## RECENT CASES

### Jury award of almost $2.4 million in damages to singer Tom Waits in "sound-alike" claim is upheld

In September 1988, Frito-Lay began broadcasting a radio commercial for SalsaRio Doritos; the commercial, as described by Federal Court of Appeals Judge Robert Boochever, "echoed the rhyming word play" of a Tom Waits song entitled "Step Right Up." Frito-Lay agreed to have company's advertising agency, Tracy-Locke, Inc., use a singer who provided a "near-perfect" imitation of Waits' raspy, gravelly singing voice.

When Waits, who has publicly announced his refusal to provide commercial endorsements, sued Tracy-Locke and Frito-Lay, a Federal District Court jury (ELR 12:1:20) awarded the performer $375,000 compensatory damages and $2 million punitive damages for voice misappropriation and $100,000 damages for a claim alleging false endorsement under the Lanham Act.

Judge Boochever, in affirming the judgment entered on the verdict (except for the award of damages under the Lanham Act) first referred to the decision in Midler v. Ford Motor Co., 849 F.2d 460 (9th Cir. 1988, ELR 10:2:7; 10:7:16; see also ELR 13:9:4), cert. denied, 112 S.Ct. 1513 (1992; ELR 14:1:21). In Midler, the court, according to Judge Boochever, held that "when a distinctive voice of a professional singer is widely known and is deliberately imitated in order to sell a product, the sellers have appropriated what is not theirs and have committed a tort in California." When a voice "is a sufficient indicia of a celebrity's identity," stated Judge Boochever, "the right of publicity protects against its imitation for commercial purposes without the celebrity's consent."

The court pointed out that the jury, in finding that the Frito-Lay parties had violated Waits' right of publicity, determined that Waits had a distinctive, widely-known voice.

Judge Boochever proceeded to consider the Frito-Lay parties' argument that Midler was incorrectly decided because it ignored the decisions in Sears Roebuck & Co. v. Stiffel Co., 376 U.S. 225 (1964) and in Compco Corp. v. Day-Brite Lighting, 376 U.S. 234 (1964). Frito-Lay adverted to several court decisions relying on Sears and Compco and rejecting, on the basis of federal copyright preemption, entertainers' challenges to imitations of their performances (see Sinatra v. Goodyear Tire & Rubber Co., 435 F.2d 711 (9th Cir. 1970).

Furthermore, in Bonito Boats, Inc. v. Thunder Craft Boards, Inc., 489 U.S. 141 (1989), the United States Supreme Court, citing its decisions in Sears and Compco ruled that a Florida patent statute was preempted by federal patent law because it directly conflicted with the comprehensive federal patent scheme.

Judge Boochever noted, however, that in Bonito Boats, the court cautioned against reading Sears and Compco for a "broad pre-emptive principle." Waits' state tort claim arguably would be preempted only under such a broad reading, stated the court. And in Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977), the United States Supreme Court upheld a state's right of publicity statute, finding that the First Amendment did not protect the unauthorized television news broadcast of an entertainer's performance. Judge Boochever pointed out that the cases cited by Frito-Lay predated Zacchini and other Supreme Court decisions narrowing the broad preemption principles of the Sears and Compco rulings.

Frito-Lay next argued that a voice misappropriation claim would be preempted by 114 of the Copyright Act.

Under 114, a state cause of action is not preempted if its subject matter "does not come within the subject matter of copyright...including works of authorship not fixed in any tangible medium of expression." Judge Boochever recalled that the Midler court had rejected the argument
that a voice is not copyrightable, and stated that, as a three-judge panel, Judge Boochever and his colleagues were "not at liberty to reconsider this conclusion, and even if we were, we would decline to disturb it."

Judge Boochever emphasized that Waits' voice misappropriation claim was a claim for invasion of a personal property right - the right "to control the use of his identity as embodied in his voice." The elements of Waits' claim, such as whether Frito-Lay deliberately imitated Waits' voice, rather then his style, and whether Waits' voice was sufficiently distinctive and widely known to give the performer a protectable right in its use, were "different in kind" from the elements of a copyright infringement case. Waits' claim therefore was not preempted by federal copyright law, declared the court.

Frito-Lay argued that the District Court erred in rejecting the company's proposed jury instructions on the various elements of the voice misappropriation claim. Frito-Lay stated that although the company may have consciously copied Waits' style in creating the challenged commercial, the company had not deliberately imitated his voice. Frito-Lay asked the court to instruct the jury to distinguish between voice and unprotectable style.

The District Court had rejected the proposed instruction and directed the jury to decide whether Waits' voice was distinctive, whether his voice was widely known, and whether Frito-Lay had deliberately imitated his voice. Judge Boochever stated that the jury instructions, read as a whole, were not misleading. The District Court apparently repeatedly noted that Waits had presented two claims; gave separate instructions on each claim; and with respect to voice misappropriation, limited the jury's consideration to voice and did not imply, in Judge Boochever's view, that the jury could consider style.

It was noted that in an additional instruction, the District Court "narrowed the jury's focus to Waits' voice and indicated that style imitation alone was insufficient for tort liability." Frito-Lay would be liable for voice misappropriation, continued the District Court if the imitation was so good that "people who were familiar with [Waits'] voice who heard the commercial believed [Waits] performed it. In this connection it is not enough that they were reminded of [Waits] or thought the singer sounded like [Waits]..." (emphasis added by the Federal Court of Appeals).

Frito-Lay also contended that the District Court unfairly and inaccurately stated the law in instructing the jury concerning the meaning of "distinctive." The argument that distinctiveness was a separate concept from identifiability had no basis in law, declared Judge Boochever. Identifiability would be considered in evaluating distinctiveness, noted the court, because it is "a central element of a right of publicity claim." The holding in Midler was based on the fact that a person may be "as identifiable by voice as by any other indicia of identity previously recognized as protectable."

The District Court, according to Judge Boochever, "invited members of the jury to use their common sense in determining whether Waits has a distinctive enough voice to warrant protection, and to consider as well what the experts had to say. This was entirely appropriate."

The District Court's instruction on the requirement that the individual's voice was "widely known" also was upheld. The court instructed the jury that "a professional singer's voice is widely known if it is knowN to a large number of people throughout a relatively large geographic area" (emphasis added by Judge Boochever). Frito-Lay sought an instruction premised on the contention that Waits was known only by a small group of fans, and that because Waits had not reached Bette Midler's level of celebrity, Waits was not well known under the Midler standard.

Judge Boochever rejected "this crabbed interpretation of Midler," stating that such a standard would exclude from legal protection the voices of many popular singers "who fall short of superstardom." Differences in the level of popularity among performers would be reflected in the amount of damages recoverable by the performer. In any event, stated Judge Boochever, the District Court correctly determined that the evidence indicated that Waits was very widely known.

In reviewing the compensatory damage award, it was pointed out that the jury awarded Waits $100,000 for the fair market value of his services; $200,000 for injury to his peace, happiness and feelings; and $75,000 for injury to his goodwill, professional standing and future publicity value.

Judge Boochever disagreed with Frito-Lay's argument that in right of publicity actions, only damages to compensate for economic injury are available. Midler did not discuss or limit the damages recoverable in a voice misappropriation action, declared that court, and referred to the market value of Midler's voice only to support the conclusion that the singer's voice had economic value and therefore was a protectable property. Waits' request for mental distress damages thus was properly submitted to the jury.

Waits testified that upon hearing the Doritos commercial, he was shocked, angry and embarrassed.

Furthermore, since Waits was strongly opposed to doing commercials, the court inferred that the commercial humiliated Waits by making the performer appear to be a hypocrite. The evidence was sufficient both to allow the jury to consider mental distress damages and to support the eventual jury award.

Frito-Lay claimed that alleged damages to Waits' reputation were unavailable because the entertainer did not allege or prove defamation. The court, however, had no doubt, "in light of general tort liability principles, that where the misappropriation of identity causes injury to reputation, compensation for such injury is appropriate." The jury, again, could have inferred from the evidence that the commercial created an impression that Waits was a hypocrite for endorsing Doritos; could have inferred damage to his artistic reputation; and also could have inferred that if Waits ever wanted to do a commercial in the future, the fee he might receive would be lowered by $50,000 to $150,000 because of the Doritos commercial.

The jury award of $1.5 million in punitive damages against Tracy-Locke and $500,000 against Frito-Lay also was upheld. Judge Boochever noted that punitive damages are available if a party has acted with oppression, fraud or malice. The statutory definition of "malice" refers to "despicable conduct which is carried on by [a party] with a willful and conscious disregard of the rights or safety of others" (emphasis added by Judge Boochever). The issue of whether a well-known professional singer has the right to control the commercial use of a distinctive voice was not an issue of first impression - "the right clearly was established by Midler." Although Midler was decided just three months before the conduct in issue, Tracy-Locke employees responsible for the Doritos commercial were familiar with the decision. The agency cautioned Frito-Lay of the risks in using the singer chosen for the commercial, and offered to indemnify Frito-Lay against damages. In going forward with the commercial, Frito-Lay and Tracy-Locke "knowingly took a calculated risk, thereby consciously disregarding the effect of these actions on Waits' legally recognized rights."

The court was "unpersuaded" by the argument that the Frito-Lay parties had a good faith belief, based on a different reading of the legal precedents, that Waits' rights would not be infringed. Again, the court cited Midler as clearly holding that in California, a well-known singer with a distinctive voice has a property right in that voice. The evidence raised at least a prima facie showing that the Frito-Lay parties acted in conscious disregard of rights recognized in California.

The court then determined that the punitive damages award was supported by clear and convincing evidence. After reviewing the parties' conduct, Judge Boochever concluded that the effect of their actions on Waits, according to the performer's testimony, "was to tarnish the artistic integrity which he had striven to achieve." A rational jury could have found the Frito-Lay parties' conduct despicable "because they knowingly impugned Waits' integrity in the public eye...[and] in spite of their awareness of Waits' legal right to control the commercial use of his voice, acted in conscious disregard of that right by broadcasting the commercial."

Judge Boochever, in turning to Waits' claim that Frito-Lay misrepresented his association with and endorsement of the company's product in violation of section 43(a) of the Lanham Act, first addressed the issue of whether false endorsement claims are cognizable under section 43(a), a question of first impression before the court.

