BUSINESS AFFAIRS

Financing the Production of Theatrical Motion Pictures

by Lionel S. Sobel

A million dollars used to be a lot of money, and still is for many purposes. Making movies is not one, however. Major motion pictures cost some $10 million today, before prints and ads. By comparison, a $1 million movie is truly a small-budget affair. Little wonder then that many producers are as involved as Wall Street investment bankers in matters of high finance. Indeed, the arrangements made to finance the production of some movies are as creative and artistic in their own way as the movies themselves.

It would be an exaggeration to say that there are as many ways to finance movies as there are movies made. But there are many. Trade papers and industry jargon divide all of these many ways into two broad categories: "studio" financing and "independent" financing. The dividing line between the two has blurred as of late, especially with the advent of new forms of movie financing companies such as Silver Screen Partners. As a result, some "independent" productions are being financed in ways that are similar to "studio" productions. And some movies that look (to the craft unions especially) as though they are "studio" productions actually are financed in ways that are similar to "independent" productions.

The purpose of this article is to describe several of the ways in which theatrical motion pictures are financed and to indicate the relationships among them.

Studio financing

For many producers (probably most) the ideal deal is one with a studio. There are seven major "studios" in the United States today: Columbia, Disney, MGM/UA, Paramount, 20th Century-Fox, Universal and Warner Bros. The traditional studio deal is one in which a studio pays for the development, production and distribution of a movie. The producer receives a fee for services rendered and an interest in the movie's profits if there are any. The studio acquires the right to distribute the movie world-wide and in all media in exchange for a distribution fee. The studio also is entitled to recoup all of its distribution expenses as well as all of the money it spends producing the movie, plus interest and studio overhead. And the studio too is entitled to an interest in the movie's profits if there are any.

Naturally the details of deals of this sort vary from studio to studio, and even from deal to deal within a studio. As a general rule, distribution fees are calculated as a percentage of film rentals (i.e., the amounts received from movie theaters and other exhibitors); studio overhead charges are calculated as a percentage of the out-of-pocket expenses involved in making a movie; and interest on production expenses and overhead is calculated in percentage points above the prime rate.

"Profit" definitions are long and complex and do not coincide with generally accepted accounting concepts of "profits" nor with the Internal Revenue Service's concept of "profits." Generally speaking, however, movies break into profit when film rentals (and other income from such sources as merchandising), less the studio's distribution fee, exceed the studio's distribution expenses (including the costs of prints and advertising) and the movie's production costs (including overhead and interest). These profits are split between the producer and the studio, typically on a 50/50 basis, though the producer's share may increase as profits increase.

The advantages to a producer from a deal of this sort are many. For those movies that make it out of development and into the production stage, financing and distribution are assured. Administrative support and office space are provided by the studio. A negotiated producer's fee is paid whether or not the movie is profitable. And there exists a chance to participate in profits, if the movie is profitable. With financing assured and administrative support provided, the producer is free to concentrate on the creative aspects of the movie.

On the other hand, there is a price to be paid for the studio deal. Distribution fees, interest rates and overhead charges are likely to be at the high end of the scale, for most producers. Studio production costs may be greater than the cost of obtaining similar goods and services from non-studio sources. And studio executives participate in the creative as well as the administrative aspects of motion picture production - participation which the producer may not relish.

Distributor and production company financing

Studio-like financing also is available from well-known, established distributors which are not true "studios" simply because they do not own their own lots, as do the seven "majors." Orion, Embassy, and New World Pictures are three examples of non-studio distributors - sometimes referred to as "mini-majors" - that finance the production and distribution of theatrical motion pictures in ways that are identical in concept to studio financing.

In recent years, the movie industry has been joined by companies that develop and produce films in ways that are similar to the majors. But these new companies do not themselves distribute movies. The Ladd Company, Tri-Star Pictures, ABC Motion Pictures and CBS Theatrical Films are examples of this new sort of development-and-production-only company. From the point of view of the individual producer, the deals these companies offer are virtually indistinguishable from studio deals. They develop movies from the idea or literary property stage and provide single-source production financing in exchange for a portion of the movie's profits and the right to recoup their expenses plus interest. Companies of this sort arrange distribution of their movies through the majors or mini-majors. Frequently, such production companies are charged smaller distribution fees than individual producers, because these companies provide a continuous flow of movies and finance their production costs themselves. The executives of these companies - like studio executives - provide administrative support and involve themselves in creative decision making, activities which producers may appreciate only in part.

Last year, an even newer kind of company joined the movie business - a company which provides financing, is not itself a distributor, and appears as though it will be less involved than studios and production companies in the actual making of the movies it chooses to finance. The prototype of this new sort of company is Silver Screen Partners, a publicly-owned limited partnership underwritten by E.F. Hutton & Company and organized to finance the production of movies to which Home Box Office has acquired pay-TV and certain other rights in advance. Like production companies, Silver Screen Partners will pay production costs in exchange for a share of profits and the return of its costs plus interest, and will arrange distribution through established distributors. It does not appear, however, that Silver Screen will spend very much, if anything, on development, nor does it appear that it will provide administrative support or creative input during the production process. Instead, it will provide pure production financing for independent producers whose projects appeal to it and to HBO. Furthermore, unlike production companies, Silver Screen is not even intended to have an ongoing life. When its initial capital is fully invested, it will finance no further movies - not even out of its profits. And according to the Silver Screen prospectus, the partnership will be dissolved in 20 years, if not before. That of course is of no moment to those producers whose projects are selected. They will receive full funding for their movies and will be free to concentrate on creative rather than financial matters.

Independent production financing

Many producers are unable or choose not to obtain single-source financing from a studio, distributor or production company. They are known as "independents," and for them, the task of raising funds is a key part of their job. Funds for independent film production are available from several sources, though apart from companies like Silver Screen Partners, few if any of those sources are sufficient by themselves to pay the entire cost of a movie. As a result, independent producers become as adept at assembling packages of financing as they are at assembling packages of talent and literary property.

Because so many producers get their start as independents, there has long been a great deal of interest in and around Hollywood in the art and science of independent film financing. Just last month, for example, more than 200 people attended a day-long UCLA Extension program on just this topic chaired by Century City attorney

Raymond L. Asher. Through a series of panel discussions, the program explored the four major sources of independent financing - negative pickups, presales, loans, and investors - and
their often conflicting requirements.

Negative pickups

A negative pickup deal is one in which a distributor acquires the right to distribute a completed motion picture that has been fully financed by someone other than the distributor itself. In the jargon of the industry, the movie's "negative" is complete and ready for the making of prints, and the distributor "picks up" the negative (actually the distribution rights to it) in exchange for a promise to pay the producer a share of the film's rentals. In a deal of this sort, the producer's share of film rentals is what is left after the distributor takes its distribution fee and has recouped its distribution expenses (including the cost of prints and advertising).

According to Robert A. Geary, senior vice president of business affairs for Orion Pictures, negative pickup deals traditionally involved already completed motion pictures. Negative pickup deals of this sort were not truly sources of production financing, because production expenses had to be incurred before these deals could be made.

Tradition has given way to innovation however. Diane Maddox, director of film acquisitions for Warner Bros., indicated that distributors now make negative pickup deals as early as the script stage. From the producer's point of view, the most desireable negative pickup deal is one in which the distributor agrees that when the movie is done, the distributor will pay to the producer (as an advance against the producer's share of film rentals) the full amount of the movie's production costs. An independent producer can use a negative pickup deal of this sort to raise the money needed to produce the movie from other sources. This is so, because a negative pickup commitment assures investors and lenders that the movie will earn back its production costs as soon as it is completed and delivered to the distributor.

Negative pickup deals are made by studios as well as other distributors, because the major studios have facilities for distributing many more movies than they finance and produce themselves. Maddox pointed out, for example, that last year, Warner Bros. produced 10 films itself in-house and distributed 24 more that it acquired in negative pickup deals. Geary indicated that Orion finances the production of 12 to 15 movies a year in-house and distributes a like number acquired as pickups. Robert Sherwood, vice president of marketing and acquisitions for Universal, said that his company too has about a 50/50 in-house/pickup ratio.

Union limitations

Ironically, because negative pickup commitments can be used to raise production funds from other sources, the studios cannot offer them to producers of non-union movies. According to collective bargaining agreements between the studios and the unions and guilds, studios must use union and guild talent for in-house productions. Studios are permitted to distribute non-union movies that are picked up after they are completed. But the unions - especially IATSE - have taken the position that independent productions that are financed, even indirectly, with negative pickup commitments are equivalent to inhouse studio productions for union-member employment purposes. As a result, small-budget movies which are small-budget in part precisely because they are non-union productions - cannot be financed on the strength of negative pickup deals with the studios (or with non-studio distributors that respect IATSE employment requirements even though they themselves are not IATSE signatories).

There are no "standard" negative pickup terms in the movie business. Each deal depends on the movie, its producer and the distributor involved. Maddox disclosed, for example, that last year Warner Bros. acquired world-wide, all-media rights to one movie for a $1.1 million advance but paid more than $11 million for the domestic theatrical rights alone to another movie. Sherwood indicated that Universal has acquired distribution rights to some movies without advancing the producer any money at all.

Presales

Often a producer is unable or chooses not to make a negative pickup deal. Distributors may not be interested in the movie at the preproduction stage; or the terms they offer may be less attractive than what the producer thinks can be gotten once the movie is completed; or the amount the distributor is willing to pay upon delivery may not be enough to cover all of the movie's production costs. Whatever the reason, in cases such as these, producers must raise money in other ways. One way that became popular some years ago is known as "presales."

Movies of course earn money in many ways. Theatrical exhibition in the United States is only one way. Indeed, over the past several years, domestic theatrical exhibition has accounted for a declining percentage of all income earned by most movies. Movies also earn money from foreign theatrical exhibition, pay-TV, network television, syndicated television, home video sales, and the sale of licensed merchandise such as toys, games, sound track albums and clothing. Just as, traditionally, negative pickup deals were made after movies were completed, so too it once was traditional for these other rights to be licensed only after movies were completed. Tradition has changed in this area as well, and independent producers now frequently sell these rights in advance of production. Hence, the industry term "presale."

