INTERNATIONAL DEVELOPMENTS

British appellate court affirms that fiddler Bobby Valentino was "joint author" of "Young at Heart," and that after song's use in 1993 television commercial made it popular again, he could revoke implied license he gave Bluebells when group recorded the song in 1984 and claim royalties for its subsequent use

British fiddle player Bobby Valentino is the joint author of the song "Young at Heart," and is entitled to a share of the royalties the song has earned since 1993, a British Court of Appeal has held. Lord Justice Jonathan Parker so ruled, in a case whose facts date back almost two decades.

In 1984, when a British band known as the Bluebells decided to record "Young at Heart," it hired a 23-year-old fiddle player named Bobby Valentino.

Valentino wasn't a member of the band; he was a hired session musician. Nevertheless, during the recording session, Valentino didn't merely perform. He also wrote the four-bar violin part that was featured in the song's introduction. That at least is what Valentino claimed, and what High Court Judge Christopher Floyd found, after trial.

A trial and an appeal became necessary, for this reason. Though the Bluebell's recording reached number 8 on the charts when it was first released, Valentino didn't then claim to be the joint author of "Young at Heart." Instead, Bluebell member Robert Hodgens was credited as the song's sole writer. What's more, Valentino wasn't paid songwriter royalties, and didn't file suit to collect any, back then.

The Bluebells broke up in 1986, and for years, it appeared that that was that. In 1993, however, "Young at Heart" was used in a Volkswagen commercial, and the commercial made the song popular again - so popular that the Bluebells' recording was re-released and reappeared on the charts in the number 1 position, for weeks. The Bluebells, in fact, regrouped in order to perform the song several times on the BBC television show "Top of the Pops."

That's when Valentino told Hodgens that he, Valentino, was a joint author of "Young at Heart," and this time around, he wanted his share of the song's royalties. When discussions didn't produce any royalties, Valentino filed the lawsuit he now has won.

Hodgens claimed that he wrote the entire song, including the violin part, and that Valentino merely followed Hodgens' instructions on how to play the violin part. But at trial, Judge Floyd found otherwise. Judge Floyd concluded that Valentino collaborated in the creation of the song, made a significant contribution to it, and that his contribution was not separate from the rest of the song.

Hodgens argued further that in order for Valentino to be a joint author, British copyright law also required Hodgens and Valentino to "intend" the song to be a jointly authored work - just as U.S. and Canadian copyright law do. Judge Floyd thought not, and Lord Justice Parker concurred. British copyright law provides that a "work of joint authorship" is one "produced by the collaboration of two or more authors in which the contribution of each author is not separate from the contribution of the other author or authors." Said Justice Parker: "I cannot see any basis in the English cases, or in the statutory definition . . . , for the importation of this third [intent] requirement. . . . Any other test introduces undesirable problems of proof for which I can see no basis in the Act."

Finally, Hodgens argued that Valentino should be estopped from claiming he jointly authored the song, because Valentino had let almost a decade go by before making the claim. Justice Parker acknowledged that as a result of Valentino's failure to make his claim earlier, "there existed an implied gratuitous licence" that allowed Hodgens to exploit the copyright to "Young at Heart." However, the Justice noted that Valentino was not claiming royalties for the period between 1984 and 1993; he only was claiming royalties from 1993 on, after he clearly asserted he was a joint author and wanted his share of the song's royalties.

"I see no reason," Justice Parker said, "why Mr Valentino should not be entitled to say at that stage 'I have let you have free use of my composition until now. But this new success is different, and I claim my share of it.'" Valentino simply had revoked his implied license; and there was nothing unconscionable about his doing so, the Justice concluded.

Valentino was represented by Ian Peacock, instructed by Davenport Lyons. Hodgens was represented by Philip Engelman, instructed by Payne Hicks Beach.

Editor's note: The result in this case differs from the likely result under U.S. law, for two reasons. First, U.S. law does require mutual intent to create a jointly-authored work (ELR 13:7:11, 20:7:10). Thus, if Hodgens could prove that he didn't intend Valentino to be a co-author of "Young at Heart," Valentino wouldn't have been. Second, the statute of limitations on a claim of co-authorship under U.S. law is three years (at least in the 2nd and 9th Circuits (ELR 18:7:24, 19:1:6), though the rule may be otherwise in the 5th Circuit (ELR 18:6:7)). This probable difference in results raises an interesting question: is Valentino the joint author of "Young at Heart," and thus the co-owner of it copyright, in the United States? The answer to this question depends on whether a U.S. judge would apply

U.S. or British law to determine who owns the song's U.S. copyright. Though U.S. judges would apply U.S. law to determine whether an infringement of "Young at Heart" occurred in this country, it is likely (but not yet absolutely certain) that they would apply British law to determine who owns the song's copyright (ELR 17:4:3, 20:8:10). U.S. judges almost always apply U.S. law to decide procedural issues in international cases, but even the Copyright Act's three-year statute of limitations may not bar a claim like Valentino's. That's because the Copyright Act's statute of limitations applies to actions "maintained under the provisions of this title [i.e., the U.S. Copyright Act]." And a claim like Valentino's would be one under British copyright law, not under U.S. law.

Hodgens v. Beckingham, [2003] EWCA Civ. 143, available at www.courtservice.gov.uk/Judgments.do [ELR 25:1:4]

WASHINGTON MONITOR

Copyright Office publishes agreement on license fees payable by noncommercial webcasters for transmissions of music recordings, as authorized by Small Webcaster Settlement Act of 2002

Noncommercial webcasters have reached an agreement with SoundExchange on the license fees they must pay to transmit music recordings. And the Copyright Office has officially published the agreement in the Federal Register.

SoundExchange is an RIAA-owned organization that collects and distributes digital performance and ephemeral recording license fees on behalf of record companies and recording artists (including non-featured musicians and vocalists). The agreement between noncommercial webcasters and SoundExchange was authorized by Congress in the Small Webcaster

Settlement Act of 2002; and its publication by the Copyright Office makes the terms of the agreement binding on all record companies and artists.

The determination of licensing fees payable by webcasters is an unusually complicated subject. This is because record companies and recording artists had no performance rights at all until 1995, and thus were not paid by anyone, when their recordings were played. (Songwriters and music publishers were paid; but not record companies or artists.) Then, in 1995, Congress passed the Digital Performance Right in Sound Recordings Act. That Act gave record companies and recording artists a limited performance right - one that was limited to digital performances of their recordings (ELR 17:6:3).

The Digital Performance Act itself was complicated. Some digital performances were exempted and thus do not require any license at all;

other digital performances require negotiated licenses that must be obtained directly from record companies; and still other performances are eligible for statutory licenses. The license fees covered by the SoundExchange agreement with noncommercial webcasters are for statutory licenses only.

Though the 1995 Digital Performance Act created a statutory license, Congress did not set the license fee itself. Instead, in 2002, the Librarian of Congress decided that all webcasters should pay 0.07 cents per listener (70 cents per thousand listeners) per song, whether or not they had any revenues (ELR 24:3:6). The Librarian's decision was just part of a long and convoluted process that isn't complete even yet (ELR 24:3:6). And it didn't entirely satisfy anyone - not webcasters or record companies and artists - and cross appeals are pending before the Court of Appeals.

In the meantime, while further proceedings are pending, Congress adopted the Small Webcaster Settlement Act. That Act allowed webcasters to agree with SoundExchange on license fees that: (a) would be binding on all record companies and artists; but (b) would not be taken into account by the Copyright Office or the Court of Appeals in proceedings concerning webcaster license fees.

Late last year, SoundExchange reached such an agreement with small commercial webcasters (ELR 24:7:11). Now, SoundExchange has reached such an agreement with noncommercial webcasters, including schools and colleges.

The operations of noncommercial webcasters vary widely. In an apparent effort to tailor license fees to each type of webcaster as much as possible, the agreement contains a complicated fee structure. Greatly simplified, however, noncommercial webcasters - who qualify for and elect to use the statutory license - will pay webcasting fees of $200 to $500 per year. (These fees will go to record companies and artists; webcasters, including noncommercial webcasters, also must pay additional public performance license fees to ASCAP, BMI and SESAC who collect them on behalf of music publishers and songwriters.)

Notification of Agreement Under the Small Webcaster Settlement Act of 2002, Library of Congress, Copyright Office, 68 Federal Register 35008 (Number 112; June 11, 2003) [ELR 25:1:6]

RECENT CASES

Supreme Court rules that distributor of video of edited version of public domain television series did not violate Lanham Act by failing to credit Twentieth Century Fox as series' creator

Just a few years after the end of World War II, Twentieth Century Fox commissioned the production of a 26-episode television series based on General Dwight D. Eisenhower's book, Crusade in Europe. The series - also titled "Crusade in Europe" - was properly registered for copyright, but its copyright was never renewed. That put the series in the public domain, where it was arguably available for copying by anyone who wished to do so.

Though it may seem unlikely that the public would have much interest in a half-century old television series, Fox has licensed the distribution of homevideo versions, and New Line Home Video does just that, with Fox's blessing.

In 1995, on the eve of the 50th anniversary of the war's end, a video distributor named Dastar Corporation also thought there would be public interest in the series. Knowing that the series was in the public domain, Dastar decided to distribute the series too, at a lower price than New Line's. Dastar, however, decided to edit the series, and it did so in a way that United States Supreme Court Justice Antonin Scalia characterized as "arguably minor."

Justice Scalia is not, of course, a video reviewer. The reason he had occasion to comment on the extent of Dastar's editing is this: Dastar gave its version of the series the new title "World War II Campaigns in Europe," gave its own employees credit as producers, and failed to acknowledge - anywhere on its packaging or within the video itself - that Fox was the producer of the original series, or indeed, that Dastar's video was created using material copied from the Fox series.

