BUSINESS AFFAIRS

An Alternative to Cable's Compulsory License: A Modest and, Thank Goodness, Short Proposal for Sports Programming

by Philip R. Hochberg

With or without jurisdiction, the Federal Communications Commission is looking into cable television's compulsory license. n1 If the Commission - or Congress - is looking for a test of the marketplace, an ideal starting point is sports, the one definite programming area where absence of the compulsory license will not create significant dislocation and consent to carry distant signals can and likely will he granted.

Background

In its Notice of Inquiry, the Commission focused on the unique characteristics of sports programming:

"28. Sports Programming: Sporting events have held a protected place in the overall regulatory scheme given the popularity of sports among the American people, the limited ability of those wishing to see sporting `live' [sic] to do so, the varying popularity of different teams, and the fact that there is generally little rerun or syndication value in sporting events. Commenters are requested to identify and describe fully the unique aspects present in negotiating for the right to exhibit sporting events, relate these to the question of how full copyright liability for cable could be implemented, and show how full copyright liability could affect the distribution of sporting events for broadcasting and cablecasting. To the extent problems are perceived to arise from any different distribution patterns, commenters should further address how such problems may be appropriately anticipated and resolved." n2

Live sports programming does in fact play a significant part in telecasting patterns across the United States. The difficulty in any broad-based analysis is that varying packages of sports telecasts exist: league-wide network packages of regular and post-season games; superstation packages of regular and post-season games negotiated on a team basis; regional networks of regular season and post-season games; and flagship carriage of regular season and postseason games-all of which are subject to non-consensual distribution pursuant to the compulsory license. n3

Congress added a new dimension to the sports property right concept when it enacted the Copyright Act of 1976. n4 At the urging of the professional sports leagues. n5 Congress extended federal copyright protection to live sports broadcasts, thereby vesting the owners of these telecasts with the exclusive right to "perform" them "publicly." n6 To be eligible for copyright protection, the broadcast must be "fixed" (i.e., recorded) simultaneously with its transmission. n7

Nevertheless, under the Copyright Act, cable systems possess the compulsory license to retransmit whatever television programming is authorized by the rules of the FCC -that is, they may carry any of this programming without obtaining the consent of the copyright owners or the originating television stations (although cable systems do have the option of negotiating for program rights if they so choose). Cable is the only communications medium that has been permitted to present the accounts and descriptions of the clubs' games without negotiating for the right to do so.

A 1981 study dealing with the marketplace impact of the 1976 Copyright Revision Act's compulsory license cited numerous circumstances when the existence of the compulsory license skewed the sports market in both professional and collegiate events. As the study concluded:

"Congress devised the compulsory license scheme to promote cable's growth and through it an abundance of new programming choices for viewers. It is ironic, then, that the compulsory license has caused a series of market distortions which are especially acute for one of the most popular types of television programming-sports events." n8

The authors cited a number of specific instances, including a 1979 NHL playoff game between Philadelphia and the New York Rangers which was not sold to WSBK-TV, Boston, because the signal of that station competed with the marketing of Madison Square

Garden Network-denying the game to Boston viewers who never had access to MSGN. The authors concluded:

"Under full copyright liability, the Flyers-Rangers telecast could have been sold simultaneously to cable systems in upstate New York, Vermont and New Hampshire and to WSBK in Boston. Had Madison Square Garden retained control over distribution, it could have created such a hybrid network. Instead, distribution of the program was confined to cable viewers in order to avoid the problem created by the existence of the compulsory license." n9

(Notwithstanding the anomalies created, the sports interests have little existing protection under the Commission's rules. In 1975, the Commission issued Sec.76.67. n10 Pursuant to this rule, a club may require cable systems within 35 miles to delete the distant signal telecast of the club's home game-provided that multiple exceptions are not triggered." n11)

Implementation and Effect of Full Copyright Liability

For years, the sports interests have been forced to respond to "jots and tittles" in cable regulations such as whether cable systems "can or should carry two, rather than three. distant signals" or "whether they should come from the nearest independent" or "whether UHF stations should receive some priority in carriage." And in fact, all of this would be reduced to an academician's exercise only if cable was totally subject to full copyright liability. This has long been the position of the sports interests and more recently has been the position of the Commerce Department, the Department of Justice, the Register of Copyrights and the immediate former Chairman of the FCC.

It is recognized nonetheless that the implementation of full copyright liability has, for two decades, bedeviled the cable industry. However, the one area where the concept of full copyright liability can be seen to be workable is sports.

While sports has many unique characteristics in terms of cable television implications, it also has the unique aspect of only one recognized rights owner - the team or league involved in the telecast. n12 This small bundle of rightswhich may be contrasted with the huge number of potential copyright owners in a motion picture or syndicated series-has been recognized in recent copyright challenges. n13 Administratively, the bundle of rights involved is one which can be easily handled.

In the late 1960's, under the then-controlling policies of the Federal Communications Commission, cable systems were not allowed to import distant signals into major television markets. n14 Notwithstanding the

Fortnightly decision n15 the Commission was willing to allow importation only where permission of the rights holders was obtained. In a case involving a cable system serving Owensboro, Kentucky, n16 the one critical success realized by the cable industry was its obtaining the consent of all the copyright holders of the Kentucky Colonels basketball team of the American Basketball Association.

Some fifteen years later, another example of the ability of sports interests to contract with cable systems was manifested when Baseball's Detroit Tigers games as shown on WDIV-TV were sold to Buckyeye Cablevision in Toledo-at full copyright liability and outside the compulsory license. The cable system and the rights owner agreed to the distribution of Tiger away games on Buckeye Cablevision without the system carrying any other portion of the WDIV-TV signal and without the system having to pay for the entire WDIV-TV signal (much of which would have been subject to network non-duplication, in any case). n17 It is an example of the ability of interested parties to reach a satisfactory agreement, with the team generating direct income and the system getting the specific programs it wanted at a cost of less than importing the entire distant signal!

The contract between the National Basketball Association and Turner Broadcasting for the distribution of regular season and playoff games on WTBS is perhaps the primcipal recognition that the sports industry and the cable industry can adjust to the existence of the compulsory license and, one would assume, be able to adjust to full copyright liability and the existence of no compulsory license.

Sports teams and leagues desire and need the exposure that a healthy cable television industry - one not dependent on an artificial subsidy from the sports leagues - can provide. With the entrance of the National Football

League into the cable television market, every major professional sports league now has or has had a league-wide contractual relationship with the cable industry. In one fashion or another, the leagues all use the cable industry. It is folly to think that sports, which has a product to sell, would walk away from the opportunity to sell that product to the cable industry.

It is not at all unlikely that a package of games could be sold to a station whose cable clearances would be handled by a middleman, acting as a clearinghouse for the distribution of rights in various programming. n18

Conclusion

If in fact the cable industry is "rethinking [its] historical stand on the compulsory license," n19 the best example would be with sports programming.

The Commission should note that the sports interests has long been victimized by the compulsory license and the importation of distant signals. Neither the Commission nor Congress in the context of communications or copyright policy has effectively taken into account the unique characteristics of sports and sports programming. The professional leagues have been forced to adjust to the compulsory license to the ultimate detriment of the fan.

If, as Bud Hostetter, Chairman and Chief Executive Officer of Continental Cablevision, has said, "Most cable operators would agree at some point we could do without the compulsory license except for local signals and underserved markets," n20 then the place to start may be with sports and the time to start may be now.

NOTES

1. Notice of Inquiry, General Docket No. 87-25, 52 Fed. Reg. 15765, April 30, 1987.

2. Id. at Para. 28.

3. Other packages likewise are affected by importation pursuant to the compulsory license. For example, the NHL's sale of a network cable-exclusive package to ESPN or the Boston Celtics sale of a pay-cable package to SportsChannel New England suffers from Eastern Microwave's unconsented distribution of WWORTV's schedule of New York Ranger and New York Knicker-bocker games.

4. 17 U.S.C. Secs. 101-801.

5. The sports leagues originally sought federal copyright protection as a means of controlling the unauthorized re-transmission of their broadcasts by cable. See, e.g., Hearings on S. 1106 Before the Subcomm on Patents, Trademarks and Copyrights of the Senate Comm. on the Judciary, 89th Cong., 2d Sess. 162-63 (1965); Hearings on H. R. 4347 Before Subcomm. No. 3 of the House Comm. on the Judiciary, 89th Cong. lst Sess. 1842-43, 1848 (1965); Hearings on S. 1006 Before the Subcomm. on Patents, Trademarks, and Copyrights of the Senate Comm. on the Judiciary, 89th Cong., 2d Sess. 6 (1966) (statement of Abraham Kaminstein, Register of Copyrights).

6. 17 U.S.C. Secs. 106(4).

7. H.R. Rep. No. 1476, 94th Cong., 2d Sess. 52-53. It has been noted that many sports fans will be shocked to

hear that since 1976 virtually every televised sports event has been "fixed" See Hochberg, Second and Goal to Go: The Legislative Attack in the 92d Congress on Sports Broadcasting Practices, 18 N.Y.L.F. 841, 863 n.97 (1973).

8. Shooshan & Jackson, Cable Copyright and Consumer Welfare: The Hidden Cost of the Compulsory License (1981), at 54.

9. Id. at 59.

10. 37 Fed. Reg. 3190, RR Current Service 85:11 (1972).

11. 40 Fed. Reg. 30641, 54 FCC 2d 265, 34 RR 2d 683 (1975). The Commission has seen fit to impose forfeitures on non-complying systems, most recently in

National Basketball Association, CSC-334, issued October 9, 1985.

12. Of course, by contract, other entities, such as a station or network, can have recognized ownership rights.

13. See National Association of Broadcasters v. Copyright Royalty Tribunal, 675 F. 2d 367, 377-79 (D.C. Cir. 1982), remanded case affirmed, Christian Broadcasting Network, Inc. v. Copyright Royalt Tribunal, 720 F.2d 1295, 1304 (D.C. Cir. 1983); Baltimore Orioles v. Major League Baseball Players Assn., 805 F. 2d 663 (7th Cir. 1986).

14. Second Report and Order, 2 FCC 2d, 6 RR 2d (1966).

15. Fortnightly Corp. v. United Artists Television Inc., 392 U.S. 390 (1968).

16. Top Vision Cable Co., 18 FCC 2d 1051, 16 RR 2d 1109 (1969) et seq. This was referred to by one trade publication as an "important departure from past practice[s] " Cable News, May 14, 1971, at 5.

