WASHINGTON MONITOR

FCC adopts new rules that generally permit companies to own more media businesses than they could before

The Federal Communications Commission has adopted new media ownership rules, following a 20-month study it said was the "most comprehensive review of media ownership regulation in the agency's history." The new rules affect the ownership of four types of media businesses: (1) television networks; (2) television stations; (3) radio stations; and (4) daily newspapers that are owned by companies that also own radio or television stations.

In general, the new rules allow companies to own more media businesses than they could before. For that reason, the new rules have been very controversial, within Congress and elsewhere. Each of the new rules - there are six of them - is unique and complicated, and their significance can be understood only with some historical background.

In the now-distant past, the FCC enforced a host of rules that limited, in many ways, the ownership of radio and television stations, cable systems and newspapers. The FCC itself abandoned some of those rules, like one that used to limit the number of television stations any one company could own in the top-50 markets (ELR 1:17:4). Other rules were eliminated or loosened by Congress; one of those limited the number of stations any one company could own, and it capped the maximum percentage of the national audience that any one broadcasting company could reach, a cap that Congress raised from 25% to 35% in the Telecommunications Act of 1996 (ELR 17:11:14).

The Telecommunications Act of 1996 did another important thing, too. It requires the FCC to review its broadcast ownership rules every two years to determine whether they remain necessary "in the public interest as a result of competition." What's more, the Telecommunications Act requires the FCC to repeal or modify any ownership rule that is no longer in the public interest. The review just completed by the FCC is the third biennial review it has conducted pursuant to the Telecommunications Act. The results of this third review are, at least in part, a consequence of judicial responses to what the FCC did during the earlier reviews.

During the first two reviews, some companies urged the FCC to scrap some of its media ownership rules entirely; but the FCC declined to do so. Though it loosened those rules somewhat, the disappointed companies appealed. In two separate decisions, the

Court of Appeals held that the FCC's failure to scrap the rules, or adequately explain why it hadn't, was "arbitrary and capricious" and in violation of the Telecommunications Act. Two rules - the Local Television Station Ownership Rule, and the National Television Station Ownership Rule - were remanded to the FCC for further consideration; and one - the Cable/Broadcast Cross-Ownership Rule - was voided by the court itself (ELR 24:2:8).

Stung by the assertion it had been "arbitrary and capricious," the FCC decided that its third biennial review would be a comprehensive study of all its media ownership rules. The FCC began its third biennial review knowing that: the Telecommunications Act directed the FCC to repeal rules that were no longer in the public interest; courts had twice found the FCC to be arbitrary and capricious for failing to do so or adequately explain why not; and one rule had been repealed by the court itself. For these reasons, it wouldn't have been shocking if the FCC had scrapped the remaining ownership rules altogether; but it didn't. Instead, it loosened some of them still further - enough to cause controversy among the rules' supporters, in and out of Congress - but it didn't eliminate them entirely.

The FCC retained its Dual Network Ownership Rule, unchanged. That rule prohibits mergers among any of the top four national television networks.

The FCC modified its Local TV Multiple Ownership Rule. This rule limits the number of television stations a company may own in a single market. The exact number of stations a company may own depends on how many television stations are in the market: if there are five or more, a company may own two stations; if there are 18 or more, a company may own three stations.

The FCC also modified its National TV Ownership Rule. This rule too limits the number of television stations a company may own, but not on a stations-per-market basis. Instead, this rule limits the total number of stations a company may own in the entire country by permitting a company's stations to reach no more than 45% of the total number of TV households in the country.

The FCC also modified its Local Radio Ownership Rule. This rule limits the number of radio stations a company may own in a single market. The number now varies from as many as eight radio stations in markets with 45 or more radio stations, to as few as five radio stations in markets with 14 or fewer stations. The new rule also changes the way in which a "market" is determined: Arbitron's geographic market definition now is used, instead of the prior technical "signal contour" method.

The FCC has replaced its old rules concerning broadcast-newspaper cross-ownership and radio-television cross-ownership with a new Cross-Media Ownership Rule. This rule regulates the extent to which a company may own television stations, radio stations and daily newspapers in a single market. It is a complicated rule that prohibits the cross-ownership of TV stations, radio stations and daily newspapers in markets that have three or fewer television stations. In markets with four to eight television stations, the new rule permits a company to own either: a daily newspaper, one TV station, and half the number of radio stations permitted for that market (by the Local Radio Ownership Rule); or a daily newspaper, and as many radio stations as are permitted for that market, but no television stations; or two television stations and as many radio stations as are permitted for that market, but no daily newspapers. In markets with nine or more television stations, the FCC has eliminated its cross-ownership ban: in such a market, a company now may own daily newspapers, television stations and radio stations.

Finally, the FCC realizes that its new rules may result in cases where companies now exceed current ownership limits. Those companies may keep all of their existing stations, under a "grand-father" rule; but they may not sell stations to new owners in groups that exceed the caps, unless they are sold to "small businesses."

Editor's note: The FCC's review was nothing if not exhaustive (and maybe even exhausting). It received and considered 520,000 written comments. More than 500,000 of those were brief comments and form letters from individuals. But almost 20,000 comments were substantive submissions. The FCC's final Report and Order was lengthy: it runs 394 printed pages, including Appendices and individual Statements by each of the Commissioners. Though the new rules are the consequence of Congressional commands made in the Telecommunications Act of 1996, some members of Congress have objected to the increased number of television stations the new rules permit companies to own; they especially object to the National TV Ownership Rule which increased to 45%, from 35%, the number of TV households a single company's TV stations are permitted to reach. As a consequence, legislation has been introduced in Congress which, if enacted, will roll back to 35% the cap on total TV households that may be reached. In addition, all of the new rules may be appealed to the Court of Appeals. So the details of rules that will regulate media ownership in the future still remain to be determined.

In the Matter of 2002 Biennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, FCC MB Docket No. 02-277 (July 2003), available at www.fcc.gov/Daily_Releases/Daily_Business/2003/db0702/FCC-03-127A1.pdf [ELR 25:2:4]

Copyright Office publishes license fees payable by Muzak, Music Choice and DMX Music for subscription digital music transmissions; Copyright Office rejects request by SoundExchange-competitor Royalty Logic to participate in proceeding, but suggests that Royalty Logic does not need to participate to be designated as receiving agent by record companies and artists

In return for the right to transmit music recordings digitally to subscribers, Muzak, Music Choice and DMX Music will pay 7% of their gross revenues (from "residential services") to record companies and artists for the years 2002 and 2003, and then 7.25% of their gross revenues from 2004 through 2007. Beginning this year, each of the three companies will pay a $100,000 annual advance against their license fees. These license fees are the result of an agreement reached between the three companies and SoundExchange, the 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 was reached after the parties had petitioned the Librarian of Congress to convene a Copyright Arbitration Royalty Panel (commonly referred to as a "CARP"). If no agreement had been reached, the license fees payable by Muzak, Music Choice and DMX Music for by-subscription digital performances of music recordings would have been set by a CARP, because the Copyright Act gives these three companies a compulsory license to digitally transmit music recordings to subscribers, in return for a "reasonable royalty fee." The Copyright Office has incorporated the agreed-upon fees into its regulations, and has published them in the Federal Register as required by law.

In addition to publishing the fees themselves, the Copyright Office published the reasons for rejecting an objection to the settlement filed by Royalty Logic, Inc. Royalty Logic is a SoundExchange competitor and has been designated by certain record companies and recording artists as their "receiving agent" for the purpose of collecting and distributing digital performance and ephemeral recording license fees on their behalf.

It does not appear that Royalty Logic objected to the amount of the agreed-upon royalties or advances. Instead, Royalty Logic was concerned that the agreement would not enable it to assure record companies and artists that it could collect and administer license fees paid by Muzak, Music Choice and DMX Music. Royalty Logic has been formally recognized as a collecting agent for digital transmission royalties payable by webcasters. But Royalty Logic is not mentioned by name in the settlement agreement or in the Copyright Office's newly-amended subscription transmission regulations, even though SoundExchange is.

The Copyright Office determined that Royalty Logic was not entitled to object to the settlement, for two reasons. First, it wasn't apparent to the Copyright

Office that Royalty Logic actually had any record company or artist clients at the time it first filed its objection. Second, the Copyright Office ruled that Royalty Logic could not object to the agreement simply because the agreement's terms might make it difficult for Royalty Logic to get clients.

On the other hand, the Copyright Office does not seem to have been completely blind to Royalty Logic's plight. In a footnote, the Office specifically said, ". . . it is not clear that RLI [Royalty Logic, Inc.] needs to participate in a CARP proceeding or be named in a negotiated settlement in order to act as a designated agent for purposes of collecting royalty fees on behalf of copyright owners and performers. . . . [I]t is plausible that a copyright owner or performer could designate any agent of his or her choosing (including RLI) - whether or not that agent had been formally designated in the CARP proceeding - to receive royalties from the licensing of digital transmissions. . . .” Moreover, the newly-amended regulations themselves specify that SoundExchange shall be the agent for receiving royalty payments “[u]ntil such time as a new designation is made. . . “ - a phrase that acknowledges that record companies and artists are permitted to designate agents other than SoundExchange, if and when they wish to do so.

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings by Preexisting Subscription Services, Library of Congress, Copyright Office, 68 Federal Register 39837 (Number 128; July 3, 2003) [ELR 25:2:5]

INTERNATIONAL DEVELOPMENTS

British court of appeal affirms race car driver Eddie Irvine's victory in lawsuit against sports talk radio station that used his photo in promotional brochure leaflet without his consent; appellate court also increases Irvine's judgment to £25,000 from £2,000 awarded by trial judge

British driver Eddie Irvine isn't racing cars this year, even though he finished second on the international Formula 1 circuit as recently as 1999. But he's having a good year, nonetheless, in the courtroom.

