BUSINESS AFFAIRS

Negotiating, Drafting and Monitoring Film Distribution Agreements

by Steven P. Kaplan

Several key considerations have an impact on the contractual relationship between a film producer and distributor. Without a solid, well-written document outlining the obligations and expectations of the parties for the film's exploitation, misunderstandings may escalate into disputes or litigation. But a carefully written distribution agreement, fully understood up front by both parties, can facilitate a mutually beneficial and profitable relationship.

This article will present an overview of the contract negotiating process, factors to consider in drafting a well-structured distribution agreement, and a synopsis of key contract provisions which often present practical problems. Finally, procedures for monitoring compliance with distribution agreements once a film is released will be covered.

The Negotiating Process

Prior to signing a distribution agreement, the parties typically go through a negotiation period, the objective being to hammer out a deal in good faith which all parties believe is the best deal they can achieve. Such an arrangement could be said to have been entered into at "arms-length" - meaning that each party had an opportunity to carefully review the draft documents prior to signing, to fully understand the key deal points (or

consult with professional advisors such as lawyers and accountants), and to question and renegotiate as necessary any unclear or unfavorable provisions. The end result of this process should be a document which governs the relationship between the parties throughout the term of the agreement. This document should be written so that it facilitates the orderly exploitation of the film and the accounting for and sharing of any profits or losses from the film's distribution.

This is the ideal situation. Unfortunately, in practice we often see the relationship between the producer and distributor deteriorate from the intended joint effort of successfully exploiting a film to a hopelessly nonproductive relationship dominated by accounting claims, disagreements regarding performance under the contract, and in some situations legal proceedings which, if played out through the courts, can distract everyone's attention for years.

In analyzing a number of troublesome situations affecting our clients over the years, we have found (sometimes through hindsight) that many of the problems could have been avoided if more care had been taken by the parties up front in negotiating the distribution agreement, and by reducing all key terms to writing. People tend to forget handshake understandings. It is important to define terms clearly, to provide examples as to how certain provisions might work, and to consider the potential impact of contingencies such as the development of new technologies or (the unthinkable) a box office disaster.

Key points to incorporate in a successful distribution agreement (i.e., an agreement that does not lead to confusion, disputes or litigation) include the following.

General Considerations

A successfully-negotiated distribution agreement should have economic substance. Simply put, there should be a reasonable opportunity for profit by both parties. The points covered in the agreement should be logical and concise, so that a reasonable person would be likely to sign it. The profit participants should not be expected to write their books in red ink for a long time even though the picture does fantastic business at the box office.

A successful distribution agreement should be tailored to particular circumstances. Provisions developed through negotiations should be included to handle the specifics of each deal to the extent practicable. The standard form of agreement used by most major studios includes definitions of terms used in the agreement.

Extensive use of "boiler plate" language can lead to problems later on. For example: "Revenues and expenses shall be accounted for and reported as is customary in the motion picture industry." The phrase is imprecise. Industry practies and distribution approaches for each film are extremely diverse; there is no such thing as a typical agreement applicable in its entirety to each and every situation. However, thanks to microcomputers, it is possible during the contract negotiation period to tailor a deal more carefully and readily evaluate alternative scenarios.

Specific Provisions

Basic provisions which should be included in a distribution agreement are those relating to "Parties to the Agreement," "Term of the Agreement," "Grant of Rights," "Territory" and "Financial Provisions." Qualified lawyers and accountants should always be consulted with respect to the nature and full range of

provisions which might be incorporated in a specific agreement.

The "Parties to the Agreement" provision simply names the producer and distributor; however, one point to consider carefully is the stated definition of "distributor" and the relationship of any of the distributor's subsidiary companies for accounting and reporting purposes.

The length of time (e.g., five years, 15 years) for which the rights are being granted needs to be clearly stated in "Term of the Agreement." If an outright sale is intended, the term could read "in perpetuity." The producer may want to limit the period in order to reserve the right to make alternative agreements at some later date if the producer believes the initial distributor is no longer exploiting the film satisfactorily. Renewal options to extend the term may be part of the document.

Under "Grant of Rights," rights for exploitation of a film might be granted to the distributor for all media including theatrical exhibition, commercial and cable television, video-cassettes, and other nontheatrical markets - or the contract may limit the license to specific media, such as theatrical only, or television only.

Adequate consideration of ancillary markets should be given during negotiations. Many films have done poorly at the box office only to have their soundtrack albums or theme songs rise high on the charts. The song or score could even win an Academy Award. Potential revenues from home video, character merchandising, book publishing, airline distribution, military sales, and other sources, can add up and should be covered by the agreement.

New technologies should be covered in the agreement. With the explosive growth of home video and pay television as sources of income, some producers and distributors have learned (painfully) that this source of revenue must be adequately contemplated by the fee structure in the agreement. Many distribution agreements now state that the grant of rights is intended to cover potential new technologies by "any means, media, method, process or device now or hereafter known, contemplated, developed or devised." This language certainly leaves all options covered.

In order to protect its rights, a distributor should insist upon certain exclusivity clauses in the contract. One of my distributor clients will never forget the day he learned from his routine reading of "TV Guide" that a film he had just opened theatrically in Los Angeles with modest success was to be shown the same week on network television. The producer had sold the film separately to the network for the same time period. Needless to say, there was no audience for the theatrical exhibition of the film. While exhibitors called to cancel and

movie-goers watched the film on TV, the lawyers went to work. Unfortunately for the litigants, it was too late. The distribution agreement should have had a simple television holdback clause to preclude TV broadcast until after the theatrical run.

The geographic "Territory" covered by the grant of rights should be clearly stated in the agreement. The licensed territory could cover the entire world. (Some agreements go further and cover "the universe.") It is also common for agreements to cover only specific locations, such as the United States and Canada, or selected foreign countries. Here, too, disputes can arise if potential ambiguities are not considered and documented in the written agreement.

One such ambiguity is the treatment of Puerto Rico, a legal commonwealth of the United States. In the film distribution business, this commonwealth is considered by some to be part of the Spanish-speaking Caribbean Islands, since English-language prints and publicity materials cannot be used there. Consequently, they believe that distribution in Puerto Rico is not contemplated by the phrase "United States of America and its territories and possessions." Therefore, to eliminate any doubt in distribution agreements, it is common to find a specific reference to Puerto Rico making it a part of, or excluding it from, the U.S.

Commercial television presents other contractual challenges. If a distributor has the TV rights for the U.S. but not for Canada or Mexico, disputes may arise over who gets the license fee when TV signals from stations in San Diego, Seattle, Detroit or El Paso creep over the international boundary. An agreement might specify that "Territory" for this purpose relates to the point of broadcast origination, not to the point of reception.

Financial Provisions

A well-structured distribution agreement should provide a clear framework for accounting and reporting. Under "Financial Provisions", the following concepts should be covered.

Definitions of key financial terms

Definitions should be provided for such key terms as "gross receipts," "net receipts," "distribution expenses," and so on, in order to eliminate ambiguity when it comes to dividing up profits or losses. A classic case of confusion involved one of our distributor clients when the definitions were so complicated and misunderstood between three entities (the distributor, a sub-distributor and a sub-subdistributor) that the written agreements actually provided for each of the three entities to receive

50% of the same defined amount. This case went to the jury for reformation.

Distribution fees

A clause should be included that describes how the distribution fees are to be computed. Since network TV sales usually require less distribution effort than theatrical distribution, the language should state whether the fees will be the same for all media or scaled down for certain rights.

Accounting method

The accounting method used by the distributor in reporting to the producer should be stated. Distributors often seek to report receipts as received and expenses as incurred, even if paid much later. This hybrid accounting

policy, often permitted by distribution agreements, serves to maximize the cash flow position of the distributor. Another common provision relates to the treatment of advances or minimum guarantees. Such items can be reported as they are collected or later upon exhibition of the film.

Revenue allocations

How revenues will be allocated between films exhibited as double features should be covered. In cases where sales of films are made in packages, such as to network or pay television, a breakdown of revenue allocations should be stated. Are allocations to films to be made as provided in contracts with third parties or by the distributor, and if by the distributor, on what basis?

Overhead allocations

Can the distributor allocate overhead for its home office or branch office personnel, including advertising departments, or is it assumed that these costs are covered by the distribution fee? Obviously, the distributor would like to allocate as much as possible; the producer would like to minimize any such allocations. The distribution agreement should specify what is permitted in this regard.

Print costs

If the distributor has its own film laboratory (many majors do) for the making of release prints, what price is to be charged in reporting to the producer - actual costs or the wholesale or retail price? Many agreements have particulars about these types of costs.

Rebates and volume discounts

Are rebates or volume discounts received from advertising agencies or film laboratories being passed on to and for the benefit of the producer? The agreement should specify.

Accounting records and reporting

The distribution agreement should clearly state that complete accounting records will be maintained for the picture for specified periods and that the distributor will submit regular participation reports and remittances to the producer in a timely, specified manner. The reports usually are monthly during the initial release period, quarterly or semiannually thereafter. Remittances are usually made 30 to 90 days after the end of the reporting period.

"Right to Audit"

Distribution agreements generally contain clauses which enable the producer's accountants to periodically audit the books and records relating to distribution of the picture.

Other provisions

Among other provisions in distribution agreements, there may be clauses dealing with rights of consultation. This provision gives the producer the right to consult with the distributor concerning the distribution approach, advertising campaigns, and the like.

Minimum expenditure level provisions require the distributor to spend a specified minimum amount for prints and advertising to adequately exploit the product to the producer's satisfaction.

Potential remake and sequel rights should be addressed indicating whether or not one of the parties has the right to produce or distribute future films based on the original film, and on what terms.

Subdistribution fees, if subdistributors are expected to be utilized in certain markets, should be considered, including how the costs will be borne (often by the distributor).

Monitoring Compliance

In order to effectively monitor performance under the distribution agreement after release of a motion picture, the producer should carefully review all participation reports received from the distributor. Reports should be checked to ensure that receipts from all known revenue

sources are being reported and that only allowable distribution expenses and fees are being deducted, although this is not always practical or effective due to the limited summary information usually submitted with reports. Explanations should be obtained for any questionable items. Amounts reported should be correlated for reasonableness with other known data, such as grosses reported by "Daily Variety" or other publications or information obtained from industry contacts.

