BUSINESS AFFAIRS

Justice Department Opposition to Showtime/Movie Channel Merger Raises Questions about Tri-Star Pictures and other HBO Deals

by Lionel S. Sobel

One of the biggest deals in Hollywood - the proposed merger of Showtime and The Movie Channel - is now on hold, because the Justice Department announced last month that it would sue to block the proposed joint venture. Showtime, the second largest pay-TV service in the country, is owned by Viacom International. The Movie Channel, which is the country's third largest pay-TV service, is owned by Warner Communications and

American Express. (The nation's largest pay-TV service is Home Box Office, owned by Time Inc.)

Last January it was announced that Showtime and The Movie Channel would be merged and that MCA and Paramount Pictures would join their existing owners in a five-way partnership. Although the Justice Department's opposition to the merger was unequivocal, the deal is not entirely dead, at least not yet. The possibility has been left open that it might be restructured in a manner that could win Justice Department approval. And meetings to explore that possibility are expected to be held this month with William Baxter, Assistant Attorney General in charge of the Department's Antitrust Division.

The Justice Department's opposition to the Showtime/Movie Channel merger naturally raises questions about the formation earlier this year of TriStar Pictures, a joint venture between Home Box Office, CBS

and Columbia Pictures. Tri-Star will produce theatrical motion pictures for distribution by Columbia, and at least some of those movies were licensed to HBO for pay-TV exhibition on an exclusive basis. The Justice Department is investigating the antitrust implications of this deal as well, but has not reached any conclusions, at least publicly, as yet. The Department's opposition to the Showtime/Movie Channel merger could be interpreted as a signal that the Antitrust Division frowns on further concentration in the movie business, and thus will seek to block Tri-Star as well. On the other hand, Justice Department officials themselves have emphasized that the two deals are different from one another and thus must be, and are, being analyzed separately. In fact, the very legal analysis used in the Showtime/Movie Channel case may result in a Justice Department finding that Tri-Star does not run afoul of the antitrust laws. That analysis may, however, raise further questions

about the legality of HBO's other recent activities, especially its extensive acquisition of payTV rights to theatrical movies on an exclusive basis, its entry into the movie producing business through Silver Screen Partners, its own production of made-for-pay-TV movies and series, and its corporate
relationships with cable systems and magazines.

Reduced competition concerns

The Justice Department has not yet released the details of the reasoning that lead it to oppose the Showtime/Movie Channel merger. But according to statements made to reporters by Wayne Dale Collins, an Acting Deputy Assistant Attorney General in the Antitrust Division, it appears that the Department's concerns were two-fold. Joint ownership of the venture by MCA, Paramount and Warners could reduce competition

among those studios - and thus among movie studios generally - in connection with the licensing of movies to pay-TV companies. And the merger of two of the country's three largest pay-TV companies could reduce competition among pay-TV companies in connection with the sale of pay-TV service to cable systems and subscribers.

By the reckoning of MCA, Paramount and Warners - as well as other movie studios - the Justice Department is being entirely academic when it worries about reduced competition among producers in the licensing of movies to pay-TV companies. Indeed, MCA, Paramount and Warners have never been reticent about their reasons for wanting to get into the pay-TV business themselves: as far as they are concerned, there is inadequate competition among pay-TV companies in the licensing of movies, because, the studios say, HBO is too big. HBO has 53% of the national pay-TV market; and

Cinemax, HBO's sister channel which also is owned by Time Inc., has about 9%. Thus together, HBO and Cinemax account for almost two-thirds of all pay-TV viewing in the country. By comparison, Showtime which is the second largest pay-TV service in the country - has less than 18% of the market; and The Movie Channel, which is number three in size, accounts for only 13%. Moreover, in addition to HBO's interests in Tri-Star Pictures and Silver Screen Partners, HBO has acquired exclusive pay-TV rights to an estimated one-third of all theatrical movies now in production. HBO's parent company, Time Inc., owns the country's second largest cable company, American Television and Communications. Time Inc. also publishes magazines which review, report about, and provide cable and TV listings for movies, including those shown on HBO and Cinemax and those produced or financed by HBO.

In short, it looks to many studios and producers that HBO is well on its way to monopolizing the payTV business. And from the studio's vantage point, it appears that the only way to prevent that from happening is to make sure HBO has some strong competition - stronger competition than Showtime and The Movie Channel can provide alone, under present ownership.

Premiere enjoined

The Showtime/Movie Channel venture is not the first time studios have attempted to get into the payTV business in competition with HBO. In 1980 while Jimmy Carter was still in the White House MCA, Paramount, Columbia and 20th Century-Fox got together with the Getty Oil Company to form Premiere. The Justice Department opposed that venture as well, and took Premiere to court to stop it. And stop it, the Justice

Department did. On December 31, 1980 - only three days before Premiere was scheduled to begin service - a Federal District Court in New York City issued a preliminary injunction restraining Premiere from commencing operations. (ELR 2:18:6) According to the court, the terms of the deal creating Premiere may have called for price fixing and group boycotts and thus probably violated the Sherman Act. Thus enjoined, Premiere was stillborn, and its owners chose to abandon the venture rather than restructure it.

Lessons were learned from Premiere's experience in court, nonetheless. Premiere was vulnerable to charges that it constituted a group boycott because its owners had agreed that Premiere would have the exclusive right, for nine months, to exhibit on pay-TV certain new movies its owners were to contribute to the venture. Premiere contended that as a new competitor in the pay-TV marketplace, it was entitled to distinguish its product

from that of its competitors by means of the planned nine-month "window." The court concluded otherwise however. As far as the court was concerned, the nine-month exclusivity period was a "drastic restraint," not merely a competitive distinction "to gain a foothold in the market."

In order to avoid a similar problem with the Showtime/Movie Channel deal, its proposed owners have made clear that the joint venture has not been granted a "window" of exclusivity to movies produced by its studio members. This distinction was not enough to satisfy the Justice Department, however.

Merger Guidelines

Although the Justice Department has not yet released the details of its opposition to the Showtime/Movie Channel merger in particular, last year the Justice

Department did release guidelines concerning its attitudes about mergers in general. Antitrust Division Merger Guidelines, 47 Federal Register 28493 (June 30, 1982) At first glance, it appears that those Guidelines held out little hope for Justice Department approval of the Showtime/Movie Channel merger. The principal difficulty with the merger stems from the degree of concentration found in the payTV industry and the manner in which the Guidelines deal with concentration.

In order to assess the degree of concentration found in an industry, the Merger Guidelines use something known to economists (and now to antitrust lawyers) as the Herfindahl-Hirschman Index (or the "HHI" for short). The HHI is calculated by adding together the squared market shares of each of the companies in an industry. In the pay-TV industry, HBO has 53% of the market; 53 squared (i.e., 53 times 53) is 2809. Showtime has 18% of the market; 18 squared is 324. The

Movie Channel has 13%; 13 squared is 169. And Cinemax has 9%; 9 squared is 81. The sum of these squared market shares is 3383. (That is, 2809 plus 324 plus 169 plus 81 equals 3383.) The HHI for the pay-TV industry is thus 3383. According to the Merger Guidelines, an industry is "highly concentrated" if its HHI exceeds 1800, and thus the pay-TV industry easily qualifies as "highly concentrated."

Determining whether an industry is highly concentrated is only one step, however, in determining what if anything the Justice Department is likely to do about a merger. Next, it is necessary to calculate the amount by which the industry's HHI will increase as a result of a merger. Even in highly concentrated industries, the Guidelines indicate that the Justice Department is unlikely to be concerned by a merger that increases the HHI by fewer than 50 points. On the other hand, if a merger in a concentrated industry increases its HHI by

more than 100 points, the Guidelines say that the merger is likely to be opposed by the Justice Department.

Showtime/Movie Channel under Guidelines

A merger of Showtime and The Movie Channel would increase the HHI of the pay-TV industry by 468 points. What then made the Showtime/Movie Channel joint venturers suppose that the Justice Department ever would approve? There are three reasons they had good reason to hope that the deal would pass muster.

First, the Reagan Administration Justice Department, under the guidance of antitrust chief William Baxter, has been noticeably more lenient in the area of mergers than was the Carter Administration Justice Department that took Premiere to court.

Second, a closer reading of the Merger Guidelines themselves indicates that there is more than one way to

interpret them, and a Showtime/Movie Channel merger may not increase the HHI by 468 points after all. Before the HHI of an industry can be calculated, it is necessary to decide what the industry consists of. Actually, the Guidelines do not speak in terms of "industry" concentration at all. They speak in terms of the concentration of a "market." A "market" may be smaller or larger than what is referred to as an "industry" in everyday speech. Thus although it is common to refer to the "pay-TV industry," the appropriate market for antitrust purposes might include more than pay-TV alone. The appropriate market might include pay-TV plus home video. Or the appropriate market might even include all television: conventional broadcasting as well as pay and cable TV and home video. Obviously, the more the appropriate market includes, the less concentration there is in it; and a merger in a more broadly defined market will not increase the HHI by as many points as merger in a

narrower market. If the Showtime/ Movie Channel partners could have convinced the Justice Department that the appropriate market was the entire television market (conventional, cable and home video as well as pay-TV), the market's HHI would have been so much smaller, that the merger of Showtime and The Movie Channel may have been approved without trouble.

Appropriate market

Did the Showtime/Movie Channel partners have any reasonable hope of convincing the Justice Department that the proper market was all of television? It certainly appears so. The Merger Guidelines say that the appropriate market includes all products which customers view as good substitutes for one another at prevailing prices. It certainly is reasonable to argue that at today's prices for pay-TV, customers consider pay-TV and

programming available on conventional television, on basic cable and on cassettes and disks to be good substitutes for one another.