The U.K. Court of Appeal has affirmed a judgment he won against a sports talk radio station, in a precedent setting ruling by the Chancery Court. What's more, the Court of Appeal increased the amount of Irvine's judgment from the modest £2,000 (about

$3,175200) the Chancery Court had awarded to a more substantial £25,000 (about $4039,675,000).

Irvine's victory came in a "false endorsement" lawsuit he filed against TalksportTalkSport Limited, which is the owner of Talk Radio, one of the largest commercial radio stations in the United Kingdom. As its name suggests, tThe format of TalksportTalkSport's radio station is sports talk shows and sporting event coverage.

In 1999, it converted to sports from more general news and talk, and it acquired the rights to broadcast that year's Formula 1 Grand Prix World Championship. To publicize this change to advertising agencies, TalksportTalkSport sent brochuresleaflets to ad agency personnel - brochuresleaflets that featured Irvine's photo listening to a portable radio bearing TalksportTalkSport's logo.

The photo was licensed from the photographer who owned its copyright. But the original photo showed Irvine talking on a cell phone, not listening to a radio. TalksportTalkSport altered the photo to replace the phone with a radio. And TalksportTalkSport did so, and used the altered photo in its brochureleaflets, without Irvine's consent.

At trial, Chancery Court Justice Laddie ruled that Irvine's "false endorsement" claim against TalksportTalkSport could be brought under British law's traditional "passing off" doctrine (ELR 24:3:8) (). This ruling set new precedent, because until Justice Laddie so held, it was generally believed that British law does not recognize (what in the United States would be called) the "right of publicity." On the other hand, Justice Laddie awarded Irvine only £2,000. Irvine and TalkSport both appealed.

On appeal, TalkSport didn't challenge Justice Laddie's conclusion that Irvine could bring a "false endorsement" claim. It did, however, challenge the Justice's factual conclusion concerning an essential element of that claim: the conclusion that it was likely that a significant number of those who received the leaflets mistakenly believed that Irvine had endorsed TalkSport's radio station. But TalkSport's challenge was not successful.

Writing for the Court of Appeal, Lord Justice Jonathan Parker said that "To my eye, the image on the front of the leaflet is the clearest representation that Mr. Irvine has endorsed Talk Radio. . . . I find it difficult to conceive of a clearer way of conveying, by way of a . . . photographic image, the message that a celebrity has endorsed a particular radio station than by depicting the celebrity listening intently to a radio bearing the station's logo."

Irvine appealed the size of the judgment he was awarded, arguing that the amount should have been greater. Justice Parker agreed.

At trial, Irvine testified that in 1999, his minimum fee for an endorsement of Talk Radio would have been $40,000 to $50,000 (or £25,200 to £31,500). Justice Parker noted that Irvine's testimony was supported by evidence of the endorsement fees which he in fact negotiated in 1999, none of which was less than £25,000. As a result, Justice Parker could "see no basis for doubting the truth of Mr. Irvine's assertion that he would not have signed an endorsement deal with [TalkSport] for less than £25,000."

This led Justice Parker "ineluctably to the conclusion that [TalkSport] would in all probability have had to pay at least £25,000 in order to enable it to do lawfully that which it did unlawfully, that is to represent by means of the image appearing on the front of the leaflet that Mr. Irvine had endorsed Talk Radio." For that reason, Justice Parker ruled that he would "allow the appeal and vary the award of damages . . . by substituting a figure of £25,000 for the judge's figure of £2,000." Lord Justice Brooke and Lord Justice Schiemann agreed.

Irvine was represented by Michael Briggs QC and Lindsay Lane (instructed by Messrs. Fladgate Fielder). TalkSport was represented by Murray Rosen QC and Stephen Tudway (instructed by Messrs. Rosenblatt).

Irvine v. TalkSport Ltd., [2003] EWCA Civ. 423, available at www.courtservice.gov.uk/judgmentsfiles/j1677/irvine_v_talksport.htm [ELR 25:2:7]

Toronto television station violated Canadian Association of Broadcasters codes by rating "Blind Date" incorrectly as a "PG" rather than "14+" series and by failing to broadcast viewer advisories, though not by airing it at 5:30 p.m., Canadian Broadcast Standards Council rules

The television series "Blind Date" is a reality dating program. Its content is "consistently sexual," and its "sexual references . . . are neither limited nor discreet." The reason that all of this matters is that Toronto television station CITY-TV broadcasts "Blind Date" daily at 5:30 p.m., when children may be watching. What's more, CITY-TV gave "Blind Date" a "PG" rating, rather than a "14+" rating. And the station failed to air viewer advisories before or during the show.

One of CITY-TV's viewers was offended by this. In Canada, offended listeners can do something specific and concrete: they can file written complaints with the Canadian Broadcast Standards Council (CBSC). When they do, broadcasters must respond in writing. And the CBSC then issues written rulings. The offended viewer filed such a complaint, CITY-TV responded, and the CBSC ruled against the station on two out of three issues.

The CBSC is not a government agency. It was created by private broadcasters to administer program content "Codes" adopted by the Canadian Association of Broadcasters (CAB) and the Canadian Radio-television and Telecommunications Commission. The CBSC is, in other words, part of the Canadian broadcast industry's effort to regulate itself, insofar as program content is concerned. More than 500 Canadian radio and television broadcasters are CBSC members.

The CBSC administers four Codes in all: the

CAB Code of Ethics; the CAB Voluntary Code Regarding Violence in Television Programming; the CAB Sex-Role Portrayal Code for Radio and Television Programming; and the Radio Television News Directors Association of Canada Code of Ethics.

The offended viewer complained that CITY-TV violated the Code of Ethics in two ways: by airing "Blind Date" before 9:00 p.m., and by failing to air viewer advisories before and during the show. And he complained that CITY-TV violated the Violence Code by rating the program "PG" rather than "14+."

CBSC's Ontario Regional Panel ruled that CITY-TV did not violate the Code of Ethics by showing "Blind Date" at 5:30 p.m. The Code has been interpreted to mean that programs must be broadcast after 9:00 p.m. only if their sexual content is "explicit," but not if it is "merely sexually suggestive or amounting to nothing more than innuendo." The CBSC determined that the content of "'Blind Date' . . . is not explicit enough" to require it to be shown after 9:00 p.m.

On the other hand, the CBSC agreed with the viewer that "Blind Date" is "unsuitable for children." The Violence Code provides that "PG" rated programs are deemed unsuitable for children younger than eight, but may be acceptable for children aged eight to 13. "PG" rated programs are permitted to contain "limited and discreet sexual references or content when appropriate to the storyline or theme," the CBSC noted. But in its opinion, "Blind Date" doesn't qualify. "The sexual references in Blind Date are neither limited nor discreet," the CBSC said. For that reason, the CBSC concluded that CITY-TV should have classified the program "14+."

Finally, the Code of Ethics requires broadcasters to air viewer advisories before and during programs that contain "mature subject matter or scenes with nudity, sexually explicit material, coarse or offensive language, or other material susceptible of offending viewers." The CBSC decided that "Blind Date" is such a program, so CITY-TV violated the Code by failing to broadcast advisories.

As a result of these violations, CITY-TV was required to announce the CBSC's decision on-air, once during prime time and a second time when "Blind Date" itself is broadcast. The station then had to provide written confirmation that it had aired these announcements to the viewer who complained and to the CBSC; and it had to provide the CBSC with air check copies of the announcements.

CITY-TV re Blind Date, CBSC Decision 02/03-0570 & -0631 9 (May 2003), available at www.cbsc.ca/english/decision/030723.htm [ELR 25:2:8]

RECENT CASES

Screenwriter Brad Radnitz wins Tax Court decision allowing him to deduct expenses for room in his residence used as "home office"

Brad Radnitz is an accomplished screenwriter. He has written episodes of such television shows as "The Lucy Show," "Gilligan's Island," "The Brady Bunch," "Ironside" and "Columbo." He is a former president of the Writer's Guild of America. And, as of this year, he is a successful tax litigator, too.

Radnitz represented himself in a dispute with the Internal Revenue Service over "home office" deductions he claimed on his 1997 and 1998 tax returns. He took the case to trial before the Tax Court; and, for the most part, he has won.

Radnitz writes in an office in his residence. He uses the room exclusively for writing. There is no bed in the room, and no one sleeps there. Not even family members are allowed in it. And when visitors came to his home, the room is locked.

The room takes up about 20% of the floor space of the residence. So for the years in question, Radnitz deducted, as a "home office expense," 20% of the total amount he spent on rent and utilities. Radnitz was meticulous in his accounting: in 1998, he used the room for writing for only six months, so he deducted only half of 20% of that year's house expenses.

The reason Radnitz used the room in his house for only six months in 1998 was that for half of that year, he and his wife "had a house full of relatives and suddenly having that office [in the house] wasn't going to work, even though [he] locked the door." As a result, he rented an apartment for the other six months of 1998 - one that he used exclusively for writing. Since he used the apartment only for writing, he deducted its expenses too, as "unreimbursed employee business expenses."

Tax Court Special Trial Judge Irvin Couvillion has allowed the deductions Radnitz took for rent and utilities on his home. In an opinion marked "should not be cited as authority," Judge Couvillion found that Radnitz's use of the room in his home satisfied all of the Internal Revenue Code's requirements for a "home office deduction."

The room was used exclusively for Radnitz's writing. Radnitz was a full time writer and used the room regularly. The room was his principal place of business, and it was the only office space he used. All of Radnitz's writing was done as an employee, even though much of his work was written on spec. And finally, the judge noted that since Radnitz "was never provided with office space by his employers . . . the home office . . . can only be said to be for the employer's convenience."

Judge Couvillion also held that the expenses of renting and furnishing an apartment were deductible as "ordinary and reasonable business expenses," because even though the apartment could have been used as a residence, Radnitz did not live there or use it for any personal purpose.

