RECENT CASES

Court dismisses idea submission lawsuit against ABC and 20th Century Fox involving television series "Have Faith," because series was independently created and plaintiff's idea was not novel

ABC and 20th Century Fox have won an idea submission case filed by novelist William Kienzle - the author of "The Rosary Murders" and other mysteries. Kienzle asserted that the short-lived television series "Have Faith" was copied from a 16-page treatment he had submitted to ABC several years before the series went on the air.

The court acknowledged several similarities between Kienzle's treatment and the series: both "(1) were `Barney Miller' style situation comedies, (2) involved a group of priests who lived together in an inner-city rectory, (3) had story lines that revolved around local residents or parishioners with whom the priests come into contact, (4) featured a Polish priest, (5) featured an unorthodox priest who occasionally shunned some of the priesthood's traditional conventions, and (6) featured a priest with a commanding physical presence."

The court found, however, that ABC and Fox proved that "Have Faith" had been independently created by Alicia Ulrich, a television reporter, who had submitted her idea to Fox, and that none of those involved in developing "Have Faith" had ever seen Kienzle's treatment.

Kienzle argued that "striking similarities" between the series and his treatment precluded the possibility of independent creation. The court disagreed. Said the court:

"No trier of the facts could reasonably conclude that the ideas in Kienzle's spine idea and `Have Faith' are so strikingly similar as to preclude the possibility of independent creation. Kienzle says the record reveals `an unearthly confluence of a multitude of coincidences and similarities which are otherwise unprecedented in the experience of mankind.' To say the absolute least, Kienzle overstates his case. In arguing that the similarities between his idea and `Have Faith' are so great as to preclude the possibility of independent creation, Kienzle relies on the following undisputed facts: (1) the title of `Have Faith' and the title of Kienzle's proposed series, `All Things', both contain two one-syllable words, (2) in promoting their series, both ABC and Kienzle referred to `Barney Miller', (3) both series have a character who is a Polish priest, (4) Kienzle's treatment and an ABC's advance press release describe a priest who is well built, (5) both series accentuate the `interaction of priests and people' rather than the `interplay between priests,' (6) both series are situation comedies set in an inner-city rectory.

"For the reasons which follow, these similarities simply would not permit a trier of the facts to reasonably conclude that Kienzle's spine idea and `Have Faith' are `so overwhelmingly identical that the possibility of independent creation is precluded.'

"- The title of many television shows contain only two one-syllable words. [Footnote] For instance, the following television series have titles containing only two one-syllable words: CBS' `Frank's Place', ABC's `That Girl', HBO's `Dream On', NBC's `Joe Bash', CBS' `Good Times', NBC's `Night Court', NBC's `Star Trek', and CBS's "All's Fair", and CBS and NBC's `Get Smart.' [end note]

"- The writer and co-creator of `Have Faith", Mauldin, wrote 160-170 episodes of `Barney Miller' and thus it is not surprising that, when promoting the series, ABC compared it to `Barney Miller'.

"- The fact that both `Have Faith' and Kienzle's treatment feature a Polish priest is plausibly explained by Mauldin who stated he patterned the character of Fr. Gabriel Padninski in `Have Faith' after a character in `Barney Miller', Wojohoweizc, a Polish detective.

" - `Barney Miller' and other popular, long-running situation comedies, e.g. NBC's `Night Court' and CBS' `Alice', have featured the interaction between a core of regular characters and the public. Thus, instead of misappropriating Kienzle's idea, defendants' emphasis on the priests' interaction with the public appears to have been the application of a successful format in a different context.

"- Kienzle developed his idea for a situation comedy set in an inner-city rectory in 1980. ...Erlicht conceptualized a thematically similar television series in 1987 after developing friendships with a group of California priests. It is not an `unearthly' coincidence that two individuals intimately familiar with the priesthood independently thought of the same raw idea for a television series within a seven-year time period."

The court added, in a footnote, that it would have granted the defendants' motion for summary judgment even if they had not proved independent creation of their series. It would have done so, the court explained, because an idea cannot be misappropriated unless it is novel, and a proposal for a television series is not novel if it merely incorporates two pre-existing ideas. This was all Kienzle's treatment did, the court said. It incorporated the elements of (1) a Barney Miller-type series involving priests (2) who work in an inner-city rectory. The first of these elements "clearly" was not novel because it was based on a long-running television series. The second element was not novel either, because "In

1962, ABC aired a television series based on the motion picture `Going My Way' which featured a young and old priest who worked in an inner-city rectory...."

Kienzle v. Capital Cities/American Broadcasting Company, 774 F.Supp. 432 (E.D.Mich. 1991) [ELR 13:12:3]

New York appellate court affirms dismissal of state court action against NBC alleging misappropriation of idea for "The Cosby Show"; earlier dismissal of federal court action brought by same plaintiff constituted res judicata

Another episode in a long-running lawsuit over who first had the idea for "The Cosby Show" has concluded with another victory for defendant NBC. The suit was brought by Hwesu Murray, a former NBC employee, who alleged that "The Cosby Show" was derived from a proposal he had submitted to the network in 1980 for a television series, to be entitled "Father's Day," about an African-American middle-class family.

Murray originally filed his lawsuit in federal court, alleging breach of implied contract and related claims under New York state law. That case was dismissed, and the dismissal was affirmed on appeal, on the grounds that the idea embodied in "Father's Day" was not novel and thus could not be the basis for an implied contract under New York law. (ELR 10:7:8; 9:10:4; 9:5:11)

Murray then sued in state court where he alleged the same facts but somewhat different legal theories. That case too was dismissed, on res judicata grounds. (ELR 12:7:16) The New York Appellate Division has now affirmed the dismissal of the state action.

The appellate court has ruled that the final judgment in the federal action - a judgment that had been rendered on the merits - precluded Murray "from relitigating issues that were or could have been raised in that action." This is so, even though the subsequent state court action was based on different legal theories. The appellate court found that the state suit "arose out of precisely the same facts presented in the federal action," and thus the claims made in the state case "could have been raised" in the earlier federal case. Nor did it matter that some of the claims asserted in the state case were equitable, rather than legal, because "res judicata bars all subsequent claims arising out of the same transaction, whether in law or in equity, regardless of whether the prior action asserted legal claims only."

This is the second time a court has so ruled. Earlier, a federal court enjoined Murray from relitigating in state court certain claims that had already been decided in federal court. (ELR 11:9:11) This latest decision disposes of the Murray's remaining claims.

Murray v. National Broadcasting Co., Inc., 576 N.Y.S.2d 578 (App.Div. 1991) [ELR 13:12:4]

New York court refuses to dismiss idea submission case filed against Japanese broadcaster by American creator of format for television program intended for Japanese audiences

In what may be the first international idea-submission opinion reported in the United States, a New York appellate court has affirmed a trial court order denying the defendants' motion to dismiss.

The plaintiff, television producer Diana Corto, alleges that she devised a "unique program and format targeted for Japanese audiences" which she proposed be transmitted by satellite from New York directly to Japan. She also alleges that she presented her idea to defendant Hiroshi Oto, the New York representative of defendant Fujisankei Communications International, a Japanese broadcaster, and that she performed "various acts on behalf of Fujisankei toward the end of producing and airing the program." Fujisankei began broadcasting the show, but according to Corto, Fujisankei was never informed by Oto that she was the show's creator and producer, and thus she has never been paid or credited, "as Fujisankei, through Oto, agreed to do."

The appellate court's decision is only one printed page in length, and it does not describe either the elements of the program's format or the circumstances surrounding Corto's submission of it to Oto.

The defendants moved to dismiss on the grounds that Corto's complaint failed to state a cause of action. The trial court denied the motion, and the Appellate Division has affirmed. In so ruling, the appellate court merely said that the allegations of Corto's complaint "suffice to make out causes of action for implied contract, unjust enrichment and misappropriation, regardless of whether the theory be that of reverse unilateral contract...which became binding upon plaintiff's performance..., or a conditional promise which became binding upon performance or defendants' acceptance and use of plaintiff's program...."

Corto v. Fujisankei Communications International, Inc., 576 N.Y.S.2d 139 (App.Div. 1991) [ELR 13:12:4]

Employment consultant's breach of contract claim against MTV is rejected

In August 1986, Melvyn Black entered a two year contract to provide various employment, recruiting and consulting services for MTV Networks. On October 1, 1987, MTV exercised its contractual option not to renew the contract. Upon receiving the letter, Black notified MTV that the company's former president of network operations, in a letter backdated to February 11, 1987, had confirmed the parties' understanding that the contract would be extended to December 31, 1989.

MTV advised Black that it was reaffirming the termination of the original contract effective December 31, 1987.

When Black sued MTV, alleging various causes of action, MTV learned, in the course of discovery, that from about 1981 to 1984, when Black worked for MTV on short-term agreements, Black, as described by New York appellate court Judge Kupferman, "had secretly made gifts totalling thousands of dollars to MTV's Director of Personnel and that, in 1985, he made an interest-free loan of $30,000 to another MTV employee."

Black claimed that the payments were not intended to influence the behavior of MTV employees, but were given for personal reasons. The trial court had found that the recipient of Black's gifts was involved in his consulting work during the time she was receiving money from him, noted Judge Kupferman, and that, as director of personnel, was in a position to exert influence on Black's behalf, "although it was unclear whether her loyalty was actually compromised."

MTV argued that Black was precluded from any recovery for breach of contract since he had fraudulently obtained the contract at issue and breached the implicit covenant of good faith and fair dealing in the contract by making the purported gifts and loan.