At the time when the commercial was broadcast, the statute provided, in pertinent part, that "Any person who shall affix, apply, or annex, or use in connection with any goods or services...a false designation of origin, or any false designation or representation...shall be liable to a civil action...by any person who believes that he is or is likely to be damaged by use of any such false designation or representation."

Judge Boochever, after citing decisions in other jurisdictions which interpreted the statutory language as authorizing claims for false endorsements, also stated that the 1988 Lanham Act amendments reinforced the cognizability of Waits' claim. The amendments did not take effect until November 1989, about a year after the broadcast of the Doritos commercial. However, since the amendments codified prior case law, and there was no controlling precedent to the contrary, the court declared that it would utilize the amendments to interpret the previous version of section 43(a). Upon so doing, Judge Boochever determined that the statute encompassed false endorsement claims, including those based on the unauthorized imitation of an entertainer's distinctive voice.

Frito-Lay next argued that Waits was not in competition with the company and thus lacked standing to sue under the Lanham Act. Judge Boochever stated "common sense contradicts this argument, for the purported endorser who is commercially damaged by the false endorsement will rarely if ever be a competitor, and yet is the party best situated to enforce the Lanham Act's prohibition on such conduct."

In order to clarify prior case law on the issue, the court referred to Smith v. Montoro, 648 F.2d 602 (9th Cir. 1981; ELR 3:6:1), which declined to restrict standing under the Lanham Act to competitors. The actor whose name was replaced with another actor's name in a film's credits and advertising had a "reasonable interest" in having his work product properly identified with his name, and therefore had standing to sue, ruled the court, although the actor was not in actual competition with the distributor of the film.

Subsequently, in Halicki v. United Artists Communications, Inc., 812 F.2d 1213 (9th Cir. 1987; ELR 9:3:12), the court dismissed a film producer's claim because of the failure to show competitive injury. The challenged misrepresentation of the film's rating by a distributor, although possibly actionable as breach of contract, was not actionable under the Lanham Act, ruled the court, because the producer was not injured by a competitor.

Judge Boochever stated that Smith and Halicki were reconcilable. Both cases embodied the principle that section 43(a) standing exists when a party's interest is a commercial interest protected by the Lanham Act. The purposes of the statute included preventing the use of deceptive and misleading marks in commerce and protecting individuals engaged in commerce against unfair competition. Section 43(a) holds parties liable for false representations concerning the origin, association, or endorsement of goods or services through the wrongful use of another's distinctive mark, name, trade dress, or other device, and for false representations in advertising concerning the qualities of goods or services. Smith and Halicki involved "different prongs" of section 43(a) liability, stated the court.

It was further observed that "a false endorsement claim based on the unauthorized use of a celebrity's identity is a type of false association claim, for it alleges the misuse of a trademark, i.e., a symbol or device such as a visual likeness, vocal imitation, or other uniquely distinguishing characteristic, which is likely to confuse consumers as to [a party's] sponsorship or approval of the product." Thus standing would not require "actual competition," in the traditional sense, stated Judge

Boochever, and would extend to a purported endorser "who has an economic interest akin to that of a trademark holder in controlling the commercial exploitation of his or her identity."

The appropriator of a celebrity's identity may be "in a sense" a competitor of the celebrity, even when the celebrity has declined to advertise products - the parties would be competing to use the celebrity's name or identity for commercial purposes. In all, held the court, "a celebrity whose endorsement of a product is implied through the imitation of a distinctive attribute of the celebrity's identity, has standing to sue for false endorsement under section 43(a) of the Lanham Act." Waits' standing was established by the likelihood that the wrongful use of his professional trademark, his unique voice, would injure him commercially.

The court also disagreed with Frito-Lay's argument that the Doritos commercial did not represent that Waits sponsored or endorsed the product. The evidence was sufficient, stated the court, to support the jury's finding that consumers were likely to be misled by the commercial into believing that Waits endorsed SalsaRio Doritos.

With respect to the jury award of damages under the Lanham Act, the court noted that Waits did not contest the Frito-Lay parties' claim that the $100,000 award was duplicative of the damages awarded for voice misappropriation representing the fair market value of Waits' services. The court, accordingly, vacated that portion of the judgment.

The District Court was within its discretion in awarding Waits reasonable attorneys' fees, concluded the court, in also awarding the performer his costs on appeal.

The court has denied the Frito-Lay parties' petition for rehearing and rejected the suggestion for rehearing en banc.

Waits v. Frito-Lay, Inc., Case No. 90-55981 (9th Cir., Aug. 5, 1992; amended Oct. 6, 1992; amended order Oct. 22, 1992) [ELR 14:6:3]

---

**Walt Disney Pictures obtains summary judgment in copyright infringement action involving "Honey, I Shrunk the Kids"**

Jeffrey Allen Kouf described his screenplay, "The Formula," as "the story of a young genius who, along with his science teacher creates a scientific formula which shrinks living beings." In about April 1986, Walt Disney Pictures rejected the screenplay. In 1989, Disney released the film "Honey, I Shrunk the Kids."

A Federal District Court in California, which had dismissed Kouf's state law claims against Disney in a prior ruling, granted Disney's motion for summary judgment with respect to Kouf's copyright infringement claim.

The court, after setting forth synopses of the competing works, pointed out that Kouf was required to establish substantial similarity on the basis of the final released version of "Honey, I Shrunk the Kids," not drafts of the screenplay. The "inescapable" conclusion was that the works were not, as a matter of law, substantially similar in their objective forms of expression.

The plot, theme, and sequence of events of the works were "wholly unalike," for, according to the court "Honey revolves around the shrunken kids' journey across their backyard and their parents' simultaneous search for their missing kids. In the course of this adventure, Honey thematically champions the importance of family values: spouses renew affection for one another, as do parents and children, and neighbors. In contrast, The Formula centers on the extended struggle between the good guys - a group of both kids and adults - and a ruthless gangster who has stolen the formula. The primary theme is good triumphing over evil; there are no family values themes."

The shrinking of people was portrayed differently in the two works, with the characters being shrunk to different sizes (1/4 inch in the Disney film, one foot in Kouf's screenplay), by different means and for different reasons. And the characters in Honey were only shrunk once, while the characters in The Formula were shrunk and enlarged several times.

The characters and dialogue of the works were not similar, and Honey developed its characters over the course of the film, stated the court; the characters in The Formula were undeveloped, and, in most cases, not even named.

Dissimilarities also "abounded" in the mood, setting, and pace of the works. The similarities identified by

Kouf were unprotectible ideas - the concept of shrinking people was not a unique copyrightable expression - or "distortions" of the works at issue. In all, the Disney film was found not substantially similar to The Formula.

Kouf v. Walt Disney Pictures and Television, Case No CV 91-3072 (C.D.Ca., July 7, 1992) [ELR 14:6:6]

---

### Sony Music foreign affiliates are subject to jurisdiction in copyright infringement action against Gloria Estefan

Eddie Palmieri, the writer of the song "Paginas de Mujer," brought a copyright infringement action against Gloria Estefan and two co-writers of the song "Oye Mi Canto." Palmieri also sued Sony Music Entertainment Inc. and thirty-three foreign affiliates of Sony

Corporation of Japan, claiming that the affiliates were departments of Sony Music and that Sony Music acted as the de facto agent of each company. The affiliate parties, stating that they were financially independent and engaged in recording activities only in their respective countries, argued that they were not subject to the jurisdiction of the court.

Federal District Court Judge Leonard B. Sand noted that the affiliates all were owned by Sony Corp. and that Sony Music exercised some control over the activities of the affiliates with respect to major financial decisions. Sony Music obtained regular financial reports from the affiliates; had guaranteed at least one of the affiliates' financial obligations; approved key personnel decisions; and assisted the affiliates in negotiating with various artists and setting business policies.

Judge Sand agreed with the affiliates' contention that they were not wholly dependent upon Sony Music's financial support to remain in business and thus were not mere departments of Sony Music. Each affiliate maintained its own books, records and bank accounts; functioned independently financially in its day-to-day operations; made most personnel decisions and decided independently which artist to sign and which records to release within its territory. It was observed that in three prior cases involving the predecessors of the companies in the instant proceeding, including Larball Publishing Co., Inc. v. CBS Inc., 664 F.Supp. 704 (S.D.N.Y. 1987; ELR 9:9:7), the courts held that the affiliates were not subject to jurisdiction in New York as "mere departments" of the related company doing business in New York.

The court nevertheless found that Sony Music acted as an agent for the affiliates. In "matrix" agreements originally signed with CBS Records, the predecessor of Sony Music, each affiliate obtained the exclusive right to manufacture and distribute within its territory any recording in the repertoire of Sony Music and of any other party to a matrix agreement with Sony Music. Each affiliate granted Sony Music and any other party to a matrix agreement the exclusive right to manufacture and distribute within their respective territories any selection from that affiliate's repertoire. The affiliates argued that the agreements were licensing arrangements which did not constitute "doing business" in New York. Judge Sand found it "clear" that the affiliates derived "hundreds of millions of dollars in profits from sales due to acts signed by Sony Music." Sony signed new acts in New York, which the affiliates then had the right to release in their territories; created the master recordings used by the affiliates to manufacture the records; distributed the recordings owned by each affiliate in New York and throughout the United States, and, through the matrix agreements, granted sublicenses for their distribution elsewhere. The affiliates received additional payments from the exploitation of their own acts by Sony Music and the other affiliates.

In Intersong-USA Inc. v. CBS Inc., 1990 U.S. Dist. LEXIS 11645 (S.D.N.Y. 1990), the court found that CBS did not act on behalf of the affiliates and that the affiliates received "mere royalties" as a result of the matrix agreements, while in Larball, it was found that CBS was acting as an agent for its subsidiaries' record sales worldwide.

Judge Sand determined that the Larball court "most accurately addresse[d] the realities of the worldwide recording business of Sony Music and the Sony affiliates. Since "the activities of Sony Music in New York are part of [the] affiliates' 'business...,'" jurisdiction was appropriate over the foreign affiliates on the basis of their agency relationship with Sony Music. The "interrelatedness of the corporations is the factor on which the courts have focused, rather than on the 'control' of one by the other," stated Judge Sand, who continued by pointing out that "when two corporations have common ownership and their activities are interrelated as here, they may have an agency relationship for jurisdictional purposes, even if the resident corporation is not controlled by the nonresident entity. This may be true even if the intimacy of the relationship between the two corporations does not reach the level of finding 'mere department' status."

