INTERNATIONAL CASES

Band leader Artie Shaw loses lawsuit seeking share of profits from Academy Award winning documentary about his life; Canadian judge rules that Shaw's agreement with filmmaker Brigitte Berman did not provide for profit sharing, and Shaw did not have right under Canadian copyright law to be compensated for movie's use of recordings of performances he gave more than 50 years ago

Success is a two-edged sword, as Toronto filmmaker Brigitte Berman has learned to her undoubted chagrin.

Berman was (and perhaps still is) a fan of famed band leader Artie Shaw. Back in 1982, she decided to produce a documentary about his life and career, and he

readily agreed. At the outset of her work, he provided her with a letter addressed "To Whom it May Concern" confirming (to those she might want to interview) that her film was being done with his "cooperation" and "authorization." Two years later, when her work was almost but not quite done, he sent her tapes of unreleased recordings of some of his performances, along with a letter authorizing her to use them in the soundtrack of the film.

Neither of these two letters said anything about Shaw sharing in whatever profits the film might make, and Shaw never raised the subject in conversation before or while the film was being made. Apparently, this was because neither of them expected the film to earn much if anything in the way of profits; and in fact, it didn't. The film cost $255,000 - not including Berman's salary - but from 1985 to 1994, it earned only $145,000.

The film was, however, an artistic success. In 1987, "Artie Shaw-Time Is All You've Got" won an Academy Award for Best Feature Documentary. And this "triggered" "Shaw's interest in capitalizing on the film's actual and potential earnings." Shaw claimed a "35% profit participation . . . after recoupment of negative costs and Ms. Berman's salary" - apparently unaware that there were no such profits.

Berman did not acknowledge any obligation to share profits. And Shaw later admitted that "the figure of 35% was what he unilaterally considered reasonable." He justified his claim for profits by contending that "he would have included such a provision in the agreement if he had anticipated that the film would be exploited commercially, or if he had believed that Berman had even considered such a possibility."

When Shaw realized the film had not earned profits, he called an expert witness who testified that if he

had marketed the film, it would have earned $300,000 rather than only $145,000. Shaw also argued that under Canadian copyright law, he was entitled to be compensated for the film's use of recordings of his performances that Berman had obtained from other sources (and thus weren't covered by his earlier letter).

Justice Romain Pitt of Canada's Ontario Court General Division has rejected both of Shaw's arguments. The judge found that Berman and Shaw had never agreed that he would be entitled to share in the film's profits, so it wasn't necessary for him to decide whether there would have been any had it been marketed by someone else.

With respect to the music issue, there was no evidence that Shaw owned the copyrights to the recordings Berman obtained from other sources and used in the film's soundtrack, so Shaw was not entitled to recover anything based on those copyrights. He did, however,

argue that as a result of a recent amendment to Canadian copyright law - in Canada's WTO Implementation Act - Canadian law now gives performers rights in their recorded performances. Justice Pitt ruled that the amendment was of no help to Shaw in this case, however, because the rights it created became effective January 1, 1996 and are prospective only.

As a result, Justice Pitt has dismissed Shaw's action.

Shaw v. Berman, 144 D.L.R.4th 484, 72 C.P.R.3d 9 (Ont.Ct. 1997) (available on LEXIS in the Intlaw Library, Cancas File) [ELR 19:1:4]

RECENT CASES

NBA wins appeal of ruling that permitted superstation WGN to televise 30 Chicago Bulls games a year, and that substantially reduced "tax" Bulls must pay NBA for each such game; Court of Appeals decides that NBA rules concerning superstation telecasts may not violate antitrust laws, because NBA may be "single entity" for TV licensing purposes or because rules are reasonable

The Chicago Bulls are the darlings of the National Basketball Association. They won the NBA championship this year, and were NBA champs four earlier times, this decade alone.

Off the basketball courts, and in the law courts, the Bulls have been successful too. On four earlier occasions, the Bulls have won judicial rulings in a long-

running battle with the NBA over the number of Bulls games Chicago television station WGN may broadcast. (ELR 12:12:11, 14:10:6, 15:3:6, 17:2:14) But the Bulls' streak in the law courts has come to an end. The NBA has won the fifth and most recent ruling, though at least one more courtroom contest will be necessary before the ultimate victor is known.

The reason the Bulls and NBA are at legal loggerheads is this. WGN - the station that televises the Bulls' home games - is a "superstation" whose signals are retransmitted by cable systems all around the country, including some whose subscribers live in cities that have NBA teams of their own. As a result, in some cities, telecasts of Bulls games compete for viewers with live and televised games played by other NBA teams. Naturally, other NBA teams don't care for this, and several years ago, the NBA adopted superstation rules to deal with this situation. The rules reduced the number of

Bulls games WGN was permitted to carry; and WGN and the Bulls responded by filing an antitrust suit in federal court in Chicago, attacking the legality of the NBA's superstation rules.

The Bulls' won the early rounds of the lawsuit, but the NBA did not give up. Instead, it amended its superstation rules and changed its television licensing practices, hoping that these changes would enable the rules to pass antitrust muster. Among other things, the NBA imposed a "tax" on teams that permitted superstation telecasts of their home games, so that superstation revenues would be shared among all NBA teams.

Once these changes were put in place, the NBA sought approval of its superstation "tax" and a court order permitting it to reduce (from 30 to 15) the number of Bulls games WGN could carry in a year. WGN and the Bulls sought to increase (from 30 to 41) the number of Bulls games WGN could carry, and asked for a

reduction in the amount of the "tax" the Bulls would have to pay. The Bulls were largely successful. District Judge Hubert Will decided that the NBA's revised superstation rules still violated the antitrust laws. The judge neither increased nor decreased the number of games WGN could show, leaving the number at 30 games a year; but he did decrease the amount of the tax the Bulls had to pay the NBA from $138,000 for each superstation-televised game to $39,400 per game.

Both sides appealed, and finally the NBA has a win in its column. In a decision by Judge Frank Easterbrook, the Court of Appeals gave the Bulls a small point by holding that the Sports Broadcasting Act does not exempt the NBA's superstation rules from the antitrust laws. But the appellate court gave the NBA two points. It held that even though the rules are not exempt, the District Court had erred in categorically rejecting the NBA's argument that it is a "single entity" and thus

cannot "conspire" in violation of section 1 of the Sherman Act. And it ruled that even if the NBA is not a single entity, the antitrust legality of its superstation rule must be fully evaluated under the Rule of Reason. So "with apologies to both sides," the appellate court remanded the case to the District Court where the parties "must suffer through still more litigation."

Editor's note: The question of whether a sports league is a "single entity" - like a conglomerate corporation - even though its teams have separate owners, has long been a hotly-disputed issue in sports and antitrust law. If a league were a single entity, its teams would be incapable of "conspiring" with one another in violation of section 1 of the Sherman Act, under the Supreme Court's decision in Copperweld v. Independence Tube, 467 U.S. 752 (1984). Not surprisingly, sports leagues have long argued that they are single entities, and several law review articles have supported that argument.