The appellate court found that whether Black's payments "were made to strangers or friends in need, the mere non-disclosure of those dealings served to permit the employer, MTV, to terminate the agreement at issue." The trial court's judgment denying MTV's motion for summary judgment therefore was reversed.

Black v. MTV Networks, Inc., New York Law Journal, p. 21, col. 3 (N.Y. App., Nov. 21, 1991) [ELR 13:12:5]

Radio station's hiring of competitor's employees does not violate antitrust laws

Midwest Radio Company operated two radio stations in the Fargo, North Dakota-Moorhead, Minnesota metropolitan area. Forum Publishing Company also operated two radio stations in the area, as well as a network-affiliated television station and the only general circulation daily newspaper in Fargo-Moorhead. Forum hired seven employees from Midwest to work at Forum's station WDAY.

Midwest claimed that Forum intended to monopolize the mass media advertising market in Fargo-Moorhead through anticompetitive acts, including the hiring of Midwest's employees. A Federal District Court granted summary judgment to Forum on the antitrust claims and on Midwest's claim that Forum had misappropriated trade secrets. A jury found on behalf of Forum on Midwest's state claims of tortious interference with contract and unfair competition.

The parties agreed on the relevant geographic market. Midwest
argued that the relevant product market consisted of Forum's newspaper, commercial radio, and commercial television. A Federal Court of Appeals, in affirming the District Court judgment, stated that Midwest produced no evidence to support the exclusion of media such as

billboards, weekly newspapers, magazines and direct mail from its proposed definition of the mass media advertising market. Therefore, the District Court did not err in concluding, as a matter of law, that Forum did not control a monopoly in the mass media advertising market.

Judge Wollman then noted that the evidence indicated that the employees hired by Forum were used to improve the radio station's performance. A valid business reason existed for the conduct alleged to be predatory, and Midwest did not demonstrate that there was an issue of material fact with respect to the claim of attempted monopolization under section 2 of the Sherman Act.

The court concluded by stating that there was no antitrust injury to Midwest. Forum's "attempt to turn up the heat of the competition most likely improved the radio programming in Fargo-Moorhead by providing better talent, more appealing music, and a healthy rivalry among competitors for mass media advertising dollars."

Midwest Radio Company, Inc. v. Forum Publishing Company, 942 F.2d 1294 (8th Cir. 1991) [ELR 13:12:5]

Former football referee may proceed with claims against National Football League alleging age discrimination and outrageous conduct

Ben P. Dreith worked as a National Football League referee from 1970 until December 1989, when the league informed Dreith that he would not be allowed to officiate any of that year's playoff games. In early 1990, the league notified Dreith that he would be demoted from referee to line judge for the 1990-1991 season, and in January 1991, the league informed Dreith that it would not renew his contract for the coming season.

Dreith had filed a complaint with the Colorado Civil Rights Division alleging that he was demoted because of his age. The complaint was transferred to the Equal Employment Opportunity Commission, and in February 1991, the commission determined that the National Football League had violated the Age Discrimination in Employment Act by demoting Dreith because of his age. In a subsequent amended determination, the Commission, in addition to restating the previous finding, determined that the league's policy "to unduly scrutinize its officials' on-field performance after they have reached age sixty" violated the age discrimination statute.

Several weeks after Dreith filed his action in a Federal District Court in Colorado, the commission sued the National Football League in a Federal District Court in New York alleging, among other claims, that the league had demoted Dreith because of his age. The District Court in New York transferred the commission's action to the Federal District Court in Colorado.

Judge Carrigan first found that Dreith's private action under the age discrimination statute was not preempted by the later commenced action by the commission that asserted, in whole or in part, the claims raised by Dreith.

The court then refused to dismiss Dreith's claim asserting outrageous conduct based on intentional infliction of emotion distress, stating that on the basis of the evidence, reasonable jurors could differ on whether the league's conduct was outrageous.

Dreith v. National Football League, 777 F.Supp. 832 (D.Colo. 1991) [ELR 13:12:6]

Hard Rock Cafe obtains preliminary injunction barring distributor of heat transfers from selling "Hard Rain Cafe" design

A Federal District Court in Washington has issued an injunction barring Pacific Graphics, a distributor of heat transfers, from selling transfers bearing a "Hard Rain Cafe" design.

Hard Rock Cafe Licensing claimed that the transfers infringed its trademarked logo. It was noted that the letters "Hard Rain" were brown, similar to the maroon/brown color used in the classic Hard Rock Cafe T-shirts. The font of the letters in Pacific Graphics' transfer was virtually identical to the font of the letters used in Hard Rock Cafe merchandise, as was a shadow background, and the superimposition of words over a brightly colored circle.

After analyzing the factors relevant to determining the likelihood of confusion, the court concluded that Hard Rock was likely to succeed on its trademark infringement and Lanham Act section 43(a) claims.

Judge Zilly rejected Pacific Graphics' parody claim, stating that parody was not a defense to trademark infringement, but was another factor to be considered in the likelihood of confusion equation. And a claim of parody is disregarded "where the purpose of the similarity is to capitalize on a famous mark's popularity for [a party's] own commercial use." It was noted that Pacific Graphics appropriated the entire Hard Rock Cafe logo, including the color scheme, shapes, lettering, size and background of the design.

The Hard Rock parties demonstrated that they would suffer irreparable injury in the absence of a preliminary injunction, and that the entry of an injunction would not cause substantial harm to Pacific Graphics.

Hard Rock Cafe Licensing Corporation v. Pacific Graphics, Inc., 776 F.Supp. 1454 (W.D.Wash. 1991) [ELR 13:12:6]

New York court refuses to enjoin allegedly unauthorized distribution of "The Terminator" videocassettes

Hemdale Film Corporation, the producer of the film "The Terminator," sold all its rights and interest in the film to Cinema '84, a New York limited partnership. Cinema '84 then granted Interlink Film Distribution the exclusive right to distribute and exploit the film. Interlink proceeded to enter a subdistribution agreement granting to Hemdale all the distribution rights Interlink had acquired from Cinema '84; Interlink and Cinema '84 retained the right to participate in distribution matters.

In mid-1991, Hemdale began distributing "The Terminator" videos through Hemdale Home Video Inc. Interlink, claiming that the distribution was unauthorized, sought a preliminary injunction.

New York trial court Judge Myriam J. Altman rejected Interlink's request, finding that the company did not demonstrate irreparable harm or that the equities were in its favor.

Judge Altman noted that a December 1984 letter agreement, dated about six weeks after the agreement between Cinema '84 and Hemdale, apparently designated Hemdale as Cinema '84's "sole and exclusive agent for the purpose of exploiting the ancillary rights..." in "The Terminator."

It also was observed that Interlink did not seek injunctive relief until after the Hemdale parties moved to dismiss and that Interlink was "profiting handsomely from the distribution," given the July 1991 release of "Terminator 2: Judgment Day." While Interlink might not have chosen to distribute videocassettes of "The Terminator" through Hemdale, the company would not have prohibited distribution altogether, stated Judge Altman.

Furthermore, if an injunction were granted, Hemdale would be required to cancel commitments, resulting in a loss for all parties.

Judge Altman ordered Hemdale to provide Interlink with copies of all agreements regarding the distribution of "The Terminator."

Interlink Film Distribution Corp. v. Hemdale Film Corp., New York Law Journal, p. 23, col. 4 (N.Y.Cnty., Mar. 19, 1992) [ELR 13:12:6]

Video store owner's conviction of illegally duplicating and distributing copyrighted films is upheld

In 1990, a federal grand jury indicted William Cohen, the owner of a video store, on nine counts of violating the criminal copyright laws. The indictment charged Cohen with illegally copying, labelling and distributing videocassettes of copyrighted films. A Federal District Court jury convicted Cohen on all nine counts, and the court sentenced Cohen, among other penalties, to eighteen months imprisonment on each count to run concurrently.

Chief Judge Merritt stated that a rational trier of fact could have reasonably inferred that Cohen had not been given permission from the copyright holders to make and rent copies of their films. The record did not suggest that such copyright holders ever grant permission to others to copy and distribute their products without compensation, "let alone to video store owners, one of their most important markets."

The court then found that the "first sale doctrine" did not apply to Cohen's activities. The videocassettes and the casings differed from the authorized copies, and the technical experts presented by the government provided convincing evidence of the illegitimate origins of the videocassettes seized from Cohen's store.

The District Court did not err in admitting into evidence a consent judgment from the companion civil copyright infringement action. The consent judgment was relevant, not overly prejudicial and was admitted with a limiting instruction, noted Chief Judge Merritt.

The findings upon which the District Court based its enhancement of Cohen's sentence and the court's method of determining the appropriate value of the infringing tapes for sentencing purposes were not clearly erroneous, concluded the court.

Judge Keith, in dissent, expressed the view that the District Court erred in admitting the consent judgment. The consent judgment did not contain an admission of liability or wrongdoing by Cohen, but was "highly prejudicial," stated Judge Keith, in that it permitted the government to suggest that Cohen was guilty of the very conduct for which he was being tried. It appeared to the dissent that the limiting instruction did not serve to prevent the improper inference that the civil judgment established Cohen's guilt in the criminal action, and Judge Keith would have reversed the conviction and sentence accordingly.

United States v. Cohen, 946 F.2d 430 (6th Cir. 1991) [ELR 13:12:7]

City is not liable in dispute involving removal of artist's work from convention center lobby

In November 1982, artist Mike Todd's works were featured in an exhibition in the lobby of the Myrtle Beach Convention Center. Todd's exhibit was presented under the auspices of a local art guild; the city had agreed to allow the guild to "self-police" displays at the convention center and to act as a self-censor. The president of the guild asked Todd to remove from the exhibition a work entitled "Narcissus or Twentieth Century Mondonna."