Foreign presales

According to Peter Elson, vice president of acquisitions and marketing for Manson International, presales of distribution rights to foreign territories first became significant about 10 years ago. Stories are still told about producers with little more than an idea going to the Cannes Film Festival with beautiful brochures, and coming home with enough money in advances from foreign distributors to go into production. Not surprisingly, many foreign distributors were disappointed with the movies they got for their money, and foreign presales lagged a few years ago, but are picking up again, Elson said.

The most significant foreign territories for American producers are Australia, England, France, Germany, Japan and Scandinavia. (Canadian distribution is handled together with U.S. distribution.) Together, they may account for 25% or more of a movie's total earnings and thus represent an important source of production funding. Sparky Greene and Myron Meisel, producers of the forthcoming low-budget movie "Oasis," expect that by the time they complete their foreign pre-sales, "Oasis" will have earned back all of the $1 million they spent making it.

Even if foreign pre-sales are not necessary to fund production, there are reasons to consider handling foreign distribution separately from domestic distribution anyway, according to Elson. Studios and other domestic distributors have overseas branches or subdistributors with which they work. Most world-wide distribution deals, however, authorize the distributor to "bundle" all of the foreign revenue and expense in a single profit calculation. In effect, distribution expenses incurred in each foreign country are "cross-collateralized" by the income earned in every other country. As a result, if a movie is profitable in Australia, but loses money in England, the English losses are offset against the Australian profits, so the producer may not receive any of those Australian profits at all. Elson pointed out that when producers use a foreign sales agent (which are companies, like Manson International, that represent American producers in dealings with foreign distributors), instead of granting world-wide rights to a domestic distributor, the foreign sales agent arranges for foreign distribution on a country-by-country basis, so that profits in one country are not offset against losses in others.

Of course, foreign pre-sales are a valuable source of production financing only if the sales agent obtains advances, or commitments backed by a letter-of-credit from a recognized bank, or some other secure guaranty of payment against which someone would be willing to put up necessary production funding. The mere promise of a distant foreign distributor to pay the producer a share of film rentals only after the movie arrives and is exhibited in the foreign country is not, by itself, going to help very much in getting the movie made in the first place.

Network and pay-TV pre-sales

At one time, network pre-sales also were a valuable source of production funding. ABC, CBS and NBC compete with one another for the network rights to popular movies. As a result of that competition, they began acquiring rights to many movies before those movies were made. These pre-production agreements would require the networks to pay an agreed upon sum of money at a particular date. And producers could use that agreement, in effect as collateral, to obtain production funding elsewhere immediately.

In recent years, pre-sales to the networks have declined, largely as a result of the tremendous growth of pay-TV and home video. Millions of viewers are seeing theatrical movies on pay-TV or video cassettes before they are aired on network television, and as a result, the ratings for network broadcasts of those movies have fallen dramatically. The slack, however, is being taken up by pay-TV and home video companies, and they now have become significant sources of production financing.

HBO probably should be credited with making pay-TV the source of production funding it has become. It acquires the pay-TV rights to 250 or so movies each year, because 70% of its programming is theatrical motion pictures. According to Maurice Singer, vice president of pre-production acquisitions for HBO, the "turning point" in the industry came some years ago, when HBO decided to acquire exclusive pay-TV rights prior to production. HBO's commitment was and is as "bankable" as the commitment of ABC, CBS or NBC.

The opportunities for independents to presell to HBO may be declining as of late, because HBO has made output deals with studios, production companies and distributors such as Columbia and Orion. Furthermore, HBO has become a partner (with CBS and Columbia) in Tri-Star Pictures, at least some of whose movies HBO owns the pay-TV rights to. And HBO was instrumental in the formation of Silver Screen Partners, all of whose movies HBO owns the pay-TV rights to. As a result, HBO has assured itself of a continuous flow of major motion pictures and is less dependent than it once was on the product of independents. It is possible, however, that the slack left by HBO may be taken up, at least in part, by Showtime and The Movie Channel, because since their merger last year, they have increased their preproduction acquisition activities in order to compete more vigorously with HBO.

Home video pre-sales

Home video companies also have become an important source of production funding, because they have increased their pre-production buying activities significantly as of late. This has largely been the result of tremendous growth in the home video market and a corresponding increase in the size of advances paid by home video companies to producers for home video rights. It also is the result of increased competition in the home video business, as more companies enter the business. In the early years of home video, for example, even a company as big as 20th Century-Fox simply licensed an unrelated company to make and sell video cassettes of Fox movies. That did not last long however, and soon Fox bought the video company and brought it into the Fox corporate family. The future of home video has not been lost on the pay-TV industry either. HBO's Maurice Singer disclosed that HBO now seeks to acquire home video (as well as pay-TV) rights to the movies it finances. And he said that HBO soon will be entering the home video business itself.

Competition between home video companies has become so intense that some producers whose proposals have been rejected by the theatrical division of a studio or distributor have been able to pre-sell the very same proposal to the studio's home video division! David A. Weitzner, executive vice president for marketing of

Embassy, disclosed that this very thing has occurred within his company. And Robert Sherwood said that the same thing has happened at MCA/Universal.

Complications caused by pre-sales

As useful as pre-sales can be in financing movie production, they are not a panacea. In fact, pre-sales can severely hurt a movie's chances for profitability in ways that may not be obvious until it is too late. An American movie's greatest source of income always has been and still is U.S. theatrical exhibition. Without successful domestic distribution, few if any movies are profitable. Even pre-sales may depend on a certain level of domestic theatrical distribution. For example, Singer indicated that HBO presale deals require theatrical distribution by a major domestic distributor which will spend at least a designated amount of money on advertising and will release the movie in at least a designated number of major American cities. From the point of view of a pay-TV service, this is a perfectly understandable requirement. The distributor's advertising and the movie's wide release make the movie well known and in effect become the advertising for the pay-TV showing of the movie as well.

On the other hand, domestic theatrical distributors dislike handling movies if significant rights to them have been presold. The distributor's reasoning too is perfectly understandable. Irving lvers, marketing president of MGM/UA, said pre-sales remind him of the television program "Let's Make a Deal" where contestants are asked whether they will trade money they have just won, the amount of which they know, for something unknown behind a closed door. Sometimes the trade favors the contestant, but sometimes it does not. Ivers said he understands why independent producers like pre-sales:

they reduce the producers' risks. (In fact, Ray Asher said that according to a widely-told story about Sam Arkoff - the founder of the old American International Pictures - Arkoff's theory of the motion picture business was not to begin production until the movie went into profits from pre-sales alone.)

On the other hand, pre-sales increase the distributor's risk. Weitzner estimated that advertising alone for a major movie could cost $6 million - a figure with which Orion's Robert Geary agreed. Many movies do not earn enough in film rentals to cover that amount, let alone the cost of prints, the distributor's fee, and a profit. Distributors therefore count on fees from foreign distribution, television, pay-TV, and home video to make up potential losses on domestic theatrical distribution. If the distributor has no chance to earn fees or to share in profits from those sources, because the producer presold those rights, many distributors will decline to distribute the movie at all, or may agree do to so only if their commitment to print and advertising expenditures is small. If the print and ad commitment is too small to satisfy a pay-TV presale requirement, the distributor's willingness to handle the movie on that basis is no better than a flat-out rejection, as far as the producer is concerned.

Presales can interfere with domestic distribution in other ways as well. Geary pointed out that home video pre-sales may grant the home video company the right to release cassettes six months after the movie is first released theatrically. Theatrical distributors dislike such provisions however, because the movie may still be in theaters after six months, and home video sales will hurt if not destroy further theatrical rentals. As a result, Geary indicated that Orion is reluctant to take on movies for which it gets only domestic theatrical distribution rights. The other rights are a distributor's "insurance," he explained, and without that insurance, a distributor is likely to pass on a movie.

Lender financing

Even if a producer makes a negative pickup deal, or makes enough presells to cover the movie's anticipated budget, there still may be little or no money in the producer's bank account. This is because negative pickups and pre-sales usually do not generate cash (except perhaps for a small advance) until the movie is finished and delivered. In the meantime of course, the producer needs cash for salaries, travel, equipment, costumes, and all of the other things that must be purchased and paid for while a movie is in production. Producers get the cash from lenders and investors.

In the movie business, some actors, directors, writers and properties are said to be "bankable." The implication is that "bankable" elements will enable a producer to borrow production funds from a bank. But that implication is not correct. Neither banks nor any other lender will loan production funds on the strength of even the most "bankable" elements, because bankable elements are not by themselves collateral. What is the case is that bankable elements enable producers to get negative pickup deals or presales or both. And banks will lend against the futurepayment commitment contained in pickup and presale agreements.

Every lender approaches transactions of this sort in its own way. Al Kelley, vice president of the entertainment unit of Security Pacific Bank, said that he does not ask to see the movie's script or the names of its cast or director. What he does want to see is the producer's business plan for repaying the loan. That is, Kelley wants to see contracts indicating that some recognized company is obligated to pay the producer a designated sum of money on a particular date. Linsey Tully, vice president of the entertainment industry group of Chemical Bank, said that unlike Kelley, she does look at scripts because her bank, as a matter of bank policy, will not lend money for the production of certain kinds of films such as hard-R or X-rated movies or movies that depend on complex special effects. Tully does want to know who the stars and director are going to be, because she prefers to avoid actors and directors who are known to be "difficult" and therefore may delay or disrupt production.

Banks will lend millions of dollars against pickups and pre-sales. Security Pacific, for example, makes loans in the $1 million to $3 million range, and Chemical has lent from $300,000 to as much as $40 million. Gerald Weisstein, president of Olympic National Bank, indicated that his bank makes loans between $1/2 million and $3 million. Interest rates vary from bank to bank and from loan to loan but generally are 2 1/2% above the prime (plus commitment and complex-document review fees).

Banks do have one thing in common: they do not lend the full amount the producer will receive from pickup and presale deals. The reason they do not is that banks want their interest to be covered by the pickup and presale proceeds; and thus, banks must "discount" those proceeds sufficiently to insure that the proceeds will cover the interest as well as the principal amount of the loan. Thus, if a producer makes a negative pickup deal with a distributor that exactly covers the movie's budget, a bank loan will not result in enough money to pay the full cost of making the movie.