However, so far, no court has ever been persuaded that a league is a single entity - though one court did rule that the PGA is a single entity (ELR 17:3:18). Nonetheless, Judge Easterbrook (who was an antitrust law professor at the University of Chicago before being appointed to the bench) read Copperweld differently than the District Court had. And as Judge Easterbrook read Copperweld, he could "see no reason why a sports league cannot be treated as a single firm . . . ." He explained: "Sports are sufficiently diverse that it is essential to investigate their organization and ask Copperweld's functional question one league at a time - and perhaps one facet of a league at a time, for we do not rule out the possibility that an organization such as the NBA is best understood as one firm when selling broadcast rights to a network in competition with a thousand other producers of entertainment, but is best understood as a joint venture when curtailing competition for players who have few other

market opportunities." If, as a result of this ruling, the NBA is deemed to be a single entity for broadcast rights purposes, it will be a "first" of enormous significance to all sports leagues - one that is likely to give leagues greater control over renegade owners than they have had for several years.

Chicago Professional Sports Ltd. v. National Basketball Association, 95 F.3d 593, 1996 U.S.App.LEXIS 23942 (7th Cir. 1996) [ELR 19:1:5]

Claim by Jimmy Merchant and Herman Santiago that they co-authored song "Why Do Fools Fall in Love?" is barred by Copyright Act's three-year statute of limitations, federal appellate court rules

"Frankie Lymon and The Teenagers" were popular in the mid-1950s. Their big hit was a 1956 recording of "Why Do Fools Fall in Love," a song that was written by Frankie Lymon and assertedly co-authored by "The Teenagers" - Jimmy Merchant and Herman Santiago.

Merchant and Santiago's contribution to "Fools" has been the subject of some dispute, because their names did not appear on the original copyright registration. In fact, they didn't formally assert their contributions to its authorship until 1987 when they filed a lawsuit in federal District Court in New York City seeking a judicial declaration that they are the song's co-authors, and as such are co-owners of its copyright and

entitled to their shares of the royalties it has earned. Since their lawsuit wasn't filed until more than three decades after the song was written, one of the big issues in their case was whether it was barred by the statute of limitations.

Earlier in the case, a jury ruled in favor of Merchant and Santiago on the most important factual issue in the case when it found that they had in fact co-authored the song. Federal Magistrate Judge Naomi Reice Buchwald then held in their favor on the big legal issue. She held that their claim was not barred completely by the Copyright Act's three-year statute of limitations, though she did limit their recovery to a share of the royalties earned by the song as of three years before they sued. (ELR 15:12:22, 16:5:18) In so ruling, Judge Buchwald relied on a then-recent decision of the Second Circuit Court of Appeals in the Hank Williams case, Stone v. Williams, which held that the statute of

limitations did not bar the co-ownership claim of Williams' daughter, Cathy Stone (ELR 14:6:8).

Nevertheless, when Merchant and Santiago's victory was appealed to the Second Circuit, the court held that their claim is barred by the Copyright Act's three-year statute of limitations. Thus the case has been returned to the District Court with instructions that it be dismissed.

In an opinion by Judge Jon Newman, the appellate court distinguished its earlier ruling in the Hank Williams case by agreeing with Nimmer on Copyright that Stone v. Williams was "based on `highly idiosyncratic facts.'" Judge Newman explained that "Stone stands for the narrow proposition that, in certain situations, the statute of limitations will not be applied to defeat the copyright co-ownership claim of an author's relative accruing more than three years before the lawsuit where uncertainty surrounded the relative's status as

a member of the author's family. Instead, if the relative prevails on the merits and if the equities permit, the Court will grant the relative a declaration of copyright co-ownership, but permit damages only for the period starting three years prior to the suit."

In other words, the result in Stone was strictly limited to its own very unusual - and unlikely to reoccur - facts. Those facts, of course, were not the facts in Merchant and Santiago's case. Judge Newman explained: "Unlike Stone, where the copyright ownership claim was based on plaintiff's uncertain status as an heir, no similar uncertainty exists as to co-ownership rights based on co-authorship. A co-author knows that he or she jointly created a work from the moment of its creation. Accordingly, the concerns motivating our decision in Stone are not present here. We hold that plaintiffs claiming to be co-authors are time-barred three years after accrual of their claim from seeking a declaration of

copyright co-ownership rights and any remedies that would flow from such a declaration."

Editor's note: By limiting Stone v. Williams to its own "highly idiosyncratic facts," the Second Circuit has changed its direction quite significantly. To its credit, it explained why it did so, and its reason is one with which most people who buy, sell or license copyrights will agree: "Our conclusion promotes the principles of repose integral to a properly functioning copyright market." In so ruling, the Second Circuit took its cue from (or at least cited with approval) the Ninth Circuit which recently held that the copyright three-year statute of limitations barred a claim by two musicians that they are co-authors of the "Hooked on Phonics" music (ELR 18:7:24) - a ruling which the Supreme Court declined to review (ELR 18:12:19). Though there is no longer a conflict between the Second and Ninth Circuit on this issue, the rule in the Fifth Circuit seems to be different.

There, the Court of Appeals held that the Copyright Act's three-year statute of limitations did not bar Shirley Goodman's claim that she co-authored "Let the Good Times Roll," even though she made the claim 28 years after the song was written; and once it was determined that Goodman was a co-author, her right to an accounting for half the song's royalties arose under Louisiana state law, which has a 10-year limitations period, rather than under the Copyright Act (ELR 18:6:7). Nontheless, the Supreme Court has declined review Merchant also.

Merchant v. Levy, 92 F.3d 51, 1996 U.S.App.LEXIS 19806 (2d Cir. 1996), cert. denied, 117 S.Ct. 943, 1997 U.S.LEXIS 707 (1997) [ELR 19:1:6]

Subscription background music license does not authorize live or disc jockey performances

BMI has prevailed, on the issue of liability, in a copyright infringement action against a New Jersey night club or restaurant named J.P. Anthony's. Music was publicly performed at Anthony's in three ways: by live performers, by disc jockeys, and by a background music service known as "Digital Music Service." The background music performances were properly licensed by Digital, and sub-licensed by Digital to Anthony's. But the live and disc jockey performances were not licensed.

Anthony's argument that its sub-license from Digital also covered live and disc jockey performances was rejected by District Judge Orlofsky, because that sub-license merely gave Anthony's the right to perform the "Digital Music Service," nothing else. Anthony's has been enjoined from "hosting the public performance" of

compositions licensed by BMI. The court denied BMI's motion for summary judgment against Anthony's owner and its request for statutory damages, but only because factual disputes prevented the court from ruling on those issues at that time.

Broadcast Music, Inc. v. 84-88 Broadway, Inc., 942 F.Supp. 225, 1996 U.S.Dist.LEXIS 15882 (D.N.J. 1996) [ELR 19:1:7]

Parody baseball cards do not violate Lanham Act rights of Major League Baseball Players Association because they do create likelihood of confusion, and parody cards are protected by First Amendment against right of publicity claims

Major League Baseball may be the national pastime, but players today receive no more respect than elected officials (or - dare I say it? - than lawyers). A company in Oklahoma named Cardtoons, L.C., proposes to publish a set of parody trading cards that feature recognizable caricatures of major league players on the front and humorous comments that ridicule them on the back.