After unsuccessful negotiations held by Todd, the guild, and the director of the convention center, the Myrtle Beach city manager ordered the closing of the inner lobby convention center until the matter was resolved.

When Todd brought an action in a South Carolina trial court, the court, finding that Todd was deprived of procedural due process since the city had not followed obscenity procedures, granted a temporary injunction to preserve the status quo.

Todd reopened the exhibition, and subsequently sued various municipal parties under 42 U.S.C. 1983, alleging the violation of his civil rights under the First and Fourteenth Amendments to the United States Constitution. The trial court granted summary judgment on behalf of the municipal parties, finding that the municipal council did not meet or vote on the acts of the former director of the convention center and the former city manager, and that those individuals were entitled to qualified immunity.

The South Carolina Supreme Court has upheld the trial court's decision.

Judge Toal, in dissent, would have reversed the grant of summary judgment to the city, stating that the evidence was sufficient to indicate a city "policy" creating liability. It further appeared to Judge Toal that the city had designated a limited public forum in the convention center inner lobby; that the city did not narrowly tailor its restriction of Todd's speech; and, in all, that the city, pursuant to a "policy," infringed upon Todd's First Amendment rights. Judge Toal pointed out that Todd had not sought summary judgment on that basis, and suggested that if Todd raised this argument on remand, the city then would be entitled to present evidence to negate the apparent de facto policy.

Todd v. Smith, 407 S.E.2d 644 (S.C. 1991) [ELR 13:12:7]

Differences between glass spiral sculptures precludes copyright infringement claim

Runstadler Studios owned the copyright on a glass sculpture known as "Spiral Motion." The sculpture was composed of 39 clear glass rectangles, overlying each other to form a spiral. Jeph Bilsky subsequently produced a sculpture composed of glass panes; the Copyright Office rejected his application to register a copyright on the ground that the sculpture was an uncopyrightable aggregation of generic shapes.

When Runstadler sued Bilsky and Merrill Chase, the distributor of Bilsky's work, a Federal District Court in Illinois found that Runstadler held a valid copyright. Runstadler may have used the wrong copyright registration application, i.e., the form for registering textual material rather than visual arts, but photographs of the sculpture were attached to the application. Judge Moran further found that the sculpture possessed the requisite creativity to qualify as an original work of authorship, citing "the choice of location, orientation and dimensions of the glass panes, and the degree of arc of the spiral" as showing "far more than a trivial amount of intellectual labor and artistic expression on [Runstadler's] part."

The court then determined, after comparing the similarities and differences in the works, that Bilsky copied Spiral Motion. However, Runstadler's glass sculpture contained only limited elements of protectible expression. Judge Moran observed that Spiral Motion has "a light, airy, delicate, graceful feel to it...the Bilsky spiral [had] a considerably heavier, more massive feel to it." And the light diffusion patterns of the two works were considerably different.

In all, an ordinary observer would not find the sculptures to be similar; the Bilsky piece did not capture the "total concept and feel" of Spiral Motion. The court therefore denied Runstadler's motion for a permanent injunction.

Runstadler Studios, Inc. v. MCM Limited Partnership, 768 F.Supp. 1292 (N.D.Ill. 1991) [ELR 13:12:8]

Court upholds Federal Communications Commission's channel exchange policy

The Federal Communications Commission allows commercial and noncommercial television licensees to exchange channels without exposing the licensees to competing applications. Rainbow Broadcasting Company, the holder of a construction permit to build a television station on Channel 65 in Orlando, Florida sought review of the policy and of two FCC orders that approved a channel exchange between two channels near Orlando, Florida and denied Rainbow the right to compete for the commercial frequency.

Rainbow claimed that the policy would stifle competition, but a Federal Court of Appeals in Washington, D.C. rejected the argument, stating that a policy "need not promote competition to be lawful." And the channel exchange policy allows room for competition, stated Judge Sentelle, by allowing private parties to initiate an exchange with minimal imposition of FCC requirements. The policy was designed to assist noncommercial educational stations in financing the construction of improvements in operations, particularly in light of the reduction of federal funding for noncommercial broadcasting. Thus, commercial stations seeking a channel exchange could be a source of funds for noncommercial stations, thereby promoting "spectrum efficiency and provid[ing] improved service to the public."

The policy was a proper exercise of the FCC's authority to further the public interest, continued Judge Sentelle, and the FCC did not misapply the policy in approving the exchange in issue. The policy did not preclude the highest bid from reaching an educational channel before it agreed to a swap with a commercial channel; the FCC reviewed the exchange to insure the continued separation of identity of the exchanging channels; and Rainbow's petition for review was denied accordingly.

Rainbow Broadcasting Company v. Federal Communications Commission, 949 F.2d 405 (D.C.Cir. 1991) [ELR 13:12:8]

RICO provision authorizing pre-trial seizures of obscene materials is ruled facially unconstitutional

The federal Racketeer Influenced and Corrupt Organizations Act penalizes individuals convicted of engaging in a pattern of racketeering. The penalties include prison terms of up to twenty years, substantial fines and the forfeiture of interests, acquired in violation of RICO, in specified property. The statute also permits the government to apply to a Federal District Court for a pre-trial order to preserve assets for forfeiture.

The statute provides that an individual is guilty of engaging in a pattern of racketeering activity if the person commits two or more acts of "racketeering activity." In 1984, Congress added to the list of predicate offenses "any act...dealing in obscene matter...which is chargeable under State law and punishable by imprisonment for more than one year" and "any act which is indictable under" the federal obscenity laws.

The Adult Video Association, along with a producer, distributor, retailer and consumer of sexually explicit videotapes brought an action against the Attorney General of the United States challenging RICO's provisions as facially unconstitutional under the First, Fifth and Eighth Amendments to the federal Constitution.

The association argued that RICO's authorization of pre-trial seizures and post-trial forfeiture amounted to unconstitutional prior restraints on speech. It also was alleged that the severe penalties under the statute for as few as two obscenity violations, "when combined with the inherent uncertainty of deciding what qualifies as obscenity" would chill constitutionally protected erotic and sexually explicit speech.

A Federal District Court in California granted the government's motion to dismiss the association's action for failure to state a claim with respect to every claim except a count challenging RICO's civil remedies. The court stated that RICO imposed subsequent punishment, rather than a prior restraint, on individuals convicted of obscenity violations.

Federal Court of Appeals Judge Thomas Tang first found that the Adult Video parties had standing to challenge the constitutionality of RICO obscenity prosecutions in and of themselves, and the statutory authorization of pre-trial seizures and post-trial forfeitures in such prosecutions.

The court then determined that Fort Wayne Books, Inc. v. Indiana, 489 U.S. 46 (1989; ELR 11:1:10) was dispositive of the association's unconstitutional chill argument, and also rejected the argument that RICO, as applied to obscenity, was subject to facial invalidation for overbreadth.

The association argued that the section 1963(d) pre-trial seizure provision was facially unconstitutional because it permitted seizures of videotapes based only on a finding of probable cause. Judge Tang again cited the Supreme Court's opinion in Fort Wayne as leaving "little room for argument over the unconstitutionality of pre-trial seizures of allegedly obscene materials." In Fort Wayne, the Supreme Court held that pre-trial seizures of allegedly obscene books and films under Indiana's RICO statute violated the First Amendment. This holding, stated Judge Tang, "translates readily to the federal RICO context," for the First Amendment "will not tolerate such seizures until the government's reasons for seizure weather the crucible of an adversary hearing."

The court proceeded to hold that the portion of section 1963(d) that authorized pre-trial seizures was facially unconstitutional; reversed on this issue; and directed the District Court to enter judgment for Adult Video.

In turning to the post-trial forfeiture penalty, the court concluded that "some tailoring of the scope of forfeiture is necessary to harmonize RICO's post-trial forfeiture penalty with the First Amendment." It was noted, in part, that after being convicted of a RICO offense, an individual would "simply have no First Amendment right to use the profits and proceeds from trafficking in obscenity to finance...constitutionally protected speech." However, to the extent that section 1963 required the forfeiture of more property than the Constitution would tolerate as punishment for an obscenity offense, the statute was unconstitutional on its face.

The court observed that other obscenity statutes contained less drastic forfeiture provisions than those im-

or interests of the convicted individual invested "in legitimate expressive activity being conducted by parts of the enterprise uninvolved or only marginally involved in the racketeering activity may not be forfeited." Judge Tang stated that it would remain for the District Courts the specific formulation of RICO forfeiture orders that are consistent with the First Amendment, in light of the particular facts presented in individual cases.

In all, RICO's provisions permitting the pre-trial preservation of assets for forfeiture were not facially unconstitutional in obscenity cases - only that part of section 1963(d) that authorized pre-trial seizures of obscene materials on the basis of probable cause was unconstitutional. And the scope of RICO forfeiture in obscenity cases must be tailored to conform with the First Amendment.

Adult Video Association v. Barr, Case No. 90-55252 (9th Cir., Mar. 12, 1992) [ELR 13:12:9]

Ordinance regulating satellite receive-only antennas does not violate First Amendment

Wayne and Judie Johnson were denied a variance for a satellite receive-only antenna pursuant to a Pleasanton ordinance.

