# NEW LEGISLATION AND REGULATIONS

## New federal "Sports Agent Responsibility and Trust Act" regulates recruiting of student athletes by sports agents

Congress has enacted a new law that puts the federal government into the business of regulating sports agents. Known as the "Sports Agent Responsibility and Trust Act," the law also gives state attorneys general and colleges new authority to pursue sports agents whose client-recruiting activities may jeopardize the eligibility of student athletes.

The centerpiece of the new law does three important things:

- it prohibits agents from giving a student athlete anything of value – including loans or loan guarantees – before the athlete signs an agency contract;
- it requires agents and student athletes to notify the athletic director of the athlete's college when an athlete signs an agency contract; and
- it prohibits agents from predating or postdating agency contracts.

What's more, when an agent is about to enter into a representation agreement with a student athlete, the law requires agents to give the athlete a "disclosure document" – which the athlete must sign – indicating two things: that the athlete may lose his or her collegiate eligibility; and that the athlete must inform the athletic director of his or her college that the athlete has entered into a representation agreement.

The new law classifies violations as "unfair or deceptive act or practice"; and it gives the Federal Trade Commission the authority to the Act in the same manner the FTC enforces any other "unfair or deceptive act or practice" allegation.

Proposals that the federal government regulate sports agents have been made for decades (*ELR* 5:10:3, 8:2:3). But this is the first federal law that actually does so.

Though the "Sports Agent Responsibility and Trust Act" is a federal law, it also gives enforcement authority to state attorneys general and to colleges. It does so by specifically empowering state attorneys general to sue sports agents in federal court for violations of the law. And it gives colleges authority to sue sports agents for damages they cause by violating the law.

The federal government is one of the last to regulate sports agents. Most states and players associations do as well, and have for quite some time. The "Sports Agent Responsibility and Trust Act" is not meant to replace those regulations. Indeed, the new law specifically states that it does not prohibit anyone from seeking remedies under state law, other federal laws, or "equity."

Finally, to emphasize the extent to which Congress intends its new law to supplement, rather than replace, state law, the "Sports Agent Responsibility and Trust Act" ends with a section reciting that "It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents. In particular, it is the sense of Congress that States should enact the provisions relating to the registration of sports agents, the required form of contract, the right of the student athlete to cancel an agency contract, the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security, and the provisions for reciprocity among the States."

*Sports Agent Responsibility and Trust Act*, H.R. 361, 108th Cong., 2nd Sess. (2004), available at http://thomas.loc.gov/cgi-bin/query/z?c108:H.R.361:

# WASHINGTON MONITOR

## ABC Family Channel and Nickelodeon settle FCC investigations of violations of Children's Programming Commercial Limits; Consent Decrees require both channels to adopt compliance programs and make substantial payments to government

The ABC Family Channel and Nickelodeon have agreed to make "voluntary payments" to the United States Treasury of $500,000 and $1,000,000, respectively, because children's programming they supplied to cable systems contained more advertising than is permitted by rules of the Federal Communications Commission.

FCC rules known as "Children's Programming Commercial Limits" prohibit the airing of more than 10.5 minutes of commercials per hour during children's programming on weekdays, or more than 12 minutes of commercials on weekends. In addition, if a children's program airs commercials for products related to that program, the FCC considers the entire program to be a "program-length commercial," thus making the entire length of the program count against the limit.

In November 2003, the ABC Family Channel provided cable systems with "31 half-hour episodes in which commercials for products associated with such programs were inadvertently aired." During that same month, Nickelodeon provided cable systems with 591 programs that contained more minutes of commercials than permitted by FCC rule, and 145 programs in which "commercials for products associated with the program were inadvertently aired."

Neither ABC Family Channel nor Nickelodeon contested its violation of the rules. Instead, in order to promptly bring the FCC's investigations to a close, both agreed to make "voluntary payments" to the government, and also to adopt and implement compliance programs.

The compliance programs require each channel to: conduct formal training programs on the requirements of the Children's Programming Commercial Limits for personnel responsible for scheduling commercials; modify its procedures to avoid future errors; and require standards and practices personnel to review the content of commercials to confirm they comply with FCC rules.

*In the Matter of International Family Entertainment*, FCC No. EB-03-IH-0745 (2004), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-04-3259A1.pdf; *In the Matter of Viacom International*, FCC No. EB-04-IH-0341 (2204), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-04-3260A1.pdf

## FTC issues fifth report on marketing of violent entertainment

The Federal Trade Commission has issued its fifth report in four years on the marketing of violent entertainment to children. As it did in its four earlier reports (*ELR* 22:4:7, 23:1:6, 23:7:10, 24:4:7), the FTC found some things to praise and others to criticize.

It praised the movie and electronic game industries for continuing to comply "for the most part" with their self-regulatory limits on ad placement, and it even reported that "the music industry has made some progress in this area as well." The FTC also noted that all three industries are disclosing rating information in most forms of advertising "in a clear and conspicuous manner."

On the other hand, the FTC criticized all three industries for continuing to advertise violent R-rated movies, explicit-content labeled recordings, and M-rated games in media with large teen audiences. The FTC also faulted retailers for selling rated or labeled entertainment products to teens.

The FTC made a number of recommendations to all three industries. It hasn't proposed regulations, though, explaining that "Because of First Amendment issues, the Commission supports private sector initiatives by industry and individual companies to implement these suggestions."

The FTC is not retiring from the violent entertainment business. It concluded its latest report by saying that yet another follow-up report "would be appropriate," following another "one-year period of monitoring industry practices and consumer concerns. . . ."

*Marketing Violent Entertainment to Children: A Fourth Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (FTC July 2004), available at http://www.ftc.gov/os/2004/07/040708kidsviolencerpt.pdf

# INTERNATIONAL DEVELOPMENTS

## Canadian ISPs do not have to pay copyright royalties for music downloaded by subscribers, because ISPs merely provide "the means" for communication and are not "communicators" themselves, Supreme Court of Canada decides

Canadian Internet service providers do not have to pay royalties for music downloaded by their subscribers, the Supreme Court of Canada has ruled. In an opinion by Judge William Binnie, the Court rejected an argument by SOCAN – Canada's public performance society – that the Copyright Board of Canada should have established a "tariff" for ISPs to pay on downloaded music.

Canadian copyright law requires those who communicate copyrighted music to the public to pay royalties, at rates set by the Copyright Board. The Supreme Court agreed with SOCAN that when music is transmitted over the Internet, it is communicated by those who upload it to those who download it. What's more, the Supreme Court also agreed with SOCAN that Canadian copyright law applies when music is downloaded to a computer in Canada, even when the music was uploaded from a server located outside of Canada.

On the other hand, the Canadian Copyright Act also provides that those who merely provide "the means" that are necessary for communication are not themselves communicators. Thus, ISPs are not communicators – and do not have to pay royalties – if they merely provide "the means" by which their subscribers download music.

Judge Binnie noted that this interpretation of Canadian law is consistent with the WIPO Copyright Treaty. The Agreed Statements to that Treaty provide that "It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Treaty or the Berne Convention."

SOCAN had hoped to persuade the Supreme Court that ISPs themselves communicate music, because ISPs often "cache" material downloaded by their subscribers. That is, ISPs often save – on their own servers – materials their subscribers have downloaded. ISPs do this, in order to speed up delivery of that material when it is requested again, later, by other subscribers.

The Supreme Court was not persuaded, however. Judge Binnie reasoned that "The creation of a 'cache' copy is a serendipitous consequence of improvements in Internet technology, . . . and . . . ought not to have any *legal* bearing on the communication between the content provider and the end user. 'Caching' is dictated by the need to deliver faster and more economic service, and should not, when undertaken only for such technical reasons, attract copyright liability. . . ."

Judge Binnie said that the outcome of the case was not based on a "loophole." Instead, it was based on "an important element of the balance struck by the statutory scheme." He explained that "Parliament made a policy distinction between those who abuse the Internet to obtain 'cheap music' and those who are part of the infrastructure of the Internet itself. It is clear that Parliament did not want copyright disputes between creators and users to be visited on the heads of the Internet intermediaries, whose continued expansion and development is considered vital to national economic growth."

The Canadian Association of Internet Providers was represented by Thomas G. Heintzman, Q.C., and Barry B. Sookman. SOCAN was represented by George Hynna, Brian A. Crane Q.C., Gilles M. Daigle and C. Paul Spurgeon.

*Editor's note*: This is the second big victory for Canadian ISPs this year. Earlier, a Canadian Federal Court ruled that those who download music from the Internet are not copyright infringers, because Canadian copyright law permits reproduction of music for personal use (*ELR* 26:1:5). That ruling is now on appeal. But as things stand in the immediate wake of these two decisions, SOCAN and other Canadian copyright owners may be forced to sue uploaders in order to enforce, or obtain license fees, for their copyrights.

*Canadian Association of Internet Providers v. Society of Composers Authors and Music Publishers of Canada*, 2004 SCC 45, available at http://www.lexum.umontreal.ca/csc-scc/en/rec/html/2004scc045.wpd.html

## New Zealand Court of Appeal refuses to enjoin "New Idea" magazine's publication of photos of children of broadcaster Mike Hosking, even though court's majority says New Zealand common law should recognize right of privacy

Mike Hosking and his estranged wife Marie are celebrities in New Zealand, where Mike is a television broadcaster. That's why *New Idea* magazine decided to publish an article about the couple's split, in its Christmas 2002 edition. The article noted that Mike would be separated from his 18-month old twins, as well as from Marie, for the holiday. And the magazine's editors decided that photos of the twins would illustrate the article nicely.