Banks are not the only ones who lend money to producers, however. Bruce Mallen is the president of Filmcorp Entertainment Finances, a non-bank lender. According to Mallen, his company - unlike banks - will lend producers the full amount due under a pickup or pre-sale agreement. Filmcorp is "at risk" for the interest it charges, because it collects interest only if the movie is profitable. Not surprisingly, Filmcorp's interest rates are higher than the rates charged by banks, and it asks for a small profit participation as well.

Participant financing

One way for a producer to reduce a movie's cash needs at its production stage is to get what may be described as "participant financing." For example, cast members, the director and the writer may be asked to defer a portion of their compensation untit after the movie is completed, and may even be asked to agree that a portion of their compensation be contingent on the movie earning profits. In return, the amount of compensation to be paid may be greater than if it were guaranteed and paid while the movie is in production; and in such cases, talent may be given profit participations in the movie as well. Even film laboratories and sound editing services have been known to defer a portion of the payments due them in exchange for profit participations. Producers must be careful not to give away more profit participations than they have, because in most cases, all such participations eventually are paid out of the producer's own share of the movie's profits - not out of the distributor's share.

The cash needs of some movies can be reduced even further by using "trade-outs" by which goods or services necessary for making the movie are obtained at little or no cost in trade for prominent use of the item in the movie itself or an acknowledgement at the end of the credits. For example, producers Sparky Greene and Myron Meisel got bottled water and hotel accommodations for their forthcoming movie "Oasis" in exchange for film mentions of Crystal Geyser and the Furnace Creek Inn.

Investor financing

While the possibilities of negative pickup, presale, lender and participant financing cannot be overlooked, few if any movies are fully financed in these ways. Virtually all independent productions require some investor financing as well. According to Peter Davis, president of Davis/Panzer Productions, movies that have budgets in the $5 million to $10 million range are likely to have 60% to 70% of their costs financed by investors. Diane Maddox of Warner Bros. pointed out that the advantage of investor financing is that it makes the movie more attractive for distributors because it leaves world-wide rights intact, and may even enable the distributor to pickup the movie for less than its full budget.

Indeed, the attractiveness of investor financing has become so apparent, that even studios and established distributors have begun to use it themselves. Harry E. Gould, Jr., chairman and president of Cinema Group, explained how his company has made co-financing deals with Paramount and New World Pictures. SLM has made similar deals to finance MGM/UA productions. The Delphi partnerships have funded movies made by Columbia. And Silver Screen Partners will be providing money for films to be shown on HBO. Studios and distributors benefit from these joint ventures because investor co-financing enables studios to make more movies in-house than they otherwise could. In order to get such co-financing, studios and distributors frequently offer investor groups better terms than would be offered to individual producers. Paul Almond, senior vice president of New World Pictures, explained that investors must have a better chance of reaching profits than profit participants who have been paid salaries for their services. As a result, Almond said, investors usually succeed in preventing cross-collateralization between domestic and foreign markets and even between theatrical and ancillary revenues.

Despite the recent formation of investor groups that finance studio productions, independent producers are still the more common users of investor financing. Typically, the producer forms a limited partnership and becomes its general partner. The investors become limited partners. In exchange for their investments, the limited partners usually receive pro rata portions of 100% of the producer's share of the movie's profits until their entire investment has been returned. Then, the limited partners and the general partner split the producer's share of the profits, usually 50/50.

Securities law issues

The formation of a limited partnership for the purpose of financing an independently produced movie looks simpler than it actually is. Indeed, trade papers frequently contain ads in their classified sections which appear to solicit just this sort of investment. As a legal matter, however, the formation of such a limited partnership raises complex issues involving federal and state securities laws. In fact, it is virtually certain that many if not most producers who place ads for investors in the trade papers inadvertently violate federal and state securities laws by doing so. This is because the sale of limited partnership interests (as well as all other kinds of "securities") must be registered under federal law with the Securities Exchange Commission and/or qualified under state law with the California Department of Corporations (and/or the corresponding official of any other state in which the partnership interest is offered) - unless the sale is exempt.

While there are exemptions that are relevant to movie producers, structuring and documenting the sale of movie investments so that they are exempt requires the expertise of a knowledgeable securities lawyer. Furthermore, the cash needs of many movies are simply too great to qualify for complete exemption. In any event, the anti-fraud provisions of the securities laws are always applicable, so that a detailed prospectus or offering circular is necessary in virtually every case. (See, e.g., Financing Motion Pictures Under Nonpublic and Limited Offering Exemptions from Federal Securities Laws by John H. Stout, 2/2 The Entertainment and Sports Lawyer 1, published by the American Bar Association in the Fall of 1983.)

Tax benefits

People have different motives for investing in motion pictures. The glamor of the industry is thought to attract many (though "Oasis" producers Greene and Meisel said they could not find any investors who had been "seduced" by the glamor). There appear to be two purely financial motives: the opportunity for unusual profits if the movie is successful, and income tax benefits.

Prior to the Tax Reform Act of 1976, the tax benefits of movie investments were great enough that some referred to them as "tax shelters." The Tax Reform Act eliminated many of those benefits, however. And for that and other reasons, tax shelter movie investments have become more difficult to sell, according to Arthur E. Rockwell, vice president of corporate relations for MGM/UA.

Nevertheless, current law still allows movie investors to enjoy two tax benefits: depreciation deductions and investment tax credits. (See, e.g., New law offers several options for obtaining the tax benefits of motion picture films by Allan E. Biblin, published in the February 1982 issue of The Journal of Taxation at pages 88-92.)

Tax law is complex, however. Thus, just as securities law compliance requires the counsel of a knowledgeable securities lawyer, the advice of a knowledgeable tax lawyer is necessary - at the prefund raising stage - to take advantage of available tax benefits.

Completion bonds

All of the financing methods used by independent producers are based on a common assumption: that the producer will complete, on time and especially on budget, the very movie that is promised to the distributor and other pre-sale customers. If a producer were to go over-budget and run out of money before the movie is completed, the entire financial package would tumble like a house of cards. To protect against this possibility, all of those who advance production funds to independent producers - be they investors, lenders, movie financing companies like Silver Screen Partners, or distributors - require something called a "completion bond."

A completion bond is an agreement by which a bonding company guarantees a movie's financiers that if the movie goes over budget before it is finished, the bonding company itself will pay whatever money is necessary to complete the movie, or will repay the financier's money in full. Completion bonds are issued by several companies, all of them backed by major insurance companies.

Completion bonds are of course more difficult to get than auto or fire insurance. Tekla Morgan, vice president of Filmaker Completion, Inc., explained that a producer's bond application must be accompanied by almost two dozen separate items, including the movie's script, budget, and shooting schedule; resumes of key personnel and cast members; all of the contracts entered into in connection with the movie including those of the producer, director, writer, and cast members; distribution agreements, and rights clearances. The bonding company reviews all of these documents to make its own assessment of whether the movie can be completed on budget; and only if it concludes that it can, will the bonding company issue a completion bond.

Although the bond will not be issued until all of these documents are reviewed, Morgan recommended that producers contact their bonding company as soon as the script and budget are complete, and before the other agreements are entered into. This is important, because it gives the bonding company a chance to help producers avoid using contract language that may hinder their chances of obtaining a bond. A "stop date" in the employment agreement of a key cast member is an example of a contract provision that may make it difficult to obtain a bond, Morgan explained. A provision in the director's contract giving the director extraordinary editing rights is another potential problem.

Morgan noted that movie-making is above all a creative process, and she acknowledged that "creativity knows no bounds." However, she added - in what could be the central theme for the entire area of motion picture funding -"finance requires bounds."

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[ELR 5:12:3]

RECENT CASES

United States Supreme Court rules that performer Shirley Jones may bring libel action in California

against Florida-based editorial employees of the National Enquirer; Supreme Court also approves New Hampshire jurisdiction over $80-million libel action filed by New York resident Kathy Keeton against Ohio-based Hustler magazine

Entertainer Shirley Jones may proceed with a libel action filed in Los Angeles against John South and Iain Calder, reporter and editor-president, respectively, for the National Enquirer, the United States Supreme Court has ruled. In this highly-publicized case, Jones, who lives and works in California, sued the Enquirer, its local distributor, South and Calder for libel, invasion of privacy and intentional infliction of emotional distress. The Enquirer, a Florida corporation, publishes a weekly newspaper with a circulation of more than five million readers. Jones objected to an article appearing in the Enquirer's October 9, 1974 issue, in which a story under

South's byline stated, among other things, that Jones "drank so heavily as to prevent her from fulfilling her professional obligations."

The Enquirer and its local distributor answered the complaint and did not object to the jurisdiction of the California trial court. South and Calder were served with process by mail in Florida. They entered special appearances in Los Angeles Superior Court to quash the service of process for lack of personal jurisdiction. The trial court granted their motion on the ground that First Amendment concerns weighed against an otherwise valid assertion of jurisdiction. The California Court of Appeal reversed this ruling (ELR 4:19:5). And, the Court of Appeal decision has been upheld by the United States Supreme Court.

Justice William H. Rehnquist, delivering the opinion for a unanimous Court, first reviewed the California contacts of South and Calder. South travels to the state and makes telephone calls to state residents for business purposes. Calder has been to California two times in connection with matters unrelated to the Jones case and has no other "substantial" contacts with the state. Despite this apparent lack of contact with California, the trial court noted that South and Calder's actions in Florida, which purportedly injured Jones in California, would be sufficient to confer California jurisdiction. But the Los Angeles Superior Court concluded that requiring reporters and editors to appear in remote jurisdictions to respond to actions concerning their writings would have a potential chilling effect on the media. Accordingly, the Los Angeles court declined to hear the matter. It also was noted that Jones' claims could be "fully satisfied" in her suit against the publisher without requiring South and Calder to appear as parties.