17. The system claimed that it would save some $60,000 in copyright fees and open up another channel for carriage of a proprietary signal. Broadcasting Magazine, April 8, 1985, at 11.

18. See Cryan and Crane, Sports on the Superstations: The Legal and Economic Effects, 3 Entertainment and Sports Law Journal 35, 52 (1986).

19. Broadcasting, June 15, 1987, at 38.

20. Ibid.

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[ELR 9:6:3]

RECENT CASES

Michael Cimino was not entitled to require Gladden Entertainment to exhibit either of the director's two versions of the film "The Sicilian" rules Directors Guild of America arbitrator; director was not entitled to final cut because of failure to comply with contractual obligation of good faith consultation

"The Sicilian" has wandered far afield from its origin as a saga of power and betrayal in order to become the subject of a Directors Guild of America arbitration proceeding.

The events leading to the Directors Guild hearing, as set forth by arbitrator Murray L. Schwartz, began in January 1986 when Gladden Entertainment Corporation entered a personal services contract with Michael Cimino. Cimino was hired to direct a film based upon the novel "The Sicilian," Gladden had obtained the rights to the novel from author Mario Puzo. The contract with Cimino required, in part, that the film have a length of "not less than 105 minutes nor more than 125 minutes (inclusive of all credits in the main and end titles)." The contract also provided that after principal photography of the film was completed, Cimino "shall have the right, after good faith consultation with Producer to determine the final cut of the Picture."

After filming in Sicily, post-production work began in September 1986. In early March 1987, Cimino and David Begelman, Gladden's principal, agreed that Cimino's final cut would be delivered on May 1, 1987 and that if the final cut exceeded 125 minutes, Gladden had the legal right to cut the film behind him. Arbitrator Schwartz noted that a difference in running time is not de minimis because in the domestic market, a running time in excess of about 130 minutes eliminates one evening showing, "dramatically affecting the commercial success of the film."

On March 18th, Cimino submitted two cuts of The Sicilian to Begelman. One of the cuts exceeded the 125 minutes limit, but was described in a note by Cimino as "the richest version of the picture yet...." The other cut complied "with the letter of the agreement," according to Cimino, but at "great sacrifices."

Begelman advised Cimino that the 125 minute version of the film was unsatisfactory and in breach of Cimino's obligation in that the version lacked continuity and was "not in accordance with the approved screenplay."

On May 1st, Cimino again delivered two versions of The Sicilian to Gladden, one running 121 minutes and 30 seconds and another running 143 minutes (referred to by the arbitrator as the short version and the long version, respectively).

Begelman declared that neither version of the film satisfied Cimino's obligations under his contract and advised the director that he was in breach of the contract.

Cimino and his loan-out company, Sweetwater Films, Inc. filed a claim with the Directors Guild seeking to prohibit Gladden from cutting the long version, and to require Gladden to show either of Cimino's cuts of The Sicilian, but no other version of the film.

Arbitrator Schwartz, after nine days of hearings, denied Cimino's claim, finding that the longer version of the film did not satisfy the director's obligations under his contract, and that the shorter version also was not in compliance with the contract because it was not a final cut arrived at after good faith consultation with Gladden.

Initially, it was observed that the 1984 Directors Guild-Producers Basic Agreement does not allocate the right of final cut. Only a "handful" of directors have obtained a contract right to a final cut with ultimate decision-making authority over creative and artistic decisions about the final version of a film. A right of final cut "manifests the confidence of the producer in the ability, skill, and vision of the director in the creation of the picture. It gives the producer the benefit of the name and reputation of the director in the financing, distribution and exhibition of the film," according to Arbitrator Schwartz.

In turning to the claims of the parties, the arbitrator noted Cimino's contention that Gladden deliberately misled him into believing that the longer version of the film would be acceptable. Cimino cited Gladden's distribution agreement with Twentieth Century Fox which required Gladden to provide Fox with films of no more than 120 minutes lengththe Gladden-Cimino contract allowed a final cut of 125 minutes. Cimino also cited the fact that it became clear during principal photography that the rough cut of the film would run 155 minutes; that Gladden apparently waited until March to notify Cimino that it would enforce the 125 minute limit; that Begelman authorized Cimino to dub the long version; and that during April 1987, Begelman "indicated interest in and support for the long version."

The arbitrator found that the evidence did not support Cimino's claims. In particular, there was no evidence that Begelman encouraged Cimino to produce a version of the film that exceeded the contractual limit by twenty or thirty minutes-authorizing the dubbing of the longer version was an attempt "to avoid disruption of the editing process ... it was not an act intended to suggest that the longer version was acceptable." Gladden did not waive the 125 minute limit or attempt to mislead Cimino into submitting a final cut in excess of his contractual obligations, declared Arbitrator Schwartz.

It next was found that the 125 minute version of the film did not meet Cimino's obligations. In cutting 20 minutes from the film, Cimino deleted fourteen scenes, including all those showing physical violence. Gladden argued that the cutting changed the genre of the film and also destroyed its comprehensibility. The witnesses and declarants who saw the short version stated that without the lifted scenes, the film was "unintelligible in crucial parts."

Cimino prepared the 125 minute version by designating, in mid-March, fourteen scenes which were to be removed; the director did not view the 125 minute version as a whole, but rather viewed, with his editor, each reel individually. The short version then was submitted to Gladden on March 18th as the version which complied with the letter of the agreement. Although Cimino was informed on March 19th that the version was unacceptable, the director did no further work on the short version prior to May 1st; did not conduct a continuous start-to-finish screening; and did not attempt to discuss the short version with Begelman. Cimino's "inattention [was] a far cry from the attention, care and review that according to the testimony directors normally accord to the versions they submit as their final cuts."

Other factors noted by the arbitrator included Cimino's failure to request screenings or previews of the short version or to request a copy of the film (he kept a copy of the longer version); his submission of the longer version as the basis for trailers; and his failure to color time his "final cut."

An issue was raised about whether the short version was in accordance with the approved screenplay, even though the Cimino-Gladden contract did not include such a provision. Practically every witness, including Mario Puzo, Steven Shagan (the first screenplay writer) and Gore Vidal (a second screenplay writer), testified that the short version was a substantial departure from the screenplay. Nevertheless, where a director has final cut, it is entitled to great weight, and Arbitrator Schwartz would have declined to interfere, on the sole basis of departure from the screenplay, with Cimino's "creative authority under his right of final cut."

However, the evidence revealed that in practically every case in which directors with final cuts made significant cuts or changes, there was "extensive consultation with the producer before those changes were made final." Cimino did not consult with Gladden about the short version he submitted as his final cut, thereby failing to meet not only the industry norm, but his contractual obligation. The director's claim that the short version of the film was substantially consistent with the screenplay did not of itself control. Given Gladden's rejection in March of the short version, Cimino had an obligation to initiate or continue the consultation about this version; the director did not attempt to meet this obligation, stated the arbitrator.

It also was noted that Cimino did not take advantage of time that became available with respect to the short version, but continued his commitment to the longer version. Intrascene cuts had reduced the running time of the short version from 125 minutes to about 121 minutes and 30 seconds, and Begelman at one point suggested the possibility of a version of about 130 minutes. There was the "clear possibility" that Cimino could have added about eight minutes to the short version, perhaps replacing some of the omitted scenes in order to achieve greater coherence. But Cimino did not propose any consultations concerning the available added time; he "stood by his longer version as his preferred picture and his short version as meeting his legal requirement."

While emphasizing that a director's final cut "is not vulnerable to every claim of procedural irregularity or creative misjudgment," the totality of the circumstances in the instant proceeding amounted to one of the rare cases which warranted the finding that Cimino did not satisfactorily meet his obligation to produce a final cut after good faith consultation with Gladden. Cimino's purported "final cut,' although so denominated by the director, had "none of the usual indicia of a final cut" and again, was not the result of the customary process that occurs in preparing a final cut. At the very least, a fullscale viewing of the shortened version was in order, especially after Begelman referred to the version as a "joke" In many respects, Cimino did not treat the short version as the final cut he expected to be exhibited, and in all, was not entitled to the relief sought.

In the Matter of the Arbitration between Directors Guild of America, Inc., Sweetwater Films, Ltd., and Gladden Entertainment Corporation relating to "The Sicilian," Case No.2183 (Before the Directors Guild of America-Producers Arbitration Tribunal, July 23, 1987) [ELR 9:6:6]

Motown Records was entitled to pursue trademark and copyright infringement claims for unauthorized performance of the song "Baby Love" by look-alikes of "The Supremes"

It was a vision which lingers in the memory of many ELR readers - the vision of a television commercial featuring three young black women, with bouffant hair, sequined formal gowns singing "Dinty Moore, My Dinty Moore' to the tune of the classic song "Baby Love."

Motown Records and Jobete Music responded to the October 1985 commercial for Hormel's "Dinty Moore" brand beef stew by filing an action for, among other claims, copyright and trademark infringement. The song "Baby Love" was recorded by the musical group "The Supremes." And although the performers in the group changed over the years, the group always consisted of three young black women generally appearing in formal gowns and hair styles. Motown had registered the name "The Supremes" as a trademark.

A Federal District Court in California granted a temporary restraining order and a preliminary injunction preventing Hormel from continuing to use the allegedly offending advertisement.

Subsequently, the court agreed with Hormel that Motown's claim for unfair competition under California's Business and Professions Code was preempted under section 301(a) of the Copyright Act since the essence of Motown's complaint was derived from Hormel's alleged unauthorized use of a copyrighted work. Motown's causes of action for intentional and negligent interference with prospective business advantage, and for the violation of section 3344 of the California Civil Code also were preempted by federal law, stated Judge Rea.

However, Hormel did not obtain summary judgment with respect to Motown's claim under section 43(a) of the Lanham Act. Although Motown did not allege that Hormel tried to "Pass off" the performers in the commercial as the actual "Supremes," Judge Rea stated that the company was entitled to show "some kind of protectable interest in the 'persona'," of the group, i.e., its likeness, style and image, notwithstanding the changes in the group's personnel.

Motown Record Corporation v. George A. Hormel & Co., 657 F.Supp. 1236 (C.D.Ca. 1987) [ELR 9:6:7]

Tennessee appellate court upholds descendibility of celebrity's right of publicity in action involving use of Elvis Presley's name, but orders remand on issue of laches

A Tennessee appellate court, in a dispute between two charitable organizations involving the right to use Elvis Presley's name, has declared that under Tennessee law, a celebrity's right of publicity constitutes intangible personal property and is descendible at death.