Even if the appropriate market is limited to payTV alone - which the Justice Department seems to have done - there is a third reason the Showtime/Movie Channel may have been approved. The Merger Guidelines indicate (in footnote 33) that there is evidence that where one or two firms dominate the market, the creation of another "strong ... firm enhances competition." This of course has been the studios' contention at least since Premiere was formed in 1980: HBO dominates the pay-TV market, and the creation of another strong pay-TV company would enhance competition. Unfortunately for the Showtime/Movie Channel partners, the Merger Guidelines also indicate that when the Guidelines were written, the Justice Department was not prepared to balance the possibility of enhanced competition from a

strong competitor against "the certainty of substantially increased concentration" that would result from a merger. Apparently, the Showtime/ Movie Channel partners could not convince the Department to make such a balance in favor of the creation of a strong competitor to HBO now.

Owners a problem

It will be interesting to learn - assuming the Justice Department publicly releases its analysis - why it concluded that the creation of a strong competitor to HBO was not entitled to greater weight. It is clear from the brief statement the Justice Department has released so far that it was concerned not only with the merger of Showtime and The Movie Channel, but also with the makeup of the venture's proposed owners. In other words, if Showtime and The Movie Channel had merged

under their current ownership - Viacom, American Express and Warners - the merger may have been approved. The participation of MCA and Paramount in the deal clearly made it more suspect from an antitrust point of view, because the deal then became not only a horizontal merger between pay-TV companies, but also a vertical merger between studios and pay-TV companies, and perhaps most suspect of all, a horizontal merger between studios.

The Merger Guidelines do warn about these problems. They indicate, for example, that by-and-large the Justice Department is not as concerned about vertical mergers as horizontal mergers, because vertical mergers are "less likely than horizontal mergers to create competitive problems." Nonetheless, the Guidelines also indicate that vertical mergers "are not invariably innocuous," and under certain circumstances, the Department will challenge them. The Department will do so when vertical

mergers facilitate collusion among companies that might otherwise compete with one another vigorously. The Justice Department had this concern in mind when it announced that the Showtime/Movie Channel deal was defective because it could reduce competition among studios in licensing movies to pay-TV companies.

Assuming that the Justice Department has defined the market narrowly to include pay-TV only, that would be a good omen for Tri-Star Pictures, because HBO's two partners in Tri-Star, CBS and Columbia, are not in the pay-TV market at all. If the Justice Department had defined the market more broadly, to include conventional television, that would have helped the Showtime/M ovie Channel deal but would have been a problem for Tri-Star because CBS is such a major force in the television business.

HBO a winner?

It thus appears that HBO may be a winner all around. The Justice Department's narrow definition of the market - limiting it to pay-TV only - so far has staved off potential competition for HBO in the pay-TV business while possibly allowing it to go into the movie production business in partnership with a major studio and a television network.

On the other hand, HBO may find these victories coming back to haunt it in other ventures. Though no one has formally challenged HBO's activities on monopolization grounds yet, it would not be surprising if a studio or independent producer, or even the Justice Department itself, did so at some time in the future. Should that day come, a narrow definition of the appropriate market - one that limits the market to pay-TV only - win make it all the easier for a court to find that HBO has indeed attempted to monopolize the pay-TV market. As courts

and legal analysts have noted many times before, the line between praiseworthy business expansion and illegal attempts to monopolize is a difficult line to discern.

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RECENT CASES

Tennessee trial court refuses to recognize descendibility of right of publicity in action involving merchandising of items bearing Elvis Presley's name and likeness; Federal Court of Appeals refuses to reconsider denial of injunctive relief in another Presley merchandising lawsuit

The tempo of the Tennessee waltz has become even more sprightly - and following the steps even more of a challenge to onlookers - as a result of two additional decisions concerning the descendibility of Elvis Presley's right of publicity.

In October 1982, Don Lancaster sued Factors Etc., Inc., and Boxcar Enterprises, Inc., for rescission of two sublicensing agreements by which Lancaster was granted the exclusive right to produce and sell postcards bearing the name and likeness of Elvis Presley. Prior to his death in 1977, Presley had conveyed to Boxcar the exclusive right to exploit the commercial value of his name, likeness and image. Factors is Boxcar's merchandising licensee.

The Chancery Court of Shelby County has denied a motion by Boxcar and Factors to dismiss Lancaster's action (which also sought a refund of licensing fees) on the ground that under Tennessee law, the right to the

exclusive commercial exploitation of the name, likeness and image of Elvis Presley terminated on Presley's death. Chancellor Alissandratos chose to follow the position taken by the Sixth Circuit Court of Appeals in Memphis Development Foundation v. Factors, Etc., Inc., 616 F.2d 956 (1980) (ELR 1:22:1), which held that under Tennessee law, the right of publicity is nondescendible.

In Chancellor Alissandratos' view, recognizing a descendible right of publicity would give rise to numerous questions concerning the term and scope of the right. The chancellor noted the recent Memorandum Opinion issued by the Chancery Court of Davidson County in which it was held that the right of publicity of bluegrass entertainer Lester Flatt did survive his death (Commerce Union Bank v. Coors, 7 Med.L.Rptr. 2204, ELR 4:12:2), but pointed out that no Tennessee appellate court has addressed the issue of descendibility.

The Second Circuit Court of Appeals, on the other hand, now has addressed the issue of descendibility of the right of publicity under Tennessee law on several occasions, and has heeded Presley's recorded request that the matter be "Returned to Sender." In 1981, the Court of Appeals reversed a District Court decision granting a permanent injunction to Factors which would have barred a company known as Pro Arts, Inc., from marketing a poster depicting Elvis Presley (Factors, Etc., Inc. v. Pro Arts, Inc., 652 F.2d 278 (2d Cir. 1981) (ELR 3:13:2). In the absence of authoritative Tennessee law, the court based its ruling on the Sixth Circuit's decision in Memphis Development Foundation. However, when the Lester Flatt decision was announced, Factors sought a rehearing from the Court of Appeals on the basis that there was an intervening change in Tennessee state law. Then the decision in Shelby was issued. As a result, the Court of Appeals has determined that whatever weight

otherwise might have been given to the Chancery Court decision in Commerce Union Bank v. Coors, the issuance of two conflicting decisions by the Chancery Court did not provide a basis for finding that the law of Tennessee had authoritatively changed.

Factors' motion to recall the mandate issued by the Court of Appeals, and its petition for a rehearing were therefore denied. Judge Mansfield, in a dissenting opinion, stated that he would have granted Factors' petition for reconsideration, because the conflicting decisions of the Tennessee Chancery Courts seem to place the Second Circuit in as good a position as the Sixth Circuit to "divine" the position of the Supreme Court of Tennessee on the issue of the descendibility of the right of publicity in that state.

Lancaster v. Factors, Etc., Inc., 9 Med.L.Reptr. 1109 (Tenn.Chanc.Ct. 1982); Factors, Etc., Inc. v. Pro Arts, Inc., 701 F.2d 11 (2d Cir. 1983) [ELR 5:2:7]

Johnny Carson wins right of publicity appeal in case against manufacturer of Here's Johnny Portable Toilets

Answer: Right of publicity. Question: What legal theory has been used successfully by NBC "Tonight Show" host, Johnny Carson, to enjoin the use of the phrase "Here's Johnny" by a corporation that rents and sells portable toilets?

In 1980, Johnny Carson unsuccessfully brought an action seeking to enjoin Here's Johnny Portable Toilets, Inc. from using the phrase "Here's Johnny" in connection with its business or advertising. (ELR 2:12:1). The

original suit was based on various legal theories including unfair competition, invasion of privacy and right of publicity. A Federal District Court dismissed the unfair competition claim citing Carson's failure to establish a "likelihood of confusion" which is necessary for an unfair competition claim brought under the Lanham Act, 15 U.S.C. sec. 1125(a). Furthermore, the District Court held that privacy and publicity theories only apply where a "name or likeness" is exploited, and that the phrase "Here's Johnny" did not qualify.

A Federal Court of Appeals has agreed with the District Court's determination that the "likelihood of confusion" test was not met. The appellate court held that although the company had intended to capitalize on the phrase popularized by Carson, it had not intended to deceive the public into believing Carson was connected with its product. The unfair competition claim was therefore properly dismissed.

Contrary to the narrow view taken by the District Court with regards to the right of privacy and right of publicity claims, the Court of Appeals held that "Carson's identity may be exploited even if his name, John W. Carson, or his picture is not used." Concentrating on "identity" rather than "name or likeness," the court stated that "if the celebrity's identity is commercially exploited, there has been an invasion of his right whether or not his 'name or likeness' is used." How exploited was Carson's identity? The Court of Appeals held that the use of the phrase "Here's Johnny," along with a second one, "the World's Foremost Commodian," with the admitted intent to identify with Johnny Carson, was sufficient to establish a claim of appropriation of Carson's right of publicity.

Carson v. Here's Johnny Portable Toilets, Inc., 698 F.2d 831 (6th Cir. 1983) [ELR 5:2:7]

The Kingsmen enjoin use of their group name in connection with sale of re-recording of "Louie, Louie" by their former lead singer

Case law continues to be generated in the area of Protection of Group Names. (See, for example ELR 4:19:2, 3:1:1, and 2:24:7.) The latest case was filed by "The Kingsmen," a popular rock & roll band of the 1960s, which has obtained a federal court order restraining the use of their name in connection with the sale of a record album which contained a rerecording of the group's most popular hit, "Louie, Louie."

