IN THE NEWS

MP3.com settles copyright case filed against it by Universal Music Group by agreeing to $53.4 million judgment

MP3.com has settled the copyright infringement lawsuit filed against it by Universal Music Group (UMG) by agreeing that a judgment could be entered against it for $53.4 million judgment in statutory damages and attorneys' fees. Agreement between the two companies was reached just as the final phase of the case was about to go to trial before federal District Judge Jed Rakoff on the issue of exactly how much in damages MP3.com would have to pay UMG.

Earlier in the case, Judge Rakoff ruled that MP3.com infringed the copyrights to thousands of recordings by copying UMG's CDs - as well as those of

BMG, Warner Music Group, EMI and Sony - in order to create a song database for the operation of MP3.com's "My.MP3.com" music streaming service (ELR 21:12:4). Following that ruling, MP3.com settled the claims of BMG, Warner, EMI and Sony, but not those of UMG.

UMG then won a significant victory in the first part of the damages phase of its case when Judge Rakoff ruled that MP3.com had infringed UMG's copyrights "willfully," and that MP3.com would have to pay UMG $25,000 in statutory damages for each CD MP3.com had copied (ELR 22:4:4). The two companies disagreed about how many CDs MP3.com had copied. But if UMG's number was right, the judgment against MP3.com could have amounted to $250 million.

The final phase of the case was to have been a trial on how many of UMG's recordings MP3.com actually copied. Because the case has now been settled, that question no longer needs to be answered.

Since MP3.com had earlier settled with the four other major record companies, the UMG settlement appeared at first to bring this case to a complete close. In fact, however, MP3.com has not yet escaped all liability for its My.MP3.com service. Separate lawsuits were filed against MP3.com by independent record labels, including Zomba Recording, Tee Vee Tunes, Koch Entertainment and Velvel Records. Those cases have yet to be settled.

What's more, according to the Form 10-Q filed by MP3.com with the Securities Exchange Commission (SEC) for the quarter ending September 30, 2000, the earlier settlement agreements with BMG, Warner, EMI and Sony all contained most-favored-nation provisions that require MP3.com to pay those companies more money "under certain circumstances." Copies of those settlement agreements were filed with the SEC, but the amounts MP3.com agreed to pay those companies, and the terms of the most-favored-nations provisions, have been marked "Confidential" and kept from public view.

Nevertheless, it has been speculated (in the trade and financial press) that MP3.com agreed to pay BMG, Warner, EMI and Sony about $20 million each - only 40% of the amount UMG is to receive. Ordinarily, a most-favored-nations clause would entitle the other four companies to the same amount UMG receives. But there has been further speculation that: (1) the most-favored-nations clause was written so that it wouldn't apply if UMG received more money in a "judgment" than the other companies received in "settlement"; and (2) that's why MP3.com's settlement with UMG was handled as an agreed-to "judgment" rather than a "Settlement Agreement" like the ones entered into with the other four companies.

As this issue of the Entertainment Law Reporter went to press, it appeared that this speculation is correct, because it has been reported that Sony and Warner have demanded of MP3.com the same amount that UMG is to receive and have threatened to go back to court if they don't get it (L.A. Times, 11/18/2000).

In addition to the claims made by record companies, infringement claims were made against MP3.com by music publishers too. MP3.com settled those last month by entering into a licensing agreement with the National Music Publishers Association. That license is apparently the "mechanical license" MP3.com needed to create its database, because each track of a copied CD includes two distinct copyrights: a publisher's musical composition copyright, as well as a record company's sound recording copyright.

MP3.com obtained a public performance license from BMI last May, though it has not yet announced obtaining one from ASCAP or SESAC. MP3.com needs public performance licenses, because when MP3.com streams recorded music, it also publicly performs musical compositions - an activity that is not covered by a mechanical license from the NMPA.

MP3.com settlement announcements available at http://pr.mp3.com/pr/index.html; links to MP3.com filings with SEC available at http://www.mp3.com/investor/financial.html#secfilings [ELR 22:6:5]

Streambox settles copyright lawsuit filed against it by RealNetworks, after federal court enjoined further distribution of Streambox's "Streambox VCR" and "Ferret" software; Streambox agrees to modify "Streambox VCR" so that it no longer circumvents copy protection features of RealNetworks' streaming media system

Streambox has settled a copyright lawsuit filed against it by RealNetworks, on terms that appear to be a complete victory for RealNetworks. The lawsuit was triggered by Streambox's distribution of three software products - Streambox VCR, Ferret, and Ripper - each of which was designed to be used by web surfers in ways that circumvented or altered the intended operation of RealNetworks' streaming media system.

The settlement requires Streambox to modify its Streambox VCR and Ripper, and to discontinue distributing its Ferret. In addition, Streambox has agreed to pay RealNetworks an undisclosed sum of money.

RealNetworks' products enable copyright owners to stream their content on the Web in a manner that prevents web surfers from downloading, storing, duplicating and retransmitting that content, without copyright-owner consent. In order to do this, RealProducts has developed technology that allows access to protected content only by those who use the company's own RealPlayer software. RealPlayer software, in turn, prevents users from downloading streamed content, unless the copyright owner has encoded its content in a manner that permits downloads.

Streambox upset this carefully-crafted system by enabling Streambox VCR users to access RealNetwork-encoded content (without using a RealPlayer), and by enabling users to download, store, duplicate and retransmit streamed media, without copyright-owner consent.

Streambox's Ripper software added insult to injury by enabling users to convert downloaded files from the RealNetwork format to other formats such as MP3 and WAV.

And Streambox compounded RealNetworks' injury by enabling users to replace RealNetworks' authorized Snap.com search engine, from which RealNetworks receives royalties, with Streambox's own search engine plug-in, Ferret.

In the lawsuit RealNetwork filed to put a stop to this, RealNetworks alleged that Streambox VCR violated the anti-circumvention provisions of the Digital Millennium Copyright Act (DCMA). Federal District Judge Marsha J. Pechman agreed and issued a preliminary injunction barring further distribution of that product.

The anti-circumvention provisions of the DCMA prohibit the distribution of devices that circumvent technological measures that: (1) control access to copyrighted works; or (2) protect against the unauthorized copying of such works. Judge Pechman found that the Streambox VCR ran afoul of both of these prohibitions, because it enabled users to get access to works that were supposed to be accessed only by using RealPlayer software, and because it enabled users to copy those works onto their hard drives without authorization.

RealNetworks' anti-circumvention argument against Streambox's Ripper was more subtle, and ultimately did not persuade Judge Pechman. RealNetworks contended that its own file format is a technological method by which copyright owners prevent others from making unauthorized derivative works.

Since the Ripper changed RealNetworks' file format to MP3 and WAV formats, which could then be incorporated into new works without authorization, RealNetworks contended that the Ripper circumvented protection against making unauthorized derivative works. Judge Pechman rejected this argument, because some copyright owners do permit downloading, and there was no evidence that these copyright owners object to file format conversions. Thus, the judge declined to enjoin Streambox's distribution of Ripper software.

RealNetworks argued that since Streambox's Ferret plug-in changes the RealPlayer interface, Ferret creates an unauthorized derivative version of RealPlayer. And though this is done by users - rather than by Streambox itself - RealPlayer argued that this made Streambox liable for contributory or vicarious copyright infringement. Judge Pechman agreed.

"It is undisputed," the judge explained, "that consumers who install the Ferret as a plug-in application to the RealPlayer cause the graphical interface of the RealPlayer to be modified, arguably creating a derivative work . . . without the copyright owner's authorization. In addition, RealNetworks has proferred evidence that end users who install the Ferret are violating a license agreement with RealNetworks." The judge therefore enjoined Streambox's continued distribution of Ferret.

The Streambox-RealNetworks settlement in effect makes Judge Pechman's preliminary injunction a permanent injunction. This is so, because the settlement requires Streambox to discontinue distributing Ferret, and it requires Streambox to modify its Streambox

VCR product so that it respects the copy protection features of RealNetworks' system.

RealNetworks has agreed to provide Streambox with a license authorizing Streambox to make new software products that can access RealNetwork streaming media. But the settlement provides that all future versions of Streambox products will respect RealNetworks' copy protection technology too.

The settlement also requires Streambox to modify its Ripper product so that it no longer converts RealMedia streams into other formats, even though Judge Pechman had not enjoined distribution of the Ripper.

RealNetworks, Inc. v. Streambox, Inc., 2000 U.S.Dist.LEXIS 1889 (W.D.Wash. 2000); *settlement* reported at www.realnetworks.com/company/pressroom and www.streambox.com. [ELR 22:6:6]

NEW LEGISLATION AND REGULATIONS

Congress repeals 1999 Copyright Act amendment making sound recordings eligible to be classified as "works made for hire"; pre-amendment status quo is restored, without prejudice to prior positions of recording artists or record companies

For the second time in less than 10 months, Congress has amended the "work made for hire" provision of the Copyright Act. It did so by eliminating "sound recording" as a type of work eligible to be classified as a "work made for hire," when specially ordered or commissioned rather than created by an employee. Sound recordings created by employees within the course and scope of their employment always have been, and continue to be, works made for hire. But few if any featured recording artists are record company "employees," and thus the status of music recordings has been surprisingly unsettled.

Ever since 1978, specially ordered or commissioned works could be works made for hire only if they fell into one of nine specifically identified types of works, and only if their "work made for hire" status were agreed to in writing. Most record companies have long included work made for hire provisions in their artist agreements, so the second of these requirements is usually fulfilled.

