INTERNATIONAL

Government of Canada initiates review of feature film policies seeking ways to increase access to films that reflect Canadians' own locales, stories and culture; target of review appears to be "foreign entertainment multinationals"

The Government of Canada has initiated a review of its feature film policies, one that is likely to be controversial outside of Canada itself and perhaps even within. The review is being conducted by the Cultural Industries Branch of the Department of Canadian Heritage which has begun the process by releasing a 23-page Discussion Paper entitled "A Review of Canadian Feature Film Policy." The goal is "a future where more Canadians have access to Canadian films playing in their local cinemas - films that reflect their own locales, their own stories and their own culture."

Canada is an active producer of motion pictures for a country of its size. In recent years, it has produced as many films per million residents as the United Kingdom, and more per million residents than Australia, Italy or Germany. Indeed, on a per capita basis, Canada produces almost as many films each year (2 films per million population) as the United States (2.6 films per million).

Moreover, Canadian films have won critical praise and international awards. This very year, The Sweet Hereafter has received two Academy Award nominations, for Best Director and Best Adapted Screenplay. The film was produced with the participation of Telefilm Canada, a government agency that administers a $40 million a year fund to support the development, production and distribution of Canadian feature films. The Sweet Hereafter also received assistance from the "Canadian Film or Video Production Tax Credit Program" which allows producers a tax credit of as much as 11% of the cost of Canadian labor for production services performed in Canada.

Poor box office results

Despite the number of films produced each year in Canada, and the critical success they enjoy, the Government of Canada is disturbed by this fact: Canadian films perform poorly at the box office, even in Canada. "In fact," the Department of Canadian Heritage says, "the box office receipts of Canadian films in Canada have remained unchanged at around 2 percent of the total Canadian market since at least 1984."

In this area - percentage of domestic box office - Canada's 2% places it last among the major movie-producing countries of the world. German, Australian and Spanish films garner roughly 10% of the box office in their own countries. British films earn about 15% of the U.K. box office. Italian films generate more than 20% of the Italian box office. And French and Japanese films do some 35% of the box office in France and Japan. In the United States, more than 95% of the box office is earned by American movies.

What accounts for the disappointing performance of Canadian films, even at home? The Department of Canadian Heritage seems to know, though it buries the explanation in the middle of its Discussion Paper. "There appears to be a correlation between the value of a film's budget and its performance at the box office," the Government notes. And "Canada's average production budgets do not appear to be competitive relative to other countries." Indeed.

According to the Government's own figures, Canadian budgets now average just $2.4 million for English-language films and $2.8 million for French-language films (in Canadian dollars) - amounts that are down 8% and 10% since the late 1980s. French and Australian average budgets, by comparison, are about three times as great, up 35% over the same period. British average budgets are almost five times as great, up 26%. And United States average budgets are more than 20 times as great as those of Canadian films.

Moreover, what the Canadian's call "marketing budgets" are woefully inadequate as well. Two-thirds of the films financed by Telefilm Canada (between 1989 and 1995) had marketing budgets of less than $150,000 (in Canadian dollars). Only five films (out of 149) had marketing budgets greater than $450,000. The Discussion Paper does not indicate what the average marketing and production budgets were for these films. But if the average production budget is assumed to be $2.6 million, and the average marketing budget is (generously) assumed to be $150,000, Canadian marketing expenses average less than 6% of production costs. In the United States, marketing expenses often exceed 40% of production costs.

Why do Canadian distributors spend so little to bring their movies to market? Again, the Department of Canadian Heritage knows. It apparently asked distributors this very question. The answer: "Distributors maintain that they usually commit enthusiastically to a Canadian film project on the basis of the script and budget submitted to them. However, once they are committed, the budget is often reduced and the screenplay, the number of shooting locations and the casting are revised. The end result is that the film delivered is not as attractive to the public as they had anticipated.

Distributors are therefore hesitant to dedicate marketing resources to films they have limited confidence in."

From these facts, reported in the Discussion Paper itself, some would conclude that Canadian films perform poorly even in Canada because of inadequate production and marketing budgets, and revisions to scripts, locations and casting made after distributors already have committed to projects. But the Department of Canadian Heritage has not reached this conclusion; or if it has, it seems to place responsibility for these facts on those outside of Canada.

Foreign entertainment multinationals

According to the Department of Canadian Heritage, "The film distribution industry in Canada . . . is dominated by subsidiaries of foreign entertainment multinationals which have, in the past, shown little interest in the distribution of Canadian films. Traditionally their interest has been in the distribution of their own productions." Though foreign distributors are only 15% of all film distributors operating in Canada, the movies they distribute there earn 85% of the revenue from film distribution in Canada.

As a result, "Many in the [Canadian film industry] believe that, with a few exceptions, Canadian distributors do not have sufficient market power to influence release dates and theatre locations to ensure that a Canadian film has a chance to reach a significant audience." Thus, they say, ". . . if Canadian films are to have a chance at reaching an audience, it is necessary to improve the performance of Canadian-owned distributors. An increase in their performances would enable Canadian distributors to provide more financing and marketing to Canadian films. As a result, with more money invested in the production and marketing of Canadian films, Canadian distributors would have a better chance with regard to obtaining key release dates and an adequate number of screens from exhibitors."

According to these members of the Canadian film industry, there is an "underlying structural challenge" to improving the performance of Canadian-owned distributors that "needs to be addressed." It is, they say, that "Canada is not treated as a distinct market for the purpose of film distribution. That is, the Canadian rights to foreign independent films are routinely bundled along with the U.S. rights into North American rights packages. Canadian distributors can seldom afford the cost of North American rights and for many foreign independent films, therefore they are priced out of the market."

Their suggested remedies: distribution legislation, stronger foreign investment guidelines, screen and shelf quotas for theatres and video stores, larger direct subsidy programs for Canadian distributors, and production subsidies such as grants or tax credits.

There is another point of view in Canada too. Some do "believe that market forces should govern"; and they "contend that Canadian films would reach a larger audience if bigger players in the industry, regardless of ownership, were permitted to distribute these films." The Discussion Paper notes that "This group usually favours an approach that includes replacing both the Canadian-ownership criteria supporting programs and the foreign investment guidelines with financial incentive programs that specifically support the marketing of Canadian films."

To help resolve the debate over what should be done, the Discussion Paper asks "interested Canadians" to respond to fifteen specific questions, including these:

"Is Canadian ownership and control of distribution companies fundamental to the distribution of Canadian feature films?"

"How important is the link between Canadian ownership and control of film companies and the production of Canadian feature films?"

"Should exhibitors and video stores in Canada be required to provide a certain minimum level of access to Canadian films? If not, how could these sectors be encouraged to increase above the historical average the performance of Canadian films?"

Responses are due by March 20, 1998, and will be posted on the website of the Department of Cultural Heritage. Comments on those responses will be accepted until April 17, 1998.

International trade obligations

The Department of Cultural Heritage notes that the film policy review "takes place in a broader context of . . . increasing trade liberalization. . . ." Ironically, however, the Department makes no mention of Canada's membership in the World Trade Organization, nor does it request comments on whether any of the suggested remedies may violate Canada's obligations under GATT. This is surprising, for at least two reasons.