The California Court of Appeal subsequently ruled that there was a valid basis for assuming jurisdiction over

South and Calder on the ground that they intended to, and did, cause tortious injury to Jones in California and Jones' cause of action arose out of those effects. The court declined to consider the First Amendment in its jurisdictional analysis.

Justice Rehnquist pointed out that the allegedly libelous article concerned the California activities of a California resident. The article, which Calder knew might have "a potentially devastating impact" upon Jones, was drawn from California sources and any injury to Jones was suffered in California. California was "the focal point both of the story and of the harm suffered. Jurisdiction over petitioners therefore is proper in California based on the 'effects' of their Florida conduct in California," declared Justice Rehnquist. The maintenance of the action in California would not offend traditional notions of fair play and substantial justice, concluded the court.

South and Calder contended that they were not responsible for the circulation of the article in California, because they had no "economic stake" in the Enquirer's sales in the state and could not control its marketing activities. Justice Rehnquist rejected these arguments, noting that South and Calder were not insulated by their status as employees of the Enquirer; their activities were "expressly aimed" at California, and South and Calder could reasonably anticipate an appearance in a California court to defend the statements made in their article. Jones was not obligated to seek redress in Florida for the "intentional injury" allegedly inflicted by South and Calder.

First Amendment concerns would "needlessly complicate" the jurisdictional analysis, in the Supreme Court's view. Special procedural protection apart from the protection available in the substantive law of defamation was not available to South and Calder.

Justice Rehnquist also delivered the opinion of the court in an action in which Penthouse magazine executive Kathy Keeton, a resident of New York, sued Hustler magazine, which is published in Ohio, for libel. The action, seeking $80 million in damages, was filed in New Hampshire where jurisdiction was premised on diversity of citizenship. The Federal District Court dismissed Keeton's suit on the ground that the application of New Hampshire's long-arm statute to obtain jurisdiction over Hustler would violate the due process clause of the Fourteenth Amendment. This ruling was affirmed by a Federal Court of Appeals which held that Keeton's lack of contacts with New Hampshire rendered the state's interest in redressing her libel claim "too attenuated" to serve as a basis for asserting jurisdiction over Hustler. The Court of Appeals also observed that Keeton's claim was based on Hustler's allegedly libelous publication of a cartoon depicting Keeton's common law husband, Penthouse publisher Robert Guccione, infecting her with venereal disease, a cartoon which was published between September 1975 and May 1976. New Hampshire was the only state where Keeton's lawsuit was not time-barred when it was filed in 1979.

At the time New Hampshire had an unusually long limitations period for libel actions - six years. But in the opinion of the Court of Appeals, New Hampshire had a minimal interest in applying its statute of limitations in a case involving alleged injuries to a nonresident occurring outside the state. Hustler sells only about 10,000 to 15,000 of its several million monthly copies in the state each month (less than one percent of its total distribution). This was a small proportion of Keeton's total claimed injury according to the appeals court and, again, did not warrant the exercise of the state's jurisdiction.

The United States Supreme Court, however, in a 9-0 ruling, found that Hustler's regular circulation of magazines in New Hampshire was sufficient to support the exercise of jurisdiction in a libel action based on the contents of the magazine. Jurisdiction was not precluded by the fact that New Hampshire has a single publication rule which would enable Keeton to recover, in this proceeding, damages from the "publication" of the alleged libel throughout the United States. Hustler engages in regular monthly sales of the magazine in the state. This activity is not "random, isolated or fortuitous," and jurisdiction over a complaint based on these contacts satisfies the due process requirement of "minimum contacts" with the state. Keeton, although a nonresident, was suing, at least in part, for damages suffered in New Hampshire. And "the reputation of a libel victim may suffer harm even in a state the individual previously was unknown." Furthermore, New Hampshire had an interest in applying its libel law in order to discourage the deception of its own Hustler reading citizens. New Hampshire also had interest in cooperating with the many other states which have enacted a single publication rule by providing a forum for Keeton to efficiently litigate, in one proceeding, all claims arising out of the alleged libel.

The duration of New Hampshire's statute of limitations was a choice of law concern that should not have entered into a jurisdictional evaluation, stated Justice Rehnquist. And Keeton's contacts (or lack thereof) with the state were not significant in determining jurisdiction. Justice Rehnquist pointed out that no court has required a party bringing an action to have "minimum contacts" with the forum state before permitting that state to assert personal jurisdiction over a nonresident. Residence in the forum state is not a separate jurisdictional requirement, and lack of residence will not defeat jurisdiction established on the basis of a defendant's contacts. There is no justification for restricting libel actions to a party's home forum for almost every libel action is brought somewhere other than a complaining party's residence. On the basis of its participation in the New Hampshire magazine market, Hustler could reasonably anticipate facing a libel action based on the contents of its magazine, and that such an action would seek nationwide damages.

In concurring, Justice Brennan agreed that Hustler's distribution of magazines in New Hampshire was sufficient to support jurisdiction over the magazine in a libel action based on the contents of the magazine. The contacts were sufficiently important and related to the underlying cause of action to meet due process standards. Justice Brennan did not consider it necessary to discuss the state's interest in the matter as an element of the jurisdictional ruling.

An article by Jonathan Kotler, in the October 1983 issue of California Lawyer, entitled "Suing the National

Media" quoted Robert Becker, an attorney for the Reporters Committee for Freedom of the Press as stating that the effect of a ruling opening media organizations to lawsuits in practically every jurisdiction where their publications are distributed would be to discourage reporters from covering certain events in a state in which the assignment indicates there is a risk of being sued in that state. Enquirer attorney Paul Selvin agreed that "reporters" have some apprehension that they will personally become embroiled in litigation throughout the country, where their only contact with defamation was that it was distributed in the jurisdiction in which the suit was brought. "The more you embroil the press in litigation, the more of a chilling effect there will be."

Jones' attorney, however, viewed the case as "a straight minimum contacts case" in which there happened to be a media defendant.

Calder v. Jones, Case No. 82-1401 (U.S.Sup. Ct., March 20, 1984); Keeton v. Hustler Magazine, Inc., Case No. 82-485 (U.S.Sup.Ct., March 20,1984) [ELR 5:12:10]

West Virginia Supreme Court reverses award of summary judgment to licensee of the television series MASH in dispute over term of syndication contract

The Supreme Court of West Virginia has prescribed further procedures in a dispute involving the term of a syndication license for the television series MASH. The contract between Twentieth Century-Fox and Lee Enterprises (doing business as WSAZ-TV), signed in January 1977, provided that WSAZ would have the right to broadcast 119 half-hour episodes of the series which were already produced. The station also was entitted to purchase additional episodes produced by Fox. It appeared that if the number of episodes produced remained at 119, the term of the license was to be four years; if, however, additional episodes were produced pursuant to Fox's contract with CBS, then the term of the license would be seven years.

WSAZ brought an action against Fox in which the station claimed that it had the right to purchase all of the additional episodes produced by Fox during the term of the contract. Fox, however, contended that the maximum number of episodes available to WSAZ was 168, since the contract stated that if the number of programs produced was greater than 119, but did not exceed 168 programs (the difference being two additional seasons of shows), the term of the license would be seven years.

A trial court granted summary judgment to WSAZ, agreeing that the station was entitled to purchase all of the episodes of the series produced during the term of the contract. The trial court also found the term to be seven years.

But the West Virginia Supreme Court has ruled that the trial court erred in granting summary judgment because the contract was ambiguous. Hence, it was not possible for the trial court to conclude that WSAZ was entitled to a seven-year term. The term of the agreement was "mutable," because there was a conflict between the paragraph in the contract permitting the purchase by WSAZ of all episodes produced and another paragraph which specified a limit of 168 episodes. The matter therefore was remanded for a determination of the number of episodes the parties contracted for under the agreement.

Lee Enterprises v. Twentieth Century-Fox Film Corp., 303 S.E.2d 702 (W.Va. 1983) [ELR 5:12:11]

Producer of "Winchell Mahoney Time" television program is entitied to sue television station and station owner for breach of contract and breach of fiduciary duty arising out of alleged erasure of tapes of the shows

In 1965, April Enterprises entered into a contract with KTTV and Metromedia, Inc., for the production of the "Winchell Mahoney Time" television show. The contract provided, in part, that both parties had the right to syndicate the show and that each party would receive 50% of the net profits from syndication. In 1968, the parties entered into a new contract by which Metromedia received the exclusive right to syndicate the program until the termination of the contract in 1973; April's compensation was reduced to 20% of the syndication revenue; and Metromedia relinquished the right to erase the video tapes of the shows.

Notwithstanding the provisions of the 1968 contract, April apparently attempted to negotiate syndication agreements in 1969 and offered to purchase the video tapes of the shows from Metromedia. Metromedia responded by offering to buy the exclusive rights to broadcast and license the shows for an additional two years. Then, in a letter of March 1970, Metromedia stated that unless April accepted the proposed new contract terms, the video tapes of the shows would be erased.

April allegedly discovered sometime in 1976 that the video tapes had been erased, and brought an action against Metromedia for breach of contract, breach of fiduciary duty by a joint venturer, and intentional interference with prospective advantage. A trial court dismissed the complaint, but this ruling has been reversed by a California appellate court.

The appellate court has ruled that April had stated a cause of action for breach of an implied covenant of fair dealing. If Metromedia indeed erased the tapes, Metromedia would have interfered with April's right under the 1965 contract to profit from the syndication of the shows. The court observed that if Metromedia possessed the absolute right to erase video tapes, it conceivably would have been "senseless" for April to conduct syndication negotiations. Thus, in order to reconcile the apparently conflicting right to syndicate and right to erase, the court suggested that the erasure clause must be qualified by an implied covenant of fair dealing. The right to erase tapes then would be limited to the situation where future syndication proved unfeasible.

Of course, under the 1968 contract, Metromedia no longer had any right to erase tapes. The court noted that if the evidence establishes that Metromedia had exhausted its own syndication rights and then deprived April of its reversionary interest by destroying the tapes, Metromedia's acts might amount to "an aggravated breach of the covenant of fair dealing."

The court also ruled that April had stated a cause of action for breach of fiduciary duty by a joint venturer since the complaint sufficiently alleged a common enterprise to syndicate the "Winchell Mahoney Time" show after it was produced and originally telecast. The 1968 contract, while giving Metromedia the exclusive right to license and syndicate, did not expressly extinguish the joint venture.