The court concluded that asserting personal jurisdiction over the Sony affiliates would not offend the standards of constitutional due process.

Palmieri v. Estefan, 1992 U.S.Dist. LEXIS 7309 (May 18, 1992), 793 F.Supp. 1182 (S.D.N.Y. 1992) [ELR 14:6:7]

## Injunctive relief is denied in dispute over two songs entitled "Better Class of Losers"

Harlan Howard and Ron Peterson wrote a song entitled "Better Class of Losers," and, along with Tree Publishing Company, owned the song. Warner Brothers Records, Randy Travis, Three Story Music, Alan Jackson and Seventh Son Music were, variously, the co-writers, producers and owners of a song with the same title.

A Federal District Court in Tennessee has denied the Howard/Peterson parties' request for a preliminary injunction. Chief Judge John T.Nixon noted that there was conflicting evidence concerning whether Travis and Jackson, before writing their song, had possession of the Howard/Peterson work. However, Warner had produced and distributed Charlie Pride's 1984 recording of the Howard/Peterson song. Thus, stated the court, there was a strong possibility that a jury could find that the Warner parties had access to the Howard/Peterson song.

Howard and Peterson claimed that the words "better class of losers" constituted substantial similarity between the works. Judge Nixon commented that the phrase was not "destined for literary immortality" and was not capriciously fanciful. The phrase expressed the idea, according to the court that "being down and out is not necessarily an emotional status reserved for one social class or another. The expression's proximity to that raw idea makes its copyright protectability questionable." In all, the Howard/Peterson parties did not establish a substantial likelihood of success on the issue of substantial similarity and on their copyright infringement claim.

The court then rejected Howard/Peterson's Lanham Act claim on the ground that the title of their song had not attained a secondary meaning and thus no public confusion was likely to result from the fact that the Warner song title was the same. While noting that the Howard/Peterson song had been publicly performed 47,000 times and attained considerable popularity in 1984, Judge Nixon observed that the numbers were "relatively insubstantial considering the lapse of time since the previous recording was released..."

Howard/Peterson argued that entertainer Mark Chestnutt had recorded their song and that the release of the Warner single would preclude the release of the Chestnutt single, thereby causing irreparable harm to Howard/Peterson. The court stated that given the "dubious success" of the Howard/Peterson song since it was first written in 1982, the claim of irreparable harm was too remote to consider for purposes of injunctive relief.

Tree Publishing Co., Inc. v. Warner Bros. Records, 785 F.Supp. 1272 (M.D.Tenn. 1992) [ELR 14:6:7]

## Daughter of Hank Williams, Sr. is entitled to share of renewal term copyrights in late singer's works

In the ongoing litigation involving Cathy Yvonne Stone's lawsuit against Hank Williams, Jr. and various music publishers, a Federal District Court in New York, in June 1991 (ELR 13:6:11), dismissed, as time-barred, Stone's claim seeking a declaration of her status as a "child" of Hank Williams, Sr. and a share of the renewal copyrights in his musical compositions. The court also refused to grant preclusive effect to an Alabama Supreme Court decision finding that Stone was Williams' natural child, and dismissed Stone's claim alleging conspiracy to suppress material facts because the Williams Jr. parties had no duty to disclose such information.

A Federal Court of Appeals has reversed the District Court's decision.

Judge Cardamone began by discussing 507(b) of the Copyright Act of 1976 which provides that "No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued" (emphasis by the court). The District Court determined that Stone's claim accrued no later than October 17, 1979 when Stone was told by her adoptive mother of her possible identity, and that Stone's 1985 action was untimely.

The Court of Appeals agreed that Stone's declaratory judgment action sought to establish her status as a "child" of Williams, but pointed out that Stone also sought relief resulting from the alleged status. Judge Cardamone noted that a declaratory judgment action is time-barred only if relief on a direct claim based on substantive rights also would be barred. Stone had alleged the Williams parties' failure to remit royalty payments, and had requested an accounting, damages, and the imposition of a constructive trust. The statute of limitations did not begin to run on these claims, stated the court, until Stone knew that Williams, Sr. was her natural father.

Judge Cardamone agreed with the District Court that Stone, in October 1979, had sufficient knowledge of the relevant facts to start the running of the limitations period, and that any recovery on an infringement claim would have to be based only on acts occurring within three years of a lawsuit, not on earlier infringing acts. However, Stone's failure to seek relief promptly for the purported violation of her interest in Williams, Sr.'s renewal copyrights did not preclude a lawsuit based on later violations, stated the court.

The Williams, Jr. parties argued that Stone's failure to seek a timely judicial determination that she was an owner of the copyright renewals barred Stone from asserting a cause of action based on such ownership. The court declared that "an overly technical approach to copyright entitlements has not carried the day in other contexts, and it fails to do so in this one."

Copyright renewal is a "creature of statute," stated Judge Cardamone. Stone would be entitled to a share of Williams' copyright renewals if she was a "child" of the author, and would not lose such status because of a delay in obtaining a judicial determination. The fact that Stone could have brought an action in 1979 did not bar a lawsuit in 1985, given the "long established rule that statutes of limitations bar remedies, not the assertion of rights." Stone thus was entitled to seek a share of royalties earned within three years of the lawsuit.

The court proceeded to review the Alabama litigation which eventually resulted in a state Supreme Court ruling declaring that Stone was entitled to a proportionate share of the proceeds of the estate of Williams, Sr., but prospectively only. Judge Cardamone, after lengthy consideration, found that the ruling was valid for purposes of preclusion and that Williams, Jr. was a "party" bound thereby; that the relationship of the other parties "vis-a-vis" Williams, Jr. satisfied the requirements for privity for purposes of preclusion. Williams, Jr. and the other parties had a parity of interest in the subject matter of the prior litigation - Stone's ability to inherit from Williams, Sr. - and those parties were bound, as was Williams, Jr. by the prior adjudication of the issue.

It also was found, given the "unique character" of the case and the relationship between Williams, Jr. and the remaining parties, that it was not "fundamentally unfair or incompatible with notions of justice or due process" to bind the Williams, Jr. parties by the Alabama Supreme Court's finding of Williams, Sr.'s paternity. In turning to the issue of Stone's interest in the copyright renewals in the works of Williams, Sr., Judge Cardamone, although observing that the question was not considered by the District Court, nevertheless chose to address the issue because the facts were undisputed and the question presented was fully briefed by the parties.

Under 24 of the 1909 Copyright Act and 304(a) of the 1976 Copyright Act, if an author is not living when the original copyright term expires, the author's "widow, widower, or children" are entitled to the copyright renewal. The 1909 Act governed Stone's interest in the renewal rights in works already in their renewal term as of January 1, 1978; the 1976 Act governed Stone's interest in previously copyrighted works not yet in their renewal term as of January 1, 1978.

Williams, Jr. first argued that even if Stone was a natural child of Williams, Sr., she was not a "child" for purposes of either the 1909 or 1976 Acts. Prior to 1979, Alabama provided for inheritance by an illegitimate child through its father only if the parents were later married and the father recognized the child, or there was a written declaration by the father, attested by two witnesses, and filed with the judge of probate. Judge Cardamone commented that "the fraud perpetrated on Stone prevented her from asserting her rights until 1979," and declined to assess her entitlement "under the law in existence while she was being victimized."

The Alabama Supreme Court applied current Alabama law and concluded that Stone, as a natural child who was not "adopted-out" at the time of Williams, Sr.'s death, was an heir entitled to inherit. Since Stone was entitled to an interest in copyright renewals under the 1909 Act based on her ability to inherit under state intestacy law, and since the interpretation of Alabama's laws by the state's highest court was binding on the Federal Court of Appeals, Stone, observed Judge Cardamone, was entitled to an appropriate share of the renewal interests in copyrights renewed under the 1909 Act.

Judge Cardamone next concluded that as the holder of the termination right for renewals registered under the 1976 Act must be determined by reference to state law, the holder of the renewal itself also must be similarly determined. Stone therefore was entitled to a share of copyright renewals under  24 of the 1909 Act and under  304(a) of the 1976 Act, despite eventually having been adopted-out, since "children" for purposes of both sections, was defined by state law.

The issue of the amount of Stone's share in the Williams, Sr. royalties was remanded to the District Court for further proceedings, as was Stone's cause of action alleging a conspiracy to suppress material facts. The District Court was asked to consider whether, despite the lack of a fiduciary relationship, there nonetheless existed a duty on the part of the Williams, Jr. parties to disclose information concerning Stone's existence and claim to the estate of Williams, Sr.

Stone v. Hank Williams, Jr., Case No. 91-7706 (2d Cir., July 13, 1992) [ELR 14:6:8]

## Copyright misuse defense is rejected in dispute over play based on Janis Joplin

A Federal District Court in Seattle has ruled that Jimmy Allen and Gaye Anderson, the producers of the play "Janis," infringed Joplin Enterprises' copyrighted songs, "Move Over" and "Kozmic Blues." Joplin Enterprises also had acquired an exclusive license to use the song "Me and Bobby McGee" in dramatic productions "based on the life story of Janis Joplin" - Allen and Anderson were not found liable for the use of that song.

The producers argued that the Joplin parties engaged in copyright misuse. Judge John C. Coughenour stated that a party alleging copyright misuse would not be required to first establish a violation of the antitrust laws. In any event, Joplin had probable cause to bring the underlying litigation, which, with respect to "Move Over" and "Kozmic Blues," was not baseless. And although Joplin did not have the right to sue the producers for copyright infringement based on the use of "Me and Bobby McGee," the claim for copyright infringement based on the song did not rise to the level of misuse, or even bad faith.

Joplin's actions in acquiring license rights and seeking to protect its copyright interest were not copyright misuse, concluded the court, in granting partial summary judgment to the Joplin parties.

Joplin Enterprises v. Allen, Case No. C91-1035C (W.D.Wash. 1992) [ELR 14:6:9]

---

**Lifetime Cable Network settles Hilary Foretich's invasion of privacy claim**

The Entertainment Law Reporter (13:5:13) previously reported on a Federal District Court decision concerning Eric Foretich's lawsuit against Glamour magazine in connection with an article concerning the highly-publicized custody dispute between Foretich and his former wife, Dr. Elizabeth Morgan, over their daughter Hilary.