The Kingsmen first recorded "Louie, Louie" in 1962 when its members were in high school and Jack Ely was the group's lead vocalist. Ely left the group shortly after the recording was made, but before the song became

popular on the record charts. The remaining members of the group went on to record a number of albums and made numerous concert appearances until 1967 when the group ceased performing and disbanded.

In 1976, Ely, at the request of a record company, re-recorded "Louie, Louie." This new recording appeared on an album entitled, "60's Dance Party" and was released for distribution in October 1982 by K-Tel International. On the back of the album cover, here appeared in bold black letters the title, "Louie, Louie ... The Kingsmen." In small print below the listing of the contents of the album was the notation, "These selections are re-recordings by the original artists."

The five musicians who had been members of The Kingsmen during the height of the group's popularity filed suit to restrain K-Tel and the record company from using "The Kingsmen" mark in connection with the

labeling and sale of the 60's Dance Party album. The suit was based on section 43(a) of the Lanham Act.

K-Tel responded that Ely had as great a right as anyone else associated with The Kingsmen at any point in the group's existence to use the name The Kingsmen; that Ely had every right to record "Louie, Louie" under the name "The Kingsmen" given the undisputed fact that he was the lead singer in the original version; and that by ceasing all recording and touring in 1967, the plaintiffs had abandoned any right to protect the "The Kingsmen."

A Federal District Court in New York disagreed with K-Tel however and has enjoined the "misleading labeling," which, the court said, was likely to cause confusion in the mind of the public with respect to the origin of the album's contents. Although Ely had originally recorded "Louie, Louie", he did not tour with the band, did not perform on their subsequent albums, and did not

participate in any fashion with the other members of the band after his departure. "The clear import of the notation 're-recordings by the original artists' is that those persons known in the public consciousness as The Kingsmen assembled in a studio to re-record Louie, Louie - an event that all parties agree did not occur," said the court.

The court rejected the contention that the name "The Kingsmen" was abandoned to the public domain. Under trademark law, a mark is deemed to be "abandoned" when its use has been discontinued with intent not to resume. The court said that even though the group disbanded and ceased recording new material in 1967, the fact that its members continue to receive royalties from previously recorded Kingsmen albums suggests that they have continued to use the name "The Kingsmen." "The plaintiffs have no more abandoned their right to protect the name of Kingsmen than have The Beatles, the

Supremes, or any other group that has disbanded and ceased performing and recording, but continues to collect royalties from the sale of previously recorded material," said the court.

The court's order did not entirely restrain the distribution of the 60's Dance Party album, only its misleading labeling. The court said it would have no objection to K-Tel's marketing of the re-recording under the name of Jack Ely with the caption "formerly of The Kingsmen," or "Jack Ely, lead singer on the original Kingsmen recording of Louie, Louie."

Kingsmen v. K-Tel International, Ltd., 557 F.Supp. 178 (S.D.N.Y. 1983) [ELR 5:2:8]

Utah municipal ordinance restricting distribution of nonpornographic material via cable television is ruled unconstitutional

A Federal District Court in Utah has declared unconstitutional an ordinance promulgated by the City of Roy which allowed the city to revoke a cable television franchise or impose other sanctions if the franchisee "Knowingly distributes any pornographic or indecent material as defined by law and in violation of the community standards ... [of] Roy City . . . ."

Community Television of Utah and three subscribers to Community's cable service brought an action challenging Roy's right to restrict the wire transmission of material deemed "indecent" under the ordinance. (Community did not challenge the ordinance's ban against the distribution of pornography.)

The City of Roy, in support of its position that the ordinance's restrictions were supported by the city's power to improve morals and by its concern for young viewers, cited the case of Federal Communications Commission v. Pacifica Foundation, 438 U.S. 726 (1978). Pacifica involved the daytime broadcast by a New York radio station of a monologue by George Carlin during which Carlin used words that a listener found offensive. An FCC declaratory order verifying the listener's complaint was placed in the file of Pacifica, the owner of the station, and thereby became available for subsequent use in periodic license renewal hearings. The United State Supreme Court upheld this action as within the power of the FCC. The following factors were the "key concepts" in the case: the broadcasting of patently offensive material, its presence on the public airwaves at a time when it could be available to children, audience surprise, and

the power of the FCC to control the airwaves in the public interest.

But Roy City's regulatory power over the transmission of electronic signals via private equipment was not equivalent to the FCC's control of the airwaves, stated Federal District Court Judge Jenkins. Transmission by cable is not considered "broadcasting" by either the Court of Appeals of the District of Columbia or Webster's New International Dictionary. A cable signal "is not pervasive in the sense of automatic availability to all." Cable signals are asked for and invited, noted Judge Jenkins. Furthermore, the level of choice for cable signals is far greater than the choices open to viewers of broadcast signals. An individual may choose whether or not to subscribe to cable and may contract for a variety of cable services in addition to a basic service, which in itself includes a larger number of channels and subject choices than broadcast television. Ultimately, one has

the option of cancelling a subscription to a cable service. Thus, Pacifica was found "irrelevant" to the Utah cable action.

Judge Jenkins noted that the content of cable transmissions may be limited, but only pursuant to the standards announced in Miller v. California, 413 U.S. 15 (1973). Miller applies to all media, observed the court, a criteria not met by the Roy ordinance which singled out one form of communication from all others for special treatment.

The court concluded that by attempting to restrict municipally defined indecency, the ordinance was overbroad and constitutionally defective because of its likely chilling effect on protected communication. The City of Roy therefore was enjoined from enforcing the ordinance.

Community Television of Utah, Inc. v. Roy City, 555 F.Supp. 1164 (N.D. Utah 1982) [ELR 5:2:9]

Game show contestant lacks standing to challenge network-production company agreement limiting eligibility

Martin Allen Fine's sprouting career as a television game show contestant has been placed in "jeopardy" by a recent court ruling. Fine appeared on three network-televised game shows between 1978 and 1982. He was disqualified from appearing on a fourth show, Joker's Wild, due to an eligibility rule contained in the contract between Barry and Enright Productions, the producer of the show, and CBS, Inc. As a consequence, Fine filed an antitrust action against the three major networks and four producers of game shows, alleging that the

enforcement of the networks' eligibility rules violated the antitrust laws.

Federal District Court Judge Lawrence T. Lydick has granted Barry and Enright's motion for summary judgment on the ground that Fine lacked standing to sue for treble damages under section 4 of the Clayton Act because his business or property had not been injured by the enforcement of the eligibility rules. Judge Lydick accepted the premise that while being a game show contestant "is not an ordinary occupation, in the absence of [the] networks' policies there is no reason why a person could not make a living out of being a game show contestant." Thus, it was conceivable that with great concentration, Fine could have entered this "business." But according to Barry and Enright, Fine had applied for only six game shows over the past four years and had been a law student as well as holding several other jobs during that period. To tell the truth, stated Judge Lydick,

Fine "neither entered the game show contestant business nor was wrongfully frustrated in a sufficient attempt to enter such business." There was no showing of a commitment to the business. Fine actually was seeking to become an attorney, stated the court. A person may be engaged in more than one business at a time, but in this case there was "no significant expenditure of time or effort by [Fine] on activities related to being a game show contestant."

Further, there was no injury to Fine's "property" since he had no contractual or legal right to appear on any game show.

Judge Lydick also considered whether Fine might have standing to sue for injunctive relief under section 16 of the Clayton Act. There is no business or property requirement under this section, and a party may obtain standing by establishing "(1) a threatened loss or injury cognizable in equity (2) proximately resulting from the

alleged antitrust violations." However, the only loss or damage asserted by Fine was his inability to apply for network game shows without being disqualified because of the eligibility policies. And this was a "purely speculative" loss since, absent the alleged antitrust violations, Fine did not show that he would have been selected for other game shows or would have won money in any such game.

Fine v. Barry and Enright Productions, Case No. CV 82-628 (May 11, 1983) [ELR 5:2:9]

Trade show sponsor has standing to bring antitrust claims against Home Box Office and Showtime, rules Federal District Court in New York

Suppose you organized a trade show and nobody came?

This was the situation faced by Crimpers Promotions, Inc., when it produced a cable television trade show known as Catel Expo-Programming Sources '81 that was to take place in Las Vegas in September 1981. The purpose of the Catel show was "to provide a forum in which independent producers and suppliers of cable television programming would meet and transact business with prospective purchasers of such programming, such as cable television networks." However, only 55 companies, rather than the more than 250 companies Crimpers had anticipated, participated in the trade show and only 200 people attended.

Crimpers claimed that Home Box Office and Showtime Entertainment, two of the leading companies in the cable television industry, boycotted Catel and caused the financial failure of the show. In an action alleging

violations of sections 1 and 2 of the Sherman Act and section 3 of the Clayton Act, Crimpers contended that HBO and Showtime engaged in a conspiracy to restrain trade and attempted to exert their purported monopoly power in the cable television industry to coerce independent suppliers of programming not to appear at Catel "by threatening that were they to do so, [HBO and Showtime] would no longer purchase their programming." Catel argued that as a result of the companies' alleged conduct, HBO and Showtime reduced competition in the markets for the buying and selling of programming for cable television and have prevented independent producers and suppliers from transacting business with potential purchasers on a face-to-face basis. Accordingly, Crimpers sought $1.6 million in general damages for lost profits and $19.5 million for its impaired financial and technological development.

HBO and Showtime argued that Crimpers lacked standing to bring its antitrust claims because Crimpers was neither the "direct target" nor within the "target area" of the alleged conspiracy. It was pointed out that Crimpers does not directly compete with HBO and Showtime in the buying and selling of cable programming, but rather is in the trade show business.