Fox responded by suing Dastar under section 43(a) of the Lanham Act, alleging that Dastar's failure to give Fox credit amounted to "reverse palming off." For a while, Fox's lawsuit was spectacularly successful.

Federal District Judge Florence Marie Cooper ruled in Fox's favor, and awarded it twice Dastar's profits on the grounds that Dastar's infringement had been deliberate and willful. What's more, Judge Cooper's ruling was affirmed by the Court of Appeal, in a very short opinion marked "not appropriate for publication" (ELR 24:9:13).

But at that point, the tide of the case began to turn away from Fox and in favor of Dastar. The Supreme Court agreed to hear the case. And in an opinion by Justice Scalia, it has reversed Fox's victory.

Section 43(a) of the Lanham Act prohibits the "false designation of origin" of "goods." Justice Scalia acknowledged that if Dastar had purchased New Line's videotapes and repackaged them as Dastar's own, Dastar would have violated that section. "Dastar's alleged wrongdoing, however, is vastly different," the Justice observed. "[I]t took a creative work in the public domain - the Crusade television series - copied it, made modifications (arguably minor), and produced its very own series of videotapes."

This meant the case came down to what the Lanham Act means by "origin" of "goods." Justice Scalia concluded that "the most natural understanding of the 'origin' of 'goods' . . . is the producer of the tangible product sold in the marketplace, in this case the physical Campaigns videotape sold by Dastar. . . . [A]s used in the Lanham Act, the phrase 'origin of goods' is in our view incapable of connoting the person or entity that originated the ideas or communications that 'goods' embody or contain."

Justice Scalia acknowledged that the purchaser of a book or video is likely to be primarily interested in the identity of its creator, and not merely "if at all" in the identity of the manufacturer of the physical product. This, of course, is what Fox argued. But the "problem with this argument," Justice Scalia responded, "is that it causes the Lanham Act to conflict with the law of copyright, which addresses that subject specifically."

According to Justice Scalia, "The right to copy, and to copy without attribution, once a copyright has expired . . . passes to the public. . . [and] once . . . the copyright monopoly has expired, the public may use the . . . work at will and without attribution." If Dastar could be held liable for crediting its employees as producers, and not crediting Fox, section 43(a) "would create a species of mutant copyright law that limits the public's 'federal right to "copy and to use"' expired copyrights. . . ." What's more, Justice Scalia concluded, "To hold otherwise would be akin to finding that [section] 43(a) created a species of perpetual . . . copyright, which Congress may not do."

Dastar was represented by David A. Gerber in Oxnard and by David Nimmer and Jane Shay Wald of

Irell & Manella in Los Angeles. Twentieth Century Fox was represented by Gary D. Roberts of Twentieth Century Fox in Los Angeles and by Neil S. Jahss of O'Melveny & Myers in Los Angeles.

Editor's note: This case is not entirely over yet. Though the copyright to Fox's television series expired, a renewal form for the copyright to Eisenhower's book was filed, and Fox reacquired the exclusive television and video rights to the book, for its renewal term. Thus, if the book's copyright was properly renewed, Dastar's production and distribution of its video would infringe the book's copyright. There is, however, a dispute between Dastar and Fox over whether the book's copyright was properly renewed; and the Supreme Court has remanded the case for further proceedings on that issue. On its face, Justice Scalia's opinion seems to have something to say only about works that have gone into the public domain. It may, however, be of broader importance. Section 43(a) has been used for more than two decades in entertainment industry credit dispute cases. Perhaps the earliest of these was Smith v. Montoro (ELR 3:6:1), where as long ago as 1981, the Ninth Circuit Court of Appeals ruled that a producer violated section 43(a) by taking an actor's name off of a movie and substituting another name. The rationale for that result, and similar results in the music industry (ELR 10:2:8), was that crediting one person for creative work actually done by another person misdesignated the "origin" of the mislabeled movie or recording - the very rationale that Justice Scalia and the Supreme Court now have rejected. Indeed, when the United States joined the Berne Union in 1989, it relied (in part) on Lanham Act section 43(a) for the proposition that U.S. law does protect the moral right of attribution, as required by the Berne Convention. Thus, the Supreme Court's decision in this case raises the question of whether the U.S. is now in default of its obligations under Berne. Fortunately (for those who wish the U.S. to remain a member of Berne), there are no enforceable remedies for a violation of Berne, so the Supreme Court's decision is unlikely to have any practical consequences for international copyright protection of U.S. works. Moreover, this case does not put the U.S. in violation of TRIPs - even though the TRIPs agreement requires WTO members (including the U.S.) to comply with Berne, and even though TRIPs does provide for enforceable remedies (ELR 23:6:4) - because TRIPs specifically provides that members have no rights or obligations under the moral rights provision of Berne.

Dastar Corp. v. Twentieth Century Fox Film Corp., 123 S.Ct. 2041, 2003 U.S.LEXIS 4276 (2003) [ELR 25:1:7]

Famous Music's publishing contracts with Henry Mancini, Johnny Mercer and others did not require it to pay them for "foreign tax credit" Famous received against its U.S. income tax on account of foreign taxes Famous paid from sub-licensing royalties in other countries, New York appellate court holds

Famous Music Corporation is the publisher of songs written by Henry Mancini, Johnny Mercer and, of course, many many others. Famous' contracts contain a "standard provision" requiring it to pay composers - including Mancini, Mercer and others - 50% of "all net sums actually received" by Famous.

Famous publishes songs in the United States, and enters into sub-publishing agreements with foreign publishers for the publication of its songs in other countries. Those foreign sub-publishers pay whatever taxes are required by the laws of their own countries, and remit the balance (less their share) to Famous in the U.S.

Composers acknowledge that Famous pays them 50% of the amount Famous actually receives from foreign sub-publishers. But a half dozen composers or their successors - including the successors of Henry Mancini and Johnny Mercer - have complained that Famous does not pay them any share of the "foreign tax credit" that Famous receives against its own U.S. income tax on account of the foreign taxes that Famous, in effect, pays in other countries.

As its name suggests, the foreign tax credit reduces the amount of income tax that Famous must pay in the United States by at least a portion of the amount of tax its sub-publishers pay, on Famous' behalf, in other countries.

Famous acknowledges that it doesn't pay

composers anything on account of the U.S. foreign tax credit. It doesn't, Famous explains, because its publishing contracts do not require it to. The only provision of those contracts bearing on this point is the phrase that requires Famous to pay composers 50% of "all net sums actually received." The question is whether that phrase includes tax credits.

A New York state court judge held that the phrase does include tax credits, and he therefore granted summary judgment in favor of the composers and successors who filed a breach of contract lawsuit against Famous. On appeal, however, Famous has won.

In a short opinion, the Appellate Division of the New York Supreme Court has held that "the clearly expressed language of the . . . contracts" shows that "the benefit of any foreign tax credit was not contemplated by the parties." The court reasoned that "the specific language of these contracts specifically identifies and delineates all of the royalties in which [the composers and their successors] are entitled to share . . . [and] the failure to identify the foreign tax credit benefit indicates that such benefit was not envisioned by the parties to be an intended term in any of the subject contracts."

The composers and their successors were represented by David Blasband. Famous Music was represented by Jonathan Zavin.

Evans v. Famous Music Corp., 754 N.Y.S.2d 259, 2003 N.Y.App.Div.LEXIS 872 (App.Div.2003)[ELR 25:1:8]

New Line's acquisition of rights to "Lost in Space" by assignment from Prelude Pictures obligated New Line to make payments required by contract between Prelude and Ib Melchior, California appellate court holds

When New Line Productions acquired the rights to "Lost in Space" it may have acquired more than it bargained for. What it bargained for were the rights to that movie. What it got in addition was the obligation to make certain payments to Ib Melchior, even though the acquisition agreement specifically provided that New Line would not be obligated to pay Melchior.

Some background: New Line acquired the movie rights to "Lost in Space" by assignment from Prelude Pictures. Prelude appears to have optioned those rights from Melchior and producer Mark Koch. Before the movie was produced, a dispute arose between Melchior and Prelude; and that dispute was settled by a written "Release Agreement." That Release Agreement obligated Prelude to pay Melchior a production bonus, an advisor fee, and 2% of Prelude's gross receipts from "Lost in Space," if the movie was produced.

After the Release Agreement was signed, Prelude assigned its rights in the movie, including its rights under the Release Agreement, to New Line. The assignment provided that New Line assumed all of Prelude's obligations under the Release Agreement except the obligation to make payments to Melchior. Indeed, the assignment expressly provided that Prelude "retained" the obligation to pay Melchior, though the assignment did authorize New Line to pay Melchior and then offset those payments from money New Line was obligated to pay to Prelude.

When the movie was produced, New Line did in fact pay Melchior his production bonus and advisor fee, but it did not pay him anything on account of gross receipts. As a result, Melchior sued New Line, asserting claims for breach of contract, conversion and unjust enrichment.

At first, the case got nowhere. The trial court granted New Line's motion for summary judgment, on the grounds that Melchior did not have a contract with New Line, and on the grounds that his conversion and unjust enrichment claims were preempted by federal copyright law.

On appeal, however, Melchior has salvaged one part of his case - the breach of contract part. In an opinion by Justice Vaino Spencer, the California Court of Appeal has agreed with the trial court that Melchior's conversion and unjust enrichment claims are preempted. But Justice Spencer has ruled that Melchior has a valid breach of contract claim against New Line.