Cardtoons announced the anticipated debut of its cards in an ad in a 1993 issue of Sports Collectors Digest which was seen by the Major League Baseball Players Association. The Players Association is the

exclusive licensing agent of all active major league players, and it has issued licenses to manufacturers of a wide variety of merchandise, including trading cards. Cardtoons did not have a license, so in response to its ad in Sports Collectors Digest, the Players Association sent the company a cease-and-desist letter. That letter had at least one of its intended effects: Cardtoons' printer refused to print the cards unless and until a court determined they would not violate the Players Association's rights.

Cardtoons did what it had to: it filed a declaratory relief action against the Players Association in federal District Court in Oklahoma. The first inning went to the Players Association when Judge James Ellison adopted a magistrate's recommendation finding that Cardtoons' parody cards would violate the players' publicity rights under the Oklahoma Right of Publicity statute. (ELR 16:3:7) Thereafter, however, the judge set aside his first

ruling and entered a judgment in favor of Cardtoons. (ELR 16:9:5) Judge Ellison did so, because after the magistrate had made his recommendation, the United States Supreme Court decided the "2 Live Crew" copyright-parody case (ELR 15:12:18); and Judge Ellison concluded that under that case, Cardtoons' cards were protected parodies.

The Players Association appealed, but the third inning has gone to Cardtoons as well. The Court of Appeals has affirmed the judgment in Cardtoons' favor, on the grounds that its cards are indeed protected parody, though for somewhat different - and perhaps more significant - reasons than those relied on by Judge Ellison.

In a thorough and scholarly opinion by Judge Deanell Tacha, the Court of Appeals has held that Cardtoons' cards would not violate the Players Association's rights under the Lanham Act, because they create no likelihood of consumer confusion. (This part of the

appellate court's ruling is somewhat ironic, because federal court jurisdiction was based solely on the Lanham Act.) On the other hand, Judge Tacha ruled that on their face, the cards do violate the publicity rights of the players under the standards established by the Oklahoma Right of Publicity statute (a statute modeled after California's publicity statute). The appellate court decided that the "fair use" analysis used by the Supreme Court in the "2 Live Crew" copyright case is not appropriate for a right of publicity case. Nor is the "fair use" analysis used in trademark cases like those involving "Debbie Does Dallas" (ELR 1:15:2) or "Mutant of Omaha" (Mutual of Omaha v. Novak, 836 F.2d 397 (8th Cir. 1987)).

Thus, in order to prevail, Cardtoons had to establish that it has a First Amendment right to publish its cards. And Judge Tacha was persuaded that it does. The First Amendment was asserted, but rejected, as a defense in the Vanna White right of publicity case (ELR

14:4:3). But Judge Tacha frankly "disagree[d]" with that case "for reasons discussed in the two dissents it engendered." (ELR 15:4:8) Judge Tacha also distinguished the Vanna White case because it involved commercial speech - an ad for Samsung television sets - while this case involves "speech subject to full First Amendment protection."

In order to decide whether Cardtoons' cards are protected by the First Amendment, Judge Tacha carefully balanced the effects of permitting the Players Association to block the sale of the cards against the effects of permitting the infringement of the Association's publicity rights. "Little is to be gained," the judge concluded, "and much lost, by protecting [the Players Association's] right to control the use of its members' identities in parody trading cards. The justifications for the right of publicity are not nearly as compelling as those offered for other forms of intellectual property,

and are particularly unpersuasive in the case of celebrity parodies. The cards, on the other hand, are an important form of entertainment and social commentary that deserve First Amendment protection."

Cardtoons, L.C. v. Major League Baseball Players Association, 95 F.3d 959, 1996 U.S.App.LEXIS 22629 (10th Cir. 1996) [ELR 19:1:7]

County law prohibiting sale to minors of "heinous crime" trading cards is unconstitutional

A Nassau County law that prohibits the sale to minors of trading cards that depict "heinous" crimes or criminals has been declared unconstitutional by federal District Judge Arthur Spatt. The law was challenged in a

suit filed by the publisher of a "True Crime" series of trading cards.

Judge Spatt held that the law violates the First Amendment because the county did not establish that trading cards depicting heinous crimes are harmful to minors and because the law is not narrowly tailored to meet a compelling state interest.

Moreover, the judge ruled that even if the law were constitutional, the trading cards at issue would not have violated the law because they are not "harmful to minors" as that phrase is defined in the law.

Eclipse Enterprises, Inc. v. Gulotta, 942 F.Supp. 801, 1996 F.Supp. 14191 (E.D.N.Y. 1996) [ELR 19:1:8]

Court of Appeals affirms $1.35 million attorneys fee award to John Fogerty in connection with his successful defense of copyright infringement suit filed against him by Fantasy; plaintiff's "blameworthiness" is not a prerequisite to awarding fees to a prevailing defendant, appellate court rules

The copyright infringement fight between Fantasy Inc. and singer-songwriter John Fogerty continues to produce precedent-setting judicial opinions on a subject that is important to lawyers and clients alike: attorneys fees. This case last appeared in these pages when District Judge Samuel Conti awarded Fogerty $1.35 million in fees to reimburse Fogerty for most of what he had spent successfully defending himself against Fantasy's claim that Fogerty's 1985 song "The Old Man Down the Road" infringed the copyright - which Fogerty had

previously sold to Fantasy - to his 1970 song "Run Through the Jungle." (ELR 17:4:20)

The $1.35 million award against it was something Fantasy did not anticipate when it filed its suit back in 1985, because in those days, the rule in the Ninth Circuit (though not everywhere) was that successful plaintiffs were entitled to their attorneys fees in copyright cases, but successful defendants were not. The United States Supreme Court overturned that rule in a decision in this very case, and held that fee awards must be "evenhanded" in copyright cases, so that successful plaintiffs and defendants are treated alike. (ELR 15:11:14)

Nonetheless, Fantasy appealed the $1.35 million award, arguing that it had conducted a "good faith" and "faultless" lawsuit on reasonable factual and legal grounds and was "blameless." As a result, Fantasy contended, Judge Conti should not have ordered it to pay

Fogerty's fees, because plaintiffs win copyright cases only when defendants are guilty of infringement and thus are "blameworthy."

While creative, that argument was not successful. In a decision by Judge Pamela Ann Rymer, the Court of Appeals has held that "a court's discretion may be influenced by the plaintiff's culpability in bringing or pursuing the action, but blameworthiness is not a prerequisite to awarding fees to a prevailing defendant."

The appellate court also awarded Fogerty the attorneys fees he incurred in defending Fantasy's appeal, though it rejected Fogerty's argument that he should have been awarded interest on the fees he paid in connection with earlier proceedings.

Fantasy, Inc. v. Fogerty, 94 F.3d 553, 1996 U.S.App.LEXIS 21926 (9th Cir. 1996) [ELR 19:1:8]

Federal District Court rules that First Amendment bars wrongful death suit filed by relatives of murder victims against publisher of books on how to commit murders read by victims' killer; case now pending before Court of Appeal

In a case that tests the outer limits of First Amendment protection for book publishers, a Federal District Court in Maryland has dismissed a wrongful death lawsuit brought by the relatives of three murder victims, all of whom were victims of a hired - and now convicted - killer who apparently learned at least some of his trade from two books published and sold by Paladin Press. Both books - Hit Man: A Technical Manual for Independent Contractors and How to Make a Disposable Silencer - are how-to manuals. The publisher has sold more than 13,000 copies of each since 1983, many to novelists, screenwriters, law enforcement

officials and others who do not intend to kill anyone. However, the publisher has acknowledged that it also knew and intended that the books would be purchased, read and used by criminals to plan and commit murders for hire.