On the other hand, until November 1999, sound recordings were not among the nine types of works specifically identified as being eligible to be classified as works made for hire. The reason that recording artist contracts have routinely included work made for hire clauses is that "compilations" have always been one of those nine types of works, and record companies - and many others in the music business - have believed (or assumed) that sound recordings almost always qualify as "compilations."

In order to make the Copyright Act perfectly clear about this, the Recording Industry Association of America asked Congress to amend the Act's definition of "work made for hire" to specifically include "sound recording" as a tenth type of work eligible for that status. Congress did so, in a most improbable way: by inserting the change, without notice or hearings, in the Technical Amendments section of the bill that, in November 1999, became the Satellite Home Viewer Improvement Act (ELR 21:9:8), an Act that otherwise had nothing whatsoever to do with recorded music or the work made for hire doctrine (ELR 21:8:8).

The amendment immediately ignited a firestorm of controversy, over the substance of the change as well as the process that brought it about. Congress was dumbfounded by the controversy; it thought the amendment was merely a "technical and clarifying" change in the law, and it said so in the Conference Report that explained the November 1999 bill.

At a hearing held in May 2000, Congress found out that many recording artists and their representatives considered the November 1999 amendment to be a "substantive change in the law," not a mere technical or clarifying one. The reason it matters whether a work is "made for hire" or not is that authors (or their successors) may terminate copyright transfers that have taken place since 1978, and thereby recapture ownership of those copyrights, unless the work is a work made for hire. Transfers of works made for hire may not be terminated.

In the record industry, this means that if sound recordings are not works made for hire, the artists who are the "authors" of recordings (or their successors) may terminate record companies' rights, beginning in 2013 (35 years after 1978) and become the owners of the copyrights to their masters. But if recordings are works made for hire, artists have no right to terminate, and record companies will continue to be the owners of the copyrights to those recordings until those copyrights expire.

When Congress learned that its November 1999 amendment was controversial, it was perfectly willing to restore the law to the way it read before the amendment. The RIAA was too. All that remained was agreement on language that would accomplish that goal.

A simple repeal of the November 1999 amendment wasn't satisfactory to the RIAA, because that could be considered by some judges to be "legislative history" showing that Congress intended sound recordings to be ineligible for work made for hire status. As a result, the "Work Made for Hire and Copyright Corrections Act of 2000" just passed by Congress and signed by President Clinton accomplishes the repeal in a somewhat wordy fashion.

First, it eliminates (from section 101 of the Copyright Act) "sound recording" from the list of works that are eligible to be works made for hire. Then, it provides that neither the courts nor the Copyright Office shall consider or give any legal significance to the November 1999 amendment or the repeal of that amendment; and it provides that the Copyright Act's "work made for hire" provision should be interpreted as though the November 1999 amendment had never been passed.

Though the earliest that terminations by recording artists could be effective is 2013, litigation over whether they have a right to do so may begin as early as 2003. This is because the Copyright Act permits notices of termination to be sent as many as ten years in advance. Thus artists who signed with record companies in 1978 will be able to begin sending termination notices in 2003 - ten years in advance of 2013. And when that happens, record companies may seek judicial declarations that the recordings at issue are works made for hire, because they are "compilations."

Work Made for Hire and Copyright Corrections Act of 2000, H.R. 5107, 106th Congress, 2d Session (2000)[ELR 22:6:8]

Technology controlling access to movie DVDs and video games may not be circumvented, Copyright Office decides; new rule permits circumvention of access controls only to lists of websites that are blocked by filtering software, and to digital literary works to which authorized access is prevented by malfunction or obsoleteness

The entertainment industry won an important victory when the Copyright Office ruled that users may not circumvent encryption or other technologies by which access to movie DVDs and video games is controlled. Indeed, virtually all digital publishers - not just those in the entertainment industry - shared that victory, because a newly-adopted Copyright Office rule permits users to circumvent access controls to just two types of digital works: lists of websites that are blocked by filtering software; and literary works (including computer programs and databases) to which authorized access is prevented by malfunction or obsoleteness.

The Copyright Office adopted this new rule in response to a Congressional mandate buried in one provision of the Digital Millennium Copyright Act. The provision was enacted in 1998 in order to satisfy the United States' obligations under two then-new treaties: the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty (ELR 20:6:4). The provision is now found in section 1201 of the Copyright Act.

As originally proposed by Congress, the provision would have banned the circumvention of any technological measure - without exception - used to protect the rights of copyright owners. However, during Congressional consideration of the legislation, this simple prohibition became surprising controversial. Computer manufacturers, educators, librarians, privacy and "public domain" advocates, and even law enforcement officials, began to conceive of ways in which copyright owners might use copyright protection systems to control their works in allegedly undesirable ways. Together, these opposing forces had significant clout in Congress. As a result, exemptions were added to legislation - exemptions that permit circumvention by those involved in law enforcement activities, encryption research, security testing, and certain other activities, under very specific and narrow circumstances.

The exemptions Congress was willing to write into the legislation did not satisfy all those who thought they ought to have the right to circumvent copyright protection measures. Thus Congress directed the Copyright Office to conduct a study to determine whether any additional exemptions should be added to the law. If the study showed more exemptions were necessary, Congress told the Copyright Office to do so by adopting a rule (rather than by making recommendations for further legislation). The rule just adopted by the Copyright Office is the result of that process.

During the rulemaking proceeding conducted by the Copyright Office, many organizations and individuals sought additional exemptions that, if adopted, would have authorized circumvention of access controls to a wide variety of works, including scholarly journals, databases, indexes, computer programs, textbooks, and law reports. In fact, some sought an exemption, which, if adopted, would have authorized users of all lawfully acquired works to circumvent access controls for any non-infringing purpose.

Three exemptions sought during the Copyright Office proceeding were particularly relevant to the entertainment industry. They were: an exemption authorizing circumvention of access controls to movie (and other audiovisual) DVDs; an exemption authorizing circumvention of access controls on video games (made for specific platforms); and an exemption that would have permitted public broadcasters to circumvent access controls on any type of work for which they have statutory licenses, such as music and art.

In deciding whether to exempt additional categories of works, the Copyright Office considered whether access control measures (such as encryption) have diminished (or soon will) the public's ability to lawfully use copyrighted works in ways the public could have, before the Digital Millennium Copyright Act was signed into law. The Copyright Office determined that this standard was met only by lists of websites blocked by filtering software and by malfunctioning or obsolete digital literary works.

The Copyright Office determined that circumvention of access controls on movie DVDs should not be permitted, because the movies themselves are also available on videotape, and thus access to them has not been diminished by methods used to control access to their DVD versions. Moreover, the Copyright Office noted that the motion picture industry decided to release movies on DVDs based on the industry's ability to limit piracy using access control measures. Thus, the Copyright Office concluded that if permitted, circumvention of access controls "would be likely to have an adverse effect on the availability of digital works on DVDs to the public."

The Copyright Office also determined that circumvention of access controls on video games that are playable only on specific platforms should not be permitted, because no evidence had been presented showing that access to such games has been diminished by access control mechanisms.

Finally, the Copyright Office rejected the request of public broadcasters, including PBS and NPR, for an exemption that would permit them to circumvent access control measures on works for which they have statutory licenses (under sections 114(b) and 118(d) of the Copyright Act). Their request was rejected because they did not allege, let alone prove, that access control measures had ever prevented them from exercising their statutory license rights.

The Copyright Office has authorized the circumvention of access controls on lists of websites that are blocked by software used by schools, libraries and parents to block children from sites containing adult material. Many website operators have complained that their sites have been blocked in error because they do not contain adult material. Filtering software contains only encrypted lists of the sites it blocks, and evidence submitted to the Copyright Office showed that such lists are not available elsewhere. For this reason, the Office concluded that access control measures on lists of blocked sites will have an adverse effect on non-infringing criticism, comment and news reporting. Thus circumvention of access controls on such lists has been permitted.

The Copyright Office also authorized the circumvention of access controls on digital literary works, including computer programs and databases, to which authorized access is prevented by malfunction or obsoleteness. Evidence presented to the Office showed that defective access control mechanisms to works of this type sometimes prevent access even by those who are authorized to have it. Worse yet, the companies that sold the works in the first place have sometimes gone out of business, and were no longer available to repair the access control mechanisms. This has an adverse effect on non-infringing uses, while permitting circumvention in these cases would not harm copyright owners, the Copyright Office concluded.

The exemptions authorized by the new Copyright Office rule took effect on October 28, 2000, and will remain in effect for three years. The Copyright Office will initiate a new rulemaking proceeding before October 28, 2003 to determine what works, if any, should be exempt from anti-circumvention for the following three years.

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies; Final Rule, (adding 37 CFR section

201.40), Library of Congress, Copyright Office, 65 Federal Register 64556 (Oct. 27, 2000)[ELR 22:6:9]

Increase in cable-TV compulsory license royalty rates is announced by Copyright Office

Most cable-TV systems will be paying more for the right to retransmit over-the-air broadcasts of copyrighted programming, as of July 1, 2000. The increase is the result of an adjustment in the cable compulsory license royalty rate just announced by the Copyright Office.

The Copyright Act gives cable-TV systems a compulsory license that authorizes them to retransmit over-the-air broadcasts of copyrighted programming, including television series, sports and movies.

(The compulsory license does not cover premium cable channels like HBO, or even cable basic channels like ESPN, that are not broadcast by conventional over-the-air television stations. Cable systems must obtain negotiated licenses from copyright owners to carry those kinds of programs.)

The royalty rates paid by cable systems for compulsory licenses are subject to adjustment every five years, by means of Copyright Royalty Arbitration Panel proceedings if necessary. This year, no such proceeding was necessary, because cable systems and copyright owners negotiated an agreed upon adjustment of the rate.