As luck would have it, a photographer was able to take photographs of the children, without their mother's knowledge, as she was pushing them in a stroller along a public street in Auckland.

When the Hoskings learned that *New Idea* planned to publish the photos, they sued the magazine, seeking an injunction that would have prevented *New Idea* from doing so. The Hoskings did not seek to protect their own privacy. They sought to protect the privacy of their children, which they argued would be invaded by the unconsented-to publication of their photos.

A New Zealand trial court denied the Hoskings' request for an injunction. And the New Zealand Court of Appeals unanimously affirmed that ruling. In a long and scholarly opinion, all five Justices agreed that *New Idea*'s publication of the children's photos should not be enjoined. The Justices disagreed, however, about whether the common law of New Zealand should recognize a right of privacy. A three-Justice majority thought so, but the minority thought not.

The lead opinion of Justices Gault and Blanchard thoroughly reviews the development of privacy law in the United Kingdom, Australia, Canada and the United States, as well as privacy-related decisions and statutes in New Zealand itself. From that, they concluded that ". . . the case for a right of action for breach of privacy by giving publicity to private and personal information is made out."

Nevertheless, Justices Gault and Blanchard voted to affirm the denial of the Hoskings' request for an injunction, because: there was no evidence to indicate the children would be harmed by the publication of their photos; the photos were taken in a public place and didn't depict anything in which there would be an expectation of privacy; and the photos were not offensive. For these reasons, Justices Gault and Blanchard did not find it necessary to consider whether the public interest would have justified *New Idea*'s publication of the photos, even if they had violated the children's privacy.

Justice Tipping too concluded that New Zealand common law should include a right of privacy, and that under some circumstances, "privacy values" may outweigh freedom of expression. In this case, Justice Tipping also agreed that the publication of the photos would not invade the children's privacy, for the same reasons Justices Gault and Blanchard came to that conclusion.

Justices Keith and Anderson voted to affirm, because they concluded that New Zealand common law should not include a right of privacy at all.

The Hoskings were represented by W.M. Wilson QC and Chen Palmer & Partners in Wellington. New Idea was represented by J.G. Miles QC and Bell Gully in Auckland.

*Hosking v. Runting*, New Zealand Court of Appeal, CA101/03 (2004), available at http://www.austlii.edu.au/nz/cases/NZCA/2004/34.html

# Recent Cases

## New York Court of Appeals to decide whether Naxos' sale of restored versions of classical, 1930s era recordings infringes state common-law copyrights owned by Capitol Records

The New York Court of Appeals has been asked to decide whether that state's common law copyright still protects classical, 1930s era recordings that were made in the United Kingdom where they are now in the public domain. The recordings in question are of performances by violinist Yehudi Menuhin, cellist Pablo Casals, and pianist Edwin Fischer. All were recorded pursuant to contracts between the performers and a predecessor of EMI recordings – contracts which gave EMI the exclusive rights to those recordings.

The issue to be decided by the New York Court of Appeals arose in a lawsuit filed by Capitol Records, which is EMI's exclusive United States licensee of whatever rights still remain in the recordings, against Naxos of America, a record company that reissued restored versions of those recordings. Naxos' versions were remastered from sound recordings in the collection of the Yale University Library; Naxos didn't copy Capitol's own recordings. But Naxos and Capitol both sell their recordings to the same record stores, where they compete for customers side-by-side.

Capitol's lawsuit, filed in federal District Court in New York City, asserted claims for unfair competition, misappropriation of property, unjust enrichment, and common law copyright infringement – all under New York state law. Because the federal Copyright Act didn't protect sound recordings until 1972, that Act doesn't provide Capitol with a federal claim. (Federal court jurisdiction was based on diversity.)

Nevertheless, the federal Copyright Act does contain one provision that arguably helps Capitol. The Copyright Act specifically provides that state law protection for pre-1972 recordings is not preempted and continues to be effective until the year 2067. This made New York state law the central issue in Capitol's lawsuit.

Naxos won the first round of the case. Federal District Judge Robert Sweet noted that the recordings were made in the United Kingdom in the 1930s; and he noted that UK copyright law protects sound recordings for 50 years. This meant that the recordings are in the public domain in their country of origin. And on that basis, the judge concluded that "the recordings have entered the public domain internationally," including the United States. Judge Sweet also ruled that EMI had waived whatever rights it may have had, in correspondence with the Yale library. (*ELR* 25:5:10, 25:8:18)

On appeal, Capitol has won a reprieve, though in the end it may turn out to be a temporary one. Writing for the federal Court of Appeals, Judge Jon Newman has decided that the question of what protection, if any, is provided by New York common law copyright is a question that should be answered by the New York Court of Appeals (that state's highest court). Judge Newman explained that New York state courts have never addressed three important questions concerning the scope of the state's common law copyright:

(1) whether the expiration of the recordings' copyrights in the UK means their New York common law copyrights have expired as well – that is, whether New York law contains a common law "rule of the shorter term";

(2) whether a successful claim under New York common law copyright requires proof of some or all of the elements of the tort of unfair competition; and

(3) whether a New York common law infringement claim is defeated by proof that the alleged infringer created a "new product" rather than simply copy the plaintiff's existing product.

If the New York Court of Appeals rules in Capitol's favor on these questions (by answering all three questions "no"), Naxos' claim that EMI waived its rights (and thus Capitol's rights too) would become the focus of the dispute. On that issue, Capitol won a reprieve too. That is, Judge Newman also ruled that Capitol is entitled to a trial on the question of whether its rights had been waived.

Capitol was represented by Philip Allen Lacovara of Mayer Brown Rowe & Maw in New York City. Naxos was represented by Maxim H. Waldbaum of Salans in New York City.

*Editor's note*: The outcome of this case will affect many more recordings than those by Yehudi Menuhin, Pablo Casals and Edwin Fischer. Copyright law in the UK and elsewhere in the European Union continues to protect sound recordings for just 50 years, as compared to the United States where recordings are protected for 95 years and Australia where they are protected for 70 years. The International Federation of the Phonographic Industry and the British Phonographic Industry have asked the European Commission to extend the term of copyright protection for recordings in the EU. But unless the EC does so, recordings by Cliff Richard will begin to fall into the public domain in the UK and elsewhere in the EU as soon as 2008, and Beatles recordings will begin to do so in 2013. The outcome of this case thus may determine whether pre-1972 recordings by Cliff Richards and the Beatles can be reissued in the United States as well as in Europe, without licenses, by anyone who wishes to do so, once 2008 and 2013 arrive. Worse yet, from the point of view of artists and record companies, recordings by American artists also will fall into the public domain in the EU (regardless of the outcome of the *Capitol Records* case). In fact, recordings by Elvis Presley and Ray Charles will fall into the public domain as soon as this coming New Year's day, 2005. (See http://business.timesonline.co.uk/article/0,,13130-1338692_1,00.html)

*Capitol Records v. Naxos of America*, 372 F.3d 471, 2004 U.S.App.LEXIS 12124 (2nd Cir. 2004)

## Violinist Elliot Rosoff may be entitled to reasonable value of services rendered to Mountain Laurel Center for the Performing Arts, but not to damages for breach of what he alleged was multi-year contract employing him as Center's artistic director, because letters between Rosoff and Center's chairman did not specify Rosoff's salary and thus did not amount to a contract, federal District Court rules

Concert violinist Elliot Rosoff was a moving force in the creation of the Mountain Laurel Center for the Performing Arts, located in the Poconos Mountains of Pennsylvania. What's more, he may be entitled to the fair value of services he rendered to the Center during its early years. But Rosoff isn't entitled to damages for the breach of what he alleged was a five-year employment contract making him the Center's Artistic Director. Federal District Judge Lewis Kaplan has so ruled, in an opinion that grants part – but only part – of the Center's motion for summary judgment.

Rosoff claimed that letters exchanged between himself and the Center's chairman, Harry Kiesendahl, constituted a five-year agreement to employ him as the Center's Artistic Director at a salary of $150,000 a year. Those letters were exchanged before the Center had hired a CEO, and in fact, one letter specifically said that the Center's board would decide on Rosoff's salary "once a CEO is appointed." Unfortunately for Rosoff, the CEO that the Center later hired decided that the Center "neither needed nor could afford a salaried artistic director." And that's what led Rosoff to file his lawsuit.

Judge Kaplan ruled that the letters did not amount to an employment contract, because they did not contain provisions concerning Rosoff's compensation or benefits. "Responsible business people simply do not enter into five year employment contracts without reaching agreement concerning at least the core of the compensation arrangements," the judge reasoned.

The judge also dismissed Rosoff's claim that Kiesendahl negligently misrepresented that Rosoff would receive a salaried position as the Center's Artistic Director. Though Kiesendahl had made such a statement to Rosoff, there was no evidence that Kiesendahl knew or should have known the statement was incorrect, nor any evidence that Kiesendahl knew or believed that the Center would not hire Rosoff.

Rosoff's promissory estoppel claim failed as well, because he didn't prove he was damaged. Though he said he had declined other employment in the belief he would be hired as Artistic Director, Rosoff had proposed that he be hired non-exclusively, and thus he wasn't required to turn down other employment.

On the other hand, Judge Kaplan declined to dismiss Rosoff's claim – under the common law theory of "quantum meruit" – for the reasonable value of the services he had rendered to the Center. The evidence showed that he had rendered services under circumstances that would support a finding that he reasonably expected compensation. The Center said Rosoff was a "volunteer." But this disagreement simply created a disputed issue of fact, requiring a trial. At trial, one of the issues will be the reasonable value of Rosoff's services. At first, he asked to be paid $150,000 a year. In his lawsuit, he alleges that the reasonable value of the services he rendered was $4 million.

