LEGAL AFFAIRS

The Demo Memo: How a Superstar's Early Recordings Can Lead to a Gold Mine or a Land Mine

by William Hochberg

Many a superstar has left a twisted trail of ex-lovers, rehab clinic bills, and dusty demo recordings from the early days. The first two may be of little concern to the artist or record label, but the latter may be a worry. When a garage band graduates to the platinum parking lot, old demos suddenly shine like diamonds and someone is going to try to cash in. Sometimes a clever ex-member, producer or manager will time a demo release to ride on the coat tails of a major label release in order to grab some precious national retail shelf space. Major labels will usually fire a cease and desist letter across the indie's bow, and possibly follow up with a complaint. But sometimes, Demo David will topple Label Goliath with the slingshot of a non-exclusive license. Such a license could be embodied in a written agreement or even just testimony of an oral understanding that the band consented to distribution of the early demo.

From Jim Morrison to Van Morrison, from Ronnie Van Zant to Townes Van Zandt, from the Beach Boys to the Beastie Boys, and from Axl Rose to Rosa Parks to Van Dyke Parks, the use of early recordings and name, likeness or images in a later record release or a television biopic is a very common occurrence, but raises red flags. Last summer (2004), a decision came out of federal court in the Central District of California on the side of the distributors of early demos of the garage group which would rise to become Guns N' Roses. In *Cleopatra Records v. William Bruce Bailey, a/k/a Axl Rose*, the owner and distributor of early demos defeated threats from Rose and others to shut them down. It's an unpublished decision, but instructive nonetheless in telling which way the judicial wind is blowing.

In the mid-1980s, Axl Rose and Izzy Stradlin formed a band called Hollywood Rose and kicked around clubs and bars in Los Angeles for nine months before landing a record deal. Now twenty years down the road, Guns N' Roses, having jettisoned their early name and a few band members, has sold tens of millions of albums and has released a greatest hits collection. One of the discarded early band guitarists, Chris Weber, who had talked his parents into investing in some recording sessions, owned a five-song demo of Hollywood Rose. Watching from the sidelines as his ex-bandmates rose to the top of rock's heap, Weber decided to cash in on those early recordings and sold them to Cleopatra Records, a label which once specialized in re-issuing quantities of esoteric hard core gothic/industrial acts with names like "Electric Hellfire Club" and "Christian Death" and later branched out to a more general audience. Weber also threw into the bargain some promotional materials (band photos, flyers and the like).

In 2004, Cleopatra attempted to release an album entitled "Hollywood Rose: The Roots of Guns N' Roses," which included the original five recordings funded by Weber's parents, together with two remixes of each of those same recordings, presumably paid for by Cleopatra. All in all, the package promised a bonanza for Cleopatra, perhaps its biggest selling item ever. All seemed well, until Axl Rose and company got wind of it and fired off a cease and desist letter, saying Cleopatra did not have the right to market the early recordings. Rose's attorneys argued that the album infringed the trademark on Guns N' Roses, in that it should only have been advertised as a "Hollywood Rose" album and should not have traded on the famous name that followed. Rose also claimed pictures of him were protected by his "right of publicity" under state law in California.

Cleopatra felt it had every right to release Weber's recordings and hired a lawyer to fire off a pre-emptive strike: a suit for declaratory relief. In essence, Cleopatra asked the court to confirm the label's right to do what it was doing. The court agreed with Cleopatra. In a well-reasoned and easy-reading opinion, Judge Gary Feess found Cleopatra had every right to put out the album and use the promotional material, and also found that Cleopatra could trade on the name Guns N' Roses without fear of reprisal from Rose and others.

While the Hollywood Rose case comforts the would-be demo distributor, it causes worry for the label wishing to control the market for a band during its most profitable album cycles. Moreover, the band is at risk of

breaching its contract because most recording agreements are exclusive and guarantee the label that no one else will be selling the band's music during the term without the label's approval. Depending on an act's political clout with its label and whether the band is friends with whomever is distributing its early demos, the label may tolerate the contract breach and hope the goodwill might help with label-artist relations when renegotiation time comes around.

So what are the rules to keep the would-be demo distributor from becoming a demo defendant? There are two:

1. Have a written or oral license establishing at least a non-exclusive right to distribute (an oral license can be shown by conduct in many cases); and
2. Stay within the scope of the license and the First Amendment.

But whether representing a garage tape entrepreneur or a band or label interested in stopping same from marketing demos under an implied nonexclusive license, an attorney must be familiar with key cases and should run the facts through a two-part inquiry, as follows.

1. What Kind of License May Exist?

There are three ways to obtain a non-exclusive license. It may be demonstrated by a written agreement, an oral agreement, or even sometimes the conduct and course of dealing between the parties. Of course a written agreement is ideal, as it will often forestall a dispute as to the existence, let alone the terms, of a license. As the Ninth Circuit put it in *Effects Assocs., Inc. v. Cohen*, 908 F.2d 555, 557 (9th Cir. 1990)(*ELR* 12:4:12), "It doesn't have to be the Magna Charta."

The difficulty with oral agreements and course of dealing agreements is proving that a license actually exists, often leading to a he-said, they-said parade of conflicting testimony. The Fourth Circuit, in *Nelson-Salabes, Inc. v. Morningside Dev., LLC*, 284 F.3d 505, 516 (4th Cir. 2002) listed three factors to look at in finding the existence of an implied license: "(1) whether the parties were engaged in a short-term discrete transaction as opposed to an ongoing relationship; (2) whether the creator utilized written contracts providing that copyrighted materials could only be used with the creator's future involvement or express permission; and (3) whether the creator's conduct during the creation or delivery of the copyrighted material indicated that use of the material without the creator's involvement or consent was permissible."

A manager or producer fronting the recording costs with the loose understanding that he or she will shop the tapes around to willing ears might satisfy the first and third prongs. A studio engineer working the board between smoking breaks, on the other hand, probably would not. As for the second prong of the test, few bands in their infancy are savvy enough to prevent early recordings from leaving the inner sanctum unguarded. In fact it's common for superstar groups to suffer leakage of early mixes of upcoming material to the Internet. The second factor (above) suggests that if a band has a procedure in place – like having producers and engineers agree in an email that they will keep the masters confidential and won't do anything with them without the band's approval in writing – there will probably be no implied agreement.

Another consideration is the Statute of Frauds. To the extent that a contract cannot be performed within one year, it is not valid unless in writing. So, if a would-be distributor says he has an oral agreement with a band, but there's nothing in writing, the contract is voidable, unless there is some sort of documentation, such as a letter or a memo or an invoice that might be used to prove the contract existed. The most common evidence of this sort is a check paid by the would-be distributor to the band, with a memo identifying it as a royalty advance.

A further hurdle to consider with unwritten contracts is revocability. A non-exclusive oral license is freely revocable by the grantor absent consideration. Here's an example. Let's say we have a "spec producer," meaning a producer who does not 'spec' to get paid, at least not upfront, but hopefully later on when the band strikes pay dirt. Spec producer takes the masters out of the studio under an oral non-exclusive agreement but doesn't pay the band anything, and sets out to distribute or shop the masters. Soon after, an A&R guy from Big Advance Records shows up at a gig with an open checkbook and wants to own those early masters exclusively as part of the deal. The band can terminate the oral non-exclusive license to Spec Producer with a "Dear John" letter. The letter ought to be certified or hand delivered by a messenger with a receipt, because if Spec Producer is crafty and shrewd, he will deliver a check to the band, in a modest amount, before receiving the termination letter, which is a chess-like move that will frustrate Big Advance Records' approach and may well make the non-exclusive deal non-revocable.

Sometimes, Spec Producer will argue that he "paid" the band by giving his time in the studio and shopping the demos. This is a potentially winning argument, but the safer route for Spec Producer is also to pay royalties or an advance to the band, which the band may or may not accept.

2. Is the Activity In Question Within The Scope of License?

If Spec Producer got over the first hurdle, and demonstrated a license, a label or artist could still throw up a quick brick wall by demonstrating that the scope of the license was exceeded. So Spec Producer needs to walk the line and not venture out of bounds. If, for

example, the band states that Spec Producer can distribute in Japan only, evidence of sales in the U.S. will be a breach, obviously. In the Axl Rose case (discussed above), the band said Cleopatra Records had no right to use the name Guns N' Roses in promoting the album. The judge disagreed and said that the First Amendment allows one to state what one is selling with reasonable clarity. But there is a line not to be crossed. For example, if all of the type face on the album cover and in advertising is 8 point font, except the name Guns N' Roses, which appears in 36 point font, then the judge would probably have ruled the other way. Cases have established a test that essentially says stay away from splashy advertising, unless you have an express license to do so.

The test often cited in these kinds of "wild demo" cases is *New Kids On The Block v. New America Publishing, Inc.*, 971 F.2d 302 (9th Cir. 1992) (*ELR* 14:9:6), in which the famous boy band wished to prevent a newspaper chain from conducting a cheesy promotion in which fans paid a small fee to the newspapers in order to call in and vote for their favorite New Kid. Of course the New Kids, who were not paid a farthing, felt a moral (or at least financial) indignation and sued. And they lost.

The New Kids Court (that's not the name of a boy band, but a panel of appellate justices who at times may wish they were a boy band) found that the newspapers' use was "nominative," and to help us understand what they meant, they gave us a three-part test that is used quite a bit nowadays: "First, the product or service in question must be one not readily identifiable without use of the trademark; second, only so much of the mark or marks may be used as is reasonably necessary to identify the product or service; and third, the user must do nothing that would, in conjunction with the mark, suggest sponsorship or endorsement by the trademark holder."