The compulsory royalty rate paid by large cable systems is a percentage of their gross receipts. The large system rate has been increased by about 7% to 11%, depending on how many distant television signals a cable system actually retransmits.

If a large cable system retransmits just one distant signal, the newly adjusted compulsory rate will bring the cable system's royalty rate to just under 1% of its gross receipts; if it transmits five distant signals, its new rate will be just under 3.5% of its gross receipts. (The formula, which is found in 37 CFR section 256.2, is complicated and affects each cable system differently, depending on the type and number of over-the-air signals each carries, the system's location, and its gross receipts.)

Despite the increase, copyright owners will not be receiving a 7% to 11% increase in the cable royalties they actually receive, because the rates payable by small and medium sized cable systems have not been increased. In fact, a substantial part of the large system increase is offset, since the new adjustment also increased by 30% the amount of gross receipts a cable system can collect and still be classified as small or medium. Small cable systems pay a flat fee, and medium sized cable systems pay a flat percentage. For royalty purposes, the size of a cable system is determined by its gross receipts.

Since small and medium sized systems pay about 10% of all cable royalties (large systems pay the other 90%), the increase in royalties payable by large systems will be offset by the greater number of systems that will now qualify as small or medium, and thus will not pay the large system higher rates.

Adjustment of Cable Statutory License Rates, Library of Congress, Copyright Office, 65 Federal Register 64622 (Oct. 30, 2000)[ELR 22:6:10]

WASHINGTON MONITOR

Commission on Online Child Protection submits report to Congress, recommending increased enforcement of existing obscenity laws but not the enactment of new legislation

Congress has attempted to protect children from online material of a sexual nature by twice enacting new criminal laws. Neither effort has been successful. Its first effort - the Communications Decency Act - was declared unconstitutional by the Supreme Court in 1997 (ELR 19:2:7). And enforcement of its second effort - the Child Online Protection Act - was enjoined, in an order that has just been upheld by the Third Circuit Court of Appeals (as reported in the "Recent Cases" section of this issue (ELR 22:6:24)).

Congress has not completely failed on this issue, however. In a portion of the Child Online Protection Act whose constitutionality was not challenged, Congress created a Commission on Online Child Protection, and directed it to study methods to help reduce access by minors to sexually explicit material. The Commission has submitted its Report to Congress, and though it is unlikely to satisfy all who are concerned with the issue, the Report appears to be a useful document.

Ironically, given the time and effort the government has spent unsuccessfully defending the constitutionality of Congress's criminal law initiatives, the Commission was not funded. Its operations were paid for with grants from Network Solutions, Yahoo!, America Online, Education Networks of America, and PSINet.

Congress directed the Commission to evaluate the accessibility, cost, and effectiveness of protective technologies and methods, as well as their possible effects on privacy, First Amendment values and law enforcement. In order to do that, the Commission studied several child-protective technologies and methods, including:

* filtering and blocking services,
* labeling and rating systems,
* age verification efforts,
* the possibility of a new top-level domain for harmful to minors material,
* "greenspaces" containing only child-appropriate materials,
* Internet monitoring and time-limiting technologies,
* acceptable use policies and family contracts,
* online resources providing access to protective technologies and methods, and

* options for increased prosecution against illegal online material.

On the basis of its study, the Commission concluded that currently, the most effective methods for protecting children from harmful content on the Internet are: aggressive efforts toward public education, consumer empowerment, greater use of existing technologies, and increased resources for enforcement of existing laws.

The Commission's recommendation with respect to enforcing existing laws was that government - state and local, as well as federal - "should fund, with significant new money, aggressive programs to investigate, prosecute, and report violations of federal and state obscenity laws, including efforts that emphasize the protection of children from accessing materials illegal under current state and federal obscenity law."

The Commission did not recommend the enactment of legislation that would create new types of criminal law violations. Instead, the Commission recommended that federal agencies "should consider greater enforcement and possibly rulemaking to discourage deceptive or unfair practices that entice children to view obscene materials, including the practices of 'mousetrapping' and deceptive meta-tagging."

The Commission's only nod in the direction of new federal legislation was in connection with its recommendation that agencies discourage deceptive and unfair practices, because the Report does suggest that if federal agencies need "further Congressional rulemaking authority" to adopt new rules to do so, they should get it.

Report to Congress, Commission on Child Online Protection, (Oct. 20, 2000), available at www.copacommission.org/report [ELR 22:6:12]

RECENT CASES

Tiger Woods loses trademark and right of publicity case against artist who created and distributed limited edition posters depicting Woods' likeness

Professional golfer Tiger Woods was unsuccessful in his attempt to prevent an artist from distributing limited edition posters depicting Mr. Woods' likeness.

Plaintiff ETW Corp. is Mr. Woods' exclusive licensing agent, and Defendant Jireh Publishing, Inc. is the exclusive publisher of the artwork of an artist known as Rick Rush. Mr. Rush, a "sports artist," created an art print entitled "The Masters of Augusta" which featured Tiger Woods. Jireh sold limited editions of this print that prompted ETW to file suit for trademark infringement, unfair competition, and violation of right of publicity. The court granted summary judgment against ETW on all claims.

In granting summary judgment in favor of Jireh on ETW's federal and state trademark infringement and unfair competition claims, the court found that ETW failed to establish any valid trademark rights in the "image" of Tiger Woods since, the court reasoned, ETW did not use Mr. Woods' image as a trademark - "an identification of source." The court held, in conformity with the decisions of other courts, that a person's image can generally not function as a trademark since the image is "not a consistently represented fixed image." While a particular photograph or drawing of an individual can function as a trademark, the court found that ETW failed to establish that it used one particular image of Tiger Woods in a trademark sense.

The court was also unpersuaded by ETW's argument that Jireh's use of the name "Tiger Woods" in literature that accompanied the art print was an infringement of ETW's rights in the trademark TIGER WOODS. Because ETW failed to establish that the use of Tiger Woods' image was an infringement, the court found that Jireh's use of Tiger Woods' name was a "fair use" under 15 U.S.C. § 1115(b) in that the use of the name was "a use, otherwise than as a mark, . . . which is descriptive of and used fairly and in good faith only to describe the goods . . . of such party."

Summary judgment was also granted against ETW on its claim for violation of the right of publicity under Ohio common law. The court relied upon the

First Amendment and held that Jireh's art prints were Constitutionally protected since each print was "an artistic creation seeking to express a message" and therefore was not like "posters which merely reproduce an existing photograph."

ETW Corp. v. Jireh Publishing, Inc., 99 F.Supp.2d 829, 2000 U.S.Dist.LEXIS 4816 (N.D.Ohio 2000)[ELR 22:6:13]

Best-selling author Patricia Cornwell wins preliminary injunction barring unknown author from creating bogus "scandal" to promote his book "Virginia Ghost Mysteries" by falsely claiming that Cornwell had plagiarized from it

In a bizarre tale which reads more like a bad novel than an actual legal opinion, a federal District Court in Virginia recently granted author Patricia Cornwell's request for preliminary injunctive relief to prevent a fellow author, Leslie Raymond Sachs, from using Ms. Cornwell's name or making false statements about her in conjunction with the sale of Mr. Sachs' book.

The sordid tale begins when Mr. Sachs, an unknown author of a book entitled The Virginia Ghost Mysteries, decided to concoct a "scandal" involving Ms. Cornwell so that he could use this "scandal" in the promotion of his book. Mr. Sachs' plan was very comprehensive. Although Ms. Cornwell's upcoming book, The Last Precinct of Publisher's Weekly, had not yet been released, and in fact, had apparently not even been written, Mr. Sachs started a letter writing campaign in which he alleged that The Last Precinct was based upon his novel. Mr. Sachs' letters got progressively more hostile over time, and in some of his later letters, he indicated that he would be able to use Ms. Cornwell's refusal to admit to plagiarism in the promotion of his own book.

Mr. Sachs' plan did not end there, however. Mr. Sachs created a new cover for his book which prominently displayed Ms. Cornwell's name in type larger than his own. The text on the new cover stated: "The MUST-READ gothic mystery that preceded PATRICIA CORNWELL'S newest bestseller." Mr. Sachs sent his proposed new book cover to Ms.

Cornwell's representatives and told them that their "silence" would indicate their acceptance of the new cover. Thus began a series of letters between Mr. Sachs and Ms. Cornwell's attorneys.

When Mr. Sachs refused to back down, Ms. Cornwell's attorney demanded, among other things, that Mr. Sachs "destroy all copies of [his] book and advertising relating to [the] book that imply that . . . illicit copying occurred." In response to this letter, Mr. Sachs intensified his campaign against Ms. Cornwell, accusing her of threatening to burn his book. Mr. Sachs began to refer to Ms. Cornwell as a "book burning Nazi" and even started a web site where he outlined and embellished even further his falsified accusations.

In keeping with his "book burning Nazi" theme, Mr. Sachs decided to affix stickers to his book which read: "The book that famous PATRICIA CORNWELL threatened to destroy." Mr. Sachs, in furtherance of his plan, also created a press release full of false information that accused Ms. Cornwell of being involved in a "conspiracy" to silence him.

Finally, Ms. Cornwell filed suit against Mr. Sachs alleging defamation and violations of the Lanham Act and Virginia's privacy statute. Ms. Cornwell sought a preliminary injunction which requested both prohibitive and mandatory relief, namely, Ms. Cornwell wanted Mr. Sachs to not only cease his activities but also to take affirmative steps to remove any false and misleading information which he had disseminated to the public. The court granted Ms. Cornwell's request.