A Federal District Court in New York has rejected these arguments and has upheld Crimper's standing to raise its claims of conspiracy and attempted monopoly. The court observed that HBO and Showtime allegedly took "direct aim" at Crimpers and its trade show, and it stated: "The fact that Crimpers does not directly compete with [HBO and Showtime] in the purchase and sale of cable programming is therefore not dispositive." Further, the injuries claimed by Crimpers were not remote or speculative and might even be easier to ascertain than

those incurred by the direct competitors of HBO and Showtime.

The court also found that Crimpers had alleged sufficient facts to withstand the cable companies' motion to dismiss the conspiracy, boycott and attempted monopolization claims. HBO and Showtime contended that, with reference to the monopolization claim, the relevant market was comprised of movies, sports and other entertainment purchased and sold for telecast by cable television station networks, and that this type of programming was interchangeable with programming transactions by the major television networks and with the viewing of programming at local movie theaters or on home video recorders. It would be unlikely, argued HBO and Showtime, that either party would attempt to monopolize so large a market. But the court rejected this characterization of the relevant market. It was pointed out that consumers may view the telecast of

programming over pay cable television as a distinct commodity, and that the purchase and sale of programming for cable telecasting might constitute an appropriately defined market.

The court did reject Crimpers' tying claim, however, in which it was alleged that HBO and Showtime engaged in the "bundling of programming" to create a vertical integration in restraint of trade.

Under New York law, Crimpers will be entitled to pursue its claim for tortious interference with contractual relations and prospective business advantage. But the company's claims of unfair competition and prima facie tort were dismissed. Crimpers did not claim that HBO and Showtime misappropriated a property right of Crimpers for their commercial advantage; that they were "palming off" their product as being manufactured by Crimpers; or that they were attempting to confuse the

public as to the identity or ownership of their programming.

Crimpers Promotions, Inc. v. Home Box Office, Inc., 554 F.Supp. 838 (S.D.N.Y. 1982) [ELR 5:2:10]

United States Supreme Court rules that Los Angeles public television station does not have to meet stricter service standards for hearing impaired viewers than the standards imposed on commercial television licensees seeking license renewal

In a petition filed with the Federal Communications Commission in October 1977, Sue Gottfried asked the FCC to deny renewal of the license of television station KCET in Los Angeles. Gottfried claimed that KCET had not met its obligation to determine the needs and

interests of the deaf and hearing impaired population in the station's service area, and that KCET had violated section 504 of the Rehabilitation Act of 1973. The Rehabilitation Act provides that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from participation in, or be denied the benefits of, any program or activity receiving federal financial assistance. Gottfried asserted that KCET failed to carry enough programming with special captioning. Subsequently, Gottfried filed separate formal objections to the renewal of seven commercial television station licenses in the Los Angeles area.

The FCC found that the licensees' efforts to ascertain through public surveys the special needs of the community were adequate and that no substantial question was presented as to whether any of the eight stations had abused its discretion in its selection of programming. It was noted that KCET had presented about 960

programs, over a three year period, which were understandable to the deaf and hearing impaired. The FCC also ruled that section 504 did not apply to the seven commercial licensees because they were not alleged to have received any federal financial assistance. KCET might be governed by section 504, the FCC agreed, but the Department of Health, Education and Welfare, the agency with the authority to enforce compliance with the Act, had not made adverse findings on KCET's compliance, thus making the allegations against the station premature.

A Federal Court of Appeals affirmed the portion of the FCC's order that related to the commercial stations, holding that Congress did not intend that the renewal of a broadcast license would be considered a form of "financial assistance" within the meaning of section 504. However, the appellate court declared that the purposes of the Act would be furthered by requiring commercial

stations to make some accommodation for the hearing impaired, pursuant to the general requirement under the Communications Act that licensees serve the "public interest, convenience and necessity."

With respect to KCET, the appellate court vacated the renewal of the station's license and held that a stricter "public interest" standard should be applied to a public television station licensee, which is a recipient of federal financial assistance, than to a commercial licensee. According to the court, the FCC should not have concluded that KCET was entitled to the renewal of its license without inquiring specifically into the station's efforts to meet the programming needs of the hearing impaired.

Most recently, the United States Supreme Court has ruled that Congress did not intend the Rehabilitation Act of 1973 to impose any new enforcement obligation on the FCC as to either public or commercial stations. Enforcement responsibilities generally are imposed on the

agencies which administer federal financial assistance programs, and the FCC Commission is not such a funding agency. If an agency determines that a licensee has violated the Act, the FCC then would be obligated to consider the relevance of such a finding. But the FCC does not have original jurisdiction in this area. Further, despite the duty of a public television station to comply with the Rehabilitation Act, it is not obligated, in the absence of officially promulgated regulations, to adhere to a stricter service standard than that applicable to commercial stations, stated Justice Stevens. A federal agency providing financial assistance to a commercial television station may impose conditions on the use of this subsidy, or regulations eventually may be issued under the Rehabilitation Act that impose special obligations on a subsidized licensee, but this has not yet occurred. The Court of Appeals order vacating the

FCC's renewal of KCET's license therefore was reversed.

In dissent, Justices Marshall and Brennan stated that Gottfried's allegation that KCET had violated the Rehabilitation Act was relevant to the FCC's consideration of the station's license renewal application and that the FCC should have given "at least some consideration" to the Rehabilitation Act, particularly since the the purpose of the Communications Act is "to make available ... to all the people of the United States a rapid, efficient, nationwide, and world-wide wire and radio communication service."

Community Television of Southern California v. Gottfried, Case No. 81-298 (U.S., Feb. 22, 1983) [ELR 5:2:11]

Court decides Barron's did not defame attorney Mickey Rudin by referring to him as Frank Sinatra's "mouthpiece"

Milton A. "Mickey" Rudin, described by the court as "attorney, businessman and philanthropist whose clients include many of the world's most celebrated show business personalities," has lost his defamation action against Barron's weekly after a court trial before U.S. District Judge Lasker in New York City.

On November 27, 1978, in its regular column "Up and Down Wall Street," Barron's commented on the purchase of stock in the Great Lakes Dredge and Dock Company by a group including Rudin, and his client Frank Sinatra. The article observed, "as to why old Blue Eyes et al acquired the block of stock, an executive declares, 'We've no idea whatsoever' . . . One thing we do know. Say what you want about Great Lakes Dredge, a

fine old company with respectable record, show biz it's not."

Rudin responded in a letter published in Barron's letters to the editor column, "Barron's Mailbag." Said Rudin: "Your article seems to indicate that neither Mr. Sinatra and I, nor the other individuals joining us in filing as 'a group,' have a limited amount of intelligence . . . that we can only understand gambling stocks or securities of companies involved in the entertainment industry ... Your reporter, if he completed a sixth grade education, should have been able to note that we are getting a 10% return on our investment.... Because we don't read Barron's I guess we very stupidly invested in this stock, which at present price levels is yielding about 7% per annum and selling at a modest multiple of five times earnings."

Barron's prefaced Rudin's letter, in bold typeface and in all capitals, with the caption "SINATRA'S

MOUTHPIECE." Rudin quickly demanded a retraction. On January 29, 1979 the Barron's Mailbag column began: "Milton Rudin, an attorney who represents Frank Sinatra, has objected to our referring to him as 'Sinatra's Mouthpiece' on last week's Mailbag Column. We meant to cast no aspersions on Mr. Rudin. Our dictionary defines 'mouthpiece' as 'spokesman.'"

In a previous ruling, Judge Lasker denied Barron's motion to dismiss, having found that the caption "Sinatra's Mouthpiece" was reasonably susceptible to defamatory meaning. (ELR 3:8:3) Nearly a year and a half later, however, after hearing extensive evidence on the import of calling a lawyer a "mouthpiece," the court found that Rudin failed to establish the defamatory meaning he ascribed to the term "Sinatra's Mouthpiece."

The parties presented several kinds of evidence: testimony by lawyers as to their understanding of the implications of calling an attorney a "mouthpiece"; expert

testimony of psychologists as to studies they performed to determine readers' reactions to the alleged defamatory phrase; fact testimony by some of the individuals involved; dictionary entries; and examples of the word "mouthpiece" as used in newspapers and other publications.

Among the prominent attorneys called to testify on behalf of Rudin was Bruce Kauffman, a former Justice of the Pennsylvania Supreme Court. Judge Kauffman testified that the word "mouthpiece," when used of an attorney, "clearly communicates one who is more concerned with fulfilling the directions and instructions of a client, usually a criminal client, and even more specifically an underworld client, and has little or no concern with the code of professional responsibility, the rules of court and the applicable law." In Judge Kauffman's view, the most important attributes of an attorney are

"independence and integrity," and a "mouthpiece" is a lawyer who lacks those qualities.

Rudin also testified himself, describing his sense of "personal humiliation" on being referred to as "Sinatra's mouthpiece." He felt the caption to be an attempt "to paint me in the [motion] pictures that I remembered as a kid with the mouthpiece as a fast talking guy with a derby who will do anything. He has got a bail bondsman in his pocket, a couple of judges in his other pocket and will do as his client pleases."

Barron's evidence included testimony by Michael O'Neill, former Editor of the New York Daily News, and Steve Andreder and Alan Abelson, editors of Barron's who were responsible for the article and caption.