Foretich also sued Lifetime Cable to prevent the broadcast of a documentary entitled "Hilary in Hiding." The documentary, which eventually was broadcast, included a scene where Hilary, using a doll, purportedly demonstrated alleged sexual abuse by her father. Foretich and Hilary, with an appointed guardian ad litem, sought compensatory and punitive damages for invasion of privacy.

A Federal District Court in Washington, D.C. denied Lifetime's motion for summary judgment, stating that factual questions were raised as to the legitimacy of the public's interest; as to whether Hilary's account of what happened to her remained a private fact until it was broadcast; and as to whether consent was given for the broadcast.

According to newspaper reports, Lifetime Cable, in March 1992, agreed to pay $175,000 in damages to settle Hilary Foretich's claim. The court decided that $115,000 of the payment would go into an annuity that, with interest, would provide Hilary with more than $200,000 at age 18. Hilary then would have a year to decide whether to accept the money or to demand a trial for damages at that time. The remaining $60,000 was awarded as attorneys' fees to the attorney appointed by the court to represent Hilary's interests.

Lifetime did not admit any liability in the matter.

Foretich v. Lifetime Cable, 777 F.Supp. 47 (D.D.C. 1991) [ELR 14:6:10]

---

## "Libel-by-fiction" claim is dismissed

Warner Books published "The Gold Coast," written by Nelson Demille in April 1990; the novel, set on Long Island's North Shore, was released in paperback form about one year later.

The primary characters in the novel, as described by New York trial court Acting Judge Herman Cahn, included Frank Bellarosa, "an organized crime boss who purchases a mansion on the Gold Coast; John Sutter, a prep school and Harvard Law graduate who is a partner at a prestigious Wall Street law firm; and Susan Stanhope Sutter..., John Sutter's wife.."

Monica Randall, a long-time resident of the "Gold Coast," sued Demille and Warner for libel, alleging that readers of the novel would identify Randall as Susan Sutter. Randall also claimed that Demille negligently misrepresented to interviewers that Randall was the model for Susan Sutter, and that Warner and Demille used Randall's name and likeness to promote the novel without her consent. As a result of the purported portrayal, according to Randall, reasonable persons in the general public believed that she was "an adulteress, an elitist, mentally unstable, spoiled, selfish, and involved, sexually and socially, with persons associated with organized crime, as Susan Sutter is portrayed in the Novel."

Randall, a painter and photographer of Gold Coast mansions and landscapes, also claimed that she was the president of the Gazebo Society, a group dedicated, among other activities, to restoring and preserving gazebos located on the North Shore of Long Island. The complaint alleged that the novel's reference to the Gazebo Society would lead the general public to believe that the society was "a front for illicit and/or immoral behavior" and that the members of the society were "incompetent at restoration, [were] mentally unstable, and aid, abet and engage in marital infidelities."

Randall and Sutter were both described as redheads, accomplished painters of Gold Coast mansions and ruins, and avid horsewomen; Randall owned a white horse named xanadu, while Sutter's white horse was named Zanzibar.

Warner and Demille argued that the Gazebo Society never existed and was Demille's creation. Demille described Susan Sutter as a wealthy heiress, who was educated in exclusive prep schools, married for twenty years to John Sutter, had two children, and was a member of two exclusive clubs. Randall, employed as a location scout and author, was not wealthy, was unmarried, had no children  and was not, in contrast to Susan Sutter, considered to be among the wealthiest families in America.

In dismissing Randall's action, Judge Cahn declared that the dissimilarities between Randall and Susan Sutter far outweighed the similarities, commenting that the biggest difference between Randall and Sutter was their overall personalities. It was pointed out that Demille portrayed Sutter as a private person, while Randall acknowledged that she was known to the public as a lecturer, author and photographer.

Judge Cahn found that the allegedly libelous statements made in reference to the Gazebo Society, without more, could not be considered anything other than opinion and were not actionable.

The court dismissed Randall's cause of action for negligent misrepresentations - Randall did not allege to whom the challenged statements were made or where they were published. Also rejected was the cause of action on behalf of the Gazebo Society, "whether or not it actually exists," under the New York Civil Rights Law.

Judge Cahn denied Warner and Demille's motion seeking to impose sanctions on Randall for bringing a frivolous action, but ordered an evidentiary hearing on the Warner parties' claim the Randall submitted to the court an allegedly perjurious affidavit and falsified documents.

Randall v. Demille, New York Law Journal, p. 25, col. 3 (N.Y.Cnty., Sep. 28, 1992) [ELR 14:6:10]

## Oklahoma State University group may seek nominal damages arising from university's response to showing of "The Last Temptation of Christ," but denies request for injunctive relief

In September 1989, the Board of Regents of Oklahoma State University voted to suspend the showing, at the student union theater, of the Martin Scorsese film "The Last Temptation of Christ." The Board subsequently rescinded the suspension, leaving the matter to the university administration. The university directed the student union activity board to include a disclaimer in advertisements for the film; the disclaimer stated: "The showing of this film does not reflect an endorsement of its contents by the OSU Board of Regents or Oklahoma State University." The film was shown on the originally scheduled dates in October 1989.

The Committee for the First Amendment, an unincorporated association of students, faculty, and "other members of the university community of Oklahoma State University," brought a lawsuit under 42 U.S.C. 1983, claiming that the university parties had engaged in content-based censorship.

A Federal District Court dismissed the committee's action with prejudice.

A Federal Court of Appeals has found that the District Court did not abuse its discretion in granting summary judgment to the university parties and in denying the committee's motion for reconsideration.

In 1991, the university adopted a "Policy Statement Governing the Extracurricular Use of University Facilities, Areas or Media for the Purpose of Expression." The committee did not show that there was a reasonable likelihood of future unconstitutional content-based censorship sufficient to warrant remanding the matter for an evidentiary hearing on whether the committee's request for injunctive relief was moot, stated the court.

However, Judge Baldock reversed the District Court's decision granting summary judgment on the committee's complaint for nominal damages, for "neither the showing of the film on the originally scheduled dates, nor the subsequent enactment of the 1991 policy erase[d] the slate concerning the alleged First Amendment violations in connection with the film." The committee, upon proving a violation of its First Amendment rights, would be entitled to at least nominal damages, noted the court.

On remand, the District Court was directed to first resolve the university parties' claim of qualified immunity concerning the claim for nominal damages.

Committee for the First Amendment v. Campbell, 962 F.2d 1517 (10th Cir. 1992) [ELR 14:6:11]

## Vanity Fair magazine and journalist obtain summary judgment in action concerning article about Hungarian political figure

William Pena Wells contacted Creative Management, Inc., claiming that he was interested in finding an author to collaborate on a biography of Dr. Antall, who at the time was a candidate for the post of Prime Minister of the Republic of Hungary. Amanda Urban, an employee of Creative Management, spoke with journalist Kati Marton about the project. Marton advised Wells that she was interested in interviewing Dr. Antall for an article about Hungary's political developments, but would not commit herself to collaborate on a biography.

Wells, who had a personal management agreement granting him the exclusive rights to Dr. Antall's life story, agreed to provide Marton with unrestricted access to Dr. Antall subject to certain conditions on the future use of the information obtained as a result of any interview. Marton rejected the proposed conditions. During a trip to Hungary, Marton interviewed Dr. Antall; it did not appear to Marton that Wells was involved in arranging the meeting.

Vanity Fair magazine published Marton's article about the political and social changes occurring in Hungary. The article included excerpts of Marton's interview with Dr. Antall.

Wells sued Marton and other parties for tortious interference with an advantageous business relationship. In a decision issued in June 1991, but only recently published, a Federal District Court in Florida granted summary judgment to the Marton parties.

Senior District Judge C.Clyde Atkins initially noted that Wells had not submitted written evidence confirming Wells' business relationship with Dr. Antall. And since Marton's article was not a life story of the political leader, the court stated that the purported agreements between Well's representative and Dr. Antall's political party were "largely irrelevant."

Judge Atkins proceeded to find that Wells did not present any evidence of intentional and unjustified interference by the Marton parties, and concluded by noting that there was no evidence of damage to Wells as a result of the alleged tortious interference.

Wells v. Marton, 794 F.Supp. 1092 (S.D.Fla. 1991) [ELR 14:6:11]

## Sports agents Norby Walters and Lloyd Bloom are sentenced after pleading guilty to mail fraud charges

In September 1992, sports agent Norby Walters was sentenced by a Federal District Court in Chicago to eighteen months in prison for mail fraud. According to news reports, Judge Harry Leinenweber also sentenced Walters, who had pleaded guilty to two counts of mail fraud, to five years' probation and 250 hours of community service, and ordered Walters to pay a $25,000 fine.

Walters' partner, Lloyd Bloom, was sentenced in August 1992 to 500 hours of community service after pleading guilty to one count of mail fraud.

The lengthy proceedings against Walters and Bloom arose from the agents' alleged signing of college athletes to representation contracts before the athletes' eligibility expired. In 1987, a Federal District Court in New York, citing "overriding policy concerns," refused to enforce a contract between former University of Auburn football player Brent Fullwood and Walters and Bloom (ELR 10:5:12).

In 1988, a federal grand jury in Chicago indicted Walters and Bloom on charges of racketeering, mail fraud, wire fraud and extortion. The indictment accused the sports agents of using money, gifts and threats of violence to obtain exclusive representation contracts with college athletes; the payments and contracts, in some cases post-dated, violated NCAA rules.

After the agents' pre-trial motions were denied (711 F.Supp. 1435), a jury convicted Walters and Bloom on charges of mail fraud and racketeering. The court then sentenced Walters to five years in prison, followed by five years of probation and sentenced Bloom to three years in prison and five years of probation. The court also ordered Bloom to finish paying back $145,000 to football player Paul Palmer, and ordered Walters to forfeit $250,000 to the government (ELR 11:2:17).