In 1992, James Perry was hired by Lawrence Horn to murder Horn's wife and brain-damaged son so that Horn could inherit a $2-million trust fund established for the boy's care. Perry had purchased Hit Man and Silencer from Paladin Press just weeks before he was hired, and using information in those books, Perry killed Horn's wife and son as well as the son's private duty nurse. Both Perry and Horn have been convicted. The victims' relatives assert that Paladin Press aided and abetted the killings and thus is liable for their wrongful deaths.

Paladin moved for summary judgment, arguing that its publication of the books is protected by the First

Amendment. A federal District Court judge has agreed. The question, the judge said, was whether the books merely advocate or teach techniques for committing murders, or whether they actually incite and encourage readers to commit murders. The judge said that he personally found Hit Man to be "reprehensible and devoid of any significant social value." But the books do not constitute "incitement or `a call to action,'" he said. For this reason, the Supreme Court's 1969 decision in Brandenburg v. Ohio requires the case to be dismissed, and the judge did so.

The plaintiffs have appealed the dismissal to the Fourth Circuit Court of Appeals which heard oral argument in May 1997.

Rice v. Paladin Enterprises, Inc., 940 F.Supp. 836, 1996 U.S.Dist.LEXIS 13209 (D.Md. 1996) [ELR 19:1:9]

Appellate court affirms dismissal of libel suit against Sheridan Square Press filed by Robert McFarlane, National Security Advisor during Reagan-Bush Administration, on account of book entitled "Profits of War" that asserted that McFarlane conspired to delay release of American hostages in Iran and was an Israeli spy; though Congress later discredited these assertions, evidence did not show Sheridan Square had published book with "actual malice"

During the closing months of his administration, former President Jimmy Carter was frustrated by his inability to negotiate the release of Americans then being held hostage in Iran. In the opinion of many, this was one of the important reasons President Carter was not re-elected in 1980, and why Ronald Reagan was elected instead.

Years later, books and articles appeared which asserted that members of the Reagan-Bush Campaign had conspired with Iran and Israel to the delay the release of the hostages in order to "steal" the 1980 election. One of these books, Profits of War by Ari Ben-Menashe, was published by Sheridan Square Press in 1992. According to Ben-Menashe's book, Reagan's National Security Advisor, Robert McFarlane, had taken part in the "conspiracy" and was even an Israeli spy. Similar assertions were made in an earlier Esquire magazine article by Craig Unger who had relied extensively on Ben-Menashe.

In 1993, a Congressional task force "thoroughly discredited" these claims. But the Congressional report did not make McFarlane feel sufficiently vindicated. As a result, he filed libel lawsuits in federal District Court in Washington, D.C. - one against Esquire and Unger, and another against Sheridan Square and Ben-Menashe.

McFarlane has been persistent but not successful. His suit against Esquire and Unger was dismissed without trial, as to Unger for lack of personal jurisdiction, and as to Esquire because the evidence did not show it had published the offending article with actual malice. That ruling was affirmed on appeal (ELR 18:4:17), and the Supreme Court denied McFarlane's cert petition (ELR 18:7:32).

McFarlane's suit against Sheridan Square Press has suffered a similar fate; it too was dismissed without trial, and that ruling too has been affirmed on appeal. Again, the basis for these rulings is that the evidence failed to show that Sheridan Square published Profits of War with actual malice. In an opinion by Judge Douglas Ginsburg, the Court of Appeals has thoughtfully and respectfully considered McFarlane's argument that a jury could properly impose liability on Sheridan Square. In

the end, however, the appellate court was not persuaded.

McFarlane's "best evidence," Judge Ginsburg said, was that Ben-Menashe lacked credibility. But others, as well as Sheridan Square, had relied on his story and had verified some of his allegations (though not those concerning McFarlane). Moreover, Ben-Menashe made the same allegations before the Congressional task force as he made in his book, and made them under oath. For this reason, evidence concerning Ben-Menashe's lack of credibility was "not enough to prove, clearly and convincingly, that Sheridan Square published Profits of War with actual malice."

McFarlane also argued that actual malice could have been found because: Sheridan Square failed to contact anyone with first hand knowledge of the alleged events; had been unable to corroborate the book's allegations about McFarlane; should have been aware of

inconsistencies between Ben-Menashe's story and other facts; had been alerted that Ben-Menashe had not been present for a crucial meeting reported in the book; and Ben-Menashe had perjured himself in an affidavit submitted to the District Court. But Judge Ginsburg disagreed. "Each provides little or no additional support for a finding of actual malice," the judge said. And "cumulatively they do not amount to much, and surely not enough under the standard set by the Supreme Court."

McFarlane v. Sheridan Square Press, 91 F.3d 1501, 1996 U.S.App.LEXIS 20452 (D.D.C. 1996) [ELR 19:1:9]

California court has personal jurisdiction over New York newspaper and columnist to hear defamation

suit filed by Berry Gordy, federal Court of Appeals holds

A federal District Court in Los Angeles has personal jurisdiction over The Daily News, a New York newspaper, and over columnist George Rush, a New York resident, a federal Court of Appeals has held. The appellate court has reversed a ruling by District Judge Ronald Lew who had dismissed a lawsuit filed against The Daily News and Rush by Berry Gordy, the founder of Motown Records, on account of an allegedly defamatory column written by Rush and published in the newspaper.

Judge Lew had dismissed Gordy's lawsuit for lack of personal jurisdiction over the newspaper and the columnist. But in an opinion by Judge William Canby, the appellate court has ruled that the District Court does have jurisdiction over both of them, even though The

Daily News sells only 18 copies of its papers on Sundays, and only 13 copies the rest of the week, to subscribers in California. This is only 0.0017% of the newspaper's total circulation, virtually all of the rest of which is to readers who live in or within 300 miles of New York City.

Nevertheless, since Gordy has lived in California for 24 years, and most of his friends, family and business associates do as well, the appellate court concluded that the effects of Rush's allegedly defamatory column "would clearly be felt in California." Moreover, "by regularly circulating newspapers in California, Rush and the Daily News purposefully availed themselves of the privilege of conducting activities in California. Gordy's claim arises from those activities." And "The Daily News and Rush have not made a compelling case that litigating in California would be unreasonable."

The court did not describe the assertions made in the column, saying that it had "no desire to republish the alleged libel, but it was of a nature that clearly would have a severe impact on Gordy as an individual."

Editor's note: Since the Supreme Court's 1984 decisions in the Shirley Jones and Kathy Keeton cases (ELR 5:12:10), courts have had an extremely expansive view of their personal jurisdiction in defamation cases. While Gordy's case is the most expansive so far, it is just a small step beyond others in which courts have asserted personal jurisdiction over publishers and authors in cases in which less than 0.2% of sales were in their state (ELR 18:9:23, 18:6:16).