In 1980, a group of Elvis Presley fans organized a non-profit corporation known as the Elvis Presley International Memorial Foundation. The foundation, which planned to support local charitable activities, obtained a corporate charter in 1981. Two days prior to the incorporation of the International Foundation, Elvis Presley's estate incorporated Elvis Presley Enterprises, Inc., and in 1985 the estate and Enterprises incorporated the Elvis Presley Memorial Foundation, Inc. as a nonprofit organization. The International Foundation filed an action seeking to dissolve the Memorial Foundation and to enjoin it from using a deceptively similar name.

The trial court granted the Memorial Foundation's motion for summary judgment. On appeal, the court agreed that Presley's estate retained the exclusive right to control the commercial exploitation of the entertainer's name, but vacated the trial court's decision and remanded the matter for further consideration of the International Foundation's defense of laches.

The descendibility of Elvis Presley's right of publicity has been considered by a number of courts, including the Sixth Circuit. In Memphis Development Foundation v. Factors, Etc., Inc., 616 F.2d 956 (6th Cir. 1980; ELR 1:22:1), the court concluded that Tennessee law did not recognize a postmortem right of publicity.

Tennessee Court of Appeals Judge William C. Koch, Jr., however, stated that Memphis Development Foundation "was based upon an incorrect construction of Tennessee law and [was] inconsistent with the better reasoned decisions in this field." Recognizing the descendibility of the right of publicity, according to Judge Koch, would promote several important state policies such as: affirming an individual's essential right of testamentary distribution; precluding unjust enrichment by advertisers; acknowledging a celebrity's expectation that he/she, via effort and financial commitment, is creating a "valuable capital asset" that will continue to benefit his/her heirs or assigns; upholding the value of the contract rights of parties who have acquired the right to use a celebrity's name and likeness; and protecting the public from deception with regard to the sponsorship of products and services.

In the instant case, recognizing descendibility also was consistent with the state's policy against unfair competition through the use of deceptively similar corporate names, emphasized Judge Koch. In concluding that Elvis Presley's right of publicity survived his death and remained enforceable by his estate and by parties holding licenses from the estate, the court noted that it was not necessary to decide the question of whether the right of publicity must have been exercised while a celebrity was alive in order to render the right descendible-Elvis

Presley clearly commercially exploited his right of publicity while he was alive.

Judge Koch went on to state that the court's decision was not based upon a Tennessee statute known as "The Personal Rights Protection Act of 1984" (ELR 6:8:3), but rather upon the recognition of the existence of the common law right of publicity. And it was noted that nothing in the statute should be construed to limit vested rights of publicity in existence prior to the effective date of the Act.

Although finding that Presley's estate retained the exclusive right to control the commercial exploitation of his name and likeness, the court nonetheless rejected the Memorial Foundation's motion for summary judgment on its right of publicity and unfair competition claims. Judge Koch stated that the Presley estate parties did not demonstrate that the International Foundation's laches defense was without merit as a matter of law. There was evidence that Elvis Presley Enterprises was aware for over four years that the International Foundation was using Elvis Presley's name in its corporate name, that Enterprises acquiesced in and even encouraged the use, and that the Foundation relied upon Enterprises' apparent acquiescence to its detriment.

Tennessee ex rel. Presley v. Crowell, 14 Med. L. Rptr. 1043 (Tenn.App. 1987) [ELR 9:6:8]

Assignee of Elvis Presley's trademark rights was incorrectly denied preliminary injunction in infringement action against distributor of "Elvisly Yours" merchandise, rules Federal Court of Appeals

Citing the decision in Tennessee ex. rel. Presley v. Crowell (ELR 9:6:8), a Federal Court of Appeals in

Tennessee has reversed a Federal District Court's decision denying a preliminary injunction sought by Elvis Presley Enterprises, Inc. against Elvisly Yours, Ltd. and Sid Shaw.

Federal Court of Appeals Judge Kennedy stated that Enterprises had presented sufficient evidence to support an inference of likely confusion as to the origin of goods distributed by Elvisly Yours. Shaw had registered the mark "Elvisly Yours" in Tennessee in 1982. But Enterprises held federal registration of the mark "Elvis" for clothing, and should have been granted a preliminary injunction with respect to the goods covered by its registered trademarks, ruled the court.

The matter was remanded to the District Court for further proceedings in accordance with the court's opinion and in light of the Tennessee Court of Appeals decision.

(The published report of the case includes a note referring to the court's indication that the opinion was "not recommended for full-text publication" and that "Sixth Circuit Rule 24 limits citation to specific situations.")

Elvis Presley Enterprises v. Elvisly Yours, 14 Med.L.Rptr.1053 (6th Cir. 1987) [ELR 9:6:8]

Player agents Norby Walters and Lloyd Bloom must arbitrate fee dispute with football player Ronald Harmon, as provided in their agent-player agreement, even though player was not a professional when he signed agreement

Player agents Norby Walters and Lloyd Bloom will have to arbitrate their fee dispute with former University of Iowa football player Ronald Harmon, despite their contention that the arbitration provision in their agent-player agreement applies only to clients who are professionals at the time the agreement is signed. Harmon was drafted by the Buffalo Bills in the first round of the 1986 draft and signed a four-year, $1.4 million contract with that team. However, Harmon was represented by another agent in his negotiations with the Bills and thus apparently did not pay Walters and Bloom.

Walters and Bloom had signed Harmon to an agent-player representation agreement in March of 1985 when Harmon was only a junior, though the agreement was post dated to January of 1986, by which time Harmon would have been a senior at Iowa and would have played his final NCAA football game. Justice Myriam Altman frowned on this practice, saying that the "underlying facts of this case reveal a pernicious practice of encouraging young college athletes to enter into deceptive agreements which are post dated so they can continue to play college football. The athletes thus act unethically and in violation of the rules of the National

Collegiate Athletic Association (NCAA) and the National Football League (NFL)."

The contract form used by Walters and Bloom when they signed Harmon as a client was the standard form required by the NFL Players Association whenever agents sign NFLPA members to representation agreements. That form includes a provision that requires disputes between agents and players, including fee disputes, to be arbitrated in accordance with procedures set forth in NFLPA regulations governing the activities of player agents.

Despite this arbitration provision, arbitration was resisted on three grounds. The first was that Harmon contended that Walters and Bloom had fraudulently induced him to sign the representation agreement in the first place, and if they had, the entire agreement, including the arbitration provision, would be void. Justice Altman, however, said the arbitration clause was "extremely broad" and therefore issues of fraud were for the arbitrator to decide.

Walters and Bloom also contended that the arbitration provision of their agent-player agreement applies only to veteran NFL players and not to those, like Harmon, who were not yet professional players at the time they signed their representation agreements. Justice Altman described this contention as "untenable;' saying that the obligation to arbitrate came into effect as soon as Har-

Finally, Walters and Bloom objected to arbitration on the grounds that the designated arbitrator was a graduate of the University of Iowa. Justice Altman rejected this contention as well. "It is hard to believe that a person would sacrifice integrity for an old school tie," the Justice wrote, adding, "In any event, the University of Iowa has no apparent interest in the case." As a clincher, Justice Altman opined that the argument makes as much sense as one suggesting that New York judges should not be involved in the case because Harmon plays for the only NFL team in the state.

Watters v. Harmon, 516 N.Y.S.2d 874 (Sup.Ct. 1987) [ELR 9:6:9]

Sports agent's breach of contract action against hockey player is dismissed for lack of jurisdiction

Chicago Blackhawks player Doug Wilson and his wholly owned corporation were not subject to jurisdiction in New York in connection with a breach of contract action brought by A.C.K. Sports, a Federal District Court has ruled. In October 1982, Wilson entered an agency contract with R.D.S. Sports, Ltd., a Canadian corporation; the contract provided that RDS, in conjunction with ACK, had negotiated a player contract for Wilson with the Blackhawks, and that the agencies would provide Wilson with various other services as well. ACK was not a party to the contract, which was negotiated and executed ill Illinois.

Norman Caplan, the RDS agent who negotiated on Wilson's behalf, died in 1984 and Caplan's widow subsequently assigned to ACK the accounts receivable to ACK and RDS. ACK then sued Wilson for failure to pay the amounts due.

Federal District Court Judge Keenan noted that although Wilson regularly played road games in New York, New York's long-arm statute did not reach the hockey player or his corporation. Doug Wilson Enterprises was not licensed to do business in New York, and Wilson did not have any control over the team's schedule and travel arrangements; Judge Keenan declined "to adopt the view that an athlete playing on a team is doing business, for personal jurisdiction purposes, in every state where his team plays."

Furthermore, Wilson did not transact business in New York, i.e, did not purposefully direct his activities in the state toward the agency contract, so as to be amenable to jurisdiction even though not engaged in doing business.

Judge Keenan concluded by emphasizing that when Wilson was playing for the Blackhawks in New York, he was performing under his contract with the Blackhawks, not the 1982 agency contract, and that the performance under one contract could not provide the jurisdictional basis for a cause of action under the other contract.

A.C.K. Sports, Inc. v. Doug Wilson Enterprises, Inc., 661 F.Supp. 386 (S.D.N.Y. 1987) [ELR 9:6:9]

Jurisdiction in Minnesota was properly exercised in lawsuit brought by National Hockey League and member teams alleging breach of settlement agreement by attorney for former World Hockey Association players

In May 1982, Charles L. Abrahams, on behalf of 28 former players and staff personnel of teams in the former World Hockey Association, sued, among other parties, the National Hockey League; the case was settled, and in December 1984, the lawsuit was dismissed. However, the League and several hockey clubs claimed that Abrahams breached a provision in the settlement agreement prohibiting the filing of similar actions, and also alleged false misrepresentation and unjust enrichment.

A Federal District Court has rejected Abrahams' argument that he was not subject to jurisdiction in Minnesota under the state's long-arm statute. It was noted that the attorney attended several settlement conferences in Minnesota and that the dismissal of the action occurred in the state, indicating that Abrahams purposefully established minimum contacts in Minnesota - the breach of contract claim arose from those contacts.

The cause of action for fraud also related to Abrahams' contacts with the forum, stated Judge Diana E. Murphy, because although the attorney signed the settlement agreement in California, his signature page was forwarded to Minnesota where the closing of the settlement agreement was held.