Looking at the first factor, the demo distributor must use the name of the band only when there's no other practical way to describe what is on the album. This was the case, the judge decided, in the *Hollywood Rose* case, discussed above. It was also true in a case involving the 1981 Playboy Playmate of the Year, Terri Welles, who almost completely defeated Playboy in its attempt to shut down her website which prominently featured the Playboy trademarks. Although this case, *Playboy Enterprises, Inc. v. Welles*, 279 F.3d 796 (9th Cir. 2002) (*ELR* 24:1:7), factually lies outside the music industry, it's frequently cited by analogy in recording cases and it involves, as the judge noted, a "nude model selected by Mr. Hefner's magazine as its number-one prototypical woman for the year 1981," making it a better read for some than, say, *Erie Railroad Co. v. Tompkins*.

Said the Hon. Thomas G. Nelson, speaking for the appellate court, in that case: "There is no other way that Ms. Welles can identify or describe herself and her services without venturing into absurd descriptive phrases. To describe herself as the 'nude model selected by Mr. Hefner's magazine as its number-one prototypical woman for the year 1981' would be impractical as well as ineffectual in identifying Terri Welles to the public."

The Court found in Ms. Welles' favor on almost all counts, except it found that her use of a playboy trademark as "wallpaper" on part of her website went over the line and she had to stop doing that. So, the First Amendment allows use of descriptive language even if it's a trademark, in some cases. In other cases, such as a recent Beach Boys decision discussed below, unauthorized use of a trademark, even by a former bandmember proved to be a "wipe out."

That's what happened to former Beach Boy Al Jardine. After he and the other Beach Boys failed to agree on a license for him to use the name, he proceeded to tour based on what he thought was an oral agreement and his rights under the First Amendment. Jardine and his band played dates using names that included "The Beach Boys" trademark. The gigs were promoted under names like: Al Jardine of the Beach Boys and Family & Friends; The Beach Boys "Family and Friends"; Beach Boys Family & Friends; The Beach Boys, Family & Friends; Beach Boys and Family; as well as, simply, The Beach Boys. Jardine's band played in locations and on dates close to Mike Love's "The Beach Boys" shows, which were fully licensed by the other members. With two bands touring as The Beach Boys or as a similar-sounding combination, show organizers were confused about what exactly they were getting when they booked Jardine's band. A number of promoters booked Jardine's band thinking they would get The Beach Boys along with special added guests, and then had to cancel when they discovered that Jardine's band was not what they thought it was. Attendees at one of Jardine's shows said that they had been confused about who was performing. During this time period, the other Beach Boys sent Jardine cease and desist letters objecting to Jardine's use of the Beach Boys trademark, but he didn't stop until the court slapped an injunction on him.

The Court, referring to the New Kids and Playboy cases discussed above, said: "Here, as in *Playboy* and *New Kids*, Jardine does not use the trademark in any primary, descriptive sense. That is, Jardine does not use 'The Beach Boys' trademark to denote its primary, descriptive meaning of 'boys who frequent a stretch of sand beside the sea.' Instead, Jardine uses 'The Beach Boys' trademark in its secondary, trademark sense, which denotes the music band – and its members – that popularized California surfing culture. This is true regardless of whether Jardine's use of the mark refers to Jardine himself or to the band. Because Jardine does not use the mark in its primary, descriptive sense, the classic fair use defense does not apply." *Brother Records, Inc. v. Jardine*, 318 F.3d 900, 907 (9th Cir. 2003) (*ELR*

24:12:11)

Some may scratch their heads as to why Jardine's use of the Beach Boys trademark is any more egregious than Welles' use of the Playboy trademark on her website. If Welles can say "1981 Playmate of the Year" instead of "nude model selected by Mr. Hefner's magazine as its number-one prototypical woman for the year 1981," why can't Jardine use "Beach Boys" to describe his band instead of "boys who frequent a stretch of sand beside the sea"? The deciding factor seems to be that more people were confused and injured financially by Jardine (the promoters and the fans thought this was the Beach Boys, not just Jardine's band) than the people who went to Welles' website.

The same three-part test that applies to websites (Welles), promotions (New Kids) and touring (Jardine) also applies to demo distribution disputes. To recap the *New Kids* test in the context of demo distribution, if the right to market early recordings is in dispute, a plaintiff should attempt to show that (1) the musical product was "readily identifiable without use of the trademark" or superstar's name; (2) more of the name or trademark than absolutely necessary was used; and (3) the user suggested sponsorship or endorsement, when none existed.

The New Kids Court's complex little three-part ditty soon became an instant hit and was immediately covered by such superstar judicial groups as the Beach Boys Court, the Axl Rose Court and others. What the test says is that someone can use a trademark without a written license to promote something only when: (1) no descriptive substitute exists; (2) no more of the trademark is used than necessary; and (3) nothing is done to suggest sponsorship or endorsement.

So using these factors, Al Jardine may have promoted himself as "Al Jardine, former member of the Beach Boys, and friends" without courting trouble (first factor). On the other hand, had Cleopatra Records printed out "Guns N' Roses" on its product in a font larger than "Hollywood Rose" they might have been welcomed to the jungle of injunction (second factor). Finally, Hef's lawyers might have defeated Terri Welles had she used "Playboy presents Terri Welles" on her website instead of the low key description she chose (third factor).

Indeed, whether garage tapes turn out to be a gold mine or a land mine for someone trying to market them, is a question that relies on what is still rather unsettled law, and therefore a written agreement is always preferable to leaving such questions to a fact finder.

William Hochberg represents renowned and award winning recording artists, producers, writers and others in the music industry, handling diverse transactional and intellectual property matters, as well as litigation. Since 1990, he has provided his services to fresh new talent as well as superstars such as BMI songwriter of the year Jeffrey Steele, blink 182, the estate of jazz legend Eddie Harris, celebrated lyricist and composer Van Dyke Parks, Oscar winning film composer Elliot Goldenthal, and fairly well-known entertainer Michael Jackson. The author, a 1990 graduate of Northeastern University Law School, wishes to acknowledge the assistance of his associate Marc Shapiro, a 2004 graduate of USC Law School and member of the California bar, who specializes in music law. Information on The Law Offices of William Hochberg can be found at http://www.highmountainlaw.com and the author can be reached at whochberg@highmountainlaw.com.

INTERNATIONAL DEVELOPMENTS

Boxing promoter Don King may proceed with libel lawsuit against Lennox Lewis' lawyer Judd Berstein in British court, even though King and Berstein both are U.S. citizens and residents, and even though offending statements were posted on U.S.-based websites, UK Court of Appeal affirms

Boxing promoter Don King used to manage British fighter Lennox Lewis, but at some point, their relationship turned so sour that they were involved in litigation against one another in the United States and Great Britain. Indeed, their legal battles became so ferocious that Lewis' lawyer, Judd Berstein, got sucked into one case personally, as a named defendant.

The case in which King sued Berstein personally, as well as Lewis, was a libel lawsuit King filed in Great Britain. King eventually settled that case against Lewis, but not against Berstein.

King's chosen forum was remarkable in one respect: King and Berstein both are U.S. citizens and residents, and Berstein's offending statements were posted to websites located in the U.S. Those statements were published in Great Britain, only in the sense that the websites on which they appeared could be viewed by readers in Great Britain, and apparently were.

Berstein suspected (not illogically) that King chose to sue him for libel in Great Britain, rather than in the U.S., because under American law, King would have the burden of proving that Berstein's statements were false, and that he made them knowing they were false or with reckless disregard for the truth. Under British law, by contrast, Berstein would have the burden of proving that his statements were true. In other words, King would have a much easier time winning his case in Britain than in the U.S.

In order to pursue his case in a British court, King needed a court order authorizing him to serve his claim (what in the U.S. would be called a summons and complaint) on Berstein outside of Britain, namely, in the United States, because that is where Berstein lives and works. King applied for and got such an order from a British Master, and the order was affirmed by Mr. Justice Eady of the Queen's Bench Division (a trial court) (*ELR* 25:10:5).

Berstein appealed again, but without success. The UK Court of Appeal has "dismissed" his appeal, thereby affirming the order that allowed King to serve his claim on Berstein in New York, so the case may proceed in London. As a legal matter, the issue before the Court of Appeal was whether the British court was the "appropriate forum" for King's lawsuit against Berstein. Berstein, of course, argued that an American court was the appropriate forum, not a British court.

Berstein argued that Justice Eady had committed a legal error when he decided that the British court was appropriate. The mistake, Berstein said, was that Justice Eady had decided that since King's case would not "survive" under American law, the United States was *not* an appropriate forum. If, in fact, Justice Eady had based his decision on the fact that British law was more favorable for King than American law, that would have been an error. Favorable law is not an accepted reason for finding one forum, rather than another, to be "appropriate."

However, the Court of Appeal found that King had not asked Justice Eady to consider the advantages of British law over American law, and Justice Eady had not actually done so. Instead, the record showed that *Berstein* himself had argued that King decided to sue in Britain, rather than the U.S., because King's claim would not survive in an American court. And King responded by arguing that it was "entirely illogical" for Berstein to argue that an American court was a more appropriate forum for King's case precisely because King would get no relief there.

The Court of Appeal found, however, that Justice Eady had not relied on King's argument. He merely took "notice" of the "irony" of Berstein's argument. And then Justice Eady based his decision on relevant factors: under British law, a libel occurs in the UK if a libelous statement is posted on the Internet and is read in the UK; and King has a reputation in the UK that was allegedly injured by Berstein's statements.

King was represented by Desmond Browne QC and Matthew Nicklin, instructed by Morgan Lewis Bockius. Berstein was represented by James Price QC and Justin Rushbrooke, instructed by Forbes Anderson.