Gordy v. Daily News, L.P., 95 F.3d 829, 1996 U.S.App.LEXIS 23437 (9th Cir. 1996) [ELR 19:1:10]

Appellate courts affirm dismissal of RICO and defamation lawsuits against ABC, Diane Sawyer and

others brought by Reverend Robert Tilton and Word of Faith Church, arising out of PrimeTime Live broadcasts; Supreme Court denies cert in Tilton's case

In 1991 and 1992, PrimeTime Live broadcast investigative reports about the fund raising practices of the Word of Faith World Outreach Center Church and its Reverend Robert Tilton. The reports were critical of those practices, and donations to the Church allegedly declined after the reports were aired by ABC.

In response, the Church filed a RICO and civil rights lawsuit against ABC, Sawyer and others in federal court in Texas; and Tilton filed a defamation and false light invasion of privacy action against them in Oklahoma. In due course, both cases were dismissed without trials: the Church's suit for failure to state a claim, and Tilton's in response to the defendants' motion for

summary judgment. Both the Church and Tilton appealed; but both rulings have been affirmed on appeal, in separate opinions by separate appellate courts.

In an opinion by Judge Edith Jones, the Fifth Circuit Court of Appeals has affirmed the dismissal of the Church's lawsuit. With respect to the Church's RICO claim, the appellate court agreed with the lower court's conclusion that the facts alleged by the Church in its complaint did not assert a violation of the RICO Act, because the complaint did not plead a "continuity of racketeering activity, or its threat." The Church's civil rights claim was defective, because the statute relied on by the Church (42 U.S.C. section 1985(3)) prohibits actions based only on racial animus, not those based on the religious animus asserted by the Church.

Tilton's lawsuit had been dismissed on the grounds that he had failed to prove falsity and actual malice. (ELR 18:3:10) In his appeal to the Tenth Circuit

Court of Appeals, he challenged that ruling as well as rulings made in anticipation of trial that excluded proposed testimony by Tilton's expert linguist and allowed the defendants to assert the newsperson's privilege to withhold the identity of confidential sources. In a very short ruling by Judge Deanell Tacha, the appellate court said that after a careful review of the record, it adopted the analysis of the lower court and affirmed for substantially the reasons it had given in its decisions. Tilton then sought review by the Supreme Court; but it has denied his petition for certiorari.

World of Faith Outreach Center Church v. Sawyer, 90 F.3d 118, 1996 U.S.App.LEXIS 19924 (5th Cir. 1996); *Tilton v. Capital Cities/ABC, Inc.*, 938 F.Supp. 748, 751, 1995 U.S.Dist.LEXIS 21344, 21341 (N.D.Okl. 1995), aff'd, 95 F.3d 32, 1996 U.S.App.LEXIS 22630

(10th Cir. 1996), cert.den., 117 S.Ct. 947, 1997 U.S.LEXIS 730 (1997) [ELR 19:1:11]

NFL Players Association retaliated against one employee, though not against two others, by terminating her in violation of Title VII

The National Football League Players Association has been ordered to pay almost $71,000 to Valerie Thomas, who once was employed by the NFLPA as a secretary and then a research analyst, because it discharged her in 1988 for engaging in legally protected activities.

Before she was discharged, Thomas had criticized the NFLPA's employment practices, saying it provided too few promotional opportunities for blacks and women who were members of the union that represented

the NFLPA's office workers. Such criticism is legally protected activity under Title VII. But Judge James Robertson found that Thomas was terminated in part because of her criticism. According to Judge Robertson, the NFLPA had failed to satisfy its burden of proving that Thomas would have been terminated anyway, because the NFLPA had to reduce its staff as a result of a cashflow crunch brought on by the 1987 player strike. Thomas had sought more back pay than $71,000, but that was all Judge Robertson awarded, because the NFLPA proved that Thomas had not used "reasonable diligence" in looking for a new job after she was terminated. Moreover, the judge refused to order the NFLPA to reinstate her, because the "acrimony" between her and the NFLPA was so great there was no reason to believe they could have a productive working relationship, and because six years had passed since her termination.

Two other former NFLPA employees were co-plaintiffs in the case, but Judge Robertson ruled against them. While one also was discharged, she had not proved that she had engaged in any protected activity that led to her discharge. The other resigned, but she did not prove that she did so because of "intolerable" working conditions that would have caused a reasonable person to quit.

Thomas v. National Football League Players Association, 941 F.Supp. 156, 1996 U.S.Dist.LEXIS 14786 (D.D.C. 1996)[ELR 19:1:11]

Court dismisses suit alleging NFL Players Association breached duty of fair representation brought by former Green Bay Packer player, because arbitrator had not yet ruled on underlying grievance

Sterling Sharpe, once a member of the Green Bay Packers, became unable to play after a 1995 surgery which he says he was coerced to have by the Packers themselves. As a result of his disability, the Packers terminated his multi-year contract, and did not pay him for 1995.

This led Sharpe to initiate an injury grievance, in which he was represented by the NFL Players Association as provided in the league's collective bargaining agreement. For some reason, however, Sharpe and the Players Association had a falling out. And even before the arbitrator ruled on Sharpe's grievance, Sharpe sued

the Players Association in federal court, alleging that it had breached its duty of fair representation.

In response to a Player Association motion, Judge June Green has dismissed Sharpe's lawsuit. The judge did so, because the case was premature. "Before the Court can entertain [Sharpe's] claim against the Players Association," Judge Green explained, Sharpe "must receive, at least, an adverse decision from an arbitrator on his claim against the Packers."

Sharpe v. National Football League Players Association, 941 F.Supp. 8, 1996 U.S.Dist.LEXIS 15394 (D.D.C. 1996) [ELR 19:1:12]

College athlete wins injunction requiring Northwestern University to permit him to play basketball,

despite risk of heart attack, under federal Rehabilitation Act

Nicholas Knapp enrolled at Northwestern University in the fall of 1995 on a basketball scholarship, wanting and intending to play, even though the year before his heart had stopped and he collapsed following a game in his high school gym. Northwestern's team doctor concluded that Knapp was not medically eligible to play intercollegiate basketball, even taking into account that Knapp had been fitted with an automatic cardioverter defibrillator which is designed to restart his heart if it stops again.

Knapp was not pleased by the doctor's concern for his life, and filed a lawsuit against Northwestern under the Rehabilitation Act - a federal law that prohibits colleges (and others) from discriminating against

"otherwise qualified" individuals on account of their disabilities.

Judge James Zagel has ruled in Knapp's favor, finding that Knapp satisfied all of the elements required under the Act. Thus the judge has issued an injunction requiring Northwestern to allow Knapp to play intercollegiate basketball.

The judge explicitly declined to say "whether Northwestern can require Knapp or potential survivors to sign a waiver of liability" before playing again, though the judge said the University may have the legal right to require a release.

Knapp v. Northwestern University, 942 F.Supp. 1191, 1996 U.S.Dist.LEXIS 20260 (N.D.Ill. 1996) [ELR 19:1:12]

NCAA wins reversal of injunctions that had barred it from enforcing its "five-year rule" in cases filed by ineligible college football players

In a pair of unrelated though similar lawsuits, the NCAA has prevailed on appeal in cases filed by college football players who had become ineligible under the NCAA's "five-year rule."