O'Neill testified that the substantial interest by Sinatra, Rudin and three other in the Great Lakes Dredge and Dock Company was indisputably a newsworthy event - in his words, "a natural" - and any editor would

"automatically" have used Sinatra's name in the caption. The fact that "mouthpiece" may be used in a legal context as a derogatory term is not necessarily relevant in determining whether journalists writing for the general public may appropriately use the word.

Andreder and Abelson testified that Barron's attempts to use a substantially more lively, irreverant and witty literary style than most financial publications. Andreder further testified that he used the word "mouthpiece" because it was his impression from the letter that Rudin was acting as Sinatra's spokesman in writing the letter and that he chose "mouthpiece" rather than "spokesman" because he considered the term more "colorful" and more likely to draw attention to the letter. He denied any intention of ridiculing Rudin.

The court concluded that the testimony presented, though lending some support to Rudin's position that the use of word "mouthpiece" was pejorative, shed little

light on whether the word was actually understood by the average reader in a defamatory sense. The court noted a study, presented by an expert testifying on behalf of Barron's, which suggested that whatever difference is perceived between the words "mouthpiece" and "spokesman" in the abstract is significantly narrowed when the comparison is between "Sinatra's Mouthpiece" and "Sinatra's Spokesman." "This fact," said the court, "casts doubt on the proposition that the potential defamatory connotations of 'mouthpiece' alone were responsible for any negative impression that Barron's readers might have formed of Rudin as a result of the caption."

Rudin v. Dow Jones & Co., Inc., 557 F.Supp. 535 (S.D.N.Y. 1983) [ELR 5:2:12]

Libel action against Time, Inc., was not abated by the death of the allegedly defamed individual, rules Federal District Court

A longstanding tenet of defamation law is that a libel action may not be brought on behalf of a deceased individual since a person's reputation dies with him or her. This principle has been modified by a Federal District Court in New Jersey in an action brought by Kenneth N. MacDonald against Time, Inc., alleging libel, conspiracy, invasion of privacy and intentional infliction of emotional distress, resulting from the publication of an article in the February 1981 issue of Life.

The article reported that MacDonald, who had been the Vice Chairman of the New Jersey Casino Control Commission, had "hastily resigned his post when his name was publicly linked to the FBI's Abscam investigation of official corruption and alleged Mob

influence." MacDonald, who was indicted in the Abscam investigation, died on April 17, 1982. Time moved for summary judgment dismissing the complaint on the ground that MacDonald's causes of action abated upon his death.

Federal District Court Judge H. Lee Sarokin refused Time's motion in an opinion which is a stirring vindication of the right of survivors to clear an individual's name and seek compensation for its destruction. "Why should a claim for a damaged leg survive one's death, where a claim for a damaged name does not?" queried Judge Sarokin. Freedom of the press would not be chilled by allowing the maintenance of libel actions already underway, noted the court, since it is unlikely that a publication would hesitate to publish a story due to the possibility that a libel action might be pursued by the representatives of a purportedly libeled individual in the event of his or her death. This case does not involve an

action for the defamation of one who is already deceased at the time of publication, observed the court.

New Jersey law was found to be in accord with the court's conclusion. New Jersey trial court decisions have construed the state's survival statute to include actions for libel and invasion of privacy whether or not special damages are involved. And Judge Sarokin viewed these decisions as the best indication of current New Jersey law.

Time also had sought dismissal of the complaint due to MacDonald's irremediable failure to participate in discovery prior to his death. While noting that Time may have been prejudiced by the lack of discovery, the court stated that any such prejudice was not substantial, may be counterbalanced by appropriate remedies, and does not outweigh the right of MacDonald's successors to pursue his claims.

MacDonald v. Time, Inc., 554 F.Supp. 1053 (D.N.J. 1983) [ELR 5:2:13]

New Mexico television station denied summary judgment in libel action brought by credit union because of factual issues regarding accuracy of newscast's statements regarding credit union's financial status

During a news report concerning the financial condition of a local credit union, station KOAT-TV in New Mexico stated that a forthcoming audit report on the Coronado Credit Union was likely to show a "very lopsided balance." The report concluded with the statement that "even the most optimistic sources say that this institution's liabilities will far outweigh its assets. It will apparently be up to bonding companies and insurance corporations to put this credit union on its feet." The

broadcast included conversations with members of the credit union's board of directors in which depositors were assured that the credit union was not insolvent, and that its deposits were insured. Nevertheless, during the four days following the airing of the newscast, the credit union's customers withdrew more than half a million dollars. Claiming that the withdrawals were caused by the newscast's false depiction of its financial situation, Coronado sued KOAT for libel.

The trial court granted KOAT's motion for summary judgment, but this ruling has been reversed in part by an appellate court. The appellate court ruled that whether KOAT's allegedly defamatory statement that Coronado's "liabilities will far outweigh its assets" was false at the time of the broadcast, and whether the statement was made maliciously, were material issues of fact requiring a trial. KOAT's refusal to reveal one of the sources on which it relied appeared to be a particularly significant

factor in the court's decision, because the court observed that the station had not shown that it had any documents or news sources that established that Coronado's liabilities in fact exceeded its assets. Moreover the statement was not broadcast as merely an opinion on the basis of disclosed facts.

The remaining statements in the newscast were properly determined by the trial court to constitute statements of protected opinion, concluded the appellate court, which also upheld the determination that the credit union was a public figure and thus must establish that KOAT published its statements with actual malice. The "fair comment" privilege did not protect KOAT with respect to its assets/liabilities statement because the statement was not found to be substantially correct so as to be qualifiedly privileged as a matter of law.

Coronado Credit Union v. KOAT Television, Inc., 656 P.2d 896 (N.Mex.App. 1982) [ELR 5:2:13]

Federal Trade Commission order that misleading commercials for Anacin cease is enforced by Federal Court of Appeals

One of the more familiar commercial refrains is Anacin's claim that it has a unique pain-killing formula that has been conclusively proven to be superior in effectiveness to all other non-prescription analgesics. The Federal Trade Commission was listening to this commercial along with the rest of us, and in a complaint issued in 1973, the FTC alleged that American Home Products, in its advertisements for Anacin and for Arthritis Pain Formula, had engaged in unfair or deceptive acts in violation of the Federal Trade Commission Act. After extensive proceedings, the Commission entered an Order against American Home which requires the

company to cease advertising that Anacin and APF are medically proven or established to be superior in effectiveness and cause less frequent side effects than competing products. And, in a lengthy opinion, a Federal Court of Appeals has upheld the order, which also requires American Home to cease claiming falsely that its products have special ingredients, or have more of any active ingredient than do competing products. The FTC had found that the advertising statements for Anacin and APF had the capacity to mislead consumers since the statements misrepresented the unique quality of the products and failed to reveal that the pain relievers contained aspirin.

The breadth of the Commission's order was found to be justified by several factors: by the potential health danger to consumers who may have been encouraged by the commercials to consume more aspirin than necessary; by the company's past record including three litigated

cease and desist orders that have been entered against American Home previously for misleading non-prescription drug advertisements; and by the fact that the challenged advertising had been widely disseminated in print and broadcast media over a period of many years and at a cost of millions of dollars annually. Furthermore, requiring American Home to disclose the presence of aspirin in its products when a performance claim is made in Anacin or APF commercials was not found to constitute a violation of the First Amendment.

However, the court did vacate, due to vagueness, one segment of the order which would have required American Home to have "a reasonable basis, consisting of competent and reliable scientific evidence for any ... non-comparative representations concerning the effectiveness or freedom from side effects of its over the counter drug products."

American Home Products Corporation v. Federal Trade Commission, 695 F.2d 681 (3d Cir. 1983) [ELR 5:2:14]

Federal District Court refuses to disqualify music publisher's attorney in dispute over rights to the lyrics of the song "More" despite attorney's prior brief representation of opposing party

The film "Mondo Cane" and its alluring theme, the song entitied "More," ignited public attention in the late 1960s and also sparked a series of lawsuits concerning the use and ownership of the music heard in the film. The composer of the music used in the soundtrack was Riz Ortolani; Norman Newell originally wrote the lyrics for the song "More." At some point, a company known as C.A.M. purportedly acquired ownership of the musical rights to the soundtrack and lyrics. In 1970, C.A.M.

sued Jack Paar for the unauthorized use of the soundtrack of "Mondo Cane." Jack Paar claimed that he had obtained the right to use the music from Broadcast Music, Inc. BMI, in turn, filed a complaint against E.B. Marks Music, Inc. As it happened, C.A.M. and E.B. Marks both were represented in this matter by Marks' longstanding attorney, the firms of Abeles, Clark and Osterberg.

Subsequently, in 1974, Riz Ortolani claimed that neither C.A.M. nor E.B. Marks had any rights to "Mondo Cane" or to "More." Again, C.A.M. and E.B. Marks were represented by the same attorney, in this case, Feinman and Krasilovsky.

Inevitably, C.A.M. sued E.B. Marks for a declaratory judgment and to enjoin Marks from asserting any claim to the lyrics of "More." Marks was represented by Abeles, Clark and Osterberg. C.A.M. moved for an order disqualifying the attorneys on the basis of an asserted

conflict of interest due to Abeles' prior representation of C.A.M. in the Paar case. Marks denied the existence of a conflict of interest, and pointed out that Feinman and Krasilovsky, C.A.M.'s attorney, were no less subject to disqualification on the ground of joint representation than Abeles, Clark and Osterberg.

Federal District Court Judge Milton Pollack has denied C.A.M.'s motion. Judge Pollack pointed out that the C.A.M.-Marks case differs from the standard successive representation situation because Abeles, Clark and Osterberg briefly had represented both parties in the prior action "when their interests apparently coincided." Thus, any "secret" which may have been revealed by C.A.M. to its attorney during the joint representation would have necessarily been revealed to the primary client - Marks. There could have been no expectation on the part of C.A.M. that information would be concealed from Marks.