Lewis v. King, [2004] EWCA Civ1329, available at http://www.courtservice.gov.uk/judgmentsfiles/j2844/lewis-v-king.htm

RECENT CASES

Dismissal of lawsuit against Random House and Joe Klein, filed by library worker who alleged she was defamed by scene in novel "Primary Colors," is affirmed

Random House and Joe Klein have prevailed, again, in a defamation and negligence lawsuit filed against them by the Site Advisor for the adult literacy program of the New York Public Library in Harlem. In her lawsuit, library worker Daria Carter-Clark claims that Klein's best-selling novel *Primary Colors* depicted her in a way that injured her reputation.

Primary Colors was about the presidential primary campaign of a character named Governor Jack Stanton. Though the book was fiction, it was based on the 1991-92 presidential primary campaign of then Governor Bill Clinton, with Governor Stanton playing the fictional stand-in for real life's Governor Clinton.

Early in *Primary Colors*, Governor Stanton visits a Harlem library where he meets a librarian named "Ms. Baum." Soon thereafter, there is a scene in the novel where Governor Stanton and Ms. Baum come out of his hotel suite bedroom – he buttoning his open shirt, and she "arranging herself" while trying "to maintain the appearance of propriety."

In real life, Governor Clinton made a primary campaign appearance at a Harlem library where Carter-Clark worked as a site advisor. But in real life, Clinton and Carter-Clark "never had any intimate relationship." Nevertheless, in her defamation lawsuit, Carter-Clark alleged that "some people whom she knows who have read the book believe that [the book's librarian, Ms. Baum] is based on her," and their beliefs have "caused damage to her reputation." She also alleged that Random House was negligent "in not adequately investigating and determining" whether readers would recognize her as being the novel's "Ms. Baum."

A New York trial court dismissed Carter-Clark's lawsuit, in response to a defense motion for summary judgment (*ELR* 25:6:7). And that ruling has now been affirmed by the Appellate Division.

In a short and to-the-point opinion, the Appellate Division held that the "any purported similarities" between Carter-Clark and the librarian in the novel were "superficial," and thus the scene in the novel was not "of and concerning" Carter-Clark, as would have to be for her to succeed.

In addition, the Appellate Division ruled that because *Primary Colors* was fiction, Carter-Clark's negligent-investigation claim against Random House was properly dismissed, because "the publisher was not obligated to take any greater steps than it did" in editing Klein's manuscript.

Carter-Clark was represented by Sandra R. Schiff of the Law Offices of Regina L. Darby in New York. Random House and Klein were represented by Elizabeth A. McNamara of Davis Wright Tremaine in New York.

Carter-Clark v. Random House, Inc., 793 N.Y.S.2d 394, 2005 N.Y.App.Div. 4202 (App.Div. 2005)

Dismissal of false-light invasion of privacy lawsuit filed against Eminem by childhood classmate, complaining of lyrics of song "Brain Damage" in "Slim Shady LP" album, is affirmed by Michigan appellate court, because lyrics were substantially true

Marshall Mathers and DeAngelo Bailey went to school together when they were children. Later in life, Mathers became the hip hop and rap artist known to his fans as "Eminem." And DeAngelo Bailey became a character in the song titled "Brain Damage" on the Eminem album "Slim Shady LP." Referring to Bailey by name, Eminem's song describes him as a "fat kid" who – worse yet – shoved Eminem into lockers at school, assaulted him in the bathroom, banged his head against a urinal, soaked his clothes in blood, and choked his throat.

Bailey admitted that he had "picked on" Eminem in the fourth grade and did "bully type things" like pushing Eminem down. But Bailey was not pleased with the way in which he was depicted in "Brain Damages," so he sued Eminem in Michigan state court for false-light invasion of privacy.

Under Michigan law, in order to succeed with his "false-light invasion of privacy" claim, Bailey had to show that Eminem's lyrics were false, unreasonable and highly objectionable, and that they put Bailey in a "false position." A trial court agreed with Eminem that Bailey could not prove this, and thus the trial court granted Eminem's motion for summary disposition.

Bailey appealed, without success. In an "unpublished" Per Curiam opinion, the Michigan Court of Appeals has affirmed Eminem's victory. The appellate court noted that the offending lyrics were not "false" – as they had to be for Bailey to prevail – if they were

"substantially true." This principle – called the "substantial truth" doctrine – also defeats a claim if incorrect facts are "irrelevant to the sting of a story" or if "a reasonable listener could not interpret it as stating actual facts. . . ."

In this case, the appellate court determined that the story told by Eminem's song "contains a number of signals that would convey to a reasonable person that it should not be taken literally." What's more, the "sting of the song lyrics rests in the characterization of [Bailey] as a bully, rather than the specific factual statements about the bathroom assault."

This was fatal to Bailey's case, "[b]ecause the literal truth [that Bailey was a "bully," as he had admitted] yields the same effect as the sting of the song lyrics. . . ." Therefore, the appellate court concluded that under the "substantial truth doctrine," there were no material facts in dispute, and the trial court had properly granted Eminem's motion for summary disposition.

Bailey v. Mathers, 2005 WL 857242 (Mich.App. 2005)

Elizabeth Taylor wins dismissal of case seeking possession of Van Gogh painting she bought in 1963 Sotheby's auction, filed by heirs of painting's former owner from whom it was stolen by Nazis

Elizabeth Taylor owns a painting by Vincent Van Gogh titled "Vue de l'Asile et de la Chapelle de Saint-Remy." She bought the painting in 1963 at a Sotheby's auction in England. More than forty years later, in 2004, Taylor was sued by the heirs of a former owner of the painting. In their lawsuit, filed in federal court in Los Angeles, the heirs sought to recover possession of the painting, which is now worth "well over $75,000" (thus giving the court diversity jurisdiction between the heirs, all of whom are "foreign citizens" and Taylor who is a California resident).

The painting's former owner – a woman named Margarete Mauthner – bought the painting in Germany in 1914, and owned it until 1939 when she and her family fled Nazi Germany for South Africa where she died in 1947. The painting stayed in Germany where it was seized by the Nazis.

In their lawsuit, Mauthner's heirs complained that when Taylor bought the painting in 1963, she "ignored warning signs" about its "ownership history." This was so, they alleged, because even though Sotheby's said the painting had passed to German art dealer Paul Cassirer in 1928, Cassirer actually died in 1926. What's more, Sotheby's also referred bidders to two catalogues "raisonne" (books of "all the works" by a specific artist) which identified Mauthner as the owner of the painting in the 1920s and '30s and as a resident of Berlin.

The heirs' lawsuit asserted two types of legal theories: "traditional claims" under California state law, for conversion, replevin, constructive trust and restitution; and "non-traditional causes of action" arising, by implication, they argued, from the federal Holocaust Victims Redress Act and the Nazi War Crimes Disclosure Act, and from "findings and declarations of the California legislature."

Taylor responded the lawsuit with a motion to dismiss, which federal District Judge Gary Klausner has granted.

The judge dismissed the heirs' traditional state law claims, because they were barred by the statute of limitations. The California statute of limitations to recover stolen property begins to run when the purchaser takes possession of the property. Thus, in this case, Judge Klausner held that the statute began to run against Taylor when she bought the painting in 1963, so the deadline for filing the heirs' lawsuit was in 1966, some 38 years before it actually was filed.

The heirs argued that the statute of limitations did not begin to run until they discovered they had a claim against Taylor. The judge ruled that this was not the law in California, but even if it were, the heirs' suit would have been time-barred, because they should have discovered that Taylor bought the painting in 1963.

Judge Klausner also rejected the heirs' non-traditional causes of action. The federal statutes they relied on were intended "to encourage governments to aid in the restitution of property through currently existing laws," but the Congressional Record did "not indicate an intent to create a private cause of action." Likewise, no California court has ever "created a special claim for the conversion of property" out of the legislative findings and declarations relied on by the heirs.

The heirs were represented by John J. Byrne, Jr., of Byrne Goldenberg & Hamilton in Washington D.C., and by Stephen F. Moeller of Valensi Rose Magaram Morris & Murphy in Los Angeles. Taylor was represented by Steven Alan Reiss of Weil Gotshal & Manges in New York, and by Stephen F. Rohde and Greg Victoroff of Rohde & Victoroff in Los Angeles.

Adler v. Taylor, USDC, C.D.Cal., CV 04-8472-RGK (C.D.Cal. 2005), available at www.EntertainmentLawReporter/decisions/270110.pdf

Appeals court affirms dismissal of idea submission lawsuit filed against Fox and FremantleMedia by producer who claims he developed "American Idol"

Fox and FremantleMedia have prevailed, again, in an idea submission lawsuit filed against them by a sometime producer named Harry T. Keane, Jr., who claims he developed "American Idol." In a very short opinion, marked "not to be published and is not precedent," the Court of Appeals has affirmed a lower court order dismissing Keane's lawsuit with prejudice, for failing to allege facts that assert a legally recognized claim.

Keane claimed trademark protection for the series' title "American Idol." But the appeals court agreed with the lower court that the claim was "derailed by two fundamental, fallacious premises: namely, that his rights in an unregistered concept or idea are protectable and that being the first in time to use the phrase 'American Idol' entitles him to trademark protection." The appeals court explained that "Trademarks only protect fully developed products, not the ideas for the products."

The appeals court also rejected Keane's argument that he was entitled to proceed on his implied-in-fact contract claim. An "idea purveyor cannot recover unless he has obtained a promise to pay or the conduct of the offeree reflects an intent to pay for the proffered idea," the court ruled. In this case, Keane did not allege he did anything to indicate that the disclosure of his idea was contingent on payment; and thus the trial court "correctly concluded that [FremantleMedia's] acceptance of [his] idea cannot be taken as an implied acceptance."

Keane's trade secret claim failed, because he sent out unsolicited letters which detailed the specifics of his idea to several production companies, and he advertised his idea on the Internet. This meant that he failed to guard the secrecy of his idea, as is required by trade secret law.

