RECENT CASES

Dismissal of musician's discrimination lawsuit against Elektra Records, complaining that company refused to sign him to recording contract because of his national origin, is affirmed by Court of Appeals

Nathaniel W. Flores is a musician who has tried – "for many years" he says – to get signed to a recording contract by Elektra Records, without success. In that respect, he is like thousands of other aspiring recording artists. But in one respect he is different.

Rather than simply accept rejection, Flores did something about it. He filed a lawsuit against Elektra, alleging that by failing to sign him, the company violated Title VII of the Civil Rights Act – the federal statute that prohibits discrimination in employment on the basis of national origin.

According to Flores, he is a "world renowned" musician who has performed in Starbucks in Fresno and Oxnard, and even at the Whiskey A Go Go. Flores claims that Elektra wouldn't sign him because of his "Spanish or Portuguese sounding surname." And he asked the court to award him "a spot on [the] Elektra Records line up" or $3 million.

Many people would relish the opportunity to become an A&R executive for a major record company. But federal District Judge Oliver Wanger is not one of them. In response to a motion by Elektra, the judge dismissed Flores' lawsuit entirely, with an unpublished order (that doesn't appear, even on Lexis or Westlaw).

Flores appealed, without success. In a short Memorandum decision, marked "may not be cited," the Court of Appeals affirmed the dismissal of Flores' case.

The appellate court ruled first that Flores had simply failed to allege the essential elements of a discrimination case. That may have happened because Flores represented himself, and – not being a lawyer – he didn't know what those elements were. Nevertheless, the appellate court held that Judge Wanger was right when he dismissed Flores' case "with prejudice," for an important reason that applies to all aspiring recording artists.

That second reason was this: recording artists are independent contractors, not employees, and in his complaint, Flores conceded as much. Title VII, however, "protects employees, not independent contractors." As a result, Title VII doesn't control which artists record companies choose to sign. That job still belongs, exclusively, to their A&R executives.

Flores represented himself. Elektra Records was represented by Adam Levin of Mitchell Silberberg & Knupp in Los Angeles.

Flores v. Elektra Records, 124 Fed.Appx. 502, 2005 U.S.App.LEXIS 2346 (9th Cir. 2005)

Screenwriter Nancey Silvers does not have standing to bring lawsuit alleging that copyright to CBS movie "The Other Woman" was infringed by Sony movie "Stepmom," because Silvers wrote "Other Woman" as work-made-for-hire and received assignment of infringement claim only, not any interest in copyright itself

Screenwriter Nancey Silvers will not be able to pursue her copyright infringement claim against Sony Pictures, after all, because the Ninth Circuit Court of Appeals, sitting *en banc*, has held that she doesn't have standing to do so.

The underlying dispute between Silvers and Sony sounds like an interesting one. Silvers thinks that the theatrical movie "Stepmom," released by Sony in 1998, infringes the copyright to a made-for-TV movie that she wrote called "The Other Woman," broadcast by CBS in 1995. "The Other Woman" is about the relationship between a mother who has cancer and her ex-husband's new wife who will raise the mother's children when she dies. "Stepmom" is about the relationship between a mother who has cancer and her ex-husband's fiancé who will raise the children when she dies.

The question of whether "Stepmom" actually does infringe the copyright to "The Other Woman" has never been decided, because Sony began its defense of the case by asserting that Silvers didn't have standing to file it. Silvers wrote "The Other Woman" as a work-made-for-hire, on behalf of the company that produced the movie, Frank and Bob Films, which owns the movie's copyright, even now. The company did, however, assign to Silvers "all right, title and interest in and to any claims and causes of action against Sony . . . with respect to the screenplay 'The Other Woman' . . . and the motion picture 'Stepmom.'"

The assignment to Silvers was executed after Sony allegedly infringed the copyright to "The Other Woman," and it was that assignment that Silvers relied on to assert her infringement claim. Sony didn't dispute the authenticity of the assignment. It merely pointed out that the Copyright Act provides that "The legal or beneficial owner of an exclusive right under a copyright is entitled . . . to institute an action for . . . infringement." And it argued that the assignment to Silvers of "claims and causes of action against Sony" didn't give her any "exclusive right under a copyright."

