RECENT CASES

NBC broadcast of Holocaust did not require presentation of contrasting views under FCC s Fairness Doctrine

Friedrich Berg, representing the Ridgewood Group, filed a Fairness Doctrine complaint with the Federal Communications Commission against WNBC-TV stemming from its broadcast of “Holocaust.” Berg contended that the mini-series was based on the “allegation of a German policy of Jewish extermination during the Second World War” and that the “extermination allegation” constituted a controversial issue of public importance.

Under the Fairness Doctrine, if a station presents one side of a controversial issue of public importance, it

must afford reasonable opportunity for the presentation of contrasting views. However, the FCC ruled that "Holocaust" did not present such an issue. Because the events depicted occurred over thirty years ago, the FCC found that NBC was not unreasonable in concluding that the alleged "issue" of whether there was a German policy of Jewish extermination during World War II is not now a controversial issue of public importance.

Friedrich also contended that the size of the viewing audience, the length of the series, and the interest generated by it, made it a controversial issue of public importance. In response, the FCC ruled that an issue is not necessarily controversial and of public importance, merely because it is newsworthy.

In so ruling, the FCC said, "In taking this action, we realize that there may be some people who question whether or not tile Holocaust occurred. However, the complainant has provided no evidence, and indeed we

are aware of none, to show that `substantial elements' of the community in the WNBC-TV viewing area disagree as to whether the holocaust in fact occurred. . . In reaching this conclusion we recognize that the occurrence of the Holocaust may affect the resolutions of current public policy questions; but the possibility — and desirability — of that impact does not cast doubt on the fact that the Holocaust is a part of history."

In re Complaint of Friedrich P. Berg, Corresponding Secretary, the Ridgewood Group against Station WNBC-TV New York, New York, FCC 79-190 (1979) [ELR 1:5:1]

Federal Court of Appeals holds unconstitutional a Communications Act provision requiring public broadcasters to record all programs in which any issue of public importance is discussed

In a decision rendered last Fall, though just recently published, the federal Court of Appeals in Washington, D.C., held that Section 399(b) of the Communications Act (47 U.S.C. Section 399(b)) violates the First and Fifth Amendments of the United States Constitution. That section required all noncommercial educational radio and television stations (receiving federal funding) to make audio recordings of all broadcasts "in which any issue of public importance is discussed."

The court held that the recording requirement violated the First Amendment, because its application depended upon the subject matter of the programming (i.e., only

programming concerning issues of "public importance" had to be recorded), and thus the purpose of Section 399(b) was deemed related to the suppression of free expression of ideas or information — a purpose which the court found was confirmed by the legislative history of the provision. Section 399(b) was said to impose a "chilling effect" on public broadcasters because "mere passage of a statute which clearly serves the purpose of allowing government officials to review program content . . . is reason enough for local licensees to fear and to dilute their public affairs coverage."

The court ruled that the three purposes asserted by the FCC for the legislation — oversight of federal funds, preservation of significant programs, and enforcement of objectivity and balance — were furthered only by "coincidence." This was so, because all federally funded programs were not within the scope of the statute (i.e., federally funded entertainment programs did not have to

be recorded), while programs of "public importance" that were produced by commercial licensees did not have to be recorded.

Because the purposes offered by the FCC were unsatisfactory, the court held that Section 399(b) served no legitimate government interest, and thus violated the First Amendment, because "the First Amendment does not permit us to tolerate even minimal burdens on protected rights where no legitimate government interest is truly being served."

The court also found Section 399(b) to violate the Equal Protection clause of the Fifth Amendment, because the recording requirement applied only to non-commercial broadcasters receiving federal funds while it left commercial broadcasters free to record or not as they pleased. Since this differential treatment involved fundamental First Amendment rights, the court pointed out "that the governmental interest served must be

`substantial' and the statutory classification `narrowly tailored' to serve that interest if the statute is to withstand equal protection scrutiny." Because it was only by coincidence that the purposes of the provision were advanced, the court concluded that no substantial governmental interest had been suggested which the distinction between commercial and noncommercial broadcasters had been "narrowly tailored" to further.