Judge Vaino reasoned that "New Line . . . accepted the benefits of Melchior's rights . . . under the original Release Agreement . . . [and therefore] it must also bear the burdens of that contract." The judge acknowledged that the Prelude/New Line assignment provided otherwise. But he concluded that "Notwithstanding the private arrangement between [New Line] and [Prelude] with respect to the nonliability of [New Line] for the [payments to Melchior], [New Line] is liable, under the circumstances here, for the [payments] stated in the [Release Agreement]. The liability of [New Line] . . . is based upon principles of estoppel," the judge said.

Editor's note: The reason that New Line didn't pay Melchior anything on account of gross receipts was that Prelude itself did not receive gross receipts. It didn't, because the Prelude/New Line Agreement required New Line to pay Prelude what the agreement called a "participation fee" only if the movie's domestic box office receipts reached $75 million or the movie reached "cash breakeven," and neither of those things happened. What's more, the original Release Agreement between Melchior and Prelude provided that Prelude would pay Melchior 2% of its own gross receipts, "not the gross . . . receipts of the Picture or the distributor's gross. . . ." Nevertheless, "Melchior argues that the New Line Agreement improperly modified the Release Agreement by reducing the amount of receipts he was to receive from two percent of what would have been Prelude's gross receipts to two percent of Prelude's 'participation fee' . . . without his written agreement to the modification." So it appears that Melchior intends to litigate what Prelude's gross receipts would have been, if Prelude had made a different deal with New Line than the one it did make; and the Court of Appeal's decision permits Melchior to hold New Line liable for 2% of that amount. This result appears to differ from the result in Recorded Picture Co. v. Nelson Entertainment (ELR 19:9:8) - a case involving the producer's share of home video receipts from a sub-distributor. In that case, the sub-distributor was not liable for amounts the original distributor agreed to pay the producer. However, Justice Spencer noted that the sub-distributor in the Recorded Picture Co. case was merely a licensee, while New Line was an assignee; and that distinction makes all the difference, Justice Spencer concluded.

Melchior was represented by Donald L. Prichard and by James J. Regan of Regan Braun in Redondo Beach. New Line was represented by Saul Brenner of Loeb & Loeb in Los Angeles.

Melchior v. New Line Productions, Inc., 131 Cal.Rptr.2d 347, 2003 Cal.App.LEXIS 299 (Cal.App. 2003)[ELR 25:1:9]

Appellate court affirms dismissal of lawsuit against HBO alleging that its sports agent series "Arliss" infringed copyright to treatment for proposed talent agent series called "Schmoozers"

HBO has defeated a claim that "Arliss," its series about a sports agent, infringed the copyright to a treatment submitted by Patricia Willis for a proposed series titled "Schmoozers." A federal Court of Appeals has affirmed the dismissal of Willis' lawsuit (ELR 23:7:7), in a short opinion marked "May Not be Cited as Precedential Authority."

The appellate court acknowledged that both "Arliss" and "Schmoozers" are "situation comedies that feature a money-driven talent agent as their primary character, and that satirize the American entertainment industry as being wholly populated by self-absorbed, morally-depraved individuals." Moreover, both series "surround the primary character with a supporting cast comprised of a hapless, male sidekick and an intelligent, female assistant."

These similarities were legally insignificant, however, because they "are based on stereotypical characters and stock themes, and thus any copying by [HBO was] related to non-copyrightable aspects of Willis' work."

The appellate court also rejected Willis' contention that the "total concept and feel" of her series and "Arliss" were substantially similar. "We do not think any reasonable trier of fact could so conclude," the court said.

Finally, the appellate court rejected Willis' argument that HBO had an implied-in-fact obligation to compensate her, under New York state law. Willis' complaint failed to allege facts supporting such a claim, the appellate court concluded.

Willis was represented by Al J. Daniel, Jr., of Daniel Seigel & Bimbler in New York City. HBO was represented by Orin Snyder of Parcher Hayes & Snyder in New York City.

Willis v. Home Box Office, 57 Fed.Appx. 902, 2003 U.S.App.LEXIS 4063 (2nd Cir. 2003)[ELR 25:1:10]

Little League coach is entitled to trial in lawsuit against Paramount Pictures alleging that movie "Hardball" defamed him, because disclaimer that movie was "fictitious" was not necessarily sufficient to defeat coach's claims, federal appellate court decides

Paramount Pictures will have to defend itself at trial after all, in a lawsuit filed against it by Little

League coach Robert Muzikowski. The lawsuit contends that the character named "Conor O'Neill" in Paramount's movie Hardball was understood by viewers to be Muzikowski, and that the "O'Neill" character had characteristics that defamed Muzikowski.

Muzikowski's lawsuit was originally dismissed by federal District Judge Charles Kocoras. But Muzikowski appealed, and in an opinion by Judge Diane Wood, the appellate court has reversed.

Paramount's movie was based on the non-fiction book Hardball: A Season in the Projects - a book that featured passages about Muzikowski and personal details about his life. The movie's credits acknowledge that it "is in part inspired by actual events, persons and organizations," but those same credits stated "this is a fictitious story and no actual persons, events or organizations have been portrayed."

Nevertheless, the "O'Neill character in the movie version of Hardball experiences almost exactly the same things as the real Muzikowski. The only differences, in Muzikowski's opinion, are unflattering and false as applied to the real man." Moreover, Paramount's publicity for the movie emphasized that it was based on the true account found in the book. Indeed, at least one news story about the movie reported that actor Keanu Reeves "plays Bob Muzikowski." And a number of Muzikowski's friends and acquaintances called to say that Paramount was making a movie about him.

Paramount argued that because its movie was fiction, "it cannot reasonably be interpreted to refer to Muzikowski." Judge Wood, however, rejected that argument. "[S]imply because the story is labeled 'fiction' and, therefore, does not purport to describe any real person' does not mean that it may not be defamatory . . . ," she ruled.

Paramount also argued that even if the "O'Neill" character were understood to be Muzikowski, it was not defamatory. But Judge Wood rejected that argument too. "In Hardball, O'Neill is lying when he tells people that he is a licensed securities broker," the judge noted, and "alleging or implying that a person is not a legitimate member of her profession is defamatory per se." Moreover, the movie's "O'Neill" character commits a number of crimes, including theft, and a false assertion that someone has committed theft "has been held to be defamatory per se," the judge said.

These rulings do not necessarily mean that Muzikowski will win the case eventually. Under Illinois law, if a statement can be interpreted in an innocent way, it is not defamatory. Paramount argued that because the movie is fictional, and there are a number of differences between "O'Neill" and Muzikowski, the movie can be interpreted as not referring to Muzikowski at all. Judge Wood acknowledged that Paramount may be able "to support its 'innocent construction' argument."

But the judge also reasoned that "Muzikowski might be able to produce evidence that there is in fact no reasonable interpretation of the movie that would support an innocent construction. He may be able to show that no one could think that anyone but him was meant, and the changes to 'his' character, far from supporting an innocent construction that O'Neill is a fictional or different person, only serve to defame him. . . ." For this reason, Judge Wood concluded that Muzikowski's case should not have been dismissed, and she remanded it to the District Court so he would have a "chance to prove his claim. . . ."

Muzikowski represented himself. Paramount was represented by Debbie L. Berman of Jenner & Block in Chicago.

Muzikowski v. Paramount Pictures Corp., 322 F.3d 918, 2003 U.S.App.LEXIS 3926 (7th Cir. 2003)[ELR 25:1:10]

California appellate court orders dismissal of invasion of privacy action filed by man who was truthfully portrayed in television series "The Prosecutor" as having pled guilty to being an accessory to murder, 13 years before broadcast

Discovery Communications and New Dominion Pictures produce and air a television series called "The Prosecutor." The series re-enacts notorious crimes, and in 2001, one episode dealt with the 1988 murder of Steve Gates' employer, Salvatore Ruscitte. Gates was originally charged as a co-conspirator, but he eventually pleaded guilty to being an accessory after the fact.

The 2001 episode of "The Prosecutor" reported that Gates had pled guilty to being an accessory after the fact, and though the episode was accurate, Gates sued Discovery and New Dominion for defamation and invasion of privacy.

The defamation part of his case didn't last long. A California trial court judge sustained Discovery and New Dominion's demurrer (a motion to dismiss for failure to state a claim). However, the trial court judge denied their demurrer to Gates' invasion of privacy claim, and also denied their motion to strike the privacy claim under California's Anti-SLAPP statute.

According to Gates, Discovery and New Dominion invaded his privacy by revealing he had pled guilty - a fact that he wished to keep private - and by airing his photograph.

California's Anti-SLAPP statute permits

immediate appeals, and Discovery and New Dominion did, successfully. In a decision by Justice Patricia Benke, the California Court of Appeal held that Gates had not shown he was likely to prevail on his invasion of privacy claim, and therefore Discovery and New Dominion's motion to dismiss should have been granted.

In order to reach this conclusion, Justice Benke had to decide that a 1971 decision of the California Supreme Court - in a case involving similar facts to those alleged by Gates - was no longer good law. Subsequent decisions of the United States Supreme Court, as well as comments by California Supreme Court justices in more recent cases, led Justice Benke to conclude that because "The disclosure was a truthful report of information in the public record of a judicial proceeding [it] was privileged under the First Amendment [and] Gates, therefore, cannot prevail on his privacy action. . . ."

Gates was represented by Niles R. Sharif in San Diego. Discovery and New Dominion were represented by Louis P. Petrich and Robert S. Gutierrez of Leopold Petrich & Smith in Los Angeles.

Gates v. Discovery Communications, 131 Cal.Rptr.2d 534, 2003 Cal.App.LEXIS 282 (Cal.App. 2003)[ELR 25:1:11]

"Girls Gone Wild" video did not misappropriate image or invade privacy of 17-year woman who exposed her breasts and consented to taping by cameraman, federal District Court rules

One day during the summer of 1999, 17-year-old Veronica Lane was driving her car in Panama City

Beach, Florida. While doing so, she was approached by a man with a video camera who asked Lane to expose her breasts to the camera in exchange for beaded necklaces. Lane apparently thought this was a fair deal, because she "pulled down her tube top to reveal her breasts in return for the beads she requested." (As columnist Dave Barry frequently says, I am not making this up.)