Rosoff was represented by Jason L. Solotaroff of Giskan & Solotaroff in New York City. The Center was represented by Diane Windholz of Jackson Lewis in New York City.

*Rosoff v. Mountain Laurel Center for the Performing Arts*, 317 F.Supp.2d 493, 2004 U.S.Dist.LEXIS 8395 (S.D.N.Y. 2004)

## Appellate court affirms dismissal of right of publicity lawsuit filed in California by Arnold Schwarzenegger against Ohio car dealership that used his photo in newspaper ads without permission, because California court lacked personal jurisdiction over dealership

Arnold Schwarzenegger appears to have a good right of publicity claim against an Ohio car dealership that used his photo in newspaper ads without permission.

But Schwarzenegger will not be able to pursue his claim in California, which is where he filed the lawsuit originally. A federal Court of Appeals has ruled that the California court does not have personal jurisdiction over the Ohio dealership. And for that reason, the appellate court has affirmed the dismissal of Schwarzenegger's case.

The lawsuit was triggered by Fred Martin Motor Company's use of photos of Schwarzenegger, in his movie role as the Terminator, in newspaper ads that ran in the *Akron Beacon Journal*, a locally-circulated Ohio newspaper. Fred Martin does have a website that can be viewed in California and "from any Internet café in Istanbul, Bangkok, or anywhere else in the world." But the newspaper ads themselves were not circulated in California, nor does Fred Martin have a car lot, office or any other physical presence in that state.

In a well-written and thoroughly-analyzed opinion by Judge William Fletcher, the Court of Appeals ruled that California courts do not have personal jurisdiction over Fred Martin Motor Company, for two reasons:

- because there was no showing that Fred Martin has "continuous and systemic business contacts" in the state, and
- because even though it was shown that Fred Martin committed intentional acts that may have injured Schwarzenegger in California, there was no showing that the dealership "expressly aimed its acts at California."

Schwarzenegger was represented by Martin D. Singer of Lavely & Singer, and by James C. Martin and Denise M. Howell of Reed Smith, in Los Angeles. Fred Martin Motor Company was represented by Roy G. Weatherup of Lewis Brisbois Bisgaard & Smith in Los Angeles.

*Schwarzenegger v. Fred Martin Motor Co*, 374 F.3d 797, 2004 U.S.App.LEXIS 13473 (9th Cir. 2004)

## Rights of publicity and trademarks may not be sub-licensed without owners' consent, federal District Court rules; but Court dismisses lawsuit filed by adopted children of band leader Glenn Miller against trademark and right of publicity licensee, objecting to unauthorized sub-licenses, because claims were barred by laches and estoppel

Band leader Glenn Miller was killed in 1944 when an armed forces airplane on which he was traveling crashed in the English Channel. Sixty years later, that event produced a precedent-setting judicial opinion, in a lawsuit filed by Miller's adopted children against Glenn Miller Productions – the corporation formed by the band leader's widow and lawyer, shortly after Miller's death.

Federal District Judge Howard Matz has ruled that rights of publicity and trademarks may *not* be sub-licensed without the consent of their owner. This has long been the rule with respect to copyrights (and patents) (*ELR* 6:5:7, 23:9:11). But Judge Matz's opinion is the first to apply the "sub-licensing requires consent" rule to the right of publicity, anywhere in the country. And his is the first opinion in the Ninth Circuit to apply that rule to trademarks (though courts in other circuits have already come to the same conclusion).

The lawsuit that produced these rulings was triggered by the corporation's sub-licensing of Glenn Miller's name and likeness and by the corporation's sub-licensing third parties to operate orchestras named "The Glenn Miller Orchestra." The reason these were *sub*-licenses is that Glenn Miller's publicity rights and trademarks were inherited by his widow, and she "licensed" them to the corporation. When she died, Miller's publicity rights and trademarks were inherited by Miller's children.

The corporation never obtained the children's consent to these sub-licenses. On that basis, the children sued the corporation to terminate its publicity and trademark licenses, and to recover damages for trademark and right of publicity infringement.

In a thoughtful opinion, Judge Matz agreed with the children that their mother's original license to the corporation did not authorize sub-licenses, and that in the absence of such consent, the corporation couldn't sub-license Miller's publicity rights or trademarks.

Nevertheless, though these rulings might have won the case for Miller's children under other circumstances, they lost the case, for two other reasons. First, Judge Matz held that the children's claims were barred by laches, because they waited too long to file their lawsuit, after they knew or should have known of the sub-licenses. Second, the corporation showed that the children had failed to supervise or control the corporation's use of Miller's trademarks, and for that reason, the children were estopped from terminating the license.

The Miller children were represented by Brian G. Wolf and Paul Karl Lukas of Lavely & Singer in Los Angeles. Glenn Miller Productions was represented by Sheldon Eisenberg of Bryan Cave in Santa Monica.

*Editor's note*: For a broader discussion of the sub-licensing issues addressed in this case, see Schuyler Moore's article "But Do You Have the Right to License those Rights?" in the September 2004 issue of the *Entertainment Law Reporter* (*ELR* 26:4:4).

*Miller v. Glenn Miller Productions*, 318 F.Supp.2d 923, 2004 U.S.Dist.LEXIS 8474 (C.D.Cal. 2004)

## Federal appeals court affirms "much" of FCC order adopting new rules that permit companies to own more media businesses than before; but court remands "certain aspects" of order for FCC's "additional justification or modification"

The question of how many media businesses a single company should be permitted to own has vexed the government for decades. Congress has the ultimate power to make that decision, and in one respect it has: earlier this year (in the 2004 Consolidated Appropriations Act), it capped at 39% the percentage of the national television audience that any one company is permitted to reach with its own stations.

Insofar as other types of media ownership limits are concerned, however, Congress has delegated its power to the Federal Communications Commission, where the pendulum swung first in favor of more and more restrictive ownership limits, and then in favor of less and less restrictive limits. The FCC's authority is itself limited only by the Constitution, the language of Congress' specific grant of authority, and by the general requirements of the Administrative Procedure Act. But these limits are serious enough that federal courts have been able to review the FCC's media concentration regulations, and to remand and even reverse several of them.

As a result, the question of how many media businesses a single company should be permitted to own has been bouncing, endlessly – like an oddly-shaped ball of Silly Putty – between Congress, the FCC and the courts. When last this question appeared in these pages, the FCC had just adopted six new and complicated rules that generally permitted companies to own more media businesses than ever before, though not as many as media companies themselves would like to be able to own (*ELR* 25:2:4).

Petitions for review to the Court of Appeals were filed, and in due course, the appellate court ruled. The court's opinion is a long one: Judge Thomas Ambro's majority opinion runs 55 printed pages, to which Judge Anthony Scirica added his own 45-page opinion dissenting and concurring in part. But despite its length, the appellate court's ruling doesn't bring the debate to an end. In a nutshell, the Court of Appeals affirmed "much" of the FCC's newest rules; but it also remanded the FCC's order adopting those rules back to the FCC for "additional justification or modification" with respect to some rules.

The court upheld the FCC's decision to:

- substitute a new cross-media limit for its old newspaper/broadcast cross-ownership rule (holding that this decision did not violate the Constitution or the Telecommunications Act);
- retain its local television ownership rule restricting combinations of the four largest stations in any market;
- modify its local radio ownership rule by using a geography-based market definition, instead of its old "contour-overlap" definition; and
- permit sales of radio stations that violate its new local ownership rules only to small businesses.

On the other hand, the court concluded that the FCC had more work to do in order to justify its decisions:

- that local market cross-ownership should be capped at the particular numerical limits set forth in the new rules;
- to allow companies to own as many as three local television stations in markets that have 18 stations or more, and as many as two stations in smaller markets; and
- to retain existing limits on the number of radio stations a single company may own.

The court therefore remanded the proceeding to the FCC, for it to justify these decisions more adequately, or to modify those decisions that can't be justified.

The details of the appellate court's reasoning will be very important to the FCC and to those involved in the proceeding. But the opinion does not influence, let alone decide, what ownership limits will finally become law. Moreover, the answer to that question is unlikely to be known for sure, until after the Court of Appeals rules at least one more time, on the validity of whatever justifications the FCC offers for its rules, after the remand.

Prometheus Radio Project (the lead petitioner in the case) was represented by Andrew Jay Schwartzman of the Media Access Project in Washington DC. The Federal Communications Commission was represented by John A. Rogovin and Jacob M. Lewis of the FCC in Washington DC. Other parties were represented by their own counsel, some of whom argued (as well as filed briefs); the complete listing of counsel runs more than a printed page and a half.

*Prometheus Radio Project v. Federal Communications Commission*, 373 F.3d 372, 2004 U.S.App.LEXIS 12720 (3rd Cir. 2004)

## Sony wins dismissal of infringement suit complaining that Ghostface Killah's rap recording "The Forest" infringed copyright to "Wonderful World"; court concludes that copied verse was fair use parody

Sony Music has defeated an infringement lawsuit filed against it by Abilene, Range Road and Quartet Music, the owners of the copyright to *Wonderful World* –

a frequently-recorded song made famous by Louis Armstrong. Hip-hop artist Dennis Coles, who is known to his fans as Ghostface Killah, copied the first verse of *Wonderful World* in a recording titled *The Forest* on his album *Bulletproof Wallets*.

Sony didn't deny the copying. Indeed, in its motion for summary judgment, Sony stipulated that Abilene and its co-plaintiffs had established a prima facie case of infringement against it. Sony's defense was that Coles' use of *Wonderful World* was a non-infringing fair use. In a recently-published opinion, federal District Judge Gerald Lynch has agreed with Sony and has dismissed the case.

