INTERNATIONAL DEVELOPMENTS

British court denies request of Paul McCartney's fiancé Heather Mills for interim injunction that would have prohibited The Sun newspaper from publishing the address of her new home, though court recognized that her right of privacy might be violated if The Sun did so

Justice Lawrence Collins had to perform a delicate balancing act between the privacy rights of Heather Mills and the free expression rights of The Sun newspaper. The balance became necessary because shortly before Mills became engaged to Paul McCartney, a Sun reporter learned that Mills was buying a new home and he began work on an article about it. Mills has received several disturbing emails, and as a result of the killing of John Lennon and the

attack on George Harrison, she wanted to be certain that the address of her new home would not be made public, because she fears that she too may be physically threatened or even injured.

When Mills learned The Sun might be working on a story about her new home, she had her solicitor contact the newspaper's editor to request a written "undertaking" that it would not publish such a story. The Sun has a "good relationship" with McCartney and his publicist, and the paper's editor told Mills' solicitor it had no intention of publishing the story. But the editor declined to sign the requested undertaking, saying that if other newspapers published it first, The Sun might then do so as well.

That apparently led to some heated exchanges which culminated in the editor's sending the solicitor a letter that said, "If you . . . threaten me in any way, I reserve the right to change my mind and print the story

to teach you a lesson." In response, Mills filed suit against the paper in the Chancery Division of the High Court of Justice, and immediately obtained "an injunction without notice," restraining The Sun from publishing material that might identify her new address. Less than a week later, Justice Collins conducted a hearing on whether the "injunction without notice" should be extended to an "interim injunction" (until trial). Ultimately, Justice Collins decided that it should not.

Though Great Britain does not have a First Amendment, it is a party to the European Convention on Human Rights, Article 10 of which provides that "Everyone has the right to freedom of expression." The European Convention was given effect in Britain by its enactment of the Human Rights Act of 1998, section 12 of which prohibits "restraining publication before trial" unless courts are satisfied that the "publication should

not be allowed." In deciding that issue, the Act requires courts to consider "any relevant privacy code" (among other things).

There is a "relevant privacy code" in Britain. It is the Code of Practice of the Press Complaints Commission, one clause of which provides that "everyone is entitled to respect for his or her private and family life [and] home. . . ." This clause, Justice Collins said, is itself "plainly based" on Article 8 of the European Convention - an Article that is virtually identical in its wording.

From this, Justice Collins concluded that "in any case where the court is concerned with issues of freedom of expression in a journalistic . . . context, it is bound to pay particular regard to any breach of the [privacy] rules set out in the [Code of Practice of the Press Complaints Commission, and a] . . . newspaper which flouts [those rules] is likely . . . to have its claim

to an entitlement to freedom of expression trumped by . . . considerations of privacy."

As applied to this case, Justice Collins ruled - as Mills had urged him to - that "there is jurisdiction to restrain a newspaper from publishing the address of a person in certain circumstances." One of those "circumstances" would be "the risk of injury or death to the person involved" - something the Code of Practice itself recognizes as a "rationale for prohibiting newspapers from publishing the address of the home of a celebrity (or material which might enable people to find its whereabouts)" because "celebrities have problems with stalkers. . . ."

Nevertheless, Justice Collins denied Mills' request for an interim injunction. He had "no reason to doubt Ms Mills' sincerity in expressing her concerns about the adverse consequences which may flow from disclosure of her address or information which may

lead to it being known," he said, "but the evidence which she puts forward for a real risk is very slight." The location of her old home was well-known; her new one is in the same town; and its location will become known as well, "at least to a limited extent," simply as a result of her living there.

Moreover, Justice Collins was persuaded by The Sun's consistent position that it would not identify her new home unless other newspapers do so first. Justice Collins also was persuaded by The Sun's assurances that it would abide by the Code of Practice.

Mills was represented by Michael Tugendhat QC and John Critchley, instructed by Sheridans. News Group Newspapers (the company that publishes The Sun) was represented by Richard Spearman QC, instructed by Farrer & Co.

Mills v. Newsgroup Newspapers Limited, High Court of Justice Chancery Division (June 4, 2001), available at http://wood.ccta.gov.uk/courtser/judgements.nsf [ELR 23:5:4]

Hearing officer for Australian Registrar of Trade Marks rejects opposition by actor Yahoo Serious to registration of trade mark "Yahoo!" by American Internet company

It looks as though the American Internet company Yahoo! Inc. will be able to register its name as a trade mark in Australia after all, despite somber opposition by Australian actor Yahoo Serious. A hearing officer for the Australian Registrar of Trade Marks has rejected Serious' opposition and has

determined that Yahoo's application should "proceed to registration," unless Serious appeals.

Yahoo Serious acquired international fame as a result of his appearance in the 1989 movie "Young Einstein." Though Yahoo! Inc. didn't begin using the word "Yahoo" in connection with its Internet directory until 1995, its founders David Filo and Jerry Yang didn't select "Yahoo" to trade on the popularity of the Australian actor. Instead, "Yahoo" was selected for three other reasons: because it was an acronym for "Yet Another Hierarchical Officious Oracle"; because the word is an exclamation of joy; and because it was used to mean an uncouth or crude person in Gulliver's Travels.

Serious relied on several sections of the Australian Trade Marks Act in his opposition to the Internet company's registration of "Yahoo!" All but one of those sections, however, required him to show that

he used his first name "Yahoo" as a trade mark, in order for those sections to be grounds to reject the Internet company's registration. Under Australian law, this required Serious to show that he used his name in connection with goods or services - and that, he was unable to do.

Hearing Officer Ian Thompson concluded that "The evidence shows that Mr. Serious does not use his name, Yahoo Serious, or his forename, to distinguish goods or services." Though Serious uses his name in connection with his movies, "it is not apparent that either of the words 'Yahoo Serious' or the word 'Yahoo' are used as a trade mark in relation to the films." Hearing Officer Thompson rejected Serious' argument that because he is well-known, he has "inherent trade mark rights in his name." Such inherent rights "do not exist," the Hearing Officer ruled.

Moreover, even if Serious did have trade mark rights in his name, that would not prevent the Internet company from registering "Yahoo!" because "Yahoo!" and "Yahoo Serious" are not "substantially identical" or "deceptively similar."

This is so, the Hearing Officer explained, because "Yahoo Serious relies for its effect on the inherent tension explicit in the juxtaposition of two conflicting ideas - on the one side silliness and foolery and on the other side gravity and earnestness." By contrast, "The exclamation mark within [Yahoo!] makes it likely that word will be seen in its denotation of being an exclamation of joy or elation." As a result, the impressions conveyed by the two marks are "significantly different."

In addition, the evidence showed that the public is "used to distinguishing between them." Evidence offered by Serious to show actual confusion - such as

misdirected mail - did not. It "simply" showed, the Hearing Officer observed, that "postal items have . . . been delivered to the wrong person, a phenomenon that most people have encountered."

Yahoo Serious v. Yahoo! Inc., [2001] ATMO 74, available at www.austlii.edu.au/au/cases/cth/ATMO/2001/74.rtf [ELR 23:5:5]

WASHINGTON MONITOR

Warner Communications agrees to Consent Order prohibiting it from fixing prices of, or restricting advertising for, audio recordings and certain videos, in proceeding brought by Federal Trade Commission involving joint venture between Warner and PolyGram for distribution of "The Three Tenors - Paris 1998" album and video

Warner Communications has settled a case brought by the Federal Trade Commission, in which the FTC alleged that Warner and PolyGram violated the law by agreeing to fix prices and restrict advertising for albums and videos of performances by "The Three Tenors" recorded during the World Cup soccer finals in 1990 and 1994. Warner has signed a Consent Order that bars it from agreeing with competitors to fix the

prices of, or restrict the advertising for, audio recordings and "Three Tenors" videos.

Opera singers Luciano Pavarotti, Placido Domingo and Jose Carreras have performed together as "The Three Tenors" every four years during the World Cup soccer finals. PolyGram distributes albums and videos of their 1990 performance, and Warner distributes albums and videos of their 1994 performance. In anticipation of The Three Tenors' 1998 performance, Warner and PolyGram formed a joint venture giving Warner the right to distribute albums and videos of it in the United States, while PolyGram had the right to distribute them outside the U.S.

The FTC did not complain about the Warner-PolyGram joint venture itself. Instead, the FTC complained about a "moratorium" agreement by which PolyGram agreed not to discount or advertise the 1990 album and video, and Warner agreed not to discount or

advertise the 1994 album and video, for two and a half months shortly before and after the release of the 1998 album and video. According to the FTC, the "moratorium" agreement was prompted by concerns that the 1998 album and video would not be as "commercially appealing" as the earlier Three Tenors releases. Thus the "moratorium" was agreed to in order to reduce competition from those 1990 and 1994 releases.

According to the FTC, the "moratorium" was not reasonably necessary for the efficient operation of the joint venture, and it had the effect of increasing prices and injuring consumers.

The Consent Decree agreed to by Warner specifically provides that the company is not prohibited from agreeing with another company on the price and advertising plans for audio and video products, if those products are "jointly produced" by Warner and the

other company. (To be "jointly produced," Warner and the other company each would have to contribute "significant assets" to the product, such as artistic services, intellectual property, technology, manufacturing facilities and distribution networks.)

Likewise, the Consent Decree does not bar Warner from entering into joint venture agreements with other companies, nor does it prevent Warner from agreeing to restraints that are related to the venture and necessary to achieve its "pro-competitive benefits."

Finally, the Consent Decree permits Warner to participate in industry efforts to discourage the promotion of violent audio and video products to children, including agreements with competitors to prevent the advertising, marketing and sale to children of audio and video products that are labeled or rated with a parental advisory.