According to Lane, the cameraman told her the video would be for his own personal use only, and that he would not show it to anyone who was not present at that time. In fact, however, the images of Lane that were taped that day turned up in a commercially distributed video entitled Girls Gone Wild. When that happened, Lane didn't think her breasts-for-beads deal was fair any more.

As a result, Lane sued the producers and distributors of Girls Gone Wild, alleging claims under

Florida law for misappropriation of her likeness, invasion of her privacy and fraud. Alas, so far at least, Lane has nothing to show for her breasts but beads, because federal District Judge Anne Conway has dismissed most of Lane's lawsuit.

Florida has a right of publicity statute - one that prohibits the use of a person's likeness for commercial purposes without consent. Lane relied in part on that statute, arguing that her topless image had been used to sell Girls Gone Wild. Judge Conway, however, ruled that commercial purposes do not include the use of a person's likeness in entertainment, and that "it is irrefutable that the Girls Gone Wild video is an expressive work created solely for entertainment purposes." Since Lane's image was not used to promote anything unrelated to Girls Gone Wild, the judge granted summary judgment against Lane in connection with her claims based on that Florida statute.

Judge Conway also ruled that even if Lane's image had been used for a commercial purpose, Lane had consented to the use, and thus the statute was not violated for that reason. Lane didn't dispute that she had consented to being taped. Rather, she argued that as a mere 17-year-old, she lacked the legal capacity to give the consent required by the statute. It is the case that in order to consent to the use of one's image in exchange for "compensation," one must be 18 years old under a Florida statute, or the contract must be approved by a judge. Lane, however, did not receive compensation for bearing her breasts; and thus Judge Conway concluded that Lane could validly consent, even though she was younger than 18 when she did so.

Lane also argued that she consented only to the cameraman's private use of the video - not its commercial distribution. Judge Conway rejected this argument on the grounds that no reasonable jury could conclude that Lane had limited her consent in that fashion. The judge noted that Lane had exposed herself on a public street while pedestrians were in the vicinity, and that the cameraman was a stranger to Lane before she exposed her breasts to him.

Lane's common law false light invasion of privacy claim was rejected as well. The judge found that Girls Gone Wild depicts Lane "truthfully and accurately as doing exactly what she did. . . ." And no falsity was created by the fact that the video also contained images of other women doing the same thing, or by the fact that Girls Gone Wild was marketed along with another video that contained "even more extensive and offensive sexually explicitly scenes."

The only claim that still remains is one for fraud. However, Judge Conway was not asked to rule on that claim, and thus her decision does not indicate what facts Lane's fraud allegations are based on.

Lane was represented by Joseph Daniel Tessitore of Motes & Carr in Orlando. The producers and distributors of Girls Gone Wild were represented by Thomas R. Julin of Hunton & Williams of Miami, David Charles Willis of Mateer & Harbert in Orlando, and David A. Brooks of Nemecek & Cole in Sherman Oaks.

Lane v. MRA Holdings, LLC, 242 F.Supp.2d 1205, 2002 U.S.Dist.LEXIS 24111 (M.D.Fla. 2002)[ELR 25:1:11]

Owner of rights to recordings by The Who is awarded balance due from Musicmaker.com under Internet licensing agreement entered into in 1999; court rejects Musicmaker's argument that it should be able to rescind agreement because Napster "frustrated" purpose of license

"Napster did make a mess of a lot of things," federal District Judge Richard Owen observed. But this did not allow Musicmaker.com to avoid paying the balance it owed under a licensing agreement that authorized it to sell and perform recordings by The Who from the website it operated when the agreement was made.

The license agreement at issue in the case was one by which Profile Publishing and Management, a Danish corporation that owns the rights to recordings by The Who, granted Musicmaker exclusive Internet rights to those recordings for 10 years, in return for a $2.5 million advance against royalties. The agreement provided that $1.5 million of the advance was to be paid when Musicmaker received master recordings, and the balance was to be paid in four quarterly payments of $250,000 each. Musicmaker made all of the payments except the final quarterly installment, and that $250,000 is what Profile sought to collect in what should have been a simple breach of contract lawsuit.

Musicmaker, however, asserted eight affirmative defenses and three counterclaims, including claims for punitive damages, which the company refused to dismiss despite Profile's assertion that all were "baseless" and should be withdrawn. Musicmaker refused to dismiss them, that is, until Profile made a motion for summary judgment. At that time, Musicmaker did withdraw its defenses and counterclaims. In their place, Musicmaker sought to amend its answer to assert just one affirmative defense: "frustration of purpose."

The "frustration of purpose" defense was based on Musicmaker's contention that Napster had made exclusive Internet rights to recordings by The Who worthless. That contention was supported, at least in part, by the fact that in January 2001, Musicmaker shut down its website and announced plans to liquidate the company.

Judge Owen explained that the "frustration of purpose" doctrine allows the frustrated party to rescind a contract "when ' . . . as a result of unforeseeable events, performance by party X would no longer give party Y what induced him to make the bargain in the first place.'"

In this case, however, the licensing agreement between Profile and Musicmaker was entered into in December 1999, seven or eight months before Napster came into existence, two months before the IFPI announced a "global attack" on Internet music piracy, and three weeks after the RIAA filed its "highly publicized" lawsuit against Napster itself. As a result, Judge Owen concluded, "while it is obvious that Napster did make a mess of a lot of things . . . [t]hat . . . does not a legal frustration of purpose make, and while one can have a sympathetic emotional tug here, a contract is a contract, and Profile has stood ready to perform."

What's more, Judge Owen granted Profile's motion for sanctions, under Rule 11, because of Musicmaker asserted affirmative defenses and counterclaims "without the reasonable inquiry required under the circumstances." The judge said that Musicmaker's "counsel should have withdrawn them early on when [Profile] urged this, not forcing [Profile] to prepare and move for summary judgment which finally caused their evaporation." The sanctions were "assessed against Musicmaker and its attorneys for the attorney fees for the summary judgment motion which Musicmaker did not oppose."

Profile was represented by Ronald C. Minkoff of Beldock Levine & Hoffman in New York City. Musicmaker was represented by Stuart A. Jackson of Re Parser & Partners in New York City.

Profile Publishing and Management Corp. v. Musicmaker.com, Inc., 242 F.Supp.2d 363, 2003 U.S.Dist.LEXIS 991 (S.D.N.Y. 2003)[ELR 25:1:12]

Umpires' union is not entitled to arbitrate a warning letter sent by Baseball Commissioner's Office to umpire, because collective bargaining agreement bars challenges to umpire discipline

Major League Baseball has won a court order barring the umpires' union from arbitrating a dispute over a letter sent by the Commissioner's Office to umpire John Hirschbeck. The letter asserted that Hirschbeck's actions at one game violated the Official Playing Rules of Major League Baseball, and that his performance as an umpire at another game was "not commensurate with [his] abilities."

Hirschbeck is the president of the World Umpires Association. The WUA is the umpires' union, but the letter he received was not prompted by his position with the union. Instead, it appears to have been triggered by a dispute between the Commissioner's

Office and Hirschbeck over the interpretation of Baseball's Official Playing Rules. That at least was what the WUA contended, when it initiated an arbitration that challenged "the letter . . . and its entire contents."

The WUA collective bargaining agreement contains a provision authorizing the arbitration of instructions issued by the Commissioner's Office that the WUA considers to be inconsistent with the Official Playing Rules. However, that same provision explicitly bars arbitration of disciplinary measures taken against umpires. Insofar as umpire discipline is concerned, the collective bargaining agreement provides that the decision of the Office of the Commissioner "shall be final and binding" and not subject to challenge by arbitration or in any other forum.

As a result, when the WUA initiated an arbitration over the letter to Hirschbeck, the

Commissioner's Office responded by filing a lawsuit in federal District Court in New York City, seeking a judicial declaration that the letter was not arbitrable. Judge Lewis Kaplan has agreed.

Judge Kaplan noted that the collective bargaining agreement stated that "discipline" included a "warning" to an umpire. And he held that "the letter sent by [the Commissioner's Office] to Hirschbeck was a warning, and therefore constituted 'discipline' with the meaning of the [collective bargaining agreement]." Because the WUA complaint "concerns the warning letter," the judge concluded, "the WUA may not arbitrate the . . . dispute. . . ."

The Commissioner's Office was represented by Howard L. Ganz of Proskauer Rose in New York City. The WUA was represented by Joseph J. Vitale of Cohen Weiss & Simon in New York City.

Office of the Commissioner of Baseball v. World Umpires Association, 242 F.Supp.2d 380, 2003 U.S.Dist.LEXIS 1102 (S.D.N.Y. 2003)[ELR 25:1:13]

Disputes between East Coast Hockey League and Professional Hockey Players Association concerning salary cap and player discipline are subject to arbitration under collective bargaining agreement, federal appeals court holds

Two separate disputes between the East Coast Hockey League and the Professional Hockey Players Association are subject to arbitration under their collective bargaining agreement, a federal Court of Appeals has held. One dispute concerns the Tallahassee Tiger Sharks' violation of the salary cap provision of the collective bargaining agreement. The other dispute concerned the League's suspension of player Brandon Sugden for throwing a stick at a patron.