Metromedia argued that the harm purportedly suffered by April - the denial of syndication rights - occurred no later than the date of the March 1970 letter. But this statute of limitations defense was rejected by the court. April did not have the right to syndicate the program in 1970 and would have had no actionable claim at that time. The court recalled that April did not base its action on Metromedia's failure to cooperate with efforts to syndicate the shows in 1969 or 1970, but on the harm caused by the lost opportunity to syndicate the shows under any circumstances due to the erasure of the tapes. April was not in a position to allege the date of the erasure. Therefore, on the basis of the pleadings, April's cause of action for breach of the implied covenant of fair dealing was not barred. If subsequent proceedings establish the date of the tape erasure, April will be subject to a statute of limitations activated at the time that April discovered, or should have discovered, the erasure. The act of erasing the tapes was not the act that activated the running of the statute, ruled the court.

The "discovery" rule for determining the accrual of a cause of action was applied to April's breach of contract claim, although the general rule in California is that a cause of action accrues on the date of injury. However, given Metromedia's exclusive custody and control of the tapes, a holding that April's action accrued on the date of erasure might result in imposing an "onerous" duty upon a contracting party to continually monitor the other party's performance under the contract.

At trial, it will be determined whether April exercised due diligence in discovering the erasure and bringing its action, concluded the court.

April Enterprises, Inc. v. KTTV, 195 Cal.Rptr. 421 (Cal.App. 1983) [ELR 5:12:12]

Musical group ABBA was entitied to register its name as a trademark for records, rules Federal Court of Appeals; but evidence did not establish that group's portrait functioned as a trademark

A Federal Court of Appeals has ruled that Polar Music International was entitled to register the name of the musical group ABBA as a trademark for sound recordings. However, the court upheld a decision of the Trademark Trial and Appeal Board which sustained a trademark examining attorney's refusal to grant Polar's application to register a portrait of the group since it was not shown that the portrait was used as a trademark.

When Polar, a Swedish corporation which is the corporate entity of ABBA, sought to register its two marks for use on sound recordings, the trademark examining attorney held that the name of a recording artist or group, when used on a phonograph record, is not registrable as a trademark for such goods, since it identifies the artist performing on the record rather than the source or origin of the goods. The portrait of the group also did not function as a trademark for the sound recordings, ruled the examiner. Polar argued that its marks, as applied to sound recordings, record covers and point of sale displays, do indicate to the general public a source of the records. Furthermore, the use of the mark on the master recordings which Polar supplied to Atlantic Records, its United States distributor, identified to Atlantic the source of the goods and functioned as a symbol of quality, stated Polar.

The Board agreed with the examining attorney that "ABBA" serves only to inform purchasers of the name of the group of artists whose performance is contained on a particular sound recording.

The Court of Appeals, in reversing the Board's ruling, took notice of the fact that the public generally requests records and tapes by the name of the recording artist. In this way, the word "ABBA" distinguishes the group's records even if purchasers might not know that Polar is the entity which exercises quality control over the recordings. And the mark "ABBA" did not merely identify four singers. Analogizing to the "well-settled" rule that the title of a series of records or books is able to function, and be registered, as a trademark, the court pointed out that every ABBA album and single and tape has the word "ABBA" on it in addition to its title. The public therefore has come to associate a certain quality of sound production with the mark "ABBA." Thus, stated the court, "the mark 'ABBA' indicates not just the source of the performance but a source of the records and tapes and the sounds recorded thereon."

The court cautioned that displaying the name of a recording group on a record will not by itself enable that name to be registered as a trademark. But if the owner of the mark controls the quality of the goods, as does Polar, and if the name of the group has been used numerous times on different records, the name then may be entitled to registration.

The portrait of the group also was not merely descriptive of the ABBA performers, stated the court. But there was no evidence as to whether the portrait had been used on more than one record album cover. The decision of the Board as to the portrait therefore was affirmed.

In re Polar Music International, 714 F.2d 1567 (Fed. Cir. 1983) [ELR 5:12:13]

Sugarhill Records denied injunctive relief in Lanham Act claim against Rick James and against Motown and MCA (the manufacturer and distributor of James' album), because alleged mislabelling of guest appearance by Sugarhill group Grand Master Flash did not cause irreparable injury

"P.I.M.P. the S.I.M.P." one of the songs on Rick James' album "Cold Blooded," featured a "guest vocal appearance" by Melvin Glover, Guy Todd Williams and Eddie Morris. Glover, Williams and Morris are members of a group of six individuals known as "Grand Master Flash and the Furious Five. " Grand Master Flash has an exclusive recording agreement with Sugarhill Records Ltd., and the jacket and sleeve of the James album stated that "P.I.M.P. the S.I.M.P" featured "Grand Master Flash" and that Grand Master Flash appeared "courtesy of Sugarhill Records Ltd."

Sugarhill brought an action against James, Motown Record Corporation (the manufacturer of the album) and MCA Distributing Corporation (the distributor of the album) for misdescription of goods under section 43(a) of the Lanham Act. Sugarhill alleged that the name "Grand Master Flash" refers to one individual, Joseph Saddler, and that the three performers featured on "P.I.M.P. the S.I.M.P" were members of the Furious Five, which is separate and distinct from Grand Master Flash, according to Sugarhill. Sugarhill further alleged that the notation that "Grand Master Flash appears courtesy of Sugarhill Records Ltd." was untrue.

A Federal District Court in New York, while noting the existence of several serious factual disputes, accepted Sugarhill's contentions on these issues as true for purposes of the company's motion for a preliminary injunction. The motion nonetheless was denied because Sugarhill did not establish that irreparable harm would be caused by the allegedly erroneous attribution.

The basis of Sugarhill's rap was the likelihood that consumers would purchase "Cold Blooded" in order to obtain the recorded performance of Grand Master Flash. This arguably would "dilute" the market for Sugarhill's soon to be released record album of Grand Master Flash and The Furious Five entitied "Greatest Messages." And consumers who might buy "Cold Blooded" in order to obtain the performance of Grand Master Flash would be "disenchanted" upon discovering that the group did not appear on the album.

The court found that Sugarhill had not established the likelihood that consumers would buy "Cold Blooded" in order to hear Grand Master Flash's brief appearance on one song on a nine-song album. Therefore, Sugarhill's allegations of irreparable harm were entirely speculative, stated the court, and the application for a preliminary injunction was denied accordingly. Motown and MCA had offered to remove all references to Grand Master Flash and to Sugarhill Records from future production of the album and tape; and any harm occasioned by the purported mislabelling in the past could be redressed by damages upon a future determination of liability, concluded the court.

Sugarhill Records Ltd. v. Motown Record Corporation, 570 F.Supp. 1217 (S.D.N.Y. 1983) [ELR 5:12:13]

California Supreme Court reverses judgment in favor of former football player Dennis Partee in action alleging that San Diego Chargers violated state antitrust law; court rules that NFL is exempt from Cartwright Act

"If a great outfielder like Curt Flood is barred by the United States Supreme Court from state antitrust protection, an outstanding gridiron performer like Dennis Partee must suffer the same fate," stated sports fan and Justice of the California Supreme Court Stanley Mosk in concurring, "under compulsion of Flood v. Kuhn," 407 U.S.258 (1972), with the court's majority in an antitrust action brought by Dennis Partee against the San Diego Chargers Football Company.

From 1968 to 1976, Partee played professional football as a punter and placekicker for the Chargers, a member of the National Football League. In 1974, one of the teams of the newly-formed World Football League offered Partee $50,000 to play for the team for a season. However, Partee chose to sign a threeyear contract with the Chargers for a salary of $38,500 in 1974, $44,000 in 1975, and $49,500 in 1976.

Partee was cut from the team in 1976 after injuring his back. He then brought an action against the Chargers for breach of contract and for violation of California's Cartwright Act.

His Cartwright Act claim alleged that five NFL operating rules (which governed his contract with the Chargers) imposed an unreasonable restraint on player transfer and thereby damaged Partee's business and property interests. The challenged rules (as they existed in 1974) were: the draft, option clause, Rozelle rule, tampering rule and one-man rule.

A San Diego trial court held that the challenged rules, with the exception of the option clause, constituted an unreasonable restraint of trade in violation of the Cartwright Act and awarded Partee damages of $103,500, which was the difference between the $50,000 WFL offer and Partee's 1974 salary, awarded for the three years of the contract and trebled. (Damages for breach of contract were assessed in the amount of $30,550 and were not challenged on appeal.)

But the California Supreme Court has reversed the antitrust ruling and has concluded that the application of the Cartwright Act to the interstate activities of professional football would conflict with the commerce and supremacy clauses of the United States Constitution.

Justice Broussard recalled that several cases have considered the applicability of state antitrust laws to national professional sports leagues. In the leading case of Flood v. Kuhn, a Federal District Court considering a challenge to baseball's reserve system, found the application of state antitrust laws inappropriate on alternative grounds: preemption and unreasonable burden on interstate commerce. This opinion was affirmed by the Court of Appeals, and the United States Supreme Court then affirmed again. The Supreme Court referred to the lower court's rejection of Flood's state law claims as conflicting with federal policy and noted the lower court's statement that "national uniformity is required in any regulation of baseball and its reserve system."

Following Flood v. Kuhn, Justice Broussard pointed out, "No case has been found applying state antitrust laws to the interstate activities of professional sports." Justice Broussard continued: "Professional football is a nationwide business structured essentially the same as baseball. Professional football's teams are dependent upon the league playing schedule for competitive play, just as in baseball. The necessity of a nationwide league structure for the benefit of both teams and players for effective competition is evident as is the need for a nationally uniform set of rules governing the league structure. Fragmentation of the league structure on the basis of state lines would adversely affect the success of the competitive business enterprise, and differing state antitrust decisions if applied to the enterprise would likely compel all member teams to comply with the law of the strictest state." In the court's view, the national uniformity required in the regulation of baseball and its reserve system was "likewise" required in the player-team-league relationship challenged by Partee.