Following the 1997 agreement that prompted the FTC proceeding, PolyGram was acquired by The Seagram Company, which in turn merged with Vivendi and Canal Plus to form Vivendi Universal. As PolyGram's corporate successor, Universal has been named in a separate but similar FTC complaint. Universal, however, has chosen not to sign a consent decree, and thus the FTC's case against it will eventually proceed to trial.

In the Matter of Warner Communications Inc., Decision and Order, FTC Docket No. C-4025 (Sept. 17, 2001), available at www.ftc.gov/os/2001/09/warnerdo.htm [ELR 23:5:6]

United States Trade Representative sanctions Ukraine for failing to prevent piracy of CDs, DVDs and CD-ROMs

Articles about activities in the Ukraine don't appear in these pages very often. Back in the early '80s, a federal appellate court held that the Marx Brothers publicity rights were not violated by "A Day in Hollywood/A Night in the Ukraine" (ELR 4:12:1). But that production was fictional satire, and the case had nothing to say about actual Ukrainian events.

More recently, the Ukraine showed up in the Entertainment Law Reporter once again, this time for real. It was one of several countries the United States Trade Representative placed on its Priority Watch List as a result of the USTR's 1999 review of the protection being given to the rights of American intellectual property owners. The USTR found that in the Ukraine,

copyright piracy is extensive, enforcement is minimal, and pirates were manufacturing and exporting large quantities of unauthorized CDs and CD-ROMs throughout its region and to other parts of the world. The USTR reported that the Ukraine had not implemented "adequate and effective penalties" for commercial piracy despite being obligated to do so by international treaties including the 1992 U.S.-Ukraine bilateral trade agreement. (ELR 20:12:6)

In response to being placed on the USTR's Priority Watch List, the Ukraine formally adopted an Action Plan in which it agreed to use its existing laws to do two things. It agreed to stop the piracy, and to establish a "licensing regime" for CD, DVD and CD-ROM manufacturers designed to prevent piracy in the future. These things were to have been accomplished by November 2000, but they weren't. The Ukraine is still the largest maker and exporter of pirated disks in

Europe, according to U.S. companies that make and distribute legitimate products. As a result, the USTR has done two things.

First, the USTR has suspended the duty free importation of Ukrainian goods. Prior to the suspension, Ukrainian goods could be imported into the U.S. duty free, because the Ukraine had special status under the U.S. Generalized System of Preferences (GSP), a program that is designed to foster economic growth of "developing" and "least developed" countries that have been designated as "GSP beneficiary countries." The suspension means that importers of goods from the Ukraine will have to pay the same duties as those who import the same types of goods from other countries.

Second, the USTR has proposed to take "further action" against the Ukraine by imposing "prohibitive duties" on certain Ukraine goods - duties that would be

greater than those that must be paid by importers of the same types of goods from other countries. However, before imposing these prohibitive duties, the USTR will hold a hearing on two issues: whether imposing such duties on particular products would be "practicable or effective" in getting the Ukraine to stop piracy; and whether imposing such duties on particular products "would cause disproportionate economic harm to U.S. interests, including small- or medium-sized businesses."

The USTR has proposed to impose prohibitive duties on such goods as Ukrainian-made windbreakers, blazers, trousers, shirts, blouses and skis, as well as diamonds, minerals and steel.

Because of the events of September 11th, no date has been set yet for the USTR's hearing.

Determination of Action To Suspend GSP Benefits Under Section 301(b); Further Proposed Action and Publication of Preliminary Product List; and Request for Public Comment: Intellectual Property Laws and Practices of the Government of Ukraine, 66 Federal Register 42246 (Aug. 10, 2001) [ELR 23:5:6]

RECENT CASES

Federal court denies Sony Pictures' request for preliminary injunction in case alleging that television series "Queen of Swords" infringes "Zorro" copyright and trademark

Sony Pictures and Zorro Productions failed to persuade federal District Judge Audrey Collins that the syndicated television series "Queen of Swords"

infringes their copyright and trademark rights in "Zorro." Judge Collins therefore denied their request for a preliminary injunction, after giving their arguments meticulous and lengthy consideration.

The fictional character Zorro first appeared in 1919 in a serialized pulp fiction magazine story written by Johnson McCulley. Movie rights to the story and character were acquired almost immediately by Douglas Fairbanks Sr. who produced and starred in the first of many Zorro films to come - the silent movie classic "The Mark of Zorro."

The most recent motion picture to feature the character is "The Mask of Zorro" starring Anthony Hopkins, Antonio Banderas and Catherine Zeta-Jones, released by Sony in 1998. In the wake of that movie's enormous success, Fireworks Entertainment developed "Queen of Swords" - a television series whose similarities to "The Mask of Zorro" and to a series of

Zorro comic books prompted Sony and Zorro Productions to sue Fireworks for copyright and trademark infringement.

Zorro's copyright pedigree is garbled by seemingly conflicting assignments made decades ago by Zorro's creator McCulley, and by the fact that the copyrights to the original magazine story and Fairbank's silent film have long since expired. Nevertheless, in denying their request for a preliminary injunction, Judge Collins chose not to rely on the possibility that Zorro Productions does not own, and therefore Sony did not acquire, enforceable rights in the Zorro copyright. Instead, she chose to assume that they do own the copyrights they claim were infringed by "Queen of Swords."

Judge Collins nevertheless denied their request for a preliminary injunction, on the grounds that they failed to show that the television series was

substantially similar to any copyright-protected aspects of Sony's movie and the comic books. In order to reach that conclusion, the judge compared characters, dialogue, themes, plots, sequences of events, moods, settings and pace. Fans of either the movie or the television series will relish Judge Collins' analysis - one similar in tone to those done of the classics in college literature courses. What it showed, however, was that "Queen of Swords" was similar to "The Mask of Zorro" and the comic books only in unprotected ways, and it was dissimilar in all other ways.

Sony's boldest similarity argument was that the main character in "Queen of Swords," its heroine Tessa Alvarado, was similar to an amalgam of three characters from "The Mask of Zorro," Elena (as portrayed by Zeta-Jones), Diego (the Zorro character portrayed by Hopkins) and Murietta (the Zorro character portrayed by Banderas). Judge Collins

acknowledged the existence of some cases that stand for the proposition that the amalgamation of several characters into one can be infringing if that one character fulfills the same plot roles as the original several characters. In this case, however, the judge found that Tessa Alvarado did not fulfill the same plot roles as Elena, Diego or Murietta. Therefore, Sony's "amalgamation theory fails," she concluded.

Sony and Zorro Productions fared no better with their trademark claims. Judge Collins concluded that it was "unclear" how they have trademark or trade dress rights in the Zorro character, because they were unable to point to any specific mark. They relied instead on a claim to trademark and trade dress rights in "a daring black-masked and costumed character with a sword, superior fighting and riding skills, and a dual identity" who uses "a secret lair" in a "mythical Old California setting." Even if they could claim trademark or trade

dress rights in such a character, the judge found, they didn't present sufficient evidence that the character had secondary meaning. For that reason, Judge Collins rejected their trademark claim without needing to assess the likelihood of confusion.

Sony and Zorro Productions were represented by Seth A. Gold of Manatt Phelps & Phillips in Los Angeles. Fireworks Entertainment was represented by Jeffrey S. Kravitz and Keith G. Wileman of Lord Bissell & Brook in Los Angeles.

Sony Pictures Entertainment v. Fireworks Entertainment Group, 137 F.Supp.2d 1177, 2001 U.S.Dist.LEXIS 4549 (C.D.Cal. 2001)[ELR 23:5:8]

Stephen King and his publisher win dismissal of lawsuit alleging that King's novel "Desperation" infringed copyright to unpublished manuscript "Blood Eternal"; court found "no similarity" between them

Federal District Judge David Hurd didn't think Stephen King's 1996 novel Desperation was "a particularly good read." Nor did the judge think much of Blood Eternal, an unpublished manuscript by Christina Starobin, an assistant adjunct professor of literature at Ulster County Community College in Stone Ridge, New York. Judge Hurd did, however, read both works "cover to cover." Having done so, he concluded that "there is no similarity - substantial or otherwise - between [them]." For that reason, the judge has granted a motion for summary judgment made by King and Penguin Putnam, his publisher, and has dismissed

Starobin's copyright infringement complaint against them.

Starobin's manuscript is "about vampires who operate a car service in the suburbs of New Jersey." King's novel, by contrast, is about "an ancient evil spirit released from a mine in the Nevada desert." Judge Hurd noted that "There are no common characters, locations, or occurrences shared by [Starobin's] novel and King's. There are no common references to popular culture, historical events, or common sequences of events."

Instead, Starobin sought to overcome King and Putnam's summary judgment motion with two types of arguments.

First, she asserted that certain "correspondences" between her manuscript and King's novel demonstrate the "literary rape" of her work. However, these "correspondences" were no more significant than passages in which characters in her manuscript hear

footsteps and talk on walkie-talkies, just as characters in King's novel hear footsteps and talk on cellular phones.

Second, Starobin accused King of being a "liar," and she contrasted her college degrees with what she said was his "debatable literary stature." This argument did not have its intended affect on the judge. Judge Hurd "admonished" Starobin for her "vitriolic attach" on King, and said "It is disheartening that a person of [Starobin's] education and self-professed abilities would resort to such attacks, particularly in light of the obviously baseless nature of her claims."

Starobin represented herself pro se. King and Penguin Putnam were represented by Gerald E. Singleton of Frankfurt Garbus Kurnit Klein & Selz, and by Peter A. Herbert of Lankler Siffert & Wohl, in New York City.