First, in 1997, Canada lost a WTO case brought by the United States involving several government policies that were intended to protect Canadian magazines from foreign competition in order to "strengthen Canadian identity and contribute to its cultural sector." As a result, Canada is now supposed to be revising its magazine policies to bring them into conformity with its WTO obligation to comply with GATT. (ELR 19:2:6)

Second, as recently as January 20, 1998, the European Communities initiated a WTO dispute resolution proceeding against Canada in which the E.C. complains that Canada's existing Film Distribution Policy violates the WTO-administered General Agreement on Trade in Services. Canada's existing Film Distribution Policy prohibits foreign takeovers of Canadian-owned and controlled film distribution businesses, permits new foreign distribution businesses to distribute only films for which the distributor owns world rights or is a major investor, and permits takeovers of foreign distribution businesses operating in Canada only if they will result in a net benefit to Canada. Since some Canadians believe that Canada's existing film policy provides inadequate support for the Canadian film industry, Canada has embarked on a course designed to strengthen that policy at the same time its legality is being challenged, in a forum that has ruled against it before.

A Review of Canadian Feature Film Policy, Discussion Paper, Department of Canadian Heritage, Cultural Industries Branch (February 1998), http://www.pch.gc.ca/culture/library/filmpol/review-e.htm [ELR 19:9:5]

RECENT CASES

Nelson Entertainment is entitled to retain 50% of "The Last Emperor's" homevideo proceeds, as provided in Nelson's subdistribution contract with distributor Hemdale Film, even though the distribution contract between the movie's producers and Hemdale provided that producers were to receive 70% of homevideo proceeds, California appellate court rules

People involved in the movie business sometimes joke about those who give away a greater share of their movies' proceeds than they actually own. Now there's published proof that it's happened, at least once - in connection with the movie "The Last Emperor."

"The Last Emperor" was produced by Recorded Picture Company and Screenframe Limited. In return for an $8 million advance from Hemdale Film Corporation, the producers entered into an agreement that granted Hemdale theatrical, television and homevideo distribution rights in the movie.

The distribution agreement authorized Hemdale to enter into subdistribution agreements, but provided that the producers were entitled to 70% of the movie's homevideo gross receipts, whether received by Hemdale or a subdistributor. Moreover, since the producers "did not trust Hemdale," the distribution agreement also required Hemdale to instruct any homevideo subdistributor to pay directly to the producers their 70% share of homevideo proceeds.

Hemdale then entered into a homevideo subdistribution agreement with Nelson Entertainment. However, Hemdale's subdistribution agreement with Nelson did not instruct Nelson to pay the producers directly. Moreover, the subdistribution agreement allowed Nelson to retain 50% of homevideo proceeds, rather than the 30% contemplated by the producers' distribution agreement with Hemdale.

Hemdale later went bankrupt, so the discrepancy between the Hemdale distribution agreement and the Nelson subdistribution agreement became critical. The producers sued, seeking an order requiring Nelson to pay them 70% of the movie's homevideo gross receipts, not just the 50% Nelson had agreed to pay Hemdale. The difference came to some $6.5 million. And the producers were successful, at first. A California trial court granted their motion for summary judgment against Nelson. But a California Court of Appeal has reversed.

In an opinion by Justice William Masterson, the appellate court has ruled that Nelson was not an assignee of Hemdale's distribution agreement with the producers; Nelson was a mere licensee. As a licensee, Nelson did not receive all of the benefits of the Hemdale distribution agreement, and was not bound by its burdens.

Nelson knew of the existence of the producer-Hemdale agreement, but Nelson did not know its terms. Nor did Nelson have constructive knowledge of those terms, the appellate court ruled. Though Hemdale had filed UCC-1's in California and New York, and had recorded a copyright mortgage in the Copyright Office, those documents did not disclose that the producers were entitled to 70% of the movie's homevideo proceeds. They merely indicated that Hemdale and the producers had entered into a distribution agreement. The court expressly rejected the producers' argument that Nelson had constructive knowledge of the contents of the UCC-1's and copyright mortgage and the contents of the distribution agreement referred to in those documents.

The appellate court also ruled that Nelson did not have a fiduciary relationship with the producers, because film distribution agreements do not create fiduciary relations between producers and distributors, let alone between producers and subdistributors.

Finally, the appellate court rejected the argument that Nelson could be held liable for failing to review the producer-Hemdale distribution agreement. The court noted that the producers actually mistrusted Hemdale before entering into a distribution agreement with it, yet did so anyway, while Nelson had no reason to believe that Hemdale would disregard that agreement while making a deal with it. Indeed, the appellate court said, the producers could have protected themselves by including information in the UCC-1's and copyright mortgage concerning their share of homevideo proceeds, or by contacting Nelson before it entered into a final contract with Hemdale.

For these reasons, the appellate court reversed the judgment in favor of the producers, and it ordered the trial court to enter judgment in Nelson's favor.

Recorded Picture Company v. Nelson Entertainment, Inc., 61 Cal.Rptr.2d 742, 1997 Cal.App.LEXIS 174 (Cal.App. 1997) [ELR 19:9:8]

Court of Appeals affirms $9.55 million judgment in favor of Columbia Pictures against TV station owner who continued to broadcast TV shows after Columbia terminated license for failure to pay fees; Supreme Court to rule on station owner's claim that he had right to jury trial on damages, even though Columbia asked for (and was awarded) statutory (rather than actual) damages

C. Elvin Feltner has the dubious honor of bringing to the United States Supreme Court the question of whether he should have been allowed a jury trial before a judgment for $8.8 million in statutory damages (plus $750,000 in fees and costs) was entered against him in a copyright infringement lawsuit filed by Columbia Pictures Television.

Feltner became the target of Columbia's lawsuit, because he is the owner of a company that owns three television stations. Those stations licensed broadcast rights to several Columbia series including "Who's the Boss?," "Silver Spoons," "Hart to Hart" and "T.J. Hooker." The stations didn't pay their license fees, so Columbia terminated the licenses. But the stations kept on broadcasting the series - 440 episodes after the licenses were terminated, 415 after Columbia's complaint was filed.

The case was tried before District Judge Edward Rafeedie, sitting without a jury after Columbia elected to seek statutory damages rather than actual damages or profits. Judge Rafeedie rejected a variety of defenses, including attacks on subject matter jurisdiction and venue, and awarded Columbia $20,000 for the willful infringement of each of the 440 episodes broadcast after Columbia's license was terminated.

Judge Rafeedie's judgment has been affirmed in all respects by the Court of Appeals. In an opinion by

Judge Melvin Brunetti, the appellate court ruled that Columbia's termination of the license agreements was proper, because each of the agreements contained a provision that expressly authorized Columbia to terminate if the licensee failed to pay license fees or any portion of those fees when due.

The court also held that each episode of each series was a separate "work" for the purpose of calculating statutory damages for three reasons: because "viewers may watch as few or as many episodes as they want, and may never watch all of the episodes"; because episodes could be repeated and broadcast in different orders; and because "the episodes were separately written, produced, and registered."