The court recognized that a party seeking mandatory injunctive relief must make an extremely strong showing of "irreparable injury" and must demonstrate "compelling circumstances" for the granting of such relief. In this case, the court easily found that Ms. Cornwell had met the standards for the grant of a mandatory injunction.

The court analyzed each of Mr. Sachs' public statements regarding Ms. Cornwell and found each to be false and misleading. Mr. Sachs even admitted as much in his testimony. Because of the heinous nature of the accusations - plagiarism, the worst act of which an author can be accused, and extortion, a felony - the court found that Ms. Cornwell's injuries absent the grant of the injunction would truly be irreparable and could not be determined monetarily nor fully compensated through damages alone.

The court was aided in its decision as well by the fact that Mr. Sachs had repeatedly outlined his byzantine plan in his letters. Mr. Sachs informed Ms. Cornwell's representatives in writing on many occasions that he intended to use the "scandal" to promote the sales of his own book.

The court was unpersuaded by Mr. Sachs' First Amendment defense. The First Amendment does not protect against false and misleading speech, and the court outlined many cases wherein it was found that "an injunction that restrains only false or misleading commercial speech 'is consistent with the First Amendment.'"

In defending against Ms. Cornwell's claim of violation of Virginia's privacy statute, Mr. Sachs attempted to invoke New York's "public interest/newsworthiness" exception to such claims. The court found this defense "completely lacking in merit" noting that the defense did not apply since Mr. Sachs was not reporting legitimate news; rather he fabricated a "scandal" out of whole cloth for the explicit purpose of selling his book. The court also recognized that, in Virginia, "there is no constitutional protection for even a truthful use of a celebrity's name for the purpose of advertising a product."

Cornwell v. Sachs, 99 F.Supp.2d 695, 2000 U.S.Dist.LEXIS 10823 (E.D.Va. 2000)[ELR 22:6:13]

Recording artists don't have standing to sue record companies for alleged underpayment of AFTRA health and retirement benefits, federal appellate court affirms

Sam Moore, Curtis Mayfield, Brian Hyland and others are at odds with their record companies over money these artists allege the companies should have paid as a result of record sales, but didn't.

Royalty calculation disputes in the record industry are not uncommon. But this dispute does not involve the calculation or payment of royalties. Instead, in an unusual case, Moore and his fellow Rock & Roll Hall of Famers allege that their record companies failed to make all the Health and Retirement Plan contributions that were required by their AFTRA collective bargaining agreement.

Featured recording artists are compensated primarily by royalties. But many are also AFTRA members, and are compensated in part under an AFTRA collective bargaining agreement known as the "Phono Code." Ever since 1959, the AFTRA Phono Code has required record companies to make payments to trustee-administered health and retirement funds. The AFTRA Phono Code provides that these health and retirement fund payments are to be an agreed-upon percentage of the "gross compensation" the record companies paid to recording artists. But until 1995, the words "gross compensation" were not defined.

As a result, from 1959 to 1995, it was unclear whether "gross compensation" included costs - like recording costs - that were advanced by record companies but were later recouped from artist royalties. When calculating payments due to the health and retirement funds, the record companies allegedly determined that "gross compensation" did not include recoupable costs; and thus the amounts they paid to the funds did not include the agreed-upon percentage of those costs.

In a lawsuit filed under the Employee Retirement Income Security Act of 1974, commonly known as "ERISA," Moore, Mayfield, Hyland and others asserted that the record companies had underpaid the amounts due to the health and retirement funds, because "gross compensation" did include recoupable advances. A federal District Court in Georgia disagreed and dismissed the case. And in an opinion by Judge Gerald

Tjoflat, the Eleventh Circuit Court of Appeals has affirmed.

The lawsuit could have been filed by the trustees of the health and retirement funds; but it wasn't. The issue on appeal was whether Moore and his fellow artists could file it themselves, as a "derivative" action on behalf of the trustees. In two federal Circuits - the Second and Third - appellate courts have permitted beneficiaries of ERISA-governed plans to file lawsuits, when trustees did not. Those cases did not involve the AFTRA record industry health and retirement plans. But Judge Tjoflat declined to follow those decisions for an even more important reason.

Judge Tjoflat concluded that ERISA simply does not authorize retirement plan beneficiaries to sue employers for unpaid contributions. Instead, relying on the plain language of ERISA and on its legislative history, Judge Tjoflat wrote: "[W]e do not believe that

Congress wanted beneficiaries to have standing to bring suit on behalf of the plan for delinquent contributions."

Concerned perhaps that such a conclusion would make it appear that beneficiaries do not have any remedy if trustees refuse to sue for delinquent contributions, Judge Tjoflat noted that beneficiaries do have a remedy in such cases. The judge explained that if the trustees' refusal is unreasonable and in breach of their fiduciary duty to the plan, beneficiaries may sue the trustees for losses resulting from their refusal, and beneficiaries can seek the removal of the trustees from their positions with the plan.

Moore v. American Federation of Television and Radio Artists, 216 F.3d 1236, 2000 U.S.App.LEXIS 15329 (11th Cir. 2000)[ELR 22:6:14]

Mattel wins dismissal of idea submission lawsuit filed by company that suggested cross-marketing venture with National Basketball Association; federal District Court rules that idea was not sufficiently novel to establish that Mattel was unjustly enriched when it later became NBA toy licensee

Mattel has been an NBA licensee since 1998, and as such, is authorized to sell NBA-themed toys, including Barbie and other dolls, worldwide. Apparently, the Mattel-NBA relationship grew out of an introduction arranged by Khreativity Unlimited, a company that invents and promotes toy ideas.

Khreativity appears to have been instrumental in getting Mattel and the NBA together, because in 1996, Khreativity proposed to Mattel - at a Mattel-hosted pitch-meeting for inventors - that Mattel make and sell

Cabbage Patch dolls dressed in NBA uniforms. This idea led to a Khreativity-arranged meeting between Mattel and the NBA; and during that meeting, Khreativity allegedly suggested an even broader Mattel-NBA cross-marketing venture.

Nothing came of that meeting at first, but twenty months later, the NBA-Mattel licensing agreement was announced. Khreativity responded by suing Mattel for a finder's fee and for unjust enrichment. Though federal District Judge Shira Scheindlin gave thoughtful consideration to Khreativity's claims, she has dismissed its lawsuit, in response to Mattel's motion for summary judgment.

In New York, that state's statute of frauds applies to a claim for a finder's fee. Khreativity admitted that its finder's fee claim was not supported by any writings. It argued that the Statute of Frauds did not apply to its case, but Judge Scheindlin ruled that it did. And since there weren't any writings, the judge easily dismissed Khreativity's finder's fee claim.

Khreativity's unjust enrichment claim presented a somewhat more difficult issue. The company argued that California law, rather than New York law, should apply to this claim. It no doubt did so, because in California, even non-novel ideas can be the basis for an implied contract (the breach of which can result in unjust enrichment). However, Judge Scheindlin concluded that New York law should apply to this case.

Until recently, New York law required ideas to be novel to everyone in order to be the basis for an implied contract or unjust enrichment claim. That would have been a tough standard for Khreativity to satisfy. However, in Nadel v. Play-by-Play Toys (ELR 22:4:14), the Second Circuit Court of Appeals changed New York law somewhat, so that now, an idea is sufficiently novel if it is novel to the recipient. This might have been an easier standard for Khreativity to meet. But even the Nadel case recognized that some ideas are so lacking in novelty that knowledge of them may be "imputed" to the recipient.

In this case, Judge Scheindlin concluded that Khreativity's "idea for a cross-marketing venture between Mattel and the NBA was so unoriginal and lacking in novelty that knowledge of the idea can be imputed to Mattel." The judge based this conclusion on evidence that before it had received Khreativity's idea, Mattel had dressed its dolls in basketball and other sports uniforms, including some connected with specific sporting events. Thus, "Khreativity's idea was nothing more than a variation on concepts already employed by Mattel. . . ."

"Simply put, the fact that Mattel never asked the NBA to participate in a cross-marketing venture does not mean that the venture was a novel idea," the judge concluded. "Accordingly, Mattel is entitled to summary judgment on [Khreativity's] unjust enrichment claim."

Khreativity Unlimited v. Mattel, Inc., 101 F.Supp.2d 177, 2000 U.S.Dist.LEXIS 6986 (S.D.N.Y. 2000)[ELR 22:6:15]

Ex-wife of artist George Rodrigue has community property interest in economic benefits of copyrights to art works he created during marriage, though he has exclusive managerial control of copyrights, federal appellate court rules

In an opinion that deals nicely with the apparent conflict between federal copyright law and state community property law, a federal Court of Appeals has held that an author of copyrighted works has the exclusive right to manage and control those copyrights, but - if the works were created in a community property state while the author was married - the author's spouse is entitled to a half-interest in the income generated by those copyrights, even after their divorce becomes final.

This ruling arose out of the divorce of artist George Rodrigue and his wife Veronica. During their marriage, they lived in Louisiana - a community property state - and George created many popular paintings. Among them was a series that depicted stylized images of a blue dog.

After their divorce, George painted additional versions of the blue dog. When Veronica claimed a community property interest in those allegedly derivative versions, George went to federal court, seeking a judicial declaration that federal copyright law made him the sole owner of the copyrights to all his art works.

At first, George was completely successful. A federal District Court ruled that Louisiana community property law was preempted by federal copyright law, and thus Veronica had no interest in the copyrights to George's paintings or the post-divorce income they earned (ELR 21:8:17).