Starobin v. King, 137 F.Supp.2d 93, 2001 U.S.Dist.LEXIS 4880 (N.D.N.Y. 2001)[ELR 23:5:9]

Author Michael Drosnin did not infringe copyright to computer program by reproducing printout of program's results in his best-selling book "The Bible Code"

There are scholars who believe that the Hebrew Bible contains embedded code that foretells future events. Originally, these scholars were mostly Orthodox Jews. But in 1997, the Bible code theory captured the attention of a very wide audience.

In that year, Simon & Schuster published a book entitled The Bible Code by Michael Drosnin who formerly had been a journalist for The Washington Post and The Wall Street Journal. Originally a skeptic,

Drosnin became a believer, especially because he himself used the code to predict the assassination of Yitzhak Rabin, a year before it happened.

Despite - or perhaps because of - the book's fantastic thesis, The Bible Code became a best-seller. It also became the subject of a copyright infringement suit, because of illustrations that appear in it. The illustrations in question are matrixes - similar in appearance to crossword puzzles - that were generated by a computer program called "Torah Soft" that is used to conduct "Bible code research."

The matrixes reproduced in The Bible Code were the result of Drosnin's own research; he didn't copy them from the software. On the other hand, Torah Soft includes its own digitized version of the Bible, from which the program extracts its results. Moreover, the format of the program's result matrixes was generated by Torah Soft; that format wasn't designed by Drosnin.

Apparently angered by Drosnin's failure to give credit to Torah Soft in his book, as allegedly promised, Torah Soft Ltd., the company that publishes the software, sued Drosnin for copyright infringement in federal court in New York City (as well as for breach of contract, in a separate filing in New York state court). Simon & Schuster, bookstores and book distributors were named as defendants too.

As intriguing as the case may be to Bible scholars, Torah Soft Ltd.'s copyright claim will not be going to trial. Judge Shira Scheindlin has granted a defense motion for summary judgment. She did so because she concluded that "none of the features of [Torah Soft] are sufficiently original to merit protection," and because Torah Soft Ltd. "failed to satisfy its burden of proving that the Software's outputs . . . , as displayed in the matrixes, contain protectible expression."

This conclusion followed from Judge Scheindlin's finding that the differences between Torah Soft's digital version of the Bible and traditional versions of it were functional rather than creative or were changes "dictated by the technological requirements of Bible code software and the end-user market . . . ." As such, they "are not protectible."

The judge also found that the matrix print-out format generated by Torah Soft was not eligible for copyright, because it was not originated by Torah Soft's creator. Other Bible code computer programs also displayed their results in matrixes before Torah Soft was created.

Torah Soft Ltd. is represented by Howard I. Rhine of Coleman Rhine & Goodwin in New York City. Drosnin and his co-defendants are represented by Marcia B. Paul of Kay Collyer & Boose in New York City.

Torah Soft Ltd. v. Drosnin, 136 F.Supp.2d 276, 2001 U.S.Dist.LEXIS 3508 (S.D.N.Y. 2001)[ELR 23:5:9]

Children's Broadcasting Corp. wins new trial on damages in contract and misappropriation lawsuit against ABC Radio and Disney following creation of Radio Disney network

Children's Broadcasting Corporation (CBC) is entitled to a new trial, limited to the issue of damages, in its breach of contract and trade secret misappropriation lawsuit against ABC Radio and the Walt Disney Company, the Eighth Circuit Court of Appeals has ruled.

CBC created a radio network in the early 1990s featuring programming for children age 12 and younger and their parents. In 1995 - before ABC was acquired

by Disney - CBC and ABC Radio entered into a contract by which ABC Radio agreed to provide CBC with advertising sales, affiliate development services and consulting. In order to enable ABC Radio to provide those services, CBC provided it with its advertiser list.

ABC was then acquired by Disney, and ABC Radio terminated its agreement with CBC. The agreement permitted either party to terminate at will, so ABC Radio committed no breach by doing so. On the other hand, when Disney started its own Radio Disney network, Disney and ABC Radio allegedly used CBC's advertiser list, including the list's information about the rates paid by each of CBC's advertisers.

In the lawsuit that followed, a jury found for CBC and awarded it $20 million. CBC's victory was short-lived, however, because federal District Judge Donald Alsop granted ABC Radio's and Disney's post-

trial motion for judgment as a matter of law and their alternative motion for a new trial. ABC Radio's and Disney's victories were short-lived as well.

In an opinion by Judge John Gibson, the Court of Appeals has held that the evidence heard by the jury was sufficient to support its conclusion that ABC Radio had breached its contract with respect to advertising sales and confidentiality, and that ABC Radio and Disney had misappropriated CBC's advertiser list. As a result, Judge Gibson has remanded the case to the District Court for a trial to determine what damages CBC suffered on these claims.

On the other hand, the appellate court ruled that Judge Alsop had properly dismissed CBC's additional claims for negligent misrepresentation, fraud and breach of fiduciary duty.

Children's Broadcasting was represented by Thomas F. Cullen Jr. in Washington DC. ABC Radio

and Disney were represented by Paul B. Klass in Minneapolis.

*Children's Broadcasting Corp. v. Walt Disney C*o., 245 F.3d 1008, 2001 U.S.App.LEXIS 6083 (8th Cir. 2001)[ELR 23:5:10]

Fox Searchlight Pictures fails to disqualify lawyers for former in-house counsel in her wrongful termination lawsuit against company; California Court of Appeal dismisses Fox's suit against former in-house counsel complaining of her disclosure of confidential information to her lawyers

Gia Paladino used to be in-house counsel at Fox Searchlight Pictures. The company didn't renew her contract, for reasons that were disputed. According to

Fox, Paladino's contract wasn't renewed because a film project on which she had provided advice "did not go well." Paladino, however, contended that her contract wasn't renewed, because of "her frequent use of pregnancy leave."

The real reason Paladino's contract wasn't renewed was the central issue in a wrongful termination lawsuit Paladino filed against Fox. But before that issue was decided, two satellite questions took center stage. One question was whether Fox could disqualify Paladino's lawyers. The other was whether Fox could pursue a lawsuit of its own against Paladino in which the company complained that she had revealed confidential and privileged information to her lawyers, in breach of her ethical obligations, fiduciary duties and employment contract.

The California Court of Appeal has ruled in Paladino's favor on both satellite issues. The central

issue - why Fox didn't renew Paladino's contract - will never be decided, because Fox and Paladino have settled that case.

Writing for the appellate court, Justice Earl Johnson rejected Fox's argument that Paladino's lawyers should have been disqualified, because prior to forming their own law firms, they were associates at Proskauer Rose, a law firm that provided Fox with advice and counsel on "'intellectual property issues' among other things." Justice Johnson noted that Fox provided no evidence that Paladino's lawyers acquired confidential or privileged information that was material to Paladino's lawsuit against Fox while they were associates at Proskauer Rose. On the other hand, Paladino's lawyers denied being involved with Fox in any matter related to Paladino's lawsuit. The only work they did for Fox while with Proskauer Rose, they said, was toxic tort litigation against a film laboratory. "This

former representation is insufficient to justify disqualification," Justice Johnson concluded.

Fox also sought to disqualify Paladino's lawyers on the grounds that she had disclosed confidential and privileged information to them. Justice Johnson rejected these grounds as well. "If an attorney representing a former in-house counsel against her employer must be disqualified because the client might divulge confidential or privileged information," the Justice reasoned, "then . . . the disqualification rules would effectively ban any litigation by a former in-house counsel against the employer as well as bar in-house counsel from defending actions brought by the employer."

Justice Johnson also ruled that Fox's lawsuit against Paladino should be stricken pursuant to a California "SLAPP" statute authorizing summary dismissals of Strategic Lawsuits Against Public

Participation. The Justice held that "the only thing the defendant needs to establish to invoke the protection of the SLAPP statute is that the challenged lawsuit arose from an act on the part of the defendant in furtherance of her right of petition or free speech." Paladino did not have to show, Justice Johnson added, that Fox "intended its suit to chill [her] exercise of First Amendment rights or that the suit had such an effect."

By this standard, Justice Johnson held that the trial court had erred when it ruled that Fox's lawsuit against Paladino was not subject to a motion to strike under the California SLAPP statute.

Fox Searchlight was represented by Jeffrey F. Webb and Theodore A. Russell in San Francisco. Paladino was represented by Alan H. Finkel of Zimmerman Koomer Connolly & Finkel and Nicholas P. Connon of Cochran-Bond Connon & Ben-Zvi in Los Angeles.

Fox Searchlight Pictures, Inc. v. Paladino, 106 Cal.Rptr.2d 906, 89 Cal.App.4th 294, 2001 Cal.App.LEXIS 377 (Cal.App. 2001)[ELR 23:5:10]

California court has jurisdiction to hear legal malpractice lawsuit against New York law firm that performed legal services for California movie producer

The New York City law firm of Rudolph & Beer, along with associate Mark Steverson, will have to defend themselves in a California court against a malpractice lawsuit filed against them by movie producer Shawn Simons. In an opinion by Justice Daniel Curry, the California Court of Appeal has held that California courts have personal jurisdiction to hear the case, even though Rudolph & Beer and Steverson

are in New York City and may never have been physically in California while rendering services to Simons.

Simons retained Rudolph & Beer to do all of the necessary legal work in connection with a movie titled "Conspiracy of Weeds." The question of whether those services were performed improperly has not been litigated on the merits yet, because early in the case, the firm and its associate made a successful motion to dismiss the case for lack of personal jurisdiction. The Court of Appeal's decision reverses that dismissal.