One effective way to monitor reported distribution results is for the producer to engage an accountant to audit the applicable books and records of the distributor on the producer's behalf. As mentioned above, distribution agreements usually contain "right-to-audit" clauses which permit this periodic inspection. There are several good reasons for auditing the distributor's books.

The primary reason is generally to identify areas where the distributor may have under-reported receipts or overstated expenses, either through misinterpretation (or a different interpretation) of contractual provisions, clerical or other honest mistakes in accounting or in compiling participation reports, and - as is sometimes found in practice in certain cases - some not-so-honest mistakes.

Other reasons to audit include the desire to gain more information regarding the extent and terms of distribution of the film, to facilitate future exploitation and monitoring efforts, to generally keep the distributor on its toes, and to obtain added comfort that the distribution is being handled properly.

The auditor's report serves as the basis for corrections by the distributor to previously-issued reports in the case of agreed-upon adjustments; it also becomes the basis for the pursuit of any formal claims by the producer against the distributor. It is not uncommon for a participation audit to pay for itself many times over, based on the end result of settlement of such claims. Such settlement generally occurs through negotiation between the producer and distributor, although tough situations may lead to arbitration or formal litigation.

Conclusion

Several times in this article I have stressed the importance of careful upfront contract planning and analysis to successful distribution of a film. When all else fails, however, our legal and judicial systems serve a necessary purpose in resolving disputes and reforming contracts. Unfortunately, the trail through the courts is a costly and time consuming one and introduces extraneous and irrelevant factors. How can a jury, inexperienced in the movie business and often comprised of persons with limited education, be expected to come to

grips effectively with the complex contractual issues addressed above?

Courtroom battles and associated legal maneuvers often end up being more entertaining than the films to which the cases relate and sometimes add even more risk and uncertainty to an already risky business.

The best prescription for a successful contractual relationship between film producer and distributor is careful advance planning and negotiation of the basic agreement between the parties. If done right, the parties can focus their energies where they belong - on the production and distribution of motion pictures.

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industry (including major studios, independent film producers and distributors). On several occasions, Steve has been chosen as an expert witness to assist clients and the court in litigating disputes arising from the reporting of film distribution results. From 1981-1985, Steve appeared "live" on the annual Academy Awards ("Oscar') telecast as one of the Price Waterhouse representatives with the envelopes. He is a member of the American Institute of Certified Public Accountants and the California Society of CPAs.

[ELR 7:11:3]

RECENT CASES

Warner Bros.' claims against Dino De Laurentiis Corp. concerning the film "Tai Pan" are dismissed by New York trial court In a dispute concerning two films entitled "Tai Pan I" and "Tai Pan II," based on the novel by James Clavell, Warner Bros. claimed that Jonathan Film, Georges-Alain Vuille and Power Films breached an agreement to deliver the films, with Steve McQueen in the leading role, to Warner Bros. The company sought the return of \$997,500 paid to Jonathan Film for distribution rights to the films, plus compensatory damages. Warners also sought injunctive relief to prevent Dino De Laurentiis Corp. from distributing any films based upon Clavell's novel "Tai Pan."

De Laurentiis moved for the dismissal of Warners' claims on the ground that Warners had terminated the Tai Pan agreements and therefore was divested of any protectible interest or right in the project. De Laurentiis also contended that the death of Steve McQueen

rendered it impossible as a matter of law for the agreement to be performed.

Justice William P. McCooe of the New York Supreme Court has found that a June 21, 1979 telex signed by Warner Bros.' president terminated the Tai Pan agreements, and that no additional writing was required for the termination to be effective, as argued by Warners. The Tai Plan agreements did not require a writing for termination, there was no evidence that a further writing was contemplated by the parties, and, if a writing was required, the telex satisfied New York law. Thus, there was no basis on which injunctive relief could be granted. Furthermore, the language of the agreement indicated that the parties intended performance to be contingent upon McQueen's work in the films; this work was rendered impossible by the actor's death.

Warners also was denied relief on its claim against De Laurentiis for tortious interference with contract since the contract at issue did not exist at the time of the alleged interference, and Warners did not allege that De Laurentiis "played a substantial role in the breakdown of the contract." All claims against De Laurentiis were dismissed accordingly.

Warner Bros. Inc. v. Jonathan Film S.A., New York Law Journal, p.7, col.1 (N.Y.Cnty., Mar. 7, 1986) [ELR 7:11:7]

Motion picture studios are awarded a portion of \$2 million in discovery costs they incurred during government antitrust action against three major television networks

"At Long Last, Costs" has received a rave review from the nonparty motion picture studios who were subpoenaed to produce "massive quantities" of documents and deposition testimony in the United States Department of Justice's long-running antitrust lawsuit against the three major television networks. The government's complaints charged the networks with illegal practices in connection with their acquisition of primetime programming from independent producers. NBC entered a consent decree with the government in 1977; final judgments based upon consent decrees between the government and CBS and ABC were entered in 1980 (ELR 3:24:4; 3:19:4; 2:11:1).

In 1978, CBS and ABC subpoenaed documents from five motion picture studios relating to the companies' activities in television production and the production of theatrical feature films. When document production was approved as to information concerning television production after 1970, the studios came up with approximately 6 million documents; underwent 80 days of

depositions; and incurred costs of over \$2 million. In 1980, the studios moved to recover these costs, but the motion was denied; the court suggested that the costs should be absorbed by the studios as a cost of doing business.

A Federal Court of Appeals reversed the District Court's finding and remanded the question of whether the studios were entitled to reimbursement for their costs. On remand, Senior District Judge Kelleher, in a recently published 1984 ruling, first stated that the Court of Appeals opinion "strongly implied" that the studios would be entitled to recover at least a part of their costs. But whether or not such reimbursement was "mandated," Judge Kelleher found that recovery was warranted in view of the following factors: the broad scope of the discovery; the invasiveness of the subpoenas - a substantial amount of the information sought was confidential or privileged; and the need to separate

responsive information from privileged or irrelevant information. There was no question, in the court's view, that the television networks were not the prevailing parties in the action since the consent decrees "substantially limited and altered their conduct in relation to primetime programming."

Judge Kelleher then reviewed the categories of costs sought by the studios, such as the compensation paid to 93 individuals who were hired to produce the documents requested by the network, along with additional temporary workers. The networks were responsible for reimbursing \$650,000 spent on such workers, stated the court. Other reimbursable costs were the amounts spent on additional office equipment and supplies, on the transportation of documents, and on altering office space to accommodate document production activities. Recovery was denied for the amounts paid by the studios to outside accountants and lawyers for their services with respect to document production. The studios attempted to recover the hourly fees paid to the accountants, rather than the actual accounting costs incurred in complying with the subpoena; there was an improper assumption that the accountants had rights against the networks to which the studios might be subrogated, stated the court. And Judge Kelleher found no basis upon which to award attorneys fees.

The networks' effort to obtain reimbursement for discovery expenses from the government for the government's alleged "ride" upon the networks' coattails in conducting discovery was rejected.

United States v. CBS, Inc., 103 F.R.D. 365 (C.D.Ca. 1984) [ELR 7:11:7]

Songwriters may proceed with breach of contract action against ABC arising from network's use of revised theme song for "Monday Night Football"

Jack Cortner and Jon Silberman, the writers of an original musical work which was used by ABC from 1978 through 1980 as the theme music for Monday night football broadcasts may proceed with their action seeking royalties from ABC Sports and American Broadcasting Music, a New York trial court has ruled. (A third writer, Joe Sicurella, apparently did not join his co-writers in bringing the lawsuit.)

The writers claimed that they assigned the theme to the ABC parties in 1976, and were to receive a specified portion of all revenue derived from the exploitation of the theme. However it was alleged that in 1980, ABC registered a revised theme, which purportedly included some of the original music. Robert Israel was named the

sole author of the theme. Cortner and Silberman claimed that as a result of ABC's action, they were deprived of public performance royalties. The writers therefore sought equitable relief the rescission of the 1976 agreement and the reassignment of the copyright in the theme - and damages for the alleged breach of the royalty agreement.

New York State Supreme Court Justice George Bundy Smith refused to grant ABC's motion to dismiss the complaint on the ground of res judicata. The parties in the matter previously had an encounter in federal court where Cortner and Silberman sued ABC for copyright infringement. A Federal Court of Appeals, while dismissing the infringement claim, acknowledged Federal District Court Judge Goettel's suggestion that ABC might be liable to Cortner and Silberman in a state court action at common law for "breach of an implied obligation not to use the musical theme in a way that would

deprive [the writers] of their right to royalties." (ELR 6:6:8) But the federal court lacked diversity jurisdiction over such a contract action. Therefore, stated Justice Smith, since the writers had not had an opportunity to litigate their breach of contract action, the doctrine of res judicata did not apply.

The writers' unfair competition claims were dismissed since there was no allegation of deception or fraudulent sales to the public by ABC, and no misappropriation of the writers' good names. And punitive damages were not available in the breach of contract action, concluded the court.

Cortner v. ABC Sports, Inc., New York Law Journal, p.7, col. 2 (N.Y.Cnty., Mar. 19, 1985) [ELR 7:11:8]

Producers of "Disco Beaver from Outer Space" television show did not defame Senor Wences, rules New York trial court

Ventriloquist Wenceslao Moreno, more well-known as Senor Wences, has lost his action involving the satirical show "Disco Beaver from Outer Space," which was produced by National Lampoon and shown on HBO in 1979 and 1980. During a segment of the show, a young actor dressed in a tuxedo and speaking with a Spanish accent stated that he was Senor Wences. The impersonator conversed with a puppet made from his hand and talked to a box bearing a picture of Jacqueline Onassis (with moving lips). The segment consisted of "verbal sexual jokes replete with double entendre."

Senor Wences claimed that the segment was defamatory, and violated sections 50 and 51 of the New York Civil Rights Law and his right of publicity.