The appellate court also ruled that Feltner did not have a right to a jury trial on Columbia's request for statutory damages. The court acknowledged there is a split among the circuits on this issue, but quoted with approval Nimmer on Copyright for the conclusion that cases saying statutory damages should be awarded by a judge (rather than a jury) are "the better view."

Feltner petitioned the Supreme Court for certiorari on the jury trial issue, and the Supreme Court granted his petition. The Supreme Court will rule on that issue before the current term ends in June or so.

Columbia Pictures Television v. Krypton Broadcasting, 106 F.3d 284, 1997 U.S.App.LEXIS 1888 (9th Cir. 1997), cert. granted, 118 S.Ct. 30, 1997 U.S.LEXIS 4442 (1997) [ELR 19:9:9]

Songwriter's assignment of public performance royalties to creditors has priority over IRS tax lien, even though creditors did not record assignment in Copyright Office, federal appellate court rules

The debts of songwriter Ronald Miller were at the heart of a case that didn't mean much to him, but did mean a lot to at least two of his creditors - and also to others who rely on copyright royalties as collateral for loans.

The case in question involved a fight between the Internal Revenue Service and two of Miller's creditors over royalties collected and distributed by BMI on account of the public performance of songs written by Miller. Each side claimed to have a superior claim to those royalties. In the end, the Ninth Circuit Court of Appeals has ruled against the IRS and in favor of Miller's creditors.

The origins of the dispute can be traced to the 1980s when Miller became indebted to Los Angeles lawyers Perry Hirsch and Marc Staenberg. To satisfy those debts, in 1989 Miller executed assignments that directed BMI to pay directly to Hirsch and Staenberg public performance royalties BMI otherwise would have paid to Miller himself. BMI paid the royalties to the two lawyers, as directed, until the IRS showed up in 1995.

The dispute arose when the IRS served BMI with notice of levy on account of unpaid taxes Miller owed for 1992, 1993 and 1994. BMI was willing to pay Miller's royalties to whomever had the superior right to receive them, but it couldn't risk deciding who that was on its own. So BMI did the prudent thing: it filed an interpleader action in federal district court, and let the IRS and Miller's creditors fight it out between them. (Miller had no stake in the outcome, because he owes money to both sides, and thus won't be getting public performance royalties from BMI, no matter who won the case, until all of those debts are repaid.)

The IRS claimed that its tax liens were superior to Miller's assignment to Hirsch and Staenberg, because the two lawyers had not recorded those assignments in the Copyright Office and thus were unsecured creditors. In support of that argument, the IRS relied on the famous case of In re Peregrine (ELR 12:5:12). That is the case which first held that in order to perfect a security interest in a copyright and in the proceeds from the exploitation of that copyright, it is necessary for the copyright to be registered and a security agreement to be recorded in the Copyright Office.

Hirsch and Staenberg argued that their right to continue receiving Miller's royalties was superior to the IRS liens, because those royalties had been assigned to them before the IRS obtained its liens (indeed, even before the years for which the taxes were owed). They also argued that they had become secured creditors with respect to those royalties, even though they had not recorded their assignments in the Copyright Office.

The District Court ruled in favor of the IRS. But the Ninth Circuit Court of Appeals has reversed. In an opinion by Judge William Schwarzer, the appellate court agreed with Hirsch and Staenberg that their claim to Miller's royalties is superior to that of the IRS. Judge Schwarzer noted that Miller did not own the copyrights to the songs that are earning the public performance royalties in dispute. (Apparently, their copyrights are owned by a music publishing company.) Thus, the judge distinguished and declined to follow the Peregrine decision, saying "This case does not involve an assignment of a security interest. . . . Rather, this is a case of outright assignments of a right to receive royalties for the purpose of satisfying a debt."

Judge Schwarzer looked to New York state law to determine whether Hirsch and Staenberg had perfected their security interests (apparently because BMI is located there, and thus the royalties in dispute are too). In New York, an outright irrevocable assignment does not have to be filed or recorded anywhere in order to be binding and thus perfected. Thus the judge agreed with the two lawyers that their right to Miller's public performance royalties is superior to the IRS's claim to those royalties.

Editor's note: This decision is significant for at least two reasons. First, it shows that it is possible to perfect a security interest in royalties from the exploitation of a copyrightable work, even when the copyright is owned by someone other than the debtor to whom those royalties will be paid. And it shows that when the debtor doesn't own the copyright and thus merely has a contractual right to receive royalties, a security interest in those royalties is perfected under state law (usually by filing a UCC-1 financing statement with the appropriate state agency). Second, this decision is significant, because it calls into question the continuing validity of Peregrine and AEG Acquisition Corp. (a case that followed Peregrine even with respect to foreign works whose copyrights do not otherwise have to be registered) (ELR 16:3:14). It does, because this decision comes from a higher court than the courts that decided those cases, and it makes the very distinction - between a copyright and a contractual right to receive royalties - that those cases refused to make. This is now the second Ninth Circuit case to make a distinction between a copyright and an interest in the royalties earned by that copyright; that court also made this very distinction not long ago in Yount v. Acuff Rose-Opryland (ELR 19:6:9) (though Yount did not involve security interests in copyrights).

Broadcast Music, Inc. v. Hirsch, 104 F.3d 1163, 1997 U.S.App.LEXIS 579 (9th Cir. 1997) [ELR 19:9:9]

"Pan and scan" homevideo version of public domain movie "McClintock!" is entitled to copyright protection, federal District Court rules in infringement action against distributor of unauthorized videos; but Copyright Office properly refused to register copyright to movie's underlying script, because original release of movie published script too

John Wayne's 1963 movie "McClintock!" went into the public domain at the end of 1991, because its copyright was never renewed. As a result, at least a couple of companies have felt free to release unauthorized homevideo versions of the movie, over the objections of Batjac Productions, the company that made the movie originally and later produced a homevideo version of its own.

Batjac and Maljack Productions (Batjac's homevideo licensee) have achieved a partial victory in their efforts to stop unauthorized homevideos. Federal District Judge Dean Pregerson has ruled that their "pan and scan" homevideo version of "McClintock!" is sufficiently original to be eligible for a copyright of its own, and thus unauthorized copies of that version infringe its copyright.

Batjac also attempted to obtain federal copyright protection for the "McClintock!" screenplay, in order to use it as another basis for stopping unauthorized homevideos. But the Copyright Office refused to register the screenplay's copyright, on the grounds that the movie's theatrical release in 1963 published the screenplay as well as the movie itself; and thus the screenplay went into the public domain along with the movie, when the movie's copyright wasn't renewed.

Batjac argued that the movie was a derivative work based on the screenplay, and that the publication of the movie did not publish the screenplay. In support of this argument, Batjac cited "The Little Shop of Horrors" case in which Judge Deborah Batts held that the release of that movie had not published the screenplay from which it had been produced (ELR 17:12:4). Judge Batts, however, sits in the Southern District of New York; and Judge Pregerson, who sits in the Central District of California, declined to follow Judge Batts' lead, saying that he "respectfully disagrees" with "The Little Shop of Horrors" case (and others that reached similar conclusions).