The only issue which Radnitz did not win dealt with the amount - or perhaps the timing - of his apartment deduction. Writers are not permitted to deduct, as home office and business expenses, more than they earn. Since Radnitz's "home office" deductions for 1997 and 1998 were as much as he earned in those years, he could not deduct his apartment expenses for 1998 too.

Radnitz argued that it was unfair and a denial of equal protection not to allow him to deduct his apartment expenses, because he "may not realize income on his speculative writings for years after they are completed." Judge Couvillion rejected this argument, however. The judge said that the Internal Revenue Code treats writers the same way it treats others who have home offices. And the judge noted that the Code allows Radnitz to "carry forward" to subsequent years apartment expenses he couldn't deduct in 1998.

Radnitz v. Commissioner of Internal Revenue, T.C. Summary Opinion 2003-29 (2003), available at www.ustaxcourt.gov/InOpHistoric/Radnitz.sum.wpd.pdf [ELR 25:2:9]

MPAA wins dismissal of lawsuit filed by operator of InternetMovies.com after Internet service provider shut down website at MPAA's request; request was privileged, justified and reasonable, court rules

Michael J. Rossi is a self-styled "entrepreneur," with some accomplishments to back his claim. Operating from his home state of Hawaii, Rossi owns and runs InternetMovies.com - a website that attracted 40,000 paid members in just six months or so. With membership fees set at $5.95 per month, Rossi grossed almost $10,500 in June 2001 alone - a performance that many Silicon Valley-based websites would have envied.

A quick glance at InternetMovies.com revealed the site's appeal. "Join to download full length movies online now! New movies every month," its home page shouted. The phrases "Full Length Downloadable

Movies" and "NOW DOWNLOADABLE" were followed by graphics for such movies as "Hannibal," "Cast Away," "Chocolat" and others.

The only wrinkle in Rossi's business plan was that he hadn't been licensed to distribute these movies, or for that matter, any movies whose copyrights were owned by members of the Motion Picture Association of America. As a result, the MPAA did what copyright owners are authorized to do by the Digital Millennium Copyright Act: it sent a take down request to Rossi's Internet service provider. In due course, the ISP did just that - it took down InternetMovies.com.

Rossi is not just entrepreneurial; he's also assertive - aggressive, even. He immediately arranged to have his website hosted by another ISP. And he filed a lawsuit against the MPAA in federal court in Hawaii. In his lawsuit, Rossi alleged that the MPAA: had interfered with his contractual business relations and prospective business advantages; had defamed him by telling his ISP that he was infringing copyrights, when in fact he was not; and that by doing these things, had caused him emotional distress.

Rossi asserts that copyrighted movies are not available for download from his website, unless copyright owners consent. And in his lawsuit, Rossi argued that the MPAA had a duty to investigate whether copyrighted movies could be downloaded from his website before it sent a "take down" request to his ISP. Federal Magistrate Judge Barry Kurren has disagreed, however.

In response to the MPAA's motion for summary judgment, Judge Kurren found there was "little question" that the phrases on the InternetMovies.com home page "strongly suggest, if not expressly state, that movies were available for downloading from the site." Even Rossi acknowledged that some of his customers "mistakenly thought that movies were available for downloading."

As a result, the judge concluded that the MPAA "had more than a sufficient basis to form the required good faith belief that [Rossi's] site contained infringing content prior to asking FlexNet [Rossi's ISP] to shut down the site. The fact that a further investigation may have revealed that movies could not actually be downloaded does not alter this conclusion."

Judge Kurren therefore dismissed Rossi's interference with contract and prospective business advantage claims. The judge also dismissed Rossi's defamation claim, ruling that the MPAA's communications with Rossi's ISP were "privileged." Finally, the judge concluded that the MPAA's communications with Rossi's ISP were "justified and reasonable," rather than "outrageous," and for that reason, the judge dismissed Rossi's emotional distress claim too.

Rossi has filed a notice of appeal.

Rossi was represented by James H. Fosbinder of Fosbinder & Fosbinder in Kahului. The MPAA was represented by Paul Maki of Edmunds Maki Verga & Thorn in Honolulu.

Rossi v. Motion Picture Association of America, 2003 U.S. Dist. LEXIS 12864 (D.Haw. 2003), available at www.InternetMovies.com/rossi-mpaa_sum_judge.pdf [ELR 25:2:9]

United States District Court reaffirms earlier ruling that Brooklyn video store owner infringed copyrights to Russian animated films licensed exclusively to American distributor by Russian company; court declines to give effect to subsequent decisions by French and Russian courts that Russian company did not own copyrights it licensed to American distributor, and again rejects video store owner's argument that Russian licensor is not true owner of copyrights

Between 1946 and 1991, a state-owned Soviet film studio known as Soyuzmultfilm Studio created 1500 animated films. These films are distributed in the United States by Films by Jove, pursuant to an exclusive license it obtained in 1992 from a Russian company also known as Soyuzmultfilm Studio. While it's not a coincidence that the Soviet film studio and the

Russian licensor have the same name, they are separate and distinct companies. Indeed, the Soviet film studio no longer exists.

The distinction between the two identically named companies is significant, for this reason. In 1998, Films by Jove filed a copyright infringement case against the owners of several video stores in Brooklyn that specialize in Russian-language entertainment. The store owners were making and selling unauthorized copies of the animated films. In the beginning, Films by Jove's infringement lawsuit may have seemed like a routine piracy case; but it's not.

The video store owners claim that Soyuzmultfilm Studio is not in fact the owner of the animated films' copyrights, and thus the exclusive license it purported to grant to Films by Jove did not in fact convey any rights to those films. What's more, another state-owned Russian company known as the Federal State Unitarian

Enterprise Soyuzmultfilm Studio ("FSUESMS") claims that it is the true owner of the films' copyrights; and FSUESMS intervened in the case, on behalf of the video store owners.

According to Federal District Judge David Trager, the dispute over which of the two Russian companies owns the films' copyrights is the product of the "complex and colorful history of the state-owned Soviet film studio that created the disputed films," as well as "the reforms of Perestroika, in the late 1980s, [and how those reforms] affected the ownership of the studio's intellectual property rights."

In response to cross-motions for summary judgment, Judge Trager decided that under Russian law, Soyuzmultfilm Studio - the Russian company from which Films by Jove acquired its exclusive license - is the legal successor to the Soviet studio that produced the films, and that Soyuzmultfilm Studio had properly acquired the films' copyrights and is their owner. This meant that the video store owners were infringers, and Judge Trager so ruled, in August 2001 (ELR 23:8:14).

The August 2001 date of Judge Trager's decision is significant, because in October 2001 and December 2001, courts in France and Russia ruled that Soyuzmultfilm Studio is not the successor to the Soviet studio that produced the films. This meant that Soyuzmultfilm Studio did not own the copyrights it has licensed to Films by Jove; and indeed, the Russian court expressly held that those copyrights are owned by FSUESMS, just as the Brooklyn video store owner had contended.

As a result, the video store owner made a motion for reconsideration of Judge Trager's August 2001 decision. However, in a 61-page decision, Judge Trager has denied that motion and has reaffirmed his earlier decision that Soyuzmultfilm Studio is the owner of the films' copyrights, and thus granted a valid and enforceable exclusive license to Films by Jove.

Judge Trager declined to give any effect to the October 2001 decision of the Paris Court of Appeals. That decision held that the government agency Sovexportfilm had the exclusive right to distribute films that were produced by Soviet studios, including those produced by Soyuzmultfilm Studio. Judge Trager declined to give the decision effect for two reasons. First, in a separate case, the same Paris Court of Appeals had earlier ruled that Soyuzmultfilm Studio did own the copyrights to films it produced and did have the exclusive right to distribute them in foreign markets, and that Sovexportfilm did not. Second, Judge Trager determined that he was "not bound to give effect to the legal interpretation of a French court" concerning "complex issues of Russian law," especially when that interpretation "appears very obviously mistaken based on the more probative evidence of Russian law furnished to this court by [Film by Jove's] experts."

Judge Trager found the December 2001 decision of a Russian court more pertinent. Indeed, he said that "[i]n the ordinary case, this court would be inclined to adopt the [Russian] Court's positions with respect to issues of law" - positions that "undermine[] certain operative premises supporting my previous decision." Nevertheless, Judge Trager ultimately decided that he would not defer to the Russian court's interpretation of Russian law, for two reasons.

"First, Russia's civil legal system does not follow the principle of stare decisis, and therefore the precedential import of the December . . . 2001 decision as a general articulation of Soviet law is questionable."

Second, Films by Jove submitted a declaration by Dr. Sergei Anatolievich Pashin - a Russian law professor and former judge - who characterized the

Russian court's December 2001 decision as "unprecedented" and "illogical." What's more, Dr. Pashin explained that it was likely the Russian court reached such a conclusion for purely political reasons. Judge Trager said that Dr. Pashin demonstrated that the decision "resulted from a concerted attempt on the part of Russian government officials to assert state property interests that certain of these officials may feel were improvidently (or improperly) transferred to private ownership, and ultimately conveyed to foreign investors, perhaps without adequate compensation to the state."

The judge acknowledged that "The Russian government may well have reasons to rethink the propriety of various privatization reforms enacted over the past decade. . . . However, vague and dilatory allegations of asset-stripping cannot now, at this late date, be used to impair the contractual rights of [Films by Jove], an American corporation that acted in good faith, expending millions of dollars to develop the commercial value of Soyuzmultfilm Studio's animated films."

Judge Trager therefore concluded that "To the extent the [Russian] Court's decision undermines this court's determination that [Films by Jove] acquired a valid copyright license . . . in 1992, that decision is entitled to no deference and will not be followed."

Films by Jove was represented Julian H. Lowenfeld in New York City and Kenneth A. Feinswog in Los Angeles. The video store owners were represented by Paul R. Levenson of Kaplan Gottbetter & Levenson in New York City.