The court rejected Partee's attempt to distinguish Flood v. Kuhn on the ground that professional baseball enjoys a unique exemption from federal antitrust laws. Again, the United States Supreme Court, in upholding the lower court opinion in Flood v. Kuhn, apparently had relied upon certain lower court statements concerning the burden of state regulation on interstate commerce and the need for national uniformity in the regulation of baseball. These statements were "clear and unequivocal," stated Judge Broussard; the California Supreme Court was not free to disregard them in ruling on the player-team-league relationships in the Partee case which were "substantially the equivalent" of that resulting from the reserve clause in professional baseball.

Judge Mosk, in the balance of his concurrence, observed that both baseball and football are for all practical purposes identical coast-to-coast sporting ventures "seeking a combination of glory and financial reward."

Judge Reynoso, in a 17-page dissent, vigorously disputed the majority's conclusions. Initially, Judge Reynoso would have ruled that the challenged activities were not exclusively in interstate commerce. The

Chargers asserted that the employment regulations at issue were solely interstate in character since the rules were applied uniformly by all the teams in the NFL. But Judge Reynoso pointed out that the court was concerned only with the anticompetitive practices of one team, a California partnership, which caused injury to a California resident. And the rules were incorporated in a personal service contract which expressly provided for the application of California law. Thus, the Chargers' conduct did not present too remote or insubstantial a nexus with intrastate commerce so as to preclude state antitrust jurisdiction, stated Judge Reynoso. And, contrary to the Chargers' position, California cases have held that the state may, consistent with the commerce clause, regulate restraints on trade which affect interstate commerce, subject to certain limitations. The limitations preclude state regulation only when the activity is exclusively in interstate commerce without intrastate aspects or a local nexus; when regulation of the activity imposes an undue burden upon or discriminates against interstate commerce; or when regulation of the activity conflicts with federal law or policy.

In Judge Reynoso's view, the majority chose to accept the Chargers' contention that Flood v. Kuhn required the court to hold that state regulation of all professional sports is prohibited by the commerce clause. Judge Reynoso, however, concluded that the United States Supreme Court's "cursory" holding in Flood v. Kuhn was limited to baseball and that no Supreme Court opinion has provided guidelines to the "exact parameters" of state antitrust regulation of interstate commerce. In Flood v. Kuhn, a baseball player challenged professional baseball's reserve system as a violation of the Sherman Act and New York antitrust law. But the major target of the case was baseball's longstanding exemption from antitrust laws pursuant to Federal Baseball Club v.

National League 259 U.S.200 (1922). And the Supreme Court, while continuing to decline to reconsider Federal Baseball, has not granted any other sport exemption from the antitrust laws. Furthermore, in Flood v. Kuhn, Justice Blackmun conceded that the baseball exemption was "an exception and an anomaly..." The court, however, left the "aberration" for Congress to remedy. And while agreeing with the decision of the Court of Appeals in Flood v. Kuhn, the Supreme Court indicated that it was rejecting the state law claims "as applied to organized baseball." The similarity in organizational structure between baseball and football does not mean that the "aberrant" exemption provided baseball must necessarily be extended to football, particularly in view of cases such as Radovich v. National Football League, 352 U.S.445 (1957), declared Judge Reynoso.

The decision in Flood v. Kuhn meant that state antitrust regulation of baseball would be preempted since the application of state antitrust law invariably would produce a holding inconsistent with the apparent Congressional policy that baseball be unregulated. State regulation might subject baseball to antitrust laws of varying strictness in violation of the commerce clause. But there is no "national policy" precluding federal antitrust regulation of professional football; football is not a subject requiring exclusive federal regulation in order to achieve uniformity, and Congress has not expressed an intent to exempt football from federal antitrust regulation, stated Judge Reynoso.

Judge Reynoso concluded by declaring that, in any event, California state antitrust regulation of football would neither burden interstate commerce nor conflict with federal law or policy. California has a legitimate interest in protecting its citizens against unfair trade practices, stated Judge Reynoso, and antitrust regulations under the Cartwright Act are within the state's inherent police powers. The Chargers had not shown that they would be subject to more stringent or inconsistent requirements under state law. Indeed, in Judge Reynoso's view, the trial court's judgment was consistent with federal court decisions which have held that the challenged practices do violate the Sherman Act. Thus, state and federal policies were successfully accommodated by the trial court, stated Judge Reynoso, who would have held that the trial court had jurisdiction to apply the Cartwright Act to professional football notwithstanding the Chargers' "unwarranted and unproven" speculations as to the Act's purported undermining of federal law.

The United States Supreme Court, without comment, has refused to review this decision.

Partee v. San Diego Chargers Football Company, 668 P.2d 674, 194 Cal.Rptr. 367 (Cal. 1983) [ELR 5:12:14]

Injunction barring individual's unauthorized interception of Home Box Office programming is upheld by Federal Court of Appeals

Movie Systems, Inc., the holder of an exclusive license to distribute Home Box Office programming in the Minneapolis/St. Paul area, obtained an injunction in a Federal District Court barring Edward P. Heller from intercepting the company's transmission of its programming. Heller had installed his own antenna and downconverter and used the equipment to receive Movie Systems' programming without the payment of a monthly subscription fee. A Federal Court of Appeals has upheld the District Court's grant of summary judgment to Movie Systems and the issuance of an injunction on the grounds that Heller violated section 605 of the Communications Act.

The court rejected Heller's contention that Movie Systems' programming was for the use of the general public and therefore was not protected under section 605 because the programming has "mass public appeal." The court noted the many opinions which have held that for purposes of section 605, "the crucial factor in determining whether the programming is broadcasting for the use of the general public is not whether the content of the program has mass appeal or mass availability but rather, whether it was intended for the use of the general public." HBO programming is available only via an MDS microwave signal which is received by special equipment such as a microwave antenna and downconverter, and MDS transmissions are not broadcasting for the use of the general public, held the court. Thus, section 605 prohibits Heller's unauthorized interception of the MDS signal.

Heller also raised a counterclaim in which he contended that Movie Systems' method of detecting his unauthorized interception of HBO programming violated his First and Fourteenth Amendments and constituted an invasion of his privacy in violation of state law. The constitutional claims were found without merit because the prohibitions of the First and Fourteenth Amendments do not apply to actions by private persons. Heller's privacy claim was denied because Minnesota never has recognized a cause of action for invasion of privacy in violation of state law. In a second counterclaim, Heller argued that Movie Systems' requirement that receiving equipment owned by a subscriber be "installed, maintained and operated pursuant to the carrier's instruction and control" constituted illegal tying under antitrust laws. The District Court found no merit in this claim because Movie Systems did not require Heller to purchase an antenna and downconverter; and the "control" requirement had been mandated by the Federal Communications Commission. This finding was affirmed on appeal.

Movie Systems, Inc. v. Heller, 710 F.2d 492 (8th Cir. 1983) [ELR 5:12:16]

Court of Appeals affirms FCC's rejection of Fairness Doctrine complaint filed by Democratic National Party against CBS and NBC alleging network failure to broadcast adequate coverage of criticism of Reagan Administration economic policies

Establishing a successful Fairness Doctrine complaint is almost as hard as producing a two-time Olympic gold winning hockey team. In fact, it is practically impossible, as the Democratic National Committee (DNC) recently discovered. In its Fairness Doctrine complaint, the DNC sought an order directing CBS and NBC to provide free response time to pro-Reagan administration ads sponsored by the Republican National Committee (RNC) during the fall of 1981. The FCC ruled that DNC failed to present a prima facia case, and the Federal Court of Appeals for the District of Columbia has upheld the FCC ruling.

The Fairness Doctrine requires broadcasters to provide reasonable coverage of controversial issues of public importance and reasonable opportunities to present conflicting views. DNC charged that the networks did not provide reasonable coverage of viewpoints opposing the administration's economic policies. It based its claim on surveys of CBS and NBC network news and weekly interview shows. DNC found that views favorable to the administration received at least twice as much air-time as contrasting view points. DNC asserted that the RNC ads coupled with these program imbalances resulted in a greater than three-to-one frequency-of-presentation ratio favoring pro-administration views. The FCC held that this disparity was not unreasonable and did not warrant an investigation.

The FCC gives considerable deference to a broadcaster's interpretation of reasonableness. However, if the public is left uninformed, the FCC and the courts will find that the public has a valid Fairness Doctrine complaint. Even if a point of view gets some exposure, the FCC has found that a severe programming imbalance can essentially leave the public uninformed. Such an imbalance can result from a discrepancy in the amount of airtime and audience size devoted to a point of view.

In determining whether a station's programming is severely imbalanced, the FCC and the courts apply a lenient standard. Broadcasters need not allocate equal time to all issues. They need only program with reasonable and good faith. The FCC ruled that DNC failed to make a prima facia demonstration that the overall programming of CBS and NBC was unreasonably imbalanced.

On appeal, DNC presented three issues to the court. First, DNC asserted that the FCC's ruling was erroneous because it would preclude a finding of imbalance whenever an opposing viewpoint received even a trivial amount of exposure. The court held that DNC simply misconstrued the FCC's decision. According to the court, the FCC applied the correct standards in assessing the validity of the complaint. The FCC inquired as to whether the networks' programming was either unreasonably imbalanced or left the public uninformed. This inquiry was sufficient according to the court because the Fairness Doctrine requires reasonableness, not equality. The court stated that DNC was implicitly trying to erect an equal time standard for opposing points of view.

Such a standard is not supported by the law, said the court.

DNC also maintained that the FCC erroneously failed to consider the audience size viewing antiadministration viewpoints. The court noted that the FCC said it considers this factor in determining whether a broadcaster afforded a reasonable opportunity for the presentation of contrasting viewpoints. However, DNC failed to present evidence of disparate audience sizes.

Lastly, DNC asserted that fairness doctrine obligations arose because the high-impact of RNC's ads could not be offset with contrasting viewpoints on news programs. The court held that licensees have wide discretion in determining how to fulfill their Fairness Doctrine obligations. Broadcasters can choose to present opposing viewpoints in any one of a number of programming modes.