A Federal Court of Appeals reversed the convictions and remanded the matter with instructions for a new trial. Chief Judge Bauer noted that Walters and Bloom had consulted with the law firm of Shea and Gould in New York concerning the possible legal ramifications of signing exclusive representation agreements before the expiration of an athlete's collegiate eligibility. The agents were informed that while they were violating NCAA rules by signing athletes who then continued to play for their college teams, they were not violating any laws. The attorneys claimed that although they were aware that athletes probably would have to conceal the agreement from their universities, they were not aware, as described by Chief Judge Bauer, that the athletes "would lie openly on their NCAA eligibility forms."

The court held that the District Court's refusal to instruct the jury that Walters' actions may have been based on the advice of counsel and the court's denial of Bloom's motion for severance were sufficiently prejudicial to Walters and Bloom to warrant the reversal of their convictions and a new trial.

It was observed that if Walters' actions were taken in good faith based on the advice of his attorneys, Walters would not have formed the specific intent necessary to commit fraud upon the universities. Chief Judge Bauer stated that it seemed "patently unreasonable" that Walters chose to conceal material information from his attorneys about his plans. There was "substantial doubt" about the circumstances of Walters' legal advice, and questions about the situation should have been resolved by the jury - not the court. It appeared to Chief Judge Bauer that Walters presented sufficient evidence on which to support his theory of defense and the refusal to provide an advice-of-counsel instruction therefore was reversible error.

The court then noted that when Walters presented the advice-of-counsel defense, Bloom was confronted with having his own attorneys testify about privileged communications. Bloom could not pursue his own defense, stated the court, "but was forced to skittle along behind that of Walters." Given that prejudicial error occurred in Walters' defense, declared Chief Judge Bauer, Bloom was prejudiced as well. Bloom did not waive his attorney-client privilege and should have been provided the option of a separate trial. The denial of Bloom's motion for severance was outside the court's discretion, concluded Chief Judge Bauer.

On remand, Federal District Court Judge Leinenweber, in October 1991, denied Walters' motion to dismiss the indictment on the ground that the evidence was insufficient to support a guilty verdict on the mail fraud counts.

The court noted that upon signing representation agreements with Walters, the college athletes lost their eligibility. The colleges were not made aware of the agreements, and thus were induced to continue financial support to the athletes through fraud, because the continuation of scholarship payments depended upon continued eligibility - "the executed agreements... by their very existence, made the players ineligible to receive scholarship money."

Walters' conduct also deprived the colleges of their right to allocate athletic scholarships on the basis of truthful representations as to each player's eligibility, declared the court, for the right to control the allocation of athletic scholarships is a right protected by the mail fraud statute.

The court concluded by denying Walters' motions to dismiss the indictment for failing to allege the requisite element of intent and for failing to satisfy the requirement of showing that the challenged mailings were made "in furtherance of" the scheme in issue.

United States v. Walters, 913 F.2d 388; 1990 U.S. App. LEXIS 16349 (1990); 775 F.Supp. 1173; 1991 U.S. Dist. 14790 (1991) [ELR 14:6:12]

---

## Insurance company's claims against National Football League are dismissed

In 1984, fourteen teams of the National Football League and the League Management Council created a "captive mutual insurance company" in Bermuda named NFL Insurance Ltd. pursuant to a plan to self-insure the league's football players and employees for employment related injuries. NFLIL was formed in order to reinsure the teams' workers' compensation insurance.

NFLIL contracted with a licensed insurer, Home Insurance Company, to write the various policies in different states. NFLIL then would reimburse the licensed insurer for workers' compensation claims.

From June 1986 through July 1989, Travelers Insurance Company took over the policies from Home Insurance and became the licensed insurer for the NFL parties. NFLIL entered several reinsurance agreements with Travelers, but subsequently became insolvent and in 1991 was placed in liquidation in Bermuda.

Travelers claimed that NFLIL failed to reimburse Travelers for over $3 million in workers' compensation claims and sought to recover debts and liabilities totalling more than $14.5 million.

A New York trial court has ruled that Bermuda law would apply to Travelers' cause of action for breach of contract in disregard of NFLIL's corporate veil, notwithstanding the fact that the reinsurance agreements stated that New York law would apply.

Judge Peter Tom then noted that Travelers did not allege that the formation of NFLIL was a scheme to enable its members to carry on their personal business in the name of the corporation; did not allege fraud, concealment or illegality; and did not allege that the League parties transferred any assets out of NFLIL to avoid liability.

Travelers' argument that NFLIL's failure to observe corporate formalities provided a basis for piercing the corporate veil was "untenable," stated the court. The purported violation of the Bermuda Companies Act of 1981 and the company's bylaws might result in liability for losses sustained by the company due to the failure to comply, but would not lead to the loss of either the corporate identity or limited liability of corporate shareholders.

The reinsurance agreements were exclusively between Travelers and NFLIL - the National Football League and its member teams were not parties to the agreements, observed Judge Tom. The workers' compensation policies which required the payment of premiums by certain League parties were met, and the teams paid all the premiums under the policies. Travelers' failure "to accurately assess potential risks of loss, and failure to insist upon the posting of adequate letters of credit by NFLIL before issuing the policies or to provide further protection in the three reinsurance contracts such as requiring written guarantees from each team cannot serve as a proper ground for Court intervention to pierce NFLIL's corporate identity," declared the court, in granting the League parties' motion for an order dismissing Travelers' breach of contract claim.

With respect to Travelers' cause of action for promissory estoppel, Judge Tom found that New York law would apply. Travelers claimed that representatives of the League parties represented to Travelers that they would insure the survival of NFLIL by providing sufficient capital to fund losses that were incurred by Travelers under the workers' compensation policies written for NFLIL members.

The court found that even if Travelers' allegations were determined to be true, the circumstances of the case were not "so egregious as to warrant the application of the doctrine of promissory estoppel." Travelers, again, did not allege fraud, fraudulent intent, or concealment by the League parties at the time of entering the reinsurance agreements. It also appeared to the court that Travelers' alleged reliance upon the purported representation by the League's "unnamed representative" was either "referable or naturally compatible with its performance under (the prior written reinsurance agreements)" and did not provide the basis for an estoppel claim.

Judge Tom next rejected Travelers' cause of action for tortious interference with contract. The company claimed that the League parties intentionally interfered with NFLIL's attempts to collect from its members the amounts necessary to satisfy NFLIL's contractual obligation to Travelers. Travelers argued that NFLIL had an obligation to collect reserve fund premiums from its members, and the power to make calls on the League parties for the payment of retrospective premiums but failed to do so.

The court determined that Travelers did not allege improper means of interference or that the alleged interference was motivated by malice, rather than in an effort to preserve the League parties' own economic interests.

Travelers Insurance Co. v. Chicago Bears Football Club, Inc., New York Law Journal, p. 22, col. 5 (N.Y.Cnty., Oct. 9, 1992) [ELR 14:6:13]

## Ruling that sculpture of couple holding eight puppies infringes copyrighted photograph is upheld, but remand is ordered for determination of damages

In 1980, Art Rogers, as reported at ELR 13:1:5 and 13:11:19, photographed Jim and Mary Scanlon and their eight puppies. The photograph was published in a local newspaper, exhibited at a museum and reproduced as a notecard.

In 1988, a Jeff Koons art exhibit at the Sonnabend Gallery included a polychromed wood sculptural version of the photograph; the piece was entitled "String of Puppies."

A Federal District Court in New York granted summary judgment to Rogers in his copyright infringement action against Koons and subsequently amended the earlier ruling by finding that the gallery, the seller of the infringing sculptures and the recipient of fifty percent of the infringing profits, was a direct infringer of Rogers' work.

A Federal Court of Appeals has upheld the District Court's decision.

Judge Cardamone began the court's opinion by commenting that Koons' copying "was so deliberate as to suggest that [Koons and Sonnabend] resolved so long as they were significant players in the art business, and the copies they produced bettered the price of the copied work by a thousand to one, their piracy of a less well-known artist's work would escape being sullied by an accusation of plagiarism."

The court then described the professional backgrounds of the artists and the circumstances leading to the creation of the works in issue. Koons acknowledged that the source for "String of Puppies" was the notecard reproduction of Rogers' work, and that he directed the workers carving the sculpture to copy the photograph.

Sonnabend sold three of the four copies of Koons' piece for a total of $367,000; Koons kept the fourth copy.

The District Court found that Koons' sculpture infringed the Rogers' photograph, and eventually entered a permanent injunction barring Koons and Sonnabend Gallery from selling any copies of, or derivative works based on, "Puppies," and requiring Koons to deliver all infringing articles to Rogers, including the fourth copy of "String of Puppies."

In May 1991, the District Court held Koons in contempt for failing to comply with the turn-over order. Judge Cardamone rejected Koons' argument that the portion of Rogers' work that was allegedly infringed was not an original work of authorship protected under the 1976 Copyright Act. It was observed that the elements of originality in a photograph may include "posing the subjects, lighting, angle, selection of film and camera, evoking the desired expression, and almost any other variant involved." Rogers posed the group for the photograph, and took and printed the picture - his work met the original work of art criteria, and the photographer owned a valid copyright.

The court agreed with the District Court that no reasonable juror could find that copying did not occur in this case. Not only was there direct evidence of copying, but Koons conceded access to the copyrighted work, and his sculpture was so substantially similar to the copyrighted work that reasonable jurors could not differ on this issue.

Judge Cardamone emphasized that what was protected in Rogers' work was not the idea of a couple, seated on a bench, with eight small puppies, but Rogers' expression of the idea "as caught in the placement, in the particular light, and in the expressions of the subjects...that gives the photograph its charming and unique character..." and made it original and copyrightable. Koons used the identical expression of the idea created by Rogers.

The court next affirmed the District Court's decision to grant summary judgment to Rogers on Koons' fair use claim. Judge Cardamone, in reviewing the fair use factors, focused on Koons' argument that the primary purpose of his use of Rogers' work was for social comment, and that his sculpture was a satire or parody of society at large.

Parody or satire, in the court's understanding, occurs when one artist "for comic effect or social commentary, closely imitates the style of another artist and in so doing creates a new art work that makes ridiculous the style and expression of the original." A parody, as a valued form of criticism, entitles its creator under the fair use doctrine to more extensive use of the copied work than is ordinarily allowed under the substantial similarity test.

Judge Cardamone again agreed with the District Court in finding that "String of Puppies" was not a parody of Rogers' work - the photograph was not in any way an object of the alleged parody. The court rejected Koons' claim that he was "acting within an artistic tradition of commenting upon the commonplace." By requiring that the copied work be an object of the parody, viewers would be aware, stated the court, that "underlying the parody there is an original and separate expression, attributable to a different artist."