Films by Jove, Inc. v. Berov, 250 F.Supp.2d 156, 2003 U.S.Dist.LEXIS 6233 (E.D.N.Y. 2003)[ELR 25:2:10]

Federal District Court orders Nancy Stouffer to pay $576,409 in attorneys' fees (in addition to $50,000 in sanctions) on account of her "bad faith" claims that "Harry Potter" books and movies infringed her trademarks

Author Nancy Stouffer claimed that the Harry Potter books and movies infringe her trademark rights in words and other features of books she has written. Federal District Judge Allen Schwartz found, however, that Stouffer's claims were made in "bad faith," because she submitted altered and forged documents to support them (ELR 24:9:12).

As a result, Judge Schwartz has ordered Stouffer to pay J.K. Rowling, Scholastic, and Warner Bros. - Harry Potter's author, publisher and producer - a total of $576,409 in attorneys' fees, in addition to $50,000 in previously-ordered sanctions.

As huge an amount of money as this is, it is considerably less than Rowling, Scholastic and Warner Bros. had requested. Judge Schwartz said that he was "mindful of the exceptional, bad faith nature of . . . Stouffer's . . . claims. . . ." But he added that he also "recognizes that Stouffer is an individual of limited means. . . ." For this reason, the judge reduced by two-thirds the fees requested by the Rowling, Scholastic and Warner Bros.' law firms: Frankfurt Kurnit Klein & Selz, and O'Melveny & Myers.

Judge Schwartz reduced the requested fees for other reasons as well. The most significant of these was that he found O'Melveny's fee request "to be excessive in several respects." The judge detailed this conclusion, perhaps as guidance for other lawyers in future cases. He found, for example, that time records were not submitted for portions of O'Melveny's requested fees. He found that some work done by some lawyers involved reviewing the work of other lawyers. And he found that "excessive" time (135.4 hours) was spent preparing the declaration of one fact witness.

Rowling and Scholastic were represented by Edward H. Rosenthal of Frankfurt Kurnit Klein & Selz in New York City. Warner Bros. was represented by Dale M. Cendali of O'Melveny & Myers in New York City. Stouffer was represented by Thomas S. McNamara of Indik & McNamara in Philadelphia and James A. Power, Jr., of Power Del Valle in New York City.

Scholastic, Inc. v. Stouffer, 246 F.Supp.2d 355, 2003 U.S.Dist.LEXIS 2855 (S.D.N.Y. 2003) [ELR 25:2:11]

Court dismisses infringement, contract and other claims asserted by writers who allege that "The American President" and "The West Wing" were copied from their treatment for movie entitled "The President Elopes"

"The American President" was written by Aaron Sorkin. Indeed, according to a WGA arbitration panel, Sorkin was entitled to sole writing credit for that movie. The reason the WGA conducted a credit arbitration is that Kyle Morris and William Richert claimed that "The American President" was based on a treatment and scripts they wrote entitled "The President Elopes."

Morris and Richert's claims were not as far-fetched as such claims often are, because before Castle Rock hired Sorkin to write "The American President," it agreed to co-produce "The President Elopes." Later, while Sorkin's "The American President" was in production, Castle Rock bought Morris and Richert's treatment and scripts for "The President Elopes"; but Castle Rock never produced that movie. Instead, according to Morris and Richert, Castle Rock bought their treatment and scripts for "The President Elopes" in order to take it out of production.

Morris and Richert made this allegation in a lawsuit filed in federal court in New York City. They alleged that Castle Rock infringed the copyright to "The President Elopes," and that Warner Television did too by producing "The West Wing," a television series that also was created and written by Sorkin. The lawsuit also alleged that Castle Rock breached Morris and Richert's writing contract for "The President Elopes" by failing to pay them additional compensation for "The American President." And it alleged that Sorkin and others conspired to defraud Morris and

Richert by deceiving the WGA panel.

Morris and Richert have been no more successful with their lawsuit than they were with the WGA arbitration. Federal District Judge Victor Marrero has dismissed their case entirely, without a trial.

The judge dismissed the writers' copyright infringement claims, because they are not the owners of the copyright to "The President Elopes." They wrote "The President Elopes" in a work-made-for-hire relationship with a company that sold the copyright to the company that resold it to Castle Rock. Thus, Castle Rock - rather than Morris and Richert - own the copyright to "The President Elopes."

Morris and Richert argued that their work-made-for-hire contract should not be enforced and the copyright should be returned to them, on the grounds that it would be unconscionable to allow Castle Rock to buy the copyright simply to take their film out of production. But Judge Marrero thought otherwise.

The judge noted that the contract itself provided that even if it were terminated, ownership of the copyright would not be affected. And the judge found nothing unconscionable about Castle Rock's purchase of the copyright to "The President Elopes," even if the company did so in order to prevent the production of a movie "with superficial similarities to the one it already had in production."

Judge Marrero also rejected Morris and Richert's breach of contract claim. The judge did so, because the contract entitled them to additional compensation only if the WGA determined that they were entitled to shared writing credit. The WGA did not determine they were entitled to shared credit with Sorkin; it determined that Sorkin was entitled to sole credit.

Finally, the judge rejected Morris and Richert's fraud and conspiracy claims. The fraud claim was without merit, the judge explained, because neither Morris nor Richert relied on any representations made by Sorkin; and even if the WGA did, fraud claims cannot be based on the reliance of third parties.

Morris and Richert were represented by Roger L. Fidler in New York City. Castle Rock and its co-defendants were represented by Franklin K. Moss of Spivak Lipton Watanabe Spivak & Moss in New York City.

Morris v. Castle Rock Entertainment, Inc., 246 F.Supp.2d 290, 2003 U.S.Dist.LEXIS 2420 (S.D.N.Y. 2003)[ELR 25:2:12]

Court finds no likelihood of confusion between title of “O The Oprah Magazine” and title of adult fetish magazine “<<O>>“; fetish magazine publisher’s trademark infringement suit is dismissed

A fellow named Robert B. Brockmeyer publishes an adult, fetish magazine titled “<<O>>.” If you’ve never heard of Brockmeyer’s magazine, that’s not surprising. Among other things, it’s published infrequently and no issue has ever sold as many as 10,000 copies in the United States.

Nevertheless, these facts didn’t deter Brockmeyer from suing the publishers of “O The Oprah Magazine” for trademark infringement. According to Brockmeyer, the similarity between his trademarked “<<O>>“ and Oprah Magazine’s “O” are likely to confuse magazine purchasers into believing that his magazine is published by the same company that publishes "O The Oprah Magazine," or that he publishes "O The Oprah Magazine."

Brockmeyer is nothing if not assertive. Early in the case, he sought a preliminary injunction against the publishers of "O The Oprah Magazine" that, if granted, would have prevented them from using the titles "O" or "O Magazine." But in an unpublished order, Federal District Judge John Koeltl denied Brockmeyer's motion.

The publishers of "O The Oprah Magazine" then went on the offensive and made a motion for summary judgment. Judge Koeltl did a detailed multi-pronged analysis of the likelihood that consumers would be confused. Virtually all of the factors showed that "it is unlikely that the use of the letter 'O' . . . in 'O The Oprah Magazine' will cause . . . confusion between the . . . marks." And thus, the judge granted summary judgment to the publishers of "O The Oprah

Magazine."

Brockmeyer represented himself pro se. The publishers of "O The Oprah Magazine" were represented by Charles W. Grimes of Grimes & Battersby in Mamaroneck, N.Y.

Brockmeyer v. Hearst Corp., 248 F.Supp.2d 281, 2003 U.S.Dist.LEXIS 3394 (S.D.N.Y. 2003)[ELR 25:2:13]

Marvel Comics action figures are "toys" rather than "dolls" so import duties are only 6.8% rather than 12%, Court of International Trade decides; "Jumpsie," however, is a "doll" rather than a "toy set" so import duties are 12%

Back in 1994, Toy Biz, Inc., imported from China a bunch of action figures based on Marvel

Comics characters - including "X-Men," "Spider-Man" and "Fantastic Four" figures - and promptly got into a marathon dispute with the United States Customs Service over how much import duty the company would have to pay. The dispute turned on whether these action figures were "dolls" or "toys," because the duty on "dolls" was 12% while the duty on "toys" was just 6.8%.

The difference between "dolls" and "toys" is one that only customs lawyers and judges could appreciate. So far as the rest of us are concerned, dolls are just one type of toy. But in the Toy Biz case, it was a difference worth arguing about; and Toy Biz and the Customs Service have been doing just that, for almost 10 years now.

Disputes of this kind are litigated before the United States Court of International Trade. Writing for that court, Judge Judith Barzilay has ruled in favor of

Toy Biz: “X-Men,” “Spider-Man” and “Fantastic Four” action figures are “toys,” she has held, and thus dutiable at the lower 6.8% rate.

This conclusion differs from one reached in an earlier case involving Hasbro’s “G.I. Joe” action figures (ELR 11:10:13); but the difference is not a mistake. Rather, Judge Barzilay explained that after the Hasbro case was decided, the United States adopted a new and different tariff schedule, and changed the definition of “dolls” which require the payment of higher duties.

In the Toy Biz case, Judge Barzilay concluded that Marvel characters are not “dolls” - as that word was defined in the revised tariff schedule - because they “do not represent human beings.” Rather, they are “mutants” with “extraordinary and unnatural physical and psychic powers.” A figure is a “doll,” by contrast, only if it “represents only a human being.”

Toy Biz didn't prevail completely. It also imported "Jumpsie" sets consisting of a doll, a toy trampoline, and other accessories. Toy Biz argued that this was a "toy set," dutiable at 6.8%, while the Customs service argued that it was a "doll," dutiable at 12%.