In one case, a Louisiana state court had issued an injunction against the NCAA, barring it from enforcing the rule against John Michael Jones, a student-athlete at an unidentified college. In a very short Per Curiam decision, the Louisiana Supreme Court vacated the injunction. In the other case, a Florida state court had issued an injunction barring the NCAA from enforcing the rule against Kevin Brinkworth, a student-athlete at the University of Miami. The Florida Court of Appeal reversed that injunction, in a decision by Judge Cope.

Though each court applied the law of its own state, the legal principles are the same, so both decisions were based on virtually identical reasoning. Both courts ruled that the NCAA is a private association whose affairs courts should not interfere with unless the association acted arbitrarily or in bad faith. Both courts concluded that the complaining players had not shown that the NCAA's rule or procedures for enforcing it were arbitrary or administered in bad faith.

Jones v. National Collegiate Athletic Ass'n, 679 So.2d 381, 1996 La.LEXIS 2263 (La. 1996); *National Collegiate Athletic Ass'n v. Brinkworth*, 680 So.2d 1081, 1996 Fla.App.LEXIS 10395 (Fla.App. 1996) [ELR 19:1:12]

Court refuses to enjoin high school athletic association from enforcing "transfer rule" against student who transferred from public to parochial school for religious reasons

A federal court has denied a request for a preliminary injunction made on behalf of Paige Robbins, a high school student who became ineligible to play varsity volleyball when she transferred from one school to another. Robbins transferred from public to parochial school after converting to Catholicism. Under the Indiana High School Athletic Association "transfer rule," she was ineligible for a year, and the Association denied her request for immediate eligibility.

The court said that it "would like to allow Robbins to play varsity volleyball" because it was "clear that she did not transfer to her new school for athletic reasons." But the court ruled that the transfer rule did not

unduly burden the free exercise of religion, nor was it irrational or enacted for the purpose of interfering with religiously motivated transfers. As a result, the rule does not violate the Equal Protection clause, the court concluded.

Robbins v. Indiana High School Athletic Ass'n, 941 F.Supp. 786, 1996 U.S.Dist.LEXIS 18827 (S.D.Ind. 1996) [ELR 19:1:13]

Appellate court revises opinion in case involving athletic association's right to sanction high school for permitting student to play under court order

The Michigan High School Athletic Association has an assortment of eligibility rules, as well as a rule that permits the Association to sanction schools that

allow ineligible students to participate. Under the Association's sanction rule, a school may be sanctioned even if it permitted an ineligible student to play pursuant to a court order, if later that court order is voluntarily vacated, stayed, reversed, found by the court to have been not justified, or expires.

This of course puts schools in an impossible position: if they obey a court order that is later vacated, etc., it may be sanctioned by the Association; and if it ignores the court order, it may be held in contempt. For this reason, the Sixth Circuit Court of Appeals earlier ruled that the Association could not sanction the Ann Arbor Huron High School District for complying with a preliminary injunction that required the District to permit a student to play basketball despite being ineligible under the Association's "eight semester" rule, even though the injunction was vacated as "moot" after the student graduated. (ELR 18:6:15)

However, in response to the Association's petition for rehearing, the court has stricken its earlier opinion entirely, and has issued a new opinion in its place. In the court's new decision - written by Judge James Oakes, as was the earlier one - the court again vacates the preliminary injunction because it is moot. But now the court has held that the Association's rule permitting it to sanction the School District does not apply to this case, because the injunction was not "voluntarily vacated," nor was it stayed, reversed, found not to have been justified or expired.

Editor's note: The ultimate result in this case appears the same. The School District is protected from sanctions by the Association; the basis of that protection is simply different. The District's protection comes not by court order (as it had earlier), but instead from a judicial interpretation of the Association's own rules.

McPherson v. Michigan High School Athletic Ass'n, 90 F.3d 124, 1996 U.S.App.LEXIS 17457 (6th Cir. 1996) [ELR 19:1:13]

Federal appellate court vacates FCC ruling that permitted TV stations to restrict campaign ads portraying material that may be harmful to children to times of day when children are less likely to be watching

On many issues, the Federal Communications Commission is caught between a rock and a hard place. One such issue is what, if anything, the FCC can do to protect children from programming that may be psychologically harmful for them to see. In one recent case, the FCC was put in this place by an unlikely candidate - not in other words by one of the Commission's previous

adversaries like Howard Stern (ELR 17:7:19) or Al Goldstein (ELR 18:3:3). Instead, the FCC's latest dilemma was brought on by a candidate for federal office named Daniel Becker, an anti-abortion activist.

Becker's anti-abortion views were so central to his campaign to become a Congressman from Georgia that his television ads featured photographs of aborted fetuses. When one of these ads was aired by an Atlanta station at 7:58 p.m., the station "received numerous complaints from viewers." In response, the station sought a declaratory ruling from the FCC that it could "channel" an ad by a federal candidate to "a safe harbor when children are not generally present in the audience" if the ad contained material "unsuitable for children."

In due course, the FCC issued such a ruling, and Becker appealed to the federal Court of Appeals in Washington, D.C. Now, in a ruling by Judge James Buckley, that court has ruled in Becker's favor and

against the FCC. The court has held that the FCC's ruling violates two provisions of the federal Communications Act.

One of these provisions is Section 312(a)(7) which requires broadcasters to provide federal candidates with "reasonable access" to the airwaves. Judge Buckley reasoned that the FCC ruling would deny such access "by permitting content-based channeling of non-indecent political advertisements."

The other provision is Section 315(a) which requires broadcasters to give federal candidates "equal opportunities" to be on the air and which specifies that broadcasters "shall have no power of censorship over the material broadcast." The FCC ruling violated this provision because it would permit broadcasters "to review political advertisements and to discriminate against candidates on the basis of their content," the appellate court held.

As a result, the Court of Appeals has vacated the FCC's declaratory ruling, and broadcasters are no longer permitted to channel political ads, even to protect children who are likely to be in the audience.

Becker v. Federal Communications Commission, 95 F.3d 75, 1996 U.S.App.LEXIS 24105 (D.C.Cir. 1996) [ELR 19:1:13]

Constitutionality of several provisions of Cable TV Acts of 1984 and 1992 are upheld by federal Court of Appeals; court rejects contention of Time Warner and others that provisions violate First Amendment

Government regulation of cable television has become a legal specialty of its own - so numerous and complex are its parts. Congress has enacted two major

statutes in the area: the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992. Some sections of these Acts required the Federal Communications Commission to adopt regulations implementing their provisions, and the FCC has done so.

As is true of all types of regulation, those regulated have felt the pinch of these two statutes, and several lawsuits have been filed attacking the constitutionality of sections of both of the Acts and the FCC's implementing regulations. Earlier this year, the United States Supreme Court upheld the constitutionality of one particularly controversial provision of the 1992 Act: the "must carry" rules which require cable systems to carry the over-the-air signals of local television stations. (ELR 18:12:7)

In a separately-litigated case, Time Warner Entertainment, Discovery Communications and the Learning

Channel challenged several other provisions of the 1984 and 1992 Acts. They enjoyed some, though not complete, success at the federal District Court level when Judge Thomas Jackson ruled that three of the challenged provisions violated the First Amendment. (ELR 16:2:28) But neither the challengers nor the Government were satisfied with that result, and both appealed. At the appellate level, the Government has emerged completely victorious; Time Warner and its fellow challengers lost what little they had gained below.