Community-Service Broadcasting of Mid-America, Inc. v. FCC, 593 F2d 1102 (D.C. Cir. 1978) [ELR 1:5:2]

Home Box Office obtains preliminary injunction prohibiting former affiliate from intercepting its television program transmissions

Pay TV of Greater New York, Inc., formerly a licensed affiliate of Home Box Office, has been preliminarily enjoined from intercepting HBO program transmissions by a federal District Court in New York. HBO successfully asserted rights under Section 605 of the Communications Act of 1934 which prohibits any person not entitled to intercept or receive radio communications from doing so and from using such communications for his own benefit. Although Section 605 does not prohibit the interception and use of transmissions intended for the "general public," HBO's distribution station broadcasts on microwave frequencies that cannot be received by conventional television. The court found that HBO has a private right of action for injury arising out of a violation of the section.

In October of 1975, Pay TV entered into a subdistribution agreement with Microband National Systems which granted Pay TV non-exclusive rights to sub-distribute

HBO programming in Queens County, but not elsewhere, for as long as Microband's own agreement to distribute HBO service in the New York City area remained in effect.

On March 1, 1976, Microband terminated its agreement with HBO. Pay TV then attempted to negotiate directly with HBO for a distribution agreement. In addition to distribution into Queens County, Pay TV sought exclusive rights in Kings and Bronx Counties. An agreement was never reached, however, and Pay TV continued to rebroadcast HBO's service without HBO objection.

In July of 1976, HBO learned that Pay TV had expanded its distribution into locations not earlier approved by HBO. HBO protested to Pay TV but did nothing more, feeling that an acceptable distribution agreement could be reached. By February of 1977, an agreement still had not been reached. HBO then made

written demand that Pay TV terminate its transmission of HBO's service. Nevertheless HBO delayed bringing suit, still hoping an agreement could be worked out. Finally, however, HBO brought suit in December of 1978.

The court found that HBO suffered irreparable injury by loss of reputation and interference with its business, because HBO had no control over locations and customers being served by Pay TV, and because Pay TV's representation of the "pirated" service as its own was damaging HBO's name and jeopardizing its expansion plans.

Pay TV claimed that "It would be put out of business by the issuance of the preliminary injunction," but the court found no harm to Pay TV's legal rights. Any damage it might suffer, said the court, would arise not by the preliminary nature of the decision, but by the operation of Section 605 of the Communications Act which

prohibits the unauthorized use of something to which Pay TV had no fair claim.

The court found that there had not been any consent by HBO to the use of its signals. No licensing agreement had been entered into, and HBO's acquiescence in Pay TV's use of service in the past was held to be irrelevant, because HBO had not done so since February of 1977.

The court rejected Pay TV's contention that an oral contract existed, because an agreement for a term beyond one year is unenforceable (under the Statute of Frauds) unless in writing and signed by HBO. Nor was Pay TV able to show that it had changed its position in reliance on HBO statements.

Finally, the court rejected Pay TV's claim that HBO was too late in asking for preliminary relief. The court ruled that Pay TV had profited by HBO's delay because Pay TV collected $75,000 per month in subscription fees without making any payments to HBO.

Home Box Office, Inc. v. Pay TV of Greater New York, Inc., 467 FSupp. 525 (E.D.N.Y. 1979) [ELR 1:5:2]

Injunction barring University of Colorado from hiring Chuck Fairbanks as its football coach is affirmed

A federal Court of Appeals in Boston has affirmed a preliminary injunction enjoining the Regents of the University of Colorado and several other co-defendants from ". . . causing the University to employ [Chuck] Fairbanks as the University's coach. . . ."

Ever since 1973, when the New England Patriots allegedly lured Fairbanks from the University of Oklahoma, inducing him to break his contract there, Chuck Fairbanks has been the Patriots general manager and head football coach. According to the provisions of his employment agreement with the Patriots, the term of which

had been extended through January of 1983, Fairbanks was not to provide services connected with football to any entity other than the New England Patriots, or to perform services of any kind for anyone without the Patriots' permission.

Fairbanks, testifying as a witness at the hearing, argued that these provisions applied only to ". . . activities competitively connected with the Patriots," and thus were not applicable to services rendered to the University of Colorado. In addition, the defendants argued that by granting an injunction in this case, the trial court violated the rule against compelling specific performance of a personal service contract. The Court of Appeals rejected these arguments, however, and found that the provisions did prohibit Fairbanks from rendering services to the University of Colorado.

