RECENT CASES

Idea submission waiver - signed as prelude to discussion of potential licensing arrangement between creator of "fictional universe" and toy manufacturer - is held to be unenforceable, because it was signed by person who had no authority to do so and because waiver was void as against public policy

When a "fictional universe" meets the real world, precedent should not be expected; so it is hardly surprising that one such case presented a question that even the parties conceded was an "issue . . . of first impression." That issue concerned the enforceability of a broadly-worded idea submission waiver. On the basis of evidence taken during the first phase of a trial in a federal District Court in Illinois, Judge Ruben Castillo has ruled that the waiver in question is void as against public policy, and that it would have been unenforceable in any event because it was signed by someone who did not have authority to do so.

The dispute that gave rise to this ruling is between FASA Corp. and Playmates Toys, Inc. FASA is the creator of a fictional universe known as "Battletech," for which it owns copyrights and trademarks. FASA publishes Battletech games and books and licenses other companies to do so as well. Playmates distributes toys, including some based on characters licensed from other companies such as Teenage Mutant Ninja Turtles, Star Trek, Addams Family and a number of Disney characters.

In 1991, a designer name Robert Allen asked FASA for an opportunity to interest toy companies in making Battletech toys, and FASA permitted him to do so - though the exact nature and scope of Allen's role were never agreed to. Allen then contacted Playmates and arranged a meeting. At the outset of the meeting, Allen was asked to sign, and he did, a "New Product Submission Form" which included a waiver of "any and all claims of any kind whatsoever, past, present or future, known or unknown against Playmates Toys, Inc. in any way relating to or connected with the `idea'." Allen gave Playmates some Battletech materials; but several months later, Playmates notified Allen that it was not interested in a Battletech license. Thereafter, Playmates came out with an ExoSquad line of toys which according to FASA infringed its Battletech copyrights and trademarks. (In an earlier decision in this case, Judge Castillo dismissed FASA's claims for common law unfair competition, dilution and tortious interference with prospective business advantage. ELR 16:12:10)

Playmates responded to FASA's complaint by asserting (among other things) that it was barred by the waiver provision of the submission form that Allen had signed on FASA's behalf, at the outset of their original meeting. Judge Castillo devoted the first phase of the trial of the case to that issue, and has ruled that the waiver is not enforceable, for two reasons. He first ruled that Allen did not have actual or ostensible authority to waive FASA's copyright and trademark rights, because he had not actually been authorized by FASA to do so, because Playmates had not attempted to contact FASA to verify Allen's authority, and because FASA had not given Playmates any reason to reasonably believe that Allen was authorized to completely waive its rights. While this ground would have been sufficient by itself to hold that FASA was not bound by the waiver, Judge Castillo expressly went on "to offer an alternate basis for . . . holding that FASA is not bound by Allen's purported wavier - namely, that Playmates' waiver form is unenforceable as a matter of law."

The judge ruled that under the laws of both California (where Playmates is located) and Illinois (where FASA is located), a waiver form which "purports to require the signor to waive unknown future claims . . . is void as against public policy." The judge also considered whether federal law might permit such a waiver and concluded that it does not. He ruled that he is "persuaded that a purported waiver of future, unknown federal intellectual property rights is unenforceable and void as against public policy [because] such a wavier would permit a party to violate another's intellectual property rights with impunity in contravention of the clear and long standing public policies underlying the trademark, copyright and patent laws." Judge Castillo explained that "Giving force to such waivers would invariably stifle creativity and inventiveness and inhibit inventors from presenting their creations to others." Thus, he concluded that even if he were to look to federal rather than California or Illinois law, he would "reach the same conclusion: The waiver of unknown future claims is unenforceable."

Editor's note: The "void as against public policy" basis for this decision clearly turns on the broad language of Playmates' waiver form. During trial, "Playmates' own experts testified that it is not typical in the toy industry for a toy company to require an inventor to waive all rights to the invention in order to submit it for review . . . [and] even Playmates' president testified he did not understand the waiver provision in Playmates' new product submission form to include a waiver of copyright, trademark, or patent claims."

Narrower waivers, however, are enforceable. For example, an agreement to arbitrate - rather than litigate - disputes concerning idea submissions has been held to be enforceable, in an idea submission case against Amblin Entertainment, Universal Studios and Steven

Spielberg. Spinello v. Amblin Entertainment, 34 Cal.Rptr.2d 695, 1994 Cal.App.LEXIS 1112 (Ca.Ct.App. 1994)(ELR 16:10:10). Years earlier, Jerry Lewis was sued by a woman who alleged that he had copied his movie "The Nutty Professor" from a screen-play she had written and submitted to him entitled "Treat Me Beat." She also had signed and submitted a release with her script, about which the trial court said, "I do not doubt that producers by appropriate contracts could provide for submission of literary properties free from any liability on their part to pay for general ideas embalmed in the literary properties under submission." Land v. Jerry Lewis Productions, Inc., 140 U.S.P.Q. 351, 352 (Cal.Super.Ct. 1964). The court nevertheless refused to grant summary judgment dismissing the case, but only because there was an issue concerning whether the plaintiff had disclosed her ideas before she signed the release. See also, Davis v. General Foods Corp., 21

F.Supp. 445 (S.D.N.Y. 1937) (complaint dismissed for failure to state a claim, where plaintiff signed a submission agreement providing that "the use to be made . . . and the compensation, if any to be paid [for an idea for a new food product] are matters resting solely in our discretion"); Hisel v. Chrysler Corp., 94 F.Supp. 996 (W.D.Mo. 1951) (summary judgment for Chrysler granted in case where plaintiff had submitted an unpatentable idea for mounting license plates, because plaintiff had signed an agreement releasing Chrysler from liability for its use of that idea "except such liability as may accrue under valid patents"); Van Rensselaer v. General Motors Corp., 324 F.2d 354 (6th Cir. 1963) (summary judgment for General Motors affirmed, where plaintiff had submitted unpatented design ideas for improved automobiles, because before plaintiff had submitted his ideas, General Motors had sent plaintiff a "booklet outlining the conditions under which the ideas would be received," and the booklet provided that General Motors would not incur any "obligations" not imposed by patent law); Wanberg v. Ocean Spray Cranberries, Inc., 194 U.S.P.Q. 350 (N.D.Ill. 1977), and Kearns v. Ford Motor Co., 203 U.S.P.Q. 884 (E.D.Mich. 1978) (no confidential relationship created where idea-submittor signed agreement waiving all rights except those arising under patent and copyright law). But see, Yadkoe v. Fields, 66 Cal.App.2d 150, 151 P.2d 906 (1944) (Suit for breach of implied contract to pay reasonable value of use of material submitted by plaintiff to W.C. Fields. Plaintiff had submitted material to Fields who thanked plaintiff by letter which said: "I am about to embark on a new radio series and if you would like to submit a couple of scripts gratis and I am able to use them, who knows, both parties being willing, we might enter into a contract. My reason for injecting the vile word `gratis' is that we get so many letters from folks who if we even answer in the negative, immediately begin suit for plagiarism. Whilst we have never had to pay off, they sometimes become irritating no end." Court of Appeal affirmed judgment of $8,000 based on jury verdict for plaintiff. The decision says nothing at all about the part of Fields' letter in which he invites plaintiff to submit material "gratis." It does not even appear from the decision that Fields argued that "gratis" meant he did not have to pay for it if he chose not to.)