A New York trial court stated that the obvious differences in the presentation and content between Wences' act and the HBO show precluded a defamation claim, especially because Wences stated that the public had not mistaken the impersonator for him. The segment was not defamatory per se and a motion for summary judgment by Time (the parent corporation of HBO) was granted accordingly.

The court next stated that Wences could not claim a right of publicity apart from section 51. And the statute does not protect an assumed or trade name. Furthermore, the name Senor Wences was not used for purposes of trade, the caricature and satire generally do not violate the statute.

Wences also did not show a likelihood of confusion arising from the show to support his claim of injury to business reputation, or that the distinctive quality of his trade name was diluted.

Moreno v. Time, 11 Med.L.Rptr. 2196 (N.Y.Cnty. 1985) [ELR 7:11:8]

Antitrust claim against New York area professional sports teams is dismissed because cable television company did not show direct injury resulting from teams' grant of exclusive production and distribution rights to competing cable company

Several New York area sports teams did not engage in anti-competitive conduct by entering into exclusive production and distribution contracts with a cable television company, a Federal District Court has ruled, in granting summary judgment to the operators of the New York Islanders, the New Jersey Nets, the New York Mets and the New York Yankees.

Beginning in 1975, the teams contracted with Cablevision - the collective denomination for a group of commonly managed entities whose "alter ego" was Charles F. Dolan - to produce and distribute sports programming for cablecasting the teams' games in the New York metropolitan area. In 1979, a Cablevision "sibling" created "SportsChannel;" the teams' cablecast games subsequently were sublicensed to cable operators as part of the SportsChannel premium cable television service. Since 1982, the contracts between Cablevision and the Islanders, Mets and Yankees have provided for payment by Cablevision based on a percentage of revenues derived from SportsChannel.

In January 1983, James Y. Nishimura, the alter ego of three corporate cable television companies, sued Cablevision alleging that the exclusive contracts between Cablevision and the teams violated federal antitrust laws. In 1967, Nishimura's company, Huntington TV

Cable Corp., entered into a non-exclusive franchise agreement with the Town of Huntington (Long Island) for the construction and operation of a cable television system. In 1976, the town executed a new franchise agreement with another cable company (later acquired by Cablevision) requiring the company to serve the approximately twenty percent of the 54,000 homes in Huntington which were not accessible by aboveground utility poles - HTVC had failed to connect those homes and permitting the newcomer to "overbuild" HTVC's existing system. HTVC and Cablevision thus entered into direct competition for Huntington's existing and new cable television subscribers.

According to HTVC's complaint, Cablevision and the sports teams conspired to restrain and monopolize competition in the cable television trade in Huntington by the use of the exclusive program production and distribution contracts, which, along with Cablevision's refusal to

sublicense the teams' games to HTVC, purportedly deprived HTVC of access to "essential" cable television sports programming.

Federal District Court Judge Barrels, after reviewing the provisions of each team's contract with Cablevision, noted that although HTVC approached the Yankees and Mets in 1979 concerning the availability of games for cablecasting in Huntington, the teams declined to consider the company's proposal, citing their exclusive contracts with Cablevision. But there was little doubt, stated Judge Bartels, that the direct cause of the alleged loss of HTVC cable television subscribers was Cablevision's refusal to grant HTVC the right to carry the teams' games on SportsChannel while granting this right to HTVC's competitor. The teams' grant to Cablevision of the right to control cable distribution of their games was at most an indirect cause of the company's alleged injury, and was not "inextricably intertwined" with the injury. HTVC therefore did not possess standing to assert, against the teams, its claims under section 4 of the Clayton Act.

The court distinguished the case of Crimpers Promotions, Inc. v. Home Box Office, 724 F.2d 290 (ELR 6:4:13) in which two cable television companies allegedly conspired to cause a boycott of Crimpers' trade show. Crimpers was found to have had standing to present its antitrust claims because the injury alleged - the failure of its trade show - had a direct causal nexus with the claimed antitrust violation.

HTVC also claimed that the teams violated the antitrust laws due to their alleged complicity in Cablevision's refusal in 1982 to grant a SportsChannel license to HTVC. Again, the teams had no legal right to interfere with Cablevision's sublicensing policies.

Even if it were assumed that HTVC could establish a causal link between the teams' conduct and the alleged

loss of subscribers, stated the court, the company had not attempted to acquire the same rights, i.e., exclusive metropolitan-wide rights, that the teams granted Cablevision. No recovery is available under the antitrust laws absent a demand to purchase the product which is the object of the alleged refusal to deal. And no demands for cable rights were made by HTVC upon the Nets or Islanders. Partial summary judgment therefore was granted as to those counts of the complaint involving the conduct of the sports teams.

Nishimura v. Dolan, 599 F.Supp. 484 (E.D.N.Y. 1984) [ELR 7:11:8]

Newspaper's territorially exclusive subscription to Los Angeles TimesWashington Post news service did

not violate Sherman Act, rules Federal District Court

Since 1962, the Philadelphia Inquirer held a territorially exclusive subscription to the Los Angeles Times-Washington Post general news service. In October 1984, the Inquirer began subscribing under a similarly exclusive agreement to the Times-Post "All-Sports" service. The two subscription services provided by the Times-Post supplement basic newswire coverage and consist of copyrighted articles written primarily by Times-Post staff members.

Due to the exclusivity of the Inquirer subscription, the Gloucester County Times, a weekday afternoon and Sunday newspaper circulated in Gloucester County, New Jersey, was unable to acquire a subscription to the Times-Post services. Accordingly, the Woodbury Daily Times Company, the owner of the Gloucester County

Times, brought an action against the Times-Post under section 1 of the Sherman Act alleging unfair trade restraint and seeking injunctive relief and damages.

In granting a motion by the Times-Post for summary judgment, a Federal District Court in New Jersey ruled that the Inquirer's subscription was not excessively broad or injurious to competition, and therefore was reasonable. In judging concerted action on vertical nonprice restraints, the court observed, prior case law dictated the application of a rule of reason standard. Thus, the Times was required to establish that the restraint imposed by the exclusive agreement applied to businesses not in substantial competition with each other, or alternatively, that the exclusivity was unreasonable under the circumstances.

In ruling on whether a newspaper is a substantial competitor, Judge Brotman pointed out that circulation figures are not conclusive in and of themselves. The extent

of local news coverage and the paper's attempts to treat the concerns of local residents also must be considered. The record, noted Judge Brotman, indicated that the Inquirer made a particular effort to cover Southern New Jersey news events and to present entertainment and lifestyle information of interest to New Jersey residents, and, in all, pointed to the conclusion that the Inquirer was a substantial competitor in Gloucester County.

Even if the Inquirer was a substantial competitor in the Gloucester County market, argued the Times, the exclusivity granted to the Inquirer was unduly broad and therefore constituted an unreasonable restraint on trade. But newspapers almost always required exclusive use, volleyed the court, and in an industry where exclusivity grants are the custom, it is less significant that the Inquirer, rather than the supplier, suggested the exclusivity provision. Moreover, the Inquirer had an exclusive arrangement with the Times-Post long before the Times

requested a subscription - the exclusivity did not deprive the Times of any right it previously had enjoyed.

The court also rejected an argument by the Times that the Times-Post service was "unique." The Times was free to write its own articles on the same subjects available to the Inquirer on an exclusive basis, observed the court. Alternatively, it could contract with other supplemental news services available in the area. Thus, the court concluded, properly limited exclusive subscriptions to news services actually may further competition and consequently serve the public interest.

Woodbury Daily Times Co., Inc. v. Los Angeles Times-Washington Post News Service, 616 F.Supp. 502 (D.N.J. 1985) [ELR 7:11:9]

Producer of television show based on "Skins" golf game is denied summary judgment in action claiming breach of alleged oral joint venture agreement

A Federal District Court in New York has found that substantial issues of fact precluded summary judgment in an action concerning an alleged joint venture between veteran sports broadcasters Don Ohlmeyer and Bob Halloran.

Halloran claimed that he and Ohlmeyer orally agreed to produce a television show based upon the golf game known as "Skins." Halloran purportedly was to line up potential participants and develop the show's format, while Ohlmeyer was to approach the networks regarding licensing the program. According to Halloran, he and Ohlmeyer were to share equally in the profits from the project. Halloran stated that he received participation commitments from Jack Nicklaus and Tom Watson.

However, the networks were not interested in purchasing the program. Ohlmeyer then decided to buy air time and independently produce the program. Ohlmeyer suggested that Halloran either underwrite one-third of the potential \$2 million loss from the independent production, or sell his interest in "Skins." Halloran instead chose to file a lawsuit.

In response to Halloran's action, Ohlmeyer denied that he and Halloran had reached an agreement or formed a partnership. Ohlmeyer claimed that Halloran did not sufficiently establish that there was an agreement to share profits and losses from the "Skins" venture or to jointly control and manage the project. Ohlmeyer and several other individuals did produce a "Skins" program which aired on NBC in 1983 and 1984; the program then was picked up on a 20 year option by the PGA tour.

In denying Ohlmeyer's motion for summary judgment, Federal District Court Judge Connor states that material issues of fact existed regarding the creation of a joint venture or partnership between Halloran and Ohlmeyer. And Halloran will be entitled to proceed on his quantum meruit claim seeking to prove that his efforts facilitated Ohlmeyer's eventual signing of Nicklaus and Watson for the project.

Halloran v. Ohlmeyer Communications Company, 618 F.Supp. 1214 (S.D.N.Y. 1985) [ELR 7:11:10]

British music performers' right of publicity claims against unauthorized distributor of posters were governed by United States law rather than British law, rules Federal Court of Appeals

A Federal Court of Appeals in Massachusetts has upheld the issuance of a preliminary injunction barring the

Bruce Miner Company from engaging in the unauthorized distribution of posters of popular British music performers. Bi-Rite Enterprises and Artemis, Inc. held exclusive licenses to distribute the posters. Miner argued that the law of Great Britain should be applied to the American merchandising activities of the performers; Great Britain does not recognize a right to control the commercial exploitation of personal names or likenesses. But the Court of Appeals, after considering the interests of the various jurisdictions involved in the case, found that the District Court correctly determined that the performers were entitled to protect their right of publicity. Recognizing this right would not restrict free commerce in Great Britain in the names and likenesses of the performers, stated the court.