The court concluded, given the circumstances of the case, that Koons' copying of the photograph was done in bad faith, primarily for profit-making motives, and did not constitute a parody of the original work.

After observing that Koons "went beyond the factual subject matter of the photograph to incorporate the very expression of the work created by Rogers," Judge Cardamone stated that no reasonable jury could conclude that Koons did not exceed a permissible level of copying under the fair use doctrine, and proceeded to find that Rogers' market for his work was prejudiced by Koons' work.

Rogers claimed infringing profits in the amount of $367,000, but the court stated that Koons and Sonnabend had incurred deductible expenses and should have an opportunity to prove the expenses as an offset to Rogers' evidence of infringing damages. The amount of actual damages incurred by Rogers, as well as the proper apportionment of Koons' profits between Rogers and Koons also must be determined on remand.

Judge Cardamone suggested that on remand, the District Court might consider that a reasonable license fee for the use of Roger's photograph would best approximate the market injury sustained by Rogers as a result of the infringement. Furthermore, to the extent Koons might be able to prove that the profits in issue derived from his own position in the art world, Koons would be allowed to retain such profits.

The court noted that in view of Koons' "wilful and egregious behavior," Rogers might elect to seek enhanced statutory damages in lieu of an award of actual damages and apportioned profits.

Judge Cardamone concluded by finding that the District Court did not abuse its discretion in directing a turn-over of the infringing works and that the contempt order for the direct violation of the turn-over order was entirely proper.

Rogers v. Koons, 960 F.2d 301 (2d Cir. 1992) [ELR 14:6:14]

---

**Winterland Productions obtains damages and permanent injunctive relief in trademark infringement**

**actions against distributors of unauthorized merchandise**

In July 1992, a Federal District Court in Pennsylvania awarded Winterland Productions, the exclusive merchandising licensee for many performers, damages of about $1 million in an action against three individuals selling infringing and imitation merchandise.

Judge Joseph L. McGlynn, Jr. found that the unauthorized sales by Edward David Brandt, Joseph MacIntosh and Laurie Markovitz were "deliberate, knowing, wilful and wanton" in violation of sections 43(a) and 44 of the Lanham Act. The distributors, stated the court, "by misappropriating and using the names, likenesses or other indicia of the Winterland Artists misrepresent and falsely describe to the general public the origin and source of their bootleg merchandise so as to create the likelihood of confusion by the ultimate purchase[r] as to both the source and sponsorship of said bootleg merchandise."

The court further found that the distributors wilfully infringed Winterland's separate rights of publicity and privacy in and to the names and likenesses of the company's licensed artists; permanently enjoined the distributors from engaging in continuing infringing activities; and awarded Winterland attorneys' fees and costs.

In a separate proceeding in New Jersey, a Federal District Court, according to a press release, awarded Winterland damages of about $2 million, as well as attorneys' fees and costs, against Gene and Cynthia Perloff and Monroe Productions. The court previously had granted Winterland a permanent injunction restraining the Perloff parties from distributing merchandise bearing the names, trademarks, service marks or likenesses of any Winterland performer.

Winterland Concessions Company v. MacIntosh, Case No. 89-8342 (E.D.Pa., July 13, 1992); Winterland Concessions Company v. Perloff, Case No. 89-1404 (D.N.J., Jan. 12, 1990) [ELR 14:6:15]

---

## Briefly Noted:

### Copyright Infringement/Jurisdiction.

Stephen Duane Johannsen created an illustration entitled "American Relix" for Relix magazine, a magazine primarily dedicated to the Grateful Dead Band and other musical groups. Johannsen granted the magazine permission to use the illustration on the cover of the magazine, but subsequently sued Relix and associated parties for copyright infringement when the illustration, without his permission, was reproduced as a poster.

A Federal District Court in Oregon has found that the Relix parties lacked sufficient contacts with the state for the court to exercise general jurisdiction over them. However, the magazine parties (except for one individual) purposefully availed themselves of the privilege of conducting activities in the state through their correspondence with Johannsen and his submissions to Relix. Johannsen's claim arose out of one of his submissions to the magazine; the magazine parties did not show that the exercise of personal jurisdiction over them by the court would be unreasonable; and the court denied their motion to dismiss.

Johannsen v. Brown, 788 F.Supp. 465 (D.Ore. 1992) [ELR 14:6:16]

## Copyright Infringement/Dinosaur Game.

During the years 1984 through 1988, Elsa O. Hofmann obtained at least five copyright registrations for various versions of a dinosaur board game. Hofmann claimed that the Pressman Toy Corporation's "Dizzy Dizzy Dinosaur" game infringed her copyrighted works. A Federal District Court in New Jersey, in a decision issued in November 1990, but only recently published, has dismissed Hofmann's complaint.

After describing the features of Hofmann's games and the Pressman game, the court noted that Hofmann never sent Pressman a prototype, a gameboard, a photograph of the gameboard, or a set of rules for her games. Judge Debevoise concluded that there was no evidence that the Pressman parties had access to Hofmann's work.

Hofmann v. Pressman Toy Corporation, 790 F.Supp. 498 (D.N.J. 1990) [ELR 14:6:16]

---

## Libel.

The July 13, 1990 telecast of the Capital Cities/ABC program "20/20" reported on an alleged stolen pet operation conducted by James Hickey.

A Federal District Court in Oregon, after reviewing the challenged statements, granted Capital Cities' motion for summary judgment. The court found that it was substantially true that the program presented evidence of a "black market" in stolen or missing pets. The program's reference to a "low, repulsive crime" apparently described the animal thefts carried out by three individuals. Since the program stated that "the Hickeys have never been charged with stealing pets," the reference was not "of and concerning" Hickey.

It was further found that the words "low," "repulsive," and "rotten," used by the program in describing the business of buying and selling stolen pets, were expressions of opinion protected by the First Amendment. The statements also were not of and concerning Hickey.

Hickey v. Capital Cities/ABC, Inc., 792 F.Supp. 1195 (D.Or. 1992) [ELR 14:6:16]

---

**Spectator Injury.**

In August 1986, Blanca Coronel attended her first Chicago White Sox baseball game at Comiskey Park; Coronel was seated behind home plate, facing first base, about three seats away from the edge of a protective screen. During the game, Coronel was struck on the right side of her face by a line-drive, foul-tipped ball, and suffered a broken jaw.

An Illinois trial court decision granting the team's motion for summary judgment has been reversed by an appellate court.

Judge Scariano stated that the principle that the owner of a baseball park owes a duty to protect spectators from injury caused by foul balls was legally recognized "a full quarter century ago by our court..." Although such a duty does not require a complete fencing of the spectators present at a ball game, a screen would be required for the most dangerous seating area, i.e., the area behind home plate.

The court found that a question of fact existed as to whether the team violated its duty to spectators seated in the most dangerous part of the ballpark, noting that evidence was presented that the protective screen behind home plate was one of the smallest in major league baseball.

A trier of fact also must determined whether the team adequately complied with the duty to warn Coronel of the possible dangers of being struck by a foul-tipped ball.

Coronel v. Chicago White Sox, Ltd., 595 N.E.2d 45 (Ill.App. 1992) [ELR 14:6:16]

---

**Workers' Compensation/Football Player.**

The Detroit Lions chose Lynn R. Boden as a first round pick in the 1975 National Football League draft. Boden played for the Lions from 1975 through the 1978 season, but was released in August 1979. The Chicago

Bears hired Boden and he played for the team in the 1979 season.

Boden filed a workers' compensation claim against the teams, stating that he suffered injuries on September 24, 1978, September 9, 1979, and November 22, 1979 (while playing for the Bears against the Lions in Michigan), and that the injuries to his left knee impaired his skills and limited his ability to find work as a professional football player.

The Michigan Bureau of Workers' Disability Compensation, in 1984, found the teams liable for the payment of benefits, but the Workers' Compensation Appeals Board reversed the decision of the bureau, stating that Boden failed to prove that his disability was attributable to any activity in Michigan.

A Michigan appellate court has found that there was competent evidence to support the board's findings and refused to reverse the board's decision.

Boden v. Detroit Lions, Inc., 483 N.W.2d 673 (Mich.App. 1992) [ELR 14:6:17]

## Amateur Sports Act Claim.

Deborah Dolan claimed that the United States Equestrian Team and American Horse Shows Association, by failing to choose Dolan as a member of the American team which competed at the 1990 World Equestrian Championship, violated the federal Amateur Sports Act.

A New Jersey trial court judge dismissed the complaint on the alternative grounds that Dolan had no cognizable cause of action, that there was a failure to exhaust administrative remedies, and that there was a failure to join an indispensable party (the individual chosen to compete in Dolan's stead).

An appellate court, on the basis of Dolan's failure to exhaust administrative remedies, has upheld the trial court's decision.

It was noted that the statute did not create a private right of action and that the exhaustion of the administrative remedies was a condition precedent to any legal action. The comprehensive provisions for arbitration, as well as the legislative history of the statute, stated Judge Bilder, demonstrated the "congressional determination that disputes shall be resolved by arbitration."

Dolan v. United States Equestrian Team, Inc., 608 A.2d 434 (N.J.App. 1992) [ELR 14:6:17]

---

**Skier Injury.**

Karl Kotovsky received serious injuries when, while participating in a downhill ski race, he collided with a wooden fence post situated along the side of the course. Prior to participating in the race, Kotovsky had signed exculpatory agreements and releases.

In response to Kotovsky's lawsuit claiming that Ski Liberty Operating Corporation, the owner of the slope, was negligent in failing to pad the post, a Pennsylvania trial court entered judgment for Ski Liberty.

In affirming the trial court decision, the appellate court pointed out that downhill skiing is a dangerous activity, that Kotovsky was an experienced skier who was familiar with the hazards of downhill racing, and that Kotovsky had expressly agreed to assume the risk of injury and released Ski Liberty from all liability, even that which might result from negligence. Judge Wieand observed that the releases were not contracts of adhesion, did not contravene public policy, and, again, specifically referred to and included possible liability for acts of negligence.