Further, the issues involved in the present case were not identical to those involved in the action brought against Jack Paar, noted the court. The Paar action concerned a dispute over ownership of the movie soundtrack. The C.A.M.-Marks dispute concerns Marks contractual rights to Newell's lyrics, and the relevant contracts were not the subject of the Paar lawsuit.

While denying C.A.M.'s motion, Judge Pollack nevertheless found that the motion was not brought in bad faith in an attempt to delay the action and denied Marks' request for attorneys fees.

C.A.M. v. E.B. Marks Music, Inc., 558 F.Supp. 57 (S.D.N.Y. 1983) [ELR 5:2:14]

Federal District Court refuses to dismiss booksellers' action alleging price discrimination by paperback book publishers

A Federal District Court in Northern California has denied a motion by the Hearst Corporation to dismiss a novel action brought against it and its Avon Books Division by the Northern California Booksellers Association. The Association and two individual retail bookstores in the San Francisco Bay Area have alleged that since 1978, Hearst and its Avon Books Division have sold mass market and trade paperback books to leading bookstore chains such as B. Dalton and Crown Books at greater discounts than the discounts available on the same books to smaller bookstores such as those belonging to the Association. In seeking injunctive relief, the Association further alleged that due to the low profit margin in the bookselling business, the price

discrimination by Hearst placed smaller bookstores at a competitive disadvantage with respect to the larger chains.

The court ruled that the Association had presented a prima facie case for injunctive relief under the Robinson-Patman Act by alleging both price discrimination regarding similar commodities and possible substantial anti-competitive impact. The Association claimed that Hearst had engaged in a "longstanding and systematic practice" of price discrimination, and that a six to seven percent price differential was "well within the range found substantial in other cases involving markets where profit margins are low and competition is keen."

Hearst argued that the competitive impact of any price differential was not substantial because mass market and trade paperback books are sold in substantial quantities through non-bookstore outlets; because Avon Books'

share of the relevant market is at most about 12%; and because one of Hearst's competitors offers its mass market paperback books to Association members at a greater discount than that allegedly offered to chain booksellers by Hearst. However, the court found that these factors were not sufficient to warrant the dismissal of the action.

Northern California Booksellers Association, Inc. v. The Hearst Corporation, Case No. C82-1468 (N.D.Cal., Nov. 3, 1982) [ELR 5:2:15]

Promoter's sale of franchises in new sports league violated California law regulating seller assisted marketing plans

Ronald Lee Mott had the idea to begin a new sports league. Mott's "National Sports League" was to have been a competitive sports league for children between the ages of eleven and fifteen. In order to create interest in his National Sports League, Mott placed an advertisement in a local Los Angeles newspaper. In the ad, he announced the formation of his new league and offered to sell partnership interests in the league's new franchises.

Three prospective investors contacted Mott about the National Sports League. During his second meeting with these investors, Mott informed them that they would have to make an initial down payment of $4,000 (which would be paid directly to the National Sports League), and that the overall purchase price for a franchise was $10,000. Mott also told these investors that the National Sports League would provide them with several additional benefits such as sporting equipment at reduced

costs, scheduling of conference games, transportation and lodging, and would also help the investors recruit players and run the team. Finally, Mott told these investors that there was a growing market for a children's sports league and that they would make money above and beyond ther $10,000 franchise fee.

Unfortunately for Mott, two of the three prospec tive investors were policemen. Mott was charged with violation of Section 1812.217 of the California Civil Code, which makes it unlawful to engage in the sale of a "seller assisted marketing plan" without filing the necessary disclosure statements.

A "seller assisted marketing plan" is a business operation in which products or services are leased or sold to a buyer by someone who also promises to assist the buyer in running and marketing the business. According to the Civil Code, a seller may not engage in the sale of a seller assisted marketing plan unless the seller first files

disclosure statements with the Secretary of State and with the prospective investors themselves. According to the statutory definition of a seller assisted marketing plan, a business is deemed to be a seller assisted marketing plan and the requisite disclosure documents must be filed if the buyer makes an initial payment of more than $500, but less than $50,000; and the seller makes representations to the buyer that the buyer will either earn money in excess of his initial payment or that there is a market for the particular product or service.

In this case, the court held that the sale of National Sports League team franchises fit precisely into the definition of a seller assisted marketing plan. The court reasoned that the $4,000 down payment, the $10,000 purchase price, and Mott's representations concerning the existing marketing for a children's sports league and the potential for profit over and above the $10,000 satisfied the statutory definition.

Nevertheless, Mott's conviction was reversed, because the Court of Appeal determined that Mott had represented himself at trial without having made a "knowing and intelligent" waiver of his right to counsel.

People v. Mott, 189 Cal.Rptr. 589 (Cal.App. 1983) [ELR 5:2:15]

Briefly Noted:

Film Distribution.

When a dispute arose between EMI Films and MGM/UA involving EMI's claim that it had been granted the right to distribute MGM/UA's film "WarGames" in territories outside North America, EMI sought a preliminary injunction to halt post-production

and distribution of the film which was scheduled for release on June 3, 1983. EMI alleged that the exclusive right to distribute the film was unique and irreplaceable on the open market, and EMI maintained that the exclusive right to distribute a unique property is, in itself, unique. EMI also asserted that potential buyers of the film might refrain from entering into sub-distribution agreements with either EMI or with MGM/UA due to uncertainty as to which company was the legitimate distributor of the film. However, a Federal District Court in California has refused to delay the release of the film, finding that the harm alleged by EMI did not rise to the level of irreparable injury. If MGM/UA is found at trial to have breached a distribution contract with EMI, EMI's harm would consist of lost profits. Lost profits are compensable in damages, even if the calculation of damages is complex, and are not "the irreparable harm necessary to justify the issuance of a preliminary

injunction," stated Judge Richard A. Gadbois. If EMI does prevail on the merits of its claim, the existence of marketplace confusion and the potential harm to EMI's goodwill and reputation would be considered in the damages award. Further, MGM/UA would likely incur considerable harm if release of the film were to be delayed, observed Judge Gadbois. The early summer release date was scheduled to take maximum advantage of the youth market, and the current intense interest in nuclear war and computer gaming which are the themes of "WarGames." If the film's release were delayed, its potential profit might be reduced to the detriment of MGM/UA and of EMI as well, since any damages awarded EMI would be proportionate to the film's financial success.

EMI Films, Limited v. United Artists Corporation, Case No. CV 83-1096 (C.D.Cal., April 15, 1983) [ELR 5:2:16]

Cable Television.

Storer Cable Communications has obtained a permanent injunction barring the further unauthorized interception or interference with its cable television service by a company named Technical Electronics. A Dade County Circuit Court, relying on federal cases concerning the theft of pay television services, has ruled that Technical Electronics violated a Florida statute which prohibits willful tampering with cables owned by a cable television service and making any connection for the purpose of using a cable service without the consent of its owners. Technical Electronics' activities also were ruled a

violation of Storer's exhibition and distribution rights in its programming and the company's rights to collect fees for that programming. Irreparable injury to Storer and an inadequate remedy at law were shown by the absence of a feasible means of detecting or terminating non-subscribers who are receiving their service through the use of unauthorized equipment, the likely loss of potential customers, and the eventual total loss of Storer's cable television service due to the lack of subscription revenue. In addition to issuing an injunction, the court awarded Storer compensatory damages in the amount of $95,000 plus $5,000 in attorneys fees and costs.

Storer Cable Communications, Inc. v. Seidner, Case No. 83-12087 (Fla. Cnty. Cir. Ct., April 25, 1983) [ELR 5:2:16]

Cable Television.

Cable television companies do have expropriation rights under Louisiana law, a Louisiana court of appeals has ruled. Expropriation rights are granted by Louisiana law to "corporations ... formed for the purpose of transmitting intelligence by telegraph or telephone or other system of transmitting intelligence." Supported by the broad language of the statute and an earlier decision, the court held that cable television is within the language of "transmitting intelligence." As a result of having these expropriation rights, cable systems do not have to obtain landowner consent to lay cable under or over a landowner's property.

Edward J. Gay, Etc. v. Bayou Cable, Etc., 423 So.2d 58 (La.App. 1982) [ELR 5:2:16]

IN THE NEWS

Jury returns verdict for CBS in Galloway-"60 Minutes" libel suit

A Los Angeles Superior Court jury has ruled in favor of CBS in a libel suit brought by Dr. Carl Galloway in which he alleged that he was defamed by a "60 Minutes" episode broadcast in 1979. The episode, entitled "It's No Accident," was reported by newsman Dan Rather who was named as defendant in the case along with CBS and producer Stephen Glauber. The report concerned an insurance fraud scheme allegedly participated in by a medical clinic which once employed Galloway. The broadcast charged that Galloway had been part of the scheme, and it displayed on camera a phony medical report which Rather said was signed by Galloway. Galloway later said that the signature on the report

was a forgery and that he had stopped working at the clinic before "60 Minutes" prepared its report.

The principal legal issue in the case was whether Rather and producer Glauber had acted "with reckless disregard for the truth" when they reported that Galloway had participated in the insurance scheme. Galloway argued that they had attempted to convince the jury likewise by showing it outtakes - segments of videotape that "60 Minutes" had recorded but not used in the broadcast itself According to Galloway's lawyer, the outtakes showed staged and rehearsed interviews which proved "reckless disregard."