Miner also pointed out that its posters were derived from publicity photographs which the photographers had sold to the European manufacturers of the posters. The photographers and their assignees, under British law, possessed copyright protection in their works. But even if the performers had participated in "unrestricted photosessions" in Britain, this did not mean that they intended to convey American publicity rights to the photographs. The court concluded by stating that "Any rule basing publicity rights on the nationality of the performer would give rise to unnecessary confusion;" would be "anomalous and unworkable;" and "would create tremendous uncertainty for foreign performers ... who seek to do business in this country." Thus, Illinois law governed Bi-Rite's claims; Connecticut law governed Artemis' claims; and the law of Georgia (the domicile of the performers' United States merchandising representative) governed the claims of the individual performers.

Bi-Rite Enterprises, Inc. v. Bruce Miner Company, Inc., 757 F.2d 440 (1st Cir. 1985) [ELR 7:11:10]

Use of IBM employee's name in nonfiction book did not violate New York Civil Rights Law, rules Federal District Court

"Intrapreneuring - Why You Don't Have to Leave the Corporation to Become an Intrapreneur" was the title of a Harper & Row book offering guidance to the fast-track corporate employees on creating innovation within the corporation. A three page profile in the book was devoted to the accomplishments of a "Richie Herink," describing his "success story" as an executive with International Business Machines Corporation and implying that his story exemplified the ideas advanced by the author of the book.

Dr. Richie Herink, the subject of the profile, took umbrage at the misspelling of his name, and also at the allegedly inaccurate reference to him as an "intrapreneur" within IBM, and sued Harper & Row and the author of the profile, alleging the violation of section 51 of the New York Civil Rights Act and the violation of his right to privacy. In his complaint, Dr. Herink sought damages for unjust enrichment and exemplary damages in the amount of \$1,500,000, as well as an injunction prohibiting the sale, distribution and advertising of the book.

In granting summary judgment to the publisher on the section 51 claim, a Federal District Court in New York observed that the work, appeared to be "a nonfrivolous hard cover nonfiction book intended to be read by corporate executives." In essence, the court observed, it was a "self-help" reference work purporting to advise and assist the corporate executive, and the use of a person's name or face in a book of this sort is not "use for

the solicitation or patronage for a particular service or product" within the meaning of the Civil Rights Law.

Similarly, the court declared, the advertising purposes provision of the Civil Rights Law was not violated because the use of Dr. Herink's name was not designed primarily to solicit customers. Nor was the Law violated by the fact that the writer and publisher had a profit motive or motive to increase circulation. Observations concerning the internal corporate bureaucracy at IBM, and a report as to how its perceived inhibiting effect was evaded by Dr. Herink were informative and newsworthy, the court determined, and therefore beyond the reach of section 51.

The court next determined that the complaint did not state a false light claim by failing to show that the article, when read as a whole, was anything other than laudatory, or that it contained any actionable innuendo of the sort which would "tend to degrade or prejudice the plaintiff in the eyes of the community." The complaint also failed to state the particular words which were alleged to be defamatory and failed to allege special damages in excess of \$10,000.

In dismission Herink's invasion of privacy claim, the court observed that no common law claim for invasion of privacy exists in New York.

Herink v. Harper & Row Publishers, Inc., 607 F.Supp. 657 (S.D.N.Y 1985) [ELR 7:11:11]

Federal Court of Appeals enjoins distribution of "Battlin' Bulldog Beer" because design on beer cans was likely to create confusion with University of Georgia's bulldog symbol

In 1982, Bill Laite Distributing Co. began marketing "Battlin' Bulldog Beer." The beer was sold in red and black cans bearing a picture of an English bulldog wearing a red sweater on which appeared a black letter "G" The bulldog had bloodshot eyes, a football tucked under its right "arm," and a beer stein in its left "hand."

The University of Georgia, whose colors are red and black, obtained preliminary and permanent injunctive relief in Federal District Court against Laite on the ground that there existed a likelihood of confusion between the company's beer and the university's bulldog symbol.

A Federal Court of Appeals has affirmed the judgment of the District Court. In so doing, the Court of Appeals reviewed the background of the university's use of the bulldog symbol for its athletic teams. It was noted that Laite had sought permission from the university to use an exact reproduction of the bulldog on the beer cans, but permission was denied. The beer cans did state in

small silver print "Not associated with the University of Georgia." Notwithstanding this disclaimer, the court found that Laite infringed the university's service marks.

The court rejected Laite's contention that the university's bulldog was not a valid trade or service mark worthy of protection. The university was not required to present proof of secondary meaning in order to prevail on its claims, as argued by Laite, since the school's mark was "at best 'suggestive,' if not downright arbitrary," stated the court. The District Court's determination that the sale of Battlin' Bulldog Beer created a likelihood of confusion was not clearly erroneous, particularly given the similarity of design between the bulldogs, and Laite's admitted intent to capitalize on the popularity of the university's athletic program. The court also observed that the use by many other schools of an English bulldog as a symbol did not diminish the strength of the university's mark; the mark was relatively strong, at least in

Georgia; there existed actual confusion between the bulldogs; and the disclaimer, which was already inconspicuous on the individual cans, was practically invisible in a six-pack grouping of cans.

University of Georgia Athletic Association v. Laite, 756 F.2d 1535 (11th Cir. 1985) [ELR 7:11:11]

Federal District Court refuses to enjoin florist association's promotional use of the phrase "This Bud's for You"

A Federal District Court in Ohio has denied Anheuser-Busch's request for a preliminary injunction in connection with the Florist Association of Greater Cleveland's use, during a one week local promotion campaign, of the slogan "This Bud's for You - And 11 More Rosebuds."

The court first noted that although Anheuser-Busch had licensed its slogan for the promotion of many kinds of merchandise, the company had not licensed the slogan in connection with the sale of fresh-cut flowers. Thus, the phrase was "utterly anemic" with respect to flowers. Furthermore, it was "absurd," in the court's view, to believe that any consumer could confuse beer with flowers "even of the underdeveloped variety." Anheuser-Busch admitted that it had not suffered any loss of beer sales as a result of the florists' use of the slogan. And while the florists may have intended to capitalize on the familiarity of the slogan, the group did not intend to deceive the public into believing that AnheuserBusch was connected with their product. The court also observed that there was no evidence of actual confusion; that the marketing channels for the products were totally different; and that there was little likelihood that Anheuser-Busch would expand its product line to include the sale of flowers.

In denying the requested injunctive relief, the court concluded that Anheuser-Busch did not establish, in view of the above findings, that it could succeed on the merits of its trademark infringement claim, adding that the term "bud" has a widely-recognized meaning of its own in the floral field and that Anheusr-Busch was not entitled to appropriate the term. An injunction also was not appropriate because the parties were not in competition with each other.

Anheuser-Busch's product disparagement claim was denied because "the promotion of something as wholesome, delectable, and appetizing as a dewy rosebud" would not disparage Anheuser-Busch's slogan or its

Anheuser-Busch, Incorporated v. Florists Association of Greater Cleveland, Inc., 603 F.Supp. 35 (N.D. Ohio 1984) [ELR 7:11:11]

Damages due to Warner Bros. from sales of infringing toy race cars must be recalculated in part, according to ruling of Federal District Court

After holding Gay Toys, Inc. in civil contempt in December 1981 for violating a temporary restraining order barring the company's continued infringing sale of the "Dixie Racer" toy car, a Federal District Court ordered a magistrate to report on the damages due Warner Bros. Inc., the holder of rights in the "General Lee:' a car featured on "The Dukes of Hazzard" television series (see ELR 6:4:10; 5:5:10). In December 1983, the court considered and rejected Gay Toys'. motion challenging the

finding in the contempt order that the company had acted in willful contempt of the temporary restraining order, and also rejected Gay Toys' motion to strike the award to Warners of its profits from the Dixie Racer.

Federal District Court Judge Whitman Knapp, however, in a belatedly published opinion, has concluded that the magistrate incorrectly used the "incremental approach" of accounting in considering the amount of damages due Warners. The incremental approach provides for the deduction from profits of those costs which were incurred as a direct result of the production of the infringing items. Gay Toys advocated the use of the "full absorption" approach under which it also might disallow costs for fixed expenses, such as overhead, to the extent such expenses were related to the production of the allegedly infringing cars; this approach was correct, stated Judge Knapp, who therefore remanded the matter to the

magistrate for the calculation of Gay Toys' costs under the full absorption approach.

Judge Knapp also remanded for recalculation certain deductions for Warners costs. The court declined to award treble damages to Warners as suggested by the magistrate and rejected the magistrate's recommendation that Warners be awarded the profits of Marchand Enterprises, a corporation controlled by Gay Toys, which produced molded parts for its toy cars. Various other recommendations by the magistrate were confirmed by the court, such as those concerning attorneys fees and a finding that Warners was entitled to prejudgment interest on lost profits and on Gay Toys profits after a specified date.

Warner Bros., Inc. v. Gay Toys, Inc., 598 F.Supp. 424 (S.D.N.Y. 1984) [ELR 7:11:12]

Toy manufacturer obtains preliminary injunction barring unauthorized distribution of copies of "Transformer" toys

Hasbro Bradley, Inc. was entitled to a preliminary injunction in connection with its claim that Wales Industries' proposal to import convertible robot toys violated Hasbro's copyright interests, a Federal District Court has ruled.

Wales had brought an action seeking a declaratory judgment that Hasbro's copyright interests were invalid, and that Wales' plan to sell the imported toys would not infringe any copyrights. It was pointed out that copyrights for three toys - Slag, Sludge, and Grimlock - were registered four months before Hasbro entered into a three year licensing agreement with Takara Co., Ltd., the Japanese manufacturer of "The Transformers" series of action figures. Hasbro stated that the licensing

agreement confirmed a prior oral agreement between the parties and this reading of the documents was "fairly reasonable," stated Judge Edward Weinfeld. The court therefore refused to dismiss Hasbro's counterclaims against Wales for lack of subject matter jurisdiction.