Keane v. Fox Television Stations, Inc., 2005 WL 627973 (5th Cir. 2005)

Artemis Records did not breach distribution agreement with 24/7 Records when it stopped distributing recording of "The Ketchup Song," nor did Sony Music interfere with that agreement, because 24/7 did not have mechanical license for song, so Artemis' distribution of recording would have been copyright infringement

A famous rhyme teaches the importance of attention to seemingly small details. The rhyme is the one that begins, "For want of a nail, a shoe was lost," which led to the loss of a horseshoe, the horse, a battle, and finally the kingdom, "All for the want of a horseshoe nail."

A lawsuit filed by 24/7 Records against Artemis Records and Sony Music illustrates the wisdom of that rhyme. The missing nail in the case was 24/7's legal obligation to obtain a statutory mechanical license for its recording of "The Ketchup Song" by a group called "The Hines Girls," *before* the recording was released. 24/7 filed a "notice of intent to use" with the Copyright Office, as required for a statutory mechanical license. But it filed the notice nine days *after* the recording was released, by which time it was too late to be effective.

This small mistake came to light in a most unusual way. 24/7 has an agreement with Artemis Records pursuant to which Artemis distributes 24/7's recordings. 24/7's version of "The Ketchup Song" was a cover recording of an earlier version that was very popular outside the United States where it was distributed by Columbia Records, a Sony Music affiliate. Columbia then released its version in the United States as well, shortly before Artemis began distributing 24/7's version.

According to 24/7, Columbia was displeased that Artemis was distributing 24/7's competing version of the same song, and Columbia persuaded Artemis to stop distributing it. When Artemis informed 24/7 that it would no longer distribute the recording, Artemis said that it stopped because continued distribution of the recording might "lead to a trademark dispute with the owner of the Heinz Ketchup trademark."

Believing that Sony's objections – not Heinz's – were the real reason Artemis stopped distributing "The Ketchup Song," 24/7 sued Artemis for breaching the contract, and Sony for tortiously interfering with it. Artemis and Sony responded with a motion for summary judgment, which federal District Judge Miriam Cedarbaum has granted.

The distribution agreement between 24/7 and Artemis required 24/7 to obtain all necessary mechanical licenses from music publishers. 24/7 claimed that it did obtain a mechanical license for "The Ketchup Song," by taking advantage of the compulsory license provision of the Copyright Act by filing the necessary "notice of intent to use" with the Copyright Office.

But Judge Cedarbaum ruled that since 24/7 filed the notice *after* – even if only nine days after – its recording of "The Ketchup Song" was released to the public, it was filed too late, because section 115 of the Copyright Act required the notice to be filed "before distributing any phonorecords." Because the notice was not filed on time, 24/7 did not and could not obtain a statutory license. And though it then tried to get a negotiated license directly from the song's music publisher, it couldn't.

Since 24/7 didn't get the necessary mechanical license, it did not comply with all of its obligations under its agreement with Artemis, and thus Artemis did not breach the agreement by discontinuing its distribution of

"The Ketchup Song."

Finally, since Artemis didn't breach its distribution agreement with 24/7, Sony was not liable for interfering with that agreement.

24/7 Records was represented by Robert W. Cinque and James P. Cinque of Cinque & Cinque in New York City. Artemis Records and Sony Music were represented by Steven M. Hayes and Gregory A. Clarick of Manatt Phelps & Phillips in New York City.

24/7 Records, Inc. v. Sony Music Entertainment, Inc., 2004 WL 2093132 (S.D.N.Y. 2004)

USA Network defeats copyright infringement claim asserted by Pannonia Farms as purported owner of rights to writings of Sir Arthur Conan Doyle; federal judge finds that transaction by which Pannonia acquired rights was nullified by state court order confirming 14-year-old settlement of prior litigation; federal judge also awards USA its fees because even if Pannonia owned copyrights, it failed to show that USA's movie "Case of Evil" used anything more than public domain characters Sherlock Holmes and Dr. Watson

In the fall of 2002, USA Network telecast a made-for-TV movie titled "Case of Evil." The movie featured the "Sherlock Holmes" and "Dr. Watson" characters that were originally created by Sir Arthur Conan Doyle back in 1887. Holmes and Watson appeared in some 60 stories written by Doyle, and because they were published so long ago, at least 51 of those stories are now in the public domain in the United States. So USA may have been surprised when, in response to the movie's telecast, it was sued for infringement by a company that claimed to be the owner of the copyrights and trademarks in Sir Arthur Conan Doyle's works.

The company in question was a New York corporation named Pannonia Farms. According to Pannonia, it acquired its claimed rights in a transaction that was the sixth and final link in a chain of title that began more than 30 years ago when Doyle's heirs transferred their rights to Baskervilles Investments, Ltd.

As things turned out, Pannonia's rights were not as clear as it claimed. Indeed, many years earlier, a number of cases were litigated in New York state courts concerning who owned the rights to Doyle's works. Those cases were settled – 14 years before Pannonia sued USA – with a written agreement, confirmed by court order, which recited that the chain of title ended with the fifth link – pointedly omitting the sixth link on which Pannonia relied. What's more, to make things perfectly clear, the settlement and court order specifically stated that "no enforceable assignment . . . was made thereafter."

Relying on this 14-year-old court order, USA filed a motion for summary judgment, arguing that Pannonia simply doesn't own the copyrights on which its claims were based. Federal District Judge Naomi Reice Buchwald agreed and granted the motion. She also dismissed Pannonia's trademark claims, ruling that since Pannonia does not own the copyrights in the still-protected Sherlock Holmes stories, it "does not have any ownership . . . interest in any protectible mark [in the Sherlock Holmes and Dr. Watson characters]. . . ."

Finally, Judge Buchwald also granted USA's motion for attorneys' fees and sanctions (under Rule 11). The judge said that in the Second Circuit, attorneys' fees are awarded to a successful defendant in a copyright case, if it was "objectively unreasonable" for the plaintiff to have filed the case to begin with. Judge Buchwald concluded that "even assuming [Pannonia] had standing to assert a copyright claim," the claim's "total lack of legal merit" made it "objectively unreasonable."

In a portion of her opinion that will be of interest even to copyright lawyers who are not involved in the case, Judge Buchwald explained that Pannonia acknowledged that most Sherlock Holmes stories are in the public domain. What's more Pannonia did not claim (at first) that the allegedly infringing movie's "particular depiction of Holmes and Watson is drawn from any original elements of the [still-protected stories], such as story line or dialogue." As a result, the movie "is not derived from any material that [Pannonia's] claimed copyrights could potentially encompass," so Pannonia "could not have reasonably expected success on its copyright claim."

Pannonia thereafter made a motion for reconsideration, saying it wanted USA to produce the movie's script, so an expert could determine whether the movie might have copied original material from the still-protected stories. But Judge Buchwald denied the motion, saying Pannonia could have taped the movie when it was telecast, or could have purchased a DVD from Amazon for as little as $19 – things it should have done, indeed, had an obligation under Rule 11 to do – before filing its lawsuit.

Pannonia was represented by Bernard C. Dietz in Washington, D.C., and by John P. DeMaio in New York City. USA was represented by Philip R. Hoffman of Pryor Cashman Sherman & Flynn in New York City.

Pannonia Farms, Inc. v. USA Cable, 2004 WL 1276842, reconsideration denied, 2004 WL 1794504 (S.D.N.Y. 2004)

New York trial court refuses to dismiss lawsuit against Clear Channel Broadcasting filed by estate of woman who died while running around radio station's building to see Britney Spears impersonator

Clear Channel Broadcasting has been sued by the estate of a woman who died as a result, the estate claims, of a publicity-generating hoax staged by a Clear Channel radio station. A disc jockey told listeners that Britney Spears would be at the station for an on-air interview. As many as 300 people came to the station to see Spears, though in fact she was never there. Instead, the "stunt featured a taped interview with Spears" which had gaps into which the disc jockey interjected his voice so it sounded like a "live colloquy." An impersonator arrived at the station by limousine to add to the impression that Spears was really there.

When the broadcast was over, the limousine drove around the corner of the station's building to pick up the impersonator at a side door. The crowd ran around the corner of the building too, hoping to catch a glimpse of the person they thought was Spears. One member of the crowd – a woman named Susan Santodonato – fell as she ran around the building, struck her head, and died.

Clear Channel filed a motion for summary judgment, seeking dismissal of the estate's lawsuit without trial. But Judge Walter J. Relihan has denied Clear Channel's motion.

"There is no doubt that the falsity of the radio publicity created the occasion for the tragic death of Susan Santodonato," Judge Relihan said. "But this, standing alone," he added, "was not the cause of her fall and injury." What's more, the judge reasoned, "Merely furnishing the occasion for the happening of the harm is not sufficient to establish that the occasion, by itself, was the cause." This much of Judge Relihan's opinion seemed to support Clear Channel's position. But there was more.

The key question, the judge said, was "What duty, if any, did [Clear Channel] owe [Santodonato] under the circumstances created by the hoax?" These circumstances included the possibility, which Clear Channel "arguably might have anticipated," that "by creating the clear impression that Britney Spears would be escaping from a side door, the crowd would charge into the darkness, over unfamiliar ground, in an effort to catch a glimpse of their idol."

As a result, the judge said, a jury could find "that concocting a scenario involving such risks was unreasonable." If the jury did find that, "the law would permit the jury to fasten liability [on Clear Channel] for the foreseeable consequences of the stunt even though other intervening acts, of a less predictable nature, contributed to the tragedy," the judge ruled.

Judge Relihan therefore denied Clear Channel's motion, because "circumstantial evidence is available in this case which is sufficient to generate a question of fact as to whether [Clear Channel's] conduct was a substantial factor in causing [Santodonato] to join a pell-mell race in the dark and to fall and sustain an injury when uneven terrain was encountered."

Santodonato's estate was represented by Peter H. Bouman of Coughlin & Gerhart in Binghamton. Clear Channel was represented by David T. Arlington of Baker Botts in Austin, and by Catherine A. Gale of Gale & Dancks in Fayetteville.