Judge Pregerson concluded that the theatrical release of "McClintock!" in 1963 did publish the movie's screenplay. And thus he ruled that the Copyright Office had properly refused to register a copyright for its screenplay when Batjac sought do so in 1996.

Editor's note: The "McClintock!" case has been appealed to the Ninth Circuit Court of Appeals; and "The Little Shop of Horrors" case has been appealed to the Second Circuit Court of Appeals. If both Circuits affirm their respective District Court rulings, a conflict among the Circuits will exist. But even then, Supreme Court review is far from certain. The Supreme Court denied cert in the La Cienega Music case involving the analogous - and commercially more significant - question of whether the distribution of a recording publishes its underlying songs (ELR 16:10:13). Congress had to resolve the conflict among the circuits on that question; but when Congress did, by enacting section 303(b) of the Copyright Act, it did so quite narrowly by providing only that the pre-1978 distribution of phonorecords should not be deemed to publish the musical works "embodied therein" (ELR 19:7:4). Thus section 303(b) does not address the question raised in the "McClintock!" and "Little Shop of Horrors" cases.

Maljack Productions, Inc. v. UAV Corp., 964 F.Supp. 1416, 1997 U.S.Dist.LEXIS 7711 (C.D.Cal. 1997) [ELR 19:9:10]

Boxer Axel Schulz wins injunction ordering International Boxing Federation to disqualify Francois Botha for failing steroid test following their 1995 heavyweight champion- ship fight

German fighter Axel Schulz accomplished something in American federal courts he had earlier failed to do in a boxing ring in Stuttgart: he beat Francois Botha of South Africa and thus got a shot at the heavyweight championship of the International Boxing Federation. In the process of doing so, Schulz may have made boxing history as the first fighter ever to be declared the victor by United States federal judges. He certainly made legal precedent, because Schulz's victory was accompanied by a published judicial decision explaining why federal judges were willing to intervene in the affairs of a private organization - something even the intervening judges said they are ordinarily "reluctant" to do.

Schulz and Botha fought for the IBF heavyweight title in Stuttgart in December 1995. Botha won, so immediately after the fight, he was tested for drug use in accordance with IBF rules. He tested positive for steroids, and under IBF rules should have been disqualified by the IBF itself, but wasn't. According to Botha, he didn't know that a medication his doctor had sent him to treat an arm injury was a steroid. The IBF thought this was a "mitigating" circumstance that warranted a $50,000 fine instead of the loss of his title.

Schulz sued the IBF in federal District Court in New Jersey (where the IBF is headquartered); and Judge Dickinson Debevoise issued a preliminary injunction that ordered the IBF to disqualify Botha. That order has been affirmed by the Third Circuit Court of Appeals, in a decision by Judge Louis Pollak.

The IBF is a private organization, and Judge Pollak acknowledged that courts "ordinarily will defer to the internal decisions of private organizations." In New Jersey, courts will intervene only if two conditions are satisfied. The plaintiff must have an "interest sufficient to warrant judicial intervention," and that interest must have "been subjected to an unjustifiable interference by the defendant."

In this case, Judge Pollak concluded that Schulz had such an interest, because his status in the boxing world, his reputation, and his economic interests all were affected by the IBF's decision not to disqualify Botha. Also, the IBF's decision not to disqualify Botha was unjustifiable, because it "likely violated New Jersey's public policy" as reflected by state rules designed to protect public confidence in the outcome of boxing matches and requiring the disqualification of fighters who use banned substances. The judge added that the IBF's own rules requiring disqualification of fighters who use drugs "may well be deemed a contract, and that application of contract law may . . . constitute an independent basis for [the injunction]."

(Despite the injunction, Schulz never did become IBF champion. Under IBF rules, Botha's disqualification did not make Schulz the champion. It merely gave Schulz the right to fight former champ Michael Moorer for the vacant championship. After the injunction was issued, Schulz did fight Moorer for the title, but Schulz lost. Moorer then fought Botha and beat him too.)

Schulz v. U.S. Boxing Ass'n, 105 F.3d 127, 1997 U.S.App.LEXIS 1005 (3d Cir. 1997) [ELR 19:9:11]

CBS and its lawyers win dismissal of malicious prosecution lawsuit filed against them by attorney Don Engel; federal District Court rules that CBS Record's earlier suit against Engel (and client Tom Scholz) had not caused "special injury"

Don Engel is a "well-known music and entertainment lawyer." Federal District Judge Miriam Cedarbaum has done him the honor of saying so in print in a published decision. But Judge Cedarbaum's compliment must have been bitter-sweet, because it appears at the beginning of decision in which the judge dismisses a malicious prosecution lawsuit Engel has filed against CBS and its lawyers, Moses & Singer and Stanley Rothenberg.

Engel's malicious prosecution lawsuit is part of the aftermath of a separate lawsuit CBS Records filed back in 1983 against the group "Boston" and its lead singer Tom Scholz. Engel represented Scholz and his co-defendants in that case, and in negotiations that eventually resulted in "Boston" signing with MCA Records despite CBS's assertion that the group was already signed to it, exclusively. The MCA signing resulted in a second lawsuit by CBS against Scholz, MCA and Engel personally. Longtime readers of the Entertainment Law Reporter may remember accounts of the numerous rulings these lawsuits produced (ELR 6:10:20, 7:1:10, 10:3:10, 11:11:6, 12:5:19). What is important for present purposes is that Scholz and Engel both won.

Engel then filed a malicious prosecution suit against CBS and its lawyers, a suit that's had its own long and winding history (ELR 7:6:20, 14:9:5, 17:8:19). Eventually, the case got to the point where Engel's prospects for success turned on whether he'd be able to prove that he had suffered some "special injury," because special injury is an essential element of a malicious civil prosecution claim under the law of New York. Following discovery that covered this point, CBS and its co-defendants moved for summary judgment, arguing that Engel had not suffered any such injury.

Engel argued that he had, and presented evidence that one purpose of CBS's suit against him was to interfere with his representation of Scholz in the earlier case. Walter Yetnikoff, who was president of CBS Records when the earlier action was brought, "admitted in his deposition that one purpose for suing Engel was to dissuade him from using certain tactics in representing

Scholz." Though this seems to be a shocking admission, in Judge Cedarbaum's opinion, "the critical question is not whether CBS intended to interfere with Engel's representation of Scholz. The question is whether there was actual interference with the attorney-client relationship to constitute special injury under New York law."

Engel said there was such interference. The suit against him, he explained, made his representation of Scholz in the earlier action more difficult because of a potential conflict of interest between him and his client in that action. The difficulty with this, according to Judge Cedarbaum - in a left-handed compliment if ever there was one - was that CBS's interference was not successful. "Engel continued to represent Scholz effectively throughout the underlying action and the related suit, and ultimately achieved a very favorable result for his client," the judge noted. "Under such circumstances, Engel's testimony that the defendants interfered with his representation of Scholz and created an advantage for CBS in the litigation is insufficient to support a finding of the essential element of special injury."