Judge Weinfeld then found that Takara, as the "author" of the Transformers, must be joined as a party to the action, as Wales had argued. And the court refused to dismiss Hasbro's claims against an independent sales representative for allegedly furthering the sale and distribution of Wales' products, thereby subjecting itself to potential liability as a contributory infringer.

Wales also had argued that several of the Transformers in issue were in the public domain, primarily because of the omission of a copyright notice on each of their various configurations. But copyright notices were affixed to an integral, nondetachable part of each toy and were visible when the toy was manipulated into its robot configuration. noted the court, and thus met the statutory requirement of providing reasonable notice.

Furthermore, even if Takara had displayed the original version of the toy at the 1984 Tokyo Toy Show without copyright notices, Hasbro, the exclusive licensee, was entitled to cure the omission with respect to copyright protection in the United States by placing notices on all copies distributed under its own authority, and by registering the works with the Copyright Office within five years after their initial publication by the foreign author.

Judge Weinfeld concluded that Hasbro was entitled to the requested preliminary injunction in that the company sufficiently established the threat of irreparable harm, and the likelihood of success on the merits. According to Hasbro, Wales' activities might involve the distribution of inferior products in imitation of Hasbro's and these products, which might not comply with federal or industry child safety standards, could affect adversely Hasbro's reputation as a distributor of high quality children's toys, as well as resulting in the loss of existing and potential customers.

The equities of the situation also warranted granting the requested relief - Wales apparently engaged in a "deliberate and calculated policy" with respect to the robot toys, with knowledge of Hasbro's copyright registration and after Hasbro had marketed about 48 million Transformers in 1985, and spent a considerable amount in advertising. Wales, on the other hand, had imported and sold only about 8000 pieces, making any injury to the company de minimis and compensable in damages.

In a separate opinion, Judge Weinfeld denied Wales' request for a preliminary injunction, pointing out again that Wales engaged in the sale of copies of the Transformer toys with full knowledge that its sales efforts might be met with claims of copyright infringement.

Wales Industrial Inc. v. Hasbro Bradley, Inc., 612 F.Supp. 507 (S.D.N.Y. 1985); Wales Industrial Inc. v. Hasbro Bradley, Inc., 612 F.Supp. 510 (S.D.N.Y. 1985) [ELR 7:11:12]

Federal Court of Appeals upholds ruling that use of the word "Class" as part of title of competing magazine did not infringe publisher's trademark, but remands matter for issuance of limited permanent injunction to prevent competitor from altering title format in potentially confusing manner

A Federal Court of Appeals has affirmed a District Court ruling dismissing C.L.A.S.S. Promotions' trademark and unfair competition claims arising from the use of the word Class in the title of a competing magazine. The District Court found that D.S. Magazine's

publication of "RIGHT ON! PRESENTS CLASS" did not constitute trademark infringement since: the mark Class was a weak mark; there only was a slight overlap in the respective markets of the magazines, D.S. Magazines did not adopt the mark in bad faith; instances of actual confusion were de minimis; and there was no likelihood that a reasonable buyer would confuse the marks.

Subsequently, D.S. changed the design of its title by reducing the size of the words "Right On! Presents." Therefore, when the District Court entered final judgment, it also granted a limited injunction prohibiting D.S. Magazines from using the word Class in its title in any form in which the words "Right On! Presents" were smaller or located differently than on the magazine's January 1984 edition.

The Federal Court of Appeals, in agreeing that there was no infringement, observed that Class Promotions

was the first user of the mark Class, and that the word Class was a suggestive mark and thus a valid trademark without proof of secondary meaning. However, there was no evidence that the mark was associated by the public with the magazine Class or with its publisher; the differing presentations of the marks reduced the potential for confusion; the appearance and editorial content of the magazines was distinguishable; Class Promotions did not show that it planned to publish a magazine comparable to "Right On! Presents Class;" there was minimal evidence of actual confusion; and D.S. Magazines adopted the term Class without actual knowledge of any prior use of the mark.

Despite the finding of no infringement, the grant of permanent injunctive relief was warranted, stated the Court of Appeals, to avoid the likelihood of confusion which might result from D.S. Magazine's alteration of its title format. But the District Court's injunction was

found to be too restrictive. Thus, the matter was remanded to allow the District Court to amend the injunction by directing D.S. Magazines to present the words "Right On! Presents Class" on its magazine cover so as not to have the cover appear to use only the word Class.

C.L.A.S.S. Promotions, Inc. v. D.S. Magazines, Inc., 753 F.2d 14 (2d Cir. 1985) [ELR 7:11:13]

Labor Commissioner's award to actress based on claim that personal manager acted as unlicensed talent agent was improperly confirmed by trial court, rules appellate court in ordering remand for further consideration of manager's position

A California appellate court has exercised its inherent equitable power in order to relieve Gilbert A. Cabot from a trial court judgment entered against him in a proceeding involving his management agreement with actress Mary-Margaret Humes.

In 1978, Cabot and Humes entered into an oral personal management agreement, and in 1980 they formed a theatrical production company, MarGil Ventures, Inc., in order to develop Humes' acting career. Humes signed an exclusive employment agreement with MarGil. In May 1981, Humes sued Cabot and MarGil in Los Angeles Superior Court seeking, in part, the involuntary dissolution of the corporation and the rescission of the written employment agreement. Humes also filed a petition, in August 1981, with the California Labor Commissioner, alleging that Cabot and MarGil acted as an unlicensed talent agency and therefore were liable for the commissions they received from Humes or as a result of the acting work she performed.

A hearing before the Labor Commissioner was scheduled for March 1982, but Cabot was incarcerated at the time for an unrelated criminal conviction and he remained imprisoned until August 1984. Nevertheless. the hearing was held in Cabot's absence. Although no appearance was made on Cabot's behalf or on behalf of MarGil, the Labor Commissioner declared the employment agreement void and ordered Cabot and MarGil to return the sum of \$30,000 to Humes.

Humes then filed a petition with the trial court to confirm the Labor Commissioner's award. Cabot wrote to the court requesting a stay of the proceeding, but his request was denied and the court granted Humes' petition.

On appeal, Judge Lillie affirmed the Labor Commissioner's determination as to MarGil since the company's opening brief did not claim that any error was made. But it was found that the trial court improperly granted Humes' petition to confirm the award against Cabot

since Cabot's failure to timely file certain documents was excused by the disability of his imprisonment. Furthermore, the denial of an adversary hearing might have prevented Cabot from presenting a potentially meritorious defense. On remand, the trial court was asked to conduct a full adversary hearing to consider Cabot's request to vacate the Labor Commissioner's award, including whether Cabot had presented sufficient cause to the Labor Commissioner for the postponement of the hearing and whether the refusal to postpone substantially prejudiced Cabot's rights.

Humes v. MarGil Ventures, Inc., 220 Cal.Rptr. 186 (Ca.App. 1985) [ELR 7:11:13]

Dr. Jeffrey R. MacDonald was not required to forfeit proceeds from the book and television movie "Fatal Vision"

A Federal District Court in North Carolina has denied the government's motion seeking the forfeiture by Dr. Jeffrey R. MacDonald of all proceeds he received from the publication of the book, and the airing of the television move, "Fatal Vision."

In 1979, before MacDonald's trial for the murder of his wife and two daughters began, he entered into a contract with author Joseph McGinniss in which MacDonald granted McGinniss exclusive rights to his life story in return for a percentage of the profits. In 1983, the book "Fatal Vision," written by McGinniss, was published. A television movie by the same name followed.

The government brought a motion for forfeiture under section 3671 of the Victims of Crime Act of 1984. The

Act provides that the court may order individuals convicted of certain offenses to forfeit "all or any part of proceeds received or to be received from a contract relating to a depiction of such crime in a movie, book, or live entertainment of any kind ... or an expression of that defendant's thoughts, opinions, or emotions regarding such crime." The government requested that the \$83,101.56 which MacDonald had received and all other proceeds to be received by MacDonald be forfeited.

MacDonald argued that the Act did not apply to him because it had been enacted fourteen years after the murders occurred and increased the penalty imposed upon him in violation of the ex post facto clause of the United States Constitution.

The court agreed that applying the statute to MacDonald was unconstitutional because the government's request for forfeiture was a retroactive application of the statute which incorrectly disadvantaged MacDonald.

United States v. MacDonald, 607 F.Supp. 1183 (E.D.N.C. 1985) [ELR 7:11:14]

References to gunrunner in book, Deadly Business, were not libelous, rules Federal District Court in New York

George Gregary Korkala, an admitted gunrunner, apparently became concerned about his reputation in the community following the publication by W.W. Norton & Company of Patrick Brogan and Albert Zarca's book Deadly Business. The book, which gave detailed accounts of activities carried on in the international arms trade, introduced Korkala, along with ex-CIA agent

Frank Terpil, as "New York gunrunners." As a result of certain alleged inaccuracies contained in the book, claimed Korkala, in a libel action filed against the publisher, editor and authors of the book, he suffered injury to his reputation and livelihood.

A Federal District Court in New York has granted summary judgment to the Norton parties on the libel claims, finding that the statements complained of either were peripheral and immaterial, or were constitutionally privileged expressions of opinion.

After an extensive review of the numerous allegedly libelous statements contained in the book, the court determined that, with two possible exceptions, the statements, even if false, simply were not harmful to Korkala's reputation. Even if Korkala's version of the truth were substituted for the authors, observed the court, a reader would have no better impression of Korkala, particularly since Korkala had admitted the

truth of the main charges made by the bookthat he was a gunrunner; that he was arrested for selling weapons to persons believed to be Latin American revolutionaries; that he was not in the United States for his trial; and that he was tried and convicted in absentia. Moreover, the court pointed out, Korkala actually had pleaded guilty to charges involving activities which were described in Deadly Business. In all, since Korkala admitted that the substance of the book was true, some minor errors which did not go to the "gist" or "sting" of the book were insufficient to support a libel claim, concluded Judge Robert L. Carter.

The court observed, however, the book's assertion that Korkala fled the country before his trial clearly was harmful to reputation. However, since Korkala admitted that he had left the country and forfeited his bail, the claim that the statement was false was "simply facetious."

Another statement concerning the ownership of a company involved in the gun running activities was a constitutionally privileged statement of opinion, and therefore not libelous, the court concluded.