Judge Barzilay ruled against Toy Biz on this item. "Jumpsie" herself represented a girl child, and thus was a "doll." Moreover, the doll portion of the set "clearly dominates . . . over the non-doll items in the set, such as the trampoline." And that meant the set was not a "toy set," for import duty purposes.

Editor's note: Judges often make note of cases that are of "first impression." Judge Barzilay noted that this case may be one of "last impression." In 2002, the United States revised its tariff schedule yet again. And though the current schedule retains the distinction between "dolls" and "toys," all dolls and toys now enter the U.S. duty-free.

Toy Biz was represented by Sherry L. Singer and Indie K. Singh of Singer & Singh in New York City. The Customs Service was represented by Robert D. McCallum Jr., Assistant Attorney General in the U.S. Department of Justice.

Toy Biz, Inc. v. United States, 248 F.Supp.2d 1234, 2003 Ct.Intl.Trade LEXIS 2 (CIT 2003)[ELR 25:2:13]

Federal court in Nashville does not have jurisdiction to hear rap sampling infringement action against Texas music publishers, but does have jurisdiction to hear infringement action against Florida record companies, federal appellate court rules

Bridgeport Music and Westbound Records have filed "several hundred" copyright infringement lawsuits in federal court in Nashville against publishers and record companies in "the 'rap' or 'hip-hop' music industry." The primary issue in these cases appears to be the defendants' allegedly unauthorized sampling of Bridgeport's songs and Westbound's recordings. But before that issue was reached, some preliminary procedural matters have taken center stage.

For example, one early ruling held that Bridgeport may assert claims under the Tennessee Consumer Protection Act against those who allegedly sampled their music, but that Bridgeport's negligence claims are preempted by the Copyright Act (ELR 23:8:17). More recently, judges have dealt with the issue of whether the federal District Court in Nashville has personal jurisdiction over publishers and record companies outside of Tennessee.

The District Court held that it did not have personal jurisdiction over California-based Agarita Music, a music publishing company that allegedly operates "under the umbrella of Disney Music Publishing." (ELR 24:2:18)

In a separate ruling, the District Court also held that it did not have personal jurisdiction over Texas-based music publishers or over Florida record companies. But the Court of Appeals has reversed half of that decision. The appellate court agreed that the Nashville court does not have personal jurisdiction over the music publishers; but it held that the Nashville court does have personal jurisdiction over the Florida record companies.

Bridgeport and Westbound argued that the Nashville court did have personal jurisdiction over Texas-based N-the-Water Publishing (an ASCAP affiliate) and Still-N-in-the-Water Publishing (a BMI affiliate), because both companies "purposefully availed" themselves of the privilege of acting in Tennessee and causing consequences there. The appellate court, however, disagreed.

It ruled that issuing mechanical licenses to Rap-A-Lot Records, a record company that was likely to sell records in Tennessee, did not amount to "purposeful availment," even though Rap-A-Lot recordings have been sold by at least two Nashville retailers. Likewise, it didn't matter that Rap-A-Lot advertises nationally, in part because there was no evidence that any of those ads targeted or even reached Tennessee.

Nor did it matter that when the two Texas publishers first affiliated with ASCAP and BMI, they dealt with the Nashville offices of those performing rights organizations; even Bridgeport acknowledged that after the publishers affiliated, they dealt with ASCAP and BMI offices located outside of Tennessee. Finally, Bridgeport and Westbound argued that the two publishers allowed and expected recordings of their songs to be sold on the Internet. But the publishers didn't themselves host or operate a website doing so.

On the other hand, the appellate court found that Florida-based record companies DM Records and Bellmark Records have "purposefully availed" themselves of the privilege of doing business in Tennessee, and thus the Nashville court does have personal jurisdiction over them. The appellate court relied on two facts in reaching this conclusion.

First, DM and Bellmark have a distribution contract with Ryco Distribution that authorizes Ryco to distribute their records throughout the United States; and DM and Bellmark's president testified that he understood that Ryco would distribute his companies' records "nationwide." Second, DM and Bellmark do operate their own website, through which customers can purchase (from Amazon.com) their recordings.

Bridgeport and Westbound were represented by Richard S. Busch of King & Ballow in Nashville. N-the-Water, Still-N-the-Water, DM Records and Bellmark Records were represented by Mary Ellen Morris of Miller & Martin in Nashville and by Henry J. Fasthoff IV of Stumpf Craddock Massey & Pulman in Houston.

Bridgeport Music, Inc. v. Still N the Water Publishing, 327 F.3d 472, 2003 U.S.App.LEXIS 8455 (6th Cir. 2003)[ELR 25:2:14]

Detroit suburb of Sterling Heights is enjoined from interfering with presentation of concerts by Hillside Productions in Freedom Hill Amphitheater

Freedom Hill Amphitheater, in the Detroit suburb of Sterling Heights, is now in the midst of its 2003 concert season; and quite a season it is. Art Garfunkel, Loretta Lynn, Paul Anka, Aretha Franklin, Tony Bennett, Michael Bolton and others all have or soon will appear on the Amphitheater's stage.

These performances were made possible by Hillside Productions, Inc., the operator of the Freedom Hill Amphitheater, and by Federal District Judge Nancy Edmunds who issued a preliminary injunction barring Sterling Heights from doing anything to interfere with Hillside's operations.

In the very beginning, Hillside Productions and Sterling Heights had good relations with one another. Hillside got all of the leases and permits the city required, and Hillside complied with all city ordinances. Nevertheless, Hillside's relationship with Sterling Heights soon turned sour, and the city did a number of things that would have made the

Amphitheater's 2003 season impossible, had not Judge Edmunds ruled in Hillside's favor in a lawsuit the company filed against Sterling Heights early in the year.

Hillside's lawsuit alleges that Sterling Heights violated the company's due process, equal protection and First Amendment rights. And in a factually-detailed and lengthy opinion, Judge Edmunds agreed.

"Rarely does one hear such compelling and unrebutted evidence of the vindictive retaliatory action such as that taken by . . . the City of Sterling Heights. . . ," the judge said. "The facts in this case establish a relentless pattern of harassment and vindictiveness. . . . It is clear that some residents of Sterling Heights were unhappy about Hillside's operation and were vocal about it. It is obvious that Hillside's operation was a thorn in the side of the City. . . . And it is equally clear and obvious that [Hillside is] likely to succeed on [its] claims that the City engaged in selective enforcement and vindictive retaliation."

Hillside Productions was represented by Cindy R. Victor of Strobl Cunningham in Bloomfield Hills. Sterling Heights was represented by Suzanne P. Bartos of Plunkett & Cooney in Detroit.

Hillside Productions, Inc. v. Duchane, 249 F.Supp.2d 880, 2003 U.S.Dist.LEXIS 3961 (E.D.Mich. 2003)[ELR 25:2:15]

Court refuses to dismiss Americans with Disabilities Act lawsuit filed against AMC and Loews Cineplex by deaf and hard of hearing movie patrons; court rules that theaters may have to provide facilities for viewing closed-captioned movies

The Americans with Disabilities Act may require movie theaters to provide facilities for viewing closed-captioned movies by their deaf and hard-of-hearing patrons. Federal District Judge Gladys Kessler has so ruled, in a lawsuit filed against AMC and Loews Cineplex. Judge Kessler's decision was in response to a motion for summary judgment filed by the two theater chains - a motion the judge has denied.

The particular form of captioning sought by those who filed the lawsuit is known as "rear window captioning." This is a relatively new technology. Captions are recorded on a computer disk, separate from the movie itself. As a movie is displayed on a theater's screen, captions are sent from the disk to an LED data panel on the back wall of the theater. Patrons are able to read the captions using portable, transparent acrylic panels that reflect the captions from the LED panel. The transparent acrylic panels are placed in cup holders and make the captions appear to be superimposed on or beneath the movie screen.

Captioning is done by movie studios, and the disks are provided at no cost to theaters. Theaters, however, have to install LED data panels and provide transparent acrylic panels; and the cost of doing that is anywhere from $11,225 to $16,000 per screen. AMC estimated it would spend $2 million equipping its 125 screens in the District of Columbia area; and Loews estimated it would spend $1.5 million to equip its 101 screens in the D.C. area. This is why AMC and Loews sought dismissal of the case.

The theater chains argued that the ADA does not require movie captioning, and indeed, the Act itself says nothing about captioning. Moreover, the ADA's legislative history explicitly says that "[o]pen-captioning . . . of feature films playing in movie theaters is not required by this legislation." But "rear window captioning" is not "open-captioning." (Open captions are "burned" onto a film's print and are visible to everyone in the movie theater, like subtitles.) Moreover, the ADA's legislative history indicated that technological advances may require accommodations in the future that would not have been required when the ADA was first enacted.

AMC and Loews also noted that ADA regulations specifically provide that book stores are not required to stock Braille books, and video stores are not required to stock captioned videos. By analogy, AMC and Loews argued, movie theaters should not be required to provide captioned movies. Judge Kessler was not persuaded by the analogy however. She noted that books and videos are goods, while the exhibition of first-run movies is a service.

What's more, the judge said, providing facilities for viewing rear window captioned movies would not change the nature of the service that theaters offer. Nor would it change the type of movies theaters exhibit. While it is true that only 2.8% of first run movies released since 1997 have been rear window captioned, the number of rear window captioned movies has been increasing each year. Also, the lawsuit does not seek to compel AMC and Loews to exhibit rear window captioned movies; it simply seeks to require the theater chains to provide the equipment necessary to enable deaf and hard of hearing patrons to enjoy rear window captioned movies, if and when they are exhibited by AMC and Loews.

Finally, the ADA does not require accommodations for the disabled that would "result in an undue . . . expense." AMC and Loews argued that $1.5 million and $2 million (for the D.C. area alone) would be an "undue expense." But the plaintiffs argued that AMC and Loews would have to equip only 20 screens each, at a cost of about $300,000 each. And this discrepancy led Judge Kessler to conclude that a trial is necessary on the theater chains' "undue burden" defense.