In November 1990, a Federal District Court held that the ordinance was preempted by regulations of the Federal Communications Commission in that the city differentiated between the satellite receive-only antennas and other types of antennas in four different respects. The court also found that although the ordinance had a reasonable and clearly defined health, safety or aesthetic objective, the city did not present sufficient evidence to overcome, on summary judgment, the Johnsons' showing that the ordinance placed such unreasonable limitations on their use of the antenna as to effectively prevent their reception of satellite delivered signals.

Subsequently, the Johnsons moved for summary judgment on their claims that the ordinance violated their First Amendment rights and that enforcement of the ordinance violated their rights under 42 U.S.C. sec. 1983. According to the Johnsons, the ordinance denied them their constitutional right of access to the television programming of their choice.

The court found that there was "no absolute and all-encompassing right to the television programming of choice." In reviewing the "traditional" time, place, and manner standards applicable to government regulations having an effect on speech, Judge D. Lowell Jensen stated that the ordinance was content-neutral. The ordinance did not distinguish between types of speech or its content, was not related to the suppression of expression, and did not seek to ban satellite receive-only antennas altogether. It was further found that the city sought to promote reasonable and clearly defined aesthetic and safety objectives, and that the ordinance was sufficiently related to the furtherance of a substantial government interest to withstand a First Amendment challenge.

Judge Jensen then stated that the court was not persuaded that the ordinance created an absolute ban on the Johnsons' right to receive satellite programming. Apparently, the Johnsons' choice to retain a pool may have foreclosed their construction of a satellite antenna which would comply with the ordinance. However, evidence was presented that the Johnsons could comply with the landscaping or screening requirements of the ordinance in certain areas of their property without creating an unreasonable interference with the antenna's reception. The Johnsons may be limited to access to 37 channels through cable programming and 15 channels through ordinary network broadcast, but, again, it did not appear to the court that the Johnsons had established a First Amendment right to receive maximum programming.

The court concluded that the ordinance was facially constitutional and was a valid exercise of the city's police power, and therefore denied the Johnsons' motion for summary judgment.

Judge Jensen then rejected the Johnsons' motion for summary judgment with respect to their Fourteenth Amendment claims and their claims under 42 U.S.C. sec. 1983. The Johnsons had alleged that because the ordinance imposed an unreasonable limitation on satellite antenna owners, a section 1983 cause of action was available. After careful review, the court determined that the fact that a regulation has been preempted does not necessarily create a cause of action for a violation of one's federal rights under section 1983. In the circumstances of the instant case, the court found that it would be contrary to the intent of the legislature to provide a separate cause of action under section 1983 following "a mere finding of preemption."

The city asked the court to find that the portions of the ordinance not cited in the court's prior finding of preemption, i.e., the provisions concerning design review, screening, and no front yard placement, were severable from the provisions cited in the court's prior order. The court noted its prior reference to "the ordinance" in its entirety as a single unit rather than to separate portions; held that the ordinance was deemed preempted in its entirety; and granted the Johnsons' motion for involuntary dismissal of a counterclaim filed by the city.

Johnson v. City of Pleasanton, Case No.C-90-0122 (N.D.Ca. 1991) [ELR 13:12:10]

Cincinnati ordinance prohibiting the distribution of commercial handbills on public property violates First Amendment

A Cincinnati ordinance prohibited the distribution of commercial handbills on public property. A Federal District Court found that the ordinance, by effectively granting newspaper distributors access to the public sidewalks through newsracks while denying that access to distributors of "commercial handbills," violated the First Amendment.

A Federal Court of Appeals has upheld the District Court decision, stating that "commercial speech" only receives lesser First Amendment protection when the governmental interest asserted is either related to regulating the commerce the commercial speech is promoting, or related to any distinctive effects the commercial activity would produce; the city of Cincinnati had asserted neither governmental interest.

Judge Boggs noted that Discovery Network published a magazine advertising learning programs, recreational opportunities, and social events for adults. Harmon Publishing published a magazine listing houses and other residential real estate for sale or rent. The publishers had been given permission by the city to place newsracks along public right-of-ways, but in February 1990, the city council required regulatory authorities to enforce an existing ordinance prohibiting the distribution of commercial handbills on public property.

The publishers sued the city under 42 U.S.C. sec. 1983, requesting declaratory and injunctive relief. The city argued that the newsracks presented aesthetic and safety problems. However, there were no city regulations establishing any safety or aesthetic standards for newsracks, stated Judge Boggs, and city officials could not distinguish the commercial from the non-commercial newsracks. It also was observed that the Discovery parties used only 62 of the between 1,500 and 2,000 newsracks present on the city's streets. The city had agreed that newsracks offering non-commercial material caused the same problems as those distributing commercial material; the District Court therefore held that the regulation was an excessive means to accomplish the stated ends.

Judge Boggs, in upholding the finding that the city's ordinance did not set forth a "reasonable fit" between the ends asserted and the means chosen to advance those ends, noted, in part, that the city had many options to control the purported ill effect of newsracks, so long as those options did not treat newsracks differently according to the content of the publications inside.

The court concluded by observing that the ordinance was not a constitutional time, place, and manner restriction because it was not content-neutral. And, as a content-based restriction, the ordinance was not the least restrictive means to further the governmental interest because it placed a substantially greater burden on commercial speech than was necessary to satisfy the city's aesthetic and safety concerns.

Discovery Network, Inc. v. City of Cincinnati, 946 F.2d 464 (6th Cir. 1991) [ELR 13:12:11]

Operator of cable system with less than 36 activated channels is not required to provide access to unaffiliated programmer

Sierra East Television sought commercial access to a cable system operated by WestStar Cable in Inyo County, California.

After reviewing the technology of cable television systems, considering the law of lease access, and applying the Cable Act's definition of "activated channels," a Federal District Court has dismissed Sierra's complaint.

The lease access requirement of the Cable Act requires large cable operators to reserve some channels for use by independent commercial programmers. According to Judge Wanger, access policy is to be implemented in a manner consistent with the growth and development of cable systems; the statute does not require the operator of a cable system with fewer than thirty-six activated channels "to designate channel capacity for commercial use by persons unaffiliated with the operator, unless the cable system is required to provide such channel capacity under the terms of a franchise in effect on the date of the enactment of the title." WestStar had no such franchise in effect on October 30, 1984.

Judge Wanger stated that the term "activated channels" did not mean unengineered potential channel capability, but referred to the number of channels actually available to subscribers. The evidence established that WestStar would not have more than twenty-five channels over which subscribers would receive cable service until the operator added equipment and engineering - the cost to upgrade the company's system to the capacity necessary to deliver services on thirty-six channels was estimated at about $250,000.

The court distinguished the case of Media Ranch v. Manhattan Cable Television (see below). Although Sierra cited the case for the proposition that the determination of the number of activated channels for commercial access should be made on a franchise-by-franchise basis, the court pointed out that the case did not involve the number of activated channels. And the District Court did not rule on the question of whether the number of channels to which access was sought should be measured by upgraded areas of the cable system. Media Ranch did not hold, stated Judge Wanger, that activated channels are to be measured only by an upgraded portion, i.e., less than the whole of a cable system to determine lease access requirements.

Sierra East Television, Inc. v. WestStar Cable Television, Inc., 776 F.Supp. 1405 (E.D.Ca. 1991) [ELR 13:12:11]

Producer of adult-oriented programming may proceed with claim seeking access to cable operator's leased access channels

In Media Ranch, a Federal District Court in New York decided a question of first impression regarding the meaning of sec. 612 of the Cable Communications Policy Act of 1984. Media Ranch, the producer of an adult-oriented cable television program called "Midnight Blue" claimed that Manhattan Cable Television set unreasonable terms and conditions for the continued broadcast of the program.

Judge Sand, in granting Media's motion for a declaration that Manhattan Cable did not set aside the proper number of leased access channels, noted that the cable company operated a system with forty-two activated channels. Media had presented "Midnight Blue" on cable Channel 23 for ten years, but in August 1990, Manhattan Cable decided to present C-SPAN programming on Channel 23. The cable company notified Media and other programmers to seek time on the company's public access or leased access channels.

The public access channel provided time to the public free of charge on a first-come, first-served basis, with no commercials permitted on the channels. Four other channels were devoted to leased access use by unaffiliated commercial programmers; commercials were permitted on those channels.

When Media and Manhattan Cable failed to agree on the terms for use of the leased access channels, Media claimed that the cable operator's terms were unreasonable within the meaning of sec. 612(d) of the Cable Act. Media challenged a proposed provision which would have limited Manhattan Cable's liability for non-wilful breach of contract and a provision requiring Media to submit a videotape of its programming to Manhattan Cable for review one week in advance of the broadcast.

Federal District Court Judge Sand noted that sec. 612 requires cable operators to designate a certain percentage of their channel capacity for commercial use by programmers not affiliated with the operator. And in order to reduce editorial control by the cable operators and insure diversity of programming, the statute holds operators to a standard of reasonableness in setting prices and conditions for offering leased access time.

Judge Sand, stating that reasonableness, and not diversity, was the determinative issue in sec. 612 actions, held that Manhattan Cable was not entitled to summary judgment. Although Media did not show by clear and convincing evidence that Manhattan had acted unreasonably, the court declined to find, on the basis of the record, that no reasonable finder of fact could find for Media on the question of reasonableness.

The court then held that Media was entitled to raise the claim that Manhattan had not set aside the number of leased access channels required by sec. 612(b); that Manhattan Cable was required to set aside five channels for leased access use; and that the cable operator therefore violated the statute.