Justice Curry noted that: movie producer Simons is a California resident; lawyer Steverson is an associate of Rudolph & Beer even though he is licensed to practice law in California but not in New York; Steverson formed a California limited liability company to act as the movie's production company; he negotiated a sales agency agreement for that company

with a California-resident sales agent; and he negotiated financing for the movie with a California bank. "In so doing," the judge concluded, "Rudolph & Beer clearly sought to obtain the benefits and exercise the privileges which are peculiarly specific to California. Its status as a New York firm was thus totally irrelevant to the subject matter of [Simons'] claims."

Simons was represented by Robert W. Woods in Santa Monica and Charles K. Wake in Beverly Hills. Rudolph & Beer and Mark Steverson were represented by John W. Sheller and Jules S. Zeman of Haight Brown & Bonestreel in Santa Monica.

Simons v. Steverson, 106 Cal.Rptr.2d 193, 2001 Cal.App.LEXIS 303 (Cal.App. 2001)[ELR 23:5:11]

Federal court ruling that trademark to band name "War" is owned by Far Out Productions, despite 1984 Florida state court judgment that Far Out fraudulently acquired trademark from band members, is affirmed on appeal

The federally registered trademark to the band name "War" is owned by a corporation known as Far Out Productions, Inc., rather than by the band's former members. Federal District Judge William Keller so ruled, in a lawsuit brought by Far Out against some of band's former members.

Judge Keller rejected allegations made by those band members - in a counterclaim and separately-filed lawsuit of their own - that Far Out had acquired the band's name from them fraudulently, and that they, rather than Far Out, were the true owners of the name "War." The Ninth Circuit has affirmed that ruling, in a

decision that deals more with procedural issues than with trademark law.

Litigation over the band's name has been on-going for quite some time. Indeed, back in 1984, a Florida state court ruled that Far Out had acquired the trademark from the band's members by "fraud." By then, however, Far Out was in bankruptcy, so the Florida court noted that its order could not have any impact on Far Out that was inconsistent with the Bankruptcy Code. Indeed, the final judgment in the Florida case noted that the claims asserted against Far Out "were severed" because of the corporation's bankruptcy.

Thereafter, in 1987, Far Out and the band's former members settled "any and all lawsuits" between them, even those that had been reduced to judgment, on terms that reaffirmed Far Out's ownership of the name "War." The corporation then filed an incontestability

affidavit with the Patent and Trademark Office, declaring that Far Out was the owner of the mark and that there had been no final decision in any court adverse to its claim.

When disputes between Far Out and the band's former members re-erupted in 1996, the band members reasserted rights under the 1984 Florida judgment, and they argued that the corporation's incontestability affidavit had been filed in bad faith because it made no mention of that judgment. In granting Far Out's motion for summary judgment, Judge Keller rejected these arguments; and the Ninth Circuit has as well.

Writing for the Court of Appeals, Judge Charles Breyer has held that the 1984 Florida judgment did not bar Far Out from asserting its ownership of the mark, because by the time that judgment was entered, Far Out was no longer a party to the case. Likewise, Judge Breyer concluded that since the 1984 judgment did not

apply to Far Out, the incontestability affidavit it later filed with the Patent and Trademark Office was not filed in bad faith, even though it did not mention that judgment.

Far Out was represented by Jay M. Coggan in Beverly Hills. The former band members were represented by Matthew L. Pepper of Pepper Moore & Smith in New Orleans.

*Far Out Productions, Inc. v. Os*kar, 247 F.3d 986, 2001 U.S.App.LEXIS 7400 (9th Cir. 2001)[ELR 23:5:11]

Unfair competition claim by musical group "Champagne" against former members is dismissed

A musical group named "Champagne" has lost its unfair competition case against former members

who continued to use the name "Champagne" after they left the original group.

Before the lawsuit was filed, the original group considered registering "Champagne" as its trademark. However, "Champagne" already was a registered trademark owned by the Lawrence Welk Group. As a result, the original group could not register it. And in fact, the Welk Group told the original group they couldn't continue to use the name.

Judge Leonard Wexler acknowledged that the Lanham Act does not require trademarks to be registered in order to be protected. But he ruled that he would "not allow a party to seek protection for a mark through a claim of unfair competition when that party is fully aware that he has no federally protected right to the mark as a trademark." The judge therefore granted the defendants' motion to dismiss the case.

Champagne was represented by Victor M. Serby in New York City. The former members of the group were represented by David H. Ledgin in Mineola.

Champagne v. Di Blasi, 134 F.Supp.2d 310, 2001 U.S.Dist.LEXIS 3205 (E.D.N.Y. 2001)[ELR 23:5:12]

Playboy wins seven separate arbitrations against those who registered domain names that were confusingly similar to its trademarks; Penthouse wins two

Playboy is the best-selling men's monthly magazine in the world. It has a worldwide monthly circulation of more than 4.7 million copies, including those that are published in 16 international editions. Playboy Enterprises International, the magazine's

publisher, also produces movies and television programs, and operates casinos and websites. Moreover, the company has registered several "Playboy" trademarks, not only in the United States, but in several other countries too.

At one time in history, the word "playboy" may have meant nothing more than "a wealthy man devoted to the pleasures of nightclubs, sports and women." But today, "Playboy" is known around the world as a provider of adult entertainment.

Despite - or perhaps because of - the strength of the "Playboy" mark, several unrelated people and companies have attempted to capitalize on Playboy's fame by registering Internet domain names that include the word "Playboy." And they've done so without Playboy's consent.

To enforce its rights, Playboy filed seven similar but otherwise unrelated arbitrations under the ICANN

Uniform Domain Name Dispute Resolution Policy. In all seven cases, the arbitrators ordered the contested domain names to be transferred to Playboy.

The domain names in dispute were: playboychannel.com and playboynetwork.com, registered by a man in Florida; plaboy.com, registered by a company in Croatia; playboycasino.com, registered by a corporation in Sweden; playboy-photographer.com, registered by a man in Italy; playboysportbooks.com (and several variations), registered by a purported corporation in Britain; playboysportsbooks.com, registered by a man in Korea; and playboynews.net and playboystory.com (and variations), registered by a man in Italy.

Though Penthouse doesn't sell as many copies each month as Playboy, Penthouse too is a successful magazine. Its owner, General Media Communications, Inc., also is engaged in video production and website

operation. And though the word "penthouse" means "a dwelling on the roof of a building," in the world of adult entertainment, "Penthouse" is a strong trademark that General Media has registered in the United States and elsewhere, including the European Community Trademark Office.

Despite - or, again, perhaps because of - the strength of the "Penthouse" mark, at least two domain names containing the word "Penthouse" have been registered, without General Media's consent. To enforce its rights, the company filed two similar but otherwise unrelated arbitrations. And in both cases, the arbitrators ordered the contested domain names transferred to General Media. The domain names were: pennthouse.com, registered by a man in Spain; and penthousemovies.com, registered by a company in Britain.

Each of these cases was decided on its own specific facts. But in all nine cases, the arbitrators concluded that the contested domain names were confusingly similar to "Playboy" or "Penthouse," even though some contained an additional word (like "playboy-casino" and "penthousemovies") and others were misspellings (like "plaboy" and "pennthouse").

Likewise, in all nine, the arbitrators concluded that the registrants had no legitimate interests in the contested domain names. In some cases, the registrants didn't even participate in the arbitrations and thus didn't assert an interest, legitimate or otherwise. In others, the registrants never used the domain names, for anything.

Finally, in all nine cases, the arbitrators concluded that the registrants had registered or used the contested domain names in bad faith. This was so, either because "Playboy" and "Penthouse" are so well known that good faith registrations of variations would

not have been possible, or - in a couple of cases - because the registrants attempted to sell the domain names at a profit.

Playboy Enterprises v. Rodriguez, Case No. D2000-1016 (WIPO 2000), available at http://arbiter.wipo.int/domains/decisions/html/2000/d2000-1016.html; *Playboy Enterprises v. SAND WebNames-For Sale*, Case No. D2001-0094 (WIPO 2001), available at http://arbiter.wipo.int/domains/decisions/html/2001/d2001-0094.html; *Playboy Enterprises v. BEG Service KB*, Case No. D2001-0494 (WIPO 2001), available at http://arbiter.wipo.int/domains/decisions/html/2001/d2001-0494.html; *Playboy Enterprises v. Concas*, Case No. D2001-0745, available at http://arbiter.wipo.int/domains/decisions/html/2001/d2001-0745.html; *Playboy Enterprises v. Universal Internet Technologies*, Case No. D2001-0811, available

at http://arbiter.wipo.int/domains/decisions/html/2001/d2001-0811.html; *Playboy Enterprises v. Borri*, Case No. D2001-0866, available at http://arbiter.wipo.int/domains/decisions/html/2001/d2001-0866.html; *Playboy Enterprises v. Park*, Case No. D2001-0778, available at http://arbiter.wipo.int/domains/decisions/html/2001/d2001-0778.html; *General Media Communications v. Lopez*, Claim No. FA0102000096776 (NAF 2001), available at http://www.arbforum.com/domains/decisions/96776.htm; *General Media Communications v. Digital Video Distribution*, Claim No. FA0105000097338 (NAF 2001), available at http://www.arbforum.com/domains/decisions/97338.htm [ELR 23:5:12]

Entertainment Network failed in bid to transmit Timothy McVeigh execution over the Internet

Timothy McVeigh was executed last June for bombing the Murrah Federal Building in Oklahoma City. Members of the press, as well as members of the victims' families, witnessed the execution. But it was not shown on television or even over the Internet.

The execution's absence from the Internet was not due to lack of interest, by two website operators at least. The Entertainment Network sought permission from prison officials to transmit digital images of the execution on the Internet. But permission was denied, because a regulation of the Federal Bureau of Prisons explicitly prohibits recordings of executions.