The plaintiffs in the case were represented by Thomas J. Simeone of Simeone & Miller in Washington D.C. AMC and Loews were represented by Steven John Fellman of Galland Kharasch Greenberg Fellman & Swirsky in Washington D.C.

Ball v. AMC Entertainment, Inc., 246 F.Supp.2d 17, 2003 U.S.Dist.LEXIS 2523 (D.D.C. 2003)[ELR 25:2:15]

AMC movie theaters violate Americans with Disabilities Act in several ways, in addition to previously ruled-upon line-of-sight violation, federal District Court decides

AMC Entertainment has engaged in a "pattern and practice" of violating the Americans with Disabilities Act, federal District Judge Florence-Marie Cooper has held. The judge reached this harsh conclusion in the second of two published opinions she has written in a lawsuit filed against AMC by the United States Department of Justice.

In the first opinion, Judge Cooper ruled that the lines-of-sight in AMC's stadium style theaters violate ADA Guidelines (ELR 24:11:17). Then, in response to the Justice Department's motion for summary judgment on several other issues, the judge ruled that a dozen AMC movie theaters violate the ADA in other ways too.

Judge Cooper's second decision is based on an expert report prepared by Bill Hecker, an architect with extensive experience in ADA compliance. "The Hecker Report catalogs well over one thousand accessibility violations at the twelve theater complexes he inspected," the judge noted. These violations concerned such things as parking areas, pay phone heights, Braille identification signs at auditorium entrance doors, ramp slopes and other theater design features.

AMC submitted a rebuttal opinion by its own expert, Michael P. Gibbens, which criticized the Hecker Report in a half dozen particulars. And AMC submitted a declaration by its Vice President Philip Pennington which controverted the evidence in the Hecker Report. However, Judge Cooper found that AMC had raised triable issues of fact only with respect to "a small subset" of hundreds of violations established by the Hecker Report. And for that reason, the judge had "no trouble concluding that . . . AMC has violated numerous sections" of the Americans with Disabilities Act Accessibility Guidelines.

The Justice Department was represented by Leon W. Weidman of the Office of the U.S. Attorney Civil Division in Los Angeles. AMC was represented by David C. Vogel of Lathrop & Gage in Kansas City.

United States v. AMC Entertainment, Inc., 245 F.Supp.2d 1094, 2003 U.S.Dist.LEXIS 2646 (C.D.Cal. 2003)[ELR 25:2:16]

Clemson University is not liable for mistaken advice that made student ineligible to play NCAA baseball during his senior year, South Carolina Supreme Court decides

R.J. Hendricks II is apparently a heck of a baseball player. He was recruited while in high school to play for several colleges. And play he did, on a baseball scholarship, for St. Leo College in Florida. St. Leo, however, is a Division II school, and Hendricks hoped to finish his college days playing for a Division I school.

Clemson University is a Division I school, and was interested in having Hendricks on its baseball team. It was, in fact, so interested that it obtained a one-time transfer exception for Hendricks from the NCAA, so that Hendricks could play for Clemson during his senior year.

At St. Leo, Hendricks majored in Business Administration, concentrating on Restaurant and Hotel Management. Clemson, however, doesn't offer that major. As a result, Hendricks met with Clemson's athletic academic advisor, who gave him advice about what subject to major in and what courses to enroll in.

Hendricks followed the advice of Clemson's advisor, exactly; but unfortunately, the advice was wrong. The advisor miscalculated the number of electives Hendricks could take. As a result, Hendricks didn't satisfy the NCAA's "50% Rule" (a rule that requires student-athletes to complete at least 50% of their course requirements towards their major to be eligible to compete as seniors). As a result of failing to satisfy that rule, Hendricks couldn't play baseball as a senior, which was the only reason he transferred to Clemson in the first place.

Hendricks reacted by suing Clemson for

negligence, breach of fiduciary duty and breach of contract. But he has lost.

In an opinion by Chief Justice Jean Toal, the South Carolina Supreme Court has ruled that "Clemson owed no duty to Hendricks" to give him accurate advice concerning NCAA eligibility requirements. "We believe recognizing a duty flowing from advisors to students is not required by any precedent and would be unwise, considering the great potential for embroiling schools in litigation that such recognition would create," the Chief Justice reasoned.

The Chief Justice also "decline[d] to recognize the relationship between advisor and student as a fiduciary one."

And she rejected Hendricks' breach of contract claim, because he "fails to point to any written promise from Clemson to ensure his athletic eligibility, and submits no real evidence to support his claim that such a promise was implied."

Hendricks was represented by Scott M. Anderson of the Anderson Law Firm in Greenville. Clemson was represented by Jack D. Griffeth of Love Thornton Arnold & Thomason in Greenville.

Hendricks v. Clemson University, 578 S.E.2d 711, 2003 S.C.LEXIS 51 (S.C. 2003)[ELR 25:2:16]

Ontario Hockey League's 20-year-old eligibility rule does not violate antitrust law, federal appeals court rules in lawsuit filed by NHL Players' Association

In August of the year 2000, the Ontario Hockey League adopted an eligibility rule, the legality of which was attacked by the National Hockey League Players' Association, almost immediately. The rule has several parts, each with its own consequences; and one of those consequences is that 20-year-old U.S. college players are barred from playing in the Ontario Hockey League, even if they are Canadian-born.

The rule is known as the "Van Ryn Rule" and it has a colorful history. It was adopted as a result of University of Michigan player Mike Van Ryn signing with the National Hockey League's St. Louis Blues for "significantly more" than he would have received from the New Jersey Devils, the NHL team that originally drafted him, after playing for an OHL team until New Jersey's draft rights expired.

According to the NHL Players Association, the Ontario Hockey League conspired with the NHL in adopting the Van Ryn Rule, in order to prevent other players from doing what Van Ryn did: becoming an NHL free agent by playing in the OHL until NHL draft rights lapsed.

One player affected by the Van Ryn Rule - perhaps the first - was Canadian-born Anthony Aquino who played hockey for Merrimack College in Massachusetts for three seasons. When Aquino was 20 years old, he was drafted by the NHL's Dallas Stars who traded him to the Atlanta Thrashers. Aquino knew that if he signed with the Thrashers immediately, his bargaining power would be limited. But if he played in the Ontario Hockey League for a year, the Thrasher's draft rights to him would expire. That would make him an NHL free agent, and he would be able to negotiate a better deal for himself, with the Thrashers or some other NHL team, just the way Mike Van Ryn previously had.

Unfortunately for Aquino, the Van Ryn Rule barred Aquino from playing for any team in the OHL, even the OHL team that had acquired rights to him from the OHL team that drafted him before he went to college, when he was just 16. Thus, there was nothing Aquino could do to become an NHL free agent. And that's what the NHL Players Association complained about, in the antitrust lawsuit it filed in a United States District Court in Michigan.

The case raised a number of interesting issues, including the question of whether a United States court had jurisdiction to decide the legality of a Canadian eligibility rule, using U.S. antitrust law. Federal District Judge Victoria Roberts decided that she did have jurisdiction (ELR 23:11:13). And later, she decided that the Van Ryn Rule was a "per se" violation of U.S. antitrust law, because it amounted to a group boycott. In an unpublished decision, Judge Roberts issued a preliminary injunction barring the OHL from enforcing its Van Ryn Rule against Aquino.

The OHL and NHL immediately appealed, and the Court of Appeals issued a stay of the preliminary injunction. Now, the appellate court has gone a step further and has reversed the injunction entirely.

In an opinion by Judge Julia Smith Gibbons, the Court of Appeals ruled that Judge Roberts had erred in applying the "per se" standard. Instead, Judge Gibbons said, the Van Ryn Rule should have been tested under the "rule of reason." And by that more lenient standard, the Van Ryn Rule is legal, Judge Gibbons concluded.

Judge Gibbons noted that the OHL is an amateur league that restricts the amount players may be paid to schooling expenses and a limited stipend. Thus, the judge reasoned, "The application of the Van Ryn Rule does not result in any economic injury to the 'market for competition among OHL . . . teams for player services,' but merely substitutes one arguably less skilled player for another arguably more skilled player." Judge Gibbons agreed that the Rule may have caused "significant personal injury" to Aquino, but it didn't cause "injury to a definable market."

This meant that the NHL Players Association had not shown a substantial likelihood of success on the merits, and for that reason, a preliminary injunction should have been issued, Judge Gibbons concluded.

The NHL Players Association was represented by Michael P. Conway of Grippo & Elden in Chicago. The OHL and NHL were represented by Stephen F. Wasinger of Wasinger Kickham & Hanley in Royal Oak.

National Hockey League Players Association v. Plymouth Whalers Hockey Club, 325 F.3d 712, 2003 U.S.App.LEXIS 6295 (6th Cir. 2003)[ELR 25:2:17]

Court dismisses claims against police officer in discrimination lawsuit filed by high school volleyball player who alleges that school district enforces Good Conduct Code more severely against women student-athletes than men

Larry Bumsted is a part-time police officer in the city of Moville, Iowa. April Marie Schultzen is a student in the city's Woodbury Central High School, and is a member of the school's volleyball team. In September of 2000, officer Bumsted caught volleyball player Schultzen smoking off campus. And because smoking violates her school district's Good Conduct Code, Schultzen was suspended from the volleyball team for six weeks.

Schultzen's minor offense, and the modest penalty she was made to suffer for it, have mushroomed into a federal case of major proportions, because Schultzen alleges that male student athletes have not been penalized for comparable violations of the Good Conduct Code, or even more serious ones. She made this allegation in a discrimination lawsuit against her school district and officer Bumsted.

Schultzen may eventually recover something against the school district. But so far, her case has suffered two setbacks. First, Federal District Judge Mark Bennett dismissed Schultzen's claim for punitive damages against the school district, on the grounds that the district is immune to such damages (ELR 24:2:18). Now, Judge Bennett has dismissed all of Schultzen's claims against officer Bumsted.