Federal District Judge Stephen Wilson disagreed with Sony, and denied its motion to dismiss. Judge Wilson did, however, certify the issue for interlocutory appeal. At first, Sony did no better on appeal. In an opinion by Judge Melvin Brunetti, a three-judge panel agreed with Judge Wilson that Silvers did have standing to bring the case (*ELR* 25:4:14). But Sony's petition for a rehearing *en banc* was granted (*ELR* 26:2:26). And following that rehearing, the Court of Appeals finally agreed with Sony, by a seven-to-four margin.

In an opinion by Judge Susan Graber, the seven-judge majority noted that section 501(b) of the Copyright Act clearly provides that the "owner of an *exclusive right* under a copyright is entitled . . . to institute an action for any infringement of that particular right *committed while he or she is the owner of it*." Silvers did not receive an assignment of an exclusive right under the CBS movie's copyright, and Sony's alleged infringement of that copyright did not occur while she was the owner of anything (it happened before the claim was assigned to her).

Judge Graber's analysis was a simple and straightforward application of the language of the Copyright Act, which does indeed say what she and the rest of the majority said it says. But that analysis was too simple and straightforward for Judge Marsha Berzon. She would have held that "Silvers, . . . as the original creator of the contested 'work-for-hire,' may pursue the accrued claims assigned by Frank & Bob Films, . . . [even though] a complete stranger to the creative process could not." (Judge Stephen Reinhardt agreed with Judge Berzon.)

Judge Graber's analysis also was too simple and straightforward for Judge Carlos Bea. He would have allowed Silvers – or any other assignee of the infringement claim – to file suit. He acknowledged that some types of claims may not be assigned for policy reasons, such as claims for personal injuries, legal malpractice, and securities law violations. But the majority's opinion was not based on policy concerns, he observed. "Nor indeed is there a reasoned policy consideration given for prohibiting suit upon an accrued cause of action for infringement," he said. (Judge Andrew Kleinfeld agreed with Judge Bea.)

Silvers was represented by Steven Glaser of Gelfand Rappaport & Glaser in Los Angeles. Sony was represented by Ronald S. Rauchberg of Proskauer Rose in New York City, George P. Schiavelli of Reed Smith Crosby Heafey in Los Angeles, and Benjamin G. Shatz of Manatt Phelps & Phillips in Los Angeles.

Editor's note: The question of whether Silvers had standing to sue Sony was a tougher one than this brief report reveals. Behind the judges' differing conclusions were differing and conflicting views concerning the proper techniques of statutory interpretation. Indeed, although Judge Wilson's original decision was unreported, and Judge Brunetti's opinion for the three-judge panel was quite short, the three opinions making up the *en banc* decision were lengthy and quite philosophical, reading more like essays on legal process than decisions on the dry issue of "standing." The difficulty of the issue also is illustrated by the fact that although Silvers lost, she actually persuaded eight federal judges that she did have standing (the District Judge, the three judges of the original Court of Appeals panel (none of whom participated in the *en banc* ruling), plus the four judges who dissented from the *en banc* ruling), while Sony persuaded only seven judges that she didn't! What's more, the outcome would have been different, if only the wording of the assignment to Silvers had been a bit different. Frank & Bob Films kept the movie's copyright, presumably because the only thing it was willing to assign to Silvers was the claim against Sony. If, though, the assignment had transferred to Silvers the "exclusive right to license Sony Pictures to produce a theatrical motion picture based on 'The Other Woman,'" that would have been an assignment of an interest in the movie's copyright. And then, even the seven-judge majority of the Court of Appeals would have held that Silvers had standing to sue.

Silvers v. Sony Pictures Entertainment, 402 F.3d 881, 2005 U.S.App.LEXIS 4850 (9th Cir. 2005)

Electronic Arts defeats suit filed by former college football player who objected to use of his image in "Madden NFL Football" video games; mismatch between image and statistics did not defame player or invade his privacy

Michael Jackson doesn't care if you're "Black or White," but Steve Neal does.

Steve Neal is an African-American former college football player. He signed a standard National Football League Player contract before trying out with the Tennessee Titans, and the contract gave the National Football League Players Association the right to license Neal's image.

The National Football League Players Association licensed Neal's image to Electronic Arts, giving the game company the right to use Neal's image in video games.