The court noted that "both professional and prominent college football teams compete for TV viewers, and

hence, for the advertising dollar . . . " and thus the court wondered whether services rendered to the University of Colorado would be noncompetitive. The court also cited cases in which athletes had been enjoined from breaching employment contracts, and held that it would not distinguish between an athlete and a coach.

The court rejected the defendants' contention that because the Patriots had caused Fairbanks to break his contract with the University of Oklahoma, the Patriots were barred from obtaining an injunction against them by the doctrine of "unclean hands." "Both parties may have done the University of Oklahoma dirt," the court said, but not in connection with the Patriots-Colorado dispute. Thus, the "unclean hands" doctrine (which prevents a party who has acted unfairly in the dispute being litigated from obtaining equitable relief) was not applicable to this case.

The court also found that Fairbanks' services were unique, and that, accordingly, the loss of his services would cause the Patriots irreparable harm. "Fairbanks was insufficiently modest to dispute this," the court pointed out. The University of Colorado, however, did argue that Fairbanks' departure may have a beneficial effect on the Patriots' performance and attendance in the future, even though his loss to Colorado would cause it irreparable harm. This argument, which the court said it "may be too unsophisticated to understand," was rejected, because, "Whatever may be thought rules elsewhere, the legal rules are clear. A contract is not avoided by crossed fingers behind one's back on signing, nor by unsupported, and at once inconsistently self-deprecating and self-serving protests that the breach was to the other party's benefit."

The court also rejected the contention that the Patriots broke Fairbanks' contract by suspending him when he

told their owner, William Sullivan, that he was leaving. Said the court, "It is a novel concept that a contract breaker had the option to require the other party to accept his choice of dates. At least until Fairbanks withdrew his unlawful announcement, the Patriots had a right not to accept the services of an unfaithful servant."

Finally, the court held that the Eleventh Amendment sovereign immunity doctrine did not protect the defendants, because restraining unlawful and tortious acts is not prohibited by the Eleventh Amendment.

(Although the University argued that Fairbanks was an indispensable party to the case, Fairbanks himself was not a party, nor was he covered by the injunction. However, Fairbanks and the University filed a separate lawsuit against the New England Patriots in Colorado state court. In that case, the Patriots obtained an order requiring Fairbanks to arbitrate their dispute before NFL Commissioner Rozelle. The order was based on a

provision of Fairbanks' contract with the Patriots in which he had agreed to abide and be bound by the NFL, By-Laws, and a provision of the NFL By-Laws giving the Commissioner jurisdiction to arbitrate disputes between coaches and clubs. Fairbanks v. New England Patriots football Club, Colorado State District Court, Case No. 79CV0057-2, unpublished ruling and order, January 22, 1979.)

Shortly after the court's decision was rendered, the case was settled so that Fairbanks will become Colorado's football coach after all. According to news accounts, the University of Colorado agreed to pay $200,000 (contributed by a university booster club) to the Patriots in exchange for Fairbanks' release from his Patriots contract.

New England Patriots Football Club v. University of Colorado, 592 F.2d 1196 (1st Cir. 1979) [ELR 1:5:3]

Performance of supervisory duties by Writers Guild Board members does not violate labor laws

The presence of "hyphenate" members on the Board of Directors of the Writers Guild of America West does not constitute a violation of Section 8(b)(1)(A) of the National Labor Relations Act, according to a recently published Memorandum of Advice submitted to the NLRB by its Associate General Counsel, Harold J. Datz. (Section 8(b)(1)(A) of the National Labor Relations Act provides that it is an unfair labor practice for labor organizations, or their agents, to restrain or coerce employees in the exercise of their rights to organize unions and to bargain collectively. 29 U.S.C. Section 158(b)(1)(A).)

The 19-member Board of Directors of the Writers Guild of America West includes approximately eight "hyphenates" elected by the membership of the Guild. The "hyphenates" are individuals, such as producers, directors and story editors, who are hired by employers "primarily to perform executive and supervisory functions including selection and direction of writers and certain limited writing duties." The hyphenates are considered supervisors under the National Labor Relations Act, and a question arose as to whether the presence of the supervisor members on the Board constituted a violation of the Act.