Not all of *The Forest* is copied from *Wonderful World*; only its first three lines are. Coles also made slight changes to the lyrics he copied, substituting slang for marijuana in place of *Wonderful World*'s references to trees and flowers.

Judge Lynch ruled that the standard for deciding whether *The Forest* is a parody is "whether . . . *The Forest* 'differs [from the original] in a way that may reasonably be perceived as commenting, through ridicule, on what a viewer might reasonably think' is the unrealistically uplifting message of *Wonderful World.*" The judge concluded that *The Forest* satisfies this standard. "The primary aim of *The Forest* is to portray the modern world as corrupted and venal," the judge explained, "and it uses *Wonderful World* to underscore that message, by providing an ironic contrast to the body of the song."

Abilene argued that *The Forest* was a satire directed at modern society rather than a parody of *Wonderful World*. If that were so, Sony's fair use defense would have been weaker. Judge Lynch understood the distinction Abilene had made. Indeed, the judge noted that *Wonderful World* was used in the movies *12 Monkeys* and *Good Morning, Vietnam*, and in both cases the song was used "to comment on negative aspects of the . . . worlds depicted by the filmmakers, but the song itself is not a parody." Nevertheless, the judge concluded that *The Forest* is a parody of *Wonderful World*, not a satire of society.

Abilene also argued that *The Forest* could harm the market for rap derivatives of *Wonderful World*. Judge Lynch, however, was not persuaded. He found that "*The Forest* is not a rap version of *Wonderful World*" at all. Instead, "*The Forest*'s rendition of *Wonderful World* is simply a quotation that stays relatively true to the melody, form, and genre of the original; only after finishing the quotation does the song's hip-hop beat and rap-style lyrics begin." Therefore, because "*The Forest* does not transpose *Wonderful World* into the hip-hop genre, it could not possibly supplant the market for non-parody hip-hop versions of *Wonderful World*," the judge concluded.

Abilene and its co-plaintiffs were represented by Jonathan J. Ross of Silverman Shulman & Baker in New York City. Sony was represented by Bruce Ewing of Dorsey & Whitney in New York City.

*Abilene Music, Inc. v. Sony Music Entertainment*, 320 F.Supp.2d 84, 2003 U.S.Dist.LEXIS 10366 (S.D.N.Y. 2003)

## Settlement of sampling infringement claim by agreement that gave Bridgeport Music part ownership of Ruthless Attack Muzick's copyright to composition "Eazy-Duz-It," and authorized Ruthless and its licensees to use "Eazy-Duz-It," barred Bridgeport's later sampling infringement claim against company that obtained license from Ruthless Attack Muzick

By settling one sampling infringement claim, Bridgeport Music unwittingly settled a second claim as well, all because of the terms of the Release and Agreement that settled the first. As a result, an appellate court has affirmed the dismissal of an infringement suit filed by Bridgeport against DJ Yella Muzick, a company owned by the rap artist known as DJ Yella.

The facts of the case are more complicated than the ruling. In essence, though, what happened was this. Bridgeport Music owns the copyrights to compositions that it claimed were infringed by the composition "Eazy-Duz-It," the copyright to which was owned by Ruthless Attack Muzick. That claim was settled by a written Release and Agreement that did two things. First, it gave Bridgeport a 40% ownership interest in "Eazy-Duz-It." Second, it released Ruthless Attack Muzick and its licensees from Bridgeport's infringement claims based on "Eazy-Duz-It."

"Eazy-Duz-It" was written and recorded by the late rap artist Eric Wright, known to his fans as "Eazy-E." After Eazy-E died in 1995, DJ Yella recorded a tribute album which contained a track titled "4 Tha E" which sampled from "Eazy-Duz-It." DJ Yella had obtained a license from Ruthless to use the sample. Bridgeport, however, didn't know of that license at the time it settled with Ruthless, or later when it sued DJ Yella. Bridgeport learned of the license later, just before DJ Yella used the license to make a successful motion for summary judgment.

Bridgeport appealed, without success. In an opinion for the appellate court marked "not selected for publication in the Federal Reporter," Judge Ralph Guy held that Bridgeport's claims against DJ Yella were barred by the Release and Agreement Bridgeport had signed with Ruthless. This was so, the judge explained, because the terms of that document gave Ruthless and its licensees the right to use the compositions sampled in

"Eazy-Duz-It," and it released Ruthless and its licensees from all claims Bridgeport had based on "Eazy-Duz-It."

Bridgeport didn't come away from the case as badly as it might have. DJ Yella had asked the District Court to award it more than $300,000 in attorneys fees and costs, but the District Court declined to do so. On appeal, DJ Yella argued that it should have received such an award. But Judge Guy ruled that the District Court had not abused its discretion by denying DJ Yella's request.

Bridgeport was represented by Richard S. Busch of King & Ballow in Nashville. DJ Yella (and its co-defendants) were represented by Philip M. Kirkpatrick of Stewart Estes & Donnell in Nashville and by Russell J. Frackman of Mitchell Silberberg & Knupp in Los Angeles.

*Bridgeport Music, Inc. v. DJ Yella Muzick*, 99 Fed.Appx. 686, 2004 U.S.App.LEXIS 10602 (6th Cir. 2004)

## Big P Music was not estopped from asserting statute of limitations defense to sampling infringement suit filed by Bridgeport Music, even though Big P had agreed to settle case – but didn't – before three-year limitations period expired

Bridgeport Music has made hundreds of infringement claims against those it says have recorded, released and published rap songs that sampled from songs whose copyrights Bridgeport owns. Quite apart from the important legal issues that some of these claims present (see, e.g., *ELR* 26:4:7), the mere management of so many claims has been a substantial task in itself. Indeed, it appears that at least one claim has been partially blocked because Bridgeport failed to get a signed agreement documenting a timely settlement, until after the Copyright Act's three-year statute of limitations had expired. As a result, Bridgeport lost three years worth of royalties it apparently would have received.

The case in question was one Bridgeport filed against Big P Music, the co-owner of the copyright to the rap composition "3 Strikes" which was released by the rap group Tru on its 1995 album "True." According to Bridgeport, its composition "Atomic Dog" was sampled in "3 Strikes," without a license.

Bridgeport notified Big P of Bridgeport's claim in November 1997. The claim was eventually settled, orally. Big P (and its co-owner) agreed to transfer a 50% interest in "3 Strikes" to Bridgeport and to pay it back mechanical royalties.

When, exactly, this oral agreement was reached isn't clear from the opinion eventually written by Court of Appeals Judge Ralph Guy. But Bridgeport didn't send Big P a written agreement to sign until April 1999. Big P didn't sign the agreement, but as late as November 1999, Big P continued to assure Bridgeport, orally, that it would.

By September 2000, Bridgeport still hadn't received a signed agreement or the back royalties it was owed. As a result, Bridgeport's lawyer wrote a letter demanding the back royalties, and threatening a lawsuit if the money weren't received within five days. All Bridgeport's lawyer got in response was a letter saying "I hope we can avoid litigation."

When neither the signed agreement nor the back royalties were received by May 2001, Bridgeport did file suit. By then, however, more than three years had passed since Bridgeport discovered the infringement. As a result, the District Court granted Big P's motion for summary judgment with respect to Bridgeport's copyright infringement claims arising before May 1998 – an order from which Bridgeport appealed, without success.

In an opinion marked "not selected for publication in the Federal Reporter," Judge Guy rejected Bridgeport's argument that Big P should be equitably estopped from asserting the statute of limitations defense. The judge held that Bridgeport had not shown that Big P concealed facts from Bridgeport, nor had Bridgeport shown that it had not discovered the facts on which its infringement claim was based within the limitations period.

Judge Guy also rejected Bridgeport's argument that it had been "lulled" into delaying its lawsuit, because Big P had provided assurances it would sign the settlement agreement and pay back royalties. There was no evidence "that it was reasonable for [Bridgeport] to rely on assurances made on behalf of [Big P] in delaying suit beyond November 2000," the judge said.

For these reasons, Judge Guy affirmed summary judgment in favor of Big P with respect to Bridgeport's pre-May 1998 copyright infringement claims.

Bridgeport was represented by Richard S. Busch of King & Ballow in Nashville. Big P was represented by John C. Beiter of Loeb & Loeb in Nashville.

*Bridgeport Music, Inc. v. Boutit, Inc.*, 101 Fed.Appx. 76, 2004 U.S.App.LEXIS 11259 (6th Cir. 2004)

## Statute of limitations barred contributory copyright infringement and negligence claims filed by Bridgeport Music and Westbound Records against music clearance firm used by TVT Records to clear samples, appellate court affirms

Bridgeport Music and Westbound Records are in the midst of a massive copyright enforcement campaign against those it accuses of sampling its music without authorization. At one point, the two companies had some 800 alleged infringers in their sights, most of which were other publishing and record companies. However, in one case that was aimed primarily at TVT Records, Bridgeport and Westbound also sued Diamond Time, Ltd., a music clearance firm that TVT used to obtain clear samples for TVT's recordings.

According to Bridgeport and Westbound, TVT released a recording by rap artists Cash Money Click that included samples for which Diamond Time had never obtained signed license agreements. Bridgeport and Westbound made this assertion in claims against Diamond Time for contributory copyright infringement and negligence.

Bridgeport and Westbound have been successful with many of the sampling cases they have filed – most famously with its recent precedent-setting victory before the Sixth Circuit Court of Appeals in *Bridgeport v. Dimension Films* (*ELR* 26:4:7). They even successfully settled their sampling claims against TVT Records, in the case that gave rise to their claims against Diamond Time. But they have not been successful against Diamond Time itself. Indeed, Diamond Time not only defeated their claims, the clearance company was awarded most of the attorneys fees it incurred in doing so (*ELR* 25:3:13).