In a lengthy opinion, the judge has ruled that Schultzen's state law claims against Bumsted are barred, because she failed to name the policeman in the claim she filed with the Iowa Civil Rights Commission, as required by Iowa law. He held that Title IX did not give Schultzen a cause of action against Bumsted, because he was not a recipient of federal financial assistance. And the judge decided that Bumsted had not acted "under color of state law" when he reported Schultzen's smoking to her school, so she could not pursue alleged constitutional violations against him under section 1983 of the federal Civil Rights Act. Finally, Judge Bennett held that Bumsted was entitled to immunity from Schultzen's section 1983 claims.

Schultzen was represented by Stanley E. Munger of Munger Reinschmidt & Denne in Sioux City. Bumsted was represented by Douglas L. Phillips of Klass Stoik Mugan Villone & Phillips in Sioux City.

Schultzen v. Woodbury Central Community School District, 250 F.Supp.2d 1047, 2003 U.S.Dist.LEXIS 2437 (N.D.Iowa 2003)[ELR 25:2:18]

DEPARTMENTS

Entertainment Lawyer News:

David E. Green joins MPAA. Jack Valenti, President and Chief Executive Officer of the Motion Picture Association of America (MPAA) has named David E. Green to the position of Vice President & Counsel, Technology and New Media. Green will focus primarily on legal issues related to the Internet and other digital electronic distribution systems. He will report to Fritz Attaway, Executive Vice President and Washington General Counsel. Green joins the MPAA from the U.S. Department of Justice where he has worked for the last 16 years. He most recently served as the Principal Deputy Chief of the highly-regarded Computer Crime and Intellectual Property Section of the Criminal Division, where he helped coordinate the national enforcement of the criminal laws protecting intellectual property. Prior to that position, Green prosecuted public corruption cases as Senior Litigation Counsel in the Criminal Division's Public Integrity Section. He also worked for several years as an associate with the law firm of Arnold & Porter where he was involved in litigation and in legislative work, including intellectual property protection. Green graduated from Oberlin College with a Bachelor of Arts in History. He received his Juris Doctorate, cum laude, from the University of Pennsylvania Law School, and served as a law clerk to the Honorable Louis H. Pollak in Eastern District of Pennsylvania. [ELR 25:2:19]

In the Law Reviews:

The Berkeley Technology Law Journal has published Volume 18, Number 2 as a symposium entitled "The Law & Technology of Digital Rights Management" with the following articles:

Foreword by C. J. Alice Chen and Aaron Burstein, 18 Berkeley Technology Law Journal 487 (2003)

Edited Transcript of the David Nelson Memorial Keynote Address: A Voice from Congress on DRM by Rep. Zoe Lofgren, 18 Berkeley Technology Law Journal 495 (2003)

The DMCA and the Regulation of Scientific Research by Joseph P. Liu, 18 Berkeley Technology Law Journal 501 (2003)

Consumers and Creative Destruction: Fair Use Beyond Market Failure by Raymond Shih Ray Ku, 18 Berkeley Technology Law Journal 539 (2003)

DRM and Privacy by Julie E. Cohen, 18 Berkeley Technology Law Journal 575 (2003)

Will Merging Access Controls and Rights Controls Undermine the Structure of Anticircumvention Law? by R. Anthony Reese, 18 Berkeley Technology Law Journal 619 (2003)

DRM as an Enabler of Business Models: ISPs as Digital Retailers by Lionel S. Sobel, 18 Berkeley Technology Law Journal 667 (2003)

Edited and Excerpted Transcript of the Symposium on the Law & Technology of Digital Rights Management, 18 Berkeley Technology Law Journal 697 (2003)

Entertainment and Sports Lawyer, a publication of the ABA Forum on the Entertainment and Sports Industries, 750 North Lake Shore Drive, Chicago, IL 60611-4497, has published Volume 21, Number 1 with the following articles:

Rap Music and the Culture of Fear by Barry Glassner, 21 Entertainment and Sports Lawyer 1 (2003) (for publisher, see above)

Copyright vs. Consumers by Niels Schaumann, 21 Entertainment and Sports Lawyer 1 (2003) (for publisher, see above)

Is Virtual Kiddie Porn a Crime? by Joseph J. Beard, 21

Entertainment and Sports Lawyer 1 (2003) (for publisher, see above)

What's in a Name: Dealing with Cybersquatting by Jonathan A. Anschell and John J. Lucas, 21 Entertainment and Sports Lawyer 3 (2003) (for publisher, see above)

Ensuring IP Protection through Escrow by Jeremy Lewis and Andrew Moore, 21 Entertainment and Sports Lawyer 8 (2003) (for publisher, see above)

The Yin and Yang of Sports Deals in China by Jinshu "John" Zhang, 21 Entertainment and Sports Lawyer 12 (2003) (for publisher, see above)

You Speak-Is Anyone Listening? by David Dempsey, 21 Entertainment and Sports Lawyer 14 (2003) (for publisher, see above)

Old Financial Ways Are Over for Record Biz by A. Barry Cappello, 21 Entertainment and Sports Lawyer 23 (2003) (for publisher, see above)

Comm/Ent, Hastings Communications and Entertainment Law Journal, has published Volume 24, Number 4 and Volume 25, Number 1 with the following articles:

Digital Divide: Myth, Reality, Responsibility by Nicholas W. Allard, 24 Comm/Ent, Hastings Communications and Entertainment Law Journal (2002)

The Global Digital Divide: Focusing on Children by Susanna Frederick Fischer, 24 Comm/Ent, Hastings

Communications and Entertainment Law Journal (2002)

The Digital Divide and Equal Access to Justice by Mark Lloyd, 24 Comm/Ent, Hastings Communications and Entertainment Law Journal (2002)

The FCC's Third Report on Broadband Deployment: Inequitable, Untimely and Unreasonable by Allen S. Hammond, 24 Comm/Ent, Hastings Communications and Entertainment Law Journal (2002)

Ownership Issues in the Digital Divide by Yale M. Braunstein, 24 Comm/Ent, Hastings Communications and Entertainment Law Journal (2002)

Digital Divide, Digital Opportunities: A Statistical Overview by Lee Price, 24 Comm/Ent, Hastings

Communications and Entertainment Law Journal (2002)

Equality and the Digital Divide by Gerald Doppelt, 24 Comm/Ent, Hastings Communications and Entertainment Law Journal (2002)

On the Digital Divide: Selected Remarks by Carl Wood, 24 Comm/Ent, Hastings Communications and Entertainment Law Journal (2002)

The Tragicomedy of the Public Domain in Intellectual Property Law by A. Samuel Oddi, 25 Comm/Ent, Hastings Communications and Entertainment Law Journal (2002)

Facing the Music: The Dubious Constitutionality of Facial Recognition Technology by John J. Brogan, 25

Comm/Ent, Hastings Communications and Entertainment Law Journal (2002)

Figure This: Judging or Federal Fraud? A Proposal to Criminalize Fraudulent Judging and Officiating in the International Figure Skating Arena by Kelly Koenig Levi, 25 Comm/Ent, Hastings Communications and Entertainment Law Journal (2002)

Speaking Out of Thin Air: A Comment on Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston by Randall P. Bezanson and Michele Choe, 25 Comm/Ent, Hastings Communications and Entertainment Law Journal (2002)

Smells Like Slavery: Unconscionability in Recording Industry Contracts by Phillip Hall, 25 Comm/Ent, Hastings Communications and Entertainment Law

Journal (2002)

Copy Protection of CDs: The Recording Industry's Latest Attempt at Preventing the Unauthorized Digital Distribution of Music by Amy K. Jensen, 21 The John Marshall Journal of Computer & Information Law 241 (2003)

Mattel, Inc. v. MCA Records, Inc. : Let's Party in Barbie's World-Expanding the First Amendment Right to Musical Parody of Cultural Icons by Tamar Buchakjian, 36 Loyola Law Review (2003)

The Digital Millennium Copyright Act: A Review of the Law and the Court's Interpretation by Neil A. Benchell, 21 The John Marshall Journal of Computer & Information Law 1 (2002)

Content-Based Regulation of Electronic Media: Indecent Speech on the Internet by Kelly M. Slavitt, 21 The John Marshall Journal of Computer & Information Law 19 (2002)

African American College Football Players and the Dilemma of Exploitation, Racism and Education: A Socio-Economic Analysis of Sports Law by Otis B. Grant, 24 Whittier Law Review 645 (2003)

Music Contracts Have Musicians Playing in the Key of Unconscionability by Omar Anorga, 24 Whittier Law Review 739 (2003)

The Best Games in Life Are Free? Videogame Emulation in a Copyrighted World, 36 Suffolk University Law Review (2003)

The Children's Internet Protection Act in Public Schools: The Government Stepping on Parents' Toes? by Kelly Rodden, 71 Fordham Law Review 2141 (2003)

"Yelling Fire" and Hacking: Why the First Amendment Does Not Permit Distributing DVD Decryption Technology by Bonnie L. Schriefer, 71 Fordham Law Review 2283 (2003)

Steal This Disk: Copy Protection, Consumers Rights", and the Digital Millennium Copyright Act by Anthony J. Colangelo, 97 Northwestern University Law Review (2003)

Peer-to-Peer Combat: The Entertainment Industry's Arsenal in its War on Digital Piracy, 48 Villanova Law Review (2003)

Legal and Policy Responses to the Disappearing "Teacher Exception," or Copyright Ownership in the 21st Century University by Elizabeth Townsend, 4 Minnesota Intellectual Property Review 209 (2003)

Speech-Zilla Meets Trademark Kong?: How the Hollywood Circuit Got It Wrong in the Barbie Battle, Mattel, Inc. v. MCA Records, Inc. by Steven Y. Reeves, 4 Minnesotal Intellectual Property Review 285 (2003)

The Policy Considerations of New Use Copyright Law as It Pertains to eBooks by Joshua A. Tepfer, 4 Minnesota Intellectual Property Review 393 (2003)

Stranding Dorothy in Oz and Keeping the Wizard Behind the Curtain? Writer's Guild Determination of Screenwriting Credits Through Arbitration by Dana N.