Kotovsky v. Ski Liberty Operating Corporation, 603 A.2d 663 (Pa. Superior Ct. 1992) [ELR 14:6:17]

____________________

**Gaming Information.**

In 1987, LeRoy's Horse and Sports Place, a betting establishment offering wagering on sports and race events, entered a one year contract with Sports Form, a licensed disseminator of gaming information. Sports Form eventually sued LeRoy's to recover the payments due under the contract.

Sports Form subsequently declined to provide LeRoy's with a signal transmitted from the origin of certain events to the betting establishment. LeRoy's sued Sports

Form for failure to provide equal access to gaming information. A trial court jury awarded LeRoy's about $14,000 in damages.

The Nevada Supreme Court has reversed the judgment entered on the verdict. Nevada laws states that "all persons licensed to operate and maintain a sports pool or race book are entitled to receive on a fair and equitable basis all information concerning such racing that is being disseminated into and within this state." The court stated that although gaming entities may be the primary beneficiaries of the Gaming Control Act, the statute did not provide them with a private cause of action - the legislature intended that only the Nevada Gaming Control Board or the Nevada Gaming Commission bring enforcement actions.

In dissent, Judge Young would have recognized a private cause of action in order to discourage Sports Form or others from future discrimination.

Sports Form, Inc. v. LeRoy's Horse and Sports Place, 823 P.2d 901 (Nev. 1992) [ELR 14:6:17]

---

## Minors' Contracts.

Tatge Lasseur Productions sought court approval of the company's performing arts contracts with thirty-three minors scheduled to dance in a film version of "The Nutcracker."

A New York trial court has determined that the terms of the contracts were in the best interests of the children, who would be performing with dancers from the New York City Ballet. Surrogate Eve Preminger questioned the appointment of a limited guardian to administer each child's net earnings since most of the children would earn $2,000 or less, and none would earn more than

$5,000. It also was noted that the administrative costs to the minors and the burden on the court's staff of establishing and supervising guardianship accounts "would be grossly disproportionate to the potential benefit" to the children.

The surrogate approved the minors' contracts, and granted the youngsters the authority to allow payment to a parent or competent adult for the use and benefit of the child.

In re Tatge Lasseur Productions, Inc., New York Law Journal, p. 23, col. 4 (Surrogate's Court, Sep. 22, 1992) [ELR 14:6:17]

---

**Previously Reported:**

According to news reports, Viacom International has settled a $2.4 billion antitrust action against Time Warner Inc. Time Warner has agreed to pay Viacom an undisclosed amount of cash (reportedly about $75 million); will participate in a join "multipremium" marketing campaign by Viacom's Showtime and Time Warner's Home Box Office; will provide wider distribution of Showtime and the Movie Channel on Time Warner's cable systems; and will increase advertising by Time Warner companies on Viacom's MTV Networks over the next five years. Time Warner also will buy Viacom's Milwaukee cable system in 1993 for $90-$95 million and granted a license to MTV Networks for Warner Music Group music videos to be shown on MTV and VHI.

In 1989, Viacom and its subsidiary Showtime Networks sued Time Inc., its wholly-owned subsidiary, Home Box Office, and other parties, alleging, among other claims, that the Time parties monopolized local markets for cable television in the United States. A Federal District Court ruled that Viacom was entitled to proceed with certain of its antitrust claims (ELR 14:4:8).

In reaching the settlement, Time Warner did not admit liability with respect to any of the claims raised by Viacom; Viacom did not admit liability in connection with any of Time Warner's counterclaims.

The United States Supreme Court has let stand a Federal District Court ruling rejecting a claim that Ozzy Osbourne and other parties associated with the distribution of the song "Suicide Solution" on the album "Blizzard of Oz" caused the wrongful death of Michael Waller by inciting him to commit suicide. The young man died in May 1986 as the result of a self-inflicted pistol wound to his head; the suicide allegedly occurred after Waller repeatedly listened to an Osbourne tape. The court, although expressing sympathy for the Waller family, granted the Osbourne parties' motion for summary judgment on the ground that the First Amendment precluded liability on the claims of negligence, nuisance, fraud and invasion of privacy (ELR 13:4:5).

The court also refused to consider a similar action brought by the family of a South Carolina teenager who shot himself in 1988 after purportedly listening to the same song.

The following cases, which previously were reported in the Entertainment Law Reporter, have been published: In re De Laurentiis Entertainment Group Inc. v. National Broadcasting Co., 963 F.2d 1269 (14:3:5); Itsi T.V. Productions, Inc. v. California Authority of Racing Fairs, 785 F.Supp. 854 (14:4:10); Luke Records, Inc. v. Navarro, 960 F.2d 134 (14:2:3); Masson v. The New Yorker Magazine, Inc., 960 F.2d 896 (14:1:3); National Labor Relations Board v. Musicians Union, AFM Local

6, 960 F.2d 842 (14:2:13); Romm Art Creations Ltd. v. Simcha International, Inc., 786 F.Supp. 1126 (14:4:9); Thoresen v. Penthouse International, Ltd., 583 N.Y.S. 2d 213 (14:1:8).

According to news reports, Creighton University has agreed to settle a lawsuit brought by former basketball player Kevin Ross. A Federal Court of Appeals (ELR 14:4:16) had ordered further consideration of Ross's breach of contract claim alleging that the athlete was barred from any participation in and benefit from Creighton's academic program. It was reported that Creighton denied any liability in the matter, but agreed to pay $30,000 to Ross.

The United States Supreme Court has let stand the decisions in Barclays Bank International Ltd. v. Franchise Tax Board (14:4:17); Cable Holdings of Georgia, Inc. v. McNeil Real Estate Fund VI, Ltd., (14:3:12); Desai v.

Hersh, (14:2:15); and New York Chinese TV Programs, Inc. v. U.E. Enterprises, Inc. (14:2:7).
[ELR 14:6:18]

## IN THE NEWS

### Los Angeles trial court jury rejects Tracey Ullman's claim seeking revenue from "The Simpsons"

A Los Angeles trial court jury has rejected Tracey Ullman's claim seeking $2.25 million from 20th Century Fox in revenue from "The Simpsons."

Ullman alleged that her contract for "The Tracey Ullman Show" provided that the actress would receive five to ten percent of net receipts from "series characters" created for the show other than those played by Ullman.

"The Simpsons" originally appeared as animation segments on Ullman's show.

Ullman also had claimed that she was entitled to seven and one-half percent of adjusted gross profits related to merchandising of the animated characters. [ELR 14:6:19][November 1992]

---

**National Football League must pay $30 million in damages to developmental squad players and $30 million to 1100 players who joined 1987 strike**

As reported at ELR 14:4:14, A Federal District Court in the District of Columbia ruled that the National Football League was not entitled to present a nonstatutory labor exemption defense in an antitrust action challenging uniform salary provisions in developmental squad player contracts. The jury apparently agreed that the

$1,000 per week salary paid to members of the developmental squads during the 1989 season was less than they would have earned had they been free to negotiate their own contracts.

In October 1992, a Federal District Court jury ordered the National Football League to pay a total of $30 million in damages for fixing the wages of 235 players. The $10 million damage award sought by the players was trebled under the antitrust laws.

In a separate proceeding, the National Labor Relations Board, according to news reports, ordered the league to pay $30 million to 1,100 players who took part in a 1987 strike. An administrative law judge had ruled that the league withheld a week's salary from the players when the walkout ended. [ELR 14:6:19][November 1992]

## Walt Disney Co. may use MGM name and logo for theme park's production facility, but MGM may use name for Las Vegas amusement park, rules Los Angeles trial court

Walt Disney Co. may continue to use the MGM name, lion logo and clips from MGM's film library in Disney's theme parks, including those parks operating a working production studio, a Los Angeles trial court has ruled.

MGM had sued Disney for operating a production facility, known as Disney-MGM Studios, in Orlando, Florida. MGM claimed that under a 1985 contract, Disney obtained the right to use the MGM logo on an attraction, not in connection with a working facility.

In response to a counterclaim filed by Disney, Judge Curtis Rappe also ruled that MGM Grand Inc. was entitled to use the MGM name for an amusement park in Las Vegas. According to news reports, the court found that the proposed park, which would be part of a casino resort, did not resemble the Disney-MGM attractions in Florida or Europe. [ELR 14:6:19][November 1992]

---

## DEPARTMENTS

### In the Law Reviews:

Regulation of Attorneys under California's Talent Agencies Act: A Tautological Approach to Protecting Artists by James M. O'Brien III, 80 California Law Review 471 (1992)

Copy Wrong: Plagiarism, Process, Property, and the Law by Laurie Stearns, 80 California Law Review 513 (1992)

State Regulation of Political Broadcast Advertising: Stemming the Tide of Deceptive Negative Attacks by Peter F. May, 72 Boston University Law Review 179 (1992)

Entertainment Law Review, published by ESC Publishing/Sweet & Maxwell, Mill Street, Oxford OX2 OJU, United Kingdom, has published Volume 3, Issue 3 with the following articles:

Film Financing: The Completion Guaranty Aspect by Schuyler Moore and Sheri Jeffrey, 3 Entertainment Law Review 79 (1992)

Television via Telephone Lines: Regulation and the Fibre Optic Revolution in the United States by Oliver R. Goodenough, 3 Entertainment Law Review 86 (1992)

Conventional Copyright: A Morality Play by David Nimmer, 3 Entertainment Law Review 94 (1992)

The Television Franchise Lottery that Licensed Litigation by Richard Gordon, 3 Entertainment Law Review 99 (1992)

The Insolvency of a Broadcaster: The Case of La Cinq in France by Gerald Bigle, 3 Entertainment Law Review 101 (1992)

The Game Genie Case: Copyright in Derivative Works versus Users' Rights by Richard H. Stern, 3 Entertainment Law Review 104 (1992)

Entertainment Law Review (for address, see above) has published Volume 3, Issue 4 with the following articles:

Mortgages and Charges over Films in the United Kingdom by Michael Henry, 3 Entertainment Law Review 115 (1992)

Droit de Suite: An Author's Right in the Copyright Law of the European Community by Theodore M. Shapiro, 3 Entertainment Law Review 118 (1992)

Reform in the International Protection of Sound Recordings by David Edward Agnew, 3 Entertainment Law Review 125 (1992)