Undaunted, the Entertainment Network and Liveontheweb.com filed suit in federal court in Indiana, arguing that the regulation is an unconstitutional

violation of their First Amendment rights. Judge John Tinder rejected the argument, however. After reviewing several cases dealing with the news media's right to access to newsworthy events and things, the judge concluded that "the right to record or broadcast an execution from within a prison . . . does not exist."

Entertainment Network and Liveontheweb were represented by Derek A. Newman of Newman & Newman in Seattle and by Stephen L. Trueblood of Trueblood Bitterman Lewis & Rodway in Terre Haute. The government was represented by Gerald A. Coraz of the United States Attorney's Office in Indianapolis.

*Entertainment Network, Inc. v. Lap*pin, 134 F.Supp.2d 1002, 2001 U.S.Dist.LEXIS 5035 (S.D.Ind. 2001)[ELR 23:5:13]

Collectors of art works attributed to Russian artist Lazar Khidekel are awarded $7100 in suit against Khidekel's son and daughter arising out of their statements that collectors' works were "fakes"

Art collectors Rene and Claude Boule have won part of their lawsuit against the son and daughter of artist Lazar Khidekel, though the victory got them a judgment of barely more than $7100. The Boules sued Khidekel's son and daughter as a result of statements they made - in letters to museums and in articles in ARTnews and Le Devoir - asserting that the Khidekel works in the Boules' collection were "fakes."

The Boules' lawsuit alleged several causes of action, some of which may have justified large judgments. Among these were claims under the Lanham Act and the New York General Business Law as well as claims for product disparagement and unfair

competition. To prevail on any of those claims, the Boules had the burden of proving by a preponderance of the evidence that the statements made by Khidekel's son and daughter were false. That in turn required the Boules to prove that the works in their collection were in fact created by Khidekel.

Following trial, federal District Judge Miriam Cedarbaum determined that the evidence concerning the authenticity of the works in the Boules' collection "is in equipoise," and thus the Boules had not sustained their burden of proving that the statements made by Khidekel's son and daughter were false.

Ironically, part of the evidence the Boules relied on to show that their works are authentic were certificates of authenticity signed by Khidekel's son with respect to several of those works, in return for the Boules' payment to him of 2500 French Francs per certificate. During the trial, Khidekel's son and

daughter denied he had signed the certificates. Judge Cedarbaum found that the son "lied under oath when he testified that he did not sign the certificates of authenticity." But this did not mean that the Boules' works were authentic. "Regrettably," the judge explained, "because of their willingness to lie under oath when they denied that [the son] had signed the certificates of authenticity, [their] representations do not carry as assurance of truth." Instead, the son's "lack of credibility diminishes the weight of his certificates," the judge concluded.

On the other hand, the certificates of authenticity did support another of the Boules' claims - their claim that Khidekel's son and daughter had breached a contract with the Boules by providing certificates of authenticity in return for pay and then later denying the authenticity of the very works for which the son had signed certificates. "A contract to pay an individual for

a signed opinion does not permit the signer to disavow the substance of that opinion and subvert the entire purpose of the contract without any justification," Judge Cedarbaum explained. In this case, there was no evidence that Khidekel's son had discovered any new information about his father's works between the time he signed certificates of authenticity for the Boules and the time he claimed those works were "fakes." As a result, those statements "were made in bad faith and constituted a breach of contract," the judge concluded.

The Boules were unable to present sufficient evidence that their works had declined in value after the certificates were signed as a result of the statements made by Khidekel's son and daughter. The Boules had, however, paid them the equivalent of $7,090 for the signed certificates. So Judge Cedarbaum awarded them that amount as restitution damages for the breach of their contract.

Claude Boule also prevailed on his libel claim against the Khidekel's son and daughter. Claude is an art historian and a lecturer and writer in the field of Russian avant-garde art. Thus, statements that she had allowed "fakes" to be displayed, after being informed they were "fakes," was presumed to injure her reputation for integrity. Since "very little evidence was presented that Claude suffered actual harm to her professional reputation," Judge Cedarbaum awarded her "nominal damages" of $10 against Khidekel's son and another $10 against his daughter.

The Boules were represented by Gerald A. Rosenberg of Rosenman & Colin in New York City. Khidekel's son and daughter were presented by George P. Felleman of Pollet & Felleman of New York City.

Boule v. Hutton, 138 F.Supp.2d 491, 2001 U.S.Dist.LEXIS 3654 (S.D.N.Y. 2001)[ELR 23:5:14]

ASCAP-licensed radio stations in Puerto Rico defeat copyright infringement claims filed by music publisher and Puerto Rican performing rights organization; court finds that ASCAP member publishers own copyrights to most Latin compositions at issue in case

Several radio stations in Puerto Rico have defeated copyright infringement claims filed against them by a Bronx-based music publisher known as Latin American Music Co., Inc. (LAMCO), and a Puerto Rican performing rights organization known as ACEMLA de P.R., Inc. According to LAMCO and ACEMLA, the stations broadcast five Latin compositions, without being licensed to do so.

The stations in question are not pirates. Indeed, two of them are owned by the Archdiocese of San Juan of the Roman Catholic and Apostolic Church. Nor are

the stations ignorant about their copyright obligations. They know they need public performance licenses to broadcast copyrighted music; and they have such licenses. It's just that they got their licenses from ASCAP rather than from ACEMLA. And LAMCO has authorized ACEMLA to issue public performance licenses to LAMCO-owned compositions, rather than ASCAP.

ASCAP does not claim to be the authorized licensing agent for all musical compositions in the world. It recognizes the existence of BMI and SESAC (and maybe even ACEMLA). Nor does ASCAP claim that LAMCO is an ASCAP member. Nevertheless, ASCAP did claim to be the authorized licensed agent for the five musical compositions at issue in this case. It did, because ASCAP asserts that the copyrights to these compositions belong not to LAMCO, but instead to

other music publishers who are in fact ASCAP members.

As a result, the existence of the case is explained by conflicting claims of copyright ownership made by rival music publishers. In response to cross-motions for summary judgment, federal District Judge Juan Perez-Gimenez has held that ASCAP's members are the true owners of the copyrights to four of the five compositions, and though LAMCO and ACEMLA have a non-exclusive license from the heirs of the owner of the fifth song's copyright, LAMCO and ACEMLA do not have standing (as mere licensees) to assert its infringement.

In order to reach these conclusions, Judge Perez-Gimenez had to individually analyze the copyright status of each of the five compositions. The issues involved in his analysis involved questions of ownership, transfers and renewals. What's more,

because the five songs were first published over a long period of time, the ownership of three songs had to be evaluated under principles found in the Copyright Act of 1909 while ownership of the other two had to be evaluated under principles found in the Copyright Act of 1976.

On the basis of that analysis, the judge has dismissed with prejudice the claims with respect to the four compositions whose copyrights are owned by ASCAP members, and he has dismissed (apparently without prejudice) the claim based on the song whose copyright is owned by the heirs of its songwriter.

LAMCO and ACEMLA were represented by Eugenio C. Romero in San Juan (and others). The radio stations were represented by Alfredo Fernandez-Martinez in Hato Rey (and others).

Latin American Music Co. v. Archdiocese of San Juan, 135 F.Supp.2d 284, 2001 U.S.Dist.LEXIS 4014 (D.P.R. 2001)[ELR 23:5:14]

Although seizure of videos of "The Tin Drum" without adversarial hearing violated First Amendment, police officers who did so were immune from personal liability because law was not clearly established before seizure

In 1997, in response to a complaint by an unidentified citizen of Oklahoma City, police officers seized videos of the "The Tin Drum" from video stores and a renter, without an adversarial hearing into whether the Academy Award winning motion picture violated a state child pornography statute. As things

turned out, the movie did not violate the statute, and thus the seizure violated the First Amendment.

In a lawsuit filed by the Video Software Dealers Association, federal District Judge Ralph Thompson ordered the city to return the videos (ELR 20:7:21). And in a separate case heard by Judge Thompson, the renter from whom a copy of the movie had been seized was awarded $2,500 in damages, under the federal Video Privacy Protection Act.

The renter in that second case was Michael D. Camfield - the Development Director of the American Civil Liberties Union of Oklahoma. Camfield wasn't satisfied with the $2,500 he was awarded for the officers' invasion of his statutory privacy rights. He wanted additional damages from them, individually, on account of their violation of his constitutional rights.

The reason he didn't get any additional damages is that Judge Thompson ruled that the police officers

were entitled to immunity from personal liability. Camfield appealed that ruling, but in an opinion by Judge Mary Beck Briscoe, the Tenth Circuit Court of Appeals has affirmed.

Judge Briscoe agreed with Camfield that the police officers violated the First Amendment by seizing videos of "The Tin Drum" without an adversarial hearing. But, she said, they could be held personally liable, only if before they did so, "the law was clearly established" that they could not seize videos without such a hearing. "Camfield does not cite, nor have we found, any cases which have held that the complete removal of suspected child pornography from public circulation with a prior adversarial hearing constitutes a prior restraint," Judge Briscoe said. As a result, the officers were immune from personal liability, as Judge Thompson had earlier ruled.

Camfield was represented by Michael C. Salem in Norman. The defendants were represented by Stacy Haws Felkner of Manchester & Pignato, John M. Jacobsen of the District Attorney's office, and Richard C. Smith of the Municipal Counselor's office in Oklahoma City.