In closing, the court noted that valid Fairness Doctrine complaints could arise from ads sponsored by national political parties. However, in order to preclude a chilling effect that Fairness Doctrine complaints may have, the FCC creates a formidable barrier for establishing a prima facia case.

Democratic National Committee v. Federal Communications Commission, 717 F.2d 1471 (D.C.Cir. 1983) [ELR 5:12:16]

New Jersey court rules that parimutuel wagering on television simulcast horse races does not violate state constitution when races are run in the state

Several years ago, the Atlantic City Racing Association proposed that horse races conducted by the New

Jersey Sports & Exposition Authority at the state-licensed Meadowlands racetrack be simulcast by live television to the Association's licensed race course so that Atlantic City patrons could place parimutuel system wagers on the Meadowlands races. The wagers would be incorporated into a central parimutuel pool at the "sending" track.

A New Jersey court has ruled that the Association's proposal would not violate the state's constitution. While agreeing with an opinion of the New Jersey Attorney General that state statutes "unequivocally restrict parimutuel wagering on races to that track where the particular race is held," the court pointed out that the constitutional and statutory restrictions were directed at discouraging off-track betting. This was not at issue in this case.

Although the simulcast proposal was ruled within the "external boundaries" of the state's constitution, the

Association still must obtain legislative and regulatory approval of the plan. The court also cautioned that its opinion should not be read as sanctioning proposals involving the placing of wagers by in-state racetrack patrons on horse races conducted out-of-state and transmitted to an in-state racetrack; such races are not subject to New Jersey's licensing and regulatory standards.

An interesting argument raised by the Association was that state regulation of the simulcast proposal was preempted by federal communications policy. But the court noted that the Association had not shown that federal law intended to prohibit state regulation of the manner in which gambling on horse races is conducted within the state; the state was not seeking to totally prohibit the broadcasting of horse races, but rather to exercise its police and regulatory powers in a matter of local interest.

Atlantic City Racing Association v. Attorney General of the State of New Jersey, 461 A.2d 178 (N.J. Super. 1983) [ELR 5:12:17]

Briefly Noted:

Copyright Infringement.

An action alleging that Christopher Durang's play "The Actor's Nightmare" infringed a work entitled "Fear of Acting," by John William See, has been dismissed by a Federal Court of Appeals in California. The court upheld a District Court ruling granting summary judgment to Durang on the ground that no reasonable trier of fact could find substantial similarity of expression between the plays. The Court of Appeals noted that neither authority nor reason supported See's contention that under Krofft Television Productions v. McDonald's Corp., 562 F. 2d 1157 (9th Cir. 1977), summary judgment is always inappropriate on the issue of substantial similarity of expression if there is substantial similarity of ideas. Rather, summary judgment "is proper if reasonable minds could not differ as to the presence or absence of substantial similarity of expression." See also challenged the District Court's application of the "scenes a faire" doctrine to unprotected "ideas." But the Court of Appeals concluded that the District Court had properly applied the doctrine to hold unprotectable stock scenes or scenes that flowed necessarily from common unprotectable ideas. The District Court also had been correct in comparing the plays as a whole in addition to considering the alleged similarities individually, the Court of Appeals held.

See v. Durang, 711 F.2d 141 (9th Cir. 1983) [ELR 5:12:18]

Contract damages.

An Ohio municipal court has held that where a band breached its contract to perform by failing to appear at a wedding reception, the plaintiffs were entitled to compensation for their distress and inconvenience and for the diminished value of their reception. The plaintiffs entered into a contract with the defendant band to perform at their wedding reception. The band failed to show up, and the couple was forced to resort to a stereo system for music. The band argued that the proper measure of damages was return of the deposit paid for services. The newlyweds felt that the proper measure of damages was payment for the entire reception. The court, noting that in an action for breach of contract the damages awarded must be the natural and probable consequence of the breach, held that the couple was entitled to damages for their distress, inconvenience, and diminution in the value of their reception.

Deitsch v. Music Co., 453 N.E.2d 1302 (Ohio Mun. 1983) [ELR 5:12:18]

Invasion of privacy.

The Louisiana Supreme Court has held that a newspaper is not liable for invasion of privacy for reproducing a randomly selected 25-year-old front page containing an article describing a local criminal case, where the circumstances did not reveal any abuse of purpose in the publication. The plaintiffs had been defendants in a criminal action in 1952. The defendant newspaper, as

front pages. An article appearing in a reprinted 25-year-old edition contained an acccount of the trial in which the current plaintiffs were criminal defendants. The plaintiffs served prison terms and have since received full pardons. The court outlined several factors to be weighed in balancing whether an invasion of privacy exists, including whether the publicized matter would be offensive to a reasonable person, the lapse of time between the event and the publication, the truth and accuracy of the report, and the motivation behind the publication, The court held that while the defendants may have displayed insensitivity or mere carelessness in publishing the randomly selected front page, more than insensitivity or mere carelessness is required for imposition of liability where, as here, the publication is truthful, accurate and non-malicious.

Roshto v. Hebert, 439 So.2d 428 (La. 1983) [ELR 5:12:18]

Defamation.

A Georgia Court of Appeals has held that a police officer is a public figure for defamation purposes and is required to show both falsity and malice to recover from a television station accused of defamation. The plaintiff, a policeman, was posing as a corrupt cop in an ongoing investigation. During the investigation, a narcotics display case used in educational presentations was stolen from his patrol car. Also, the officer was being investigated by his department for possible credit card falsification. Both situations were resolved in favor of the officer after a television station had broadcast news of the investigations. The court held that the officer was a public figure because his duties were peculiarly "governmental" in character and highly charged with public interest. In addition, the plaintiff failed to prove that the statements were false at the time they were broadcast, even though he was cleared of any wrongdoing at a later date.

Pierce v. Pacific & Southern Co., Inc., 303 S.E.2d 316 (Ga.App. 1983) [ELR 5:12:18]

Previously Reported:

In reporting on the case of Tamarind Lithography Workshop, Inc. v. Sanders, 142 Cal.App.3d 552 (1983) (ELR 5:5: 10), it was stated that the California Court of Appeal issued an injunction prohibiting Tamarind from exhibiting the film "Four Stones for Kanemitsu" unless Terry Sanders was given screen credit on future exhibitions of the film. Rather, the court, while finding that Sanders was entitled to relief consisting of the damages already recovered, and an injunction against future injury, remanded the matter to the trial court with directions for the trial court to act "in conformity with the views expressed in (the Court of Appeals') opinion." In December 1983, Los Angeles Superior Court Judge Charles H. Older denied Sanders "any and all relief, whether injunctive, for specific performance, or otherwise," as against Tamarind Lithography Workshop and dismissed Sanders' cross-complaint. Sanders is appealing this ruling to the Court of Appeal. [ELR 5:12:18]

IN THE NEWS

Shirley Jones and Marty Ingels settle libel lawsuit against National Enquirer

Three days after the Supreme Court ruled that actress Shirley Jones and her husband, producer Marty Ingels, could proceed with their lawsuit against the National Enquirer in Los Angeles Superior Court (see ELR 5:12:10), the parties participated in an unusual arbitration proceeding that has resulted in a settlement of the entire case.

In order to settle the case without a trial, Jones, Ingels and the Enquirer submitted arguments to Superior Court Judge George M. Dell concerning the amount of damages Jones and Ingels sought to recover. A week or so later, Judge Dell advised the parties of the damage figure he had set. The parties had previously agreed to accept Judge Dell's figure a figure they also agreed would remain confidential.

In addition to the monetary award, the Enquirer also agreed to print a retraction saying, "We have discovered that the article contained unfortunate inaccuracies which were based on imperfect sources and faulty information that the Enquirer believed to be accurate at the time. Therefore, we deeply regret any embarrassment or discomfort caused and apologize to the Ingels, to their family and friends, and to their many fans across the country." [May 1984] [ELR 5:12:19]

Federal Court of Appeals blocks pending merger between Warner Communications and PolyGram Records

On the verge of a merge between Warners and Poly

The FTC rang the bell on the trolley
Nay, onward you go, hailed District Judge Real
Until the Court of Appeals read the dirgefor this deal
The parties, for now, remain status quo
And that, ELR reader, is all you need to know .

For the unpoetic: Federal District Judge Manuel Real recently refused to grant the Federal Trade Commission's request for a preliminary injunction to block a proposed merger between Warner Communications Inc. and PolyGram Records Inc. Judge Real stated that the Commission had failed to prove that the merger would violate federal antitrust laws. But the Ninth Circuit Court of Appeals granted the FTC's prompt request for an injunction blocking the merger pending an appeal by the FTC.

As reported in these pages last month (ELR 5:11:20), the FTC views the proposed merger as anticompetitive, because it might create "the largest prerecorded music distributor in the United States and the world, controlling 26% of the United States market." [May 1984] [ELR 5:12:19]

Reverse discrimination suit against Directors Guild is dismissed by a Federal District Court in Los Angeles

A reverse discrimination suit filed by two white male second assistant directors, Jack Breschard and Donald Newman, against the Directors Guild of America has been dismissed by a Federal District Court in Los Angeles. The action accused the Guild of imposing upon motion picture producers a hiring quota system for women and minorities that resulted in discrimination against the hiring of white male second assistant directors.