From the early 1960s to the late 1980s, courts did seem to have low regard for releases. See, e.g., Burten v. Milton Bradley Co., 763 F.2d 461 (1st Cir. 1985) (construing an idea-submission waiver narrowly as applying only to obligations arising from contractual relationships and not to liability from torts); Houser v. Snap-On Tools Corp., 202 F.Supp. 181 (D.Md. 1962) (doubting that waiver would give manufacturer the right to use an idea without payment where the parties' dealings showed that the idea submittor was seeking payment if his ideas were used); Moore v. Ford Motor Co., 43 F.2d 685 (2d Cir. 1930) (construing an idea-submission waiver as meaning that the defendant had no obligation to accept or pay for the submission, but not as a waiver of the defendant's obligation to pay for it if it were accepted and used).

Now however releases are treated with greater respect because courts have come to appreciate that they serve a useful purpose. See James C. Martin, "Judicial Acceptance of Release Agreements," Los Angeles Lawyer (June 1993) at 24. Even those courts that have refused to enforce ambiguous waivers have recognized that idea recipients "may wish to insulate themselves" from claims; and such courts have acknowledged that "[t]his objective may be clearly realized by . . . explicit waivers. . . ." Burten v. Milton Bradley Co., supra, 763 F.2d at 467.

Releases serve the interests of writers and other idea creators, particularly those seeking to break into the entertainment industry who are not represented by agents. Idea recipients long have considered "[i]dea submission claims" to be "a real plague." Harry R. Olsson, Jr., "Dreams for Sale," 23 Law and Contemporary Problems 34 (1958). As a result, many companies will not read material submitted by unrepresented writers unless a release is submitted as well, and therefore those who wish to sell material to producers are advised to do so. Robert Kosberg with Mimi Eichler, How to Sell Your Idea to Hollywood 175 (1991) ("Any one-line idea submitted without a release will not be read in Hollywood. Period. So I suggest that with all your correspondence you use the standard release form that I have provided in the reference section at the back of this book.") If courts were to refuse to enforce releases, it is likely that unrepresented writers would be unable to get their material read at all - a consequence more harmful to aspiring writers than the possibility that releases will bar some of them from suing for the suspected theft of their ideas. Cf., Burten v. Milton Bradley Co., 592 F.Supp. 1021, 1031 (D.R.I. 1984), rev'd, 763 F.2d 461 (1st Cir. 1985) ("If [idea recipients] could not effectively safeguard themselves against such forays [i.e., idea submission claims], they might well have to curtail submissions from independent [idea submittors]. Such a result would be plainly detrimental to both sides - and to the consumer as well.")

FASA Corp. v. Playmates Toys, Inc., 892 F.Supp. 1061, 1995 U.S.Dist.LEXIS 8741 (N.D.Ill. 1995) [ELR 17:11:3]

Appellate court rules that Christensen White law firm should have been disqualified from representing Tracinda Corp. and other defendants in suit brought by Credit Lyonnais Bank, arising out of MGM/UA merger with Pathe Communications

Back in 1990, MGM/UA merged with Pathe Communications Co. in a transaction in which Tracinda Corporation, Kirk Kerkorian and others received more than a billion dollars for their MGM/UA stock. The merged company had financial difficulties from the start, and the fallout from those difficulties has been fodder for court proceedings literally from coast-to-coast. (See, e.g., ELR 13:10:3.) One of these cases has produced a decision on an issue that is not central to the merger or the company's subsequent difficulties, but is nevertheless of considerable personal interest to entertainment and corporate lawyers. That issue is this: are lawyers disqualified from representing the principals in a former corporate client, after the corporation itself has been acquired by others, if a dispute arises between those principals and the new owner of the corporation or others allied with the new owners? The answer appears to be yes.

MGM/UA, Tracinda and Kerkorian had been represented for years by Christensen White Miller Fink & Jacobs; and they were represented by that firm in connection with the Pathe merger and stock sale as well. Following the merger, Metro-Goldwyn-Mayer - the name given to the merged company after a brief period during which it was known as MGM-Pathe - sued the sellers alleging they had misrepresented MGM/UA's financial condition. Credit Lyonnais Bank had provided funding for the merged company, and in due course the Bank too sued Tracinda and the other sellers. Tracinda and its fellow defendants retained Hufstedler Kaus &

Ettinger to represent it in the Metro-Goldwyn-Mayer case; but they retained Christensen White to represent them in the Credit Lyonnais case.

Metro-Goldwyn-Mayer and Credit Lyonnais made three separate motions to disqualify Christensen White as counsel for the sellers, including one motion which was made after the two cases were consolidated for trial. All three motions were denied by the trial court. But the California Court of Appeal has reversed. It has ruled that Christensen White's prior representation of MGM/UA generally, and its specific involvement in the merger transaction, made "it . . . clear that its appearance in this action is `adverse to the . . . former client' and Christensen White should have been, per se, disqualified from representing Kerkorian, Tracinda [and the other sellers] in this dispute."

California has not adopted the American Bar Association's Model Rules of Professional Conduct.

Instead, the State Bar of California has adopted its own Rules of Professional Conduct. Two of those rules were pertinent here. Rule 3-310 prohibits lawyers from representing more than one client in cases having actual or potential conflicts, and it prohibits lawyers from accepting employment adverse to a client or former client where the lawyer has obtained material confidential information. Rule 3-600 permits lawyers to represent officers, directors and shareholders of a corporation, as well as the corporation itself, but not under circumstances where such representation would be prohibited by Rule 3-310.