Camfield v. City of Oklahoma City, 248 F.3d 1214, 2001 U.S.App.LEXIS 8160 (10th Cir. 2001)[ELR 23:5:15]

Following dismissal of some, but only some, antitrust claims by American Booksellers Association against Barnes & Noble and Borders, case is settled for $4.7 million

Independent booksellers have been fighting a bicoastal battle for survival against their national book chain competitors. One front is being fought in New York City where The Intimate Bookshop is the lead plaintiff in an antitrust action against Barnes & Noble, Borders and Waldenbooks. The other front was being fought in San Francisco where the lead plaintiff was the American Booksellers Association in a separate antitrust lawsuit against Barnes & Noble and Borders.

Both cases were triggered by alleged secret discounts and other favorable terms, extracted by the national chains from book publishers and distributors, which are not available to independent booksellers.

These practices, the independents have alleged, violate the federal Robinson-Patman Act. In the San Francisco case, they also were alleged to violate the California's Unfair Trade Practices Act and Unfair Competition Law.

Perhaps because the two cases were similar, the national chains responded to both in similar fashion: with motions to dismiss (in New York) and for summary judgment (in San Francisco). In both cases, the judges responded by giving each side just a partial victory. In New York, Judge William Pauley ruled that some of The Intimate Bookshop's allegations stated valid claims (ELR 22:3:13), and thus that case is still being litigated.

In San Francisco, Judge William Orrick held that there were disputed fact issues relating to some of the claims made by the American Booksellers Association. He found disputes about whether certain objected-to

discounts were functional or cost-justified, and about whether certain promotional allowances amounted to indirect price discrimination. Judge Orrick therefore denied Barnes & Noble's and Borders' summary judgment motions as to those claims.

On the other hand, Judge Orrick agreed with Barnes & Noble and Borders that discounts they receive from Houghton Mifflin, Penguin, Putnam, Rutledge Hill, St. Martin's, Levin and Random House cannot be challenged by the American Booksellers Association, so long as those discounts comply with the terms of a consent order that settled an earlier antitrust suit filed by the Association in 1994.

In the wake of Judge Orrick's lengthy ruling (which addressed other specific issues as well), the San Francisco case was settled. Barnes & Noble and Borders reportedly agreed to pay the American Booksellers Association (and the 26 or 27 independent

booksellers that were its co-plaintiffs) a total of $4.7 million - $2.35 million by each of the two national book chains.

The settlement also reportedly included an agreement that all of the documents that supported the Association's case were to be destroyed - a provision to which The Intimate Bookshop has taken exception. It wants access to the Association's documents to help it prepare for its still-pending case in New York.

The American Booksellers Association was represented by Douglas R. Young of Farella Braun & Martel in San Francisco and Jerald A. Jacobs of Jenner & Block in Washington DC. Barnes & Noble was represented by Melvin R. Goldman of Morrison & Foerster in San Francisco, Daniel M. Petrocelli of O'Melveny & Myers in Los Angeles, and Margot J. Metzger of Robinson Silverman Pearce Aronsohn & Berman in New York City. Borders was represented by

Reginald D. Steer of Skjerven Morrill MacPherson Franklin & Friel in San Francisco and Paul R. Griffin of Pillsbury Winthrop in San Francisco.

American Booksellers Association v. Barnes & Noble, 135 F.Supp.2d 1031, 2001 U.S.Dist.LEXIS 3219 (N.D.Cal. 2001)[ELR 23:5:16]

Satellite Home Viewer Improvement Act permits PrimeTime 24 to retransmit network signals to big dish subscribers who voluntarily terminated their subscriptions before a certain date (in addition to those whose subscriptions were terminated by court order, before Improvement Act was passed)

PrimeTime 24 is entitled to restore service to satellite television subscribers who voluntarily

terminated their C-band subscriptions before October 31, 1999, the Eleventh Circuit Court of Appeals has ruled. The ruling is a victory for PrimeTime.

C-band subscribers live primarily in rural areas and are those who use 5-foot rotating dish antenna (unlike DBS subscribers who live in cities and use small roof-top or window mounted antenna).

The question of whether C-band subscribers who voluntarily terminated their subscriptions may receive such service again became a legal issue, because of the wording of the Satellite Home Viewer Improvement Act of 1999. Before that Act was passed, network television signals could be retransmitted by satellite only to "unserved" households. Lawsuits between the networks and PrimeTime 24 over the proper meaning of "unserved" resulted in victories for the networks (ELR 20:8:13 and 20:11:14). Injunctions were issued

against PrimeTime, barring it from providing service to many of its subscribers.

Congress, however, reacted to those injunctions by enlarging the number of those who are legally eligible to receive satellite retransmission service. (See "Congress Gives Satellite TV Industry and Subscribers Big Benefits in Satellite Home Viewer Improvement Act of 1999" by Philip R. Hochberg (ELR 21:8:8)) Moreover, a "grandfather" clause made some people eligible to receive satellite retransmission service - even if the Improvement Act didn't otherwise make them eligible - so long as they were receiving C-band service on or before October 31, 1999, including those who had received C-band service before that date but no longer were because of "any termination."

The legislative history of the Improvement Act makes it pretty clear that Congress intended to authorize the resumption of service only to those whose

service was terminated by court order before October 31, 1999 - not to those who voluntarily terminated their own service. That's not, however, what the Improvement Act actually says. The Improvement Act appears to authorize the resumption of service even to C-band subscribers who voluntarily terminated their own service.

After the Improvement Act was passed, PrimeTime sought and obtained modifications to the injunctions that had previously been entered against it. In one of those cases, District Judge Lenore Nesbitt modified the injunction to permit PrimeTime to resume service to those whose service had been terminated by her earlier injunction, but not to those who had voluntarily terminated their own service. PrimeTime appealed, successfully.

In his opinion for the Court of Appeals, Judge Edward Carnes explored at length the question of when

legislative history should be used to determine that a statute means something other than what it appears to say. The judge concluded that legislative history should not be used in this case. As a result, Judge Carnes has remanded the case to the District Court for "further proceedings," the result of which, it now seems certain, will be a further modification of the injunction that permits PrimeTime to provide service to C-band subscribers, including those who voluntarily terminated their own service.

The networks and their affiliates were represented by Neil K. Roman of Covington & Burling in Washington DC, David M. Rogero of Lott & Friedland in Coral Gables, and Thomas P. Olson and Lawrence A. Kasten of Wilmer Cutler & Pickering in Washington DC. PrimeTime 24 was represented by Brian F. Spector of Kenney Nachwalter Seymour Arnold Critchlow & Spector in Miami, and by Richard

W. Benka, Stephen B. Deutsch and Andrew Z. Schwartz of Foley Hoag & Elliot in Boston.

CBS Inc. v. PrimeTime 24 Joint Venture, 245 F.3d 1217, 2001 U.S.App.LEXIS 4566 (11th Cir. 2001)[ELR 23:5:16]

Designer of copyrighted jewelry may be entitled to recover a reasonable royalty or license fee as actual damages, in infringement suit complaining about Gap store magazine ad in which model wore his jewelry without consent

Jewelry designer On Davis may be entitled to recover something, after all, in his copyright infringement suit against the Gap stores. The amount of any such recovery, however, will certainly be far less

than what he sought, when he originally filed his lawsuit.

In some circles, Davis is well known as the designer of "nonfunctional jewelry worn over the eyes like eyeglasses." He markets his work under the name "Onoculii Designs." And his creations have been worn by entertainers and models while appearing on stage and television and in magazine photographs and fashion shows.

Davis' lawsuit against The Gap was triggered by a Gap magazine ad that featured a model wearing Davis' jewelry without his permission. The case was dismissed by the trial court, in response to the Gap's motion for summary judgment. But the Second Circuit Court of Appeals has reversed the dismissal and has remanded the case to the trial court for further proceedings.

In an opinion by Judge Pierre Leval, the appellate court has held that although Davis could not recover any part of the Gap's profits or punitive damages, he may be entitled to recover, as "actual damages," an amount equal to what a reasonable royalty or license fee would have been, for the type of use the Gap made of his work.

Judge Leval agreed with the trial court that Davis could not recover any part of the Gap's profits, because the only evidence Davis submitted on that issue was evidence of the Gap's gross sales of $1.668 billion - not evidence of sales attributable to the offending magazine ad. Likewise, Judge Leval agreed with the trial court that punitive damages are not available under the Copyright Act, and in any event, Davis failed to show that the Gap had ignored his copyright "willfully."

On the other hand, Judge Leval agreed with Davis that the Gap ad was neither a "de minimus" use

of his copyrighted design nor a fair use, and thus it could have been infringing. This made the question of what measure of damages might be appropriate an important issue.

Davis once received a $50 fee from Vibe magazine for its use of a photograph of musician Sun Ra wearing one of Davis' Onoculii designs. From this, it could be argued that there does exist a reasonable royalty or license fee for the type of use the Gap made of Davis' jewelry. And Davis argued that he should be able to recover as "actual damages" an amount equal to that royalty or fee. This presented an interesting legal issue, because the two leading copyright treatises disagree about whether "actual damages" - as authorized by the Copyright Act - include unpaid royalties or license fees. Paul Goldstein's treatise Copyright says that they do, while Melville and David

Nimmer's Nimmer on Copyright concludes that they do not.

Judge Leval agreed with Paul Goldstein and thus held that the Copyright Act "permits a copyright owner to recover actual damages, in appropriate circumstances, for the fair market value of a license covering the defendant's infringing use."

Davis was represented by Kenneth Spole in Syosset NY. The Gap was represented by Lorin L. Reisner and Suzanne J. Irving of Debevoise & Plimpton in New York City.