Korkala v. W.W Norton & Company, 618 F.Supp. 152 (S.D.N.Y. 1985) [ELR 7:11:14]

ON/TV obtains injunction to prevent further pirating of its programs through the sale of "decoder kits"

A Federal Court of Appeals has affirmed a District Court order granting a preliminary injunction to ON/TV of Chicago against Archie Julien, prohibiting the further sale of "decoder kits" capable of unscrambling ON/TV signals. Julien, the owner of an electronics store, sold

kits which he advertised as "ON/TV decoder kits." ON/TV alleged that Julien violated the Federal Communications Act and engaged in copyright infringement and unfair competition.

Julien stated that since he included a disclaimer with each kit, ON/TV had no cause of action under section 605 of the Federal Communications Act. Section 605 (now section 705) prohibits any person from receiving or assisting in receiving communications which they are not entitled to receive. However, this prohibition does not apply to the transmission of communications "for the use of the general public."

The court held that the sale of decoder kits was evidence that Julien assisted others in the interception of protected communications; this evidence was not diminished in any way by the disclaimer. The court also rejected Julien's argument that subscription television fell under the general use exception. Noting that the crucial

factor in determining whether to apply the general use exception was intent, the court stated that although subscription television may be of interest to the general public, it is intended for the benefit of paying subscribers. Moreover, the sale of pirate decoders threatens the viability of the subscription television industry, and ON/TV would suffer irreparable harm from lost sales if the injunction were denied.

ON/TV of Chicago v. Julien, 763 F.2d 839 (7th Cir. 1985) [ELR 7:11:15]

Tort claims against Metropolitan Opera in connection with death of violinist must await Workers' Compensation Board determination

On July 23, 1980, Helen Hagnes Mintiks, a violinist who regularly played with the Metropolitan Opera Orchestra, was filling in with the Berlin Opera Ballet, then appearing at the Lincoln Center. During the intermission, Mintiks was brutally murdered and thrown down a ventilator shaft by Craig Crimmins, a stage hand employed by the Metropolitan Opera Association.

Mintiks' husband sued the Metropolitan Opera Association and Lincoln Center, claiming that they were negligent in employing Crimmins; knew or should have known that Crimmins was dangerous and had mental problems; and failed to provide adequate security and a safe work environment.

The Metropolitan Opera claimed that since Mintiks was its employee, the Worker's Compensation Law provided the only remedy available.

A New York trial court determined that it was improper for a court to attempt to resolve these issues without a conclusive determination by the Workers' Compensation Board as to whether or not there was compensation coverage. The court stated that the Board must decide whether, on the day of the murder, Mintiks was a covered employee of the Metropolitan Opera or an independent contractor. Also, the Board must determine whether the attack by Crimmins arose out of the course of Mintiks' employment. The court dismissed all motions by both sides without prejudice pending a conclusive determination by the Board on these issues.

Matter of the Estate of Helen Hagnes Mintiks v. Metropolitan Opera Assn., Inc. New York Law Journal, p.12, col.6 (N.Y.Cnty. May 28, 1985) [ELR 7:11:15]

Federal Court of Appeals in California upholds order restraining attorney communications with the media during espionage trial of former FBI special agent

In July 1985, a Federal District Court amended a previously issued restraining order and prohibited counsel in the then-pending espionage trial of former FBI special agent Richard A. Miller from making extra judicial statements to members of the news media relating to several subjects, such as the character, credibility or reputation of a party, or the identity of a witness, or the expected testimony of a party or a witness.

The Radio and Television News Association of Southern California, an organization representing Southern California broadcast journalists, filed a petition for a writ of mandamus seeking to compel the district court to vacate the restraining order. A Federal Court of Appeals

has denied the petition, holding that restraints on the statements of trial participants, although indirectly denying the media access to those participants, do not infringe rights to freedom of the press under the First Amendment. The court first found that the news association demonstrated a sufficient stake in the controversy to establish standing to raise freedom of the press concerns, and asserted an interest at least "arguably" protected by the First Amendment. But the restraining order in this case was not directed toward the press - the media was free to attend all of the trial proceedings and to report anything that occurred. Thus, the media's "right to gather news and disseminate it to the public" was not restrained. And while the press has a constitutional interest in access to the criminal courts, there is no First Amendment right of full access to trial participants, including trial counsel, concluded Judge Beezer.

The news association's claim that the restraining order was subject to strict scrutiny as a prior restraint on freedom of the press also was rejected. The district court had found that the restraining of the trial counsels' communications with the press was necessary to reduce prejudicial publicity. The restraining order therefore was reasonable and served a legitimate purpose, observed the court.

In concurring with the court's opinion, Judge Nelson questioned whether the district court had complied fully with the Court of Appeal's earlier order to determine which types of "extrajudicial" statements might threaten the empaneling of an impartial jury - a "brief rationale" for each category of proscribed statements would be of assistance, in Judge Nelson's view, in the "constitutionally sensitive area of prior restraints and the first amendment. . ."

Miller's trial ended with the jury unable to reach a verdict, and a new trial currently is underway.

Radio and Television News Association of Southern California v. United States District Court, Case No. 85-7524 (9th Cir., Feb. 10, 1986) [ELR 7:11:15]

Federal District Court denies contemnor's post trial application for subpoena requiring CBS News to produce outtakes from "60 Minutes" report, citing chilling effect on newsgathering activities

An individual who was found guilty of criminal contempt for wilfully violating an injunction forbidding the manufacture, distribution or sale of counterfeit Louis Vuitton merchandise, applied to the Federal District Court in New York for an ex parte order seeking leave to issue a subpoena to CBS News, Inc. The subpoena would have required CBS to produce the "outtakes" from an October 1984 "60 Minutes" segment entitled "Sting Man Stings Again." The outtakes purportedly were necessary to assist in the individual's defense in that the broadcast apparently suggested facts not previously presented to the court concerning alleged violations of due process by parties associated with Louis Vuitton. Federal District Court Judge Brieant, in declining to issue the requested order, found that there was no showing of necessity to justify the request for the subpoena. The court did not believe that new facts had "surfaced" since the time of the trial, and stated that the outtakes were not likely to contain any statements "more inflammatory, sensational, outrageous or interesting" to the defense than what CBS chose to broadcast on the program. There had been an "ample opportunity" at trial to confront the leading witness, and there was no specific showing that the information sought was "highly material" or "critical."

Furthermore, CBS was not a party to the action, and had no interest in the outcome. "Court-ordered production of CBS' news documents under the circumstances of this case implicates serious First Amendment constitutional problems. . ." declared Judge Brieant since the subpoena, if issued, could act as a chill on news coverage. If criminal defendants whose completed trials became the subject of a television documentary or news report were allowed to "scout" media files in support of a motion for post conviction relief, news broacasters might be less willing to interview trial witnesses or otherwise report on court proceedings vital to the public interest, emphasized the court, distinguishing the situation where pretrial publicity might prejudice a criminal defendant's right to a fair trial.

United States ex rel. Vuitton Et Fils S. A. v. Karen Bags, Inc., 600 F.Supp. 667 (S.D.N.Y. 1985) [ELR 7:11:16]

Briefly Noted:

Arbitration.

When Patricia Linden sued Mary Perot Nichols, her partner in a literary venture, Linden claimed that because Nichols did not contribute to the project, their book was not completed, causing Linden a loss of the profits which might have been earned upon the publication of the work. The two writers had entered into a collaboration agreement which provided for arbitration, and a New York trial court has stayed, pending arbitration,

two of Linden's claims arising from the alleged breach of contract. The court dismissed eight other causes of action, including those for defamation, fraud, conversion, intentional infliction of emotional distress and for punitive damages.

Linden v. Nichols, N.Y. Law Journal, p. 6, col. 4 (N.Y.Cnty., Sept. 30, 1985) [ELR 7:11:16]

Employment Discrimination.

A Federal District Court in New York denied Janet Walter Berman's request for a preliminary injunction restraining the New York City Ballet from selecting another violinist to replace her as acting principal second violinist pending a determination of employment discrimination charges brought by Berman. The court held

that Berman failed to show irreparable harm, despite her assertion that hiring another violinist would result in damage to her reputation and loss of employment opportunities. Berman also unsuccessfully argued that if the position was filled and she should later prevail on the merits the court would be unable to award her the position. The court also expressed doubt as to the merits of the employment discrimination charges.

Berman v. New York City Ballet, Inc., 616 F.Supp. 555 (S.D.N.Y. 1985) [ELR 7:11:16]

Cable Television.

A Federal District Court in Michigan has dismissed an action brought against the Village of Union City in connection with the village's revocation, after two years, of

a non-exclusive 15 year franchise granting St. Joseph Valley Cablevision the right to build, operate and maintain a cable television system within the village. The village claimed that it revoked the franchise because the company did not install the system in accordance with the construction timetable provided in the franchise agreement, and, after two years, had not provided service to any residences within the village. In granting summary judgment to the village and dismissing the cable company's claims, Federal District Court Judge Benjamin F. Gibson upheld the village's contentions that it was immune from federal antitrust liability under the "state action" doctrine; that the primary purpose of the revocation of the franchise was to regulate non-speech elements of the franchisee's conduct, not the content of speech; that Union City had a substantial interest in regulating the cable operation to avoid public disruption and that the franchise agreement was a narrowly

tailored, reasonable means to control the cable company's use of the public ways and the village's utility poles, and did not infringe the franchisee's First Amendment rights. The court also rejected the cable company's equal protection and impairment of contract claims, and concluded that the revocation was not an unconstitutional taking of property-although franchises may be considered property for purposes of a "taking" claim, the franchise in this case was revoked in accordance with the terms of the revocation clause in the franchise agreement.

Carlson v. Village of Union City, Michigan, 601 F.Supp. 801 (W. D. Mich. 1985) [ELR 7:11:17]

Cable Television.