In this case, Christensen White argued that Rule 3-310 did not prohibit it from representing clients in a suit brought by Credit Lyonnais, because its former client Metro-Goldwyn-Mayer was not a party to that lawsuit and because the law firm had never represented Credit Lyonnais. The appellate court disagreed, however. It concluded that the difference between Metro-Goldwyn-Mayer and Credit Lyonnais was "a distinction without a difference. The proscription exists where counsel's employment is `adverse to the client or former client,' and can exist even though a prior client is not a party to the litigation." This case was found to be even "more compelling" than others where disqualification had been ordered, because in this case, the originally separate Metro-Goldwyn-Mayer and Credit Lyonnais lawsuits had been consolidated for trial, and both cases were based on the same factual allegations. Thus, every time Christensen White attempted to disprove Credit Lyonnais' case against the law firm's current clients, it would have an effect on Metro-Goldwyn-Mayer's case as well. "In effect, Christensen White will be representing a former shareholder and director against the interests of the former corporate client." As a result, the appellate court reversed the trial court's denial of the disqualification motions made by Metro-Goldwyn-Mayer and Credit Lyonnais.

Editor's note: The appellate court did not indicate whether Christensen White had obtained confidential information while representing MGM/UA that would be material in either the Metro-Goldwyn-Mayer or Credit Lyonnais case, even though Rule 3-310 would seem to require disqualification only if the firm had. Thus, this case appears to stand for the proposition that law firms should be disqualified from representing the principals of a former corporate client any time the interests of those principals is adverse to the interests of the former corporate client. If that is the effect of this decision, it will be a significant precedent that has impact substantially beyond this case and beyond the entertainment industry. Ironically, it is not apparent what practical effect, if any, the appellate court's ruling will have on the trial of this case in particular, because before the ruling was issued, the trial court granted the sellers' motions for summary judgment in both the Metro-Goldwyn-Mayer and Credit Lyonnais cases; and appeals from those rulings had not been briefed or argued at the time the appellate court's decision was issued.

Metro-Goldwyn-Mayer, Inc. v. Tracinda Corp., 36 Cal.App.4th 1832, 43 Cal.Rptr.2d 327, 1995 Cal.App. LEXIS 698, 774 (1995) [ELR 17:11:5]

Random House did not violate New York right of publicity law or the Lanham Act when it included - in newspaper ad for Gerald Posner's book "Case Closed" - the name and photo of the author of another book about President Kennedy's assassination

President Kennedy was assassinated more than 30 years ago, but the after effects of that history-altering event reverberate to this very day. The fundamental question of who was responsible for the assassination has been the topic of countless books, one published by Random House as recently as 1993. That book is Case Closed by Gerald Posner; and its thesis is that the Warren Commission was right when it concluded that President Kennedy was killed by Lee Harvey Oswald, acting alone. This is the minority thesis, insofar as book authors are concerned. Most books about the assassination have theorized there was a conspiracy; and Posner's book criticizes these theories.

When Posner's book was published, Random House advertised it in the New York Times. The ad contained the names and photographs of six "conspiracy theory" authors, along with brief quotations from each of their books. Above the six photos was a headline that read "Guilty of Misleading the American Public." The ad's sales pitch was below the photos and quotations; it read, "One Man. One Gun. One Inescapable Conclusion. Read: Case Closed by Gerald Posner."

Author Robert Groden was one of those whose names and photos were in the Random House ad, accompanied by a quote from his book High Treason. Groden's name and photo were used without his consent, and he responded with a right of publicity lawsuit alleging that the Random House ad violated his rights under sections 50 and 51 of the New York Civil Rights Law and section 43(a) of the Lanham Act. Since Groden's identity was used in an ad, his right of publicity lawsuit had merit, on its surface. But District Judge John S. Martin, Jr., dismissed Groden's lawsuit; and now the Second Circuit Court of Appeals has affirmed that dismissal, in an opinion by Judge Jon O. Newman.

While as a general rule, sections 50 and 51 of the New York Civil Rights Law do prohibit the unauthorized use of a person's name or likeness for commercial purposes, there is an "incidental use" exception which permits such use under certain circumstances. This exception has been applied in cases like Namath v. Sports Illustrated, 48 A.D.2d 487, 371 N.Y.S.2d 10 (1st Dept. 1975), aff'd, 39 N.Y.2d 897, 386 N.Y.S.2d 397 (1976), where Sports Illustrated was permitted to use one of its magazine photographs of Joe Namath in an ad for the magazine itself, without liability. More recently, the exception was used in Stern v. Delphi Internet Services, 626 N.Y.S.2d 694 (Sup.Ct. 1995) (ELR 16:12:9), where a photo of radio talk show host Howard Stern was used, without liability, in an ad for an Internet provider. Groden argued that the "incidental use" exception did not apply in his case for three reasons: because his photo did not appear in Posner's Case Closed; because his identity was used in an "objectionable manner"; and because the Random House ad did not represent the quality and content of Posner's book. However, the court rejected all three of these contentions and concluded that the Random House ad did fall within the "incidental use" exception. Moreover, the court noted that the exception "implements, and might even be required by, First Amendment considerations."

The court also rejected Groden's Lanham Act claim, because the ad's assertions about his book were obviously "a statement of opinion" and were not literally false. The court noted that it had to be careful not to permit the Lanham Act claim to "intrude on First Amendment values." It explained, "With a subject of such manifest public interest as the Kennedy assassination, ample leeway must be accorded to statements that advertise books by expressing opinions, no matter how extravagantly worded, about the merits of opposing viewpoints."

Groden v. Random House, Inc., 61 F.3d 1045, 1995 U.S.App.LEXIS 20414 (2d Cir. 1995) [ELR 17:11:6]

MCA Records' use of rap label "Uptown Records" does not infringe unregistered trademark rights of independent jazz label "Uptown Records," because court finds no likelihood of consumer confusion

Rap artist Andre Harrell shared an "American Dream" with a physician named Dr. Robert Sunenblick: both started their own record companies . . . using the label "Uptown Records." Sunenblick started his company in 1979, and he specialized in jazz. Harrell started his company several years later, in 1986, and he specialized in rap and rhythm and blues. For a while, neither was aware of the other. But eventually, they realized that both were using the name "Uptown Records." As the "senior" user, Sunenblick filed a trademark infringement action against Harrell and against MCA Records which finances and distributes records produced by Harrell's company.

Sunenblick never registered his "Uptown Records" mark (nor had Harrell or MCA), and thus Harrell brought his action under section 43(a) of the Lanham Act - the section that permits owners of unregistered marks to assert claims in federal court for "misdesignation of origin." In such cases, it is necessary for plaintiffs to show that their marks are distinctive (because they are suggestive, fanciful or arbitrary) or (if their marks are only descriptive) that they have acquired secondary meaning. If distinctiveness or secondary meaning is proved, the mark is entitled to protection - even though not registered. Infringement is a separate inquiry and requires proof of "likelihood of confusion."