The Association demanded that both disputes be arbitrated, pursuant to a provision of the collective bargaining agreement that provides for arbitration of disputes arising out of that agreement or any player contract. The League, however, refused to arbitrate either dispute. Instead, the League filed a declaratory relief lawsuit in federal court in Virginia, seeking a declaration the neither dispute was arbitrable.

At first, the League was successful. A magistrate-judge ruled that although the collective bargaining agreement does require arbitration of disputes between the League and the Association, the Association waived its right to arbitrate League decisions relating to conduct by teams or players. The Sharks' violation of the salary cap was conduct by a team; and Sugden's throwing a stick at a patron was conduct of a player. And thus the magistrate-judge concluded that neither dispute was subject to arbitration.

The Court of Appeal has reversed, however.

In an opinion by Judge Morton Greenberg, the appellate court reasoned that because the salary cap is part of the collective bargaining agreement, and the arbitration clause of the collective bargaining agreement requires arbitration of disputes concerning the collective bargaining agreement, the salary cap dispute is subject to arbitration.

Judge Greenberg also ruled that the dispute over Sugden's suspension was subject to arbitration, because it was a dispute concerning his employment, and his standard player's contract provided that any disputes between him and the League shall be submitted to arbitration pursuant to the collective bargaining agreement.

As a result, Judge Greenberg concluded that the magistrate-judge's decision that the Association had "'waived the right to arbitrate League decisions relating to player or member conduct' simply is wrong."

The Association was represented by Ronald Leonard Jaros, Sr., of Jaros & Jaros in Hamburg, New York. The League was represented by James H. Falk, Jr., in Washington D.C.

East Coast Hockey League v. Professional Hockey Players Association, 322 F.3d 311, 2003 U.S.App.LEXIS 4256 (4th Cir. 2003)[ELR 25:1:13]

Statute of limitations bars California Talent Agencies Act claim by Tae Bo instructor and actor Billy Blanks for refund of compensation paid to former manager, California Court of Appeals holds

Tae Bo instructor and actor Billy Blanks is locked in a multifaceted legal dispute with his former manager. The dispute dates back to 1999 when Blanks' manager, Jeffrey Greenfield, sought to negotiate an agreement giving him as much as 49% of Blanks' various enterprises - businesses that were worth millions of dollars. "Blanks suspected he was being defrauded by Greenfield," and responded by filing a lawsuit in California state court.

Blanks' lawsuit asserted 17 separate causes of action alleging fraud, breach of fiduciary duty and other claims. One of these causes of action - indeed, the first cause of action - asserted that Greenfield had violated the California Talent Agencies Act because Greenfield had acted as Blanks' agent without being licensed to do so, after Blanks' agreement with the William Morris Agency expired. One of the remedies that would have been available to Blanks, if Greenfield had acted as an unlicensed agent, would have been a refund of the commissions Blanks had paid Greenfield for his services as an agent.

The California Talent Agencies Act has a one-year statute of limitations. Blanks' lawsuit was filed less than a year after Blanks' last payment to Greenfield. But the lawsuit was filed in court. The Act requires claims to be filed with the California Labor Commissioner before they are filed in court. And though Blanks' filed a claim with the Labor Commissioner too, that claim was filed more than a year after Blanks paid commissions to Greenfield.

Blanks' lawsuit was put on hold while he pursued his claim before the Labor Commissioner. In due course, the Labor Commissioner ruled that Greenfield had violated the Act by acting as an unlicensed agent, but that Blanks was not entitled to a refund of commissions paid more than a year before his claim was filed with the Labor Commissioner.

Blanks then went back to court, where he argued that since he had filed his lawsuit within a year, his claim for a refund of commissions was not barred by the statute of limitations. The trial court agreed, and thus denied Greenfield's motion to dismiss that claim. On appeal, however, Greenfield prevailed.

In an opinion by Justice Richard Aldrich, the California Court of Appeal ruled that the Talent Agencies Act requires claims alleging violations of its provisions to be filed with the California Labor Commissioner within one year, and that filing a lawsuit in state court does "not toll the statute of limitations."

As a result, the appellate court granted Greenfield's petition for a writ of mandate and ordered the trial court to grant Greenfield's motion for dismissal of Blanks' first cause of action seeking a refund of commissions.

Greenfield was represented by Leonard D. Venger of Manatt Phelps & Phillips in Los Angeles and by Alan L. Isaacman of Isaacman Kaufman & Painter in Beverly Hills. Blanks was represented by Charles N. Kenworthy of Allen Matkins Leck Gamble & Mallory, and by Martin D. Singer of Lavely & Singer, in Los Angeles.

Greenfield v. Superior Court, 131 Cal.Rptr.2d 179, 2003 Cal.App.LEXIS 290 (Cal.App. 2003)[ELR 25:1:14]

Advertising photographs of Skyy Vodka bottle did not infringe copyrights to similar photos taken by another photographer, because photos were not virtually identical, federal appellate court rules

Photographer Joshua Ets-Hokin has once again lost his copyright infringement suit against Skyy Spirits Inc., the maker of Skyy Vodka. The road to this result has been a rocky one, for both parties.

The case began when Ets-Hokin was commissioned by Skyy to take photos of Skyy's vodka bottle. He did, and he granted Skyy a license to use them in certain ways. According to the photographer, Skyy's license did not include authorization for his photos to be used in advertisements, but Skyy did anyway, thereby infringing his copyrights. However, the photos Skyy actually used were shot by other photographers. But Ets-Hokin alleged that those photos mimicked his own, and so they infringed his copyrights too.

Early in the case, a federal District Court granted Skyy's motion for summary judgment, in a ruling that held that Ets-Hokin's photos were not eligible for copyright protection. That decision, however, was reversed on appeal (ELR 22:9:18); and the case was remanded to the District Court.

Skyy then made a second motion for summary judgment, arguing that even though Skyy's photos were protected by copyright, the photos Skyy used in its ads did not infringe Ets-Hokin's copyrights. The District Court agreed, and again granted Skyy's motion.

This time, the Court of Appeals affirmed the dismissal of Ets-Hokin's case. Writing for the Court of Appeals, Judge Mary Schroeder held that Ets-Hokin's case failed, because of the "defensive doctrines of merger and scenes a faire."

Judge Schroeder acknowledged that "the Ets-Hokin and Skyy photographs are indeed similar." But the judge explained that "their similarity is inevitable, given the shared concept, or idea, of photographing the Skyy bottle." This meant that in order for the photographs to be "substantially similar," they had to be "virtually identical," and they were not. "Indeed," Judge Schroeder observed, "they differ in as many ways as possible with the constraints of the commercial product shot." The lighting, angles, shadows and highlighting all differed. "The only constant is the bottle itself," the judge said, and that meant that Skyy's "photographs are therefore not infringing."

Ets-Hokin was represented by Christopher C. Welch in Newport, Rhode Island. Skyy was represented by James Wesley Kinnear of Holme Roberts & Owen in San Francisco.

Ets-Hokin v. Skyy Spirits Inc., 323 F.3d 763, 2003 U.S.App.LEXIS 4510 (9th Cir. 2003)[ELR 25:1:15]

New York appellate court affirms dismissal of suit against producer of 1980 documentary film titled "Wild Style" filed by graffiti artist who uses "Wild Style" to identify himself and his work

Michael Tracy is a graffiti artist who uses the phrase "Wild Style" to identify himself and his work. "Wild Style" also is the title of a 1980 documentary film produced by Pow Wow Production.

Tracy sued Pow Wow in New York state court, in 1999, alleging that Pow Wow misappropriated the phrase "Wild Style" by using it as the title of its film. The trial court did not agree and granted Pow Wow's motion for summary judgment. The Appellate Division affirmed.

The appellate court agreed with Pow Wow that Tracy's claims were time-barred, because he knew as long ago as 1982 about Pow Wow's documentary. Tracy argued that his claims were revived in 1997, when the film was re-released and Pow Wow promised him he would be "taken care of" if the film were profitable. But the Appellate Division noted that Tracy's complaint did not allege a claim for breach of contract, and that in any event, Pow Wow's alleged promise was "insufficient to raise a triable issue as to the existence of an enforceable oral agreement."

What's more, even if Tracy's claim were not time-barred, it would fail on the merits, the Appellate Division concluded. Tracy never used "Wild Style" in connection with a product or business, nor did he register it as a trademark or show that it had acquired secondary meaning.

Tracy was represented by Eric Vaughn-Flam. Pow Wow Productions was represented by Jeremy L. Wallison.

Tracy v. Pow Wow Production, 755 N.Y.S.2d 76, 2003 N.Y.App.Div.LEXIS 841 (App.Div. 2003)[ELR 25:1:15]

Musicians were independent contractors rather than employees of chamber orchestra, and thus their Title VII and ADA lawsuits against orchestra were properly dismissed, because those statutes protect only employees, federal appellate court affirms

The Minnesota Sinfonia chamber orchestra has escaped without liability - indeed without trials - in two separate lawsuits filed by musicians who formerly performed with it.

French horn player Tricia Lerohl sued the Sinfonia for violating Title VII of the Civil Rights Act; she alleged that the Sinfonia terminated her in retaliation for her complaints about sexual harassment by the orchestra's conductor. Clarinet player Shelley Hanson sued the orchestra under the Americans with Disabilities Act for terminating her after she was injured during a rehearsal.

The factual merits of the musicians' claims were never evaluated. Instead, both of their cases were dismissed by federal District Courts, in response to the Sinfonia's motions for summary judgment.

At issue in both cases was the question of whether Lerohl and Hanson were "employees" or "independent contractors," because Title VII and the ADA protect only employees, not independent contractors. In a published opinion in Hanson's case, the District Court concluded that she was an independent contractor (ELR 24:1:11). And that decision was followed by the court in Lerohl's separate case, in an unpublished ruling.