Glasser, 3 Pepperdine Dispute Resolution Law Journal (2003)

Establishing Accountability on the Digital Frontier: Liability for Third Party Copyright Infringement Extends to Manufacturers of Audio Compression Software by Kimberly D. Simon, 52 Syracuse Law Review 921 (2002)

Caught by the Web-A Web Site Can Subject a Company to Lawsuits in Far Away States, 15 Intellectual Property & Technology Law Journal 1 (2003) (edited by Weil, Gotshal & Manges, published by Aspen Publishers)

Clean Flicks v. Hollywood: Intellectual Property Owners Losing Control, 15 Intellectual Property & Technology Law Journal 6 (2003) (for publisher, see above)

The History and Business of Contraction in Major League Baseball by Scott R. Rosner, 8 Stanford Journal of Law, Business & Finance 265 (2003)

The Internet, Innovation, and Intellectual Property Policy by Philip J. Weiser, 103/April Columbia Law Review (2003)

Information Wants to Be Free: Intellectual Property and the Mythologies of Control by R. Polk Wagner, 103/May Columbia Law Review 995 (2003)

Protecting Consumers from Themselves: Alleviating the Market Inequalities Created by Online Copyright Infringement in the Entertainment Industry by Kevin Michael Lemley, 13 Albany Law Journal of Science and Technology (2003)

The Digital Millennium Copyright Act: Bringing Copyright Law into the Digital Age by David A. Whitehurst, 2 Appalachian Journal of Law 77 (2003) (published by the Appalachian School of Law, Grundy, Virginia)

White Out: The Absence and Stereotyping of People of Color by the Broadcast Networks in Prime Time Entertainment Programming by Leonard M. Baynes, 45 Arizona Law Review (2003)

The First Amendment, the FCC, and Digital Subscriber Line Service: Will Congress Get it Right This Time? by Adam J. Coates, 5 University of Pennsylvania Journal of Constitutional Law (2003)

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Harboring Doubts About the Efficacy of § 512 Immunity Under the DMCA by Jennifer Bretan, 18 Berkeley Technology Law Journal 43 (2003)

Jurisprudence under the In Rem Provision of the Anticybersquatting Consumer Protection Act by Bhanu K. Sadasivan, 18 Berkeley Technology Law Journal 237 (2003)

The Ontology of Copyright Infringement: Puzzles, Parts, and Pieces, 35 Connecticut Law Review (2003)

Internet Domain Name Security Interests: Why Debtors

Can Grant Them and Lenders Can Take Them by Alexis Freeman, 20 The Computer and Internet Lawyer 7 (2003) (edited by Arnold & Porter and published by Aspen Publishers)

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Digital "Revision": Greenberg v. National Geographic Society, 70 University of Cincinnati Law Review (2002)

Security Interest in Intellectual Property and Licenses and the Revised Article 9 by Zuan-Thao Nguyen, 23 The Licensing Journal 9 (2003) (edited by Grimes & Battersby and published by Aspen Publishers)

Trade-Related Aspects of Intellectual Property Rights and Copyright Provisions-Some Issues with Special Reference to Developing Countries by Somesh K. Mathur, 6 The Journal of World Intellectual Property 65 (2003) (www.wernerpubl.com/frame_pro.htm)

An Evaluation of the African Regional Intellectual Property Rights Systems by Enyinna S. Nwauche, 6 The Journal of World Intellectual Property 101 (for website, see above)

The Economic Case against Copyright Owner Control over Parallel Imports-The Market for Sound Recordings by Theo Papadopoulos, 6 The Journal of World Intellectual Property 329 (2003) (for website, see above)

The Exhaustion of Intellectual Property Rights-

Different Approaches in EC and WTO Law by Marco M. Slotboom, 6 The Journal of World Intellectual Property 421 (2003) (for website, see above)

Advertising Works of Art for Sale-Copyright or Contract? by Owen Morgan, 14 Australian Intellectual Property Journal 21 (2003) (published by The Law Book Co Ltd, 44-50 Waterloo Road, North Ryde NSW 2113 Australia)

Fair Dealing and Freedom of Expression in the United Kingdom by Robert Burrell and James Stellios, 14 Australian Intellectual Property Journal 45 (2003) (for publisher, see above)

China and the Internet: Recent Developments by DW Choy, The Australian Journal of Asian Law 77 (2003) (http://www.law.unimelb.edu.au/ajal/)

Entertainment Law Review, published by Sweet and Maxwell, www.sweetandmaxwell.co.uk, has issued Volume 14, Issues 4 and 5 with the following articles:

The Eurovision Song Contest: A Proposal for Reconciling the National Regulation of Music Collecting Societies and the Single European Market by Emily Lui, 14 Entertainment Law Review 67 (2003) (for website, see above)

Beckingham v. Hodgens and Others: Joint Authors by John Lambert, 14 Entertainment Law Review 85 (2003) (for website, see above)

Musicians and Their Assets by Paul Woolf, 14 Entertainment Law Review 90 (2003) (for website, see above)

Brief Update on Equitable Remuneration by Chris McLeod, 14 Entertainment Law Review 92 (2003) (for website, see above)

Book Review: Copyright in the Cultural Industries by Ed. Ruth Towse, 14 Entertainment Law Review 94 (2003) (for website, see above)

Piracy Is Good for You by Jurgen Proschinger, 14 Entertainment Law Review 97 (2003) (for website, see above)

Waiver of Injunctive/Equitable Relief & Termination Rights in Film and Television Distribution Agreements by Arhtus Evrensel and Ken Cavalier, 14 Entertainment Law Review 105 (2003) (for website, see above)

Now You See It, Now You Don't: The Copyright

Owner's Right to Terminate Licenses and Assignments by Leonard D. Duboff, 14 Entertainment Law Review 109 (2003) (for website, see above)

Previously in Arsenal v Reed by Anthony Robinson, 14 Entertainment Law Review 112 (2003) (for website, see above)

The Copyright Exceptions of Art.5(2)(a) and (b) of the EU Directive 2001/29 by Carsten Schaal, 14 Entertainment Law Review 117 (2003) (for website, see above)

Book Review: Film Copyright in the European Union by Pascal Kamina, 14 Entertainment Law Review 122 (2003) (for website, see above)

Book Review: Broadcasting in the European Union-

The Role of Public Interest in Competition Analysis by Ingrid Nitsche, 14 Entertainment Law Review 122 (2003) (for website, see above)

Copyright World, www.ipworldonline.com, has published April, 2003 with the following articles:

New Moon Rising: Hong Kong and Western-style Copyright Piracy by Jared Margolis, April Copyright World 14 (2003) (for website, see above)

The Three-step Test: Fair Dealing under the Australian Copyright Act by Mary Wyburn, April Copyright World 20 (2003) (for website, see above)

Fair Use? Search Engines v Copyright Owners by Mark Clark, May Copyright World 23 (2003) (for website, see above)

Digital Days: The Saga of ElcomSoft, Sklayarov, and the DMCA, April Copyright World 10 (2003) (for website, see above)

Young at Heart: Co-authorship Question Examined by Jason Rudkin-Binks, May Copyright World 12 (2003) (for website, see above)

Needletime Revived: South Africa: Ready for a Global and Digital Century? by Carlo Scollo Lavizzari, June Copyright World 1 (2003) (for website, see above)

From Berne to Belize: The Berne Convention as the Most Effective Tool for Protecting Copyright in the Caribbean by Alhaji Tejan-Cole, June Copyright World 17 (2003) (for website, see above)

Share Tactics: US Court Victory is Music to File

Sharers' Ears by Matthew Dick, June Copyright World 21 (2003) (for website, see above)

The Exhaustion of Intellectual Property Rights-Different Approaches in EC and WTO Law by Marco M. Slotboom, 6 The Journal of World Intellectual Property Law 421 (2003) (www.wernerpubl.com)

The Myth of Copyright at Common Law by Ronan Deazley, 62 The Cambridge Law Journal (2003) (published by Cambridge University Press)

Return to the Beaten Path?: Director's and Employees' Liability for Intellectual Property Torts after Mentmore by David Debenham, 16.3 Intellectual Property Journal 527 (2003) (published by Thomson/Carswell)

Exporting Copyright Models: The Canadian

Retransmission Regime and the Internet by Ysoldi Gendreau, 16.3 Intellectual Property Journal 547 (2003) (published by Thomson/Carswell)

Canadian Originality and the Tension Between the Commonwealth and the American Standards for Copyright Protection by Yo'av Mazeh, 16.3 Intellectual Property Journal 561 (2003) (published by Thomson/Carswell)

European Intellectual Property Review, www.sweetandmaxwell.co.uk, has published Volume 25, Issues 2-5, with the following articles:

TRIPS and the Fairness in Music Arbitration: The Repercussions by Richard Owens, 25 European Intellectual Property Review 49 (2003) (for website, see above)

Book Review: Copyright in the Cultural Industries, edited by Ruth Towse, reviewed by Simon Stokes, 25 European Intellectual Property Review 103 (2003) (for website, see above)

Copyright Duration? Too Long! by Ian Kilbey, 25 European Intellectual Property Review 105 (2003) (for website, see above)

Exhaustion and Online Delivery of Digital Works by Eric Tjong Tjin Tai, 25 European Intellectual Property Review 207 (2003) (for website, see above)

Prospects of Further Copyright Harmonisation? by Simon A. Fitzpatrick, 25 European Intellectual Property Review 215 (2003) (for website, see above)
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