The Memorandum of Advice pointed out that while it is possible that supervisory personnel holding elected union office might give rise to an employer's violation of the Act, Section 8(b)(1)(A) has not been applied to unions to prevent them from permitting members with supervisory positions from serving as elected union

officials. Dismissal of charges against the Writers Guild was therefore recommended.

Writers Guild of America West, Inc., 1978-79 CCH NLRB Para. 20,218 (1979) [ELR 1:5:4]

Music publisher stated claim for copyright infringement and unfair competition in suit against church organizations

A publisher of religious music, while not entitled to a preliminary injunction restraining alleged infringement of its copyrights, stated a claim for vicarious copyright infringement and unfair competition against two national church organizations, according to a federal District Court in Illinois.

Plaintiff F.E.L. Publications alleged that its copyrights in various songbooks were being infringed by the unauthorized use of its songs in "homemade" hymnals produced in many dioceses and archdioceses of the Catholic Church throughout the United States. The defendants, the National Conference of Catholic Bishops and the United States Catholic Conference, Inc., were responsible for the publication and supervision of liturgical books and materials within the church. FEL contended that the defendants infringed its copyrights by failing to provide adequate direction to the dioceses and parishes concerning the proper use of FEL's copyrighted materials.

Liability for vicarious copyright infringement may be shown if a defendant has the right and ability to supervise the infringing activities and a direct financial interest in those activities. (Shapiro, Bernstein & Co. v. H.L. Green & Co., 316 F.2d 304 (2d Cir. 1963).)

The Defendants contended that they did not have the requisite supervisory authority over the parishes in connection with production of the allegedly infringing materials. FEL pointed out, however, that if an organization with knowledge of an infringing activity "induces, causes or materially contributes to the infringing conduct of another [it] may be liable as a `contributory infringer'." (Gershwin Publishing Corporation v. Columbia Artists Management, Inc., 443 F.2d 1159 (2d Cir. 1971).) In Gershwin, the defendant was a manager for concert artists and also actively participated in organizing concerts where the artists appeared without having obtained permission to perform copyrighted musical compositions.

The court distinguished Gershwin, noting that the defendant church organizations were not directly involved in all aspects of the alleged infringing activities and that FEL had not shown a "direct and substantial financial

benefit" to the defendants. The court nevertheless refused to grant the defendants' motion to dismiss, finding that FEL was entitled to an opportunity to establish that the defendants had the ability to control the allegedly infringing activities even in the absence of formal and express authority. The court rejected the defendants' claim that the First Amendment would preclude an examination of the supervisory structure and internal policies of the Catholic Church.

However, the court denied FEL's request for a preliminary injunction, holding that FEL had not made the requisite showing of probable success on the merits of its claim, that monetary damages, if proven, would adequately compensate FEL, and that an order directing the defendants to stop the alleged infringement of FEL's copyrights would have no effect and would not prevent injury to FEL, since the defendants had shown that they had no authority to enforce such an order.

The court also found that FEL had stated a claim for unfair competition under Section 43(a) of the Lanham Act, because the copyrighted songs had been distributed to the public "without acknowledging FEL's ownership rights" and this false designation of origin would create a likelihood of confusion among the public.

F.E.L. Publications v. National Conference of Catholic Bishops, 466 F.Supp. 1034 (N.D.Ill. 1978) [ELR 1:5:4]

Renewal of television license affirmed despite licen-see s cross-ownership of several communications properties

Several years ago, a citizens group known as the Syra-cuse Coalition filed a petition with the FCC seeking de-nial of the renewal of the license of television station

WSYR-TV in Syracuse, New York. The Syracuse Coalition objected to WSYR being part of a group of communications holdings owned by Newhouse Broadcasting. In addition to the television station, Newhouse owned AM and FM radio stations, cable facilities, and two major newspapers, all in Syracuse.

Without conducting a hearing on Syracuse Coalition's petition, the FCC renewed Newhouse Broadcasting's license to operate WSYR-TV; and, in a recently published opinion, the federal Court of Appeals in Washington, D.C., affirmed the FCC's action.