Judge Murphy also rejected Abrahams' argument that he was not subject to jurisdiction because he acted only as an agent for his clients-the relevant provision of the settlement agreement concerned the obligations of counsel in his individual capacity and did not impose any duties on Abrahams' clients.

And venue was proper in Minnesota because a substantial part of the events giving rise to the claims occurred in the state.

Edmonton World Hockey Enterprises, Ltd. v. Abrahams, 658 F.Supp. 604 (D.Minn. 1987) [ELR 9:6:10]

Copyrights in literary works are a community property asset, rules California appellate court, in action upholding former wife's right to one-half of any proceeds obtained from copyright infringement action brought by author of trivia books

A California Court of Appeals, expressing "little doubt" that any artistic work created during a marriage constitutes community property, has reached the "inescapable" conclusion that two trivia books by Frederick

L. Worth were community property, and that the copyrights in the works also were community assets.

"The Complete Unabridged Super Trivia Encyclopedia," and "The Complete Super Trivia Encyclopedia, Volume II," were conceived, written and published during the marriage of Frederick and Susan Worth, noted Presiding Judge Racanelli, and the author's agreement to divide future royalties with his former wife amounted to an acknowledgement that the books were considered to be community property. The court, citing Nimmer on Copyright, next stated that since the copyrights derived from Worth's literary efforts, time and skill during the marriage, the copyrights and related tangible benefits must be considered community property. And, although a copyright may initially vest in the author-spouse, the copyright is automatically transferred to both spouses by operation of California's law of community property; the fact that a copyright is intangible does not affect its community character or the community nature of any tangible benefits directly associated with the copyright, declared Judge Racanelli.

The court distinguished those decisions which have held that a legal education acquired during a marriage was not a divisible community asset, pointing out that a copyright has a present value based upon the ascertainable value of the underlying artistic work-the value usually does not depend on the post-marital efforts of the author, but, again on the benefits associated with the literary product.

With this in mind, the court upheld a trial court ruling granting Susan Worth's request for an order that she would be entitled to one-half of any proceeds derived from Worth's copyright infringement action against the producers of the board game "Trivial Pursuit."

Worth had argued (as described by Judge Racanelli) that since a transfer of the literary property did not convey any of the statutory rights attached to his works, the agreement to share royalties did not effect a transfer to Susan Worth of an interest in the copyrights; without such an interest, Susan Worth had no claim to share in any proceeds arising from the infringement of Worth's statutory right to the exclusive use of the books to prepare derivative works.

The court referred, once again, to the community nature of the copyrights. The stipulated judgment may have divided only future book royalties and not the intangible copyrights, but as "property interests acquired during the marriage which remained undistributed under the terms of the interlocutory judgment," Susan and Frederick Worth held title to such undivided interests in the copyrights as tenants in common-thus, Susan was entitled to share in all of the proceeds from the copyrights, including any settlement or damage award resulting from an infringement action.

The Copyright Act did not preempt California's community property laws, declared the court - the Act expressly provides for co-ownership as well as transfer of all or part of a copyright, and rights of ownership and division of marital property are "in no way" equivalent to rights within the scope of copyright under the Act. Furthermore, there existed no irreconcilable conflict between state and federal law to warrant preemption under the supremacy clause.

In a significant footnote, Judge Racanelli mentioned the recent Federal Court of Appeals decision (ELR 9:6:11) upholding a Federal District Court ruling that rejected Worth's copyright infringement claim. Given the thenpending status of the federal litigation, the state court elected to reach the merits of Worth's appeal in the marital property dispute. Worth apparently informed the court that he plans further appeals in connection with the copyright infringement claim. If the Federal Court of

Appeals decision is affirmed, noted Judge Racanelli, the state court action would become moot.

Worth v. Worth, Case No. A035151 (Ca.Ct.App., Oct.23, 1987) [ELR 9:6:10]

Distributors of "Trivial Pursuit" game did not infringe trivia encyclopedias, rules Federal Court of Appeals

The designers and marketers of the game "Trivial Pursuit" did not infringe Fred L. Worth's copyrighted trivia encyclopedias, a Federal Court of Appeals in California has ruled.

The board game did not copy the arrangement of Worth's books, and although the books were the source for many questions, the selection of facts for the game cards was not substantially similar to the selection of 12,000 factual entries in the books. Worth had calculated that from about fourteen to twenty-nine per cent of the factual entries were used as the basis for various editions of game card questions. But the use of factual content from the trivia books did not constitute infringement, nor did the "verbatim repetition of certain words in order to use the nonprotectible facts"

Judge Dorothy W. Nelson, in upholding the District Court decision granting summary judgment to the Trivial Pursuit parties, also noted that viewing the works in context and for overall "mood,' highlighted the lack of substantial similarity in expression between Worth's books and the game cards.

Worth v. Selchow & Righter Company, Case No.86-5909 (9th Cir., Sept. 8, 1987) [ELR 9:6:11]

Federal Court of Appeals upholds disposition of claims arising from Syufy Enterprises' cancellation of exhibition guarantees for "The Cotton Club," including finding that Orion Pictures failed to show antitrust injury

In the summer of 1984, Orion Pictures conducted blind bidding for the film "The Cotton Club" Syufy Enterprises submitted a bid to license the film for showing in Las Vegas during the Christmas season; the bid included a $152,000 guarantee. Orion awarded the license to Syufy.

In October 1984, Syufy bought Red Rock Theatres and became the owner of all 23 first run movie screens in Las Vegas. Soon after, Syufy saw the trade screening of "The Cotton Club." Three days later, the company cancelled its guarantees for the film, including the guarantee for Las Vegas. Syufy apparently offered to exhibit the film and to pay Orion a percentage of the actual box office receipts. Orion refused to deal with Syufy and arranged for replacement screens from which the distributor received total film rentals of $320,358 for The Cotton Club, rather than Syufy's guarantees of $579,000.

Orion proceeded to sue Syufy, alleging antitrust violations, fraud and breach of contract. Syufy's counterclaims alleged antitrust violations, breach of contract, fraud and unfair competition.

A Federal District Court granted Syufy's motion for a directed verdict against Orion's antitrust and fraud claims (Syufy withdrew the antitrust and breach of contract portions of its counterclaim). The court then granted Orion's motion for a directed verdict against Syufy's fraud and unfair competition counterclaims, and, after granting a directed verdict on Orion's breach of contract claim, submitted the issue of contract damages to the jury. The jury returned a verdict in the amount of $0 (see ELR 8:1:21).

A Federal Court of Appeals has affirmed the judgment of the District Court. It was noted that the District Court had found that Orion failed to present evidence of monopoly power or antitrust injury; Federal Court of Appeals Judge Edward Leavy, citing Newman v. Universal Pictures, 813 F.2d 1519 (ELR 8:12:9), based the affirmance on Orion's lack of antitrust injury. Judge Leavy noted that Syufy's alleged monopolization of the Las Vegas market did not affect competition to license The Cotton Club at the time of bidding for the film. And after the film was licensed, Syufy's obligation to Orion was fixed by the contractual commitment to pay guarantees.

With respect to Syufy's unfair competition claim, Judge Leavy found that the bidding on The Cotton Club followed standard blind bidding procedures. Syufy contended that Orion had a screenable print of the film which could have been shown to exhibitors when bids were solicited. The fact that a "rough cut" of the film may have been available in June 1984 did not mean that the film was suitable for screening, and California does not prohibit blind bidding as a general practice, observed the court in declining to hold that Orion engaged in an unfair trade practice under section 17200 of the California Business and Professions Code.

Orion Pictures Distribution Corporation v. Syufy Enterprises, Case Nos. 86-6341; 86-6370 (9th Cir., Oct.9, 1987) [ELR 9:6:11]

Damage award of over $460,000 in copyright infringement action involving stuffed toy animals is upheld

After a series of proceedings (ELR 7:6:9; 3:12:7) a Federal District Court awarded Kamar International damages of $460,520 in the company's copyright infringement action against Russ Berrie & Company involving toy stuffed animals. The District Court determined that the statutory maximum set forth in section 101 of the Copyright Act of 1909 could be exceeded for the purpose of deterring postnotice infringement. The award therefore consisted of: $35,000, representing statutory damages of $5,000 for each of the seven infringed copyrights; $425,020, representing $10 for each of the 42,002 infringing items sold; and $500, representing $250 for each of the two remaining infringed copyrights.

A Federal Court of Appeals has upheld the damage award. Judge Cynthia Holcomb Hall first agreed with the District Court's finding that Berrie had actual notice of Kamar's infringement claim when Berrie was served with Kamar's complaint, not, as argued by Berrie, on the date of the entry of the preliminary injunction. The District Court correctly calculated infringing sales, and did not abuse its discretion either in denying Berrie's motion for a new trial or in awarding damages amounting to about four times the amount of Berrie's gross profits, concluded Judge Hall.

Kamar International v. Russ Berrie & Company, Inc., Case No. 86-6362 (9th Cir., Oct. 1, 1987) [ELR 9:6:11]

Newspaper's incorrect listing of cassoulet ingredients was libelous, rules New York court, but restaurant owner's failure to establish damages results in dismissal of claim

Maryann Terillo, doing business as Cafe de la Gare, was not entitled to $1500 in damages sought for business libel arising from New York Newsday's incorrect listing of the ingredients in the restaurant's cassoulet, a New York trial court has found, although the error was libelous.

On March 4,1987, Newsday published a food critic's report on Manhattan restaurants serving cassoulet. When Terillo notified the newspaper that the critic had erred in describing the ingredients in the casserole dish, Newsday printed an addendum to the report, rather than a retraction, prompting Terillo to sue the newspaper in Small Claims Court.

Judge Norman C. Ryp determined that the ingredient list was a statement of fact, which was capable of being proven true or false, and which was not in the realm of protected opinion, as would be a reviewer's comments on the food, service and decor of a restaurant.

Furthermore, Newsday, although informed of its error almost immediately, did not issue a clear correction or a retraction; the newspaper merely noted Terillo's objection and then repeated the list of incorrect ingredients, along with the correct ingredients. The court also observed that the critic had a copy of the restaurant's menu, which listed the cassoulet ingredients, in her possession when the story was written.