Santodonato v. Clear Channel Broadcasting, 791 N.Y.S.2d 310, 2004 N.Y.Misc.LEXIS 2606 (Sup. 2004)

Video-game company Blizzard Entertainment owns registered "Blizzard" trademark only for use with games, so its use of "Blizzard" in connection with music CDs and downloads may infringe trademark rights of Blizzard Records which first used "Blizzard" for music, federal District Court rules

Convergence in the entertainment industry creates opportunities . . . and potential problems. One of these problems is dramatically illustrated by a trademark dispute between Blizzard Entertainment and Blizzard Records – two companies that, despite their similar names, are entirely unrelated to one another.

In the beginning, their businesses were unrelated too. Blizzard Entertainment, a subsidiary of Vivendi Universal Games, was in the computer game business. "Warcraft" and "Diablo" are just two of its successful products. Blizzard Records was in the music business. It began by releasing albums by the bands "Zillion" and "Chillin' Sun."

Eventually, Blizzard Entertainment expanded into the music business. It did so by selling music-only CDs and downloads of the soundtrack music from its games. When it did so, it used its "Blizzard Entertainment" name. This name was of course quite similar to Blizzard Records' name – a name that the record company was by then using quite extensively for the online sale of music recordings by more than 700 artists.

When Blizzard Entertainment demanded that Blizzard Records stop using the "Blizzard" name, Blizzard Records responded with a lawsuit, seeking declaratory and injunctive relief as well as damages and attorneys fees. The case raised an important threshold issue: which company owns the "Blizzard" trademark? Insofar as the two companies were concerned, that question primarily involved which had used the mark first. The debate over that question immediately took on

a "he-said, she-said" quality. In a motion for summary judgment filed by Blizzard Entertainment:

- Blizzard Entertainment argued that it used and registered the mark in 1994, before Blizzard Records used it.
- Blizzard Records responded that it began using the mark in 1986.
- Blizzard Entertainment argued that Blizzard Records abandoned the mark because it failed to use it after 1987.
- Blizzard Records replied that it had not abandoned the mark, because it always intended to resume using it, and in fact resumed using it in 1995 – and in any event, no later than 1999 – while Blizzard Entertainment didn't begin using the mark *for music* until 2000.

Federal District Judge John Elfvin agreed with Blizzard Entertainment that Blizzard Records had abandoned the mark in 1987. But the judge denied Blizzard Entertainment's summary judgment motion nonetheless, because he also agreed with two key points made by Blizzard Records.

Judge Elfvin found that Blizzard Records had resumed using the mark in the music business not later than 1999. And he agreed with Blizzard Records that the trademark rights that Blizzard Entertainment obtained with its 1994 registration were in connection with computer and video games only – not for music.

Since Blizzard Records began using the "Blizzard" mark for music not later than 1999, while Blizzard Entertainment didn't begin using the mark for music until 2000, Judge Elfvin denied Blizzard Entertainment's motion for summary judgment, on the infringement liability issue.

Blizzard Entertainment didn't come away from the motion completely empty-handed, though. Blizzard Records lawsuit included claims for damages and attorneys fees. To recover damages, Blizzard Records would have to show that Blizzard Entertainment had caused actual confusion or deception, had been unjustly enriched, and caused actual damages to Blizzard Records, or had willfully infringed Blizzard Records' trademark. To recover attorneys fees, Blizzard Records would have to show that Blizzard Entertainment had acted in bad faith. Judge Elfvin found there was no evidence that Blizzard Entertainment had done any of these things. So the judge did dismiss the claims for damages and fees.

Blizzard Records was represented by Mitchell J. Banas, Jr., of Jaeckle Fleischmann & Mugel in Buffalo. Blizzard Entertainment was represented by Ramsey M. Al-Salam of Perkins Coie in Seattle, and by Robert J. Lane, Jr., of Hodgson Russ in Buffalo.

Mele v. Davidson & Associates, Inc., 2004 WL 2285111 (W.D.N.Y. 2004)

"March Madness" is protectable trademark that was infringed by operator of website whose domain name "marchmadness.com" was registered in bad faith, federal appeals court affirms

The NCAA and the Illinois High School Association have successfully defended the victory they won in a federal trial court in a trademark and cybersquatting lawsuit against Netfire Inc., the one-time operator of the website "marchmadness.com." (*ELR* 26:4:18) The two athletic associations own a company called the "March Madness Athletic Association," which in turn owns the "March Madness" trademark.

In a Per Curiam opinion marked "is not precedent," the Court of Appeals has held – in technical language that tracks the standard of review in cases like this – that it found "no clear error" in the trial court's conclusion that Netfire had infringed the "March Madness" trademark. It also found "no clear error" in the trial court's conclusion that Netfire's use of marchmadness.com was likely to cause confusion.

The appeals court also found "no error" in the trial court's conclusion that Netfire had violated the Anti-Cybersquatting Consumer Protection Act, because the "marchmadness.com" domain name is identical or confusingly similar to the "March Madness" trademark, and because Netfire used the domain name "with the bad faith intent to profit" from it.

Netfire didn't do as badly as it might have, though. The trial court refused to award the March Madness Athletic Association any damages. And the appeals court affirmed that ruling too. The appeals court held that the Anti-Cybersquatting Act does not make damages available for domain registrations or use that occurred before the Act became law in 1999, by which time Netfire was no longer using marchmadness.com.

The appeals court also affirmed the trial court's decision not to award attorneys' fees to the March Madness Athletic Association.

The March Madness Athletic Association was represented by Scott Marshall Kline of Andrews & Kurth in Dallas, and by Douglas N. Masters of Loeb & Loeb in Chicago. Netfire was represented by R. Brent Cooper of Cooper & Scully in Dallas.

March Madness Athletic Association v. Netfire Inc., 120 Fed.Appx. 540, 2005 U.S.App.LEXIS 1475 (5th Cir. 2005)

Multimedia's victory in contract lawsuit filed by talk-show host Phil Donahue, objecting to assignment of old show tapes to Universal, is affirmed by South Carolina appeals court

In 1982, a subsidiary of Multimedia, Inc., entered into a contract with Phil Donahue for him to act as master of ceremonies for the "Donahue" show. The contract gave the subsidiary the right to sell and assign the contract during its term. However, Donahue had the option to meet the price, terms and conditions of any purchase offer. The contract was amended four times, primarily to adjust Donahue's compensation and to extend its term; and the final amendment provided that any discussions about continuing the program had to occur before May 31st, 1996. Donahue decided not to renew the contract.

In 1995, Gannet purchased the stock of Multimedia. In 1996, Universal purchased the assets of the subsidiary, which included video tapes of already produced episodes of the "Donahue" program. Donahue challenged both of these actions, contending they violated his rights under the contract. In his lawsuit, Donahue sought the rights to the "Donahue" show tapes. But a South Carolina trial court disagreed with his arguments, and granted Multimedia's motion for summary judgment.

On appeal, Donahue argued that Gannett's purchase of Multimedia's stock violated the contract because the transaction constituted an unauthorized assignment of the contract. However, in an opinion by Judge Bruce Williams, the South Carolina Court of Appeals ruled that the transfer of the stock of a corporation is not an assignment of a contract. Moreover, Judge Williams noted that Gannett did not purchase the stock of the subsidiary which was the actual party to Donahue's contract, but instead purchased the stock of Multimedia. As a result, Judge Williams concluded that the transfer of the stock of the parent of a contracting corporation did not constitute an assignment of its subsidiary's contract.

Second, Donahue argued that Universal's purchase of the assets of the subsidiary violated his contract, because it ignored his right of first refusal – a right which Donahue argued survived the contract's termination date. Judge Williams rejected that argument, however, because the first refusal section of the contract specifically applied only during the term of the contract, and that term expired. The fact the parties expressly agreed that other provisions would last in perpetuity created no ambiguity about provisions – like the first refusal section – that were expressly limited to the contract's term.

Finally, Donahue argued that the contract was a personal service contract, and thus could not be assigned for that reason. Judge Williams concluded both parties contemplated the contract's possible assignment when they entered into it, and the contract expressly granted the subsidiary the right to assign it, subject only to Donahue's option to meet any offer.

As a result, the Court of Appeals affirmed the dismissal of Donahue's lawsuit.

Multimedia, Gannett and Universal were represented by Donald A. Harper in Greenville. Donahue was represented by Steven E. Farrar in Greenville. *(AR)*

Donahue v. Multimedia, Inc., 608 S.E.2d 162, 2005 S.C.App.LEXIS 4 (S.C.App. 2005)

Court order that required Florida High School Athletic Association to allow student to play baseball for another year is reversed on appeal

Jason Marazzito used to play varsity baseball for his high school, All Saints Academy, in Polk County, Florida. According to the rules of the Florida High School Athletic Association, Marazzito's eligibility expired, so he doesn't play baseball for All Saints any more. For a while, though, it looked as though he was going to be able to play for one more year (and in fact, may have).

A Florida trial court decided that the Association should have granted Marazzito's request for a "hardship waiver," and thus the trial court ordered the Association to let him play another year. On appeal, however, the injunction has been reversed.

In a short opinion by Judge Morris Silberman, the Florida Court of Appeal has held that the evidence did "not support the trial court's conclusion that the [Association] improperly denied [Marazzito's] waiver request or that [its] internal procedures were inadequate to address the request for a hardship waiver."

Moreover, in Florida, the law permits courts to intervene in the internal affairs of organizations like the Florida High School Athletic Association "only under exceptional circumstances." In this case, though, the trial court did not find that the Association acted "maliciously or in bad faith," or that the Association's denial of Marazzito's waiver request adversely affected any of his "substantial property, contract or other economic rights." This meant there weren't any exceptional circumstances. And that is why the Court of Appeal reversed the injunction.