The Court of Appeals ruled that Syracuse Coalition had failed to show and specific abuses attributable to Newhouse's common ownership, or that common ownership created economic monopolization violating the Sherman Antitrust Act. According to the FCC's cross-ownership rules, one of these clements must be present before the FCC will take cross-ownership into

consideration in a license renewal proceeding. (At the time of the renewal, the FCC did have cross-ownership rules which required Newhouse to divest itself of its cable systems. But this rule was subsequently modified so as to be inapplicable to certain preexisting systems, Newhouses' being one of them.)

The court also dismissed Syracuse Coalition's objection to WSYR's minority hiring practices and approved of the use of post-term employment data to verify the efficacy of the station's minority employment plan. During the term of the license, WSYR-TV's minority employment practices "did not fall outside the zone of reasonableness," and thus the court held that the FCC had properly rejected that claim without further inquiry.

In a separate proceeding, Syracuse Coalition is also challenging a subsequent license renewal of WSYR-TV.

Syracuse Coalition For the Free Flow of Information in the Broadcast Media v. Federal Communications Commission, 593 F.2d 1170 (D.C. Cir. 1978) [ELR 1:5:5]

New York City movie licensing ordinance declared unconstitutional; warrantless seizure of movie projectors by Baltimore police also unconstitutional

New York City's movie licensing ordinance, passed to rid neighborhoods like the 42nd Street Times Square area (which one court described as "an ugly wormhole in the `Big Apple'") of theatres showing sexually explicit films, has been declared unconstitutional by both a federal District Court and a state court in New York, in unrelated cases.

The ordinance empowered a city official to deny, suspend, or revoke a movie theater operating license if,

among other conditions, a licensee or a license applicant, or any of its officers, directors, principals or ten percent shareholders: (1) had been previously convicted of a listed crime, or (2) failed to disclose financial information or past criminal conviction records. The crimes listed in the ordinance included specific sex-related offenses, any felony, and certain misdemeanors involving movie theaters' premises.

New York City argued that under the ordinance a license would not be denied unless there was a direct relationship between the offense and the license sought. However, in the federal case, the court held that even if the past offense were an obscenity conviction, the ordinance would still fail, because "to deny a person the right to exercise rights provided by the First Amendment because of past abuse of those rights is precisely the type of infringement on a fundamental freedom which the courts have consistently struck down." While a

system of prior restraint may be sustained upon a showing that the granting of a license to a party would present "a clear and present danger of a serious substantive evil," the City had made no such showing with regard to its movie licensing ordinance.

Both courts also found the ordinance's disclosure requirements unconstitutional. No substantial relationship between the information required and a significant government interest was shown.

In Maryland, a film itself must be licensed by the State Board of Censors before it may be shown. The Court of Special Appeals of Maryland has ruled that the seizure of the projectors themselves, rather than merely the unlicensed film, was an unconstitutional seizure under the First and Fifth Amendments to the federal Constitution and provisions of the Maryland Constitution. Baltimore police had seized two hundred projectors from a "peep show" bookstore, although their warrant covered only

films. The State argued that the projectors were necessary "evidence of crime." The Maryland Court ruled, however, that confiscation of property has not been legislated as a punishment for violation of a licensing law. "Notwithstanding the State's contention," the court said, "it is crystalline that its aim was not to offer hundreds of projectors into evidence but to strike at the appellants' pocketbooks and, thus, make it unprofitable for `peep shows' to continue to exhibit unlicensed film."

Natco Theatres, Inc. v. Rainer, 463 F.Supp. 1124 (S.D.N.Y. 1979); People v. J. W. Productions, 413 N.Y.S.2d 552 (1979); Europa Books, Inc. v. Pomerleau, 395 A.2d 1195 (Md.Ct.Spec.App. 1979) [ELR 1:5:5]

Constitutionality of Arizona obscenity statute upheld

Arizona's obscenity statute has been upheld against a challenge alleging that its "scienter" requirement and its lack of provision for speedy appellate review violate the First and Fourteenth Amendments of the United States Constitution. The operators and employees of "adult bookstores" who were the plaintiffs in the case sought a permanent injunction restraining the enforcement of the statute which prohibits the sale of obscene material made with knowledge of the character and content of the material. Knowledge that the material is obscene is "scienter," and the plaintiffs contended that the scienter aspect of the statute might require them to inspect and self-censor all items offered for sale. They argued that such a requirement might be permissible if obscene

materials were being sold to minors but would be invalid if applied to sales of such materials to adults.