Hanson and Lerohl's cases were consolidated on appeal; and the Court of Appeals has affirmed both rulings. In an opinion by Judge James Loken, the appellate court applied the same "employee vs. independent contractor" test used by the Supreme Court in the Community for Creative Non-Violence copyright case (ELR 11:3:12).

Judge Loken emphasized that "Sinfonia musicians retained the discretion to decline particular Sinfonia concerts and play elsewhere," and that "Sinfonia withheld no income or FICA taxes, documented musician payments on an IRS Form 1099, and provided no employee benefits other than to an independent union pension fund." These factors led the judge to conclude that Hanson and Lerohl were independent contractors, rather than employees.

In reaching this conclusion, Judge Loken noted that "[t]here are surprisingly few cases addressing whether musicians who played in a band or orchestra were employees. . . ." One of those cases, however, reached a different conclusion than the one reached by Judge Loken in this case. In Seattle Opera v. NLRB (ELR 24:5:14), a different Court of Appeals concluded - in a split 2-1 decision - that chorus members were "employees." In dealing with that decision, Judge Loken reasoned that the "dissent [was] more persuasive" than the majority's opinion.

Hanson and Lerohl were represented by Jill Clark in Golden Valley. The Minnesota Sinfonia was represented by Frederick E. Finch in Minneapolis.

Lerohl v. Friends of Minnesota Sinfonia, 322 F.3d 486, 2003 U.S.App.LEXIS 3919 (8th Cir. 2003)[ELR 25:1:16]

Texas court has personal jurisdiction over Mexican record company to hear case seeking damages for accident in Mexico that injured and killed members of band "Intocable" who were being driven by record company employee from Texas to Mexico for concert appearance

Auto accident cases do not usually involve entertainment law. But a tragic car crash in Mexico in 1999 resulted in an exceptional case - one that does involve entertainment law, broadly defined. The crash was one that injured and killed members of the band "Intocable," as they were being driven from Texas to

Mexico for a concert in Mexico City.

The crash itself took place in Mexico and the defendant is a Mexican company. The resulting lawsuit was filed in Texas, however, because all but one of the bands' members were Texas residents and the band itself was a Texas limited liability company.

What makes this case an entertainment law case is that the defendant is the band's record company. It had sent two Suburbans to Texas, driven by record company employees, to drive the band from Texas to Mexico. And the lawsuit filed by the injured band members and by relatives of the deceased band members alleges that the record company sent a reckless, unfit and exhausted employee to drive the car that crashed.

The record company is EMI Music Mexico, S.A. de C.V. It is a Mexican company that has no offices, agents, representatives, employees, property or bank accounts in Texas. For that reason, EMI Mexico responded to the lawsuit by filing a "special appearance" in which it argued that the Texas court did not have personal jurisdiction over it.

The trial court disagreed. It denied EMI Mexico's special appearance, and the Texas Court of Appeals has affirmed. EMI Mexico is a wholly-owned subsidiary of EMI Group PLC, and as such, is a corporate sibling of Capitol Records, Inc., a United States corporation. But EMI Mexico's relationship with Capitol Records appeared to play no role in the appellate court's ruling.

Rather, in an opinion by Justice Linda Reyna Yanez, the appellate court emphasized that "EMI Mexico purposefully directed its activities toward Texas by sending its employee . . . to Texas to pick up the band." Moreover, Justice Yanez ruled, the trial court's exercise of personal jurisdiction over EMI

Mexico "does not offend traditional notions of fair play and substantial justice."

EMI Mexico was represented by Barry A. Chasnoff in San Antonio. Injured band members and the relatives of the deceased were represented by Kevin Dubose of Hogan Dubose & Townsend in Houston, and other lawyers.

EMI Music Mexico v. Rodriguez, 97 S.W.3d 847, 2003 Tex.App.LEXIS 954 (Tex.App. 2003)[ELR 25:1:16]

Appeals court affirms CNN's victory in anticybersquatting case in federal court in Virginia to recover ownership of "cnnews.com" domain name from Chinese company that registered and used it to operate website for residents of China

A federal Court of Appeals has affirmed a District Court order transferring ownership of the domain name "cnnews.com" to Cable News Network. The order was issued in an "in rem" lawsuit filed by CNN in federal court in Virginia against a Chinese company that registered and used the domain name to operate a website for residents of China.

The case was brought by CNN under the Anticybersquatting Consumer Protection Act. In response to CNN's motion for summary judgment, District Judge T.S. Ellis found that he had jurisdiction to hear the case, even though the Chinese company had no contacts with the United States, because the domain name was registered in Virginia; and the judge held that the Chinese company's use of "cnnews.com" was likely to cause confusion, and that the company had registered the mark in bad faith (ELR 24:1:17).

The Chinese company appealed, without success. In a short Per Curiam opinion that "was not selected for publication in the Federal Reporter," the Court of Appeals affirmed Judge Ellis' ruling, including his order transferring the domain name to CNN.

The Chinese company was represented by James Wilson Dabney of Pennie & Edmonds in New York City. CNN was represented by David J. Stewart of Alston & Bird in Atlanta.

Cable News Network v. Cnnews.com, 56 Fed.Appx. 599, 2003 U.S.App.LEXIS 1065 (4th Cir. 2003)[ELR 25:1:17]

Florida gross receipts tax on boxing promoters does not violate First Amendment, Florida appellate court holds

Florida imposes a 5% tax on the gross receipts of boxing promoters, including their receipts from the sale of television rights. In the eyes of two promoters - Top Rank and America Presents - Florida's tax violates their First Amendment free speech rights. Showtime Networks, which frequently telecasts boxing matches, agrees.

The views of Top Rank, America Presents and Showtime were expressed in a lawsuit they filed against the Florida State Boxing Commission, in state court in Florida. Those views, however, are not shared by Florida judges.

A trial court judge dismissed Showtime from the case, on the grounds that the tax doesn't apply to it, and it ruled against Top Rank and America Presents on the merits of their First Amendment argument. That ruling was then affirmed by the Florida Court of Appeal, in an opinion by Judge James Wolf.

Judge Wolf concluded that "boxing conveys no message or idea; [and] therefore it has no content which is protected by the First Amendment."

To reach this conclusion Judge Wolf had to distinguish a similar case that held that a California gross receipts tax on pay-per-view telecasts of boxing matches was unconstitutional; and he did. The California case - United States Satellite Broadcasting v. Lynch (ELR 21:5:4) - involved a tax on broadcasters themselves, and for that reason was held to violate the First Amendment. The Florida statute, by contrast, does not tax broadcasters; it only taxes boxing promoters.

Top Rank, American Presents and Showtime were represented by Stephen H. Grimes of Holland &

Knight in Tallahassee. The Florida Boxing Commission was represented by Robert A. Butterworth, Florida's Attorney General, in Tallahassee.

Top Rank v. Florida State Boxing Commission, 837 So.2d 496, 2003 Fla.App.LEXIS 102 (Fla.App. 2003)[ELR 25:1:17]

Producer of "The Uncle Ed Show" does not have right to sue Mediacom for its refusal to air program on cable access channel, federal court rules

David Leach is the producer of "The Uncle Ed Show," a program that Mediacom has aired twice weekly for several years on its public access channel in Des Moines, Iowa. In 2002, Leach's show featured video and still images of aborted fetuses and people entering a Planned Parenthood Clinic. When Mediacom refused to air that episode, Leach filed a lawsuit alleging that Mediacom's refusal violated his rights under the Cable Communications Policy Act.

Federal District Judge Harold Vietor has dismissed Leach's lawsuit. In a brief and to-the-point decision, Judge Vietor held that the Cable Communications Policy Act does not create a private right of action allowing public access program producers to file lawsuits alleging the Act has been violated. As a result, the judge ruled that Leach did not have standing to bring his claim in federal court.

Leach represented himself. Mediacom was represented by Michael A. Giudicessi of Faegre & Benson in Des Moines.

Leach v. Mediacom, 240 F.Supp.2d 994, 2003 U.S.Dist.LEXIS 1072 (S.D.Iowa 2003)[ELR 25:1:17]

Previously Reported:

Jury awards $30 million to creators of "Psycho Chihuahua" cartoon character in idea-submission case against Taco Bell. Persistence appears to have paid off for Joseph Shields and Thomas Rinks - the creators of a cartoon character named "Psycho Chihuahua." In a lawsuit they filed against Taco Bell several years ago, the two men alleged that the talking Chihuahua that starred in Taco Bell television commercials, saying "Yo Quiero [I want] Taco Bell," was copied from their cartoon character. Taco Bell claims its talking Chihuahua commercials were created by the company's advertising agency, Chiat/Day. Early in the case, a federal District Judge dismissed Shields and Rinks' lawsuit, saying that their implied contract claims were preempted by copyright law, and that Psycho Chihuahua was not novel, as required for protection by Michigan law (ELR 21:7:7). On appeal, however, Shields and Rinks won reinstatement of their case. The Court of Appeals held that their implied contract was not preempted by copyright law, and that Michigan law does not require ideas to be novel to be protectible (ELR 23:7:15). The case was remanded to the District Court for trial which resulted in a jury verdict in favor of Shields and Rinks for $30,174,000. Taco Bell's parent company, Yum! Brands, Inc., has announced that it plans to appeal.