In a lengthy Per Curiam decision by Judges James Buckley, Raymond Randolph and David Tatel, the Court of Appeals for the D.C. Circuit has upheld the constitutionality of two provisions of the 1984 Act - one requiring cable systems to lease channels to unaffiliated programmers, and another requiring cable systems to provide access to other channels for public, educational and governmental programming.

The appellate court also upheld the constitutionality of six provisions of the 1992 Act - those (1) requiring the FCC to regulate cable rates, (2) permitting liability to be imposed on cable systems for obscene material carried on access channels (while giving cable systems the authority to refuse to carry obscene programming), (3) requiring cable systems to give subscribers advance notice concerning free previews of premium channels that show movies rated X, NC-17 or R, (4) requiring the FCC to issue regulations prohibiting vertically integrated cable companies from discriminating between programming suppliers, (5) insulating municipal governments from monetary damages in connection with their franchising decisions, and (6) requiring direct broadcast satellite services to set aside some of their channels for noncommercial educational or informational programming.

Time Warner Entertainment v. Federal Communications Commission, 93 F.3d 957, 1996 U.S.App.LEXIS 22387 (D.C.Cir. 1996), rehearing denied, 105 F.3d 723, 1997 U.S.App.LEXIS 2016 (D.C.Cir. 1997) [ELR 19:1:14]

Mail fraud convictions based on distribution of artworks falsely attributed to Chagall, Dali, Miro and Picasso, are affirmed on appeal

Leon Amiel would have been proud, at least at first. After the "prominent" art publisher passed away in 1988, his wife and brother continued to run his business; and later, his daughters and granddaughter took charge.

Somewhere along the line, however, the Amiel family crossed the over the line of illegality. It may have happened early, because before his death, the

government was investigating Leon for circulating fraudulent prints. By 1991, the investigation focused on his daughters and granddaughter, and in 1992 they were indicted and charged with mail fraud and conspiracy.

The charge was based on the government's contention that the Amiels had distributed artworks fraudulently attributed to Chagall, Dali, Miro and Picasso and falsely represented to be signed by those artists. A trial resulted in their convictions, and those convictions have been affirmed on appeal.

In a decision by Judge Fred Parker, the appellate court has rejected the Amiels' assertions that the evidence against them was insufficient, that the government had improperly failed to disclose that two government witnesses were connected to organized crime, that they had been subject to double jeopardy because of an earlier civil forfeiture proceeding, and that the trial judge

had made prejudicial comments about defense counsel in front of the jury.

United States v. Amiel, 95 F.3d 135, 1996 U.S.App. LEXIS 23274 (2d Cir. 1996) [ELR 19:1:15]

Seller of painting breached warranty of authenticity because gallery and auctioneer had expressed doubts, so buyer was entitled to recover price he would have received in aborted resale

Werner Siebenmann breached a written warranty of authenticity he gave to David Rogath in connection with Rogath's purchase from Siebenmann of a painting that was supposed to be a self portrait by English artist Francis Bacon. District Judge Deborah Batts has so ruled in a case brought against Siebenmann by Rogath

to recover $950,000 Rogath refunded to his customer when a resale of the painting was aborted because Rogath's customer was told (by others) that the painting was not authentic.

The judge found that Siebenmann breached his warranty that he had "no knowledge of any challenge to . . . [the] authenticity of the Painting," because before he sold the painting to Rogath for $570,000, both the Marlborough Fine Art Gallery and Southeby's told Siebenmann they questioned its authenticity. To prevent a "duplicative recovery," Rogath must return the painting to Siebenmann.

Rogath v. Siebenmann, 941 F.Supp. 416, 1996 U.S.Dist.LEXIS 14339 (S.D.N.Y. 1996) [ELR 19:1:15]

Appellate court affirms dismissal of civil rights suit against television station that videotaped police search of plaintiffs' home

St. Louis television station KSDK has won a civil rights action filed against it by the occupants of a home the station had videotaped while it was being searched by police. The action was brought under 42 U.S.C. section 1983 which punishes those who deprive others of their constitutional rights while acting "under color of state law."

In a brief opinion by Judge Morris Sheppard Arnold, a majority of a federal Court of Appeals has affirmed the dismissal of the lawsuit against the station, ruling that KSDK had acted independently of the police in deciding to enter the house and videotape the search, and thus the station was not acting under state law. Judge James Rosenbaum dissented on the grounds that

the station's news crew went to the house with the police and could not have entered it if the police had not done so first.

Parker v. Boyer, 93 F.3d 445, 1996 U.S.App.LEXIS 20458 (8th Cir. 1996) [ELR 19:1:15]

Investigator working for promoter of Holmes/McCall fight misplaced tape recordings of his observations, but court denies sanctions requested by restaurant and bar owners sued by promoter for allegedly unlicensed interception and display of TV broadcast of fight

The April 1995 Holmes/McCall fight was televised, and the fight's promoter encouraged restaurant and bar owners to show it to their patrons, in return for a

license fee. Several restaurant and bar owners in New Jersey allegedly did so, but without a license, and were sued by the promoter as a consequence under 47 U.S.C. section 605.

During discovery, the defendants learned that the promoter's investigator dictated his observations on a micro-recorder, transcribed them later, and then reused or misplaced the tapes. The defendants claimed that this amounted to "spoliation" of evidence, and they sought dismissal of the case or other sanctions.

Judge Nicholas Politan has denied the defendants' motion however, because there was no evidence the tapes had been intentionally destroyed and because the investigator and his transcribed notes were both available. The most remarkable thing about Judge Politan's opinion is that it is written entirely as a poem.

Joe Hand Promotions v. Sports Page Cafe, Inc., 940 F.Supp. 102, 1996 U.S.Dist.LEXIS 11915 (D.N.J. 1996) [ELR 19:1:16]

DEPARTMENTS

Letter to the editor:

Second and Ninth Circuits agree that Copyright Act's three-year statute of limitations applies to claims of co-ownership

The discussion regarding denial of certiorari in the "Hooked on Phonics" case (ELR 18:12:19) misaligns the Second Circuit with the Fifth Circuit as applying state law to determine the applicable limitations period governing claims of copyright co-ownership. In Merchant v. Levy, 92 F.3d 51 (2d Cir. 1996), cert.

denied, 117 S.Ct. 943 (1997), the Second Circuit recently held that plaintiffs' claims of co-ownership of copyright in a musical composition were barred by the three-year statute of limitations contained in section 507(b) of the Copyright Act. Merchant thus brings the Second Circuit into conformity with the Ninth Circuit's decision in Zuill v. Shanahan, 80 F.3d 1336 (9th Cir. 1996).