In finding that Terillo established by "the fair preponderance of the credible evidence" that Newsday acted in a grossly irresponsible manner, Judge Ryp stated that "the constitutional right to be wrong must be offset by the responsibility to correct factual errors ... This is especially true for food critics, whose words, ingested by a gullible public, can mean life or death to a restaurant."

Judge Ryp found, however, that Terillo failed to prove any monetary damages as a result of the restaurant review or the addendum and therefore granted Newsday's motion to dismiss the complaint.

Terillo v. New York Newsday, New York Law Journal, p.6, col.4 (N.Y. Small Clms.Ct., Aug.24, 1987) [ELR 9:6:12]

National Broadcasting Company was not entitled to summary judgment in connection with erroneous news broadcast concerning apparent abandonment and mistreatment of mentally impaired youth, rules New York trial court

A neighborhood's efforts to assist a young man who purportedly was homeless and mentally retarded was a matter of genuine public interest, a New York trial court has found. The court therefore applied the "gross irresponsibility" standard of Chapadeau v. Utica Observer-Dispatch, Inc. (38 N.Y.2d 196) in considering whether NBC, which reported on Patrick Delaney's plight in a December 1980 evening edition of "NewsCenter 4," was entitled to summary judgment in a defamation action brought by Delaney's relatives. Apparently, the story Delaney told to NBC regarding his abandonment and mistreatment by his family was not true.

Queens County Justice Cooperman has determined that issues of fact as to whether the NBC parties were grossly irresponsible in preparing and airing the broadcast precluded summary judgment. Most significantly, since Patrick Delaney was observably mentally impaired, an issue was present as to whether NBC had reason to doubt the accuracy of its source and whether the truth would have been easily accessible upon a proper investigation.

Justice Cooperman did dismiss the Delaney family's causes of action for negligent false reporting and for the violation of their right to privacy. It was noted that there is no common law right to privacy in New York and that sections 50/51 of the New York Civil Rights Law do not apply to publications concerning newsworthy events or matters of public information or of legitimate public interest. The court concluded, however, by agreeing to grant NBC's motion for an order dismissing the complaint unless John Delaney complied with the court's discovery orders.

Delaney v. National Broadcasting Co., Inc., New York Law Journal, p.13, col.4 (Queens Cnty., Aug. 14, 1987) [ELR 9:6:12]

Award of damages to television executive in wrongful termination of employment action against Worldvision Enterprises is reversed

A New York appellate court has reversed a trial court judgment (ELR 8:5:11) awarding Harold Golden over $450,000 in damages in his action against Worldvision Enterprises for breach of an employment contract.

Golden worked as the executive vice president for marketing for Worldvision. His four year employment contract, which began in January 1982, provided for compensation of $200,000 a year and also provided that "In the event in the judgment of the Company, the Employee fails to perform his duties in accordance with the provisions of this Agreement, the Company may permanently terminate the Employee's employment for the entire remaining term of the Agreement." Golden was dismissed in September 1982.

In reversing the trial court's ruling, the appellate court observed that when the satisfactory performance of duty is the condition upon which the continuation of employment depends, then, under state law, it is the employer's prerogative to determine whether the employee is, in fact, living up to the terms of his or her employment; a court may inquire only whether the employer's dissatisfaction was genuine. The trial court erred in considering the relationship of the parties prior to entering the employment contract, and in characterizing Worldvision's view of the contract as one that permitted firing at will.

Rather, stated the appellate court, the evidence presented disclosed an "ample basis" for Worldvision's dissatisfaction with Golden's performance under the employment contract. Apparently, Golden, contrary to instructions, became involved with sales activities. Golden also engaged in a long telephone conversation with a potential competing program distributor, during which he may have disclosed information which undermined Worldvision's bargaining position for the purchase of the "Dallas" television series. And the record indicated that Golden's achievements as senior vice president of marketing "were by no means impressive."

The court concluded that there was no indication that Worldvision engaged in a pretextual firing, or, given the evidence of Golden's "repeated failures to comply with his superior's wishes respecting the manner in which his job was to be performed," that he was dismissed from his executive position in bad faith. Golden's argument that he was entitled to notice of the impending termination was rejected-the executive was aware of the company's " extreme displeasure" over the "Dallas" matter; Golden, who had long involvement with the "volatile" entertainment industry, "must have known that he was courting his dismissal."

Golden v. Worldvision Enterprises, Inc., New York Law Journal, p. 4, col.3 (N.Y.App., Aug.31, 1987) [ELR 9:6:12]

J. Walter Thompson obtains summary judgment in $20 million libel action brought by dismissed barter executive

Marie Luisi worked for the J. Walter Thompson advertising agency for twenty-five years and eventually assumed responsibility for buying commercial spots on television shows and selling syndicated television programs to local television stations through bartering. Bartering consisted of obtaining commitments from television stations for certain amounts of commercial advertising time in return for television programs which JWT purchased from independent production companies and provided to the stations. The advertising time often was held for later use in a "time bank;" the time then was made available, for a fee, to JWT's advertising clients.

In 1981, an independent auditor questioned JWT's accounting practices with respect to syndication time-bank usage; the unit's actual revenue, as "restated," would have been substantially reduced. After an investigation conducted by internal staff and outside parties, JWT announced in a March 1982 press release, that Luisi was responsible for financial irregularities which resulted in a $30 million loss to the company, and that Luisi had been dismissed. The press release attributed the irregularities, in part, to improper purchases of spot television time without corresponding client commitment for its use, and to false entries into a computer system which "vastly overstated" the revenue of the barter system.

A New York trial court has dismissed Luisi's $20 million libel action against the advertising agency on the ground that Luisi did not show, by a preponderance of the evidence, that JWT's investigation of the barter unit's practices was conducted in a grossly irresponsible manner. The court determined that the gross irresponsibility standard of Chapadeau v. Utica Observer-Dispatch, Inc., 38 N.Y.2d 196 (1975) applied to JWT, and that the company had acted responsibly in gathering and disseminating information.

Luisi v. JWT Group, New York Law Journal, p.7, col.3 (N.Y.Cnty., Sept. 18, 1987) [ELR 9:6:13]

Disallowance of limited partners' claimed deductions, depreciation, investment credits and interest in connection with investments in films is upheld because partnerships' dominant economic motive was tax avoidance

The dominant economic motive of the partnership, not that of the individual investors, determines whether investment activities are undertaken for a profit or for tax avoidance, a Federal Court of Appeals has held.

Cinema Financial of America was the general partner in several limited partnerships which acquired feature length films from Cinema Financial for distribution. The acquisition of the films was financed through large non-recourse notes payable from a percentage of net distribution receipts; individual investors claimed distributive shares of losses and investments for tax credit purposes.

The Commissioner of Internal Revenue disallowed the taxpayers' claimed deductions, depreciation, and investment credits. The Tax Court held that the write-offs were improper because the partnerships' primary purpose in buying film properties was to create tax shelters, not to profit.

In affirming the Tax Court's decision, the Court of Appeals agreed that Cinema Financial's predominant motivation for actions taken on the partnerships' behalf "was to garner tax benefits." It was noted that large prepayments for Cinema Financial's services and for interest left the partnerships "grossly undercapitalized;" that inexperienced personnel would not likely achieve successful marketing; that Cinema Financial had extensive experience in tax shelter syndication; and that the partnerships had no control over the quality of the films.

The Court of Appeals also agreed with the Tax Court's conclusion that interest expense deductions were improper because the amounts of the non-recourse notes given as partial consideration for the films greatly exceeded the films' value, i.e., the debts were not genuine. The Tax Court credited a report introduced by the Commissioner which assigned market values of $30,000, $62,000, $25,000 and $0 to films with stated purchase prices of $625,000, $1,425,000, $1,425,000 and $115,000 respectively.

Polakof v. Commissioner of Internal Revenue, 820 F.2d 321 (9th Cir. 1987) [ELR 9:6:13]

Authors were not required to capitalize prepublication expenses in connection with pre-1987 book projects

Under the Tax Reform Act of 1986, authors must capitalize prepublication expenses over the estimated useful life of the book produced. However, in the taxable years after 1975 and before 1987, authors were entitled to deduct, in the year incurred, the ordinary and necessary expenses attributable to writing a book, a Federal Court of Appeals has ruled.

The case before the court involved Arthur Hadley, the author of "The Empty Polling Booth," published in 1978, and Lloyd McKim Garrison, the author of the unpublished work "Still a Distant Drum." The Commissioner of Internal Revenue disallowed Hadley's expenses of $20,743, which were incurred in 1978, and Garrison's expenses of $3,055, which were incurred in 1980. The Tax Court agreed with the Commissioner on the ground that section 280 of the Internal Revenue Code, originally written as section 210(a) of the Tax

Reform Act of 1976, required amounts attributable to the production of a book to be capitalized. (ELR 8:7:14).

Federal Court of Appeals Judge James L. Oakes, in reversing the Tax Court decision, declared that section 280 was concerned with book publishing tax shelters, not individual authors engaged in writing manuscripts.

Hadley v. Commissioner of Internal Revenue; Garrison v. Commissioner of Internal Revenue, 819 F.2d 359 (2d Cir. 1987) [ELR 9:6:14]

Wall Street Journal's unintentional publication of a financial institution's fraudulent advertisement did not subject newspaper to liability for investor's losses when institution went bankrupt

In an advertisement in the Wall Street Journal, Central Mortgage and Trust Company, a Texas financial institution, offered "jumbo" interest rates on deposits. The advertisement falsely represented that funds deposited with Central were backed by the United States Government. When Central went bankrupt, John Pittman lost about $50,000. Pittman sued the Wall Street Journal on various tort and contract claims and under Louisiana law for the unintentional publication of a fraudulent advertisement.

A Federal District Court in Louisiana has held that the publisher of the newspaper was not liable under any of the asserted theories.

Federal District Court Judge Feldman recalled that a newspaper of general circulation "has no duty, whether by way of tort or contract, to investigate the accuracy of advertisements placed with it which are directed to the general public, unless the newspaper undertakes to guarantee the soundness of the products advertised." And Pittman did not establish some special relationship, other than being a reader/subscriber of the Wall Street Journal, which would support recovery under a contract or quasi-contract claim. Judge Feldman, in granting summary judgment to the publisher, noted that commercial speech, "although afforded less protection, is nevertheless protected under the First Amendment."

