of confidentiality. Donahue's company has said it will appeal the verdict. [June 1983] [ELR 5:1:20]

Libel verdict in suit by Mobil Oil president against Washington Post is set aside by trial judge

U.S. District Judge Oliver Gasch has set aside a $2.05 million jury verdict in favor of Mobil Oil president William P. Tavoulareas against the Washington Post. The verdict was rendered last summer in a libel case that was triggered by an article written by Post reporter Patrick Tyler and edited by Bob Woodward, the newspaper's assistant managing editor. The verdict consisted of $250,000 in actual damages and $1.8 million in punitive damages. Judge Gasch set aside the verdict on the grounds that there had been no evidence that the article contained knowing lies or statements made in reckless disregard for the truth. As a public figure, Tavoulareas had to meet this standard to win. [June 1983] [ELR 5:1:20]

CBS releases report of internal investigation into Vietnam documentary, as ordered by District Court in Westmoreland libel suit

CBS News has released the report of its internal investigation of the making of "The Uncounted Enemy: A Vietnam Deception." The accuracy of the documentary has been challenged in a libel suit filed against the network by General William Westmoreland who was the commander of U.S. troops in Vietnam. In pretrial discovery proceedings, Westmoreland's lawyer sought a copy of the report, known as the "Benjamin Report" because it was prepared by CBS News producer Burton Benjamin. CBS refused to turn over the report, claiming that it was privileged. U.S. District Judge Pierre Leval ruled against CBS on that issue, however, and denied CBS's request that the question be certified for immediate appeal. Trial of the case is scheduled to begin March

1, 1984 in Federal District Court in New York City. [June 1983] [ELR 5:1:20]

WASHINGTON MONITOR

NBC charges three cable systems with "pirating" Super Bowl feeds

NBC has filed a complaint with the Federal Communications Commission alleging that three cable systems "pirated" the network's feed of last January's Super Bowl game between the Washington Redskins and the Miami Dolphins. The feeds were being transmitted to NBC affiliates by satellite, and allegedly were intercepted by the cable systems without authorization. The cable systems in question are Athena Cablevision of Corpus Cristi, Cox Cable of New York, and United

Video Cablevision of St. Louis. NBC has asked the FCC to impose the maximum penalty permitted by law which would include prison terms and fines of as much as $10,000. [June 1983] [ELR 5:1:20]

U.S. Senate Subcommittee considers video and record rental royalty bills

The Senate Copyright Subcommittee heard testimony last month concerning bills that would require retail stores to obtain permission and pay royalties when they rent - rather than sell - records and audio and videotapes. As the law stands now, retailers are free to rent tapes and records they have purchased from producers and record companies without permission and without paying royalties. This is because of a principle of copyright law known as the "first sale doctrine" which permits the purchaser of a copyrighted work to do anything with it except those things prohibited by the Copyright Act. Although the Copyright Act does prohibit copying and public performance, it does not prohibit rental of copyrighted works. The subcommittee is considering two bills, S.32 and S.33, which are designed to amend the Copyright Act to give copyright owners the right to control the rental of records and tapes even after they have been sold. [June 1983] [ELR 5:1:20]

Bill introduced in Congress to permit cable carriage of "superstations" without payment of fees at new rate

A bill has been introduced in the House of Representatives by Congressman Mike Synar of Oklahoma which would permit cable systems to carry the signals of three distant television stations without paying copyright royalty fees at the new rate set by the Copyright Royalty Tribunal last November (ELR 4:18:3). The Tribunal increased the cable royalty rates (to 3.75% of gross receipts per distant signal) in response to the FCC's repeal of its distant signal carriage and program exclusivity rules (ELR 2:16:3) - an action which was upheld by the Court of Appeals (ELR 3:5:2). As a result of the higher rates, it was thought that cable systems would reduce the number of distant signals they carry. It now appears, however, that fewer cable systems than originally projected actually have ceased carrying superstation signals. Nevertheless, the issue remains one of concern for at least one superstation owner, Turner Broadcasting. In addition to Turner's WTBS Atlanta, there are two other superstations on the air at this time: WOR-TV in New York and WGN in Chicago. [June 1983] [ELR 5:1:20]

FCC proposes elimination of personal attack and political editorial rules

In response to a petition filed by the National Association of Broadcasters, the Federal Communications Commission has voted to consider the repeal or modification of its personal attack and political editorial rules. The personal attack rule provides that if a broadcaster attacks the honesty, character or integrity of a person or group, the broadcaster must offer that person or group an opportunity to respond on the air. The political editorial rule requires broadcasters who endorse candidates to, offer opposing candidates reply time. The NAB contends that these rules conflict with the First Amendment and Supreme Court decisions handed down since the FCC first adopted the rules. the Entertainment Law

Reporter will report more fully on the FCC's reasons for proposing to repeal or modify these rules as soon as a copy of its Notice of Proposed Rulemaking has been obtained. [June 1983] [ELR 5:1:21]

DEPARTMENTS

Book Note:

Communications Law 1982

Every year, the Practicing Law Institute conducts a two-day program on Communications Law, chaired by James Goodale. Last fall's program - the tenth in the series - covered a wide variety of topics of interest to lawyers who represent newspapers, magazines, radio and television stations, and those in new and emerging media. As is PLI's custom, those in attendance received a course handbook which outlined and supplemented the presentations made by a large faculty. The 1982 handbook is in two volumes totaling more than 1700 pages, and is now available to those who were unable to attend the program.