Very truly yours,
Eric P. Bergner
Moses & Singer LLP
New York City

Editor's note: Mr. Bergner is absolutely correct. See ELR 19:1:6 (above) for a discussion of Merchant and a comment on the earlier Second Circuit decision that until Merchant appeared to align that circuit with the Fifth. [ELR 19:1:17]

In the Law Reviews:

Comm/Ent, Hastings Communications and Entertainment Law Journal, has published Volume 19, Number 2 with the following articles:

Blood Money: When Media Expose Others to Risk of Bodily Harm by Sandra Davidson, 19 Comm/Ent, Hastings Communications and Entertainment Law Journal 225 (1997)

Making the World Wide Web Safe for Democracy: A Medium-Specific First Amendment Analysis by Andrew Chin, 19 Comm/Ent, Hastings Communications and Entertainment Law Journal 309 (1997)

Access to Premises and Easements: Can the Cable Operator Come In? by Philip Kantor, 19 Comm/Ent,

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Seeing Beyond the Smoke and Mirrors: A Proposal for the Abandonment of the Commercial Speech Doctrine and An Analysis of Recent Tobacco Advertising Regulations by Scott Joachim, 19 Comm/Ent, Hastings Communications and Entertainment Law Journal 517 (1997)

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The Lone Arranger: Have the Courts Unfairly Singled Out Musical Arrangements by Denying Them Protection as Derivative Works? by Jeffrey Brandstetter, 15 Entertainment and Sports Lawyer 1 (1997) (for address, see above)

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Cardtoons, L.C. v. Major League Baseball Players Association: The "Bonding" Effect of Parody by Mark T.

Gould, 15 Entertainment and Sports Lawyer 8 (1997) (for address, see above)

Book Review: Online Law: The Software Publishers Association's Legal Guide to Doing Business on the Internet, edited by Thomas J. Smedinghoff, reviewed by Robert L. Siegel, 15 Entertainment and Sports Lawyer 11 (1997) (for address, see above)

The Entertainment Law Review, published by Sweet & Maxwell, Cheriton House, North Way, Andover, Hants SP10 5BE, England, has issued Volume 8, Issue 3 with the following articles:

The European Convention on Cinematographic Co-productions: Towards a Single Entertainment Market in Europe by Giovanni A. Pedde, 8 Entertainment Law Review 79 (1997) (for address, see above)

Look Before You Leap: Copyright Warranties of Title by Jonathan Radcliffe and Peter Price, 8 Entertainment Law Review 83 (1997) (for address, see above)

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Impediments and Opportunities for Investment in Russian Broadcasting-The Licensing System by Marian M. Hagler, 8 Entertainment Law Review 94 (1997) (for address, see above)

The Geneva Diplomatic Conference on Copyright and the Rights of Performers and Phonogram Producers by Mario Fabiani, 8 Entertainment Law Review 98 (1997) (for address, see above)

Right of Publicity in Finland by Jukka V. Muhonen, 8 Entertainment Law Review 103 (1997) (for address, see above)

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Retroactive Copyright Protection for Music Recordings: Japanese versus American Style by Lionel S. Sobel, 8 Entertainment Law Review 108 (1997) (for address, see above)

Communications and the Law, published by Fred B. Rothman & Co., 10368 W. Centennial Road, Littleton, CO 80127, has issued Volume 19, Number 1 with the following articles:

Opening the Doors to Juvenile Court: Is There an Emerging Right of Public Access? by Thomas A. Hughes, 19 Communications and the Law 1 (1997) (for address, see above)

Pirone v. Macmillan Inc.: Trying to Protect the Name and Likeness of a Deceased Celebrity Under Trademark Law and Right of Publicity by Sharlene A. McAvoy, 19 Communications and the Law 51 (1997) (for address, see above)

False Light Privacy by Deckle McLean, 19 Communications and the Law 63 (1997) (for address, see above)

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The Effect of Fogerty v. Fantasy on the Award of Attorney's Fees in Copyright Disputes by Douglas Y'Barbo, 5 Texas Intellectual Property Law Journal 231 (1997)

Recent Developments in Trademark Law by Dana Wilson Easley, 5 Texas Intellectual Property Law Journal 273 (1997)

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The Piracy Gap: Protecting Intellectual Property in an Era of Artistic Creativity and Technological Change by Sherri L. Burr, 33 Willamette Law Review 245 (1997)

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What Licensors Should Know About Protecting "Famous Marks" in the United States by William Hennessey, 17 The Licensing Journal 1 (1997) (published by GB Enterprises, PO Box 1169, Stamford, CT 06904-1169)

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International Licensing: Strategies for the Global Marketplace by Lanning G. Bryer, 17 The Licensing Journal 6 (1997) (for address, see above)

Is the Green-Eyed Monster Sore or Can Color Really Be Trademarked Under the Lanham Act: Qualitex Co. v. Jacobson Products Co., Inc. by Juanita J. Webber, 21 Thurgood Marshall Law Review 425 (1996)

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Remedies in Domain Name Lawsuits: How Is a Domain Name Like a Cow? by Carl Oppedahl, 15 The John Marshall Journal of Computer & Information Law 437 (1997)

A Primer on Trademark Law and Internet Addresses by David J. Loundy, 15 The John Marshall Journal of Computer & Information Law 465 (1997)

An Island in the Net: Domain Naming and English Administrative Law by Mark Gould, 15 The John Marshall Journal of Computer & Information Law 493 (1997)

Orderly Expansion of the International Top-Level Domains: Concurrent Trademark Users Need a Way Out of the Internet Trademark Quagmire by David B. Nash, 15 The John Marshall Journal of Computer & Information Law 521 (1997)

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From the Internet to Court: Exercising Jurisdiction over World Wide Web Communications by Gwenn M. Kalow, 65 Fordham Law Review 2241 (1997)

A Fear of Commitment: The Supreme Court's Refusal to Pronounce a First Amendment Standard for Cable Television in Denver Area Educational Telecommunications Consortium, Inc. v. FCC, 71 St. John's Law Review 173 (1997)

Indecent Proposals: How Each Branch of the Federal Government Overstepped Its Institutional Authority in the Development of Internet Obscenity Law by Sean J. Petrie, February Stanford Law Review 637 (1997)

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No Team, No Peace: Franchise Free Agency in the National Football League by Katherine C. Leone, 97 Columbia Law Review 473 (1997)

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Brown v. Pro Football, Inc.: Pulling a Tarp of Antitrust Immunity Over the Entire Playing Field and Leaving the Game by Jonathan P. Heyl, 75 North Carolina Law Review 1030 (1997)

The Opportunity to Play Ball: Title IX, University Compliance, and Equal Pay by Rikki Ades, 13 New York Law School Journal of Human Rights 347 (1997)

Buy Me Some Peanuts and Ownership: Major League Baseball and the Need for Employee Ownership by Russell M. Yankwitt, 5 Cornell Journal of Law and Public Policy 401 (1996)

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Evaluation of the Sino-American Intellectual Property Agreements: A Judicial Approach to Solving the Local

Protectionism Problem by Yiqiang Li, 10 Columbia Journal of Asian Law 391 (1996)

Recent Changes in Russian Intellectual Property Law and Their Effect Upon the Protection of Intellectual Property Rights in Russia by Andrei A. Baev, 19 Suffolk Transnational Law Review 361 (1996)

The Trade Practices Act, Equity and Professional Sport: News Limited and Ors v Australian Rugby Football League Limited and Ors by Damien Hazard, 19 The Sydney Law Review 95 (1997)
[ELR 19:1:17]