Media Ranch, Inc. v. Manhattan Cable Television, Inc., 757 F.Supp. 310 (S.D.N.Y. 1991) [ELR 13:12:12]

City's denial of franchise transfer approval violates Cable Communications Policy Act and franchise agreement violates cable operator's First Amendment rights

In 1986, the city of Huntsville and Cable Alabama Corporation entered into a franchise agreement. Certain provisions of the agreement restricted Cable Alabama's right to sell, assign or otherwise transfer its rights, and granted the city rights to approve or disapprove any proposed sale, assignment or transfer.

During the next few years, Cable Alabama and a competing system, Comcast Cable Television, engaged in a price war, resulting in significant losses to both companies. In 1989, Bresnan Communications sought to purchase the Huntsville cable systems of both Cable Alabama and Comcast. Bresnan planned to combine the two systems and to operate a single cable television system. But the Huntsville City Council refused to approve Cable Alabama's transfer request (Comcast's franchise did not require city approval).

Subsequently, Comcast proposed to acquire several Cable Alabama franchises, including the system in Huntsville. The city, again citing the need to maintain a "competitive" cable television market in Huntsville, rejected Cable Alabama's transfer approval request.

When Cable Alabama sued the city, a Federal District Court first found that sec. sec. 553(c) and (d) of the Cable Communications Policy Act of 1984 authorized the Federal Communications Commission to regulate the ownership and control of local cable television systems on the basis of an entity's ownership or control of other local cable television systems and that local franchising authorities, such as the city of Huntsville, may not prohibit the ownership or control of a local cable television system because an entity owns or controls any other cable system. The city therefore could not prohibit either Bresnan or Comcast from acquiring Cable Alabama because those parties owned or controlled other cable systems, either in Huntsville or elsewhere.

Chief Judge Myron H. Thompson found that the city, its mayor and city council violated sec. 533(d) by basing the decisions to reject Cable Alabama's transfer requests on the stated reason that Bresnan (or Comcast) then would own and control both Huntsville cable television systems, and granted Cable Alabama's motion for summary judgment on this claim.

Cable Alabama also argued that by forcing the company to provide cable television services in Huntsville, the city violated the company's First Amendment right to refrain from speaking. The court, after careful review, granted Cable Alabama's motion for summary judgment, stating that the city's reasons for rejecting the transfers to Bresnan and Comcast served no "important or substantial" governmental interest and did not represent the least intrusive means by which legitimate governmental interests might have been satisfied.

It was further found that the transfer provisions of the cable franchise allowed for "an open-ended, unguided and unstructured decision-making process" by the city. The franchise agreement allowed consideration of a proposed transferee's qualification without any standard to determine what qualifications the transferee was required to meet, and, in all, was unconstitutionally vague.

Judge Thompson refused to grant the city's motion for summary judgment with respect to Cable Alabama's claim that, by arbitrarily and unreasonably preventing the company from selling its cable system, the city deprived Cable Alabama of its property without just compensation. Summary judgment also was not available to the city with respect to the cable company's equal protection and Alabama contract claims.

The court declared the challenged provision of the franchise agreement void and of no effect. The city thus had no legally enforceable interest in the transfer of Cable Alabama's franchise rights, privileges, and obligations to Comcast; Cable Alabama was authorized to execute the agreement to transfer its Huntsville cable system to Comcast. Cable Alabama's request for damages and the remaining issues raised by the company must be resolved by a full trial, concluded the court.

Cable Alabama Corporation v. City of Huntsville, Alabama, 768 F.Supp. 1484 (N.D.Ala. 1991) [ELR 13:12:12]

Federal Court of Appeals orders review of revised United States Information Agency regulations concerning certification of documentary films for duty-free status abroad

In late 1985, a Federal District Court in California was asked to consider the claims of several independent film makers and film distributors, alleging that the United States Information Agency violated their constitutional rights by refusing to certify their films as "educational, scientific, or cultural" under an international treaty known as the Beirut Agreement. Agency regulations attempted to define which films would be characterized as educational; the distributors of the designated films were entitled to a certificate waiving import duties by the country to which the film was being exported.

Judge Tashima granted summary judgment on behalf of the film makers, declaring the regulations facially invalid (ELR 9:9:8).

The agency subsequently adopted new regulations and certified two documentary films for duty-free status abroad, leaving uncertified four other films. Bullfrog objected to the interim regulations, and in 1988, the District Court ruled that the interim regulations were facially unconstitutional. The court ordered the agency to issue new regulations, consistent with the Constitution within sixty days, and to grant provisional certification to Bullfrog's films, pending reconsideration under the new regulations. However, a Federal Court of Appeals granted the agency's application for a stay of the District Court's decision striking down the interim regulations.

In October 1991, the President signed into law the Foreign Relations Authorization Act. The statute, in part, set forth regulations for determining "international educational character."

Bullfrog argued that the agency's appeal should be dismissed because the parts of the interim regulations found unconstitutional by the District Court were "supplanted" by the new legislation. The agency agreed that the appeal was moot as to three parts of the regulations, and the Federal Court of Appeals dismissed the agency's appeal on those issues. The matter was remanded to the District Court with instructions to vacate its earlier judgments.

The District Court also had held unconstitutional a part of the regulations pursuant to which material could be denied certification unless its content was presented "in a primarily factual or demonstrative manner." The Federal Court of Appeals noting that the District Court had not been asked to interpret the regulation, declined to issue an advisory opinion on the constitutionality of a regulation that may have been supplanted by the new statute. And reconsideration of Bullfrog's films by the agency in light of the new legislation "may well make further litigation unnecessary."

The court therefore stated that, on remand, the District Court should enter an order requiring the agency to reconsider any of Bullfrog's films denied certification and to grant provisional certification to the films pending reconsideration.

In a separate case, Bullfrog sought an award of attorneys fees under the Equal Access to Justice Act, 28 U.S.C. sec. 2412. A Federal District Court had denied the award, holding that the government's position was substantially justified, and that Bullfrog was not entitled to fees incurred on its post-judgment motions because those motions involved new substantive issues and were not part of the original action.

Federal Court of Appeals Judge Fletcher found that the District Court abused its discretion in holding that Bullfrog was not entitled to attorneys fees because the government's position was substantially justified; however, the District Court did not abuse its discretion in refusing, for the purpose of its fee award, to consider post-judgment proceedings together with proceedings necessary to obtain the judgment.

Bullfrog Films, Inc. v. Wick, Case Nos. 88-6310; 89-55945 (9th Cir., Mar. 12, 1992) [ELR 13:12:13]

Source for Glamour Magazine article may proceed with promissory estoppel claim arising from allegedly unauthorized disclosure of identifying information

The September 1988 issue of Glamour Magazine contained an article, written by Claudia Dreifus, about sexual abuse by therapists. Jill Ruzicka's experience as a victim of sexual abuse was discussed in the article. Ruzicka had agreed to be interviewed for the article, upon the condition that she would not be identified or made identifiable. Dreifus, although referring to Ruzicka as "Jill Lundquist," stated in the article that "Lundquist" was a Minneapolis attorney who had served on a Minnesota task force that dealt with therapist-patient abuse, and mentioned "Lundquist's" lawsuit against the allegedly offending psychiatrist.

A Federal District Court in Minnesota, as reported at ELR 12:6:7, granted summary judgment to Conde Nast Publications, the owner of Glamour magazine, and to Dreifus on Ruzicka's breach of contract and other state law claims.

A Federal Court of Appeals has affirmed the District Court's judgment with respect to Ruzicka's contract and tort claims, but remanded the matter to the District Court for consideration of Ruzicka's claim under principles of promissory estoppel.

Chief Judge Lay first agreed with the District Court that Minnesota law applied in the case, noting that the agreement was made in Minnesota, that the interviews took place there, and that Ruzicka resided in the state.

The court determined that the Minnesota Supreme Court's decision in Cohen v. Cowles Media Co.,, 457 N.W.2d 199 (Minn. 1990); rev'd on other grounds, 111 S.Ct. 2513 (1991; ELR 13:3:11; 12:7:13) would apply. The Minnesota Supreme Court, as described by Chief Judge Lay, concluded that promises of confidentiality between journalists and sources "are not legally enforceable under Minnesota law because such parties do not intend a binding contract;" this holding was not affected by the United States Supreme Court's reversal of the case on the promissory estoppel issue. The court therefore affirmed, on the basis of the Minnesota Supreme Court's decision in Cohen, the District Court's rejection of Ruzicka's claim for breach of an express contract.

Chief Judge Lay, without expressing an opinion as to the viability of Ruzicka's cause of action for promissory estoppel, remanded the claim to the District Court.

Ruzicka v. Conde Nast Publications, Inc., 939 F.2d 578 (8th Cir. 1991) [ELR 13:12:14]

Federal Court of Appeals upholds decision denying preliminary injunction to importer of "Miss America" dolls pending Customs Service proceeding brought by distributor of Barbie dolls

As reported at ELR 13:4:14, Mattel, Inc. claimed that the head sculptures for two dolls in Kenner Products' proposed "Miss America" fashion doll series were designed from the same mold as that used for Mattel's "Super Star Barbie."

When Kenner and the Miss America Organization sought a preliminary injunction barring Mattel and other parties from interfering with the importation and sale in the United States of the dolls in issue, Mattel argued that the court lacked jurisdiction pending the issuance of a final order in a proceeding conducted by United States Customs to determine whether the "Miss America" dolls infringed Mattel's copyright. Mattel had obtained an exclusion order detaining shipments of the dolls from China on "suspicion" of infringement of Mattel's copyright for Barbie.