Editor's note: Engel has written an article about the case. "Anatomy of a Little Murder," Entertainment, Publishing and the Arts Handbook, 1997-98 Edition, at page 277 (West 1997). He also has appealed to the Second Circuit, so further developments will occur in due course.

Engel v. CBS, Inc., 961 F.Supp. 660, 1997 U.S. Dist.LEXIS 5500 (S.D.N.Y. 1997) [ELR 19:9:12]

"Sally Jessy Raphael" show violated Michigan eavesdropping statute by broadcasting tape of conversation between mother and daughter, recorded at daughter's request but without mother's knowledge, Michigan appellate court rules; jury verdict in favor of show's producers is set aside and case is remanded for hearing on damages to be awarded to mother

A mother-daughter confrontation broadcast on the "Sally Jessy Raphael" show has resulted in liability being imposed on Metromedia Entertainment and others involved in producing the program, in a lawsuit filed by the mother. The mother's lawsuit asserted several types of claims though only one has been successful. As a result of a ruling by the Michigan Court of Appeals, the mother has prevailed on her allegation that the show's producers violated Michigan's eavesdropping statute.

The tensions between Dorothy Jean Dickerson and her daughter Valda Gratias grew out of the Dickerson's increasing involvement in the Church of Scientology, an involvement that her daughter felt was "dominating" Dickerson and was "causing her to sever all ties to her family." After telling her mother that she intended to contact the "national media" to "expose" Scientology, Gratias contacted the "Sally Jessy Raphael" show and told the show's producer that she wanted to "surreptitiously" record a conversation with her mother.

In response to daughter's request, the producer arranged for her to be fitted with concealed microphone and transmitting device that was used to record a conversation between the daughter and her mother in a public park in Ann Arbor. The conversation was recorded without the mother's knowledge or consent and was later broadcast on the show.

A trial in the mother's lawsuit resulted in a jury verdict in favor of the show's producers. But the mother appealed on the grounds that the trial court should have granted her motion for a directed verdict on her eavesdropping statute claim. In an opinion by Presiding Judge Maura Corrigan, the appellate court has agreed.

A Michigan statute makes it illegal to use a device to eavesdrop on a private conversation without the consent of all of the parties to that conversation. The statute also provides that those whose conversations are illegally eavesdropped upon "shall be entitled" to actual and punitive damages. Judge Corrigan concluded that despite the daughter's consent to the eavesdropping and broadcast, the producers of the "Sally Jessy Raphael" show violated the statute because the mother had not consented and the statute requires the consent of "all" of those participating in the conversation.

The appellate court also rejected the producers' argument that the daughter had a First Amendment right to tell her story and that the show had a First Amendment right to provide a forum for the daughter to do so. "While the First Amendment protects the publication of truthful information of legitimate public concern," Judge Corrigan responded, "the information may not be obtained unlawfully."

The case has been remanded to the trial court for a hearing on the mother's claim for damages.

Dickerson v. Raphael, 564 N.W.2d 85, 1997 Mich. App.LEXIS 87 (Mich.App. 1997) [ELR 19:9:12]

Invasion of privacy lawsuit brought by teenage girl against Tribune Entertainment was properly dismissed where offending statement was made by girl's stepmother on "Charles Perez Show" in response to girl's defamatory accusations; appellate court rules that stepmother was privileged to rebut girl's attack, and that Tribune could assert stepmother's privilege too

"When a television program invites quarreling family members to state their respective cases before an audience of millions, most anything can happen," a federal appeals judge has noted. And it did, on the "Charles Perez Show," a TV talk show produced by Tribune Entertainment. A 16-year-old guest named Tammy Howell accused her stepmother of adultery and abuse, and the stepmother responded by reading a police report that Tammy was "violent, abusive" and more.

This televised exchange resulted in a lawsuit by Tammy against Tribune Entertainment (though not against her stepmother) for invasion of privacy - a suit that was dismissed "for failure to state a claim" by federal District Judge John Shabaz. In an opinion by Chief Judge Richard Posner, the Court of Appeals has affirmed the dismissal of the lawsuit, on the grounds that even if the stepmother's disclosure of the contents of the police report violated Tammy's right of privacy, Tribune Entertainment was privileged to broadcast it.

Judge Posner reasoned that "if Tammy can broadcast her own accusations to millions, she should not be able to block her stepmother from broadcasting a reply to those accusations to the same audience." Moreover - and more important from Tribune's point of view - "To prevent the audience from obtaining a one-sided view of the quarrel, the producer must be allowed to assert the stepmother's privilege."

Apparently, Tammy argued that Tribune was at fault for producing the type of show that was likely to lead guests to violate one another's rights. But Judge Posner was unmoved. In a sentence that is likely to become oft-quoted by media defense litigators, he said, "There is no principle in the law that by staging an event at which one person is likely to defame or invade the privacy of the other, the media become complicit in the defamation or the invasion of privacy."

Arguing by analogy, Judge Posner also added another passage that is likely to be quoted by defense lawyers. "No one supposes that Goethe, let alone his publisher, should have been liable to the families of the young men who were moved by The Sorrows of Young Werther to commit suicide. That kind of vicarious liability would put quite a damper on the media's taste for public controversy, in rather clear violation of the First Amendment."

Howell v. Tribune Entertainment Co., 106 F.3d 215, 1997 U.S.App.LEXIS 2024 (7th Cir. 1997) [ELR 19:9:13]

Court of Appeals rules that FCC regulations prohibiting broadcast advertising for casino gambling violate First Amendment rights of Nevada broadcasters; in response, FCC announces that it will not enforce regulations against broadcasters in Ninth Circuit, but also seeks Supreme Court review

Gambling is legal in at least 21 states, but radio and television advertising for one form of gambling - casino gambling - has been illegal everywhere, by federal statute. The statute has been attacked as unconstitutional in two lawsuits filed by broadcasters. And most recently, the Ninth Circuit Court of Appeals has agreed with the broadcasters and has affirmed a District Court ruling (ELR 15:12:24) that the statute violates First Amendment free speech rights.

In an opinion by Judge Diarmuid O'Scannlain, the appellate court said that the government had persuaded it that "the harms [of gambling] sought to be avoided are real," and the government's interest in preventing those harms is "substantial." Nevertheless, the court noted that the statute itself contains exceptions permitting broadcast advertising for many types of equally harmful gambling, including certain types of lotteries, fishing contests, and - most important - gambling conducted by Indian tribes. Because of these exceptions, there is "little chance" the statute "directly and materially" advances the government's objectives. And that is why it is unconstitutional, Judge O'Scannlain concluded.

In response to the appellate court's ruling, the FCC issued a Public Notice announcing that it would not enforce the statute against broadcasters located in the Ninth Circuit.

The reason the FCC has not abandoned enforcement of the statute elsewhere in the country is that in an earlier separate case, the Fifth Circuit Court of Appeals upheld the constitutionality of the same statute. Greater New Orleans Broadcasting Ass'n v. United States (ELR 18:1:10). Broadcasters took that case to the Supreme Court which summarily remanded it to the Fifth Circuit (ELR 18:7:32) for further consideration in light of the Supreme Court's then-recent decision in 44 Liquormart case (ELR 18:2:6) which invalidated a statute that prohibited liquor price advertising. The Fifth Circuit has not yet issued a decision in response to the Supreme Court's remand.