A Missouri appellate court has affirmed the dismissal of an action for trespass and for an order compelling the removal of cable television equipment brought by the trustees of University Park, a residential subdivision of St. Louis, against Continental Cablevision of St. Louis County. The predecessors of the trustees were granted the right to construct and maintain electric, telephone and telegraphic service over the rear strip of all lots in the subdivision and to grant easements to other parties for the same purposes. The trustees subsequently granted an easement to Southwestern Bell Telephone Company and Union Electric for such purposes. The court rejected the argument by the trustees that the easement granted to the utilities was not apportionable and therefore, did not authorize the utilities to grant an easement to Continental. The court also held that the installation of cable television apparatus fell within the apparent intentions of the grantors, i.e., to bring electrical power and communication into the homes of the subdivision, and therefore, did not constitute an extra burden on the property not contemplated by the grantors. In any event, the attachment of a coaxial cable to existing poles constituted no more of a burden than would the installation of telephone wires, a burden clearly contemplated at the time of the grants.

Henley v. Continental Cablevision, 692 S.W.2d 825 (Mo.App. 1985) [ELR 7:11:17]

Cable Television.

A Pennsylvania Commonwealth Court has found that New Britain Township was authorized to regulate cable television services for its residents by entering into and enforcing exclusive cable television service contracts. The Board of Supervisors of the township had entered into an exclusive service contract with Home-Vue Cable for the delivery of cable television to its residents of New Britain, and sued to enjoin a competing company, Bucks County Cablevision, from selling its services to residents and installing its equipment in violation of the contract. The court, in reversing a trial court decision, noted that cable television companies occupy a monopolistic position in the market and therefore are subject to local control. The court also found that such control was not inconsistent with the Constitution or laws of Pennsylvania.

Board of Supervisors of New Britain Township v. Bucks County Cablevision, 492 A.2d 461 (Pa. Commw. Ct. 1985) [ELR 7:11:17]

Broadcasting.

A New York trial court has set aside a tax assessment. on property owned by Trinity Broadcasting of New York, a subsidiary of Trinity Broadcasting Network, Inc. and the operator of a of a television station broadcasting religious programming in the New York area. The court declared that the organization's property was exempt from taxation under Section 420-a of the Real Property Tax Law, holding that Trinity qualified for the exemption as an organization established primarily for religious purposes. The court rejected arguments by the Assessor of the Town of Fishkill that Trinity did not qualify for the exemption since it was not formally associated with any particular religious sect, denomination or organization having as its purpose the furtherance of a recognized religion. Although Trinity's parent corporation in California did not bear the name of any major

denomination, held the court, it was organized as a religious corporation under the laws of California. In addition, the content of programs broadcast by Trinity included the preaching of the doctrines of the mainstream of various Christian sects and denominations, and the principal portion of the work of the station was to advance the ideas and doctrines of the Christian religion. Since Trinity already had paid the tax assessments for the years during which it qualified for the exemption, the court ordered a refund with interest of these payments.

In Re Trinity Broadcasting of New York, Inc., N.Y. Law Journal, p. 15, col. 4 (Dutchess Cnty., July 3, 1985) [ELR 7:11:17]

Civil Rights.

Folk dancers from three Baltic countries brought a discrimination action against the Los Angeles Olympic Organizing Committee for refusing to allow them to participate in the 1984 Olympic Games' opening ceremonies. The folk dancers claimed they were not allowed to participate because of their ancestry, national origin, and political beliefs. A California appellate court, relying upon a similar case from the 1980 Winter Olympics, held that the issue was nonjusticiable because it involved a political question.

Spindulys v. Los Angeles Olympic Organizing Committee, Case No. 2d Civ. B009941 (Ca.App., Dec. 3, 1985) [ELR 7:11:17]

Contracts.

Sherwin M. Goldman Productions, Inc. has been denied a preliminary injunction requiring Radio City Music Hall to continue to store the sets, costumes and props of Goldman's production of "Porgy and Bess." Goldman claimed that, pursuant to an agreement between the parties, Radio City was required to store the Porgy and Bess materials at its own expense until Goldman was able to begin a new production of the play.

In 1982 Goldman and Radio City entered into an agreement to produce Porgy and Bess. Radio City paid \$605,000 for the construction of the sets, costumes and props. The agreement provided that Goldman could use the materials in all future productions of the play as long as Goldman paid for all storage and transportation costs and as long as Goldman retained the right to produce the play.

After the play concluded its run at Radio City it was followed by a series of productions in six cities which finally ended in 1984; the materials remained in storage at Radio City. Goldman's production rights expired and Radio City wanted to remove the materials to avoid storage costs. Radio City offered to give the materials to Goldman as long as the company paid the removal costs but Goldman refused the offer.

Goldman claimed that one of the inducements for entering into an agreement with Radio City was its ability to store the sets and costumes, and also claimed that Radio City personnel promised that the props could be used and returned to Radio City for storage at the end of each production and would be kept there "for the foreseeable future" at no cost to Goldman.

A New York trial court has held that the agreement clearly provided that Goldman was to pay all storage costs and that the right to use the materials lasted only for the duration of the production and the subsequent tour. Also, Goldman did not show the prerequisites for injunctive relief.

Sherwin M. Goldman Productions, Inc. v. Radio City Music Hall Productions, Inc., N.Y. Law Journal p. 12 col. 2 (N.Y.Cnty., May 29, 1985) [ELR 7:11:18]

Contracts.

A Federal District Court in New York has granted partial summary judgment to A. Joseph Perry, a member of the rock band "Aerosmith," in his breach of contract action for royalty payments against Contemporary Communications Corporation and Daskel Music. In September, 1975, Perry signed an exclusive recording contract with Contemporary and an exclusive songwriter

contract with Daskel. Perry alleged in his complaint that both companies owed him over \$178,000 in royalties based on these contracts. In response, the companies did not dispute that the royalties were owed, but submitted an accountant's affidavit showing various debts allegedly owed to them by Perry. In granting Perry's motion for partial summary judgment, the court noted that the claims by Contemporary and Daskel represented potential set-offs that were separate from the royalty payments owed. Although Perry's alleged debts to the companies might affect the ultimate payment of money to Perry, the court found that the debts did not alter the amount of royalty payments which were owed to Perry.

Perry v. Contemporary Communications Corp., Case No. 83 Civ. 4614 (S.D.N.Y., June 19, 1985) [ELR 7:11:18]

Contracts.

In her breach of contract action against Mediafare Entertainment Corporation, Mary Ellen Winston failed to establish that a binding settlement agreement was reached concerning her claim to a finder's fee, a Federal Court of Appeals has ruled. Winston alleged that she was instrumental in bringing together Mediafare and Marcus & O'Leary, Inc. in order to exploit a series of characters known as "The Gallavants." The District Court agreed with Winston, but the Federal Court of Appeals reversed this ruling, on the ground that the parties did not intend that a binding agreement would be reached prior to execution of a final document. The court noted that language in the correspondence between the parties did not reveal such an intent; that there was no evidence of partial performance of the settlement agreement; and that there was continual redrafting of specific terms of the proposed agreement. The court also noted that the amount of the fee at issue - \$62,500 - and the fact that payment was to be made over several years, indicated a type of agreement that generally requires a written contract.

Winston v. Mediafare Entertainment Corp., 777 F.2d 78 (2d Cir. 1985) [ELR 7:11:18]

Contracts.

In early 1980, the Radio Picture Show Partnership entered into a written contract with Exclusive International Pictures, Inc. granting Exclusive the right to sell the film entitled "The Radio Picture Show" to television stations in certain specified territories. However, in March 1980, Exclusive learned that it had been replaced by another

distributor. The company sued Radio Picture and associated entities for breach of contract. The trial court ruled in favor of Exclusive and this decision has been upheld on appeal. The appellate court found that sufficient minimum contacts were present to subject the Radio Picture Show entities to the jurisdiction of the Indiana courts; that service of process was made properly; that there was no unilateral abandonment of the contract by Exclusive; and that while the contract did not use the term "exclusive," it did contain references which "conjured up the image" that Exclusive International indeed was obtaining exclusive distribution rights.

Radio Picture Show Partnership v. Exclusive International Pictures, Inc., 482 N.E.2d 1159 (Ind.App. 1985) [ELR 7:11:18]

Previously Reported:

The following cases, which were reported in previous issues of the Entertainment Law Reporter, have been published: Mayor and City Council of Baltimore v. Baltimore Football Club, Inc., 624 F.Supp. 278 (7:7:9); Blatty v. New York Times Company, 221 Cal.Rptr. 236 (7:8:10); Entertainment and Sports Programming Network, Inc. v. Edinburg Community Hotel, 623 F.Supp. 647 (6:10:10). [ELR 7:11:18]

WASHINGTON MONITOR

United States International Trade Commission denies Warner Brothers' unfair competition complaint in connection with unauthorized importation of "Gremlins" merchandise

Warner Brothers' failure to allege that its licensing program for the copyrighted "Gremlins" characters also included the domestic production activities of Warner licensees has resulted in the denial of the company's unfair competition claim by the United States International Trade Commission.

Warner's July 1984 complaint alleged unfair acts and methods of competition in the unauthorized importation and sale of "Gremlins" merchandise. An administrative law judge's initial determination found that Warner Brothers' copyrights were infringed; that the licensing program for the copyrights constituted the requisite domestic industry under section 337 of the Tariff Act of 1930, as amended, 19 USC 1337; that the domestic licensing industry was efficiently and economically operated; and that the complained-of unfair practices tended to substantially injure the domestic licensing industry.

But the Commission reversed that portion of the initial determination that found Warner's licensing program to be a domestic industry, noting that "production related activities are what distinguish a domestic industry from an importer or inventor..." and section 337 protects the former, not the latter.

The Commission declined to redefine the domestic industry so as to include both the licensing activities and the domestic production activities of Warner's licensees since Warner did not develop this argument before the administrative law judge or the Commission.

In a dissenting opinion, the Vice Chairman of the Commission pointed out that the statute does not require a "minimum relative or absolute size of productive activities. . ." and noted that the failure to protect intellectual property rights as developed by licensees might diminish the incentive to engage in domestic product development.

International Trade Commission decisions are not published. For further information, contact N. Tim Yaworski, Esq., Office of the General Counsel, (202) 523-0311. [Apr. 1986] [ELR 7:11:19]

Federal Communications Commission ends rule requiring separate programming on AM and FM radio stations owned by the same company

The Federal Communications Commission no longer will require AM and FM radio stations owned by the same company to run different programming 75% of the time.