On appeal, Veronica has done much better. Indeed, she has won her claim to share in the post-divorce earnings of any derivative versions of George's pre-divorce paintings. What makes this case palatable to other authors, publishers and licensees - even if not entirely pleasing to George himself - is the Court of Appeals' ruling that George alone has the exclusive right to manage and control the copyrights to his works.

In an opinion by Judge Jacques Wiener, the appellate court found that Louisiana law contains many examples of situations in which exclusive management of community property is given to one spouse while both spouses share its "enjoyment." Among these are paychecks that can be cashed only by the employee-spouse, though the proceeds belong to the community.

From this, Judge Wiener concluded that there is no conflict between federal copyright law which gives authors the exclusive right to reproduce, perform, display and distribute their works, and to create derivative versions of them, and Louisiana law which gives each spouse a half-interest in the economic benefits of community property. Judge Wiener explained that because ". . . equal management does not apply to copyrights, federal interests in predictability and efficiency are not impaired by it."

The passage of Judge Wiener's opinion that will be most important to other copyright owners, publishers and licensees is the one in which he explicitly stated, "A potential purchaser or licensee will still be able to obtain good 'title' from the author-spouse alone free of interference from the other spouse."

The case was remanded to the District Court with instructions that a judgment be entered "recognizing Veronica's entitlement to an undivided one-half interest in the net economic benefits generated by or resulting from copyrighted works created by George during the existence of the community and from any derivatives thereof."

Judge Wiener emphasized that "Such judgment also must recognize George's continued entitlement to the exclusive control and management . . ." of the copyrights, "albeit," the judge added, "subject to [George's] duty to 'manage prudently' all such copyrights and derivatives thereof under his control."

Rodrigue v. Rodrigue, 218 F.3d 432, 2000 U.S.App.LEXIS 15676 (5th Cir. 2000)[ELR 22:6:18]

Distribution of recordings before 1978 does not publish recorded songs; Copyright Act amendment making this clear applies retroactively, even to cases pending when amendment was passed in 1997, federal appellate court holds

Robert Johnson was a blues singer in the late 1930s who wrote, recorded, and released only a handful of songs before he was murdered in 1938. Despite his short career, Mr. Johnson has become a legendary figure in musical history with many modern artists recording cover versions of his songs.

The Rolling Stones recorded cover versions of two of Mr. Johnson's works - "Stop Breakin' Down" and "Love In Vain." When The Rolling Stones released their versions of Mr. Johnson's compositions in the early 1970s, the Rolling Stones' publishing company (and ABKCO's predecessor) filed copyright registrations of the Rolling Stones' arrangements of the compositions.

In the mid-1970s, Defendant Stephen LaVere convinced Mr. Johnson's sister and sole surviving heir to assign her interests in Mr. Johnson's copyrights to him so that he could attempt to exploit Mr. Johnson's musical works and share the profits with Mr. Johnson's sister. Over the years, Mr. LaVere formed various companies, and eventually assigned the copyrights to his current company, Defendant Delta Haze.

Columbia Records released a successful boxed-set of Mr. Johnson's recordings in 1990. By that time, Columbia, as well as others in the industry, acknowledged the copyrights in Mr. Johnson's works.

ABKCO, however, did not, and in 1991, a dispute began between ABKCO and Delta Haze when Delta Haze alleged that it owned the copyrights in the Johnson compositions and demanded that ABKCO cease and desist from unlicensed uses of the same. When negotiations broke down, ABKCO filed an action seeking declaratory relief that the Johnson compositions had fallen into the public domain by virtue of their "publication" in the late 1930s. The district court found in favor of ABKCO, and Delta Haze appealed the decision to the Ninth Circuit.

The Ninth Circuit recognized that the "ultimate question" presented was "whether a phonorecord distributed in the late 1930s 'published' the underlying work such that the clock started ticking under the Copyright Act of 1909." In its decision in La Cienega Music Co. v. ZZ Top, 53 F.3d 950 (9th Cir. 1995) [ELR 16:10:13; 17:5:18], the Ninth Circuit held that it did. The Ninth Circuit's La Cienega ruling was contrary to the Second Circuit's 1976 holding in Rosette v. Rainbo Record Mfg. Corp., 546 F.2d 461 (2nd Cir. 1976). In 1997 (after ABKCO filed its suit), Congress amended the Copyright Act to conform to the Second Circuit's holding and specifically provided that publication of a composition did not occur by virtue of its release on a sound recording prior to January 1, 1978. (17 U.S.C. § 303(b) (ELR 19:7:4)).

The parties agreed that if La Cienega controlled, the Johnson compositions would have fallen into the public domain since they were released on sound recordings in the late 1930s and thus "published" at that time. Because the 28-year period for copyright protection would have begun to run in the late 1930s, the works would have fallen into the public domain in the late 1960s.

If the amended section 303(b) applied, on the other hand, the parties agreed that the Johnson compositions would not have fallen into the public domain since their release sound recordings prior to January 1, 1978 would not have been a "publication" of the works, and thus, the 28-year period would not have begun to run. Therefore, the controlling issue was whether Section 303(b) was to be applied retroactively.

The Ninth Circuit concluded that Section 303(b) was to be applied retroactively since the amendment clarified rather than changed the law. Therefore, the Ninth Circuit reversed the district court's grant of summary judgment in favor of ABKCO, and remanded it for further proceedings.

The court found that although the Johnson compositions had not entered the public domain, many other issues remained which were best decided by the district court - namely, whether ABKCO had an ownership interest in the arrangement of the compositions, whether Delta Haze's counterclaim was proper, and whether Delta Haze's claims were time-barred.

ABKCO Music, Inc. v. LaVere, 217 F.3d 684, 2000 U.S.App.LEXIS 14568 (9th Cir. 2000)[ELR 22:6:19]

Rolling Stone magazine wins dismissal of defamation lawsuit filed by D.A.R.E. America complaining about article written by since-discredited journalist Stephen Glass

Rolling Stone has escaped from a defamation case filed by D.A.R.E. America, without liability or even a trial. Federal District Judge Virginia Phillips has granted the magazine's motion for summary judgment, in a case that is noteworthy for this reason: the article that triggered the lawsuit - "Truth and D.A.R.E." - was written by a journalist who later became as controversial as the organization his article so seriously offended.

The journalist in question, Stephen Glass, was once a star at The New Republic, for which he had written regularly before Rolling Stone asked him to write about D.A.R.E. In fact, in 1997, Glass wrote an article about D.A.R.E. that had appeared in The New Republic. And much of the material in Glass's 1998 article for Rolling Stone originally appeared in that earlier New Republic piece.

D.A.R.E. is a non-profit corporation that provides in-school drug education programs. The effectiveness of its programs has been questioned by some researchers, as have D.A.R.E.'s responses to its critics.

What eventually turned Glass into a controversial character in his own right was the disclosure, two months after his D.A.R.E. article appeared in Rolling Stone, that he had fabricated portions of many articles he had written for The New Republic and others - including his Rolling Stone piece about D.A.R.E.

Glass's fabrications were first revealed by The Washington Post, and D.A.R.E. thereafter wrote a letter to Rolling Stone complaining about Glass's article. Rolling Stone published D.A.R.E.'s letter, and an Editor's Note that acknowledged that "some" quotes and incidents in the article had been fabricated. The Editor's Note specifically identified three of those statements. But D.A.R.E. had complained that eight other statements were libelous, and Rolling Stone's Editor's Note did not mention those. D.A.R.E.'s defamation lawsuit followed.

As a public figure, D.A.R.E. had to prove that Rolling Stone published Glass's article with "actual malice." Since Glass knew his article was in part false, D.A.R.E. thought it had done that. But Judge Phillips found that Glass wrote his article as an independent contractor, not as a Rolling Stone employee. For this reason, the judge concluded that Glass's "knowledge of his own falsehoods cannot be imputed to [Rolling Stone]."

Judge Phillips also found that there was no other evidence of actual malice on Rolling Stone's part. It published Glass's article before Glass was exposed, and it fact-checked his article before publishing it. As a result, the magazine had not published with knowledge of the article's falsity or with reckless disregard for the truth, the judge said. "[T]o the contrary, [Rolling Stone] devoted the necessary time and effort to confirm Glass's sources and information."

Finally, with respect to four of the eight statements about which D.A.R.E. complained, Judge Phillips found that "the record contains sufficient evidence to corroborate the substantial truth of Glass's statements. . . ."

D.A.R.E. America v. Rolling Stone Magazine, 101 F.Supp.2d 1270, 2000 U.S.Dist.LEXIS 6508 (C.D.Cal. 2000)[ELR 22:6:19]

Florida appellate court affirms punitive damage award won by model against resort that used photos of model in travel agency brochures beyond three-year period authorized by contract; but court rules that award was excessive and reduces amount from $250,000 to $42,000

There's a price to be paid for using photographs of a model beyond the term specified in the model's contract. In one Florida case, that price came to $56,000 - $42,000 of which was purely punitive damages.

As stiff a price as this may seem to some, it was a good deal less than a jury awarded model Robert Wagner in his lawsuit against Sun International, the operator of a resort in the Bahamas. Wagner had sued Sun for using photos of Wagner in travel agency brochures beyond the three-year period in the contract

Wagner had signed at the time he posed for the photos. The jury awarded Wagner $264,000 - $14,000 in compensatory damages and $250,000 in punitive damages.

Sun appealed, arguing that no punitive damages should have been awarded at all. In support of its position, Sun cited an earlier Florida Court of Appeal decision, Genesis Publications v. Goss (ELR 6:2:12), in which punitive damages had been set aside entirely. But Sun's argument was rejected.