Judge Bernard Newman (sitting by designation in the Southern District of New York) did a lengthy and thorough analysis of the dispute. Harrell and MCA had argued that "Uptown Records" was merely descriptive, and thus was not entitled to protection in the absence of evidence of secondary meaning. But Judge Newman disagreed. He ruled that the mark was suggestive, and thus was inherently distinctive and entitled to trademark protection even without proof of secondary meaning. On the other hand, after applying the multi-factor test for determining whether there was a likelihood of confusion, the judge concluded that "there is no likelihood that consumers will be confused as to the source of Sunenblick's products as a result of [Harrell's and MCA's use of `Uptown Records' as their] trademark."

Judge Newman's decision treated Sunenblick and Harrell (and their lawyers) with remarkable respect. The judge observed, for example, that Sunenblick "represents the best of [the American] dream. He had a vision [and] . . . undertook the risks, investing time, energy and money in order to make the vision a reality. And so did Andre Harrell. He is the very archetype of an American success story." Ultimately, however, the judge ruled in favor of Harrell and MCA, because he found that he "cannot say that Harrell's success poses any likelihood of injury to Sunenblick in the marketplace."

Editor's note: This case primarily involved the application of its specific facts to a handful of broadly worded legal principles, and thus does not amount to precedent for the notion that one record company may use the same label as another with impunity, so long as the two specialize in different types of music. The case does, however, deal with one interesting though narrow legal issue which was "a question of first impression" in the Second Circuit. One of the several factors courts consider in deciding whether there is a likelihood of confusion is the strength or weakness of the mark in question. In most cases, the plaintiff is a bigger company than the defendant and the plaintiff's use of the mark is more extensive than the defendant's allegedly infringing use. In some cases, however - including this one - the plaintiff is a smaller company than the defendant, and the plaintiff's use is less extensive than the defendant's. Cases of this sort are called "reverse confusion" cases; and the issue they present is whether courts should assess the strength or weakness of the mark as it has been used by the plaintiff (as courts would in ordinary "forward confusion" cases) or whether instead courts should assess the mark's strength as it has been used by the defendant. In this case, Harrell and MCA argued that "Uptown Records" was a weak mark as used by Sunenblick; and Sunenblick argued that the mark was strong as used by Harrell and MCA. Courts in the Seventh Circuit, and possibly in the Third Circuit, look at the strength of the mark as used by the defendant, in reverse confusion cases. And Judge Newman concluded that he should as well (despite Harrell's and MCA's argument that the Second Circuit was not bound by decisions in the Seventh and Third Circuits). As a result, the strength-of-the-mark factor counted "slightly in favor of Sunenblick" in this case, even though his company's use of the mark was weak.

Sunenblick v. Harrell, 895 F.Supp. 616, 1995 U.S.Dist. LEXIS 11402 (S.D.N.Y. 1995) [ELR 17:11:7]

Sale of clothing bearing group portrait of 1969 Mets, without permission of individual players, violated their publicity rights under New York law; but remedies available only in connection with sales in New York

In 1969, a "miracle" happened in the sport of baseball: the New York Mets won the World Series. More than two decades later, a clothing manufacturer commemorated that miracle by selling cotton jerseys "emblazoned" with a group portrait of the team, as well as statistics reflecting the players' accomplishments during that legendary season.

The manufacturer was not a commercial pirate or freeloader. Its jersey was approved and licensed by Major League Baseball, and the photo it had used for the Mets portrait was licensed from the National Baseball Hall of Fame and Museum, Inc., which owns the photo's copyright. Moreover, the manufacturer paid a "significant fee" to Major League Baseball Properties, Inc., the licensing agent for Major League Baseball, for permission to use the Mets' team name and logo.

What the clothing manufacturer did not do, however, was get permission from the individual members of the 1969 Mets. That failure is what triggered an interesting and significant lawsuit by those players under sections 50 and 51 of the New York Civil Rights Law, that state's right of publicity statute. State trial court Judge Martin Schoenfeld has ruled that the sale of those jerseys, without the players' permission, violated their rights under the New York statute; but since the statute - by its own terms - refers only to sales within New York, the players' remedies will be limited to those that arise on account of jersey sales within that state only.

The Uniform Player's Contract signed by each of the Mets contained a provision by which each player granted the Mets the right to use his photograph for publicity purposes. But this provision was of no aid to the clothing manufacturer for several reasons. The Mets had not authorized the clothing manufacturer to use the photograph; the manufacturer's use was "commercial," rather than for publicity purposes, and Judge Schoenfeld ruled that under the Uniform Player's Contract, the players had retained their commercial use rights; and "most fundamentally," the players were not seeking to assert a right in the picture itself, but instead were asserting a right "to the commercial exploitation of their identities."

Judge Schoenfeld rejected the manufacturer's argument that the portrait on its jersey was "of such poor quality," and the players' faces so small, that individual players are difficult or impossible to identify. Rather, the judge found that someone familiar with the team could identify individual players; and if certain players could not be identified, that could "be resolved at the damage trial."

Judge Schoenfeld also rejected the manufacturer's argument that the players' claim was preempted by federal copyright law. In this case, the players' publicity claim satisfied the "extra element" test for avoiding preemption - the extra element being the use of the photograph for commercial purposes. The judge distinguished Baltimore Orioles v. Major League Baseball Players Ass'n, 805 F.2d 663 (7th Cir. 1986) (ELR 8:11:7), which had held that the publicity claims asserted by the players in that case were preempted. The judge distinguished the Orioles case by saying that "a right of publicity `in a [particular] performance' is distinguishable from a right to commercial exploitation of one's own identity," and by noting that the Orioles decision itself had said that "a player's `right of publicity in his name or likeness would not be preempted' if the club, without consent, commercially exploited the player's identity."

The judge enjoined the jersey manufacturer from violating the New York statute and he ruled that the players could seek damages for prior sales. However, the manufacturer did win one potentially significant legal point. The New York statute provides remedies for unauthorized uses "within this state." As a result, the judge dismissed the players' claims "to the extent" they were based on jersey sales outside of New York.