A Federal District Court in New York noted that under the Copyright Act, the importation into the United States of copies of copyrighted work acquired abroad would infringe the copyright owner's exclusive right to distribute copies. The Treasury Department has set forth regulations to enforce the provisions of the Copyright Act prohibiting the importation of allegedly infringing material. The court found that the Kenner parties were required to exhaust their administrative remedies in the Customs proceeding before obtaining judicial review.

The Intellectual Property Rights Branch of the Customs Service subsequently determined that the overall appearance of three of the Kenner dolls' heads were "substantially similar" to the head of Superstar Barbie, and that the dolls infringed Mattel's copyright. A Federal Court of Appeals has affirmed the District Court's decision, rejecting Kenner's arguments against the application of the exhaustion doctrine. Judge Richard J. Cardamone noted that Customs has expertise in infringement determinations and that if, upon administrative reconsideration or judicial review, the Customs' decision was overturned, any loss due to canceled orders would be calculable in money damages.

Miss America Organization v. Mattel, Inc., 945 F.2d 536 (2d Cir. 1991) [ELR 13:12:14]

Court declines to grant injunctive and declaratory relief in connection with Defense Department's guidelines for covering overseas military activities

Various press representatives challenged the United States Department of Defense regulations governing coverage of the military activities of American armed forces overseas during periods of open hostilities. The regulations, adopted after the Vietnam war, were in effect during the Grenada and Panama military operations, and in revised form, applied during Operations Desert Shield and Desert Storm. The regulations were lifted on March 4, 1991, upon, as described by Federal District Court Judge Sand, the "informal cessation of hostilities" in the Persian Gulf.

The press parties' fundamental claim was that the press has a First Amendment right to unlimited access to foreign areas in which American armed forces are engaged in combat activities. The "pooling" regulations limit battlefield access to a specified number of press representatives and subject them to certain restrictions, which, according to the press parties, infringe on news gathering activities in violation of the First Amendment. The press did not focus on the regulations which limit, for national security reasons, the information that pool members may publish.

The court found that the press parties had standing to raise their First and Fifth Amendment claims, rejecting the Department of Defense argument that there was no showing that those parties were in fact excluded from admission to any media pool. The claim that the questions presented were non-justiciable as political questions was rejected. And Judge Sand declared that mootness did not preclude the court from considering the challenged conduct, which met the "capable of repetition, yet evading review" requirements.

Notwithstanding the above, the court declined to issue the requested injunctive relief because such relief was not appropriate for past injuries. Judge Sand then declared that the question of whether press parties were entitled to report, without government interference, on overt actions in an open area, was a question of first impression, "the answer to which would require charting new constitutional territory." The court therefore suggested leaving the definition of the "exact parameters of press access to military operations abroad for a later date when a full record is available, in the unfortunate event that there is another military operation," and, accordingly, rejected the press parties' request for declaratory relief on their right of access claim.

The press parties also claimed that the government gave some members of the press preferential treatment in the form of financial assistance and more extensive access to events as they occurred. The court refused to evaluate a set of regulations, undergoing review for probable revision, to determine their reasonableness. In the absence of a well focused controversy, the court granted the Department of Defense's motion to dismiss the complaint.

Nation Magazine v. United States Department of Defense, 762 F.Supp. 1558 (S.D.N.Y. 1991) [ELR 13:12:15]

Individual injured in rhinoceros attack during filming of Peter Beard wildlife documentary may proceed with negligence action

In 1987, Robert Nixon, on behalf of ABC Television invited Terence Mathews, a Kenyan sculptor and former professional big game hunter and safari guide, to appear on a wildlife special entitled "With Peter Beard in Africa: Last Word from Paradise." The film was produced by NDEFU Productions, Peter Beard and Peter Riva, along with Robert Nixon Productions.

Mathews and Beard were tracking a mother rhinoceros and calf in Kenya's Nairobi National Park when the rhinoceros charged the men, gored Mathews and seriously wounded him.

When Mathews sued the ABC parties, a Federal District Court in New York determined that assumption of risk, known under Kenyan law as volenti non fit injuria, would provide a complete defense to negligence liability. However, Judge Kram questioned whether under Kenyan law, a party may be deemed to have assumed the risk of another's unforeseen, reckless or negligent conduct. Judge Kram rejected the ABC parties' argument that Mathews should be deemed to have assumed any risk (emphasis by the court) attendant to stalking the rhinos; held that Mathews may be deemed to have assumed and consented only to the ordinary and foreseeable risks of that activity; and stated that under Kenyan law, those risks would not include the risk of injury stemming from Beard's unforeseeable reckless conduct or the producers' negligent conduct, if proven.

The court noted that Mathews admitted that the ordinary risks of stalking a rhinoceros in the wild would include the risk of serious injury or death, and also understood the danger of approaching the particular rhino that gored him. According to Mathews, Beard alerted the rhino to the presence of the men by walking upright toward the rhino while filming with a noisy camera. Judge Kram stated that the record raised a triable issue of fact concerning whether Beard's conduct recklessly provoked the rhinoceros to charge and whether Beard's conduct was the proximate cause of Mathews' injuries.

The court denied the producers' motions for summary judgment, stating that certain evidence tended to establish that the directors/producers bore substantial responsibility for the safety of those participating in the filming. It was observed that an armed park ranger who was relied upon for protection in the event of a rhinoceros charge had left his position at the critical moment. Judge Kram held that the evidence was sufficient to raise a triable issue of fact concerning the adequacy of the producers' safety precautions.

Mathews v. ABC Television, Inc., 776 F.Supp. 821 (S.D.N.Y. 1991) [ELR 13:12:15]

Federal Court of Appeals remands, for consideration of assumption of risk doctrine, action brought by yacht owner seeking recovery for damages arising from collision at finish line of race

Domenico De Sole claimed that his racing yacht, "Ciro," was damaged in a collision with the United States Navy yacht, "Cinnabar," at the finish line of a Chesapeake Bay Yacht race. De Sole filed an action in admiralty under federal law seeking to recover damages of about $41,000.

A Federal District Court granted the Navy's motion to dismiss the action, agreeing that De Sole, in entering the race, had assumed the risk of collision.

A Federal Court of Appeals, noting the "dearth of information on sailing" in the record, has reversed the District Court's decision and remanded the matter for a hearing.

Judge Murnaghan observed that a review by Navy personnel had absolved Ciro of any fault in the collision and disqualified Cinnabar on the ground that it had violated an International Yacht Racing Rule requiring that a yacht clear astern keep clear of a yacht clear ahead.

The Federal District Court cited cases involving other sporting events, such as horse races, in holding that the assumption of risk barred any recovery by De Sole. The court also referred to Dunion v. Kaiser, 124 F.Supp. 41 (E.D.Pa. 1954), a case involving property damage which occurred during a motorboat race on navigable waters; it appeared to Judge Murnaghan that Dunion was the only case that has held that "a sporting event in which admiralty jurisdiction is invoked triggers the assumption of risk doctrine."

Judge Murnaghan pointed out that assumption of risk has been rejected in the context of a recreational boating accident involving personal injury, and has been barred in admiralty cases involving commercial collisions, as well as in a case involving faulty repairs to a private yacht. The court agreed with De Sole that even if the assumption of risk doctrine was applicable, it was necessary to remand the matter to determine: the practices and traditions of the sport; the expectations of the participants; what the inherent risks of sailboat racing are; and whether the risk of the injury occurring here was assumed by De Sole.

The court declined to hold that assumption of risk applied to the facts as presented, noting the unresolved issue of whether the clear ahead rule was waived or otherwise abated automatically upon the parties' participation in the race. The rule granting absolute preference to the vessel ahead is "universally well established and observed and is manifestly designed to avoid injury. It is not normally waived and was not waived here by participants in a sailing race...," and, continued the court, the tenets of admiralty law, "do not permit assumption of risk in cases of personal injury whether in commercial or recreational situations."

De Sole's allegations were sufficient to raise a claim for gross negligence, declared the court, and, emphasizing that it was not reaching the question of whether, and if so, under what circumstances assumption of the risk applied in admiralty, remanded the matter to determine the presence, if any, of gross negligence or recklessness.

Judge Widener, in dissent, expressed the view that assumption of risk should be applied to preclude recovery by one racing yacht from another when ordinary negligence is claimed. Judge Widener pointed out that De

Sole alleged negligence, that the Navy responded to a charge of negligence, and that the District Court treated the matter as a negligence case. The majority, stated Judge Widener, was "out of place...in trying to read gross negligence into the complaint."

Judge Widener concluded that the District Court correctly applied the doctrine of assumption of risk, noting that the mere fact that admiralty law applies comparative fault principles, and not assumption of risk in the context of injuries to a seaman would not prevent the doctrine of assumption of risk from applying in the context of a yacht race. It also was noted that the general rule in racing of any kind is that assumption of risk applies; thus, the majority's opinion permitting the prosecution of a claim for ordinary negligence would be contrary not only to the principle that one participant in a race cannot recover from another participant for mere negligence, but would be a "disservice" to the sport by encouraging actions for damages occurring during a race due only to the negligence of another participant.

De Sole v. United States, 947 F.2d 1169 (4th Cir. 1991) [ELR 13:12:16]

Briefly Noted:

First Amendment.

A Federal District Court has ruled unconstitutional a Missouri statute restricting the display and sale, to individuals under seventeen, of videocassettes depicting violence "in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for persons under the age of seventeen."

Judge Bartlett noted that the state legislature sought to restrict minors' exposure "to some vaguely defined kinds of violent expression," and that the state attempted to regulate only certain kinds of speech based on its content. The legislature did not articulate "precisely the type of violence it concluded to be detrimental to minors," making it impossible for the court to determine if the statute was narrowly drawn to regulate only that expression. The court emphasized that violent speech or speech about violence, unlike obscenity, has not been determined to be outside the protection of the First Amendment. In all, the statute was overbroad in its proscription and, in the absence of specific definitions of prohibited conduct, also was unconstitutionally vague.