In the meantime, however, the FCC has petitioned the Supreme Court for certiorari seeking review of the Ninth Circuit's Valley Broadcasting decision.

Valley Broadcasting Co. v. United States, 107 F.3d 1328, 1997 U.S.App.LEXIS 3291 (9th Cir. 1997), petition for cert. filed, Docket No. 97-1047; FCC Public Notice DA 97-2014 (Sept. 17, 1997) [ELR 19:9:14]

Sony Music must pay personal property taxes on CD artwork stored in Indiana

An Indiana Tax Court has denied Sony Music an exemption from $845,000 in personal property taxes levied on $4 million worth of artwork (booklets, liners and longboxes) temporarily stored at the facilities of an unrelated company in Indiana that Sony had hired to manufacture compact discs.

Indiana law exempts personal property from tax if it is stored in-state for the purpose of shipping it out-of-state and if it is ready for shipment without additional manufacturing or processing except repackaging. The Tax Court rejected Sony's argument that its compact disc artwork was exempt under this definition. Instead, the court ruled that the artwork was part of a process that involved processing beyond repackaging, because the product was packaged compact discs, not simply re-packaged artwork.

Sony Music Entertainment v. Indiana State Board of Tax Commissioners, 681 N.E.2d 800 (Ind.Tax 1997) [ELR 19:9:14]

Agreement by which Sony Music gave Blockbuster exclusive right to sell Barbara Streisand video did not violate antitrust law

Blockbuster Video and Sony Music did not violate the Rhode Island Antitrust Act by agreeing that a special version of Barbra Streisand's video "Barbra-The Concert" would be sold only at Blockbuster video stores, the Supreme Court of Rhode Island has held.

In a Per Curiam decision affirming an order that dismissed a complaint filed by the owner of a competing video store, the supreme court reasoned that an exclusive-dealing contract does not violate antitrust law unless there is proof of substantial market foreclosure, injury to competition, or an intent to fix prices or destroy competition - none of which was alleged.

The court also rejected claims of unfair competition, deceptive trade practices, and civil conspiracy.

ERI Max Entertainment, Inc. v. Streisand, 690 A.2d 1351, 1997 R.I.LEXIS 78 (R.I. 1997) [ELR 19:9:14]

New York Kicks' owner states antitrust claim against National Professional Soccer League

In an on-going legal match between the National Professional Soccer League and successive owners of the New York Kicks (ELR 16:3:19), a New York appellate court has held that the Kicks' second owner adequately alleged an antitrust violation in its cross-complaint against the League, and thus the trial court properly denied the League's motion for summary judgment dismissing that claim.

The alleged antitrust violation involved two League practices: an unwritten League policy that prohibited teams from signing players who had previously played for other teams in the League, even though those players' contracts had expired and they were technically free agents for the following season; and a salary cap limiting the amount each team could spend on player salaries. The Kicks' owner alleged that it was injured by these practices, because they prevented the Kicks from fielding a better team to increase fan attendance and revenues.

In an opinion by Justice Ann Mikoll, the Appellate Division ruled that these allegations adequately stated an antitrust violation under New York law.

Capitaland United Soccer Club Inc. v. Capital District Sports & Entertainment Inc., 656 N.Y.S.2d 465, 1997 N.Y.App.LEXIS 3956 (A.D. 1997) [ELR 19:9:15]

Claims of co-ownership of "Ms. Mystic" comic book character are time barred

Federal District Judge Robert Sweet has dismissed a lawsuit in which artist Michael Netzer alleged that he was the co-creator and co-owner of the comic book character "Ms. Mystic."

In response to a motion for summary judgment by the publisher of "Ms. Mystic" comic books, Judge Sweet ruled that Netzer's claims of co-authorship were barred by the Copyright Act's three-year statute of limitations. Netzer argued that the limitation period should be tolled for various reasons, but the judge said that even if the tolled periods were subtracted from the time that passed before Netzer filed suit, more than three years had elapsed.

Judge Sweet ruled that other legal claims asserted by Netzer - including fraud, contract, warranty, breach of fiduciary duty, and trademark infringement - were time barred as well. An unjust enrichment claim was held to be preempted by the Copyright Act.

One of the offending comic books portrayed a terrorist character whose aliases were "Mike Nasser" and "Abu Netzer"; and this triggered additional claims of libel and invasion of privacy. Judge Sweet dismissed those too. The libel claim failed, because no reasonable reader could have understood the comic book character to be artist Netzer; and the privacy claim failed, because the incidental use of a person's name is not prohibited by New York privacy law.

Netzer v. Continuity Graphic Associates, Inc., 963 F.Supp. 1308, 1997 U.S.Dist.LEXIS 4389 (S.D.N.Y. 1997) [ELR 19:9:15]

Spectator at minor league baseball game did not assume risk of injury from fly ball

A lawsuit filed by a spectator who was seriously injured by a fly ball while attending a minor league Rancho Cucamonga Quakes baseball game should not have been dismissed, a California Court of Appeal has ruled.

The trial court had granted the team's motion for summary judgment, relying on Neinstein v. Los Angeles Dodgers (ELR 9:1:13) and Clapman v. City of New York (ELR 4:15:5) - cases which held that the Los Angeles Dodgers and New York Yankees were not liable for injuries suffered by spectators hit by foul balls while attending their games.

However, in the case against the Quakes, those earlier decisions were distinguished, because the Quakes' fan was hit while his attention was distracted from the field by the antics of the Quakes' mascot (a seven-foot tall costumed dinosaur). Under these circumstances, the California Court of Appeal ruled, the doctrine of "primary assumption of risk" does not apply, because the Quakes had a duty not to increase the inherent risks to which baseball spectators are exposed.

Lowe v. California League of Professional Baseball, 65 Cal.Rptr.2d 105, 1997 Cal.App.LEXIS 532 (Cal.App. 1997) [ELR 19:9:15]

Music cassette counterfeiter ordered to pay restitution to record manufacturers association

A music cassette counterfeiter was properly ordered to pay restitution to the Association of Latin American Record Manufacturers as a condition of the counterfeiter's probation, a California Court of Appeal has held.

In an opinion by Justice Earl Johnson, the appellate court ruled that the trade association was a "victim" for the purpose of the California restitution statute because it represented the record companies who were the direct victims of the counterfeiter's crime. The restitution order included amounts spent by the association assisting police in their investigation and an additional amount based on the counterfeiter's estimated sales.

People v. Ortiz, 62 Cal.Rptr. 2d 66, 1997 Cal. App.LEXIS 201 (Cal.App. 1997) [ELR 19:9:16]

University has right to suspend athlete who failed drug test

The University of Southwestern Louisiana was improperly enjoined from suspending a student-athlete who had tested positive for drug use in a random test administered by the NCAA, a Louisiana Court of Appeal has ruled.