In a Per Curium decision, the Florida Court of Appeal distinguished the circumstances in the Genesis case from those in Wagner's suit against Sun. In Wagner's case, the appellate court explained, Sun had "direct knowledge" that brochures containing photos of Wagner were available in travel agencies and the resort itself, as much as two years after the term of Wagner's three-year contract had expired. Thus, the appellate court concluded that punitive damages were appropriate.

On the other hand, a Florida statute limited punitive damages to three times compensatory damages, except in cases where the claimant shows "by clear and convincing evidence" that a greater award is not excessive. In this case, the evidence did not rebut the statute's presumption that a greater award was excessive, the appellate court concluded.

The appellate court therefore reduced the punitive damage award to $42,000 - three times Wagner's compensatory award of $14,000.

Sun International Bahamas, Ltd. v. Wagner, 758 So.2d 1190, 2000 Fla.App.LEXIS 5544 (Fla.App. 2000)[ELR 22:6:20]

Software emulator company's use of screen shots from Sony PlayStation video games for comparative advertising purposes is a fair use, federal appellate court holds

Some video games are designed to play on dedicated consoles only - not on computers - and Sony PlayStation games are among them. They are designed to play only on PlayStation consoles, and only on consoles made for use in particular parts of the world, to boot. (Games from Japan, for example, will not play on consoles from the United States.)

Several companies have invented things that allow PlayStation games to be played on computers or on consoles from other parts of the world. Sony has attempted to put a stop to the activities of those companies, with mixed success (ELR 22:3:16, 21:1:14).

A two-man software company named Bleem is Sony's most recent adversary in the PlayStation legal wars. Bleem created and distributes a "software emulator" that enables PlayStation games to be played on personal computers. Bleem's software does so by "emulating" the functions performed by Sony's console. This of course jeopardizes sales of the Sony PlayStation console, though it probably increases sales of the game disks themselves.

In an effort to put a stop to Bleem's activities, Sony filed suit in federal court asserting that Bleem violated several of Sony's intellectual property rights. The suit did not challenge the legality of Bleem's emulator software itself. Among other things, however, Sony take issue with Bleem's unauthorized use of PlayStation screen shots in Bleem's advertising.

Federal Court of Appeals Judge Diarmuid O'Scannlain explained that "Screen shots are ubiquitous in the packaging of video games because they convey to the purchaser exactly what the game will look like on a screen when it is played." Bleem used PlayStation screen shots to compare the way Sony's games look when played on PlayStation consoles with the way they look when played on computers using Bleem's emulator.

According to Sony, Bleem's unauthorized use of these screen shots constituted copyright infringement. A federal District Judge Charles Legge agreed, and granted Sony's motion for a preliminary injunction. On appeal, however, that injunction has been vacated. Writing for a three-judge panel of the Ninth Circuit Court of Appeals, Judge O'Scannlain has held that Bleem's use of PlayStation screen shots is a non-infringing fair use.

Judge O'Scannlain characterized Bleem's use of the screen shots as "comparative advertising," and thus concluded that all four fair use factors weighed in favor of Bleem. "We are persuaded by the need for Bleem to impose minimally upon Sony's copyright with respect to these screen shots," the judge explained, "because there is no other way to create a truly accurate comparison for the user."

Editor's note: Though Bleem seems to have won the advertising battle, it may not win the unauthorized-emulator war. In another Sony PlayStation case, a federal District Court held that a device that permits users to play games from other countries on their American PlayStations violates the anti-circumvention provisions of the Digital Millennium Copyright Act (ELR 22:3:16). Bleem's emulation software appears to do that as well. The anti-circumvention issue, however, was not before Judge O'Scannlain, when he ruled on the screen shot infringement claim of Sony's case.

Sony Computer Entertainment v. Bleem, LLC, 214 F.3d 1022, 2000 U.S.App.LEXIS 8774 (9th Cir. 2000)[ELR 22:6:21]

Manufacturer of board game "Clever Endeavor" is not entitled to recover anticipated lost profits from game's distributor, despite distributor's alleged breach of licensing agreement, because manufacturer's damages are too speculative, appellate court holds

MindGames, Inc., has lost its breach of contract lawsuit against Western Publishing Company; and a frustrating loss, it must have been, too. MindGames is the manufacturer of the board game "Clever Endeavor." Western Publishing is the company that MindGames licensed to sell the game, after MindGames sold 30,000 of them by itself in less than three months.

The central dispute in the case was whether Western did all it was required to do in connection with marketing "Clever Endeavor." Though Western sold 165,000 copies of the game during the first year of its license, sales fell "precipitously" after that, because - MindGames alleged - Western failed to adequately market the game.

Western successfully chipped away at MindGames' claims, in two separate motions. The first resulted in a federal District Court ruling that MindGames was not entitled to recover any lost profits from Western's alleged breach, because MindGames was a new business whose future profits could not be established with reasonable certainty, and thus their recovery was barred by the "new business rule." (ELR 19:3:22)

The second motion resulted in a District Court ruling that MindGames was not entitled to recover the minimum fees Western had to pay in order to renew its license, because MindGames permitted Western to continue distributing the game even though Western had not paid those fees to do so. (ELR 20:5:28)

On appeal, both rulings - and thus the judgment dismissing MindGames' case entirely - have been affirmed.

Writing for the Court of Appeals, Judge Richard Posner held that the rejection of MindGames' claim for the unpaid renewal fee had been "clearly correct." Western simply had not exercised its option, Judge Posner noted, and thus was not required to pay a renewal fee. When MindGames permitted Western to continue distributing "Clever Endeavor" anyway, that created a new contract, which didn't require Western to pay a renewal fee.

"The more difficult issue," Judge Posner continued, "is MindGames' right to recover lost profits for Western's alleged breach of its duty to promote 'Clever Endeavor.'" On this issue, MindGames' scored a partial victory: it persuaded Judge Posner that the "new business rule" probably doesn't exist any more in Arkansas (the state whose law applied to the case); but if it does, it "surely" doesn't apply in this case. Since its claim for lost profits had been dismissed precisely because of the "new business rule," it looked at first as though MindGames might prevail. But that didn't happen.

Instead, Judge Posner determined that the evidence of MindGames' lost royalties "was too speculative to ground an award of damages for that loss." This was so, at least in part, because when Western allegedly breached its license, MindGames made no other efforts to market "Clever Endeavor."

This was "telling evidence of a lack of commercial promise unrelated to Western's conduct," Judge Posner reasoned.

"This is not to suggest that damages for lost earnings on intellectual property can never be recovered," Judge Posner cautioned, nor "that 'entertainment damages' are not recoverable in breach of contract cases." It simply meant that in this case, MindGames "was not in the position of a bestselling author who can prove from his past success that his new book, which the defendant failed to promote, would have been likely . . . to have enjoyed a success comparable to that of the average of his previous books if only it had been promoted as promised."

MindGames, Inc. v. Western Publishing Co., 218 F.3d 652, 2000 U.S.App.LEXIS 14476 (7th Cir. 2000)[ELR 22:6:21]

Yahoo! Fantasy Football does not infringe fantasy football game patent issued in 1990 to Fantasy Sports Properties, federal District Court rules

Back in 1990, a company known as Fantasy Sports Properties, Inc., obtained a patent for its "Computerized Statistical Football Game." In everyday language, the game is called Fantasy Football. It's played by fans who pretend to draft actual NFL players in order to assemble their own fantasy teams. Each week, fantasy teams win fantasy points based on the performance of the real players in that week's actual NFL games.

In order to get a patent, an invention must be "novel." The game of football of course was not novel in 1990; and it appears that Fantasy Sports got its patent only by including a novel rule that "bonus points" would be awarded to its fantasy teams under certain circumstances.

Yahoo began offering fantasy football to web surfers in 1998, thus prompting Fantasy Sports to sue it for patent infringement. Since Yahoo's version of fantasy football doesn't include bonus points under any circumstances, it argued that its game did not infringe Fantasy Sports' patent.

Yahoo made this argument in a motion for summary judgment; and federal District Judge Jerome Friedman has agreed.

The judge found that Yahoo's game does not award bonus points, and that Yahoo's scoring rules contain no elements that were not present in the prior art that existed before Fantasy Sports got its patent. For this reason, the judge ruled that Yahoo's game does not infringe Fantasy Sports' patent.

Fantasy Sports Properties, Inc. v. Sportsline.Com, Inc., 103 F.Supp.2d 886, 2000 U.S.Dist.LEXIS 9868 (E.D.Va. 2000)[ELR 22:6:22]

Louisiana noise statute violates First Amendment free speech rights of New Orleans street musicians, federal District Court rules

A group of New Orleans street musicians and others were successful in their Constitutional challenge to a Louisiana statute that attempted to curtail noise in public places. The statute made it unlawful for anyone to produce sound in public within ten feet of hospitals or houses of worship if the sound produced was in excess of 55 decibels and was "likely to disturb, inconvenience, or annoy a person of ordinary sensibilities."

The musicians challenged the statute on two grounds. First, they argued that the statute violated their First Amendment right of free speech, and second, they argued that the statute was contrary to the Establishment Clause since it gave religious authorities the right to regulate speech. The court found in favor of the musician on the first ground.

In holding that the statute violated the First Amendment right to free speech, the court recognized that a government has an interest in protecting its citizens from excessive noise and may therefore impose reasonable restrictions to accomplish this. A government cannot, however, regulate speech simply because it does not like the content of the speech, and therefore, any regulations must be content neutral, narrowly tailored, and leave open alternate methods of communication.