YES Network and Cablevision settle lawsuit over Cablevision's failure to carry Yankees games during 2002 season. At the beginning of the 2002 baseball season, a dispute broke out between the YES Network - the channel that owns the cable TV rights to New York Yankees' games - and Cablevision Systems, the cable TV system that until that year had been showing all of the Yankees' games. The dispute involved a number of related issues, including whether Cablevision would make the YES channel available to cable subscribers as part of Cablevision's basic package, or whether Cablevision would offer YES as a premium channel only to those subscribers who paid extra for it. Because the dispute was not immediately resolved, Cablevision didn't carry Yankees games at all for a while. That in turn prompted YES to file an antitrust lawsuit against Cablevision, to which Cablevision responded with a motion to dismiss. A federal District Court denied Cablevision's motion however (ELR 24:10:10). And that ruling eventually led to a settlement. The settlement took the form of "a definitive interim agreement with the YES Network that [made] YES available to all Cablevision customers in time for the 2003 baseball season," Cablevision announced. Under terms of that agreement, Cablevision added the YES Network to premium packages received by more than a million Cablevision customers for no additional fee. Other customers will have the ability to choose to receive the YES Network for a flat fee of $1.95 per month, or to receive the network as part of a regional sports tier that also includes MSG Network and Fox Sports Net New York for a monthly fee of $4.95. Cablevision and YES are now working on a "long-term agreement."

Before case went to trial, judge denied Def Jam's summary judgment motion in TVT Record's lawsuit over recordings by Ja Rule. As previously reported in these pages, TVT Records won a jury verdict of $132 million in its lawsuit against Def Jam Music, in a case involving TVT's right to release recordings by Ja Rule (ELR 24:11:6). Before the case went to trial, two other things happened in the case.

One of these was that the court granted TVT Records' request for injunction barring Def Jam from including tracks by Ja Rule in his album "The Last Temptation" that were recorded for TVT while Ja Rule was member of rap group Cash Murda Click, in an opinion that also was previously reported (ELR 24:10:9). The other was that the court denied Def Jam's motion for summary judgment. The court's opinion in that pretrial ruling has now been published. Judge Marrero simply found there were disputed issues of fact that required the trial that was subsequently conducted, and that resulted in the verdict in favor of TVT. TVT Records v. Island Def Jam Music Group, 244 F.Supp.2d 263, 2003 U.S.Dist.LEXIS 2273 (S.D.N.Y. 2003).

Opinions published. Opinions in cases previously reported in the "In the News" column of the Entertainment Law Reporter have been published in

print: In re Verizon Internet Services, 240 F.Supp.2d 24, 2003 U.S.Dist.LEXIS 681 (D.D.C. 2003) (ELR 24:9:10); Wolf v. Superior Court, 130 Cal.Rptr.2d 860, 2003 Cal.App.LEXIS 270 (Cal.App. 2003) (ELR 24:10:4); Dluhos v. Strasberg, 321 F.3d 365, 2003 U.S.App.LEXIS 3014 (3rd Cir. 2003) (ELR 24:10:4); Metro-Goldwyn-Mayer Studios v. Grokster, Ltd., 243 F.Supp.2d 1073, 2003 U.S.Dist.LEXIS 800 (C.D.Cal. 2003) (Sharman decision, ELR 24:11:4).
[ELR 25:1:18]

DEPARTMENTS

Entertainment Lawyer News:

Leslie Jose Zigel joins Greenberg Traurig. Leslie José Zigel has joined Greenberg Traurig's

Miami office as a shareholder. Zigel joined the firm after almost seven years with BMG U.S. Latin and the BMG Latin American regional office. He previously had a year in private practice as an entertainment, corporate and real estate attorney. While at the BMG Latin American regional office, Zigel was vice president of business and legal affairs for three years following three years as director of business and legal affairs at BMG U.S. Latin. Zigel is an executive counsel member of the Entertainment, Arts & Sports Law section of The Florida Bar, and a member of the Bar since 1995. He is a board member of the City of Miami Beach Visitor & Convention Authority board, an advisory board member of the National Institute of Entertainment & Media Law for the Southwestern University School of Law, and a governing board member of the American Bar Association (ABA) Forum on the Entertainment & Sports Industries, for which Zigel served as the Annual Meeting Planning Committee and Program chair from 1995 to 1999. Zigel has been an expert presenter or panelist for the 2003 Billboard Latin Music Conference, 2003 Copyright Society of the USA mid-winter meeting, 2002 Entertainment & Sports Lawyer annual meeting of The Florida Bar, the 2001 United States Copyright Office International Symposium on the Effect of Technology on Copyright and Related Rights, and a featured speaker at his alma matter, the University of Miami, where he earned his juris doctorate, cum laude, in May 1995. Zigel, who served as Editor-in-Chief of the University of Miami Inter-American Law Review, previously earned a bachelor's degree, cum laude, in 1985, from the University of Rochester in Rochester, N.Y., with the interdisciplinary major: A Sociological Study of the Music Industry. Prior to obtaining his law degree, Zigel was associated with Festival Productions, Inc., founded by George Wein. While there, he served as director of American Express Platinum Card and was responsible for the By Invitation Only program launch. He also served as marketing director of American Express Gold Card Events; director of the Miller Maquina Musical, the largest Hispanic outdoor concert festival; producer of numerous jazz festivals, including the Boston Globe Jazz Festival and the Mellon Jazz Festivals in Pittsburgh and Philadelphia; and as an assistant producer at the Newport Jazz Festival, Newport Folk Festival and New Orleans Jazz and Heritage Festival. Also, Zigel served as tour manager for Branford Marsalis' 1987 summer European tour. Greenberg Traurig has 950 lawyers and governmental professionals practicing in 20 offices throughout the United States and Europe: Amsterdam; Atlanta; Boca Raton, Fla.; Boston; Chicago; Denver; Fort Lauderdale, Fla.; Los Angeles; Miami;

Morristown, N.J.; New York; Orlando, Fla.; Philadelphia; Phoenix; Tallahassee, Fla.; Tysons Corner, Va.; Washington, D.C.; West Palm Beach, Fla.; Wilmington, Del.; and Zurich. Greenberg Traurig's international entertainment team focuses on the music, motion picture, television, live stage and cable industries, including the convergence of new technologies, digital delivery systems and the role of advertising and sponsor driven financing models.

Jill R. Cohen and Ann Parsons join Davis Wright Tremaine. The law firm of Davis Wright Tremaine has expanded its national media and entertainment law practice with the addition of two entertainment transactions attorneys formerly with the Los Angeles/Century City office of Hogan & Hartson. Jill R. Cohen joins DWT's Los Angeles office as a partner and Ann Parsons joins as of counsel. Cohen and

Parsons are the most recent additions to DWT's entertainment practice. In April, DWT's New York office added 10 lawyers from the communications/media/entertainment law firm of Kay & Boose, significantly enhancing DWT's existing practices and increasing the breadth of client services in areas such as entertainment law. Cohen has extensive experience in all areas of motion picture production, development, distribution, financing and acquisitions. Her clients include independent production companies, motion picture studios and financiers. Cohen's entertainment industry career spans more than 20 years. She served as the head of the entertainment department of Squadron Ellenoff Plesent & Sheinfeld, LLP until that firm's merger with Hogan & Hartson in March 2002. She began her transactional entertainment practice in 1990 at Hill Wynne Troop & Meisinger. Prior to her graduation from law school, she worked in various management positions in the legitimate theatre, as an executive of the Society of Stage Directors and Choreographers and worked in the Worldwide Anti-Piracy Department of the Motion Picture Association of America. She received her J.D. from Fordham University School of Law and B.A. from the State University of New York at Albany. Cohen is admitted to practice in California and New York. Parsons' practice includes advising domestic and international financial institutions, producers and distributors in all aspects of motion picture finance, with special emphasis on representing lenders in complex multi-source financing transactions and credit facilities. She has substantial experience in negotiating and documenting loan, interparty and intercreditor agreements for international tax-advantage film financings involving co-production arrangements and sale and leaseback transactions. Prior to joining Hogan

& Hartson in May of 2002, Parsons was a senior associate in the entertainment finance group of Gipson, Hoffman & Pancione, focusing on financial institutions and borrowers in a wide variety of film and television financing transactions. She received her J.D. from the University of Chicago Law School (1994), and B.A., magna cum laude, from the University of California, Los Angeles. She is admitted to practice in California and is also a certified public accountant. DWT is a full service business and litigation law firm, with national practices in the areas of communications, media and entertainment law, intellectual property, business transactions, litigation and more. The firm has more than 400 attorneys in its nine offices located throughout the Pacific Northwest, in Anchorage, Los Angeles, San Francisco, New York, Washington D.C., and Shanghai, China.

Jeremy Nussbaum joins Cowan, Liebowitz & Latman. Jeremy Nussbaum has joined Cowan, Liebowitz & Latman in New York City, as a member of the firm. He is a copyright and transactional entertainment lawyer with wide experience in all entertainment media, including theater, film and publishing. His practice consists of counseling clients on copyright and entertainment matters and participating in or handling negotiations for the acquisition, sale or license of copyrighted works and for the services of writers, directors and others. His clients include authors, performers, playwrights, production companies, composers, artists, literary agencies and heirs or estates owning or controlling literary or other intellectual properties. Among these clients are Tony-award winners Lynn Ahrens and Stephen Flaherty, Thomas Meehan and Jerry Zaks; Roundabout Theatre Company; and the estate of J.R.R.

Tolkien. Nussbaum received his J.D. degree from New York University in 1968, and his A.B. degree from the University of California, Berkeley in 1964. He is admitted to the bar in New York. Before coming to Cowan, Liebowitz & Latman, Nussbaum was a partner at Kay Collyer & Boose where he practiced from 1983 to 2003. He also practiced with Fulop & Hardee (1982-1983), Barovick Konecky Schwartz Kay & Schiff (1979-1982), and Greenbaum, Wolff & Ernst (1968-1979). He is Vice-Chair & Counsel of the Hamptons International Film Festival, and the author of "There Is No Net: Profit Participation Agreements in the Motion Pictures Industry" (Entertainment Law Review, 1994).