A Comparative Study of TV Listings with Reference to the United Kingdom, Australia, New Zealand and Europe by Margot Watts and Robyn Durie, 3 Entertainment Law Review 133 (1992)

Sponsoring Television and Radio Programmes: The 1990 UK Broadcasting Act and the ITC Code by Ian S. Blackshaw and Gillian Hogg, 3 Entertainment Law Review 138 (1992)

The New Broadcasting Regime for the New Federal States of the Federal Republic of Germany by Klaus Kraatz, 3 Entertainment Law Review 145 (1992)

Performing Rights Societies: The Price is Right 'French style', or the SACEM Cases by Andre Bertrand, 3 Entertainment Law Review 146 (1992)

Fighting Piracy: The EC Rental Rights Proposal by Angus Murray, 3 Entertainment Law Review 148 (1992)

Barnes v. Glen Theatre, Inc.: Application of Indiana's Public Indecency Statute to Nude Dancing-Is the

Supreme Court Stripping Away First Amendment Protections to Reveal a New Standard? by Ingrid Kristin Campagne, 25 Loyola of Los Angeles Law Review 595 (1992)

Copyright Law's Broken Rear Window: An Appraisal of Damage and Estimate of Repair by Daniel A. Saunders, 80 California Law Review 179 (1992)

Does A Copyright Coowner's Duty to Account Arise Under Federal Law? by Craig Y. Allison, 90 Michigan Law Review 1998 (1992)

Movies and Product Placement: Is Hollywood Turning Films into Commercial Speech? by Steven L. Snyder, 1992 University of Illinois Law Review 301 (1992)

Communications and the Law has published Volume 14, Number 2 with the following articles and is available from Fred B. Rothman & Co., 10368 W. Centennial Road, Littleton, CO 80127.

Conceptual Problems of Broadcast Indecency Policy and Application by Jeremy Harris Lipschultz, 14 Communications and the Law 3 (1992)

Public Versus Private Figure Determination Under Gertz by Deckle Mclean, 14 Communications and the Law 31 (1992)

A Proposal for Rethinking the "Of Public Concern" Requirement of Pickering by Michael J.K. Schiumo, 14 Communications and the Law 51 (1992)

Expert Testimony in Private Figure Libel Trials on the Issue of Negligence: A Developing Concept by Don E. Tomlinson, 14 Communications and the Law 69 (1992)

The Journal of Arts Management and Law may be ordered by calling 1-800-365-9753.

Sorting Out Our Roles: The State Arts Agencies and the National Endowment for the Arts by Jeffrey Love, 21 Journal of Arts Management and Law 215 (1991)

The Effect of NEA Restructuring on Arts Organizations by Edward A. Martenson, 21 Journal of Arts Management and Law 227 (1991)

Lobbying for Entitlements: Advocacy and Political Action in the Arts by Ronald Berman, 21 Journal of Arts Management and Law 258 (1991)

How Many Muses? Government Funding for the Multicultural by W. McNeil Lowry, 21 Journal of Arts Management and Law 264 (1992)

Do Artists Have Moral Rights? by Joseph Zuber, 21 Journal of Arts Management and Law 284 (1992)
First Amendment Constraints on Grant Restrictions by Theodore B. Olson, 21 Journal of Arts Management and Law 308 (1992)

Are Content Restrictions Constitutional? by Kathleen M. Sullivan, 21 Journal of Arts Management and Law 323 (1992)

The First Amendment and Public Support for the Arts: A Symposium by Kenneth Aaron Betsalel, 21 Journal of Arts Management and Law 328 (1992)

Warning Labels on Records and Tapes: The Mapping of Two Conflicting Policy Positions by Ann Galligan and Timothy Brown, 21 Journal of Arts Management and Law 355 (1992)

The Man in the Pink Bunny Suit Battles the False Fat Boys: Growing Confusion in the Application of Fair Use to Commercial Parodies in Eveready Battery Co. v. Adolph Coors Co. and Tin Pan Apple v. Miller Brewing Co. by Alexander Alben, Spring Tort and Insurance Law Journal 555 (1992)

On Target with the Parody Defense to Copyright Infringement by Matthew H. Schwartz, Beverly Hills Bar Association Journal 57 (1992)

Direct Broadcast Satellites and the Determination of Authors' Rights Under the Berne Convention: Lucy in the Sky without Rights?, 15 Suffolk Transnational Law Journal 563 (1992)

International Art Theft and the Illegal Import and Export of Cultural Property: A Study of Relevant Values, Legislation, and Solutions, 15 Suffolk Transnational Law Journal 609 (1992)

Cable Television: Competition and the First Amendment by Shaun Christensen, 37 South Dakota Law Review 566 (1992)

Regulating Cable Television Rates Under the FCC's New Effective Competition Standard, 41 Drake Law Review 81 (1992)

Copyright Overextended: A Preliminary Inquiry into the Need for a Federal Statute of Unfair Competition by L. Ray Patterson, 17 University of Dayton Law Review 385 (1992)

What's All the Fuss about Feist? The Sky is Not Falling on the Intellectual Property Rights of Online Database Proprietors by Paul T. Sheils and Robert Penchina, 17 University of Dayton Law Review 563 (1992)

Bigotry, Pornography, and the First Amendment: A Theory of Unprotected Speech by Alon Harel, 65 Southern California Law Review 1887 (1992)

The First Amendment and Media Rights During Wartime: Some Thoughts after Operation Desert Storm by Mark C. Rahdert, 36 Villanova Law Review 1513 (1991)

The Abandonment of the State Radio-Television Monopoly in the Soviet Union: A First Step Toward Broadcasting Pluralism? by Peter Krug, 9 Wisconsin International Law Journal 377 (1991)

The Thai Copyright Case and Possible Limitations of Extraterritorial Jurisdiction in Actions Taken Under Section 301 of the Trade Act of 1974 by Chris Shore, 23 Law and Policy in International Business 725 (1992)

Intellectual Property Licensing and the Canadian Goods and Service Tax by Sheldon Burshtein, 12 The Licensing Journal 16 (1992)

The Copyright Office and the Formal Requirements of Registration of Claims to Copyright by Marybeth Peters, 17 University of Dayton Law Review 737 (1992)

Copyright Registration after Feist: New Rules and New Roles? by Steven J. Metalitz, 17 University of Dayton Law Review 763 (1992)

Copyright and Misappropriation by Dennis S. Karjala, 17 University of Dayton Law Review 885 (1992)

A Comment on Dennis S. Karjala's Copyright and Misappropriation by Sara Straight Wolf, 17 University of Dayton Law Review 943 (1992)

Response of Kurt D. Steele to Dennis S. Karjala's Copyright and Misappropriation by Kurt D. Steele, 17 University of Dayton Law Review 951 (1992)

Copyright Protection for Factual Compilations after Feist: A Practitioner's View by David O. Carson, 17 University of Dayton Law Review 969 (1992)

Copyright Protection for Purely Factual Compilations Under Feist Publications Inc. v. Rural Telephone Service Co.: How Does Feist Protect Electronic Data Bases of Facts? by Gerard J. Lewis, Jr., Santa Clara Computer and High Technology Law Journal 169 (1992)

Cohen v. Cowles Media Co.: Upsetting the First Amendment Scales by William Penner, 26 University of San Francisco Law Review 753 (1992)

Intellectual Property Problems Arising in Insolvency and Receivership by John Hull, 7 Journal of International Banking Law 324 (1992)

National Copyright Law v. Community Law: Which Law is Controlling in Intellectual Property Derivative Market Products? by Lynne Kimberly Law, 10 Dickinson Journal of International Law 333 (1992)

Gigs: Jazz and the Cabaret Laws in New York City by Paul Chevigny, 27 Harvard Civil Rights/Civil Liberties Law Review 303 (1992)

Stop the Presses: Reporter-Source Confidentiality Agreements and the Case for Enforcement, 33 Boston College Law Review 599 (1992)

From the Land of Bondage: The Greening of Major League Baseball Players and the Major League Baseball Players Association by Michael J. Cozzillio, 41 Catholic University Law Review 117 (1991)

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 26 Copyright Bulletin 13 (1992)

Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, 26 Copyright Bulletin 19 (1992)

Convention Relating to the Distribution of Programme-carrying Signals Transmitted by Satellite, 26 Copyright Bulletin 28 (1992)

Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties and Additional Protocol, 26 Copyright Bulletin 32 (1992)

The Concept of Originality in Anglo-Australian Copyright Law by Sam Ricketson, 39 Journal of the Copyright Society of the USA 265 (1992)

Passing Off and Image Marketing in the UK by Mark Elmslie and Margaret Lewis, 14 European Intellectual Property Review 270 (1992)

Seton Hall Journal of Sport Law has published Volume 2 with the following articles:

The Professional and Amateur Sports Protection Act-Policy Concerns Behind Senate Bill 474 by Senator Bill Bradley, 2 Seton Hall Journal of Sport Law 5 (1992)

From Shoeless Joe to Charley Hustle: Major League Baseball's Continuing Crusade Against Sports Gambling by Thomas J. Ostertag, 2 Seton Hall Journal of Sport Law 19 (1992)

Sentencing the Sick: Compulsive Gambling as the Basis for a Downward Departure Under The Federal Sentencing Guidelines by Lawrence S. Lustberg, 2 Seton Hall Journal of Sport Law 51 (1992)

Courts Leave Legislatures to Decide the Fate of the NCAA in Providing Due Process by Kevin M. McKenna, 2 Seton Hall Journal of Sport Law 77 (1992)

Wanted: Tickets-A Reassessment of Current Ticket Scalping Legislation and the Controversy Surrounding Its Enforcement by Phyllis L. Zankel, 2 Seton Hall Journal of Sport Law 129 (1992)

The Time Has Come: Ending the Antitrust Non-Enforcement Policy in Professional Sports by John J. Scura, 2 Seton Hall Journal of Sport Law 151 (1992)

The National Football League's Ban on Corporate Ownership: Violating Antitrust to Preserve Traditional Ownership-Implications Arising from William H. Sullivan's Antitrust Suit by Drew D. Krause, 2 Seton Hall Journal of Sport Law 175 (1992)

Sports Bars' Interception of the National Football League's Satellite Signals: Controversy or Compromise? by Lynne S. Sutphen, 2 Seton Hall Journal of Sport Law 203 (1992)
[ELR 14:6:20]