The Association was represented by Leonard E. Ireland, Jr., of Clayton-Johnston in Gainesville. No lawyer appeared on behalf of Marazzito (thus suggesting that he may have played a final year, after all, before the injunction was reversed by the appellate court).

Florida High School Athletic Association v. Marazzito, 891 So.2d 653, 2005 Fla.App.LEXIS 867 (Fla.App. 2005)

Previously Reported:

Supreme Court denies cert or remands. The United States Supreme Court has denied petitions for certiorari in two previously reported cases. In *Fogerty v. MGM Group Holdings Corp.*, 125 S.Ct. 1064, 2005 U.S.LEXIS 796 (2005), the Court denied a petition filed by songwriters Frank Fogerty and Nathan Crow in the case in which the Court of Appeals ruled that the theme song for the James Bond movie "The World Is Not Enough" was not copied from "This Game We Play," but that the songwriters' infringement claim was not objectively unreasonable so attorneys fees should not have been awarded to MGM (*ELR* 26:7:6). In *Rossi v. Motion Picture Association of America*, 125 S.Ct. 1977, 2005 U.S.LEXIS 3770 (2005), the Court denied a petition filed by Michael J. Rossi, the operator of the InternetMovies.com website, in the case in which a federal Court of Appeals affirmed a summary judgment in favor of Motion Picture Association of America, thereby bringing an end to the tort case filed by Rossi complaining that his site was shut down pursuant to the MPAA request under the Digital Millennium Copyright Act (*ELR* 26:10:15). In *Michigan High School Athletic Association v. Communities for Equity*, 125 S.Ct. 1973, 2005 U.S.LEXIS 3714 (2005), the Court remanded the case to the Court of Appeals for further consideration in light of a recent Supreme Court decision that prevents lawsuits being brought under one law, when another federal law provides a remedy. The Court of Appeals had held that the Athletic Association violated the Equal Protection rights of female athletes by scheduling girls' sports to be played during non-traditional or inferior seasons. The Athletic Association said the lawsuit should have been brought under Title IX, an issue the Court of Appeals did not address. (*ELR* 26:7:18)

Ruling against Vinnie Cusano affirmed in KISS "Creatures of the Night" royalties case. The Court of Appeals has affirmed a District Court order that dismissed a lawsuit filed by former KISS songwriter Vinnie Cusano in which he sought mechanical royalties for three songs he co-wrote for KISS's "Creatures of the Night" album (*ELR* 26:3:14). The District Court found that Cusano had sold all of his rights in those songs, except his writer's share of performance royalties. In a Summary Order (of less than one page), the Court of Appeals affirmed "For substantially the same reasons set forth in the district court's decision and order. . . ." *Cusano v. Horipro Entertainment Group*, 126 Fed.Appx. 521, 2005 U.S.App.LEXIS 7158 (2nd Cir. 2005)

Opinions published. Opinions in these previously reported cases have now been published: *Leto v. RCA Corp.*, 355 F.Supp.2d 921, 2004 U.S.Dist.LEXIS 21614 (N.D.Ill. 2004) (*ELR* 26:4:8); *Yoo v. Robi*, 24 Cal.Rptr.3d 740, 2005 Cal.App.LEXIS 233 (Cal.App. 2005) (*ELR* 26:10:10).

DEPARTMENTS

Entertainment Lawyer News:

Edwin Komen joins Sheppard Mullin Richter & Hampton in Washington, D.C. Edwin Komen has joined the Washington, D.C., office of Sheppard Mullin Richter & Hampton as a partner in its Entertainment & Media Group and Intellectual Property Practice Group. Komen, most recently with Arent Fox in Washington, D.C., specializes in all aspects of copyright, trademark and unfair competition law, with a particular emphasis on practice before the United States Copyright Office. He represents motion picture companies and other entertainment clients in transactional issues involving rights clearance and acquisition. Komen's practice encompasses all issues surrounding copyrights, trademarks and related matters including the right of publicity, right of privacy, defamation and domain name registration. He often assists in preparing, prosecuting and securing copyright, trademark and service mark registrations for clients, and has extensive knowledge of the rules and regulations governing practice and procedure before the United States Copyright Office and the Patent and Trademark Office's trademark division. In addition to his work for motion picture and television producers such as New Line Cinema, Universal Studios, Focus Features, and Freemarket Films, Komen has represented clients in advertising, interactive software, online services, live theatrical productions, music publishing, record labels, architecture, photography, sculptural works, toys, apparel, textiles, carpets, industrial tools and products, automotive products, and virtually any other product or service whose value substantially depends on copyright or trademark protection. Komen serves on the editorial board of both *Copyright World* and the *Journal of the Copyright Society of the U.S.A.* He authored the "U.S. Anti-Piracy" section of the *Fact Book* published by the American Film Marketing Association. Komen is currently on the Advisory Board of the Montana State University Film School, where he also lectures on film law. He earned his law degree from George Washington Law School in 1976 and graduated, cum laude, from University of Southern California, with a BA in 1971. He received his undergraduate degree at USC's Film School and was a professional filmmaker prior to attending law school. Upon graduation from film school, Komen was in the Peace Corps stationed in Micronesia.

Greenberg Traurig opens Las Vegas office via merger with Quirk & Tratos. Greenberg Traurig has opened an office in Las Vegas incorporating Quirk & Tratos, Nevada's largest Intellectual Property and Entertainment law firm. Mark Tratos, a co-founder of Quirk & Tratos, is the Managing Shareholder of Greenberg Traurig's Las Vegas office. In addition to extensive experience in prosecuting, procuring and protecting the full range of intellectual property assets for clients, Quirk & Tratos has played an important role in helping to shape intellectual property law, both by drafting legislation and trying cases. The firm is one of the few with a national reputation in the area of art law. This experience runs the gamut from examining and analyzing the provenance of world-class impressionists and post-impressionist paintings to structuring and negotiating major traveling art exhibitions as well as agreements for gallery consignments, museum acquisitions, architectural renderings, photographic licensing, and more. Clients in this area include major visual artists and collectors, art institutions, galleries and museums.

Lucia E. Coyoca rejoins Mitchell Silberberg & Knupp in Los Angeles. Lucia Coyoca has rejoined Mitchell Silberberg & Knupp as a partner in the firm's litigation department. She specializes in entertainment industry litigation, including profit participation disputes, vertical integration claims, trademark and copyright infringement, disputes involving film financing transactions, and other claims arising out of the production and distribution of motion pictures and television programming. She also has expertise in insurance and other types of complex business litigation. Coyoca, who first joined the firm in 1988 and became a partner in 1994, will Chair the firm's Diversity Initiative.

M. Keely Tillery joins Pepper Hamilton in Philadelphia. Pepper Hamilton has announced that M. Kelly Tillery, a national authority in intellectual property and anti-counterfeiting protection, has joined the firm as a partner in the firm's Intellectual Property Practice Group in Philadelphia. Tillery has specialized in obtaining individual, national and facility injunctions to protect the trademarks and copyrights of performing artists as well as major software, novelty, jewelry and designer manufacturers from around the world. He also has extensive experience in commercial litigation. Tillery joins Pepper from Leonard Tillery & Sciolla in

Philadelphia, a firm he co-founded in 1982, and in which he was a senior partner and chair of its Intellectual Property and E-Commerce Group. Tillery also is an arbitrator of domain name and other intellectual property disputes for the National Arbitration Forum. He has written numerous articles and frequently lectures on issues involving the protection of intellectual property and electronic commerce. Tillery is a member of the intellectual property law committees of the Pennsylvania and Philadelphia bar associations, and a member of the American Bar Association's Section on Patent, Trademark and Copyright Law. He is a member of the Philadelphia Intellectual Property Law Association, and a proctor in admiralty with the Maritime Law Association. He is a member of the Copyright Society of the U.S.A., Philadelphia Chapter, and a past member of the board of directors of the International Anti-Counterfeiting Coalition. He is a senior adviser to the Philadelphia Volunteer Lawyers for the Arts. Active in civic affairs, he was a member of the Rendell for Governor finance committee in 2001-03, and he has been involved in a number of capacities with other political campaigns and administrations. He is a charter member of the Carper Senate Roundtable. Tillery received his undergraduate degree with high honors from Swarthmore College in 1976, and his law degree from the University of Pennsylvania Law School in 1979. He is a member of the Pennsylvania bar.

Douglas M. Isenberg opens law firm in Atlanta. Douglas M. Isenberg has opened his own law firm known as "The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC" – shortened, simply, as "The GigaLaw Firm." He specializes in intellectual property, technology and Internet law, with an emphasis on: domain name disputes and advice; copyright protection and infringement; trademark clearance, prosecution, licensing and advice; content licensing; software licensing and other agreements; technology agreements; privacy on the Internet; CAN-SPAM Act and other e-mail legal issues; and website legal audits. He has recently been appointed a domain name panelist by the World Intellectual Property Organization (WIPO). Isenberg is the founder of GigaLaw.com; the author of *The GigaLaw Guide to Internet Law* (published by Random House); an adjunct professor of computer and cyberspace law at Georgia State University College of Law; Chair-elect of the Intellectual Property Law Section of State Bar of Georgia; and a frequent commentator (including on-air on CNN) on technology law.