The volumes contain outlines and articles on media access, advertising and commercial speech, libel and privacy, the regulation of new modes of electronic communication, antitrust issues faced by newspapers and cable systems, reporters privilege and the Freedom of Information Act. Though published in connection with the PLI program, the outlines are sufficiently complete and detailed to make them a valuable source and research tool even for those who did not hear the lectures they accompanied.

Both volumes are available as a set for $30 directly from the Practicing Law Institute, 810 Seventh Avenue, New York, N.Y.; phone (212) 765-5700. They are books number 153 and 154 in the PLI Course Handbook Series. [ELR 5:1:21]

In the Law Reviews:

Defamation in Fiction: With Malice Toward None and Punitive Damages for All by Berna Warner-Fredman, 16 Loyola of Los Angeles Law Review 99 (1983)

The Cable-Copyright Controversy Continues, But Not in the Courts, 48 Brooklyn Law Review 661 (1982)

Obscenity Law in Colorado: The Struggle to Pass a Constitutional Statute by Neal A. Richardson, 60 Denver Law Journal 49(1982)

The FCC's Multiple Ownership Rules and National Concentration in the Commercial Radio Industry by Michael O. Wirth, 60 Denver Law Journal 77 (1982)

Metromedia, Inc. v. City of San Diego: A First Amendment Analysis of Governmental Suppression of Speech, 60 Denver Law Journal 105 (1982)

Motion Picture Licensing Acts: An Analysis of the Constitutionality of Their Provisions, 51 Fordham Law Review 293 (1982)

The Broad Sweep of Aesthetic Functionality: A Threat to Trademark Protection of Aesthetic Product Features, 51 Fordham Law Review 345 (1982)

There's No Such Thing as a Free Airwave: A Proposal lo Institute a Market Allocation Scheme for

Electromagnetic Frequencies by Ira Barron, 9 Journal of Legislation 205 (1982), published by Notre Dame Law School, Notre Dame, Indiana 46556.

Leasing of Thoroughbred-Broodmares: A Newly Developing Tax Shelter by Robert B. Martin Jr. Alan J Hallberg, 58 Journal of Taxation 152 (1983)

Works of Applied Art: An Expansion of Copyright Protection by Valerie V. Flugge, 56 Southern California Law Review 241 (1982)

Home Taping of Sound Recordings: Infringement or Fair Use? by Jonathan Fein, 56 Southern California Law Review 647 (1983)

Public Status Over Time: A Single Approach to the Retention Problem in Defamation and Privacy Law by

Carol Anne Been, 1982 University of Illinois Law Review 951

The Emergent Law of Women and Amateur Sports: Recent Developments by Robert H. Skilton, 28 Wayne Law Review 1701 (1982)

The Affirmative Right of Access for Federal Elective Candidates: CBS v. FCC by Drew Henwood, 35 Arkansas Law Review 637 (1982)

Review of Australian Audiovisual Copyright Law, 56 The Australian Law Journal 621 (1982), published by Law Book Co. Ltd., 31 Market St., Sydney NSW 2000, Australia.

Copyright and Contributory Infringement by Robert Conley, 23 Idea 185 (1983), published by the PTC Research Foundation, 2 White St., Concord, NH 03303

Faculty Writings: Are They "Works Made for Hire" Under the 1976 Copyright Act? by Todd F. Simon, 9 Journal of College and University Law 485 (1982-1983)

Drawing a Line on Freedom of the Press: the Burger Court Picks Up the Chalk by Steven Cann, 66 Judicature 296 (1983)

Indecency and the First Amendment: Special Problems of the Broadcast Industry by William Drysdale, 13 Lincoln Law Review 101 (1982)

The latest issue of the Kentucky Law Journal is a symposium on Equine Law. It contains the following articles:

Introduction by Kent Hollingsworth, 70 Kentucky Law Journal 899 (1982)

Antitrust Boycott Analysis Applied to a Harness Racing Association by A. Vernon Carnahan and David S. Versfelt, 70 Kentucky Law Journal 915 (1982)

Choosing the Equine Business Form by John K. Kropp, John A. Flanagan and Thomas W. Kahle, 70 Kentucky Law Journal 941 (1982)

Business Versus Hobby: Determination of nether a Horse Activity is Engaged in for Profit by Tandy C. Patrick, 70 Kentucky Law Journal 971 (1982)

Applying I.R.C. Section 1033 to Involuntary Conversions of Thoroughbred Horses by Bruce M. Reynolds, 70 Kentucky Law Journal 987 (1982)

Taxation of Equine Partnerships: Selected Problems by Chris Trower, Thomas A. Davis and Alvin J. Geske, 70 Kentucky Law Journal 1021 (1982)

Secured Interests in Thoroughbred and Standardbred Horses: A Transactional Approach by David Lester, 70 Kentucky Law Journal 1065 (1982)

Brennan Revisited: Trainer's Responsibility for Race Horse Drugging by Ray H. Garrison and Jewel N. Klein, 70 Kentucky Law Journal 1103 (1982)

Stallion Syndicates as Securities by Rutheford B. Campbell, 70 Kentucky Law Journal 1131 (1982)

Corrupt Horse Racing Practices Act of 1980: A Threat to State Control of Horse Racing by Edward S. Bonnie, 70 Kentucky Law Journal 1159 (1982)
[ELR 5:1:22]