Pittman v. Dow Jones & Company, Inc., 662 F.Supp. 921 (E.D.La. 1987) [ELR 9:6:14]

Columbia Artists Management obtains termination of 1955 final judgment restraining company's activities in managing and booking concert artists

A Federal District Court in New York has granted a motion by Columbia Artists Management and Community Concerts, Inc. to terminate a final judgment entered against the parties in 1955; the United States Department of Justice consented to the entry of an order terminating the final judgment.

In 1955, the Justice Department charged Columbia and its subsidiary, Community Concerts, with conspiring to restrain and monopolize trade in the management and booking of concert artists and in forming and maintaining organized audience associations. The final judgment entered in the matter barred the Columbia parties from agreeing to allocate markets or otherwise engaging in various anticompetitive activities.

The government noted that the current state of the concert industry does not require the continuation of the final judgment in order to promote competition, and that maintaining the judgment conflicted with the Antitrust

Division's policy of limiting consent judgments to a period of ten years. Since 1955, the number of organizations presenting concert artists has increased considerably; access to audience associations no longer is critical for independent managers; and Columbia, although generally considered the largest manager of artists, has several significant competitors, observed Judge William C. Conner, in agreeing with the government that the termination of the final judgment would be in the public interest.

United States of America v. Columbia Artists Management, Inc., 662 F.Supp. 865 (S.D.N.Y. 1987) [ELR 9:6:14]

Composer for songs for franchise restaurants' animated robot creatures was entitled to damages for copyright infringement; issue of attorney's fees is remanded for further consideration

Henry Casella composed ten songs to be performed by the animated creatures appearing at various Fuzzy Wuzzy Wizard Wonderlands of Food and Fantasy. When the owners of the restaurant enterprise paid Casella $10,000, rather than the agreed-upon fee of $20,000, and then failed to pay Casella an additional $2000 for one of two Fuzzy Wuzzy birthday party songs, Casella terminated the licenses he had granted for the songs, and brought an action for copyright infringement against Arnold E Morris, one of the owners of the restaurant franchising entity.

A Federal District Court found Morris vicariously liable for the infringing performers, and awarded Casella

$12,000 in damages. Federal Court of Appeals Senior Circuit Judge John R. Brown has affirmed the District Court judgment on the broader ground that Morris was liable as a contributory infringer.

Judge Brown noted that when Morris participated in the sale of the franchise rights in the Fuzzy Wuzzy restaurants to Family Time Entertainment - a sale that included the copyrights (or licenses) purportedly owned in the Casella songs - Morris was aware that Casella had terminated all licenses. But Morris did not stop the transfer, limit its effect, or inform Family Time of the rescission-his "utter inaction in the Family Time transaction warranted the court's view that this was a blatant inducement to Family Time to infringe Casella's copyright," stated Judge Brown.

The District Court had rejected Morris' claim that the $10,000 payment secured the rights to at least five songs because Morris failed to show which songs correlated to the payments that he had made. The finding that "up to six" of the songs were unlicensed thus was upheld, but the failure to award attorney's fees, particularly since willful infringement was found, prompted Judge Brown to remand the matter in order to allow the District Court to reconsider the issue of attorney's fees and to state a reason for denying or awarding such fees.

Casella v. Morris, 820 F.2d 362 (11th Cir. 1987) [ELR 9:6:15]

Michigan theater owner's antitrust claims against competitor are dismissed

In September 1985, Kerasotes Michigan Theatres sued National Amusements alleging that National Amusements and other parties were monopolizing and unreasonably restraining trade with respect to the exhibition of films in the Flint, Michigan area. Kerasotes operated eleven indoor screens in the Flint area; National operated ten screens in the area.

In response to Kerasotes' lawsuit, National claimed that Kerasotes had attempted to induce National to enter into a split agreement to allocate films in the Flint area, and when National refused to enter such an agreement, Kerasotes proceeded with its lawsuit. National also alleged that Kerasotes used its market power outside Flint to induce and coerce film distributors to license films to Kerasotes, rather than National, in the Flint area.

Federal District Court Judge Newblatt first determined that National did not allege that the Kerasotes parties engaged in conduct amounting to a per se restraint of trade, with the presumption of unreasonable anticompetitiveness. And under a rule of reason inquiry, National did not establish that the complained-of conduct had a significant anticompetitive effect on prices or output, stated the court in granting Kerasotes' motion to dismiss National's claim under sections 1 and 2 of the Sherman Act for monopolization and restraint of trade.

Judge Newblatt also granted Kerasotes' motion to dismiss for failure to state a claim National's argument that Kerasotes attempted to monopolize the exhibition of firstrun films in the Flint area; National did not allege that Kerasotes had a sufficient market share or power to succeed in its purported goal of obtaining monopolistic control of the Flint area market.

Kerasotes also prevailed on its motion to dismiss National's claims under section 7 of the Clayton Act, and the company's claims for abuse of process, and for tortious interference with prospective advantage.

Kerasotes Michigan Theatres, Inc. v. National Amusements, Inc., 658 F.Supp. 1514 (E.D.Mich. 1987) [ELR 9:6:15]

Briefly Noted:

Costs on Appeal.

A Federal Court of Appeals has reversed a District Court decision concerning the costs incurred by Flynt Distributing Company in borrowing funds used as collateral to secure an appellate bond. In Lerman v. Flynt Distributing Co., 745 F.2d 123 (ELR 7:3:10), cert.denied, 105 S.Ct. 2114, the court reversed a $10 million judgment Lerman had obtained against Flynt. In connection with that appeal, the parties agreed that Flynt would post a bond of $1 million. However, the company could not secure an anticipated letter of credit to back the bond, and eventually borrowed cash which remained on deposit for the life of the bond which was issued by Aetna Casualty and Surety Co., without earning any interest for Flynt.

Flynt, upon moving for the release of its bond, also sought interest costs incurred in borrowing the $1 million at an annual interest rate of 15 percent. Judge Jon 0. Newman ruled that none of the interest expense, which was sought in addition to the premium on a supersedeas bond, was taxable as costs and vacated the District Court order granting Flynt about $64,000.

Lerman v. Flynt Distributing Co., 789 F.2d 164 (2d Cir. 1986) [ELR 9:6:15]

"Son of Sam" Law.

A New York trial court has denied a motion for fees sought by the attorneys for Jack Henry Abbott. Abbott gained notoriety as the author of "In the Belly of the Beast," a book describing his experience in prison. In 1981, six weeks after Abbott was freed from prison on a work-release program, he killed a young man named Richard Adan. Abbott was convicted in 1982 of first degree manslaughter, and currently is imprisoned in New York. Recently, a publisher released "My Return" by Abbott; the book included a play based on the stabbing of Adan. As described by news reports, about $13,000. representing the royalties from the book, an option for a proposed film about Abbott's life, and advances on the rights for the play has been placed in escrow by the New York State Crime Victim Compensation Board. However, the escrow account was not available to pay

Abbott's appellate counsel, stated Justice David H. Edwards, Jr., because the attorneys have not yet filed a criminal appeal, and because Abbott, not the attorneys, possessed standing to apply to the Board for the payment of his legal fees (up to a maximum of one-fifth of the account).

Adan v. Abbott, New York Law Journal, p.14, col.1 (N.Y.Cnty., Oct. 22, 1987) [ELR 9:6:16]

Musical Group Name.

A Federal Court of Appeals has reversed a District Court decision denying Larry Marshak's service mark infringement claim alleging the unauthorized use of the musical group name "The Drifters." It was found that the District Court abused its discretion in advancing the date for a scheduled jury trial, and that the advancement "infected subsequent proceedings" in the action. The matter was remanded for further proceedings before a different judge.

Marshak v. Tonetti, 813 F.2d 13 (1st Cir. 1987) [ELR 9:6:16]

Booking Agency Contract.

When Michael Wolfgramm, the patriarch of a family musical performing group now known as the "Jets" signed a booking agency contract in April 1983, the children in the group were not bound by the contract, a Minnesota appellate court has ruled, because the statute of frauds precluded enforcement against the nonsigning parties. However, although the parents of the young performers were involved musically with the group only on a limited basis, the trial court erred by granting summary judgment in favor of Wolfgramm with respect to the agency's breach of contract claim, stated the court. There existed a disputed issue of fact as to whether Wolfgramm understood the extent of his personal liability under the contract; this issue therefore was remanded for further findings. The trial court's rulings granting summary judgment to the musical group parties on the agency's wrongful interference and defamation claims were upheld.

O'Brien Entertainment Agency, Inc. v. Wolfgramm, 407 N.W.2d 463 (Minn. 1987) [ELR 9:6:16]

Age Discrimination/Disc Jockey.

In a decision issued in January 1986 but only recently published, a Federal District Court in Illinois denied a claim for front pay sought by disc jockey Leo Rengers. Rengers sued radio station WCLR, alleging that his discharge from the station violated the Age Discrimination in Employment Act. A jury awarded Rengers $97,433 in back pay and the court awarded Rengers the same amount in liquidated damages based on the jury's finding that the station's actions were willful. Renger's motion for reinstatement was denied, and judgment was reserved on his motion for front pay, in lieu of reinstatement, for about nine years-from the time of judgment until his retirement age.

In denying front pay, the court noted that Renger's employment agreement did not guarantee him tenure for the nine year term; that the radio industry provides only tenuous job security for disc jockeys; and that "animosity, distrust, disagreement and conflict" had developed between Rengers and WCLR management. The court refused to engage in "pure speculation" by presuming that Rengers would have remained employed by WCLR indefinitely, and found that the total award of $194,866 was sufficient to fully compensate Rengers.

Renger v. WCLR Radio Station, 661 F.Supp. 649 (N.D.Ill. 1986) [ELR 9:6:16]

Keeton-Hustler Judgment.

A Federal Court of Appeals in New York has affirmed a District Court decision denying Hustler Magazine's motion to enjoin the enforcement in New York State of a $2 million New Hampshire federal judgment obtained by Kathy Keeton. Keeton had sued Hustler for libel; in August 1986, she obtained a judgment on the jury's verdict of $2 million (ELR 8:4:20). Judge George C. Pratt rejected Hustler's claim that Keeton was not entitled to register and enforce the judgment in New York while the magazine's appeal was pending in the First Circuit, and the claim that the Uniform Enforcement of Foreign Judgments Act preempted the application of New York's judgment enforcement procedures to Keeton's federal judgment.

Keeton v. Hustler Magazine, Inc., 815 F.2d 857 (2d Cir. 1987) [ELR 9:6:16]

Copyright Infringement.