Rich Karcher appointed Director of Sports Law Center at Florida Coastal School of Law. Rick Karcher, an Assistant Professor of Law at Florida Coastal School of Law, has been appointed Director of the school's Center for Law and Sports. Karcher developed the program in conjunction with Dean Peter Goplerud and Professor Nancy Hogshead-Makar, a triple Olympic gold medalist. The three professors have extensive sports law backgrounds and will instruct the courses. Sports industry practitioners will also teach courses periodically. Students who have completed one year of law school can apply to the Sports Law Certificate Program, which will officially begin in fall 2005. Courses offered in the curriculum will provide students with substantial legal knowledge regarding how the sports industry functions under state and federal laws, and will give students practical legal skills necessary to work in the field. Karcher, who joined Florida Coastal in 2004, received his J.D. degree from Michigan State University College of Law, where he was Managing Editor of its Law Review and Editor-in-Chief of the Entertainment and Sports Law Journal. He was a partner at Honigman Miller Schwartz and Cohn in Detroit, where he practiced corporate law and represented professional athletes. Prior to law school, he played three seasons as a first baseman in the Atlanta Braves organization.

In the Law Reviews:

SOUTHWESTERN UNIVERSITY LAW REVIEW has published Volume 34, Number 2 as a symposium issue entitled Sony v. Universal: The Betamax Decision Twenty Years Hence presented by the Donald E. Biederman Entertainment and Media Law Institute in association with the Los Angeles Copyright Society with the following articles:

Foreword by David Kohler, 34 Southwestern University Law Review 151 (2004)

Rewind: Looking Back at the Impending Revolution, 34 Southwestern University Law Review 161 (2004)

Play: The Revolution Arrives, 34 Southwestern University Law Review 179 (2004)

Fast Forward: A New World Order?, 34 Southwestern University Law Review 203 (2004)

On the Sony Side of the Street by David Nimmer, 34 Southwestern University Law Review 205 (2004)

In Memoriam: Axel Aus Der Muhlen, 34 Southwestern University Law Review 231 (2004)

Modernizing Sony-Betamax for the Digital Age: The Ninth Circuit Enables P2P by Joshua S. Wattles, 34 Southwestern University Law Review 233 (2004)

Tuning the Dial on Internet Radio: The DPRA, the

DMCA & the General Public Performance Right in Sound Recordings by Howard Cockrill, 9 Intellectual Property Law Bulletin 103 (2005) (published by University of San Francisco School of Law)

Rewinding Sony: Can the Supreme Court and Big Media Grok P2P? by Dan Pontes, 9 Intellectual Property Law Bulletin 159 (published by University of San Francisco School of Law)

COMM/ENT: HASTINGS COMMUNICATIONS AND ENTERTAINMENT LAW JOURNAL has published Volume 27, Number 3 with the following articles:

Leveling the IP Playing Field: Conditional Waiver Theory and the Intellectual Property Protection Restoration Act by Jason Karasik, 27/3 Comm/Ent: Hastings Communications and Entertainment Law Journal (2005)

Undermining the Initial Allocation of Rights: Copyright versus Contract and the Burden of Proof by Thomas A. Mitchell, 27/3 Comm/Ent: Hastings Communications and Entertainment Law Journal (2005)

The War Against the Illegal Antiquities Trade: Rules of Engagement for Source Nations by Jason McElroy, 27/3 Comm/Ent: Hastings Communications and Entertainment Law Journal (2005)

On a ClearPlay, You Can See Whatever: Copyright and Trademark Issues Arising from Unauthorized Film Editing by Gail H. Cline, 27/3 Comm/Ent: Hastings Communications and Entertainment Law Journal (2005)

Into the Grey: The Unclear Laws of Digital Sampling by Bryan Bergman, 27/3 Comm/Ent: Hastings Communications and Entertainment Law Journal (2005)

Will Mechanicals Break the Digital Machine?: Determining a Fair Mechanical Royalty Rate for Permanent Digital Phonographic Downloads by David Kostiner, 27/3 Comm/Ent: Hastings Communications and Entertainment Law Journal (2005)

FORDHAM INTELLECTUAL PROPERTY, MEDIA & ENTERTAINMENT LAW JOURNAL has published Volume 15, Number 2 as a symposium issue with the following articles:

Panel I: Defamation in Sports by Andrew Sims, Gerald Eskenazi, Stephen Heninger, Gary Huckaby, and Gary Belsky, 15 Fordham Intellectual Property, Media & Entertainment Law Journal 335 (2005)

Panel II: Maurice Clarett's Challenge by Jay Moyer, Howard Ganz, David Feher, Gary Roberts and David Cornwell, 15 Fordham Intellectual Property, Media & Entertainment Law Journal 391 (2005)

Panel III: Trademark and Publicity Rights of Athletes by Tom Ferber, Edward Kelman, Bruce Meyer, Dennis Niermann and Mike Principe, 15 Fordham Intellectual Property, Media & Entertainment Law Journal 449 (2005)

Post No Bills: Can the NBA Prohibit Its Players from Wearing Tattoo Advertisements? by John Vukelj, 15 Fordham Intellectual Property, Media & Entertainment Law Journal 507 (2005)

Rolling the Dice: Are Online Gambling Advertisers "Aiding and Abetting" Criminal Activity or Exercising First Amendment-Protected Commercial Speech? by Megan F. Frese, 15 Fordham Intellectual Property, Media & Entertainment Law Journal 547 (2005)

VANDERBILT JOURNAL OF ENTERTAINMENT LAW & PRACTICE has published Volume 7, Number 1 with the following articles:

The Music Industry's Failed Attempts to Influence File Sharing Norms by Steven A. Hetcher, 7 Vanderbilt Journal of Entertainment Law & Practice 10 (2004)

United States' Trade Policy and the Exportation of United States' Culture by Beverly I. Moran, 7 Vanderbilt Journal of Entertainment Law & Practice 41 (2004)

Regulation through Intimidation: Congressional Hearings and Political Pressure on America's Entertainment Media by Kenneth A. Paulson, 7 Vanderbilt Journal of Entertainment Law & Practice 61 (2004)

The Curb Center at Vanderbilt: Panel Discussion on Federal Regulation and the Cultural Landscape, Office of the USTR, and Popular Media, 7 Vanderbilt Journal of Entertainment Law & Practice 90 (2004)

A Whole Different Ballgame: Ticket Scalping Legislation and Behavorial Economics? by Jasmin Yang, 7 Vanderbilt Journal of Entertainment Law and Practice 110 (2004)

Typosquatters, the Tactical Fight Being Waged by Corporations, and Congress' Attempt to Fight Back in the Criminal Arena: U.S. v. Zuccarini by David A. Gusewelle, 7 Vanderbilt Journal of Entertainment Law & Practice 146 (2004)

A Traitor in Our Midst: Is it Your TiVo? by Teresa W. Chan, 7 Vanderbilt Journal of Entertainment Law & Practice 166 (2004)

THE JOURNAL OF THE COPYRIGHT SOCIETY OF THE USA, 352 Seventh Avenue, Ste 307, New York, NY 10001, has published Volume 52, Number 2 with the following articles:

Repeat Infringers by David Nimmer, 52 Journal of the Copyright Society of the USA 167 (2005) (for address, see above)

Potential Problems with Commonwealth Copyright for Posthumous Poets and Other Dead Authors by Ken Cavalier, 52 Journal of the Copyright Society of the USA 225 (2005) (for address, see above)

Peer-to-Peer Networking and Digital Rights Management: How Market Tools Can Solve Copyright Problems by Michael A. Einhorn, 52 Journal of the Copyright Society of the USA 239 (2005) (for address, see above)

THE BERKELEY TECHNOLOGY LAW JOURNAL has published its Annual Review with the following Copyright articles:

Morris Communications v. PGA Tour: Battle Over the Rights to Real-Time Sports Scores by Andrea Freeman, 20 Berkeley Technology Law Journal 3 (2005)

Database Protection in Theory and Practice: Three Recent Cases by Charles C. Huse, 20 Berkeley Technology Law Journal 23 (2005)

Defining the Contours of the Digital Millennium Copyright Act: The Growing Body of Case Law Surround the DMCA by Diane M. Barker, 20 Berkeley Technology Law Journal 47 (2005)

ENTERTAINMENT LAW REVIEW, published by Sweet and Maxwell, www.sweetandmaxwell.co.uk, has issued Volume 16, Issue 4 with the following articles:

Legal and Commercial Aspects of Monetising Intellectual Property Across Wireless Networks by Nayeem Syed, 16/4 Entertainment Law Review 63 (2005) (for website, see above)

Reflecting the Sound of Ring Tones and Copyright by Professor Arnold Vahrenwald, 16/4 Entertainment Law Review 67 (2005) (for website, see above)

The Levitation of Copyright: An Economic View of Digital Home Copying, Levies and DRM by Kamiel J. Koelman, 16/4 Entertainment Law Review 75 (2005) (for website, see above)

Taming the Beast of File-Sharing-Legal and Technological Solutions to the Problem of Copyright Infringement over the Internet: Part II by Colin Nasir, 16/4 Entertainment Law Review 82 (2005) (for website, see above)

Musical Works: Out with the Old and in with the New? by Victoria Jones, 16/4 Entertainment Law Review 89 (2005) (for website, see above)

Looking for Inspiration in Homestyle Magazines-IPC Media v. Highbury Leisure Publishing Ltd by Tanya Theobald, 16/4 Entertainment Law Review 92 (2005) (for website, see above)

Defining "Control" of Motion Picture and Television Companies under French Law by Winston Maxwell and Julie Massaloux, 16/4 Entertainment Law Review 94 (2005) (for website, see above)

Comparative Advertising and Trade Mark Infringement-The O2 Case-Bubble and Strife by James Hennigan, 16/4 Entertainment Law Review 95 (2005) (for website, see above)

THE EUROPEAN INTELLECTUAL PROPERTY REVIEW, published by Sweet and Maxwell, www.sweetandmaxwell.co.uk, has issues Volume 27, Issue 6 with the following articles:

Technology as an Imperative for Regulating Copyright: From the Public Exploitation to the Private Use of the Work by Severine Dusollier, 27/6 European Intellectual Property Review 201 (2005) (for website, see above)

Authorship, Ownership of Right and Works Created by Employees: Which Law Applies? by Paul Torremans, 27/6 European Intellectual Property Review 220 (2005) (for website, see above)