The athlete contended that his drug test results were "false," and a trial court agreed and issued the requested injunction. On appeal, however, Chief Judge Morris Lottinger reviewed the record and concluded that the trial judge had "committed manifest error in finding that the drug tests were flawed."

Judge Lottinger also rejected the student-athlete's constitutional attacks on his suspension. The judge ruled that the student-athlete had only a "diminished expectation of privacy," and that while the drug tests may have invaded the athlete's privacy, they were nonetheless "reasonable . . . in the context of intercollegiate sports." The judge also ruled that the athlete had no liberty or property interest in participating in intercollegiate sports, and thus could not prevail on his due process claim.

Brennan v. Board of Trustees, 691 So.2d 324, 1997 La.App.LEXIS 873 (La.App. 1997) [ELR 19:9:16]

High school athletic association has right to realign conferences

The Wisconsin Interscholastic Athletic Association was improperly enjoined from realigning its conferences, a Wisconsin Court of Appeals has held, and therefore a preliminary injunction granted at the request of the Slinger School District has been reversed.

Slinger contended that the WIAA's constitution and by-laws were a contract that gave it a legal right to be placed in a conference with other schools that were reasonably close, comparable in size, and had similar athletic programs. But, in an opinion by Judge Daniel Anderson, the appellate court noted that while the WIAA's constitution and by-laws provide that the distance to be traveled by teams "shall" be "reasonable," those same documents recognize that "greater distances may be required."

From this, Judge Anderson concluded that WIAA members have given the Association "unfettered power" to make decisions concerning conference alignments, and that the Association's members have agreed that "conference alignment, while important, is not so important that it will be a `contractual right' that members are going to fight about in court."

Slinger School District v. Wisconsin Interscholastic Athletic Association, 563 N.W.2d 585, 1997 Wis.App.LEXIS 425 (Wis.App. 1997) [ELR 19:9:16]

Retransmission of radio broadcasts by telephone is fair use

In a suit brought by Infinity Broadcasting against a company known as Media Dial-Up, federal District Judge Lewis Kaplan has held that Media Dial-Up's re-transmission by telephone of Infinity's copyright-protected radio broadcasts is a fair use.

Media Dial-Up's subscribers include companies that advertise on radio stations and want to confirm their ads have been broadcast, performing rights organizations like ASCAP that want to monitor broadcasts for use of copyright-protected music, and by those who want to audition on-air talent. Media Dial-Up's retransmission of radio broadcasts by telephone allows subscribers to listen to radio stations whose signals would otherwise be out of reach because the stations are located in cities that are distant from those who want to hear them.

Infinity sued Media Dial-Up for infringing the copyrights in Infinity programming. In response to cross-motions for summary judgment, Judge Kaplan has ruled that Media Dial-Up's retransmissions are a fair use, for two reasons. First, Media Dial-Up serves only a limited audience with "quite specialized objects in mind," and thus the purpose and character of Media Dial-Up's use "cuts to some extent" in its favor. Second, Media Dial-Up's retransmissions have "had no impact on the value of Infinity's copyrighted programs as a means of generating advertising or syndication revenue," and thus Media Dial-Up's retransmissions have had "no material effect on the value of [Infinity's] copyrighted material."

Infinity Broadcasting Corp. v. Kirkwood, 965 F.Supp. 553, 1997 U.S.Dist.LEXIS 7889 (S.D.N.Y. 1997) [ELR 19:9:16]

Fish mannequins are not copyrightable because their idea and expression merge

Taxidermy mannequins used to mount fish are not protected by copyright, federal District Judge Frederick Scullin has held, because their idea and expression merge. As a result, the judge has dismissed copyright infringement claims brought by several designers of fish mannequins against the Dan Chase Taxidermy Supply Company. (The case has proceeded however with claims based on mannequins of other animals, where the idea-expression merger doctrine did not defeat copyright protection.)

Judge Scullin issued the same ruling earlier in the case (ELR 17:7:13). But that ruling was vacated by the Court of Appeals for reconsideration, because the appellate court thought that the question of whether idea and expression had merged should be considered only after Judge Scullin had considered how similar the plaintiffs' mannequins were to those made and sold by Dan Chase. (ELR 18:11:14)

On remand, Judge Scullin determined that the plaintiffs' fish mannequins were substantially similar to Dan Chase's, as well as to those made by other designers. And the judge concluded from these similarities that there are "very limited options" available for the design of fish mannequins.

Hart v. Dan Chase Taxidermy Supply Co., Inc., 967 F.Supp. 70, 1997 U.S.Dist.LEXIS 9488 (N.D.N.Y. 1997) [ELR 19:9:17]

Federal Trademark Dilution Act does not apply retroactively

Viacom has lost a trademark dilution lawsuit it filed against Ingram Enterprises which began using "Blockbuster" four years after Viacom had registered that mark as its own.

Federal District Judge Russell Clark dismissed Viacom's lawsuit, because even though Ingram's use of "Blockbuster" followed Viacom's, Ingram began using the mark in August 1990 - more than five years before the federal Trademark Dilution Act became effective in January 1996. Judge Clark has ruled that the Act is not retroactive and may not be applied to uses that began before the Act took effect.

Viacom, Inc. v. Ingram Enterprises, Inc., 965 F.Supp. 1278, 1997 U.S.Dist.LEXIS 3756 (W.D.Mo. 1997) [ELR 19:9:17]

Previously Reported:

The Supreme Court has granted the government's petition for certiorari in National Endowment for the Arts v. Finley (ELR 19:2:10) and will review a Ninth Circuit ruling that it is unconstitutional to require the National Endowment to consider "decency and respect for American values" when selecting grant recipients. National Endowment for the Arts v. Finley, 118 S.Ct. 554, 1997 U.S.LEXIS 7058 (1997)

The Supreme Court dismissed a petition for certiorari in Dr. Seuss Enterprises v. Penguin Books (ELR 18:9:16, 19:5:11), a case in which Penguin Books and Dove Audio were enjoined from publishing The Cat NOT in the Hat!, a book about the O.J. Simpson case that parodies the style of Dr. Seuss. Penguin Books USA, Inc. v. Dr. Seuss Enterprises, 118 S.Ct. 27, 1997 U.S.LEXIS 4426 (1997)

The Supreme Court has denied a petition for certiorari filed in MCA Records v. Charly Records (ELR 16:9:4). Charly International sought review of a judgment entered against it and in favor of MCA Records in a case involving a dispute over the ownership of the "Chess Catalog," a catalog of postwar blues and early rock & roll music. Charly International v. MCA Records, 118 S.Ct. 79, 1997 U.S.LEXIS 4784 (1997)
[ELR 19:9:17]

DEPARTMENTS

In the Law Reviews:

The Antitrust Bulletin, published by Federal Legal Publications, Inc., 157 Chambers Street, New York, NY 10007, has issued a Symposium: Antitrust in the Sports Industry with the following articles:

Antitrust in the Sports Industry: An Introduction by Roger D. Blair and Amanda K. Esquibel, XLII The Antitrust Bulletin 517 (1997) (for address, see above)