Broadcast Music, Inc. has obtained summary judgment in a copyright infringement action against Pine Belt Investment Developers, Inc., doing business as Studebaker's. A Federal District Court in Mississippi found that the Hattiesburg-area establishment was liable for the unlicensed public performance of thirteen copyrighted musical compositions including "Ain't No Sunshine," "Baby Love" and "Dance to the Music"; ordered Pine Belt to pay a total of $13,000 in statutory damages, as well as attorney's fees and costs; and enjoined the company from further infringing the copyrighted works.

Broadcast Music, Inc. v. Pine Belt Investment Developers, Inc., 657 F.Supp. 1016 (S.D.Miss. 1987) [ELR 9:6:16]

Copyright Infringement/The Fat Boys.

"The Fat Boys" have obtained summary judgment in a $1 billion copyright infringement action brought against the rap music group by a rap group known as "The Human Effect" The Human Effect claimed that its song "We Like the Girls" was infringed by a sound element occurring in six Fat Boys songs-the challenged sound was described by a Federal District Court judge as "rapid in-and-out gasping." In granting summary judgment to The Fat Boys, the court noted that the version of "We Like the Girls" which was registered with the Copyright Office, unlike the song submitted to the court, did not contain the gasping sounds - a finding of infringement thus was precluded because the registered version of the work did not include the allegedly infringing material.

Human Effect Records v. Sutra Records, Case No.C-86-0036 (N.D.Ca., June 30, 1987) [ELR 9:6:17]

Copyright Infringement/Commercial.

A Federal District Court in Wisconsin has granted Wendy's International's motion for summary judgment in a copyright infringement action involving two commercials known as "Fluffy Bun 1" and "Fluffy Bun II." The court found that a company doing business as Suburpia Submarine Sandwich Shoppes did not acquire any rights in the commercials as works made for hire.

Sandwiches Inc., v. Wendy's International, Inc., 654 F.Supp. 1066 (E.D.Wisc. 1987) [ELR 9:6:17]

Tax.

An Internal Revenue Service ruling disallowing all travel, entertainment and automobile expense deductions claimed by a professional actor for the years 1981 and 1982 has been upheld by the Tax Court. James P. Kisicki failed to substantiate his expenses, and did not establish that his entertainment expenditures were directly related to the active conduct of his trade, stated Special Trial Judge Pate. Although conversations held at gatherings of Kisicki's colleagues at the Cleveland Playhouse may have included some business discussions, they were "in the main indistinguishable from what is usually considered personal entertainment." And while the actor may have rehearsed plays, and stored wardrobes, scripts and materials in his home office, the performances at which he earned his income were held at theaters and studios, thus precluding any deduction for the use of his home office. Investment credits or depreciation deductions on the actor's home office furniture and equipment or his car also were not available, stated Judge Pate, who concluded by agreeing with the Internal Revenue Service that a self-employment tax was due on Kisicki's 1982 net Schedule C income.

Kiskcki v. Commissioner, 87 T.C. No. 245 (1987) [ELR 9:6:17]

Tax.

The Tax Court has found that Victor and Margaret Baigent and other parties were not entitled to deductions, losses or investment tax credits taken as a result of their investment in videotapes because the taxpayers did not have the requisite profit motive in acquiring the tapes. The taxpayers did not investigate the experience or expertise of those involved in the production and distribution of the tapes; did not seek an appraisal of the tapes; and were not primarily interested, as evidenced by a promotional brochure, in the production of income, but rather in obtaining tax benefits.

Baigent v. Commissioner, T.C.Memo 1987-314, 1987 Tax Court Decisions (CCH) para. 7617. [ELR 9:6:17]

Arbitration Agreement/Rod Stewart Booking Agency Fee.

A dispute between performer Rod Stewart and American Talent International concerning the booking agency's retention of about $45,000 in receipts from Stewart's 1981-1982 concert tour has been ordered to arbitration. In March 1983, Stewart and American Talent agreed to submit the disputed claim to arbitration, but Stewart did not serve a demand for arbitration until July 1985. A New York trial court has found that a sixty day time period set forth in the agreement to arbitrate was not a condition precedent to arbitration; that American Talent breached an implied convenant of fair dealing and good faith since the agency did not attempt to resolve the dispute; and that the agency was equitably estopped from claiming that Stewart's failure to demand arbitration within sixty days from the execution of the agreement barred him from seeking arbitration-an agency representative "misled Stewart into believing that ATI would not insist upon strict compliance with the sixty-day time period," stated Judge Hortense Gabel, in granting Stewart's cross-motion to compel arbitration.

American Talent International, Ltd. v. Stewart, N.Y. Law Journal, p. 13, col.3 (N.Y.Cnty., March 17, 1987) [ELR 9:6:17]

Previously Reported:

The following cases, which were reported in previous issues of the Entertainment Law Reporter, have been published: Carlin Communications v. Mountain States Telephone and Telegraph Company, 827 F.2d 1291 (9:5:13); Sable Communications of California, Inc. v. Federal Communications Commission, 827 F.2d 640 (9:5:13); Three Movies of Tarzana v. Pacific Theaters, Inc., 828 F.2d 1395 (9:5:15). [ELR 9:6:17]

WASHINGTON MONITOR

Internal Revenue Service announces that hockey player's income, subject to allocation between United States sources and sources outside the United States, encompasses payments to player for pre-season and playoff services, as well as for services performed during regular season

The Internal Revenue Service, in a matter involving the allocation of income paid to a hockey player by a United States professional club, has announced that the salary paid a player includes payments for services performed during the pre-season training camp, the regular season, and any playoffs for which the club qualifies. The Service previously had concluded, in Rev. Rul.76-66, that the salary paid a player under the standard hockey league contract is paid for services performed only during the regular season. This position was rejected in Stemkowski v. Commissioner, 690 F.2d 40 (2d Cir. 1982; ELR 4:14:5) and in Hanna v. Commissioner, 763 F.2d 125 (4th Cir.1985); the Commissioner now has adopted the view of the courts in these cases.

In the proceeding before the Service, the hockey player, a resident and citizen of Canada, worked partly within the United States and partly in Canada. Under the applicable regulation, the amount to be included in the gross income of the player for federal income tax purposes would bear the same relation to the total compensation under the contract as the actual number of days of performance of the service within the United States during the pre-season training camp, regular season, and playoff game period for the year bears to the total number of days in the season, beginning with the first day of the pre-season training camp, and ending with the last day of the regular season or the last day on which the team played in a playoff game.

Internal Revenue Service, Rev.Rul. 87-38 [Nov. 1987] [ELR 9:6:18]

Federal Communications Commission approves General Electric's acquisition of Miami television station

The Federal Communications Commission has approved General Electric's $270 million acquisition of CBS affiliate WTVJ-TV in Miami, Florida. Sunbeam Television Corp., the owner of the local NBC affiliate, WSVN, had argued that the purchase of WTVJ by NBC's parent company would be anticompetitive. But the Commission stated that WSVN's objection did not require a hearing, and that the transaction would not violate the FCC's multiple ownership rules.

General Electric announced that WTJV will become an NBC affiliate when NBC's contract with WSVN expires in 1989. [Nov. 1987] [ELR 9:6:18]

IN THE NEWS

Federal District Court refuses to restrain NBC's broadcast of "The Billionaire Boys Club" miniseries

A Federal District Court in Los Angeles denied Joe Hunt's attempt to restrain NBC from airing "The Billionaire Boys Club" Hunt, a leader of the social club, was convicted of murdering Ron Levin in a dispute over money. Hunt argued that the NBC miniseries would jeopardize his rights in a pending trial in Northern

California where he will be tried for the murder of Hedayat Eslaminia upon the conclusion of the trial of two other BBC members-Reza Eslaminia (Hedayat's son) and Ben Dosti.

Joe Pittman, a BBC bodyguard, also unsuccessfully sought to prevent the airing of the program, claiming that the broadcast would influence jurors in Pittman's second trial on charges of murdering Levin. After nine days of jury deliberations (and prior to the scheduled broadcast), a Santa Monica judge declared a mistrial in Pittman's case. Pittman subsequently pleaded guilty to being an accessory to murder after the fact when the district attorney's office agreed to drop murder and robbery charges against the suspected "triggerman" in the Levin slaying. Pittman also has been charged with the Eslaminia slaying. [Nov. 1987] [ELR 9:6:19]

Lorimar Telepictures and actress Valerie Harper agree to schedule prompt jury trial concerning Lorimar's use of the name "Valerie" for television series sans Harper

Lorimar Telepictures may continue, at least for the remainder of the 1987-1988 television season, to use the name "Valerie's Family" for the series that formerly featured actress Valerie Harper, according to an agreement reached between the actress and the production company. The parties, who are involved in a contract dispute, agreed to arrange for a jury trial by April 20, 1988 on the issue of Lorimar's right to use the name "Valerie" in the title of the series; Harper had sought a preliminary injunction to restrain Lorimar from such use. [Nov. 1987] [ELR 9:6:19]

MTM Productions win change name of "St. Elsewhere's" owner in response to trademark infringement action filed by Humana, Inc.