On Davis v. The Gap, 246 F.3d 152, 2001 U.S.App.LEXIS 5532 (2nd Cir. 2001)[ELR 23:5:17]

Trial court should have considered evidence concerning attorneys' fees before it awarded Playboy $109,000 for fees it incurred in successfully defending copyright infringement suit filed by competing adult magazine publisher

Playboy Enterprises may yet be awarded the attorneys' fees it incurred in successfully defending a copyright infringement suit filed against it by Crescent Publishing Group, the publisher of several adult magazines. But before such an award can be made, properly, the trial court must first consider evidence of "the propriety and the amount" of any such award, the Second Circuit Court of Appeals has held.

The appellate court therefore reversed an order by District Judge Nicholas Tsoucalas awarding more than $109,000 in fees and costs to Playboy, because Judge Tsoucalas made that award without giving

Crescent or Playboy the opportunity to present evidence concerning Playboy's fees.

Writing for the appellate court, Judge Chester Straub also ruled that evidence concerning the "actual billing arrangement" between Playboy and its lawyers would be "a significant, though not necessarily controlling, factor" in determining what fee would be "reasonable."

Crescent Publishing was represented by Lawrence E. Abelman and Michael Aschen of Abelman Frayne & Schwab in New York City. Playboy was represented by Kenneth P. Norwick and Judith L. Bachman of Norwick & Schad in New York City.

Crescent Publishing v. Playboy Enterprises, 246 F.3d 142, 2001 U.S.App.LEXIS 4913 (2nd Cir. 2001)[ELR 23:5:18]

New Orleans Saints are entitled to credit for full amount paid to injured players Paul Green and Mike Jerich against workers compensation benefits payable under Louisiana law

The New Orleans Saints finally have prevailed on a seemingly simple point of Louisiana law - though they had to go all the way to that state's Supreme Court to do so. The question involved was whether the Saints are entitled to credit against workers compensation benefits payable under Louisiana law for the full amount they pay injured players, or credit only for the number of weeks covered by those payments.

The reason the distinction matters is that Louisiana workers compensation benefits for disabled football players have been $341 per week, while players for the New Orleans Saints earn much more than that. Thus, if a Saint is disabled for, say, six

weeks, the Saints may pay him more than $38,000. That in fact is what the Saints paid player Paul Green when he was injured in 1997.

The Saints acknowledged that Green also was entitled to workers compensation benefits; and Green acknowledged that the Saints were entitled to an offset against those benefits for the $38,000 the team had paid him. However, the Saints and Green could not agree about whether the Saints offset was for the first six weeks of benefits only, because that was the period covered by the $38,000 the team had paid him, or whether the offset was for 112 weeks of benefits, because that is the period that would be covered by $38,000 paid at the rate of $341 per week.

Louisiana's workers compensation statute answers this question, because it provides that "The compensation benefits payable to a professional athlete . . . shall be reduced or offset by an amount equal to the

total amount of benefits . . . on a dollar-for-dollar basis and not just on a week-to-week basis. . . ." Indeed, in a case involving player Jim Dombrowski, a Louisiana Court of Appeal once held that the Saints were entitled to a dollar-for-dollar credit for the full $200,000 it had paid Dombrowski following his injury, not just a credit for the 16 weeks that the $200,000 would have covered had he remained healthy (ELR 22:8:19).

On the other hand, the Saints lost on that issue in a case involving Tom Ricketts who was paid more than $26,000 by the team following his injury. That was the amount Ricketts would have earned for playing just three weeks, though it would have covered more than 76 weeks of workers compensation benefits (at $341 per week). A Louisiana Court of Appeal held that the Saints were entitled to an offset against Ricketts' workers compensation benefits for just three weeks, not 76, despite the state statute. According to the appellate

court, a provision of the NFL collective bargaining agreement constituted a waiver by NFL teams of the "dollar-for-dollar" provision of the statute (ELR 19:6:14).

When Paul Green's case got to the Louisiana Court of Appeal, it ruled in his favor, relying on the Ricketts decision (ELR 22:5:20). The state Supreme Court then agreed to review Green's case, and it has reversed. In an opinion by Justice Jeffrey Victory, the Supreme Court has held that the Saints are entitled to an offset for the full amount the team paid Green on a dollar-for-dollar basis, not just on a week-to-week basis. In so ruling, Justice Victory ruled that the NFL collective bargaining agreement "was clear and explicit and did not amount to a waiver of the statutory dollar-for-dollar offset. . . ."

Several weeks after the Supreme Court ruled in the Saints' favor in Paul Green's case, the Louisiana

Court of Appeal decided a case involving Saints player Mike Jerich. The Louisiana Office of Workers' Compensation had allowed the Saints only an eight-week credit against workers compensation benefits due Jerich on account of his injury, rather than a credit for the full $134,500 it had paid him. The Court of Appeal reversed, however. Writing for the appellate court, Judge Susan Chehardy held that the Supreme Court's decision in the Green case meant that the Saints were entitled to credit for the full amount the team had paid Jerich.

The New Orleans Saints were represented in both cases by Sammie Maurice Henry of Egan Johnson & Stiltner in Baton Rouge. Paul Green was represented by Simeon Bernard Reimonenq Jr. Mike Jerich was represented by Robert L. Hackett in New Orleans.

Green v. New Orleans Saints, 781 So.2d 1199, 2000 La.LEXIS 2992 (La. 2000); *Jerich v. New Orleans Saints*, 776 So.2d 1283, 2000 La.App.LEXIS 3441 (La.App. 2000)[ELR 23:5:18]

University of Illinois is restrained from enforcing directive prohibiting students and faculty from contacting high school and junior college athletes about University's use of Chief Illiniwek mascot, without Athletic Director's authorization

Students and faculty at the University of Illinois have won a temporary restraining order that bars the University's enforcement of a "Directive" that would have required them to get authorization from the Athletic Director before they contact high school or junior college athletes.

The Directive was intended to assure that the University complies with NCAA rules that regulate the recruitment of student athletes. But the students and faculty who have sued the University don't want to recruit high school or junior college athletes. They want to let those athletes know that in their opinion, Chief Illiniwek, the mascot for the University's athletic program, is degrading to Native Americans.

Federal District Judge Michael Mihm has concluded that the Directive "is an unlawful prior restraint" that violates the students' "constitutionally protected speech." That restraint, the judge said, cannot be justified by the University's interest in complying with NCAA rules, by its interest in preventing the harassment of potential student athletes, or by its interest in controlling the management of its athletic department and recruiting.

Judge Mihm acknowledged that employers are permitted to impose certain restraints on the job-related speech of their employees. But the judge concluded that although faculty members are University employees, the Directive was unconstitutional as to faculty as well. "It is undisputed," the judge noted, "that the Chief Illiniwek controversy presents an issue of public concern." And he concluded that the University's interests in enforcing its Directive against faculty members are not sufficient to outweigh their free speech interests.

The students and faculty were represented by Harvey Grossman of the Roger Baldwin Foundation of the ACLU in Chicago. The University was represented by William J. Brinkmann of Thomas Mamer & Haughey in Champaign.

Crue v. Aiken, 137 F.Supp.2d 1076, 2001 U.S.Dist.LEXIS 8553 (C.D.Ill. 2001)[ELR 23:5:19]

Amateur Hockey Association of Illinois is not subject to Title IX because it doesn't receive federal funding

The Amateur Hockey Association of Illinois does not receive federal funding, and therefore it is not subject to Title IX's ban on discrimination on the basis of sex. Federal District Judge Milton Shadur has so ruled in a lawsuit brought the members of two girls' hockey teams - as well as their sponsor, parents, and coach - alleging that the Association discriminates on the basis of sex in its administration of amateur hockey in Illinois.

The plaintiffs argued that the Association does receive federal funding for two reasons: because Illinois public schools - which do receive federal funding - have given the Association authority to run their hockey programs; and because the Association is exempt from federal taxation.

Some cases have in fact held that Title IX applies to organizations that have "controlling authority" over programs conducted by recipients of federal funding. But other cases have rejected that argument.

Judge Shadur reviewed both lines of authority in detail, and concluded that he had to "'follow the money' and find that Title IX applies only to the grant recipient - in this case the high schools, not [the Association]." He reasoned that since the Association itself does not receive federal funding, "there is no action that a federal agency could take to curb its alleged noncompliance."

Judge Shadur also rejected the argument that the Association receives federal funding because it is tax exempt. Federal financial assistance, of the sort that requires recipients to comply with Title IX, "encompasses only direct transfers of federal money. . . ," the judge explained, and tax exemption "just does not equate to . . . direct transfers."

For these reasons, Judge Shadur has dismissed the plaintiffs' Title IX claim, though other claims remain in the case for further proceedings.

The plaintiffs were represented Alan N. Salpeter of Mayer Brown & Platt in Chicago. The Association was represented by Ralph A. Morris of Schiff Hardin & Waite in Chicago.

Johnny's Icehouse v. Amateur Hockey Association of Illinois, 134 F.Supp.2d 965, 2001 U.S.Dist.LEXIS 2546 (N.D.Ill. 2001)[ELR 23:5:19]

School district may be liable for high school athlete's failure to satisfy NCAA freshman eligibility requirements, where failure is caused by guidance counselor's negligent advice that particular high school course would be approved as NCAA core course, Iowa Supreme Court rules

In an opinion that creates what may be a new tort, the Supreme Court of Iowa has held that the Cedar Rapids Community School District may be liable to former student Bruce Sain, because Sain's high school guidance counselor advised Sain that a course he took during his senior year would be an approved NCAA "core course," when in fact it turned out not to be.

Sain was a high school basketball player, and an outstanding one at that. He was selected to the all-state basketball team and received other awards as well. Moreover, during his final months in high school, he

was offered and accepted a basketball scholarship to Northern Illinois University - a school whose basketball team competes in Division I of the NCAA.