A federal District Court in Arizona noted that the failure to include any scienter requirement would constitute "impermissible prior restraint." And in the leading case of Ginsberg v. State of New York, 390 U.S. 629 (1968), a statute with a scienter requirement "virtually identical" to that of the Arizona statute was upheld by the United States Supreme Court. In discussing scienter, the court did not distinguish between a general obscenity statute and a statute designed for the protection of minors. The court pointed out that although some scienter requirement must exist, the type of mental element required has not been addressed by the courts.

The court also found that the need for speedy appellate review exists in situations where statutes require the submission of materials to an administrative censorship board before exhibition. But, it concluded, there is no

similar need for immediate appeal from a judicial determination of obscenity, and thus such a provision is not constitutionally required.

Dugal v. Hyder, 467 F.Supp. 1119 (D. Ariz. 1979) [ELR 1:5:6]

California statute requiring payment of royalty to original artist upon resale of work of fine art upheld as constitutional

The constitutionality of California's Resale Royalties Act (Civil Code Section 986) has been upheld by a federal District Court in Los Angeles. The Act, which went into effect in January of 1977, requires payment by the seller of a work of fine art to a living, original artist of five percent of the gross sales price, if that price exceeds

$1,000 and is greater than the price paid when the seller acquired the work. The Act does not apply to the initial sale of the work made by the artist. Galleries must collect and pay the royalty to the artist on their sales. If a seller is unable to locate and pay the artist within 90 days of a sale, the seller then pays the royalty to the California Arts Council. The Act applies to all sales within California and to sales outside the state when the seller is a resident of California. It applies to works of art created before as well as after January of 1977.

In March of 1977, Howard Morseburg, an art dealer, entered into two transactions for the sale of paintings to which the Act applied. He then filed suit against one of the artists and the California Arts Council, seeking a declaration that the Act is unconstitutional and unenforceable. Morseburg contended that because of the Supremacy Clause of the United States Constitution, the

Copyright Act of 1909 and the Copyright Revision Act of 1976 preempted the Resale Royalties Act.

The court held that the Resale Royalties Act did not conflict with the Copyright Act of 1909, because the copyright owner's right to vend under the Copyright Act "applies to and terminates with the first sale of the copyrighted work" while the California Act applies only to resales. In addition the court found that the Royalties Act furthered rather than frustrated the Copyright Act's purpose of encouraging the production of fine art.

Since the Copyright Revision Act of 1976 does not apply to actions arising prior to January of 1978, the court did not discuss its impact on this case, except to note that it rejected Morseburg's contention that the Copyright Revision Act preempted the Royalties Act.

In granting summary judgement for the defendants, the court also rejected the plaintiffs arguments that the retroactive application of the Royalties Act violated the

"impairment of contracts" and "due process" clauses of the Constitution. The court found that the purpose of encouraging the arts and protecting financial interests of artists would outweigh the "moderate compromise of plaintiffs contractual rights."

Since the sales in question were made in California the court did not address the question of whether the Royalties Act would be affected by the Commerce Clause of the Constitution.

Although this case was decided in March of 1978 and has generated considerable public discussion, the opinion was published only recently.

Morseburg v. Balyon, 201 USPQ 518, CCH Copyright Law Reports, Para 25,077 (C.D.Cal. 1978) [ELR 1:5:6]

Court upholds New York statute barring landlords from interfering with installation of cable TV facilities upon their property

A landlord, Jean Loretto, brought suit against Teleprompter and the City of New York challenging the constitutionality of Section 828 of New York's Executive Law. The statute allows cable television companies to install reception facilities on apartment buildings to service tenants of those buildings and to service tenants of other buildings farther removed from the source of transmission.

The statute also limits the compensation cable operators must pay to landlords to an amount set by the Commission on cable television. To date the Commission has made only nominal awards of $1.00 and has indicated that it will continue to do so, unless a landlord shows

that greater damages were caused by the installation of cable TV components.