MTM Productions has agreed to change the name of the owner of the fictional hospital depicted in the "St. Elsewhere" television series. Humana, Inc., a large hospital chain, brought a trademark infringement lawsuit against NBC which broadcasts the series. MTM, although apparently not named in the lawsuit, agreed that by the end of the current television season, the series no longer will refer to "Ecumena" as the new owner of St. Eligius and presumably no longer will use a blue and white sign which resembled Humana's company sign. [Nov. 1987] [ELR 9:6:19]

"The Telephone" may not be disconnected, rules Los Angeles trial court in denying Whoopi Goldberg's request for injunction to prevent New World from releasing

Whoopi Goldberg has been denied an injunction that would have barred New World Pictures from releasing the film "The Telephone" The actress claimed that she was not consulted on the final cut of the film and that the film, as edited, would injure her professional reputation, notwithstanding Goldberg's starring role. Los Angeles Superior Court Judge Leon Savitch stated (according to news reports) that New World and director Rip Torn gave Goldberg the opportunity to participate in editing the film but that the company retained final cut rights. [Nov. 1987] [ELR 9:6:19]

California Board of Equalization exempts post-production and film animation services from sales and use taxes

Charges for post-production services, such as film editing, special effects and sound effects editing, will qualify for an exemption from California sales and use taxes under a regulation approved by the state's Board of Equalization. It is estimated that studios using independent contractors for post-production and film animation work will save about $10 million. If approved by the Office of Administrative Law, the regulation would become effective on January 1, 1988. [Nov. 1987] [ELR 9:6:19]

Dow Jones & Co. abandons trademark claim against Small Street Journal

When Innovative Learning Concepts, a Colorado publisher, began issuing a monthly childrens newspaper known as the Small Street Journal, Dow Jones & Co., the parent company of the Wall Street Journal, notified Innovative Learning that the name and masthead of the childrens newspaper violated Dow Jones' trademark rights. After a temporary change to the title "Fun Day Times," Innovative Learning resumed using the name Small Street Journal, but changed the front page banner of the newspaper to eliminate typographical resemblances to Dow Jones' newspaper. According to news reports, Dow Jones has withdrawn its objection to the Small Street publication since the changes in the banner decreased the likelihood of confusion with the daily financial publication. [Nov. 1987] [ELR 9:6:19]

NABET members end long strike against NBC and approve new contract

The National Association of Broadcast Employees and Technicians have ended a 17 week strike against NBC. NABET members, primarily camera and sound technicians and engineers, approved a contract, which is effective until March 31, 1990, under which they will receive a 3.68 percent pay increase in the first year of the contract, a 4.64 percent increase in the second year, and a lump-sum payment equal to 3 percent of their salary in the third year.

NBC obtained concessions in the contract with respect to the employment of temporary workers known as "daily hires." [Nov. 1987] [ELR 9:6:20]

Directors Guild members approve new contracts

The members of the Directors Guild of America have approved contracts resulting from the basic industry agreement reached in July (ELR 9:4:19) with the Alliance of Motion Picture and Television Producers. The contracts, which cover directors of low-budget films and commercials, and network staff members at ABC, CBS and NBC, are retroactive to July 1, 1987 and will expire on June 30, 1990-the same time as the basic agreement. [Nov. 1987] [ELR 9:6:20]

National Football League Players Union ends strike; union files antitrust action against League

The 24-day National Football League strike ended on October 16th when player representatives from all 28 teams voted to return to work without having negotiated a new collective bargaining agreement. The Players Union has filed an antitrust action against the League and the team owners claiming that the owners conspired to limit competition via the player compensation system, and challenging the college draft and other player restraints. [Nov. 1987] [ELR 9:6:20]

National Football League pays $19.6 million damages award to Los Angeles Coliseum Commission as well as attorneys fees

The National Football League has paid the Los Angeles Coliseum Commission damages of $19.6 million, thereby ending the Commission's antitrust action against the League arising from the relocation to Los Angeles of the former Oakland-based Raiders football team (see

ELR 8:6:13; 8:9:11; 9:5:17). A Federal District Court in Los Angeles also ordered the League to pay over $5 million in legal fees to Maxwell Blecher, the attorney who represented the Commission. [Nov. 1987] [ELR 9:6:20]

DEPARTMENTS

In the Law Reviews:

ASCAP'S Copyright Law Symposium, Number 32, a compilation of winning articles submitted to the Nathan Burkan Memorial Competition, has been published by Columbia University Press with the following articles. The volume may be obtained by contacting Herman Finkelstein, ASCAP Director, One Lincoln Plaza, New York, NY 10023.

An Assessment of the Copyright Model in Right of Publicity Cases by Kevin S. Marks, 32 ASCAP Copyright Law Symposium 1 (1986)

Copyrightability of Works of the Federal and State Governments Under the 1976 Act by Marvin J. Nodiff, 32 ASCAP Copyright Law Symposium 43 (1986)

No Titles to Titles: An Analysis of the Lack of Copyright Protection for Literary Titles by Janie M. Burcart, 32 ASCAP Copyright Law Symposium 75 (1986)

Copyrighting Improvised Music by Warren Shaw, 32 ASCAP Copyright Law Symposium 109 (1986)

Copyright Protection for Computer Programs in Read Only Memory Chips by Peter D. Aufrichtig, 32 ASCAP Copyright Law Symposium 133 (1986)

The Manufacturing Clause: Death-Defying Provision of the U.S. Copyright Law by Craig K. Morris, 32 ASCAP Copyright Law Symposium 185 (1986)

Communications and the Law, Volume 9, Numbers 4 and 5 have been published by Meckler Corporation, 11 Ferry Lane West, Westport, CT 06880 with the following articles:

Copyright Problems in Mastermixes by Jean-Victor A. Prevost, 9/4 Communications and the Law 3 (1987)

Federal Preemption of State and Local Zoning Regulation of Satellite Earth Stations by Louis S. Sorell, 9/4 Communications and the Law 31 (1987)

"Single Instance" Rule as Libel Defense by Kyu Ho Youm, 9/4 Communications and the Law 49 (1987)

New Technology, New Law by Charles M. Mathias, Jr., 9/5 Communications and the Law 3 (1987)

Libel as Communication Phenomena by Jeremy Cohen and Albert C. Gunther, 9/5 Communications and the Law 9 (1987)

Recognizing the Reporter's Right to Trespass by Deckle McLean, 9/5 Communications and the Law 31 (1987)

Lifting the Shroud: News Media Portrayal of the U.S. Supreme Court by Richard Davis, 9/5 Communications and the Law 43 (1987)

Comm/Ent, Hastings Journal of Communications and Entertainment Law, has published Volume 9, Number 3, including the following articles. Comm/Ent is available from Hastings College of the Law, 200 McAllister Street, San Francisco, CA 94102-4978.

False Light Invasion of Privacy: Untangling the Web of Uncertainty by Ruth Walden and Emile Netzhammer, 9 Comm/Ent 347 (1987)

Moral Rights and Section 43 (a) of the Lanham Act: Oasis or Illusion? by Larry E. Verbit, 9 Comm/Ent 383 (1987)

Rock is a Four-Letter Word: The Potential for FCC Regulation of (Un)Popular Music by Alan Jay Lazarus, 9 Comm/Ent 423 (1987)

Black and White and Brilliant: Protecting Black-and-White Films from Color-Recording by Suzanne Ilene Schiller, 9 Comm/Ent 523 (1987)

Entertainment & Sports Law Journal, Volume 3, Number 2, has been published by University of Miami School of Law with the following articles:

Twisted Sister, Washington Wives and the First Amendment: The Movement to Clamp Down on Rock Music by Seth Goodchild, 3 Entertainment & Sports Law Journal 131 (1986)

Of Sports, Agents, and Regulations -The Need for a Different Approach by Miriam Benitez, 3 Entertainment & Sports Law Journal 199 (1986)

Violence in Athletics: A Judicial Approach by Steven BaickerMcKee, 3 Entertainment & Sports Law Journal 223 (1986)

Using Entertainment Law to Teach Legal Writing by Robert M. Jarvis, 3 Entertainment & Sports Law Journal 243 (1986)

Conflicts Between Copyright and the First Amendment After Harper & Row, Publishers v. Nation Enterprises by David E. Shipley, 1986 Brigham Young University Law Review 983 (1986)

Libel Law and the Canadian Charter of Rights and Freedoms: Towards a Broader Protection for Media Defendants, 10 Fordham International Law Journal 750 (1987)

Importation of Out-of-Print works Under the Copyright Act of 1976, 10 Fordham International Law Journal 782 (1987)

The Signal Cable Sends-Part I: Why Can't Cable Be More Like Broadcasting? by Laurence H. Winer, 46 Maryland Law Review 212 (1987)

The Lawyer's Professional Responsibility in Rendering Tax Shelter Opinions by Katherine L. Delsack, 33 The Practical Lawyer 63 (1987) (published by The Practical Lawyer, 4025 Chestnut Street, Philadelphia, PA 19104)

Personal Liability of Corporate Officers and Directors in Intellectual Properly Actions? by Ronald B. Coolley, 33 The Practical Lawyer 79 (1987) (for address, see above)

The Creative Employee and the Copyright Act of 1976 by Rochelle Cooper Dreyfuss, 54 The University of Chicago Law Review 590 (1987)

The Conundrum of News Coverage of Terrorism by Robert G. Picard, 18 The University of Toledo Law Review 141 (1986)

The Expansion of Victim Compensation Programs: Today's "Son of Sam" Legislation and Its Susceptibility to Constitutional Challenge, 18 The University of Toledo Law Review 155 (1986)

Eliminating Drug Use in Sports- Utilizing Contractual Remedies by Tim Freudenberger, 6 The Entertainment and Sports Lawyer 1 (1987) (published by the ABA Forum Committee on the Entertainment and Sports Industries, 750 N. Lake Shore Drive, Chicago, IL 60611)

Block Booking-Perhaps Forgotten, Perhaps Misunderstood, But Still Illegal by Gerald F. Phillips, 6 The Entertainment and Sports Lawyer 3 (1987) (for address, see above)

A Technical Solution to Private Copying: The Case of Digital Audio Tape by Gillian Davies, 9/6 European Intellectual Property Review 155 (1987) (published by ESC Publishing Limited, Oxford OX2 OJU, United Kingdom)

Fairness Versus Certainty-Pop Goes the Music Contract by J. H. Woolcombe, 9/7 European Intellectual Property Review 187 (1987) (for address, see above)

Merchandising and Sponsorship in the Music Business, 9/7 European Intellectual Property Review 215 (1987) (for address, see above)

Sounds Familiar? The 'Chariots of Fire' Case by Isobel Brown, 9/8 European Intellectual Property Review 244 (1987) (for address, see above)

The Singapore Copyright Act 1987 by Norman Ho, 9/9 European Intellectual Property Review 266 (1987)

Television by Satellite-Legal Aspects, 9 /9 European Intellectual Property Review 275 (1987) (for address, see above)

Limitation of Free Bargaining and Sanctity of Contracts with Performing Artists and Composers, 9 / 9 European Intellectual Property Review 275 (1987) (for address, see above)

The Case for Digital Audio Tape: An Opportunity, Not a Problem by Donald G. Jerrard, 9/ 10 European Intellectual Property Review 279 (1987) (for address, see above)

The First Parody Case in Japan by Keiji Sugiyama, 9/ 10 European Intellectual Property Review 285 (1987) (for address, see above)

The Magic Kingdom of Will-Bumping: Where Estates Law and Copyright Law Collide-Part 1 by Francis M.

Nevins, Jr., 9/10 European Intellectual Property Review 293 (1987)
[ELR 9:6:21]