THE JOURNAL OF LEGAL ASPECTS OF SPORT, published by the National Sports Law Institute, Marquette University School of Law, has issued Volume 15, Number 1 as a Symposium entitled Legal Issues and Reform in Intercollegiate Athletics with the following articles:

Free Expression versus Prohibited Speech: The First Amendment and College Student Sports Fans by Louis M. Benedict and John D. McMillen, 15 Journal of Legal Aspects of Sports (2005) (for publisher, see above)

Major Violations and NCAA "Powerhouse" Football Programs: What are the Odds of Being Charged? by K. Alexa Otto, 15 Journal of Legal Aspects of Sport (2005) (for publisher, see above)

Title IX, Sexual Harassment, and Policies at NCAA Division 1A Athletics Departments by Barbara Osborne

and Clare Duffy, 15 Journal of Legal Aspects of Sport (2005) (for publisher, see above)

Gambling and Collegiate Sport by John Grady and Annie Clement, 15 Journal of Legal Aspects of Sport (2005) (for publisher, see above)

The Case for a Minimum 2.0 Standard for NCAA Division I Athletes by Ellen J. Staurowsky and B. David Ridpath, 15 Journal of Legal Aspects of Sport (2005) (for publisher, see above)

Camp Randall Memorial Stadium Case Study: University of Wisconsin-October 30, 1993 by Gil Fried and Robert Metchick, 15 Journal of Legal Aspects of Sport (2005) (for publisher, see above)

Book Review: Title IX by Rebecca J. Mowrey, 15 Journal of Legal Aspects of Sport (2005) (for publisher, see above)

Stay Out for Three Years After High School or Play In Canada-And for Good Reason: An Antitrust Look at Clarett v. National Football League by Peter Altman, 70 Brooklyn Law Review 569 (2004/2005)

Beyond Fair Use: Expanding Copyright Misuse to Protect Digital Free Speech by JuNelle Harris, 13 Texas Intellectual Property Law Journal 83 (2004)

THE FEDERAL COMMUNICATIONS LAW JOURNAL, published by Indiana University School of Law-Bloomington, has published Volume 57, Number 2 with the following articles:

Communications Policy for the Next Four Years by Senator Conrad Burns, 57 Federal Communications Law Journal 167 (2005) (for publisher, see above)

The 2005 Communications Act of Unintended Consequences by Daniel Brenner, 57 Federal Communications Law Journal 175 (2005) (for publisher, see above)

Convergence and Competition - At Last by Antoinette Cook Bush, John Beahn and Mick Tuesley, 57 Federal Communications Law Journal 183 (2005) (for publisher, see above)

Universal Service: Problems, Solutions, and Responsive Policies by Allen S. Hammond IV, 57 Federal Communications Law Journal 187 (2005) (for publisher, see above)

Time for Change on Media Cross-Ownership Regulation by John F. Sturm, 57 Federal Communications Law Journal 201 (2005) (for publisher, see above)

The Broadcast Flag: It's Not Just TV by Wendy Seltzer, 57 Federal Communications Law Journal 209 (2005) (for publisher, see above)

Four More Years. . .of the Status Quo? How Simple Principles Can Lead Us Out of the Regulatory Wilderness by Adam Thierer, 57 Federal Communications Law Journal 215 (2005) (for publisher, see above)

Beef with Big Media: How Government Protects Big Media-and Shuts Out Upstarts Like Me by Ted Turner, 57 Federal Communications Law Journal 223 (2005) (for publisher, see above)

Jazz Has Got Copyright Law and That Ain't Good, 118 Harvard Law Review 1940 (2005)

Hear No Evil, See No Evil, Spread No Evil: Creating a Unified Legislative Approach to Internet Service Provider Immunity by Sarah Duran, 12 University of Baltimore Intellectual Property Law Journal 115 (2004)

Securing Trademark Protection in a Global Economy-The United States' Accession to the Madrid Protocol by Thies Bosling, 12 University of Baltimore Intellectual Property Law Journal 137 (2004)

Wills, Trusts, Schadenfreude, and the Wild, Wacky Right of Publicity: Exploring the Enforceability of Dead-Hand Restrictions by William A. Drennan, 58 Arkansas Law Review 43 (2005)

"Non-Conventional" Musical Analysis and "Disguised Infringement": Clever Musical Tricks to Divide the Wealth of Tin Pan Alley by Mark Avsec, 52 Cleveland State Law Review 339 (2004-5)

The Artist's Resale Right Will Be Implemented in the UK, the Only Thing Left to Decide is How by Michele Boote, 149 Copyright World 10 (2005) (www.iponline.com)

Casting a Wider Net: Addressing the Piracy Problem in Southeast Asia, 28 Boston College International and Comparative Law Review 149 (2005)

Extraordinary Ability and the English Premier League: The Immigration, Adjudication and Place of Alien Athletes in American and English Society by Kevin K. McCormick, 39 Valparaiso University Law Review 541 (2004)

The Run for the Roses Meets the First Amendment: An Examination of Desormeaux v. Kentucky Racing Commission and the Constitutionality of Prohibitions on Jockey Advertising by William Barnette, 52 Cleveland

State Law Review 371 (2004-5)

Barking Up the Wrong Channel: An Analysis of Communication Law Problems Through the Lens of Media Concentration Rules by Erica Hepp, 85 Boston University Law Review (2005)

Porn Impacts the Spending Power? The Children's Internet Protection Act and Dole's Need for Practical "Bite" by Curtis Summers, 53 The University of Kansas Law Review 509 (2005)

Liberty Versus Property? Cracks in the Foundations of Copyright Law by Richard A. Epstein, 42 San Diego Law Review 1 (2005)

Is Copyright Property? by Adam Mossoff, 42 San Diego Law Review 29 (2005)

IP as Conflict Resolution: A Micro View of IP by Solveig Singleton, 42 San Diego Law Review 45 (2005)

Digital Rights Management in the United States and Europe by Stefan Bechtold, 52 The American Journal of Comparative Law 323 (2004) (www.comparativelaw.org/journal.html)

Enhancing Statutory Damages in Copyright Infringement Actions by Frederick F. Mumm, 22/5 The Computer & Internet Lawyer 5 (2005) (edited by Arnold & Porter and published by Aspen Publishers)

Copyright Registration and Damages for Infringement of Photographs by Mary M. Luria and Ashima A. Dayal, 17/4 Intellectual Property & Technology Law Journal 7 (2005) (edited by Weil, Gotshal & Manges LLP and published by Aspen Publishers)

Overcoming the Extraterritorial Bar to Bringing Copyright Actions: On Pleading Copyright Infringement to Protect Copyrighted Works from the Defendant That Ships Overseas for Distribution Abroad, 17/5 Intellectual Property & Technology Law Journal 1 (2005) (for publisher, see above)

Avoiding the Legal Pitfalls of Text Messaging, Video Games, Dating, and Gambling on Wireless Devices, 17/5 Intellectual Property & Technology Law Journal 10 (2005) (for publisher, see above)

Don't Dare Associate "Playboy" with Porn: Playboy Enterprises, Inc. v. Netscape Communications Corp. by Elias Schilowitz, Boston University Journal of Science & Technology Law 389 (2005)

Use, Liability, and the Structure of Trademark Law by Uli Widmaier, 33 Hofstra Law Review (2004)

Educational Programs Calendar:

Understanding Basic Copyright Law 2005, July 18, PLI California Center, San Francisco and July 25, PLI New York Center, New York City. Presented by the Practising Law Institute, the program is offered in conjunction with Understanding Basic Trademark Law 2005 described below. The program provides an Overview of Basic Principles of Copyright Law and Copyright Office Practice; Enforcing Copyrights; Ethics; Notable New Cases in Copyright Litigation; and Web and Streaming: Music on the Internet. For additional information, call (800) 260-4PLI or online at www.pli.edu.

Understanding Basic Trademark Law 2005, July 19, PLI California Center, San Francisco and July 26, PLI New York Center, New York City. The program is presented in conjunction with Understanding Basic Copyright Law 2005 described above by the Practising Law Institute. It offers an Overview of Basic Principles of Trademark Law and Unfair Competition; Trademarks in Practice: Searching, Clearance, the Application Process and Strategies in the U.S. and Abroad; Creating a Trademark Protection Program in the U.S. and Abroad: Cost-Benefit Analysis; Trademark Infringement Primer; and Litigation Alternatives-Trademark Office and UDRP Proceedings. For additional information, call (800) 260-4PLI or online at www.pli.edu.

Hot Topics in Entertainment and Sports, Friday, August 5, 10:30a.m.-noon, Hyatt Regency Hotel, Chicago, IL. Presented by the Forum on the Entertainment and Sports Industries of the American Bar Association, attorneys will discuss New Artist Business Models; New Developments in Television and Film; Copyrights in the New Millennium; Relationships between Owner and Athletes; and Business Opportunities for Attorneys Representing Sports Clients. For additional information, contact Dawn R. Holiday@holidayd@staff.abanet.org. The annual meeting of the ABA Forum on Entertainment and Sports will be held October 6-8 at the Marriott Marquis Hotel in New York City.

Visual Arts & the Law, August 11-12, Eldorado Hotel, Santa Fe. This seventh annual conference, sponsored by CLE International, outlines Current Developments and Decisions in Art and Antiques for 2004/2005; Copyright Basics; Digital Issues; Visual Artists Rights Act; Primary Art Market and Museums; Appraisal and Valuation Issues; The Auction Process; Licensing Art; Native American Issues: A Panel Presentation; Fine Art Loss Control and Claims Handling; Selling Art Internationally; Estate Planning; and Ethics. For additional information, contact www.cle.com; CLE International, 1620 Gaylord Street, Denver, CO 80209 or call (800) 873-7130.