Editor's note: Judge Schoenfeld characterized this case as one that "presents an interesting issue of apparent first impression." But not all of the issues in the case are of first impression. The unauthorized use of celebrity likenesses on shirts has been held to violate celebrities' publicity rights in countless prior cases. The inapplicability of the clause in the Uniform Player's Contract was simply the result of contract interpretation; and the decision that a manufacturer's use of a photo on a shirt is a "commercial" use rather than a "publicity" use is not remarkable, particularly where the shirt is manufactured more than two decades after the team photo was taken. Even the preemption issue is not unprecedented. While the judge's effort to distinguish the Orioles case left something to be desired, the fault on the preemption issue lay not with Judge Schoenfeld, but rather with the 7th Circuit's ruling in the Orioles case itself. It is likely this Mets case will be remembered not because of what the players won, but instead because of the judge's ruling that the players' remedies must be limited to those based on jersey sales in New York. The conflict of laws issue in right of publicity cases is one that has long been lurking just beneath the surface of cases like this. See, e.g.: Choice of Law in Sound-Alike Cases, by Stanley Rothenberg, David Rabinowitz and Helene Godin (ELR 14:8:3); Comment, Choice of Law in Right of Publicity, 31 UCLA L. Rev. 640, 644 (1984); and J. Thomas McCarthy, The Rights of Publicity and Privacy, sec. 11.3 (1996). This case dramatically illustrates the limited geographic sweep of state right of publicity statutes. Because state antidilution statutes suffer from the same limited geographic sweep, Congress recently enacted a federal antidilution statute. (ELR 17:10:12) For the same reason, the time may be ripe for Congress to enact federal right of publicity legislation as well.

Shamsky v. Garan, Inc., 632 N.Y.S.2d 930, 1995 N.Y.Misc.LEXIS 498 (1995) [ELR 17:11:8]

Warner Home Video and Atlantic Records win dismissal of copyright case filed by Richie Havens, based on their distribution of two songs performed by him at Woodstock, because Copyright Office records failed to prove Havens' ownership of songs' copyrights

A copyright infringement action brought by singer Richie Havens against Warner Home Video and Atlantic Records has been dismissed, because Havens failed to prove that he owned the copyrights to the two songs at issue in the case - "Handsome Johnny" and "Freedom" - at any relevant time.

Havens had performed the two songs at Woodstock in 1969, and the defendants apparently released records and videotapes of those performances in a manner that allegedly exceeded the scope of a license Havens once granted them. The actual scope of the license was an issue that was never reached in the case, however. Instead, the defendants' motion for summary judgment was granted by Judge Peter Leisure, because Havens failed to offer evidence from which the judge could conclude that Havens was the owner of the copyright to either song.

The evidence did show that the copyright to "Handsome Johnny" had been registered in the name of a company known as Unart Music Corp., and that several instruments had been recorded at the Copyright Office concerning the song. But according to Judge Leisure, the recorded instruments were "notable only for the fact that none of them purports to assign any right with respect to the composition to Havens." Thus, the judge dismissed Havens' claim as to this song "with prejudice."

While the copyright to "Freedom" was originally registered in Havens' name, subsequently recorded instruments concerning an otherwise unidentified song of the same name called into question Havens' continued ownership of its copyright. Havens' claim with respect to this song was dismissed without prejudice.

Editor's note: Havens' actual interest in the copyrights to "Handsome Johnny" and "Freedom" can only be speculated about, for the very reasons noted in Judge Leisure's opinion. If, however, it is assumed that he owns the songs' copyrights, this case illustrates just how important it is that an accurate chain of title be established by properly recording documents with the Copyright Office.

Havens v. Time Warner, Inc., 896 F.Supp. 141, 1995 U.S.Dist.LEXIS 11849 (S.D.N.Y. 1995) [ELR 17:11:9]

Producer of public access cable program has cause of action for damages under federal Cable Act against cable company that canceled her program, but cancellation did not violate producer's First Amendment rights

A woman known only as "Glendora" has brought a federal court action on her own behalf that has established a principal of potential significance to the entire cable television industry - one that involves a producer's right to use public access channels free from the editorial control of cable-TV companies. The Cable Communications Policy Act prohibits cable operators from exercising such control over non-obscene access channel programming. But the Act itself does not indicate who should enforce that prohibition. As a result of Glendora's lawsuit, District Judge Charles Brieant has ruled that the Act creates a private cause of action that may be asserted in federal court by those who produce programs for public access channels. Enforcement of this prohibition, in other words, is not the special province of the Federal Communications Commission.

Glendora's suit was brought against Cablevision Systems Corporation which is the operator of the cable-TV system on Long Island, New York. Cablevision's system had carried Glendora's weekly program about the many lawsuits she had filed in state and federal courts. Eventually, however, Cablevision canceled the program on the grounds that she was using it "to further her personal vendettas against her adversaries." When Cablevision canceled her program, it too became the target of her lawsuits - two such cases in fact, one in state court (ELR 16:5:22) and another in federal court. Cablevision made a motion to dismiss the federal lawsuit. But since her program was not obscene, Cablevision's cancellation of it violated the Cable Act. And as a result of Judge Brieant's ruling that the Act creates a private cause of action, Cablevision's motion was denied (in part) and she has been permitted to pursue a claim for damages against the company in federal court.

The judge did, however, dismiss Glendora's additional claim that her First and Fourteenth Amendment rights had been violated. He did so, because he ruled that Cablevision's actions were not "state action" under those Amendments.

Glendora v. Cablevision Systems Corp., 893 F.Supp. 264, 1995 U.S.Dist.LEXIS 10665 (S.D.N.Y. 1995) [ELR 17:11:9]

Briefly Noted:

Defamation.

A defamation lawsuit against Time magazine and Suzanne Schnitzer, an art critic quoted by Time in an article about the restoration of Barnett Newman's painting "Who's Afraid of Red, Yellow and Blue III," has been ordered dismissed by the Appellate Division of the New York Supreme Court. The order reverses a portion of an earlier decision by trial court Judge Edward Greenfield denying Time's and Schnitzer's motions to dismiss (ELR 15:11:12). However, the Appellate Division upheld Judge Greenfield's refusal to dismiss the case against other defendants. The case against Time and Schnitzer was dismissed, in part, because their allegedly defamatory statements concerning the assertedly poor quality of the restoration work done by plaintiff Daniel Goldreyer were ruled to be privileged "opinion." The Time article also referred to a report done by the Dutch Ministry of

Justice; and while those statements were not privileged opinion, they were held to be entitled to the "absolute privilege as to fair and true reportage of an official proceeding" - a privilege that is codified at section 74 of the New York Civil Rights Law. Dow Jones did not fare as well; a Wall Street Journal article about the Newman restoration also contained allegedly defamatory statements, but the wording of the Journal article was different than that of the Time article, and was not eligible for the "opinion" privilege, according to the Appellate Division.