According to Loretto, cable companies customarily paid 5% of their gross revenues to landlords, before the statute was adopted. Thus, Loretto argued that the statute "amounts to an uncompensated trespass and condemnation of property that constitute a `taking' without due process."

The Special Term of the New York Supreme Court ruled that the "public advantage sought to be served by the legislation . . . greatly outweighs the insignificant nature of the physical use of private property permitted by the statute." Therefore, the court ruled that the statute is "a reasonable and, therefore, justifiable exercise of the police power of the State. . ."

Loretto v. Teleprompter Manhattan CATV Corp., 415 N.Y.S.2d 180 (1979) [ELR 1:5:7]

NEW LEGISLATION AND REGULATIONS

IRS rules that investment tax credit is available to purchaser of all network television rights to, plus a percentage of syndication profits from, a movie, but only to the extent of the percentage interest in syndication

The IRS has ruled that when a television network purchases all rights to broadcast a new "qualified" movie (see ELR 1:2:1) over network television and at the same time purchases a percentage interest in the net profits from future syndication, the network may claim investment tax credit, but only to the extent of the syndication percentage acquired.

A taxpayer is entitled to claim an investment tax credit only if it owns a "part" of a qualified film. A "part" of a film is defined as the exclusive right to display the film in a medium of exhibition, in one or more geographic areas, over the entire period of substantial exploitation of the film in that medium.

The right to exhibit a film on "television" constitutes a part." However, the "television medium" consists of both network telecasts and syndication. Thus, when a taxpayer acquires a percentage interest in syndication profits and all of the rights to network telecasts, it acquires a "part," but only to the extent of its percentage interest in syndication.

In such cases, the IRS has ruled that the amount paid by the taxpayer must be allocated between network rights and syndication rights. If, for example, the taxpayer acquires a 20% interest in syndication profits, the amount allocated to syndication rights plus 20% of the

amount allocated to network rights would be eligible for investment tax credit treatment. The balance of the purchase price allocated to network rights is not.

It should be noted that the ruling considered the acquisition of an interest in ”net profits“ from syndication. The ruling did not describe the extent of the network’s control, if any, over syndication. Nor did the ruling consider what the result would be if an interest in gross receipts had been acquired.

Rev. Rul. 79-141, IRB 79-19,6; 79(10) CCH Standard Federal Tax Reports, Para. 6585 [ELR 1:5:7]

DEPARTMENTS

In the Law Reviews:

The University of Southern California has just published a symposium issue of its law review entitled ”Aspects of Entertainment Law.“” The individual articles and notes are entitled:

Legal Protection for Titles in the Entertainment Industry by Dennis Angel, 52 Southern California Law Review 279 (1979)

Copyright Infringement of Audiovisual Works and Characters by Bayard F. Berman and Joel E. Boxer, 52 Southern California Law Review 315 (1979)

The Failure to Pay Wages and Termination of Entertainment Contracts in California: Some Implications of the Labor Code by Russell J. Frackman, 52 Southern California Law Review 333 (1979)

The Personal Manager in the California Entertainment Industry by Neville L. Johnson and Daniel Webb Lang, 52 Southern California Law Review 375 (1979)

Alien Artists, Intangible Properly and United States Taxation, 52 Southern California Law Review 429 (1979)
Statutory Minimum Compensation and the Granting of Injunctive Relief to Enforce Personal Service Contracts in the Entertainment Industries: The Need for Legislative Reform, 52 Southern California Law Review 489 (1979)

Tort Liability of the Media for Audience Acts of Violence: A Constitutional Analysis, 52 Southern California Law Review 529 (1979)

Home Videorecording: Fair Use or Infringement?, 52 Southern California Law Review 573 (1979)

Rohauer v. Killiam Shows, Inc. and the Derivative Work Exception to the Termination Right: Inequitable Anomalies Under Copyright Law, 52 Southern California Law Review 635 (1979)

Copies may be obtained for $5.50 each by writing to the Business Manager of the Southern California Law Review at the USC Law Center, Room 314, University Park, Los Angeles, California 90007.
[ELR 1:5:8]