The jury however disagreed, and in post-verdict interviews with the press, jury members indicated they had followed the judge's instructions quite closely. Superior Court Judge Jack Swink had instructed the jury that in order for Galloway to prove that CBS had acted in "reckless disregard for the truth," he had to prove more

than a "mere failure" on its part to adequately investigate its statements about him. Instead, Judge Swink instructed the jury that it was necessary for Galloway to prove by "clear and convincing evidence" that Rather and Glauber "must have entertained serious doubts about the truth" of their statements about him. This is the definition of "reckless disregard" adopted by the Surpreme Court in St. Amant v. Thompson, 390 U.S. 727 (1968). The jury's foreman told reporters that he believed the "general consensus" of the jury had been that Galloway had not in fact signed the medical report shown in the broadcast. Nevertheless, the jury foreman also said that the jury did not think that Rather and Glauber had "entertained serious doubts" about the truth of their statement that Galloway had signed the report. And that at least was one reason the jury ruled in favor of Rather, Glauber and CBS.

Galloway's lawyer has said he will ask Judge Swink for a new trial, and that if his motion is denied, an appeal is "highly likely." [July 1983] [ELR 5:2:17]

Movie marketing executive is enjoined from working for MGM/UA until contract with Fox expires in September

Los Angeles Superior Court Judge Bruce Geernaert has issued a preliminary injunction barring Irving Ivers from assuming his duties as president of advertising, marketing and promotion for MGM/ UA until his employment contract with 20th Century-Fox expires this coming September. Ivers had been Fox's senior vice president of marketing. Fox asserted that it was concerned that Ivers would use confidential information

about its plans for summer releases in making decisions about MGM/UA's summer films.

California law provides that the breach of an employment contract may be enjoined when - but only when - the employee's services are "unique" and "extraordinary." Judge Geernaert found that Ivers' services satisfy this standard. This provision of California law, and similar provisions in the laws of many other states, have been used for decades to enjoin actors, singers and athletes from breaching their employment agreements. But this case apparently is the first in which a business executive has been enjoined.

As a practical matter, the court's order simply requires Ivers to take a paid summer vacation, because Fox will have to pay Ivers until his contract expires even though it is not using his services. [July 1983] [ELR 5:2:17]

Grand Jury indicts filmmakers in deaths of Vic Morrow and two children on "Twilight Zone" set

A Los Angeles County grand jury has indicted five filmmakers on charges of involuntary manslaughter in connection with the deaths of actor Vic Morrow and two children on the set of the just-released movie "Twilight Zone." The indicted are director John Landis, associate producer George Folsey Jr., unit production manager Dan Allingham, special effects coordinator Paul Stewart, and pilot Dorcey Wingo. Morrow and the two children were killed when a helicopter being flown by Wingo crashed and struck them during filming a year ago. It has been reported that the helicopter crashed because its tail rotor was hit by debris kicked up by a powerful special effects explosive.

Landis, Stewart and Wingo were charged with all three deaths on the grounds that their allegedly reckless use of

the helicopter and explosives caused the actors' deaths. Folsey and Allingham were charged with the deaths of the two children on the grounds that they allegedly had been reckless in arranging for the two youngsters to appear in the scene in violation of child-endangering laws.

All five filmmakers pleaded innocent at their arraignments and were released on their own recognizance until their trial for which no date has been set as yet.

The indictments follow earlier legal actions by other government agencies including fines imposed by the California Occupational Safety and Health Administration and Department of Labor for alleged violations of state safety and child labor laws. In addition, the families of the deceased actors have filed civil wrongful death lawsuits. [July 1983] [ELR 5:2:17]

Warner Amex Cable of Cincinnati indicted on obscenity charges for carrying films shown on Playboy Channel

A grand jury in Hamilton County Ohio has charged Warner Amex Cable of Cincinnati with possessing and disseminating obscene movies. The indictment is based on Warner Amex's showing of "Maraschino Cherry" and "The Opening of Misty Beethoven" on the cable system's Playboy Channel.

The Playboy Channel is carried on 250 cable systems and has some 500,000 subscribers, approximately 5,000 of them on the Warner Amex system in Cincinnati. In response to the indictment, which did not name the Playboy Channel itself, Playboy issued a statement saying that the indictment was a "response to pressure tactics by a small but vocal minority of Cincinnati residents who wish to prevent cable subscribers from exercising

their freedom of choice." Playboy noted that the Supreme Court has ruled, in Stanley v. Georgia, 394 U.S. 557 (1969), that "a State has no business telling a man, si one in his own house, what books he may read or what films he may watch." The statement also emphasized that "Neither Playboy magazine nor the Playboy Channel has ever been judged by any court to be in violation of local community standards anywhere in the country, and we are confident that this will continue to be the case."

Warner Amex also responded to the indictment by saying that "Under our Constitution, the government does not have the right to dictate what American citizens can see, read or think in the privacy of their own homes." Warner Amex noted that it had made every effort to restrict access to the Playboy Channel only to those who wish to see it. Warner Amex even provides subscribers

with lockout devices and keys to prevent unauthorized viewing by children. [July 1983] [ELR 5:2:18]

NBC sues cable system for "pirating" Super Bowl feed

NBC and its affiliate in Corpus Christie, Texas, have filed a copyright infringement suit against Athena Cablevision of Corpus Christi as a result of Athena's carriage of last January's Super Bowl game between the Washington Redskins and the Miami Dolphins. The suit alleges that Athena intercepted NBC's satellite feed of the Super Bowl to the network's affiliates and then transmitted the feed, without commercials or local station announcements, to Athena's own subscribers.

NBC also has filed a complaint with the Federal Communications Commission against Athena and two other

cable systems who are alleged to have intercepted and used NBC's Super Bowl feed. (ELR 5:1:20) [July 1983] [ELR 5:2:18]

Directors Guild victory in HBO antitrust suit is affirmed by Court of Appeals

A Federal Court of Appeals in New York has affirmed a District Court decision that the Directors Guild of America acted legally when it ordered its members not work for HBO or any other pay TV producer who has not signed a collective bargaining agreement with the DGA. HBO had filed suit against the DGA alleging that the guild had violated the antitrust laws by preventing its members from working for HBO and other non-signatories. But a Federal District Court in New York City ruled in January 1982 that the DGA is exempt from

the antitrust laws because it is a labor organization. (ELR 3:19:1) The Entertainment Law Reporter will publish an account of the appellate court's reasoning as soon as a copy of its decision is obtained. [July 1983] [ELR 5:2:18]

Universal is awarded $6.6 million by London court in suit against British movie pirates

Universal Pictures has been awarded a judgment of more than $6.6 million by a London court in a suit against British movie pirates. Universal commenced an investigation last summer when it found that pirated copies of "E.T." were available in London even though the movie had not been released in England as yet. A court ordered raid last September turned up several thousand cassettes of "E.T." and other movies including

"Star Wars," "The Empire Strikes Back," "Porky's," "Annie," "Poltergeist," "Raiders of the Lost Ark" and "Star Trek." The judgment is reported to be the largest ever entered anywhere in the world against movie pirates. [July 1983] [ELR 5:2:18]

WASHINGTON MONITOR

FCC working on Financial Interest and Syndication Rules; Congress is considering bill to preserve mies for at least 5 years; but Justice Department may agree to modification of related Consent Decrees regardless of FCC or Congressional actions

The Federal Communications Commission is hard at work on its proposal to repeal its Financial Interest and Syndication Rules. But conflicting developments now

occurring in Congress and and in the Justice Department may diminish the significance of the FCC's forthcoming decision, whatever it is.

The FCC's Financial Interest and Syndication Rules prohibit ABC, CBS and NBC from acquiring financial interests in, or syndication rights to, television programs produced domestically by other companies. The rules were adopted in 1970 after a sixyear investigatory proceeding and a five-year rulemaking proceeding, because the FCC had concluded that such rules were necessary to protect competition in the television programming industry.

At that time, the Justice Department shared the FCC's concerns. In fact, in 1972, the Department filed an antitrust lawsuit of its own against the three networks alleging that they had restrained trade in acquiring program rights. After several years of expensive litigation, the Justice Department's suits were settled with Consent

Decrees. (ELR 2:11:1) The decrees impose restrictions on network practices that duplicate and in some respects exceed the restrictions imposed by the FCC's Financial Interest and Syndication Rules. Among other provisions, the Consent Decrees limit the amount of programming each network may produce itself to no more than 2 1/2 hours per week in prime time (with similar time restrictions for other times of the day).

Ironically, at about the time the Justice Department settled its antitrust suits against the networks, FCC staff members concluded that the Financial Interest and Syndication Rules should be eliminated altogether. According to the staff's analysis, the rules had been misguided, had interfered with risk-sharing arrangements between the networks and producers, and actually had restrained rather than improved competition. Although the FCC did not approve or adopt the staff report, it did issue a notice of proposed rulemaking in which it indicated that it

was considering repeal of the rules, as its staff had recommmended. (ELR 4:11:3)

In response to the notice of rulemaking, comments literally poured in to the FCC. By April 26, 1983 - the deadline for reply comments - the FCC had received approximately 3,500 pages of written arguments for and against repeat of the rules. The FCC also spent an entire day hearing oral arguments. The FCC's staff is now studying all of the arguments and may complete a draft of a proposal for consideration by the FCC itself within a month or so.

In the meantime, however, Congressman Henry Waxman of California introduced a bill in the House of Representatives, H.R. 2250, which would prevent the FCC from repealing its Financial Interest and Syndication Rules for five years at least. Last month, the House Telecommunications Subcommittee held hearings on the bill in Los Angeles. The bill is favored by television

producers who oppose repeal of the rules. And of course, the bill is opposed by the networks who very much want the rules eliminated.