Daniel Goldreyer, Ltd. v. Van De Wetering, 630 N.Y.S.2d 18, 1995 N.Y.App.Div. 7787 (1995) [ELR 17:11:10]

Copyright infringement.

The owner of Stanford's Comedy Club in Little Rock, Arkansas, has been found liable for copyright infringement, on account of its public performance of four songs - as recorded by The Eagles - over the Club's stereo system without an ASCAP license. Judge Susan Webber Wright has granted summary judgment in favor of Cass County Music Co. and Red Cloud Music Co., the owners of the copyrights to the four songs in question. In addition to holding the corporate owner of the Club liable, Judge Wright also imposed vicarious liability on the Club's general manager who had responsibility for the Club's day-to-day operations, and on two other officers, directors and shareholders who had the right and ability to supervise the Club's management even though they were not responsible for its day-to-day operations. The judge awarded the plaintiffs statutory damages of $1,000 per song ($4,000 total) which was approximately 2.5 times what the cost of an ASCAP license would have been for the relevant period. And the judge awarded the plaintiffs $3,583 in attorneys' fees plus $890 in costs. An injunction against further infringements has been issued as well.

Cass County Music Co. v. C.H.L.R. Inc., 896 F.Supp. 904, 1995 U.S.Dist.LEXIS 11433 (E.D.Ark. 1995) [ELR 17:11:10]

Football coach discharge/Rehabilitation Act and Americans with Disabilities Act.

A Federal Court of Appeals has affirmed the dismissal of a lawsuit brought against the University of Tennessee by a former assistant football coach who alleged that he had been discharged by the University in violation of the Rehabilitation Act and Americans with Disabilities Act, on account of his disability: alcoholism. In fact, the coach had been fired because he had been arrested for driving under the influence of alcohol. The court ruled that the law distinguishes between discharging someone for unacceptable misconduct and discharging someone because of a disability; and therefore, the University had not violated either Act when it discharged the coach.

Maddox v. University of Tennessee, 62 F.3d 843, 1995 U.S.App.LEXIS 23043 (6th Cir. 1995) [ELR 17:11:11]

College football player eligibility/Rehabilitation Act.

The University of Kansas did not violate the federal Rehabilitation Act when it barred a player from the school's intercollegiate football team after the team's physician discovered that the player had a congenitally narrow cervical canal. This condition put the player at an extremely high risk for a potentially severe neurological injury. Nevertheless, the player objected to his disqualification; and in a federal district court lawsuit, the player alleged that barring him from the team violated his rights under the Rehabilitation Act. Judge G. Thomas Van Bebber disagreed, however. He has denied the player's motion for a preliminary injunction, ruling that the player is not "disabled" within the meaning of the Act, and that even if he were disabled, he was not otherwise qualified to play intercollegiate football because he was at a high risk for permanent injury.

Pahulu v. University of Kansas, 897 F.Supp. 1387, 1995 U.S. Dist.LEXIS 12616 (D.Kan. 1995) [ELR 17:11:11]

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High school athletic eligibility/Rehabilitation Act and Americans with Disability Act.

The Michigan High School Athletic Association did not violate the federal Rehabilitation Act or the Americans with Disabilities Act when it enforced a regulation that makes 19-year-olds ineligible for high school sports, a federal Court of Appeals has ruled. Two 19-year-old learning disabled students sued the Association and their schools when they were not permitted to participate in track and cross-country during their senior years. The students alleged that they were still in high school at age 19, because their learning disabilities prevented them from completing high school earlier. In a decision by Judge James Ryan, the Sixth Circuit has held that the Association's age eligibility rule does not violate the Rehabilitation Act, because the students were not declared ineligible solely by reason of their disabilities, but rather by reason of their dates of birth. Likewise, the age eligibility rule does not violate the Americans with Disability Act, because the students were not declared ineligible on account of their disabilities, but rather because they were too old, and the Act does not require the Association to "accommodate" the students by waiving the age eligibility rule.

Sandison v. Michigan High School Athletic Ass'n, 64 F.3d 1026, 1995 U.S.App.LEXIS 25601 (6th Cir. 1995) [ELR 17:11:11]

Baseball park grounds keeper claim for overtime wages.

Baseball's "infield fly rule" is complex, but no more so than the question of whether federal law entitles a baseball park grounds keeper to overtime pay for working more than 40 hours a week. That question has been resolved by a federal Court of Appeals, against the grounds keeper and in favor of a minor league subsidiary of the Chicago White Sox, because of a little-known exemption from the law's overtime pay requirement that benefits certain "amusement or recreational establishment[s]" (along with camps and religious or non-profit educational conference centers). The court's ruling came in a case brought by a grounds keeper who worked at a baseball park in Florida leased from the city of Sarasota by the Sarasota White Sox. The overtime pay exemption applies to amusement and recreational establishments that do not operate more than seven months a year, and to those whose receipts for any six months during a year are not more than 33 1/3 percent of their receipts during the other six months of the year. In a per curiam ruling, the Fifth Circuit Court of Appeals adopted a District Court order holding that the White Sox are entitled to the exemption because they are an amusement or recreational establishment (even though they don't own the park), because their receipts during the off-season were much less than their receipts for the six-month baseball season, and because the White Sox did not operate the baseball park for more than seven months a year. As a result, the White Sox' motion for summary judgment was granted.

Jeffery v. Sarasota White Sox, Inc., 64 F.3d 590, 1995 U.S.App.LEXIS 26089 (11th Cir. 1995) [ELR 17:11:11]

Use tax on movies.

A Colorado appellate court has upheld a decision by the city of Westminster that American Multi-Cinema must pay local use taxes on license fees it pays movie distributors for the right to publicly exhibit movies in AMC's theaters in that city. AMC argued that it was not required to pay the city's use tax for three reasons: because AMC's agreements with distributors were not for the rental of "tangible personal property"; because its transactions with distributors were "wholesale" transactions, to which the use tax does not apply; and because the city imposes an excise tax on admissions, and thus a use tax would be an improper double tax. The appellate court rejected all three of these arguments. It ruled that courts in Colorado and elsewhere have long considered the exhibition of movies to be the use of tangible personal property. It rejected the notion that movie exhibition licenses are wholesale transactions, because movie viewers are not given possession of movies and thus no resales occur. And the court ruled that excise and use taxes are levied on different people on their exercise of different privileges arising out of separate transactions, and thus no double taxation occurs.

American Multi-Cinema, Inc. v. City of Westminster, 910 P.2d 64, 1995 Colo.App.LEXIS 210 (Colo.App. 1995) [ELR 17:11:11]

Idea submission case sanctions.