The non-duplication rule was adopted 22 years ago to foster the competitive status of FM stations. According to the FCC, the viability of many AM stations currently depends upon their association with a stronger FM

facilities, reflecting the substantial increase in the FM listening audience. [Apr. 1986] [ELR 7:11:19]

IN THE NEWS

Federal District Court jury awards over \$2.5 million to former University of Georgia professor in action alleging violation of free speech rights

Jan Kemp, a former English professor at the University of Georgia, has been awarded over \$2.5 million in back pay and damages by a Federal District Court jury. The jury apparently found that two university officials violated Kemp's right to free speech by demoting Kemp and later dismissing her as a remedial studies English professor due to Kemp's complaints about the preferential treatment of athletes. According to news accounts of

the testimony, the university's admission standards were lowered for revenueproducing athletes; and some athletes were promoted from the remedial program even if they were not meeting grade requirements, were offered individual instruction, or were given more than the usual four quarters to get through the remedial program. The award included about \$80,000 in back pay, \$200,000 in compensation for mental suffering, \$1 for damage to Kemp's reputation, \$1.5 million in punitive damages against university official Virginia Trotter and \$800,000 in punitive damages against university official Leroy Ervin. [Apr. 1986] [ELR 7:11:19]

DEPARTMENTS

Book Notes:

Representing Artists, Collectors, and Dealers 1985 by Ralph E. Lerner (Editor)

This 1030-page volume was compiled for a two-day PLI program held in New York City last summer, and is prime evidence (if any is required) of the extent to which lawyers have become major participants in the art world.

The book is divided into 13 sections: Planning the Collector's Estate; Art Appraisals and Valuation for Federal Tax Purposes; Copyright Problems of Artists, Collectors, and Dealers in Connection with their Business Relationships; Estate Planning for the Artist; Problems of Estate Administration, Conflict of Interest and Rothko;

Documenting Art Appraisals for Federal Tax Purposes; The New York Visual Art Multiples Law; Problems of Museums and their Impact on Artists, Collectors, and Dealers; Insurance Problems of Artists, Collectors, and Dealers; The Fine Art of Appraisals; How an Auction House Works, and the Expertise and Marketing Advantages of Sale at Auctions, and How a Dealer Works and the Advantages for the Seller of Working through a Dealer.

In addition to outlines of the presentations made by the speakers at the PLI program itself, the volume also contains dozens of valuable exhibits, including cases, statutes, regulations, revenue rulings, letter rulings, contracts, forms, IRS and Copyright Office circulars, and checklists. The book is, in other words, a virtual art law library in itself.

This book is Course Handbook Number 204 in the PLI Patents, Copyrights, Trademarks, and Literary Property

Series; and its PLI catalog number is G4-3768. It may be ordered by writing directly to PLI at 810 Seventh Avenue, New York, N.Y. 10019, or by calling Ms. June McDonald, PLI Book Sales Manager, at (212) 765-5700. [ELR 7:11:20]

A Practical Guide to the Cable Communications Policy Act of 1984 by George R. Borsari, Jr., and Gary L. Christensen (Editors)

The Cable Communications Policy Act of 1984 is a statutory landmark in the history of television regulation. This 445-page volume was compiled for a PLI program conducted last summer in New York City, and it covers 15 topics: Initial Franchises, Including Franchise Fees; Constitutionality of Cable Television Franchise Fee Legislation; Standards for Franchise Renewal under the

Cable Communications Policy Act; Commercial Use and PEG Channels; First Amendment Considerations; Franchise Rate Regulation after the Cable Act; Back Yard Easements; Ownership and Theft of Service; Competitive Bids and Municipal BuyBacks; Due Process and Standing to Sue before and after the Award of a Cable Television Franchise; Implementing the New Cable Act; Consumer Relations and Privacy; Enforcement of the Cable Act; and Grandfathering under the Cable Act.

This book is Course Handbook Number 200 in the PLI Patents, Copyrights, Trademarks, and Literary Property Series, and its PLI catalog number is G4-3771. It may be ordered by writing directly to PLI at 810 Seventh Avenue, New York, N.Y. 10019, or by calling Ms. June McDonald, PLI Book Sales Manager, at (212) 765-5700. [ELR 7:11:20]

Media Insurance and Risk Management 1985 by John C. Lankenau (Editor)

The liability insurance "crisis" is a topic much in the news these days, and the media themselves have not escaped the effects of that crisis. This 543-page volume was prepared for a two-day program sponsored by PLI in New York City last summer.

The program, and the outlines and materials in this book, address 14 topics: Why the Media has Become a Litigation Target and What's to be Done about It; a Survey of Recent Media Verdicts, their Disposition on Appeal, and Media Defense Costs; Developments in Obtaining Insurance, Changing Terms, and Market Restrictions; Libel Policy Deductibles and Limits; Controlling Litigation Costs; a Comparison of Three Leading Media Insurance Policies; Insuring Media Related Risks Not Often Included in the Basic Libel Policy; Public

Policy Limitations on Insuring Punitive and Actual Damages; Rules of Construction Applicable to Insurance Policies; Reducing Risk by InHouse Procedures; Shifting the Risk by Contract Indemnities; Current Practices and Issues in Authors' Insurance and Indemnities; the Pros and Cons of Publishers Providing Libel Insurance to Authors; and the Role of In-House Counsel in Maintaining Insurance Coverage.

As is usually the case in connection with PLI's libel law programs, the outlines in this volume are especially well done and useful even to those who did not attend the program itself.

This book is Course Handbook Number 205 in the PLI Patents, Copyrights, Trademarks, and Literary Property Series. Its PLI catalog number is G4-3770. It may be ordered by writing directly to PLI at 810 Seventh Avenue, New York, N.Y. 10019, or by calling Ms. June

McDonald, PLI Book Sales Manager, at (212) 765-5700. [ELR 7:11:20]

In the Law Reviews:

Columbia University School of Law and Volunteer Lawyers for the Arts have published four issues of Volume 9 of Art and the Law. They may be obtained from the Subscription Office, 1560 Broadway, New York, NY 10036 and contain the following articles:

Art as Libel: A Comment on Silberman v. Georges by Harriette K. Dorsen and Colleen McMahon, 9 Art and the Law 1 (1984)

Copyright and the Visual Artist's Display Right: A New Doctrinal Analysis by Thomas M. Goetzl and Stuart A. Sutton, 9 Art and the Law 15 (1984)

The Unauthorized Reception of Pay Television: The New York Laws in Perspective by V. Scott Pascucci, 9 Art and the Law 57 (1984)

As the World Turns: Copyright Liability of Satellite Resale Carriers by Amy J. Cassedy, 9 Art and the Law 89 (1984)

Symposium on the Public Benefits of the Arts and Humanities, 9 Art and the Law 123 (1985)

Amicus Curiae Briefs: Harper & Row v. Nation Enterprises Introduction by John Kennedy, 9 Art and the Law 253 (1985)

In Support of Petitioners: Association of American Publishers, Inc. Volunteer Lawyers for the Arts, Inc., 9 Art and the Law 263 (1985)

In Support of Respondents: Pen American Center, Gannett Company, Inc., Los Angeles Times, Newsweek, Inc., The New York Times Company and the Washington Post, 9 Art and the Law 287 (1985)

Fair Use and Unpublished Works: Harper and Row v. Nation Enterprises by David B. Goroff, 9 Art and the Law 325 (1985)

The Rockettes: Out of Step With the Times? An Inquiry Into the Legality of Racial Discrimination in the Performing Arts by Gregory J. Peterson, 9 Art and the Law 351 (1985)

Authors' Rights in France: The Moral Right of the Creator of a Commissioned Work to Compel the Commissioning Party to Complete the Work by Andre Francon and Jane C. Ginsburg, 9 Art and the Law 381 (1985)

The Lawyer as Literary Agent by Morton L. Janklow, 9 Art and the Law 407 (1985)

Securing the Future of Copyright: A Humanist Endeavor by David Ladd, 9 Art and the Law 413 (1985)

Legal Protections in Improvisational Theater by Brian M. Levy, 9 Art and the Law 421 (1985)

Apple v. Wombat: Australian Developments in the Copyright Protection of Computer Software by Sibylle I. Krieger, 9 Art and the Law 455(1985)

The Legal Protection of Copyright and the Rights of Authors in the People's Republic of China, 1949-1984: Prelude to the Chinese Copyright Law by Mark Sidel, 9 Art and the Law 477 (1985)

COMM/ENT, Hastings Journal of Communications and Entertainment Law, 200 McAllister Street, San Francisco, CA 94102, has published Volume 7, No. 3, which contains the following:

The Cable Communications Policy Act of 1984 v. the First Amendment by Scott Sibary, 7 COMM/ENT 381 (1985)

Per Se Legality in Copyright Licensing by Lawrence J. Siskind, 7 COMM/ENT 417 (1985)

Neutral Propaganda: Three Films "Made in Canada" and the Foreign Agents Registration Act by Anne Dorfman, 7 COMM/ENT 435 (1985)

Disabled Patrons of Amusement Parks: A Survey of Legal Issues by Susan E. Morton, 7 COMM/ENT 469 (1985)

The Right of Publicity: A Comprehensive Bibliography of Lawrelated Materials by Frank G. Houdek, 7 COMM/ENT 505 (1985)

Communications and the Law, Volume 8, has been published by Meckler Publishing, 11 Ferry Lane West, Westport, CT 06880, with the following articles:

False and Comparative Advertising under Section 43(a) of the Lanham Trademark Act by A. Andrew Gallo, 8 Communications and the Law 3 (1986)

Alcoholic Beverage Advertising and the Electronic Media by Gary B. Wilcox, Dorothy Shea and Roxanne Hovland, 8 Communications and the Law 31 (1986)

The Pay Cable TV-Spoils Broadcasting Nexus by Dartyl C. Wilson, 8 Communications and the Law 43 (1986)

A Review of New and Extraordinary Relief in Intellectual Property Cases by Mary Ann Decarolis, 8 Communications and the Law 73 (1986)

[ELR 7:11:22]