Furthermore, the statute unconstitutionally imposed strict liability on video store operators, continued the court. Even if, as argued by the state, an infraction was not a crime, the fact that a fine might be imposed for violating the statute meant that video store operators might engage in self-censorship. Judge Bartlett observed that the state did not argue that a scienter requirement could be added or inferred.

The court concluded that given the lack of legislative history, a state court would have no basis for limiting the unconstitutionally vague provisions of the Act. In addition to granting the Video Software Dealers Association's request for injunctive relief barring the enforcement of the challenged provisions of the statute, the court awarded reasonable attorneys' fees.

Video Software Dealers Association v. Webster, 773 F.Supp. 1275 (W.D.Mo. 1991) [ELR 13:12:17]

Copyright Infringement/Damages.

In 1989, a Federal District Court in New York (ELR 11:3:14) ruled that Jonathan Kwitny's 1984 book "Endless Enemies" quoted considerable material from an unpublished manuscript by Kennett Love in which Love described the events surrounding the 1953 restoration to power of the Pahlevi monarchy.

It was stipulated that Love waived any claim for his own lost profits, and the court earlier had dismissed the author's claim for statutory damages. In 1991, the court awarded damages to Love based on the fair proportion of the profits of each of the publishing parties from the sale of "Endless Enemies" attributable to the infringement, as follows: Book of the Month Club - about $420; St. Martin's Press - about $610; and BDB Corporation - about $150. Kwitny was ordered to pay the costs incurred by Love.

Judge Michael B. Mukasey refused to issue an injunction restraining the further sale of the book or requiring the destruction of remaining copies or plates.

In calculating the damage award, Judge Mukasey noted that the parties stipulated that the infringed portion of Love's manuscript accounted for eleven pages of Kwitny's 421 page book - about 2.6 percent of the book. The publishers argued that their income taxes would be deductible for purposes of computing profits. After careful consideration, the court disallowed any deduction of the corporate infringers' income taxes. There was no issue of income taxes as to Kwitny because he made no money on the book.

The court then found that the Book of the Month Club was entitled to deduct royalty payments to publisher Congdon & Weed; that Love did not establish special circumstances to justify an award of prejudgment interest; and that Love failed to explain "what an injunction could accomplish at this stage of the litigation beyond a gratuitous slap at Kwitny."

Love v. Kwitny, 772 F.Supp. 1367 (S.D.N.Y. 1991) [ELR 13:12:17]

Season Tickets.

In a dispute over the ownership of five Washington Redskins season tickets, a trial court ruled that three tickets were the sole property of H. Hampton King, but that King shared the ownership of two subsequently-purchased tickets with individuals identified as Gast and Kraynack.

A Washington, D.C. appellate court upheld the ruling with respect to the three tickets, but reversed the ruling as to the remaining two tickets. Senior Judge Kern noted that King and Gast had established an "elaborate system of 'teams' of users of the tickets King purchased each year." However, the tickets always were registered at the Redskins ticket office in King's name, the sharing arrangement was never formalized in writing, and King did not discuss with Gast the possibility of an ownership interest in the two additional tickets.

When King decided to use the two tickets for his family, Gast sued for breach of contract and for the imposition of a constructive trust over the tickets he was using under the sharing arrangement. The trial court had found that King was acting as an agent for Gast and Kraynack when he purchased the two extra tickets. But Judge Kern stated that there was no evidence that the parties consented to establishing an agency relationship, and that it was solely within King's control to exercise his option to purchase the tickets each year. The prolonged use of the tickets owned by another did not produce an ownership interest, in the absence of an agreement to this effect, concluded the court.

Davey v. King, 595 A.2d 999 (D.C.App. 1991) [ELR 13:12:18]

Insurance/Indemnification.

Robert Bolanowski and Frank Paul, doing business as Back Trax, sued Robert and Gladys McKinney, doing business as Sunset Lounge, for damage, caused by a fire at the lounge, to the musicians' instruments and equipment, as well as lost wages during the time that the musicians could not perform.

A trial court, finding that the McKinneys "negligently misrepresented insurance coverage" to the musicians, entered judgment on behalf of Bolanowski and Paul in the amount of $80,000, representing the replacement cost of the musical equipment, lost wages in band earnings, and the costs incurred to rent replacement equipment.

The musicians brought a garnishment action to recover the judgment amount from the McKinneys' insurer, Western World Insurance Company, Inc. The trial court entered judgment in favor of Bolanowski and Paul.

An Illinois appellate court has affirmed the trial court's determination that Western World was obligated to indemnify the lounge owners. The company claimed that it had no duty to defend the McKinneys because the policy excluded damage to "property in the care, custody or control of the insured..."

In considering the "care, custody, or control" exclusion, the court stated the record did not demonstrate the McKinneys clearly had possessory control of the musician's equipment at the time of the fire. The equipment was left at the lounge when not in use for Back Trax's weekend shows, but there was no evidence concerning whether the McKinneys were granted or exercised the right of access to the equipment in order to maintain, move, or protect the equipment. In the absence of allegations as to the McKinneys' right or duty to exercise some type of possessory control over the equipment, the record did not show that the lounge owners had "care, custody, or control" over the equipment at the time of the fire. The fact that the McKinneys controlled the lounge premises did not require the court to conclude that they also had possessory control of the musicians' equipment.

The court remanded for further proceedings the question of the amount for which Western World must indemnify its insureds. The record did not indicate whether the policy's coverage for "damage to property" included lost profits associated with "loss of use" of the damaged property.

Bolanowski v. McKinney, 581 N.E. 2d 345 (Ill.App. 1991) [ELR 13:12:18]

Insurance/Indemnification.

In July 1985, Rensselaer Polytechnic Institute agreed to allow the Ice Capades (owned by Metromedia, Inc.) to use the school's fieldhouse for performances. The school agreed to obtain a property damage and bodily injury liability insurance policy and indemnify and hold Ice Capades harmless from any claims made against the company. Fred S. James and Company, Inc. named Rensselaer Polytechnic as an additional insured on a comprehensive general liability policy that Zurich

American Insurance Company had issued to Metromedia.

Laura Wilder, after attending an Ice Capades performance at the fieldhouse, slipped and fell after exiting the building. When Wilder sued the school and the Ice Capades, Rensselaer Polytechnic requested Zurich's defense and indemnification. Zurich denied any obligation in connection with Wilder's claim.

When Rensselaer Polytechnic brought a declaratory judgment action, a trial court granted the insurance parties' motion for summary judgment and declared the Zurich did not have an obligation to defend or indemnify Rensselaer Polytechnic.

A New York appellate court affirmed the trial court's ruling. The court pointed out that the policy's additional insured endorsement limited the coverage to liability "arising out of the ownership, maintenance or use of that part of the premises...leased to the named insured" (emphasis added by the court).

Assuming, without deciding, that the school was an additional insured, the court rejected the argument that the leased premises included the walkways immediately adjacent to the fieldhouse. Ice Capades leased only the space located within the fieldhouse. The court also rejected the argument that the accident arose out of the use of the leased premises.

Rensselaer Polytechnic Institute v. Zurich American Insurance Company, 575 N.Y.S.2d 598 (N.Y.App. 1991) [ELR 13:12:18]

Cable Television/City Tax.

In July 1989, the City of Norfolk approved a fifteen year franchise agreement with Cox Cable Hampton Roads, Inc. In May 1990, the city enacted an ordinance establishing a utility tax rate for cable television service at seven percent of a consumer's total bill, excluding certain charges.

The Supreme Court of Virginia has affirmed a trial court ruling holding that the city possessed the general power of taxation, which included the power to impose a tax on cable television service. The taxing ordinance applied to all cable companies that might operate in the city - Cox Cable's franchise was not exclusive and did not apply to areas annexed to the city in which the cable television businesses may have been providing cable services, noted the court. In all, the tax was one of general applicability, did not target a small group of First Amendment speakers, and was not content based.

Judge Hassell therefore held that the tax did not violate Cox's First Amendment rights.

However, Judge Hassell found that the trial court erred in granting the city's demurrer to the cable company's Equal Protection claim. Cox Cable had argued that there was no compelling governmental interest to support taxing cable television services while exempting satellite master antenna television systems. The court found that the company was entitled to a trial on the merits of its arguments that the tax ordinance created a classification which was not based on a real difference in the systems; that the distinction was not relevant to the purpose for which the classification was made; and that the different treatments were arbitrary.

Cox Cable Hampton Roads, Inc. v. City of Norfolk, 410 S.E.2d 652 (Va. 1991) [ELR 13:12:19]

Cable Television.

Oceanic Cablevision, a supplier of cable television programming to subscribers in the Honolulu, Hawaii area, offered customers, for a monthly fee, a converter box to unscramble the signals of certain premium channels. Oceanic claimed that M.D. Electronics sold unauthorized unscrambling equipment to Oceanic customers.

A Federal District Court in Nebraska rejected Oceanic's claims that M.D. Electronics committed mail and wire fraud in violation of the Racketeer Influenced and Corrupt Organizations Act. The court pointed out that Oceanic did not plead that the Rico "enterprise" was a separate entity from the RICO "person."