Never ones to give up easily, Bridgeport and Westbound appealed that loss, without success. The Court of Appeals has affirmed Diamond Time's victory as well as the attorneys fee award it received.

In an opinion by Judge Ralph Guy, the appellate court ruled that Bridgeport and Westbound's claims all were barred by the statute of limitations.

Their contributory copyright infringement claims were barred, because they failed to prove that TVT had committed any direct infringements within three years of the date they filed their complaint. And without a direct infringement, there can be no contributory infringement. What's more, even if TVT had committed direct infringements within that period, Diamond Time's alleged failure to obtain a signed license agreement took place more than three years before, and "claims against a contributory infringer who commits no acts within the limitations period are . . . time barred," even if the direct infringer commits infringing acts within the period.

In connection with its negligence claim, Bridgeport and Westbound argued that Diamond Time was a "dual agent" for themselves as well as for TVT, and thus owed them a duty of care. Judge Guy determined that he didn't have to decide whether Diamond Time owed them a duty under New York law. It wasn't necessary, he explained, because even if Diamond Time did owe them a duty, its alleged negligence occurred more than three years before, and thus was barred by New York's three-year statute of limitations for negligence claims.

Finally, Judge Guy upheld the trial court's decision to award attorneys fees to Diamond Time as well as the reasonableness of the amount of the fees – more than $64,000 – it awarded.

Bridgeport and Westbound were represented by Richard S. Busch of King & Ballow in Nashville. Diamond Time was represented by R. Horton Frank III of Stewart Estes & Donnell in Nashville.

*Bridgeport Music, Inc. v. Diamond Time, Ltd.*, 371 F.3d 883, 2004 U.S.App.LEXIS 12009 (6th Cir. 2004)

## Professional skier Jeremy Bloom fails to enjoin NCAA rule that would disqualify him from playing football for University of Colorado if he endorsed products or acted for pay in movies or on television

Jeremy Bloom won the 2002 World Cup championship in freestyle moguls. As befits a professional skier of that caliber, Bloom then endorsed ski equipment, signed a contract to model Tommy Hilfiger clothing, and was even offered an opportunity to host a television show on Nickelodeon. If Bloom weren't such a well-rounded athlete, he could have done all of these things, without running afoul of anyone's rules.

Bloom, however, is also an outstanding football player; and that presented a problem. It was a problem because Bloom plays football for the University of Colorado which is a member of the NCAA. NCAA rules permit students to be professional in one sport and still play on a college team in another sport. But NCAA rules do not permit athletes to do endorsements or receive pay for acting (or other media events).

Bloom thought that, properly interpreted, the NCAA ban on endorsements and paid acting applied only to opportunities related to an athlete's NCAA sport – not to opportunities related to his or her professional sport. But the NCAA disagreed. On Bloom's behalf, the University asked the NCAA to "waive" its endorsement and paid media activity rules for Bloom, and then the University asked the NCAA to issue an "interpretation" of those rules that coincided with Bloom's own interpretation. The NCAA refused to do either.

In response, Bloom sued the NCAA, and unsuccessfully sought a preliminary injunction. In an opinion by Judge John Dailey, the Colorado Court of Appeals has affirmed the trial court's denial of Bloom's request for an injunction.

Judge Dailey acknowledged that many of those who compete in individual (rather than team) sports – like golf, tennis and skiing – "customarily" earn much of their income from sponsors. But the judge noted that although NCAA rules permit student athletes to be professionals in one sport, those rules do not establish a right to receive "customary income."

The NCAA's endorsement and media appearance rules "do not contain any sport-specific qualifiers." And thus, the judge ruled, "although student-athletes have the right to be professional athletes, they do not have the right to simultaneously engage in endorsement or paid media activity and maintain their eligibility to participate in amateur competition."

The distinction the NCAA makes between professional sport salaries and even bonuses, which are permitted, and endorsements and paid media appearances, which are not, did not disturb Judge Dailey. It didn't, because the judge found that in Bloom's case "there would 'be no way to tell whether he is receiving pay commensurate with his . . . football ability or skiing ability."

Bloom was represented by James C. Smittkamp of Smittkamp & Walters in Boulder. The NCAA was represented by Colin G. Harris of Holme Roberts & Owen in Boulder. The University of Colorado was represented by Joanne M. McDevitt of the Office of University Counsel in Denver.

*Bloom v. National Collegiate Athletic Association*, 93 P.3d 621, 2004 Colo.App.LEXIS 781 (Colo.App. 2004)

## NCAA wins dismissal of antitrust suit filed by summer basketball camp operators who object to NCAA rules that affect recruiting at camps by Division I colleges

The operators of five summer basketball camps have lost a lawsuit complaining about NCAA rules that affect recruiting by Division I colleges at those summer camps. The camp operators who filed the lawsuit are not affiliated with NCAA colleges, though some NCAA members operate similar and competing camps of their own. The plaintiffs claimed that the NCAA rules to which they object were designed to "protect" the camps operated by NCAA members and to "harm" their own camps.

The plaintiffs made this claim in an antitrust and interference with contract complaint filed against the NCAA in federal court in Philadelphia. In their complaint, the plaintiffs took issue with three rules in particular. One requires non-institutional camps (meaning those that are not run by NCAA members) to be certified by the NCAA. A second limits the number of days Division I basketball coaches may visit non-institutional camps. And a third prohibits Division I coaches from being employed by non-institutional camps.

On their face, the rules in question do look as though they may have been intended to give NCAA members a competitive advantage over non-institutional camps, in the business of running summer basketball camps. But the case did not get very far. Judge Anita Brody has granted the NCAA's motion for summary judgment, and has dismissed all of the plaintiffs' claims.

Judge Brody dismissed the plaintiffs' antitrust claims, because she concluded that "when the NCAA promulgated these rules it was acting in a paternalistic capacity to promote amateurism and education." For this reason, she said, the rules "do not constitute trade or commerce" and thus they are "immune" from antitrust scrutiny.

Moreover, she said that even if the rules were subject to scrutiny under the antitrust laws, they would be evaluated under the "rule of reason" (that is, they would not be illegal "per se"). In rule of reason cases, plaintiffs must identify a relevant market – something the plaintiffs in this case failed to do, Judge Brody said. The plaintiffs did allege that the product market is "summer basketball camps." But the plaintiffs did not offer evidence showing that the market for basketball camps differs from the market for other types of camps, or that the market for basketball camps in the summer differs from the market for basketball camps at other times of the year.

Judge Brody dismissed the plaintiffs' interference with contract claim – despite the plaintiffs' allegation that the NCAA had interfered with their contracts with parents of high school basketball players – because the plaintiffs offered no evidence of "specific contracts" with which the NCAA interfered.

The plaintiffs were represented by Darin J. McMullen and Richard M. Meltzer of Pelino & Lentz and Ira P. Tiger of Schnader Harrison Segal & Lewis in Philadelphia. The NCAA was represented by David P. Bruton of Drinker Biddle & Reath in Philadelphia.

*Pocono Invitational v. National Collegiate Athletic Association*, 317 F.Supp.2d 569, 2004 U.S.Dist.LEXIS 7958 (E.D.Pa. 2004)

## European graphic novel publisher loses trademark priority for "Humanoids" because application to U.S. Patent and Trademark Office – filed on last day to claim priority based on French trademark registration – mistakenly attached drawing of a different mark

It was, no doubt, a simple mistake, but it had serious consequences. The Humanoids Group – a European graphic novel publisher – was seeking to register its "Humanoids" trademark with the United States Patent and Trademark Office. But because of a mistake, its application was not effective, and another company was able to register "Humanoids" as its own mark, in the United States.

Trademark applications must be accompanied by a drawing of the mark sought to be registered; and Humanoid's application was. Unfortunately, the wrong illustration was attached. Instead of a drawing of the "Humanoids" mark, a drawing of "Graphic Stores" – an entirely different mark – was mistakenly attached to the "Humanoids" application. Pursuant to its policy for handling cases where the application and the drawing differ, the PTO treated the application as one to register "Graphic Stories" rather than "Humanoids."

The reason this had serious consequences is that the other company used "Humanoids" as a trademark in the United States before the Humanoids Group did, and thus as a *general* rule, the other company would be the one entitled to register that mark in the U.S. However, the Humanoids Group had registered "Humanoids" as a trademark in France, before the other company used it in the U.S.

Pursuant to trademark treaties between U.S. and France (as well as many other countries), and pursuant to section 44(d) of the Lanham Act, its registration of the mark in France gave the Humanoids Group a six-month priority over others in the United States. This meant that if the Humanoids Group filed its trademark application in the PTO within six months of its French registration, it would have priority over others who may have first used the mark in the U.S. during that six month period.

Since the Humanoids Group filed its application on the last day of the six-month priority period, it lost its priority for "Humanoids" when the PTO treated the application as one for "Graphic Stories."

The Humanoids Group appealed, but without success. In an opinion by Judge Diana Gribbon Motz, the Court of Appeals held that the PTO's interpretation of its regulations concerning the filing of applications was entitled to deference, and its policy of treating applications as being for the mark illustrated on the drawing page was not inconsistent with those regulations. In so ruling, Judge Motz rejected the Humanoid Group's argument that when the PTO saw the application and the drawing were for different marks, the PTO should have contacted it to see which mark it actually intended to register.

The Humanoids Group was represented by Mark Lebow of Young & Thompson in Arlington. The PTO was represented by C. Edward Polk, Jr., Associate Solicitor, in Arlington.