Federal District Court Judge David W. Williams noted that no factual support was presented for Breschard and Newman's allegation that the Guild coerced production companies into violating Title VII. Furthermore, if the Guild indeed had an affirmative action hiring goal of 37% employment of women and minority members, this goal would likely be found reasonable and legal as part of an accelerated hiring process, according to the court. [May 1984] [ELR 5:12:19]

Los Angeles court dismisses author William Blatty's action against the New York Times involving dispute over best-seller status of Blatty novel

A Los Angeles Superior Court Judge has dismissed an action filed by author William Blatty against The New York Times. Blatty charged that the newspaper negligently failed to list the novel "Legion" in The Times' best-seller list for several weeks. "Legion," the sequel to Blatty's best-selling novel "The Exorcist," did briefly appear on The Times' best-seller list, but only after Blatty filed his lawsuit. Judge Laurence Rittenband ruled that The Times did not damage sales of "Legion," a ruling Blatty plans to appeal. [May 1984] [ELR 5:12:19]

Mississippi legislature rejects ban on blind bidding

A Mississippi Senate committee has voted against a measure to outlaw blind bidding in that state. The Motion Picture Association of America mounted a major lobbying effort in the legislature, focusing on the contention that a ban on blind bidding would be a "disincentive" to securing commitments for location filming in the state as well as an "intrusion on free enterprise." [May 1984] [ELR 5:12:19]

Federal Court of Appeals affirms dismissal of Hell's Angels libel action against Playboy magazine

The dismissal of a libel action filed by members of the Hell's Angels against Playboy magazine has been affirmed by the Ninth Circuit Court of Appeals in an opinion which was ordered unpublished. As reported in The National Law Journal (April 16, 1984), the Court of Appeals, in agreeing with the District Court decision in Barger v. Playboy Enterprises, Inc., 564 F.Supp. 1151 (1983) (ELR 5:11:13), noted that the allegedly libelous statements in the July 1981 Playboy article apparently referred to "all women associated with Hell's Angels, a group too large to permit recovery." [May 1984] [ELR 5:12:20]

New York's anti-piracy statute is amended to protect United States licensees of foreign-owned sound recordings

New York State has extended the definition of "owner" of recorded sounds to parties holding the exclusive license to reproduce or distribute those sounds in the United States. Under Article 275 of the New York Penal Law, the manufacture of unauthorized sound recordings is a felony, and the advertising or sale of such recordings is a misdemeanor. Prior to the recent amendment, if the sounds were owned by a foreign party and licensed in the United States, only the foreign owner could act as the complainant in a criminal proceeding. The broader definition of "owner," which is found in the United States Copyright Act, enables exclusive United States licensees to act as complainants in proceedings brought under Article 275. This is likely to increase the prosecution of record pirates. [May 1984] [ELR 5:12:20]

WASHINGTON MONITOR

Federal Communications Commission issues ruling on "must-carry" rules, broadcast ownership standards, cable-broadcast cross-ownership, stereo television broadcasting, earth station ownership, and radio station interference compensation

The Federal Communications Commission has denied broadcaster Ted Turner's request to end the "must-carry" rules which require cable companies to transmit programs carried by local television stations. The Commission noted that the growth in cable subscribership and in channel capacity have made mandatory local station carriage less burdensome, while increasing the impact of noncarriage for local broadcasters.

In a separate proceeding, the Commission increased the interest that a nonvoting party may have in a media property from five percent to ten percent. Also, a party may now hold a five percent rather than a one percent interest in a broadcast property before being considered an owner for purposes of applying the multiple ownership rules.

The Commission also decided not to require divestiture under its cable/broadcast cross-ownership rules for those "nonegregious" combinations which existed in the same community prior to 1970. Nonegregious situations are those where the broadcast station is not the only commercial broadcaster providing principal service to the cable community.

And the Commission has approved the use of the television aural baseband for stereo broadcasts and other uses; has approved a proposal to allow any company to own and operate an international satellite earth station (such stations in the United States currently are owned by a consortium of communications companies); and approved new rules governing compensation to AM radio stations for expenses caused by Cuban radio interference. [May 1984] [ELR 5:12:21]

Federal Communications Commission initiates inquiry into Fairness Doctrine

The Federal Communications Commission has proposed to re-examine the Fairness Doctrine which requires broadcasters to air discussions of controversial issues of public importance and to provide fair coverage of opposing views of such issues. FCC Chairman Mark Fowler stated that the purpose of the investigation would be to determine whether broadcasters should continue to be subject to the Doctrine in light of the expansion of communications technologies, and whether the FCC, rather than Congress, has the authority to eliminate the Doctrine's requirements. [May 1984] [ELR 5:12:21]

Federal Communications Commission repeals regional concentration rule

The Federal Communications Commission has voted to repeal the regional concentration rule which barred the ownership of three commercial AM, FM or television stations where any two properties were within 100 miles of the third or where there was overlap of the primary service area. The regulation is no longer necessary due to the increase in the number of broadcast and other media outlets, concluded the Commission. [May 1984] [ELR 5:12:21]

DEPARTMENTS

Book Notes:

"The Writer's Legal and Business Guide" compiled and edited by Norman Beil

Every year, the Beverly Hills Bar Association Barristers Committee for the Arts presents a legal and business symposium for artists and their representatives. The third of these symposia was devoted to writers - meaning motion picture and television screenwriters and book authors. The program and the materials compiled for it were well received, and those materials have now been made available to a national audience by Arco Publishing, Inc.

The Writer's Legal and Business Guide was compiled and edited by Norman Beil, a past president of the Beverly Hills Bar Association Barristers and a business affairs executive with the William Morris Agency. The topics for the book were selected after Mr. Beil and his editorial board discussed the informational needs of writers with dozens of writers, agents and lawyers, and after reviewing a log that was compiled by the Writers Guild of the questions most frequently asked by its members. The result is admirably comprehensive.

A section on the "Business of Writing" provides an overview of the movie, television and book publishing industries and an introduction to agents and the Writers Guild. A "Practical Legal Guide" section covers copyright, idea protection, defamation and invasion of privacy, with an emphasis on what writers should and should not do. A separate section on "Contracts" analyzes the terms of motion picture, book publishing, and agents contracts. And the terms of the Writers Guild Minimum Basic Agreement are explained. The book also includes tax tips for writers as well as advice on seeking unemployment benefits. Finally, it concludes with a directory of service organizations for writers and a bibliography.

Though written to be understandable to writers themselves, the book also will be valuable to agents and lawyers new to representing writers and those seeking an overview of the field. It is available in book stores or directly from its publisher, Arco Publishing Inc., 215 Park Avenue South, New York, N.Y. 10003, for the modest price of $14.95 in cloth cover or $9.95 in paperback. [ELR 5:12:22]

In the Law Reviews:

Access for CATV Meets the Taking Clause: The Per Se Takings Rule of Loretto v. Teleprompter Manhattan CATV Corp. by Steven N. Berger, 25 Arizona Law Review 689 (1983)

Loretto v. Teleprompte: A Restatement of the Per Se Physical Invasion Test for Takings by Randall J. Pick, 35 Baylor Law Review 373 (1983)

Minimum Contacts and the First Amendment: When Should They Meet? by Frank W. Mitchell, 35 Baylor Law Review 467 (1983)

Taking the Oakland Raiders: A Theoretical Reconsideration of the Concepts of Public Use and Just Compensation by Steven M. Crafton, 32 Emory Law Journal 857 (1983)

Motion Picture Split Agreements: An Antitrust Analysis, 52 Fordham Law Review 159 (1983)

Freedom of the Press: An Emerging Privilege by Martin J. Rooney, 67 Marquette Law Review 33 (1983)

Defamation: Problems with Applying Traditional Standards to Non-traditional Cases - Satire, Fiction and Fictionalization, 11 Northern Kentucky Law Review 131 (1984)

Vanderbilt Law Review has published a Special Symposium on the New Technology in the Communications Industry: Legal Problems in a Brave New World which contains the following articles:

Cable Franchising and the First Amendment by William E. Lee, 36 Vanderbilt Law Review 867 (1983)

Independent Political Action Groups: New Life for the Fairness Doctrine by L. Gregory Ballard and Charles D. Ferris, 36 Vanderbilt Law Review 929 (1983)

Federal and State Roles in Telecommunications: the Effects of Deregulation by Eli M. Noam, 36 Vanderbilt Law Review 949 (1983)

Global Governance of Global Networks: A Survey of Transborder Data Flow in Transition by Anne W. Branscomb, 36 Vanderbilt Law Review 985 (1983)

Cable Television's Emerging Two- Way Services: A Dilemma for Federal and State Regulators by Frank W. Lloyd, 36 Vanderbilt Law Review 1045 (1983)

Since the Meadowlands Sports Complex is Not a Public Forum, the Prohibition of All Literature Distribution and Fund Solicitation by Outside Organizations Does Not Violate the First Amendment, International Society for Krishna Consciousness, Inc. v. New Jersey Sports and Exposition Authority (1982), 28 Villanova Law Review 741 (1983)

Injunctions Entered Pursuant to Public Nuisance Obscenity Statutes and the Doctrine of Prior Restraints, 61 Washington University Law Quarterly 775 (1983)

Content Regulation and the First Amendment by Geoffrey R. Stone, 25 William and Mary Law Review 189 (1983)

Radio Entertainment Format-Free Market Approach: FCC v. WNCN Listener's Guild, 28 New York Law School Law Review 221 (1983)

Right of Publicity: Famous Person's Right of Publicity Is Descendible (Groucho Marx Productions, Inc. v. Day & Night Co., 2d Cir. 1982), 14 Seton Hall Law Review 190 (1983)

Cable Television vs. District Broadcast Satellites: Market Competition Replaces the FCC as the Guarantor of the Public Interest, 34 Syracuse Law Review 851 (1983)

Setting Norms in Publishing Contracts: The Publishers Association Code of Practice in the United Kingdom by Jeremy Phillips, 5 European Intellectual Property Review 211 (1983) (published by ESC Publishing Limited, 25 Beaumont Street Oxford OX 1 2NP United Kingdom)

Merchandising and Trade Marks in the United Kingdom: Legality Reviewed by Alan Wood and David Llewelyn, 5 European Intellectual Property Review 298 (1983) (published by ESC Publishing Limited, 25 Beaumont Street Oxford OX1 2NP United Kingdom)

Character Licensing and Merchandising: New Protection in Canada by Michael Andrews, 5 European Intellectual Property Review 312 (1983) (published by ESC Publishing Limited, 25 Beaumont Street Oxford OXI 2NP United Kingdom)

The Droit Moral in French Law - Part I by Brian Lewis, 5 European Intellectual Property Review 341 (1983) (published by ESC Publishing Limited, 25 Beaumont Street, Oxford OX12NP United Kingdom)

The Droit Moral in French Law - Part II by Brian Lewis, 6 European Intellectual Property Review 11 (1984) (published by ESC Publishing Limited, 25 Beaumont Street, Oxford OX 12NP United Kingdom)
[ELR 5:12:23]