Louisiana's statute was not "narrowly tailored" since the statute attempted to prohibit sound levels that were not disturbing in and of themselves. In reaching this conclusion, the court noted that sound in excess of 55 decibels included the level of normal human conversation. Even more troubling, however, was not that the statute absolutely prohibited sounds in excess of 55 decibels - only sounds which were "likely to disturb, inconvenience, or annoy a person of ordinary sensibilities." Since there is no logical way to regulate what "annoys" people, the court found that the statute, at its worst, would allow the government to prohibit speech with which it did not agree.

The "likely to disturb, inconvenience or annoy" wording of the statute was also found to be unconstitutionally vague in that it would require a person of "common intelligence" to guess at its meaning. A statute must provide fair warning of the conduct that is prohibited as well as explicit standards for its enforcement.

The court found that the statute did not violate the Establishment Clause, however. A statute violates this clause if it lacks secular purpose, if its primary affect is to advance religion, and if it excessively entangles with government with religion. Here, the court indicated that the statute did have a secular purpose - namely, to protect the public from excessive noise. The statute also did nothing to advance religion, nor did the statute give religious groups the power to restrict speech or enforce the statute.

Lionhart v. Foster, 100 F.Supp.2d 383, 1999 U.S.Dist.LEXIS 17059 (E.D.La. 1999)[ELR 22:6:22]

Preliminary injunction barring broadcasts by unlicensed radio station is affirmed; FCC is likely to defeat station's First Amendment challenge to license requirement, appellate court holds

Prayze FM is a low-power radio station that operated out of Bloomfield, Connecticut. It used to broadcast gospel music and Christian programming to the African-American community in the greater Hartford area. And it did so without a license, even though federal law requires radio broadcasters to be licensed by the FCC.

Prayze made a constitutional case out of the FCC's efforts to enjoin its broadcasts. Prayze argued in fact that the law's requirement that low-power broadcasters be licensed violates the station's First Amendment rights.

The argument was not successful at the District Court level. District Judge Warren Eginton granted the FCC's request for a preliminary injunction barring further broadcasts by Prayze (ELR 22:2:24).

Prayze is not easily discouraged, however. It took its First Amendment argument to the Court of Appeals, where once again it has been rejected. In an opinion by Judge Guido Calabresi, the appellate court has affirmed the preliminary injunction, for two reasons.

First, the FCC does not have unfettered discretion to withhold licenses from broadcasters, as Prayze contended it does. Second, it is likely that the FCC's low-power broadcasting regulations will be found to be narrowly tailored to achieve the government's substantial interest in allowing broadcasters to operate without spectrum interference from other broadcasters.

Prayze FM v. Federal Communications Commission, 214 F.3d 245, 2000 U.S.App.LEXIS 12186 (2nd Cir. 2000)[ELR 22:6:23]

Appellate court upholds FCC's revocation of radio station licenses on account of station owner's conviction for sexually abusing children and misrepresentations to FCC concerning owner's continued involvement in station affairs

The "character" of a radio station's owner is a factor the Federal Communications Commission considers - because it is directed to do so by statute - when it grants or renews broadcast licenses. As a result, Contemporary Media, a company that owns radio stations in Missouri and Indiana, had reason to be concerned when Michael Rice, the company's sole shareholder, president and treasurer, was convicted for sexually abusing children.

As required by law, Contemporary notified the FCC of Rice's arrest, and said that he had "no managerial or policy role in the affairs" of the company since shortly after that arrest. When Rice was later convicted, the FCC revoked Contemporary's licenses, because of that conviction and because the FCC learned that Rice in fact did play a role in the company's affairs following his arrest.

Contemporary appealed, but without success. Writing for the Court of Appeals, Judge Merrick Garland has affirmed the revocation of the company's licenses. The judge concluded that it was rational - rather than arbitrary or capricious - for the FCC to consider felony convictions in making licensing decisions, and that its policy of doing so had been rationally applied in connection with Rice's conviction.

Moreover, Judge Garland held that Contemporary's misrepresentation concerning Rice's continued involvement in company affairs was grounds, by itself, for revoking the company's licenses. Finally, the judge ruled that the revocation of those licenses did not violate the Eighth Amendment's ban on excessive fines.

Contemporary Media, Inc. v. Federal Communications Commission, 214 F.3d 187, 2000 U.S.App.LEXIS 14054 (D.C.Cir. 2000)[ELR 22:6:23]

Preliminary injunction barring enforcement of Child Online Protection Act is affirmed on appeal

In an opinion that praises "Congress' laudatory attempt to achieve its compelling objective of protecting minors from harmful material on the World Wide Web," a federal Court of Appeals has nevertheless affirmed a preliminary injunction that bars enforcement of the Child Online Protection Act.

The Act - which is commonly referred to as "COPA" - was passed by Congress in 1998, in response to a United States Supreme Court decision holding that the Communications Decency Act was unconstitutional (ELR 19:2:7). The Communications Decency Act also was passed by Congress to protect children from material on the Internet. And COPA was an attempt to respond to the Supreme Court's reasons for declaring the Communications Decency Act unconstitutional.

The Supreme Court found fault with the Communications Decency Act, in part, because it was too vague about what sort of "indecent" or "patently offensive" material could not legally be transmitted to children. Congress attempted to be more specific in

COPA, because it prohibits making available to minors only those sex materials that are harmful to them "applying contemporary community standards."

The Court of Appeals' decision that COPA, like its predecessor, is unconstitutional too shows just how difficult it is to draft a statute that regulates content on the Internet in a constitutional fashion.

In an opinion by Judge Leonard Garth, the appellate court explained that COPA's fatal flaw is that it requires Web sites to "abide by the most restrictive and conservative state's community standards," because "material posted on the Web is accessible by all Internet users worldwide, and because current technology does not permit a Web publisher to restrict access to its site based on the geographic locale of each particular Internet user. . . ."

Judge Garth reasoned that this "imposes an overreaching burden and restriction on constitutionally protected speech," because "to meet the more stringent standards of less liberal communities, adults whose constitutional rights permit them to view such materials would be unconstitutionally deprived of those rights."

Editor's Note: COPA also created a Commission to study methods to reduce access to sexually explicit material on the Internet. The Commission's recommendations are reported the "Washington Monitor" section of this issue (ELR 22:6:12).

American Civil Liberties Union v. Reno, 217 F.3d 177, 2000 U.S.App.LEXIS 14419 (3rd Cir. 2000)[ELR 22:6:24]

Transmission equipment for unlicensed FM radio station is forfeited; appellate court rejects station owner's First Amendment and other defenses

Radio station WPRC-FM used to transmit from Belinda's Bar in Cleveland, Ohio, at 91.9 on the FM dial. It had all the equipment it needed to do so. What it didn't have was an FCC license, even though federal law makes it illegal to broadcast without one.

The FCC warned WPRC-FM's owner, William Perez, more than once that he was violating federal law, and that he could lose his equipment - or worse - for doing so. But Perez persisted nonetheless. As a result, the government filed a lawsuit in federal court, seeking a forfeiture of the station's transmitting equipment.

Perez put up a vigorous fight, arguing among other things that his First Amendment free speech rights would be violated if his transmitter were forfeited. His arguments were not successful in the District Court, nor have they been in the Court of Appeals.

District Judge Donald Nugent granted the government's motion for summary judgment and entered a forfeiture order. On appeal, Judge Karen Moore has affirmed. In her opinion, Judge Moore dealt respectfully with each of Perez's many arguments, though she rejected all of them.

Perez's First Amendment argument was rejected, because more than a half-century ago, the Supreme Court held that "The right of free speech does not include . . . the right to use the facilities of a radio station without a license." Judge Moore explained, "Because Perez does not have a First Amendment right to broadcast his views on an unlicensed radio station, this argument does not present a defense to forfeiture."

United States v. Any and All Radio Station Transmission Equipment, 218 F.3d 543, 2000 U.S.App.LEXIS 15604 (6th Cir. 2000)[ELR 22:6:24]

Kingvision Pay-Per-View is awarded only $1,540 in damages in suit against bar that had unlawfully intercepted telecast of Mike Tyson's championship fight with Bruce Sheldon

Kingvision Pay-Per-View won its lawsuit against the owner of a bar in the San Francisco Bay area called Blue Bird Cocktails, on account of the bar's unlawful interception and showing of the pay-TV telecast of Mike Tyson's championship fight with Bruce Sheldon in 1996.

The bar's owner failed to answer Kingvision's complaint within the time required by federal rule, so

Kingvision's victory was by default. But as things turned out, it wasn't much of a victory.

The only issue federal District Judge Thelton Henderson had to decide was how much in damages to award Kingvision. It had asked for statutory damages under 47 U.S.C. sections 605 and 553, both. But Judge Henderson decided to award statutory damages under section 605 alone. Moreover, he decided to award only $1,000 in statutory damages, rather than the "enhanced" damages of as much as $100,000 Kingvision had requested.

Judge Henderson declined to award enhanced damages, because even though the bar had displayed the Tyson-Sheldon fight in a "commercial setting," there was no evidence that it had advertised that it would show the fight, nor was there evidence it had collected a cover charge to enter the bar that night, nor was there evidence it had charged a premium for food or drinks while the fight was being shown.

Moreover, since there were only 16 patrons in the bar during the fight, "any commercial advantage or private financial gain was minimal at best," Judge Henderson concluded. Kingvision didn't even allege that those 16 patrons had come to the bar solely to watch the fight. Nor did Kingvision allege that the bar was a repeat offender.

In addition to statutory damages under 47 U.S.C. section 605, Kingvision sought $10,000 for copyright infringement, and an additional $10,000 in damages under California statutory and common law - amounts that Kingvision said approximated its actual damages. Judge Henderson awarded instead just $540 in actual damages, calculated at the rate of $15 for each of the 16 patrons in the bar at the time of the fight, for a total of

$240; plus $300 "for any possible loss from future sales."