*Humanoids Group v. Rogan*, 375 F.3d 301, 2004 U.S.App.LEXIS 14949 (4th Cir. 2004)

## Website not a direct infringer, even though subscribers posted unlicensed copyrighted photos to site, and even though website did not satisfy all requirements for DMCA's "safe harbor" exemption, federal appellate court rules

LoopNet runs a website that features photographs whose copyrights it does not own. The photos aren't of celebrities or other entertainment industry subjects. The photos are of real estate. (Indeed, the site – www.LoopNet.com – is an online commercial real estate marketplace.) Nonetheless, LoopNet was sued for copyright infringement in a case whose outcome is important to the entertainment industry – so important, in fact, that several music and movie companies filed an Amicus Brief supporting the plaintiff, a company known as CoStar Group, which also provides commercial real estate information including real estate photos.

LoopNet allows its subscribers to post photos directly to LoopNet's website. Subscribers are required to assure LoopNet that none of the photos infringe copyrights, but sometimes subscribers post infringing photos anyway, and some of those are photos whose copyrights are owned by CoStar. In response, CoStar sued LoopNet for direct and contributory infringement.

At first, CoStar seems to have enjoyed some success. That is, in response to cross-motions for summary judgment, a federal District Court ruled that LoopNet *may* be liable for contributory infringement, and that LoopNet was *not* entitled to the "safe harbor" immunity provided by the Digital Millennium Copyright Act. On the other hand, the District Court dismissed CoStar's claim that LoopNet was liable for its own direct copyright infringement. Then, for reasons not explained by the appellate court, CoStar and LoopNet stipulated to the dismissal of all of CoStar's claims *except* its direct infringement claim; and CoStar appealed LoopNet's victory on that claim.

At first blush, it looked as though CoStar had the better half of the appeal, for two reasons: (1) because the DMCA contains a specific provision describing what website operators must do in order to be immune from liability for infringements committed by users who post infringing materials; and (2) because LoopNet had not done everything the DMCA required it to do.

On the other hand, even before the DMCA was enacted, the *Netcom* case had held that a passive online service provider was not liable for infringements committed by its users when they posted infringing materials without the service provider's knowledge (*ELR* 18:7:22).

Thus, the question to be decided by CoStar's appeal was whether the DMCA supersedes the ruling in *Netcom*, so that LoopNet had to comply with the DMCA's requirements to avoid liability, or whether the

DMCA simply added a basis for immunity to the doctrine expressed by *Netcom*.

In an opinion by Judge Niemeyer for a 2-to-1 majority, the Court of Appeals sided with LoopNet and ruled that the DMCA supplemented *Netcom*, it didn't supersede it; and that under *Netcom*, LoopNet was not directly liable for displaying infringing photos from its website that had been posted by its subscribers.

Judge Niemeyer based this conclusion on a subsection of the DMCA that says that the failure of a service provider to qualify for immunity under the "safe harbor" provision "shall not bear adversely" on the defense that the service provider is not liable for other reasons. In addition, Judge Niemeyer noted that whenever CoStar notified LoopNet of an infringing photo, LoopNet removed it and then took special care to be certain that the photo wasn't posted again later.

Judge Roger Gregory dissented.

Co-Star was represented by Jonathan D. Hacker of O'Melveny & Myers in Washington DC. LoopNet was represented by Kurt B. Opsahl of Perkins Coie in San Francisco. The music and movie companies that filed an amicus brief supporting CoStar were represented by Paul B. Gaffney of Williams & Connolly in Washington DC. Online service providers that filed an amicus brief supporting LoopNet were represented by Scott E. Bain of Wiley Rein & Fielding in Washington DC.

*CoStar Group v. LoopNet, Inc.*, 373 F.3d 544, 2004 U.S.App.LEXIS 12123 (4th Cir. 2004)

## Collectors of art works attributed to Russian artist Lazar Khidekel recover additional $18,289 plus interest in New York unfair competition in lawsuit against artist's son and daughter-in-law because they made false statements to "ARTnews" and "Le Devoir"

Art collectors Rene and Claude Boule have been awarded an additional $18,289, plus pre-judgment interest (dating back to 1996), in their lawsuit against the son and daughter-in-law of artist Russian Lazar Khidekel. Federal District Judge Miriam Cederbaum ordered the entry of a "supplemental" judgment, after a trial in which the Boules proved that false statements made by Mark and Regina Khidekel to *ARTnews* and *Le Devoir* magazines had diminished the value of Khidekel drawings in the Boules' collection.

In determining how much the value of those drawings had been diminished, Judge Cederbaum noted that the Boules had paid 1.5 million French Francs – about $201,178 – for 176 Khidekel drawings, or $1,143 each. The damaging statements affected the value of 16 drawings, so the Boules' total damages came to $18,289.

The Khidekels told *ARTNews* and *Le Devoir* that the drawings in the Boules' collection were "fakes" and that the Boules were relying on "forged" certificates of authenticity in claiming otherwise. The certificates in question had been signed by Mark Khidekel himself, in return for a $7,090 payment from the Boules. Although the Boules failed to prove their Khidekel drawings were real, they did prove that the artist's son and daughter had lied about the certificates of authenticity being "forged." Thus, in an earlier phase of the case, Judge Cederbaum awarded the Boules $7,090 for breach of contract (plus a nominal $20 on their defamation claim, because they hadn't proved actual harm to their reputations) (*ELR* 23:5:14, 23:11:16).

However, in that earlier phase of the case, Judge Cederbaum denied the Boules any recovery on two other claims: one under New York's deceptive trade practices statute; and the other under the state's common law of unfair competition. Those rulings were reversed by the Court of Appeals, which held that the Boules may be entitled to prevail on those legal theories (*ELR* 25:3:17). The case was therefore remanded for trial on those claims.

Once again, the Boules were unable to prove their deceptive trade practices claim. That claim requires harm to the public interest *within the state of New York*. The Boules could not show *in-state* harm, however, because their Khidekel drawings weren't offered for sale or exhibited in New York, and because the magazines in which the Khidekel's offending statements were made were published in Canada and France.

On the other hand, the Boules did succeed with their unfair competition claim. New York's law of unfair competition required them to prove that their art collection was a "business," and they did. That is, Judge Cederbaum noted that they had exhibited their collection widely and had consigned a significant number of their Khidekel drawings for sale in Paris. Against this evidence, the artist's son and daughter-in-law "offered no reason why [the Boules'] art collection should not be considered a business under the common law of unfair competition by disparagement," Judge Cederbaum concluded. The judge awarded the Boules the additional $18,289 plus interest under this unfair competition theory.

The Boules were represented by Gerald A. Rosenberg of Katten Muchin Zavis Rosenman in New York City. Mark and Regina Khidekel were represented by Anastasios Sarikas in Astoria.

*Boule v. Hutton*, 320 F.Supp.2d 132, 2004 U.S.Dist.LEXIS 9836 (S.D.N.Y. 2004)

## Mannequin head depicting "hungry look" high-fashion runway model is protected by copyright, after all, federal appellate court rules

After 13 years of litigation, a copyright infringement suit filed by Pivot Point International against Charlene Products will finally go to trial, for the very first time. Pivot Point and Charlene Products both sell mannequin heads that have the "hungry look" of a high-fashion runway model. In fact, the two companies' heads are allegedly so similar in appearance that Pivot Point claims that the Charlene Products head was copied from Pivot Point's, and thus infringes Pivot Point's copyright.

The first 13 years of this case were devoted to the question of whether Pivot Point's mannequin head is entitled to copyright protection all. Charlene Products said that it's not, because the head is "utilitarian." Indeed, Pivot Point's customers are beauty schools whose students use the heads to practice hair styling and makeup techniques. The "utilitarian" nature of the head is significant, because although copyright law protects works of sculpture, it doesn't protect their utilitarian functions. Thus, if the head's sculptural features can't be separately identified and can't exist independently from its utilitarian functions, the head isn't protectible.

At least three conflicting rulings on the copyrightability of Pivot Point's head were issued by different judges of the District Court alone. The most recent of these was by Judge Frank Easterbrook – a Circuit Court of Appeals judge who was then sitting by designation in the Northern District of Illinois. Judge Easterbrook granted Charlene Product's motion for summary judgment, ruling that the utilitarian features of Pivot Point's head could not be separated from their sculptural features (*ELR* 15:7:26, 23:11:14).

Now, by a 2-to-1 vote, the Court of Appeals itself has reversed Judge Easterbrook. In an opinion written by Judge Kenneth Ripple, the appellate court has held that Pivot Point's head is entitled to copyright protection. Judge Ripple's lengthy and scholarly opinion canvases earlier opinions from other Circuits on this issue, and concluded that the head is protected because it "is not difficult to conceptualize a human face, independent of . . . the shape of the eye, the upturned nose, the angular cheek and jaw structure, that would serve the utilitarian functions of a hair stand and . . . makeup model."

The reason the head's design could "be conceptualized as existing independent from its use in hair display or make-up training" is that it was "the product" of its designer's "artistic judgment." That is, Pivot Point did not "constrain" the designer's "artistic judgment by functional considerations." Thus, Judge Ripple concluded, "because [Pivot Point's head] was the product of a creative process unfettered by functional concerns, its sculptural features 'can be identified separately from, and are capable of existing independently of,' its utilitarian aspects."

As a result, Pivot Point is "entitled to have [its] expression of the 'hungry look' protected from copying." And the case has been remanded to the District Court for trial.

Judge Michael Kanne dissented.

Pivot Point was represented by Robert E. Browne of Neal Gerber & Eisenberg in Chicago. Charlene Products was represented by James B. Meyer of Meyer & Wyatt in Gary, and by Martin H. Redish of Mayer Brown Rowe & Maw in Chicago.