Hwesu Murray has been ordered to pay $10,000 in costs to NBC on account of "frivolous" appeals from the dismissal of his case in which he alleged that he had submitted to the network the idea that became "The Cosby Show." Over a period of several years, Murray brought three separate lawsuits against the network: one in federal court and two in state courts in different counties. All three were dismissed without trial. (ELR 14:1:21,12:7:16, 11:9:11, 10:7:8, 9:10:4) While Murray asserted that he had a good faith belief in the merits of the case, he acknowledged that at the time he filed his third case he was a law student and had since been admitted to the New York bar, and that he was familiar with the concept of res judicata. As a result, the court concluded that Murray had not only placed an unnecessary burden on NBC, but he also had misused judicial resources.

Murray v. National Broadcasting Company, 629 N.Y.S.2d 802, 1995 N.Y.App.Div.LEXIS 8109 (1995) [ELR 17:11:12]

Billboard advertising of beer and cigarettes.

A federal Court of Appeals has upheld the Constitutionality of ordinances adopted by Baltimore which prohibit alcohol and cigarette advertising on billboards in that city.

Anheuser-Busch, Inc. v. Schmoke, 63 F.3d 1305, 1995 U.S.App.LEXIS 24515 (4th Cir. 1995); Penn Advertising of Baltimore v. Mayor and City Council, 63 F.3d 1318, 1995 U.S.App.LEXIS 24504 (4th Cir. 1995) [ELR 17:11:12]

Previously Reported:

Readers catch errors in reports on NFL blackout and Michael Jackson copyright cases

Gremlins must have attacked page 17 of the February issue of the Entertainment Law Reporter, because both casenotes on that page contain errors. Fortunately, those errors were caught by eagle-eyed subscribers; and thus corrections and apologies are offered herewith.

The "Editor's note" at the end of the report on Stoutenborough v. National Football League - the case that held that the NFL's home game "blackout rule" does not violate the rights of the hearing impaired under the Americans with Disabilities Act - said that Congress protected high school and college broadcasts in legislation enacted in 1973. (ELR 17:9:17) In fact, Congress provided protection for colleges in its 1961 Sports

Broadcasting Act and the NFL-AFL merger legislation in 1966; and ELR Advisory Editorial Board member Phil Hochberg, of Verner Liipfert Bernhard McPherson & Hand in Washington, D.C., caught the mistake and wrote to advise me of it. At my age, the differences between 1973, 1966 and 1961 are no longer as dramatic as they once were, and apparently my gremlins merged those years into one while I was writing that note.

The piece on Cartier v. Jackson - in which the 10th Circuit Court of Appeals approved jury instructions that had been given in a copyright infringement action against Michael Jackson - reported that the trial had taken place in Oklahoma. (ELR 17:9:17) It didn't. It took place in Colorado, and Ira Selkowitz of Colorado Springs caught the mistake and called to set the record straight. (I know the difference between Colorado and Oklahoma, even if my gremlins don't!)

--Lon Sobel [ELR 17:11:12]

INTERNATIONAL CASES

French Supreme Court holds that French television broadcaster infringed copyright to murals in bar of Theatre des Champs-Elysees, painted by Edouard Vuillard, when station briefly showed murals as part of program on current events in the theater

There are murals in the smoking bar of the Theatre des Champs-Elysees painted by artist Edouard Vuillard. Though a smoking bar is not a museum or even an art gallery, these murals have become the object of an interesting and important copyright decision by the Cour de Cassation (the French Supreme Court) concerning the scope of the French "right of brief quotation." The issue arose because Societe Nationale de Programmes

Antenne 2 broadcast a program about current events in the theater; and in the course of that program, Vuillard's murals were fleetingly shown, though the broadcaster did not have a license to do so.

A suit for damages was brought on Vuillard's behalf by SPADEM, the French society responsible for collecting royalties payable to artists. Judgment was entered for SPADEM, on the grounds that "the televised showing of Vuillard's works was not justified by the right of brief quotation" granted by the French Intellectual Property Code.

In its appeal to the Cour de Cassation, the broadcaster argued that the judgment against it effectively "prohibited any possibility of brief quotation from a work of the plastic arts by means of television," because the judgment failed to "take account of the fleeting nature of the reproduction of the works." The Cour de Cassation rejected this argument, however. In a very brief decision, that court ruled that "the complete reproduction of a work, irrespective of the form it takes and its duration, cannot be described as a brief quotation. Therefore the [intermediate level] appeal court, which found that Vuillard's works had been shown in the course of the programme in their entirety, was right in deciding that such reproduction could not constitute a brief quotation for the purpose of the Intellectual Property Code."

Editor's note: The French "right of brief quotation" is roughly analogous to the "fair use" doctrine found in United States copyright law. Because the decision of the Cour de Cassation is so short - it is only one page in length - it is impossible to say whether a U.S. court would have been likely to reach the same conclusion as the French court did, or whether a U.S. court would have given the broadcaster more latitude under the fair use doctrine (or otherwise). Two similar cases have been decided in the United States. In both, the courts ruled that the defendants' unlicensed showing of copyright protected props in homevideos was not an infringement, either because there was no "substantial" use to begin with or because the use was "fair." See, Amsinck v. Columbia Pictures Industries, Inc., 862 F.Supp. 1044 (S.D.N.Y. 1994) (ELR 16:10:10); Frank Schaffer Publications, Inc. v. The Lyons Partnership, L.P., CV 93 3614 R (C.D.Cal. 1993) (ELR 15:10:9; full text)

Societe Nationale de Programmes Antenne 2 v. SPADEM, [1996] ECC 81 (available in LEXIS Eurcom Library, Cases File) [ELR 17:11:13]

NEW LEGISLATION AND REGULATIONS

Telecommunications Act of 1996 will have impact on several aspects of entertainment business, including program content, broadcast station ownership, and cable-TV rates

The Telecommunications Act of 1996 is a massive bill. It runs to more than a hundred pages of small print and covers an unusually wide range of topics, many of which are of little or no interest to those in the entertainment industry (at least as the industry is presently constituted). There are, for example, lengthy sections concerning telephone services. But the Act also contains several provisions that will have both immediate and long-term effects on the entertainment industry, at least some of which are very controversial and are already the subject of (as-yet undecided) test case litigation.

Perhaps the most newsworthy of the Act's provisions is the one that empowers the FCC to prescribe a television programming rating code that would rate programs that contain "sexual, violent, or other indecent material" and that would require the transmission of program ratings so parents may block programming "they have determined is inappropriate for their children." This section of the Act also requires the manufacturers of television sets having 13-inch or bigger screens to equip those sets with so-called "V-chips" which will enable viewers to block programs on the basis of their ratings. The FCC has one year to adopt a rating code, but only if the television industry itself has not already established "voluntary rules" for rating programs. The V-chip requirement takes effect in two years.