To be eligible to play basketball as a freshman for an NCAA Division I school, students must satisfy NCAA "core course" requirements while in high school. Sain knew this, and took what he thought were the appropriate courses to satisfy that requirement. Unfortunately, one of his senior year English courses - a new course in Technical Communications - was not on the NCAA's list of approved core courses offered by Sain's high school. After graduating from high school, the NCAA notified him that he had not satisfied the core English requirements. As a result, Sain lost his scholarship and was unable to play basketball or even attend Northern Illinois.

In a lawsuit filed in Iowa state court, Sain alleged that his guidance counselor had told him that the

Technical Communications course, though new, would be approved by the NCAA as a core English course. Apparently it wasn't approved only because Sain's high school never submitted the course to the NCAA for approval. Nevertheless, an Iowa trial court dismissed Sain's case, ruling that Iowa law does not recognize the tort of educational malpractice.

On appeal, however, the Supreme Court of Iowa has reversed. In an opinion by Justice Mark Cady, the Supreme Court has held that a counselor has a duty to use reasonable care when informing a student that a class will be approved by the NCAA. And Sain had alleged sufficient facts to be entitled to proceed with his claim that the counselor had breached that duty.

Justices Linda Neuman and Marsha Ternus dissented.

Sain was represented by Anne E. Updegraff of the Tom Riley Law Firm in Cedar Rapids. Cedar

Rapids Community School District was represented by Matthew G. Novak of Pickens Barnes & Abernathy in Cedar Rapids.

Sain v. Cedar Rapids Community School District, 626 N.W.2d 115, 2001 IowaLEXIS 82 (Iowa 2001)[ELR 23:5:20]

High school athlete's First Amendment rights were not violated when she was dropped from basketball team for refusing to apologize for letter to teammates that used profane word to criticize coach

"Pride goeth before destruction, and an haughty spirit before a fall," federal appellate Judge Myron Bright observed, quoting from the Proverbs.

The "destruction" and "fall" to which Judge Bright alluded were those of high school basketball player Rebecca Wildman. And the opinion in which this quote appeared was one in which the judge affirmed the dismissal of a lawsuit Wildman had filed against her coach, in response to being dropped from the team. The reason she was dropped, even the coach seemed to agree, was that she refused to apologize for a letter she had written to her teammates in which she asserted the coach had given them "bullshit."

According to Wildman's lawsuit, the coach (and others) had violated her First Amendment free speech rights by dropping her from the team. But a federal District Court in Iowa disagreed and dismissed her case. Judge Bright's opinion for the Eighth Circuit Court of Appeals affirms that dismissal.

Judge Bright acknowledged that "students do not 'shed their constitutional rights to freedom of speech or

expression at the schoolhouse gate.'" But, he added, their "right to express opinions on school premises is not absolute." In Wildman's case, the judge emphasized that Wildman had merely been asked to apologize, and when she refused, the coach's actions "were reasonable."

Judge Wildman reasoned that "coaches deserve a modicum of respect from athletes, particularly in an academic setting." Wildman's use of the word "bullshit," said the judge, "constitutes insubordinate speech towards her coaches." As a result, "no basis exists for a claim of violation of free speech," he judge concluded.

Wildman was represented by Anthony F. Renzo in Des Moines. The coach (and his co-defendants) were represented by Andrew J. Bracken in Des Moines.

Wildman v. Marshalltown School District, 249 F.3d 768, 2001 U.S.App.LEXIS 8477 (8th Cir. 2001)[ELR 23:5:20]

Cable system wins case against customers who used unauthorized descramblers to steal pay-TV service

TCI Cablevision has been awarded $10,000 in statutory damages against each of several customers who used unauthorized descramblers to view premium programming from Cinemax, Showtime, Encore, The Disney Channel and Starz, and to receive pay-per-view programs as well.

Federal District Judge Alvin Thompson has ruled that the evidence against TCI's customers was sufficient, even though all of them asserted their Fifth Amendment privilege against self-incrimination and

refused to admit what they had done. The evidence relied on by TCI were records seized by the FBI from a descrambler manufacturer showing the identities of those to whom he sold descramblers.

The federal Communications Act authorizes courts to make statutory damage awards of between $1,000 and $10,000, "as the court considers just." In this case, Judge Thompson concluded that the maximum award was "just," because TCI's customers "employed a strategy of simply making it as difficult as possible for TCI to vindicate its rights," by asserting meritless arguments and pleading the Fifth.

TCI was represented by Burton B. Cohen of Murtha Cullina in New Haven. The defendants were represented by Jonathan J. Einhorn, James F. Cirillo Jr., and James C. Delany in New Haven; Daniel Shepro of Shepro Brown & Blake in Stratford; and by Thomas W. Bucci Jr. in Bridgeport.

Community Television Systems, Inc. v. Caruso, 134 F.Supp.2d 455, 2000 U.S.Dist.LEXIS 5086 (D.Conn. 2000)[ELR 23:5:21]

Previously Reported:

The decision of the California Supreme Court holding that artist Gary Saderup infringed The Three Stooges' rights of publicity by reproducing their likenesses on lithographs and T-shirts (ELR 22:12:5) has been published. Comedy III Productions, Inc. v. Gary Saderup, Inc., 106 Cal.Rptr.2d 126, 21 P.3d 797, 2001 Cal.LEXIS 2609 (Cal. 2001)

The Nevada Supreme Court has denied Steve Wynn's request for a rehearing in his defamation suit against the publishers of Running Scared: The Life and Treacherous Times of Las Vegas Casino King Steve

Wynn. In its earlier ruling, the Nevada Supreme Court reversed a $3.3 million judgment won by Wynn, on the grounds that the jury had been given an inaccurate instruction on actual malice (ELR 23:2:14).
[ELR 23:5:21]

DEPARTMENTS

Email to the Editor:

I just finished reading the August issue of the Entertainment Law Reporter. Once again, a great effort. One correction: Steve Garvey was a first baseman when he played for the Dodgers. Did he switch positions when he joined the Padres?

Ira Selsky
Grubman Indursky & Schindler
New York City

Editor's response: Oops. No, Garvey did not switch positions when he joined the Padres. He played first base for them as well. His field position was misreported in the August 2001 article (ELR 23:3:11) about the Supreme Court's ruling that a federal appeals

court had erred when it ordered an arbitrator to award Garvey compensation from a settlement fund for damages resulting from collusion by owners of Major League Baseball teams.
[ELR 23:5:22]

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Columbia-Volunteer Lawyers for the Arts Journal of Law & the Arts has published Volume 24, Number 2 with the following articles:

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Arresting Art Loan Seizures by Laura Popp, 24 Columbia-VLA Journal of Law & the Arts 213 (2001)

A Fiduciary's Duties When a Celebrity Persona is the Asset by Neil Caulkins, 24 Columbia-VLA Journal of Law & the Arts 235 (2001)

How Copyright Became Community Property (Sort Of): Through the Rodrigue v. Rodrigue Looking Glass by Dane S. Ciolino, 47 Loyola of New Orleans Law Review 631 (2001)

Grigson v. Creative Artists Agency: Signatories "Can't Have It Both Ways" - Non-signatories to a Contract Agreement Now Have Standing to Compel Arbitration by Holly M. Roberts, 47 Loyola of New Orleans Law Review 963 (2001)

Communications and the Law, published by Fred B. Rothman Publications, 10368 W. Centennial Road, Littleton, Colorado 80127, has issued Volume 23, Number 2 with the following articles:

"How-To" Manuals for Hitmen: Paladin Press, a Triple Murder, and First Amendment Protection of Technical Information by Juliet Dee, 23 Communications and the Law 1 (2001) (for address, see above)

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The Journal of Legal Aspects of Sport, published by the National Sports Law Institute, Marquette University School of Law, www.ithaca.edu/sslaspa/pubs.htm, has issued Volume 11, Number 2 with the following articles:

Online Sports Gambling-Regulation or Prohibition? by Lori K. Miller & Cathryn L. Claussen, 11 Journal of Legal Aspects of Sports 99 (2001) (for address, see above)

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What Is Appropriate Signage for the Sport Industries? by Gil Fried & Robin Ammon, Jr., 11 Journal of Legal Aspects of Sport 181 (2001) (for address, see above)

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Copyright Enforcement in the Internet Age: The Law and Technology of Digital Rights Management by Stephen M. Kramarsky, 11 DePaul University Journal of Art and Entertainment Law (2001)

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Regulating Rap Music: It Doesn't Melt in Your Mouth by David Germaine, 11 DePaul University College of Law Journal of Art and Entertainment Law (2001)

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Electronic Publishing Rights: The Tasini Case by Robert G. Sugarman, Naomi J. Gray, and Pierre M. Davis, 13 Intellectual Property & Technology Law

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The Mischief of Cohen v. Cowles Media Company by Alan E. Garfield, 35 Georgia Law Review (2001)

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The Talent Agencies Act: Reconciling the Controversies Surrounding Lawyers, Managers, and Agents Participating in California's Entertainment

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Beyond Napster: An Enforcement Crisis in Copyright Law? by J. Jeffrey Landen, 28 Northern Kentucky Law Review 713

Cable Open Access: Exorcising the Ghosts of "Legacy" Regulation by Rosemary C. Harold, 28 Northern Kentucky Law Review 721

The Role of Freedom of Speech in the "Open Access" Debate by Dennis R. Williams and W. Thomas Fisher, 28 Northern Kentucky Law Review 796

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The United States Supreme Court's Limitations of the Individuals with Disabilities Education Act Forces a Court to Prevent a Disabled Student from Receiving a Meaningful Public Education by Denying Him the Necessary Services of Participation in Athletics by Lucy Kats, 11 The Journal of Sport Law of Seton Hall University School of Law (2001)

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