Because the Consent Decrees duplicate the Financial Interest and Syndication Rules, elimination of those rules by the FCC would not, by itself, be sufficient to allow the networks to go into the syndication business or acquire interests in programs produced by other companies. The Consent Decrees themselves would have to be modified or eliminated first. On this issue, the networks have an important ally: the Justice Department. Although it has been only a few years since the Consent Decrees were entered, the Justice Department has indicated a willingness to request their modification. Indeed, the Department filed comments with the FCC in which it took the position that the networks should be permitted to acquire financial interests in television programming produced by others.

Now it appears the Justice Department may be willing to go one step further - a step that may result in increased ownership of programming by the networks even if the FCC decides not to repeal its Financial Interest rule, or is prevented by Congress from doing so. It has been reported that the networks and the Justice Department have agreed on the terms of an amendment to the Consent Decrees which would permit the networks to produce themselves more programming than they are allowed to produce at present. Any such change in the terms of the decrees would have to be approved by the Federal District Court in Los Angeles where the decrees were originally entered. But if such a modification is approved, the networks will be able to "acquire" financial interests in the programming they broadcast simply by producing it themselves, rather than by licensing it from other companies. [July 1983] [ELR 5:2:19]

Senate passes national cable TV bill

The United States Senate has passed a controversial bill designed to establish a uniform national policy for the regulation of cable television systems. The bill, S.66, was authored by Senator Barry Goldwater of Arizona, and is based on a compromise agreement worked out between the National Cable Television Association and the National League of Cities. Despite the bill's support by the National League of Cities, it was vigorously opposed by several individual cities, including New York, because of the limits that the bill would impose on the ability of state and local governments to regulate cable system within their own jurisdictions.

Unlike over-the-air broadcast regulation, which always has been national and uniform, cable TV regulation has

been a patchwork of sometimes conflicting rules imposed by all levels of government, local, state and national. Cable systems have chaffed under this regulatory scheme for a decade or more, but until now have been able to do little about it. Whether the bill actually will become law remains to be seen, as it first must be passed by the House of Representatives as well. Although the House is conducting hearings on cable deregulation legislation, the particular provisions contained in S.66 are expected to meet more resistance in the House than they did in the Senate. And thus the exact contours of the final law, if there is one, are difficult to predict.

Among the most significant provisions of S.66 are those that limit the franchise fees the local governments may charge cable systems and that limit the authority local governments have over the services offered by cable systems and the rates they charge their subscribers. The

bill provides that local governments may not charge cable systems franchise fees of more than 5% of their revenues. It deprives local governments of the authority to regulate the rates charged subscribers (in cities that have at least four commercial television stations). And it states that cable systems may not be regulated as common carriers even if they offer services, such as data transmission, which also are offered by regulated telephone companies. AT&T lobbied against this provision of the bill and will do so again in the House. [July 1983] [ELR 5:2:19]

Senate subcommittee approves record rental bill

The copyright subcommittee of the Senate Judiciary Committee has approved a bill designed to prevent record stores from renting audio disks and tapes without

the permission of copyright owners. The bill, S.32, is supported by record companies and music publishers who fear that uncontrolled record rentals will seriously damage the financial health of their industry. Under present law, record rentals cannot be prevented - nor can copyright owners insist on the payment of royalties on rentals - because of the "first sale doctrine." In essence, the first sale doctrine provides that the purchaser of a copyrighted work (including a record) may do anything with it except those things specifically prohibited by the Copyright Act. Although the Copyright Act prohibits the unauthorized copying and public performance of records, it does not prohibit their sale. S.32 would thus modify the first sale doctrine to require the consent of copyright owners - both record companies and music publishers - before records could be rented.

The bill is now before the Senate Judiciary Committee which must vote on it before it goes to the full Senate and then on to the House of Representatives.

The copyright subcommittee also has heard testimony on a companion bill, S.33, designed to prohibit the unauthorized rental of video tapes and disks. (ELR 5:1:20) That bill, however, is vigorously opposed by video retail and rental stores, and the subcommittee decided to move forward with the record rental bill immediately while awaiting the Supreme Court's decision in the "Betamax" case before voting on S.33. [July 1983] [ELR 5:2:20]

Court of Appeals affirms most of FCC's deregulation of radio

A three-judge panel of the Federal Court of Appeals in Washington, D.C., has affirmed most of the FCC's decision to deregulate radio. In 1981, the FCC announced that it would no longer regulate the amount of non-entertainment programming presented on commercial radio stations nor would it restrict the number of commercial minutes broadcast per hour. The FCC also eliminated the requirement that radio stations ascertain the needs of their communities and maintain program logs. (ELR 2:22:6) The Court of Appeals unanimously affirmed all of the FCC's ruling except its elimination of the requirement that program logs be maintained. The court's reasoning will be reported in the Entertainment Law Reporter just as soon as a copy of the decision is obtained.

The telecommunications subcommittee of the House of Representatives is now considering legislation that would codify the FCC's deregulation of radio and would

deregulate radio even more than the FCC already has. [July 1983] [ELR 5:2:20]

In the Law Reviews:

Hastings College of the Law has published Volume 5 Number 2 of Comm/Ent, A Journal of Communications and Entertainment Law. The issue is available at a cost of $6.50 directly from Hastings, 200 McAllister, St., San Francisco, CA 94102. It contains the following articles:

The IRS, the INS and the Foreign Entertainer by Richard D. Fraade, David B. Gardner and Allan Stewart, 5 Comm/Ent 191 (1983)

The Copyright Notice Requirement - Deliberate Omission of Notice by Warran L. Patton and John C. Hogan, 5 Comm/Ent 225 (1983)

Commercialization of Public Broadcasting by Craig Austin Dunagan, 5 Comm/Ent 241 (1983)

The Zoning of Adult Entertainment - How Far Can Planning Commissions Go? by Raymond H. Aver, 5 Comm/Ent 293 (1983)

Closed to the Media - The Defendant's Right of Privacy in the Preliminary Examination by Joseph A. Wynne, 5 Comm/Ent 317 (1983)

Video Technology and the Law - A Bibliography of Legal and Law-Related Materials on Cable Television, Subscription/Pay Television, Direct Broadcast Satellites,

Videorecording and Videotext by Frank G. Houdak, 5 Comm/Ent 341 (1983)

Columbia law students and Volunteer Lawyers for the Arts have published Issues 2, 3 and 4 of Volume 7 of Art & the Law. All four issues of Volume 7 are available at a cost of $20 directly from Volunteer Lawyers for the Arts, 1560 Broadway, New York, N.Y. 10036. Issues 2, 3 and 4 contain the following articles:

Universal City Studios v. Sony Corporation of America by Jonathan D. Haft, 7 Art & the Law 85 (1982)

Legislative Relief and the Betamax Problem by David J. Rapson, 7 Art & the Law 125 (1982)

The California Injunction Statute and the Music Industry -- At What Price Injunctive Relief? by Jeffrey B. Light, 7 Art & the Law 141 (1982)

The Performance Pirate and the Diva - Can Federal Law Come to the Rescue? by Lisa Greco, 7 Art & the Law 177 (1982)

VLA Perspectives, 7 Art& the Law 193 (1982)

Volunteer Lawyers for the Arts Amicus Curiae Brief for Universal City Studios Inc. v. Sony Corporation of America, Introduction by Beryl A. Abrams, 7 Art & the Law 195 (1983)

Before Raising the Curtain: Legal Questions and Requirements on Financing the Presentation of Live For-

Profit Theatrical Ventures by Robert Barandes, 7 Art & the Law 209 (1983)

Cable Television: Toward an Improved Copyright and Communications Policy by Glenn C. Zorn, 7 Art & the Law 239 (1983)

A Giant Step Forward - New York Legislation on Sales of Fine Art Multiples by Susan Hobart, 7 Art & the Law 261 (1983)

Copyright Notice Placement for the Visual Artist by Alison Strasburger, 7 Art & the Law 281 (1983)

Commissioning Orchestral Works - Sample Agreement and Commentary by Adria G. Kaplan and John M. Kernochan, 7 Art & the Law 293 (1983)

Copyright in the Stage Direction of a Broadway Musical by Jessica Litman, 7 Art & the Law 309 (1983)

Tarzan Meets the Second Circuit - Reflections on Burroughs v. Metro-Goldwyn-Myer by Kathleen Kress, 7 Art & the Law 337 (1983)

The Right of Publicity in New York - A Practical Analysis by Joel S. Lind, 7 Art & the Law 355 (1983)

VLA Perspectives, 7 Art & the Law 373 (1983)

The Spring 1983 issue of Communications and the Law has been published by Meckler Publishing, 520 Riverside Avenue, Westport, CT 06880. It is Volume 5 Number 2, and contains the following articles:

In Search of a Scholar's Privilege by Louis A. Day, 5/2 Communications and the Law 3 (1983)

The Future of Strict Liability in Libel by F. Dennis Hale, 5/2 Communications and the Law 23 (1983)

Local Regulation of Cable - The Boulder Cases by William J. Toman, 5/2 Communications and the Law 39 (1983)

An Examination of Self-Regulation in Broadcasting by Harvey C. Jassem, 5/2 Communications and the Law 51 (1983)

The Kaminstein Legislative History Project - A Compendiun and Analytical Index of Materials Leading to the Copyright Act of 1976, Alan Latman and James F.

Lightstone, Editors reviewed by Kate McKay, 5/2 Communications and the Law 65 (1983)[ELR 5:2:22]