The court next denied M.D. Electronics' motions to dismiss Oceanic's claim that M.D. engaged in the unauthorized reception of cable services in violation of sec. 553(a) of the Cable Communications Policy Act of

1984, Oceanic's cause of action under sec. 605(a) of the Federal Communications Act of 1934, Oceanic's claims based on the wire interception of oral communications, and various pendent claims, including tortious interference with prospective advantage, tortious interference with lawful business, and unfair competition.

M.D. Electronics prevailed on a motion to dismiss Oceanic's claim based on the alleged violation of an Hawaiian criminal statute concerning cable television service fraud.

Oceanic Cablevision, Inc. v. M.D. Electronics, 771 F.Supp. 1019 (D.Neb. 1991) [ELR 13:12:19]

Jurisdiction.

Bay Area Interconnect sued Futuresat Industries and Hollywood Broadcasting Network, corporate entities with a principal place of business in Texas, for damages amounting to about $28,000 arising from the alleged breach of an oral contract to purchase 740 video tapes. The Futuresat parties moved to quash service of summons or to obtain alternative relief, arguing that the court lacked jurisdiction. Futuresat stated that the companies communicated with Bay Area by telephone or written correspondence.

A California trial court decision denying the Futuresat parties' motion has been reversed by a California appellate court. Presiding Judge Agliano held that there was no California jurisdiction over the nonresident purchasers - there were no continuing business transactions or relationships between the parties and Futuresat did not engage in conduct amounting to purposeful activity aimed at doing ongoing business with Bay Area in

California. The "mere extension of credit in a one-time transaction, without more," stated Judge Agliano, was not a sufficient basis for jurisdiction. The court, accordingly, issued a writ of mandate ordering the trial court to grant Futuresat's motion to quash service of summons.

Futuresat Industries, Inc. v. Superior Court of Santa Clara County, Case No. H008805 (Ca.Ct.App., Jan. 30, 1992) [ELR 13:12:19]

IN THE NEWS

Island Records and Warner Chappell obtain injunction barring distribution of unauthorized recording "U2 Negativland"

In October 1991, a Federal District Court in California granted Island Records and Warner Chappell Music International a preliminary injunction barring SST Records from distributing a recording entitled "U2 Negativland."

The Island parties, the manufacturers and distributors of recordings by the musical group "U2," claimed that the packaging, label artwork and text of the unauthorized SST recording constituted trademark and copyright infringement. The challenged material allegedly displayed the name and mark "U2" and the name of each member of the group, thereby, according to Island, "creating the false and misleading impression that the accompanying sound recording is a long-playing album featuring the recorded performances of U2."

The recording contained two songs, one of which purportedly incorporated portions of U2's recording of the song "I Still Haven't Found What I'm Looking For;" the second track of the recording contained an instrumental performance of portions of the same composition.

Island noted the then-imminent release of the "long-awaited and highly publicized" new U2 album.

According to a representative of the Island parties, the court, without issuing a written opinion, granted the requested injunctive relief; ordered SST to turn over the company's inventory of the infringing material, as well as all parts and tapes used in the manufacture thereof; awarded $40,000 to the Island parties; and granted the Island parties' request for an accounting with respect to revenue earned by SST from pre-injunction sales of the recording. [May 1992] [ELR 13:12:20]

Chicago court approves settlement of Milli Vanilli class action

Arista Records and its parent company, Bertelsmann Music Group, will offer $1 refunds on Milli Vanilli singles, $2 on cassettes and vinyl ablums and $3 on compact discs to individuals who submit a bar-code identification tag from merchandise purchased before November 27, 1990, under the terms of an agreement to settle a class action fraud lawsuit against the record company.

The agreement, which has been approved by Chicago trial court Judge Thomas O'Brien, also provides a five percent refund (not to exceed $2.50) to individuals who bought tickets to Milli Vanilli concerts before November 27, 1990.

Arista also agreed to donate $250,000 to charities. [May 1992] [ELR 13:12:20]

Federal Communications Commission increases ownership limits on radio stations

The Federal Communications Commission, in March 1992, adopted rules allowing broadcasters to own thirty AM and thirty FM stations nationwide; ownership previously was limited to twelve AM and twelve FM stations.

The Commission also modified the local radio "duopoly" rules. The rules provided that a broadcaster could own a combination AM-FM station in the same market, but not two AM or two FM stations. Under the new rules, which become effective in August 1992, individuals or companies in markets with fewer than fifteen stations may purchase up to three stations, no more than two of which may be FM stations, as long as the combined audience reach of the three stations is below fifty percent.

The rules also specify ownership limit increases in larger markets.

New "time brokerage" rules also were adopted; the rules involve the practice whereby a radio programmer buys a block of time from a competing broadcaster and fills the time with simulcasted programming. Under the new rules, a broadcaster would be considered the owner of a station from which it bought "brokered" time. And licensees were barred from simulcasting more than twenty-five percent of programming on another station in the same service area. [May 1992] [ELR 13:12:20]

DEPARTMENTS

In the Law Reviews:

Columbia-Volunteer Lawyers for the Arts Journal of Law & the Arts has published Volume 15, Number 3 with the following articles:

Availability: The Hidden Value in Copyright Law by Francis M. Nevins, Jr., 15 Columbia-VLA Journal of Law & the Arts 285 (1991)

Ethical Considerations for Music Industry Professionals by M. William Krasilovsky and Robert S. Meloni, 15 Columbia-VLA Journal of Law & the Arts 335 (1991)

Profits of Doom: Net Profit Participation Contracts in the Motion Picture Industry by David Edward Agnew, 15 Columbia-VLA Journal of Law & the Arts 267 (1991)

The Berne Convention and American Protection of Artists' Moral Rights: Requirements, Limits and Misconceptions by Roy S. Kaufman, 15 Columbia-VLA Journal of Law & the Arts 417 (1991)

Indecent Speech on the Air, the Federal Communications Commission and the First Amendment: An Update by Guy A. Reiss, 15 Columbia-VLA Journal of Law & the Arts 435 (1991)

Unmasking the Copyright Office Policy on Costume Design Registrability by Katherine Mark Thompson, 9 Entertainment and Sports Lawyer 1 (1992) (published by the ABA Forum on the Entertainment and Sports Industries, American Bar Association, 750 N. Lake Shore Drive, Chicago, IL 60611-4497)

Candid Camcorder: Legal Restrictions on Use of Surreptitiously Recorded Videos by Andrew M. White, Ruth Anne Taylor and Joseph B. Marks, 9 Entertainment and Sports Lawyer 5 (1992) (for address, see above)

The Supreme Court Frees "Son of Sam" by Nicholas C. Katsoris, 9 Entertainment and Sports Lawyer 14 (1992) (for address, see above)

Baseball Salary Arbitration in Japan by Kenneth L. Shropshire, 9 Entertainment and Sports Lawyer 17 (1992) (for address, see above)

Fairness or Confusion? Interpreting the Cullman Doctrine by Jay Baltezore and Elizabeth Krueger, 13 Communications and the Law 3 (1991) (published by Fred B.

Rothman & Co., 10368 West Centennial Road, Littleton, CO 80127)

Implied Libel: A Chill Wind on First Amendment Freedoms by Joyce S. Meyers, 13 Communications and the Law 21 (1991) (for address, see above)

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Los Angeles Lawyer Magazine has published its April, 1992 issue with the following entertainment-related articles:

The Entertainment Industry in Europe: How to Prepare for 1993 by Thomas F.R. Garvin and Peter M. Armstrong, 15 Los Angeles Lawyer 23 (1992) (published by the Los Angeles County Bar Association, 617 S. Olive St., Los Angeles, CA 90014)

International Co-Financing Arrangements by Gary O. Concoff and Robert Wise, 15 Los Angeles Lawyer 26 (1992) (for address, see above)

Janis: The Right of Publicity vs. Freedom of Expression by Douglas L. Thorpe and Manny Freiser, 15 Los Angeles Lawyer 30 (1992) (for address, see above)

Taking the Rap: Should Artists Be Held Accountable for Their Violent Recorded Speech? by Peter D. Csathy, 15 Los Angeles Lawyer 34 (1992) (for address, see above)

Representing Comedians by Peter Martin Nelson and Dawn G. Friedman, 15 Los Angeles Lawyer 38 (1992) (for address, see above)

I Can't Believe I Taped the Whole Thing: The Case Against VCRs That Zap Commercials by Steven S. Lubliner, 43 Hastings Law Journal 473 (1992)

Comm/Ent, Hastings Communications and Entertainment Law Journal, has published Volume 14, Number 1 with the following articles:

Structuring Media Joint Ventures in the European Community by Anne Moebes, 14 Hastings Communications and Entertainment Law Journal 1 (1992)

Allocating Spectrum Through the Use of Auctions by Terrence J. Schroepfer, 14 Hastings Communications and Entertainment Law Journal 35 (1992)

The Right of Publicity: Star Vehicle or Shooting Star? by Barbara Singer, 10 Cardozo Arts & Entertainment Law Journal 1 (1991)

New Technologies on the Block: New Kids on the Block v. News America Publishing, Inc. by Randy S.

Frisch, 10 Cardozo Arts & Entertainment Law Journal 51 (1991)

Reading Between the Lines: High Definition Television, Antitrust Reform and America's Chance to Get Back into the Television Business by David L. Glotzer, 10 Cardozo Arts & Entertainment Law Journal 127 (1991)

A Fresh Look at the Paramount Decrees by Barry J. Brett and Michael D. Friedman, 9 The Entertainment and Sports Lawyer 2 (1991) (published by the ABA Forum on the Entertainment and Sports Industries, American Bar Association, 750 N. Lake Shore Drive, Chicago, IL 60611-4497)
[ELR 13:12:21]