*Pivot Point International v. Charlene Products, Inc.*, 372 F.3d 913, 2004 U.S.App.LEXIS 12837 (7th Cir. 2004)

## Previously Reported:

**Dow Jones settles Australian online libel lawsuit.** Dow Jones has settled a libel lawsuit filed against it in Australia by Joseph Gutnick, a businessman who lives in Melbourne. Gutnick alleged he was defamed by an article that appeared in Barron's Online, a website maintained by Dow Jones on servers located in New Jersey. Before the case was settled, Dow Jones argued that the case shouldn't be heard by Australian courts, because the article was "published" in New Jersey rather than in Australia. The High Court of Australia rejected that argument, however, saying that the article caused harm in Australia because that is where it was read by Australians, and that harm was sufficient to give Australian courts jurisdiction to hear the case (*ELR* 24:9:7). In settling the case, Dow Jones lawyers read a "clarification" (previously published in Barron's itself) in the Victoria Supreme Court (where the case would have been tried) which said that Barron's had not intended to allege that Gutnick was a customer of a Melbourne man who had been jailed for tax evasion and money laundering, nor had Barron's intended to allege that Gutnick had any criminal or improper relations with that man. Dow Jones also paid Gutnick an amount of money variously reported in the Wall Street Journal (11/15/04) as "US$154,000" and by the Australian Broadcasting Corporation (11/12/04; http://www.abc.net.au/news/newsitems/200411/s1242115.htm) as "$180,000 in settlement of the case with a further $400,000 in costs" (or a total of AUS$580,000 which is about US$450,000).

# DEPARTMENTS

## Entertainment Lawyer News:

**Gary Culpepper joins Idell Berman & Seitel in San Francisco.** Music industry lawyer Gary D. Culpepper has become Of Counsel to the San Francisco entertainment law firm Idell Berman & Seitel. His practice will focus on advising film, television and video game companies, artists, songwriters, agents and personal managers, in connection with the acquisition of digital downloading rights for digital music distribution and third-party licensing of intellectual property rights. Culpepper was a co-founder of EMusic where he was Executive Vice President, Business Affairs, and was responsible for the acquisition of rights for digital distribution of music using MP3 technology. Culpepper is a graduate of UCLA and received his J.D. degree from Southwestern University School of Law.

**Susan Cleary promoted to VP/General Counsel of Independent Film & Television Alliance.** Susan Cleary has been promoted to Vice President and General Counsel of the Independent Film & Television Alliance (formerly known as AFMA). In her new position, Cleary will continue to oversee legal matters and arbitration activities for the International Film & Television Alliance, and adds supervision of I.F.T.A. Collections (formerly AFMA Collections) to her responsibilities. I.F.T.A. Collections manages the worldwide claims for and collection of audio-visual royalties and levies for more than 125 participating companies and generates more than $5 million a year for its participants. Cleary joined the organization in 1998 as Director, Legal Affairs, originally handling licensing and intellectual property matters, and was later promoted to Vice President, Legal Affairs. She is active in the entertainment legal community having served as the Chairman of the Intellectual Property and Entertainment Law Section of the Los Angeles Country Bar Association. She is also a member of the Advisory Committee for the Donald E. Biederman Entertainment and Media Law Institute at Southwestern University School of Law. Cleary received her Bachelor's degree and a Master's degree of Art from Rutgers University, and holds a Law degree from Southwestern University.

## In the Law Reviews:

The Loyola of Los Angeles Entertainment Law Review has published Volume 24, Number 3 with the following articles:

*When Is a User Not a "User"? Finding the Proper Role for Republication Liability on the Internet* by James P. Jenal, 24 Loyola of Los Angeles Entertainment Law Review (2004)

*Modified to Fit Your Screen: DVD Playback Technology, Copyright Infringement or Fair Use?* by Ashley C. Kerns, 24 Loyola of Ls Angeles Entertainment Law Review (2004)

*How the RIAA Can Stop Worrying and Learn to Love the RICO Act: Exploiting Civil RICO to Battle Peer-to-Peer Copyright Infringement* by Phillip Stuller, 24 Loyola of Los Angeles Entertainment Law Review (2004)

*Internet Pop-Up Ads: Your Days Are Numbered! The Supreme Court of California Announces a Workable Standard for Trespass to Chattels in Electronic Communications* by Geoffrey D. Wilson, 24 Loyola of Los Angeles Entertainment Law Review (2004)

Entertainment Law Review, published by Sweet and Maxwell, www.sweetandmaxwell.co.uk, has issued Volume 15, Issue 8, with the following articles:

*Trouble in Paradise: The New DCMS Guidelines on Film Co-Productions* by Philip Alberstat, 15/8 Entertainment Law Review 233 (2004) (for website, see above)

*The Olympics: A Celebration of Sport and the Role of Law* by Andrew Moss, 15/8 Entertainment Law Review 237 (2004) (for website, see above)

*Film Licensing in New Zealand and the Limits of Constitutional Protection for Artistic Expression* by Ian Cram, 15/8 Entertainment Law Review 243 (2004) (for website, see above)

*Pan-European Advertising Clearance* by Carl Rohsler and Alison Willis, 15/8 Entertainment Law Review 249 (2004) (for website, see above)

*Summary of Advocate General's Opinion in the BHB v William Hill Case* by Hamish Porter, 15/8 Entertainment Law Review 252 (2004) (for website, see above)

*Privacy "par excellence"* by Rico Calleja, 15/8 Entertainment Law Review 253 (2004) (for website, see above)

*The Future Regulation of Broadcast Advertising* by Alison Willis, 15/8 Entertainment Law Review 255 (2004) (for website, see above)

*Loi Evin and the European Court of Justice* by James Hennigan, 15/8 Entertainment Law Review 257 (2004) (for website, see above)

*Book Review: Trademark Law, A Practical Approach by Jeremy Phillips,* reviewed by Colm Mackernan, 15/8 Entertainment Law Review 259 (2004) (for website, see above)

Villanova Sports & Entertainment Law Journal has published Volume 11 with the following articles:

*The 2003 Legislative Assault on Violent Video Games: Judicial Realities and Regulatory Rhetoric* by Clay Calvert and Robert D. Richards, 11 Villanova Sports & Entertainment Law Journal 203 (2004)

*A Jurisdictional "Nightmare": Determining When an Interdependent Copyright and Contract Claim "Arises Under" the Copyright Act in Scholastic Entertainment, Inc. v. Fox Entertainment Group, Inc.* by Christopher D. Birrer, 11 Villanova Sports & Entertainment Law Journal 271 (2004)

*Maurice Clarett v. National Football League, Inc.: An Analysis of Clarett's Challenge to the Legality of the NFL's Draft Eligibility Rule Under Antitrust Law* by Shauna Itri, 11 Villanova Sports & Entertainment Law Journal 303 (2004)

*Website Operators and Misappropriators Beware! The California Supreme Court Holds a Preliminary Injunction Prohibiting Internet Posting of DVD Decryption Source Code Does Not Violate the First Amendment in DVD Copy Control Association, Inc. v. Bunner* by Nick Washburn, 11 Villanova Sports & Entertainment Law Journal 341 (2004)

*Free Content's Future: Advertising, Technology, and Copyright* by Matthew Scherb, Northwestern University Law Review 1787 (2004)

*Bono, the Culture Wars, and a Profane Decision: The FCC's Reversal of Course on Indecency Determinations and Its New Path on Profanity* by Clay Calvert, 28 Seattle University Law Review (2004)

The Sports Lawyers Journal, a publication of the Sports Lawyers Association, edited by the students of Tulane University School of Law, has published Volume 11, Number 1 with the following articles:

*F@#%K Pads: The Assumption-of-Risk Doctrine, Liability-Limiting Statutes, and Skateboarding* by David Amell, 11 The Sports Lawyers Journal (2004) (for publisher, see above)

*Should the Criminal Courts Adjudicate On-Ice NHL Incidents?* by Jennifer Marder, 11 The Sports Lawyers Journal (2004) (for publisher, see above)

*Is the T-Shirt Cannon "Incidental to the Game" in Professional Athletics?* by Scott B. Kitei, 11 The Sports Lawyers Journal (2004) (for publisher, see above)

*Penalties, Fouls, and Errors: Professional Athletes and Violence Against Women* by Carrie A. Moser, 11 The Sports Lawyers Journal (2004) (for publisher, see above)

*Title IX: How Title IX Should Be Interpreted to Afford Women the Opportunities They Deserve in Intercollegiate Athletics* by Eric Bentley, 11 The Sports Lawyers Journal (2004) (for publisher, see above)

*NFL vs. Sherman Act: How the NFL's Ban on Public Ownership Violates Federal Antitrust Laws* by Genevieve F.E. Birren, 11 The Sports Lawyers Journal (2004) (for publisher, see above)

*Professional Athletes and Sports Teams: The Nexus of Their Identity Protection* by Dunnean J. Hetzel, 11 The Sports Lawyers Journal (2004) (for publisher, see above)

*Irvine v. Talksport Ltd,: Snatching Victory from the Jaws of Defeat - English Law Now Offers Better Protection of Celebrities' Rights* by Peter M. Bryniczka, 11 The Sports Lawyers Journal (2004) (for publisher, see above)

*Opening the Floodgates: The Effects of Flexible Immigration Laws on International Basketball Players Seeking Employment in the NBA* by Trey Miller, 11 The Sports Lawyers Journal (2004) (for publisher, see above)

*The Legal Status of Professional Athletes: Differences Between the United States and the European Union Concerning Free Agency* by Andreas Joklik, 11 The Sports Lawyers Journal (2004) (for publisher, see above)