"Entertainment Lawyer News" is a new feature that begins with this issue of the ENTERTAINMENT LAW REPORTER. It will report lateral moves, promotions, honors and the like - the sorts of news that readers of the Reporter may be interested in learning about others in the entertainment law profession. To have your news included in future issues, send announcements by email to Sobel@EntertainmentLawReporter.com. [ELR 25:1:19]

In the Law Reviews:

DePaul Law Review has published Volume 52, Number 4 as a symposium entitled "Annual Center for Intellectual Property Law & Information Technology Symposium: The Many Faces of Authorship: Legal and Interdisciplinary Perspectives" with the following articles:

The Concept of Authorship in Comparative Copyright Law by Jane C. Ginsburg, 52 DePaul Law Review

1063 (2003)

Invention and Authorship in Early Modern Italian Visual Culture by Evelyn Lincoln, 52 DePaul Law Review 1093 (2003)

Authorship without Ownership: Reconsidering Incentives in a Digital Age by Diane Leenheer Zimmerman, 52 DePaul Law Review 1121 (2003)

Fear, Hope, and Longing for the Future of Authorship and a Revitalized Public Domain in Global Regimes of Intellectual Property by Rosemary J. Coombe, 52 DePaul Law Review 1171 (2003)

Libraries, Users, and the Problems of Authorship in the Digital Age by Laura N. Gasaway, 52 DePaul Law Review 1193 (2003)

Commentary on "The Concept of Authorship in Comparative Copyright Law": A Brief Illustration by Roberta Rosenthal Kwall, 52 DePaul Law Review 1229 (2003)

Commentary on "Fear, Hope, and Longing for the Future of Authorship and Revitalized Public Domain in GlobalRegimes of Intellectual Property" by Jane Eva Baxter, 52 DePaul Law Review 1235 (2003)

Commentary on "Libraries, Users, and the Problems of Authorship in the Digital Age" by Judith A. Gaskell, 52 DePaul Law Review 1241 (2003)

California Labor Code Section 2855 and Recording Artists' Contracts, 116 Harvard Law Review 2632 (2003)

I Put Up a Website About My Favorite Show and All I Got Was This Lousy Cease-and-Desist Letter: The Intersection of Fan Sites, Internet Culture and Copyright Owners by Cecilia Ogbu, 12 Southern California Interdisciplinary Law Journal 279 (2003)

An Exclusive Right to Evoke by Stacey L. Dogan, 54 Boston College Law Review 291 (2003)

Cyberlaw 2.0 by Michael Geist, 54 Boston College Law Review 323 (2003)

The Internet and the Persistence of Law by Justin Hughes, 54 Boston College Law Review 359 (2003)

Copyright Law's Theory of the Consumer by Joseph P. Liu, 54 Boston College Law Review 397 (2003)

Rights of Access and the Shape of the Internet by Michael J. Madison, 54 Boston College Law Review 433 (2003)

Controlling Opportunistic and Anti-competitive Intellectual Property Litigation by Michael J. Meurer, 54 Boston College Law Review 509 (2003)

Trading Posts in Cyberspace: Information Markets and the Construction of Proprietary Rights by Ruth L. Okediji, 54 Boston College Law Review 545 (2003)

The First Sale Doctrine in the Era of Digital Networks by R. Anthony Rose, 54 Boston College Law Review 577 (2003)

Internet Points of Control by Jonathan Zittrain, 54 Boston College Law Review 653 (2003)

Evaluating Gender Equity Within the Framework of Intercollegiate Athletics' Conflicting Value Systems by Gary R. Roberts, 77 Tulane Law Review (2003)

The Seton Hall University Journal of Sport Law has published Volume 13, Number 1 with the following articles:

Tax Advantages of Sports Franchises: Part II-Estate Planning by John R. Dorocak, 13 Seton Hall University Journal of Sport Law (2003)

Coaches' Liability for Athletes' Injuries and Deaths by Thomas R. Hurst and James N. Knight, 13 Seton Hall University Journal of Sport Law (2003)

How Far Have We Come? A Look at the Olympic and Amateur Sports Act of 1998 and the United States

Olympic Committee and the Winter Olympic Games of 2002 by Noelle Nish, 13 Seton Hall University Journal of Sport Law (2003)

Why Conforming with Title IX Hurts Men's Collegiate Sports by David Klinker, 13 Seton Hall University Journal of Sport Law (2003)

First Amendment-Establishment Clause-Student-led, Student-initiated Prayer at Football Games Violates the Establishment Clause by Bridget Aspiand, 13 Seton Hall University Journal of Sport Law (2003)

Contracts-Collective Bargaining-Federal District Court Improperly Dismissed All Claims by Professional Athlete When State Courts May Not Have Been Pre-empted by the Labor Management Relations Act Due to Their Lack of Dependence on Collective Bargaining

Agreements by John Kaplan, 13 Seton Hall University Journal of Sport Law (2003)

Symposium: Sports Card Trading and Collectibles, 13 Seton Hall University Journal of Sport Law (2003)

Popov v. Hayashi, A Modern Day Pierson v. Post: A Comment on What the Court Should Have Done with the Seventy-Third Home Run Baseball Hit by Barry Bonds by Patrick Stoklas, 34 Loyola University Chicago Law Journal (2003)

The Federal Communications Law Journal, published by Indiana University School of Law-Bloomington, 201 South Indiana Avenue, Bloomington, Indiana 47405, has issued Volume 55, Number 3 as a symposium entitled The Vast Wasteland Revisited with the following articles:

Television and the Public Interest by Newton N. Minow, 55 Federal Communications Law Journal 395 (2003) (for publisher, see above)

Revisiting the Vast Wasteland by Newton N. Minow and Fred H. Cate, 55 Federal Communications Law Journal 407 (2003) (for publisher, see above)

The Role of the Federal Communications Commission on the Path from the Vast Wasteland to the Fertile Plain by Kathleen Q. Abernathy, 55 Federal Communications Law Journal 435 (2003) (for publisher, see above)

Promoting Innovation to Prevent the Internet from Becoming a Wasteland by Zoe Baird, 55 Federal Communications Law Journal 441 (2003) (for publisher, see above)

Minow's Viewers: Understanding the Response to the "Vast Wasteland" Address by James L. Baughman, 55 Federal Communications Law Journal 449 (2003) (for publisher, see above)

The "Vast Wasteland" Speech Revisited by Jonathan Blake, 55 Federal Communications Law Journal 459 (2003) (for publisher, see above)

Minow and the "Wasteland": Time, Manner, and Place by Daniel Brenner, 55 Federal Communications Law Journal 467 (2003) (for publisher, see above)

The "Vast Wasteland" Revisited: Headed for More of the Same? by Michael J. Copps, 55 Federal Communications Law Journal 473 (2003) (for publisher, see above)

Avast Ye Wasteland: Reflections on America's Most Famous Exercise in "Public Interest" Piracy by Robert Corn-Revere, 55 Federal Communications Law Journal 481 (2003) (for publisher, see above)

Whatever Happened to Local News?: The "Vast Wasteland" Reconsidered by Geoffrey Cowan, 55 Federal Communications Law Journal 493 (2003) (for publisher, see above)

From Vast Wasteland to Electronic Garden: Responsibilities in the New Video Environment by Charles M. Firestone, 55 Federal Communications Law Journal 499 (2003) (for publisher, see above)

TV: A Vast Oasis of Public Interest Programming by Edward O. Fritts, 55 Federal Communications Law Journal 511 (2003) (for publisher, see above)

Promoting the Public Interest in the Digital Era by Henry Geller, 55 Federal Communications Law Journal 515 (2003) (for publisher, see above)

Forty Years of Wandering in the Wasteland by Nicholas Johnson, 55 Federal Communications Law Journal 521 (2003) (for publisher, see above)

Coming of Age in Minnesota by Jane E. Kirtley, 55 Federal Communications Law Journal 535 (2003) (for publisher, see above)

Good News for Good News: Excellent Television Journalism Benefits Networks and Our Society by Robert Leger, 55 Federal Communications Law Journal 541 (2003) (for publisher, see above)

Electronic Oases Take Root in Mr. Minow's Vast

Wasteland by Edward J. Markey, 55 Federal Communications Law Journal 545 (2003) (for publisher, see above)

Family-friendly Programming: Providing More Tools for Parents by Kevin J. Martin, 55 Federal Communications Law Journal 553 (2003) (for publisher, see above)

A Diversity of Voices in a "Vast Wasteland" by Condace L. Pressley, 55 Federal Communications Law Journal 565 (2003) (for publisher, see above)

How Do We Make Goodness Attractive? by Fred Rogers, 55 Federal Communications Law Journal 569 (2003) (for publisher, see above)

The "Vast Wasteland" in Retrospect by Joel

Rosenbloom, 55 Federal Communications Law Journal 571 (2003) (for publisher, see above)

I Want My C-Span by Bruce W. Sanford, 55 Federal Communications Law Journal 581 (2003) (for publisher, see above)

Manhattan by Cass R. Sunstein, 55 Federal Communications Law Journal 585 (2003) (for publisher, see above)

Measuring Quality Television by Russ Taylor, 55 Federal Communications Law Journal 593 (2003) (for publisher, see above)

Screen-Agers...and the Decline of the “Wasteland” by Elizabeth Thoman, 55 Federal Communications Law Journal 601 (2003) (for publisher, see above)

"Do You Believe in Miracles?" by Richard E. Wiley, 55 Federal Communications Law Journal 611 (2003) (for publisher, see above)

Book Review: Public Television Law Reduit: A Review of The Public Television Legal Survival Guide by Herbert A. Terry, 55 Federal Communications Law Journal 615 (2003) (for publisher, see above)
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