Whose Field of Dreams: Antitrust Relief Against Restrictions on the Sale or Relocation of Major League Baseball Teams by Michael Eric Ross and Sashe

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Antitrust Franchise Relocation in Professional Sports: An Economic Analysis of the Raiders Case by Kenneth Lehn and Michael Sykuta, XLII The Antitrust Bulletin 541 (1997) (for address, see above)

Brown v. Pro Football, Inc.: The Supreme Court Gets It Right for the Wrong Reasons by Gary R. Roberts, XLII The Antitrust Bulletin 595 (1997) (for address, see above)

Why Highly Paid Athletes Deserve More Antitrust Protection Than Ordinary Unionized Workers by Stephen F. Ross and Robert B. Lucke, XLII The Antitrust Bulletin 641 (1997) (for address, see above)

Collusive Monopsony in Theory and Practice: The NCAA by Roger D. Blair and Richard E. Romano, XLII The Antitrust Bulletin 681 (1997) (for address, see above)

Monopoly, Monopsony, and Vertical Collusion: Antitrust Policy and Professional Sports by Walter Adams and James W. Brock, XLII The Antitrust Bulletin 721 (1997) (for address, see above)

Antitrust and Sports Franchise Ownership Restraints: A Sad Tale of Two Cases by John E. Lopatka and Jill Boylston Herndon, XLII The Antitrust Bulletin 749 (1997) (for address, see above)

Antitrust and Intellectual Property: From Separate Spheres to Unified Field by Willard K. Tom and Joshua A. Newberg, 66 Antitrust Law Journal 167 (1997)

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Protecting Folklore of Indigenous Peoples: Is Intellectual Property the Answer? by Christine Haight Farley, 30 Connecticut Law Review 1 (1997)

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Gender Equity in Interscholastic Sports: A Case Study by Ray Yasser and Samuel J. Schiller, 33 Tulsa Law Journal 273 (1997)

Brown v. Pro Football, Inc.: Labor's Antitrust Touchdown Called Back; United States Supreme Court Reinforces Nonstatutory Labor Exemption from Antitrust Laws by John J. Baroni, 33 Tulsa Law Journal 401 (1997)

The European Intellectual Property Review, published by Sweet & Maxwell, Cheriton House, North Way, Andover Hants SP10 5BE, England, has issued Volume 19, Number 12 with the following articles:

Do Marks with a Reputation Merit Special Protection? by Hazel Carty, 19 European Intellectual Property Review 684 (1997) (for address, see above)

A New Remedy for Copyright Infringement? by Richard Arnold, 19 European Intellectual Property Review 689 (1997) (for address, see above)

Droit de Suite: A Critical Analysis of the Approved Directive by Simon Hughes, 19 European Intellectual Property Review 694 (1997) (for address, see above)

Comparative Advertising in the United Kingdom by Darren Fitzgerald, 19 European Intellectual Property Review 709 (1997) (for address, see above)

Power to Modify the Vesting of Copyright in an Employer: Subsection 35 (3) of the Copyright Act 1968 (Cth) and Australian Universities by Ann Monotti, 19 European Intellectual Property Review 715 (1997) (for address, see above)

The Entertainment Law Review, published by Sweet & Maxwell Ltd, FREEPOST, Andover, Hants SP10 5BR

United Kingdom, has issued Volume 8, Issues 7 and 8 and Volume 9, Issue 1 with the following articles:

Spectrum Scarcity in Broadcasting by Tony Ballard, 8 Entertainment Law Review 239 (1997) (for address, see above)

Music, the Internet and the Role of Collection Societies by Gavin Robertson, 8 Entertainment Law Review 242 (1997) (for address, see above)

The Authors of Audiovisual Works in the Spanish Legal System by Jose Antonio and Suarez Lozano, 8 Entertainment Law Review 247 (1997) (for address, see above)

Self-regulation of Comparative Advertising in the United Kingdom by Darren Fitzgerald, 8 Entertainment Law Review 250 (1997) (for address, see above)

Trade, Culture and Technology: A Test of Canada's Cultural Mettle by Christine P. James, 8 Entertainment Law Review 253 (1997) (for address, see above)

Film Development Agreements by Philip Alberstat and Mike Conradi, 8 Entertainment Law Review 265 (1997) (for address, see above)

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New Labour, Privatisation and Nurturing Talent by Justin Watts, 8 Entertainment Law Review 279 (1997) (for address, see above)

"Television Without Frontiers": The Broadcasting of Sporting Events in Europe by Hazel Fleming, 8 Entertainment Law Review 281 (1997) (for address, see above)

Do We Need Our Privacy? by Martin Davies, 8 Entertainment Law Review 286 (1997) (for address, see above)

News from the Front: Practical Legal Issues in the Digital Revolution by Alan Williams and Duncan Calow, 8 Entertainment Law Review 290 (1997) (for address, see above)

The Rental Right of Copyright and Neighbouring Right Owners on a Cinematographic Film and the Principle of Free Movement of Goods within the Common Market by Kriton Metaxopoulos, 8 Entertainment Law Review 294 (1997) (for address, see above)

Speaking Up for the Entertainmees by Jeremy Phillips, 9 Entertainment Law Review 1 (1998) (for address, see above)

Freedom of Political Discussion and Intellectual Property Law in Australia by Megan Richardson, 9 Entertainment Law Review 3 (1998)

Statutory Protection of Television Show Formats by Harro Von Have and Frank Eickmeier, 9 Entertainment Law Review 9 (1998) (for address, see above)

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Copyright in Stage Production Elements: Requirements of Originality and Record Under English Law by D. Michael Rose, 9 Entertainment Law Review 30 (1998) (for address, see above)

The Decline of Likelihood of Confusion: Of Broomheads and March Madness by Neil J. Wilkof, 9 Entertainment Law Review 34 (1998) (for address, see above)

Enforcing Copyright Law in Thailand: the New Intellectual Property Court by Frabrice Mattei, 75 Copyright World 32 (1997) (published by Armstrong International Limited, The Courtyard, 12 Hill Street, St Helier, Jersey JE2 4UB, Channel Islands)

Litigation of Intellectual Property Rights in the Arab World by Dr Salah Eddin M. Al-Basir, 75 Copyright World 35 (1997) (for address, see above)

Fair Dealing in Australian Copyright Law: Rights of Access Under the Microscope by Peter Brudenall, 20 University of New South Wales Law Journal 443 (1997)

The Intellectual Property Journal, published by Carswell, 2075 Kennedy Road, Scarborough, Ontario M1T 3V4, has issued Volume 11, number 3 with the following articles:

Trade-mark "Use" in Canada: The Who, What, Where, When, Why and How (Part 1) by Sheldon Burshtein, 11 Intellectual Property Journal 229 (1997) (for address, see above)

Copyright and the Information Superhighway: Some Issues to Think About (Part 2) by Barry B. Sookman, 11 Intellectual Property Journal 265 (1997) (for address, see above)

Protection Against the Use of One's Likeness in Quebec Civil Law, Canadian Common Law and Constitutional Law (Part 2) by Louise Potvin, 11 Intellectual Property Journal 295 (1997) (for address, see above)