*The Trading Games: NFL Free Agency, the Salary Cap, and a Proposal for Greater Trading Flexibility* by Ari

Nissim, 11 The Sports Lawyers Journal (2004) (for publisher, see above)

The Marquette Intellectual Property Law Review has published Volume 7 with the following articles:

*A Role for the Business Attorney in the Twenty-First Century: Adding Value to the Client's Enterprise in the Knowledge Economy* by Peter J. Gardner, 7 Marquette Intellectual Property Law Review (2003)

*Whither European Trade Mark Law? Arsenal and Davidoff: The Creative Disorder Stage* by S. M. Maniatis, 7 Marquette Intellectual Property Law Review (2003)

*Comments on Cyber Copyright Disputes in the People's Republic of China: Maintaining the Status Quo While Expanding the Doctrine of Profit-Making Purposes* by Wei Yanliang and Feng Xiaoqing, 7 Marquette Intellectual Property Law Review (2003)

*Keywords, Trademarks, and the Gray Market: Why the Use Is Not Fair* by Lisa A. Nester, 7 Marquette Intellectual Property Law Review (2003)

*Virtual Child Pornography: Does It Mean the End of the Child Pornography Exception to the First Amendment?* by Brian G. Slocum, 14 Albany Law Journal of Science & Technology (2004)

*Noah v. AOL Time Warner: Are There Legitimate Barriers to Civil Rights Protection on the Internet?* by Joseph Dowling, 14 Albany Law Journal of Science & Technology (2004)

*Virtual Child Pornography: Why American and British Laws Are at Odds with Each Other* by Sofya Peysakhovich, 14 Albany Law Journal of Science & Technology (2004)

The European Intellectual Property Review, published by Sweet and Maxwell, www.sweetandmaxwell.co.uk, has issued Volume 26, Issue 11 with the following articles:

*The Ironies of Arsenal v Reed* by Ian Kilbey, 26/11 European Intellectual Property Review 479 (2004) (for website, see above)

*Anti-competitive Refusals to Grant Copyright Licences: Reflections on the IMS Saga* by Burton Ong, 26/11 European Intellectual Property Review 505 (2004) (for website, see above)

*The Panel Case High Court Decision* by Megumi Ogawa, 26/11 European Intellectual Property Review 517 (2004) (for website, see above)

*Book Review: World Copyright Law: Protection of Authors' Works, Performances, Phonograms, Films, Video, Broadcasts and Published Editions in National, International and Regional Law* by Johanna Gibson, 26/11 European Intellectual Property Review 521 (2004) (for website, see above)

*Book Review: International Agency, Distribution and Licensing Agreements* by John A. Tessensohn, 26/11 European Intellectual Property Review 522 (2004) (for website, see above)

## Educational Programs Calendar:

**American Bar Association Forum on Communications Law 10th Annual Conference**, January 13-15, 2005, Boca Raton Resort & Club, Boca Raton, Florida. The program highlights workshops on Hot Issues in Newsgathering; Hot Issues in Ethics; Hot Issues in Libel and Privacy; Hot Issues on the Internet; How to Diversify the Media Bar; How to Avoid Burnout; and How to Build a Litigation Coalition; plus sessions on Richmond Newspapers v. Virginia, 25 Years Later: Is There a Presumption of Access to Terrorism and Celebrity Cases?; Election 2004: How Did the Media Perform?; Luncheon Speech by the President of the American Bar Association; Milkovich v. Lorain Journal, 15 Years Later: Has the Supreme Court Been Overruled?; and Journalism Jeopardy. For additional information, contact the ABA Forum on Communications Law, MS 18.2, 321 N. Clark St., Chicago, IL 60610-4714, online at www.abanet.org/forums/communication/home.html; or FAX 312-988-5677.

**Entertainment, Arts, and Sports Law: Ninth ALI-ABA Course of Study**, Thursday-Saturday, January 20-22, Le Meridien at Beverly Hills, Los Angeles. The American Law Institute-American Bar Association Committee on Continuing Professional Education in cooperation with the ABA Forum on the Entertainment and Sports Industries, will present three days of panels delving into Protecting Creative Rights: Intellectual Property, Trademark Law Overview and Copyright Law Overview; Negotiating Individual Contracts; The Music Industry: Contract Principles and Negotiation; Major League Team Sports Contracts: Representing the Superstar; Sports Marketing: Endorsements, Sponsorships, Licensing and Merchandising; TV News and Programming Talent Agreements; International Law Issues: Foreign Appearances and Immigration Problems; and Ethics; Negotiating Collective Bargaining

Agreements; Labor and Employment Law Overview; Labor Issues Unique to the Film, Sports and Entertainment Industries; Domestic and International Tax Planning for the Superstar; The Film Deal: A Transactional Analysis; Art: Representing the Artist; Representing the Gallery; Art Law Issues; Stadium and Arena Financing, Including Franchise Relocation Problems; Unauthorized Usage of the Images and Stories of Stars, Talent, and Artists; Putting the Pursuit into Perspective: The Value of Sport; Litigation in the Entertainment and Sports Industries. For additional information, phone 800-CLE-NEWS, FAX 215-243-1664 or on the internet at www.ali-aba.org.

**2005 Association of National Advertisers Advertising Law and Business Affairs Conference**, January 26-27, Marriott East Hotel, New York. This first Legal Affairs conference will provide an Overview and Introduction: Setting the Stage for Day One; Legislative Overview: State and Federal Developments; Tying in with Others: Sponsorships and Co-Promotions; Contract Negotiation and Drafting: Concurrent Breakout Sessions; Negotiating and Drafting Agreements with Advertising Agencies; Children's Advertising and Self Regulation; Negotiating and Drafting Agreements with Celebrity Talent; In House Counsel-Maximizing Your Protection Under the Attorney-Client Privilege and Work Product Doctrine; Internet, Wireless, and SMS Marketing; The Creative Side of Advertising; 2005 Federal Trade Commission Agenda; Challenges in Global Advertising-Global Advertising Lawyers Alliance; a Regulatory Panel from State Attorney General Offices; Branded Entertainment; and Developments in Privacy and Publicity. For additional information, call 212-697-5950 or contact the Association of National Advertisers, Inc. Attention: Registration Coordinator, 708 Third Avenue, New York, NY 10017.

**Winning At All Costs: Today's Addiction: A Conference on Sports Law & Ethics**, February 9-11, Palmer House Hilton, Chicago, Illinois. Sponsored by Valparaiso School of Law, the program examines BALCO: The Prosecution's Case and the Defense's Case; AAA-CAS with athletes' attorneys and USADA representatives; Professional Leagues; luncheon speaker Bob Costas; Professional League Sports; College Sports; the Olympic Movement; The University of Colorado (A Case Study); Why Do We Have a Crisis of Ethics in Sports? Ethical Problems and Solutions. For additional information, contact Valparaiso University School of Law, Conference on Sports Law & Ethics, c/o Cindy Martin, 656 S. Greenwich, Valparaiso, IN 46383, FAX 219-465-7808, call 877-825-7652, or register on-line at www.valpo.edu/law/sportsconf/.

**Cable Television Law 2005: Competition in Video, Internet & Telephony**, February 14-15 in New York City, March 7-8 in San Francisco and Live Webcast, www.pli.edu on March 7-8. This Practising Law Institute program will cover Video Competition between Cable Incumbents, DBS, and Overbuilders; Bundling Strategies and Counter-Strategies; City Cable Telecommunications Regulation; Non-affiliated Internet Service Providers Attempts to Gain Access to Cable Modem and DSL Services; Court Decisions on Cable Franchise Fees; FCC Reviewof Cable Carriage of Digital TV Broadcast Channels; Retransmission Consent vs. Must-Carry Negotiations; FCC on "Effective Competition;" Privacy, Copyright and Internet Access over Cable Modems and the FCC and "Voice Over Internet." For additional information, call (800) 260-4PLI or online at www.pli.edu.

**Counseling Clients in the Entertainment Industry 2005**, March 30-April 1 in New York City and Live Webcast, www.pli,edu, March 30-April 1. Registration is for one, two or three days of the program, sponsored by the Practising Law Institute. Day one will delve into Television, the Computer & Video Game Industry; Ethics and Hot topics in Entertainment Law: Recent Court Decisions. Day two will focus on Film and Theater and Day three, the Music Publishing and Sound Recordings Business. For additional information, call (800) 260-4PLI or online at www.pli.edu.

**Representing Your Local Broadcaster: 24th Annual Legal Forum**, Sunday, April 17, 2005, The Bellagio, Las Vegas, Nevada. The program is sponsored by the American Bar Association Forum on Communications Law, the National Association of Broadcasters, and the Federal Communications Bar Association. For additional information, contact the ABA Forum staff Teresa Ucok at 312-988-5658 or e-mail tucok@staff.abanet.org.

**Advanced Seminar on Copyright Law 2005**, May 23-24, New York City. Sponsored by the Practising Law Institute, the program will examine How to Deal with Copyright Ownership and Transfer Issues; How to Draft Licensing Agreements; the Important Issues in Copyright Litigation; Intersection of Entertainment Law and Copyright; Intersection of Trademark Law and Copyright; Intersection of Right of Publicity and Copyright; and Music and Movies on the Internet. For additional information, call (800) 260-4PLI or online at www.pli.edu.

**Advanced Seminar on Trademark Law 2005**, June 30, New York City. This Practising Law Institute program will provide an Up-To-Date Look at Important Trademark Issues in the Face of Rapidly Occurring Economic and Technological Changes in the United States and the World. For additional information, call (800) 260-4PLI or online at www.pli.edu.