A separate section of the Telecommunications Act requires cable-TV companies to scramble or otherwise block the signal of any channel "primarily dedicated to sexually-oriented programming" so that it cannot be received by those who are not subscribers to that channel. The constitutionality of this section of the Act has been challenged in federal court by Playboy Enterprises, on the grounds that it requires cable-TV companies to scramble or block Playboy Channel signals, but not the signals of other channels, like HBO, that may also offer "sexually-oriented programming" without being "primarily dedicated" to such programming. (According to news reports, Judge Joseph Farnan of the District Court in Delaware, has issued a preliminary injunction barring enforcement of this section of the Act, pending the outcome of the case.) The Act also specifically authorizes cable-TV companies to refuse to carry public access programs that contain "obscenity, indecency, or nudity."

Another section of the Act makes it a crime to use "any interactive computer service" to display to anyone "under the age of 18 years" obscene material over an "interactive computer service," even if the person to whom such material is displayed initiated the communication, unless appropriate actions are taken to restrict access to such material by minors. This section also criminalizes the use of "a telecommunications device" to transmit obscene "or indecent" material to anyone younger than 18. These provisions have been the object of vigorous criticism by Internet users, and already are the target of a lawsuit brought by the ACLU and others in federal court in Pennsylvania attacking its constitutionality.

The Act also purports to "clarify" federal obscenity law by making it applicable to material transmitted by "an interactive computer service." And the Act insulates computer service providers from any civil liability for actions they may voluntarily take to restrict access to or the availability of material that the provider "considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected."

The Telecommunications Act contains several provisions that loosen pre-existing rules concerning broadcast station ownership. Insofar as television station ownership is concerned, the Act eliminates restrictions on the number of stations a person or company may own nationally and permits the ownership of any number of stations so long as their signals do not reach more than 35 percent of the total national audience (up from 25 percent under prior law). Radio station ownership has been similarly liberalized: limits on the number of radio stations that may be owned nationally by a person or company have been eliminated, and even within a single market, the number of radio stations that may be owned has been increased.

Finally, the Act also deregulates cable-TV subscription rates as of April 1999 for large cable systems and immediately for small ones.

Telecommunications Act of 1996, Public Law 104-104, 104th Cong., 2d Sess. (Feb. 1996) [ELR 17:11:14]

DEPARTMENTS

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Copyright Law of China: Can It Effectively Protect U.S. Works? by Chong Zheng Ren, 16 Loyola of Los Angeles Entertainment Law Journal (1995)

The New Academic Requirements for Amateur Sports: No Pass, No Play by Thomas H. Sawyer, 16 Loyola of Los Angeles Entertainment Law Journal (1995)

Enjoining Unauthorized Biographies and Docudramas by Teri N. Hollander, 16 Loyola of Los Angeles Entertainment Law Journal (1995)

Music Piracy in the Pacific Rim: Applying a Regional Approach Towards the Enforcement Problem of

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The Antitrust Analysis of Network Joint Ventures by Thomas A. Piraino, Jr., 47 Hastings Law Journal 5 (1995)

Cardozo Arts & Entertainment Law Journal has published Volume 13, Number 3 as a Symposia on Television Self-Regulation and Ownership Regulation: The American Experience with the following articles:

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The European Interest in the American Experience in Self-Regulation by Bernd-Peter Lange and Runar Woldt, 13 Cardozo Arts & Entertainment Law Journal 657 (1995)

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Russian Media Law & Policy: An Introduction by Jamey Gambrell, 13 Cardozo Arts & Entertainment Law Journal 781 (1995)

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Civil Defamation Law and the Press in Russia: Private and Public Interests, the 1996 Civil Code, and the Constitution: Part One by Peter Krug, 13 Cardozo Arts & Entertainment Law Journal 847 (1995)

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Sharing the Spotlight: Equitable Distribution of the Right of Publicity by Jonathan L. Kranz, 13 Cardozo Arts & Entertainment Law Journal 917 (1995)

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It Had to be Hue: The Meaning of Color "Pure and Simple" by Karin S. Schwartz, 6 Fordham Intellectual Property, Media & Entertainment Law Journal 59 (1995)

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Truth, Justice, and the American Way: The Courts May Yet Again Have to Determine the Rights of Comic-Book Artists to Exploit the Characters They Create by M. Christine Valada, 19 Los Angeles Lawyer 28 (1996)

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ronald@mcdonalds.com-"Owning a Bitchin'" Corporate Trademark as an Internet Address - Infringement? by James West Marcovitz, 17 Cardozo Law Review 85 (1995)

Dissemination of Digitized Music on the Internet: A Challenge to the Copyright Act by Adam P. Segal, 12 Santa Clara Computer and High Technology Law Journal 97 (1995)

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National Security and the Persian Gulf War on Television News: Ethics and the First Amendment Paradox by Elizabeth Burch, 17 Communications and the Law 3 (1995)

The First Amendment and The Times by George Freeman, 17 Communications and the Law 21 (1995)

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ASCAP, BMI, and the Sherman Act: Are Today's Top Stars in Bed with the Blanket License? by Joseph P. Escalante, 22 Western State University Law Review 75 (1994)

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Provisions by Thomas C. Picher, 20 Vermont Law Review 559 (1995)

The Title IX Tug-of-War and Intercollegiate Athletics in the 1990's: Nonrevenue Men's Teams Join Women Athletes in the Scramble for Survival by Susan M. Shook, 71 Indiana Law Journal 773 (1996)

Speculating on the Efficacy of "Speculation": An Analysis of the Prudent Person's Slipperiest Term of Art in Light of Modern Portfolio Theory by Michael T. Johnson, January 1996 Stanford Law Review (1996)

"Idea/Expression Dichotomy" and "Method of Operation": Determining Copyright Protection for Computer Programs by Paul I. Kravetz, 8 DePaul Business Law Journal 75 (1995)

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From Sesame Street to Wall Street: An Analysis of Market Competition in Commercial Children's Television by sylvia M. Chan-Olmsted, 40 Journal of Broadcasting and Electronic Media 30 (1996) (published by Broadcast Education Association, 1771 N Street, NW, Washington D.C. 20036-2891)

The First Amendment as a Sword: The Positive Liberty Doctrine and Cable Must-Carry Provisions by Matthew D. Bunker and Charles N. Davis, 40 Journal of Broadcasting and Electronic Media 77 (1996) (for address, see above)

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