The judge also indicated that he would award Kingvision attorney's fees and costs, though not necessarily the $2,500 in fees and $475 in costs it requested. Rather, the judge asked Kingvision to submit an "itemized list" of fees and costs, detailing the time spent on each task and the hourly rate charged.

Kingvision Pay-Per-View, Ltd. v. Backman, 102 F.Supp.2d 1196, 2000 U.S.Dist.LEXIS 9264 (N.D.Cal. 2000)[ELR 22:6:25]

Texas Supreme Court rules that high school baseball players, whose team forfeited all games when league learned it had used an ineligible player, do not have constitutional right to participate in statewide baseball tournament

According to sports lore, high school football is the religion of Texas. But now there is evidence that baseball can be important too. The evidence in question is a lawsuit filed by the parents of members of the Robstown High School baseball team, in an effort to get the team a slot into a statewide baseball tournament.

Apparently, Robstown's team had used an ineligible player for much of the season. When the Interscholastic League found out about it, the League forfeited the team's victories, thereby knocking the team out of the tournament.

A Texas trial court judge granted the parents' request for injunctive relief and ordered the League to hold a playoff game between Robstown High and Roma High. The League appealed to the Texas Supreme Court, which has let the League off the hook.

In a short, unsigned Per Curiam decision, the Supreme Court held that high school students do not have a constitutional right to participate in extracurricular activities, and that "judicial intervention in matters such as these often does more harm than good."

In this case, the parents had alleged that their children would suffer "immediate and irreparable harm if they do not participate in the State baseball tournament." But "This allegation is not enough to demonstrate a constitutional violation," the Supreme Court held.

As a result, the Supreme Court ordered the trial court to vacate its injunction "immediately."

In re University Interscholastic League, 20 S.W.3d 690, 2000 Tex.LEXIS 55 (Tex. 2000)[ELR 22:6:25]

High school principal and athletic director did not violate track coach's constitutional rights by placing him on leave for recommending caffeine as a performance-enhancer to distance runner during track meet

Cola soft drinks are perfectly legal, even when consumed by high school athletes shortly before they compete. However, many types of cola contain caffeine. As a result, the head track coach at Wayne High School in Ohio put his job in jeopardy when, during the Roosevelt Relays track meet, the coach recommended a cola to one of his team's distance runners, telling him the caffeine would help his performance during his upcoming race.

Coach Bob Schul had a reputation for recommending caffeine to his team members as a performance enhancer. For this reason, Wayne High's principal and athletic director had warned Schul not to "mention" caffeine to anyone on the track team. When the principal and athletic director learned that despite their warning, Schul had recommended a cola to one of his long distance runners during the meet, specifically because the caffeine would help, they placed Schul on administrative leave for the balance of his coaching contract.

In response, Schul sued the athletic director and principal in federal court, alleging that they had violated his First Amendment free speech and association rights as well as his Fourteenth Amendment due process rights. Schul's suit was not successful, however. Judge Walter Rice has granted the athletic director and principal's motion for summary judgment and has dismissed the case.

Judge Rice dismissed Schul's free speech claim on the grounds that his advice on the benefits of drinking caffeine involved a matter of private, rather than public, concern. Therefore, as a government employee, the First Amendment did not protect Schul from reprisals on account of that advice. Moreover, the judge added, the interests of the athletic director and principal "outweighed Schul's interests in speaking to [the runner] about caffeine, even if such speech did touch upon a matter of public concern."

The judge also ruled that, "as a suspended head coach of the track team," Schul did not have a constitutional right to associate with members of the team.

Finally, Judge Rice rejected Schul's due process claims. Those claims were apparently based on Schul's contention that his "good name" had been injured without his having been given "a name-clearing hearing." However, the judge found that the athletic director and principal had done nothing to injure Schul's good name. Rather, Schul admitted that he, and he alone, had provided the news media with information about his suspension, when he filed his ultimately unsuccessful lawsuit.

Schul v. Sherard, 102 F.Supp.2d 877, 2000 U.S.Dist.LEXIS 6350 (S.D.Ohio 2000)[ELR 22:6:26]

DEPARTMENTS

Book Note:
Internet Law and Business Handbook by J. Dianne Brinson and Mark F. Radcliffe

The Internet Law and Business Handbook is a practical guide to the legal and business issues that arise when creating Web sites, creating new material for the Internet or using existing material from it, and e-commerce.

Since it was written for non-lawyers as well as lawyers, it's an especially readable, handsome, and modestly-priced volume. It's peppered with examples that illustrate the application of legal doctrines, and is accompanied by a computer disk containing fifteen contract forms.

The book's 27 chapters cover, as "Building Blocks," such topics as the basics of copyright, patent, trademark, trade secret, contract, defamation, publicity and privacy law. It then addresses agreements, licenses and clearances relevant to Web site creators. Marketing and E-Commerce issues are explained next, including domain names, privacy laws, and linking, framing and caching. A concluding section discusses such topics as music on the web, distance learning issues, and service provider liability.

The book is available at bookstores or directly from Ladera Press (www.laderapress.com, phone 800-523-3721). [ELR 22:6:27]

In the Law Reviews:

The Entertainment and Sports Lawyer, published by the American Bar Association Forum on the Entertainment and Sports Industries 750 North Lake Shore Drive, Chicago, IL 60611-4497 (800) 285-2221, has published Volume 18, Number 2 with the following articles:

Riding the Bullet to the eBook Revolution by Bob Pimm, 18 Entertainment and Sports Lawyer 1 (2000) (for address, see above)

White House Anti-Drug Policy and Government Manipulation of Media Content an editorial by Ariel Berschadsky, 18 Entertainment and Sports Lawyer 3 (2000) (for address, see above)

Zombie and Once-Dead Works: Copyright Retroactivity after the E.C. Term Directive by Paul Edward Geller, 18 Entertainment and Sports Lawyer 7 (2000) (for address, see above)

Trademark Counterfeiting, Product Piracy, and the Billion Dollar Threat to the U.S. Economy by Paul R. Paradise, reviewed by William Nix, 18 Entertainment and Sports Lawyer 13 (2000) (for address, see above)

Entertainment, Publishing and the Arts Handbook 2000-2001 Edition has been published by West Group with the following articles:

Copyright Protection for Fictional Characters within the Context of Professional Wrestling by Dan Swartwout, 2000-2001 Entertainment, Publishing and the Arts Handbook 3 (2000)

Fair Use of Trademarks and Copyrighted Works by Paul Dennis Connuck and Douglas F. Galanter, 2000-2001 Entertainment, Publishing and the Arts Handbook 25 (2000)

ACPA/UDRP: An Improvement Over Traditional Trademark Law? An Overview of the Law of Cyber-Squatting and Intellectual Property Protection by David N. Makous and Daniel C. DeCarlo, 2000-2001 Entertainment, Publishing and the Arts Handbook 55 (2000)

In Search of Uniformity-State Marital Property Laws and the Balkanization of Federal Copyright Ownership: Why Congress Must Act Now to Ensure a Nationwide Standard by Edward Randall Bernett, 2000-2001 Entertainment, Publishing and the Arts Handbook 65 (2000)

Internet Privacy and Free Expression: New Media for the New Millennium by Kurt Wimmer, 2000-2001 Entertainment, Publishing and the Arts Handbook 73 (2000)

Liability Insurance for E-Business Risks by Roger Raphael and William John Rea, Jr., 2000-2001 Entertainment, Publishing and the Arts Handbook 87 (2000)

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Factual Databases: Comparison Shopping over the Internet Post-Feist by Paul R. Katz and Charles Kim, 2000-2001 Entertainment, Publishing and the Arts Handbook 115 (2000)

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T. Williams, 2000-2001 Entertainment, Publishing and the Arts Handbook 139 (2000)

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The Digital Revolution and Its Effect on Recording Agreements by Owen J. Sloane, 2000-2001 Entertainment, Publishing and the Arts Handbook 233 (2000)

Defeating the Purpose: An Ethical Consideration of How the Talent Agencies Act Fails to Safeguard the Very Artists It Aspires to Protect by Eric G. Kaufman, 2000-2001 Entertainment, Publishing and the Arts Handbook 243 (2000)

Wages v. Property of a Minor: The Family Law Code v. the Probate Code in the State of California by Susan J. Cooley, 2000-2001 Entertainment, Publishing and the Arts Handbook 265 (2000)

Shopping Agreement as an Alternative to Traditional Film Option Deals by Jay S. Kenoff, 2000-2001 Entertainment, Publishing and the Arts Handbook 271 (2000)

Vertical Integration v. Contingent Compensation: An Analysis of How Profit Participation is Affected Through Corporate Self-Dealing by Eric G. Kaufman, 2000-2001 Entertainment, Publishing and the Arts Handbook 277 (2000)

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Ignacio, 2000-2001 Entertainment, Publishing and the Arts Handbook 361 (2000)

California's New Coogan Law, Senate Bill 1162-Implementation, 2000-2001 Entertainment, Publishing and the Arts Handbook 369 (2000)

The European Intellectual Property Review, www.sweetandmaxwell.com, 100 Avenue Road, London NW3 3PF, United Kingdom, has published Volume 22, Issue 9 with the following articles:

Norwzian Revisited by Tom Rivers, 22 European Intellectual Property Review 389 (2000) (for address, see above)

Defending the Public Interest, Hyde Park v. Yelland by Robert Burrell, 22 European Intellectual Property Review 394 (2000) (for address, see above)
[ELR 22:6:27]