The National Football League sent a picture of Neal to Electronic Arts (along with photos of other players), and the company used the photo in its popular video game "Madden NFL Football." The photo showed Neal, but listed the statistics of the New England Patriots' Steve Neal – a Caucasian football player with the same name.

Neal sued Electronic Arts for invasion of privacy by appropriation, invasion of privacy by false light, and defamation.

In response to Electronic Arts' motion for summary judgment, federal District Judge Richard Enslen concluded that the licensing agreement clearly gave the Players Association the right to license Neal's image for use in video games, and therefore Neal had no claim for invasion of privacy by appropriation.

Judge Enslen also rejected Neal's claim for invasion of privacy by false light. The judge determined that a reasonable person would not be highly offended by the mismatch between Neal's image and another player's statistics.

Finally, Judge Enslen concluded that use of a picture suggesting a player was of another race was not defamatory. In fact, the judge stated that Neal – a player who never made it onto an NFL team – could not have suffered harm to his reputation by having his image associated with a player on the three-time Super Bowl champion New England Patriots.

The judge also imposed Rule 11 sanctions on Neal's attorney, because he should have known that all of the claims were meritless.

Electronic Arts was represented by Herschel P. Fink of Honigman Miller Schwartz & Cohn in Detroit. Steve Neal was represented by Randall L. Pomeroy in Portage, Michigan. (*HK*)

Neal v. Electronic Arts, Inc., 374 F.Supp.2d 574, 2005 U.S.Dist.LEXIS 12324 (W.D. Mich. 2005)

Nine Inch Nails lead singer Trent Reznor's claim that his former management contract is unconscionable was dismissed because the contract terms were not unusual for the music industry, but the court ruled that a jury must decide whether the manager breached a fiduciary duty by committing fraud and conversion

Nine Inch Nails lead singer Trent Reznor is in a legal cat fight with his former manager John A. Malm Jr.

Reznor started it by firing his management company J. Artist Management, which is wholly owned by Malm, claiming that Malm had "run Reznor's finances into the ground." Malm responded by filing a breach of contract claim for $1.5 million in unpaid commissions from the Nine Inch Nails' 1994-1995 tour.

Next, Reznor filed a separate lawsuit that alleged Malm breached his fiduciary duty by fraudulently inducing Reznor into business agreements which Reznor claims are unconscionable. Reznor took issue with the term of the management contract that provided for Malm's 20% commission to be taken out of gross revenue. Reznor also alleged that Malm gained full ownership of NIN trademarks and the NIN merchandising company through fraud. Reznor claimed that Malm transferred Reznor's money to jointly held companies without his authorization.

Both sides filed summary judgment motions. Federal District Court Judge Jed S. Rakoff dismissed Malm's breach of contract claim for unpaid commissions from the NIN 1994-1995 tour because the applicable period of limitations had expired.

But Reznor's breach of fiduciary duty, fraud and conversion claims survived summary judgment because a reasonable jury could find in favor of Reznor on those issues. However, Judge Rakoff did dismiss Reznor's unconscionability claim because Reznor did not lack bargaining power when entering the agreement and the contested terms were not unusual for the music industry.

Trent Reznor was represented by Daniel A. Platt of Katten Muchin Zavis & Rosenman in New York. John A. Malm, Jr. and J. Artist Management, Inc., were represented by Thomas More Lopez of Esanu Katsky Korins & Siger in New York and by Debra Jean Horn of Meyers Roman Friedberg & Lewis in Cleveland. (*MAR*)

Reznor v. J. Artist Mgmt., 365 F.Supp.2d 565, 2005 U.S.Dist.LEXIS 6805 (S.D.N.Y. 2005)

RIAA subpoenas seeking identities of university students allegedly engaging in P2P copyright infringement are quashed, because universities – acting as internet service providers – are not subject to subpoenas, federal District Court rules

Finding an internet protocol (IP) address is easy. Finding the person behind the IP address is hard. So the Recording Industry Association of America (RIAA) discovered when it attempted to get two universities to unveil the names and addresses of students allegedly engaging in copyright infringement. One is a student at the University of North Carolina, the other at North Carolina State.

Through tracking programs, the RIAA ascertained the IP addresses and user names of the two students who are allegedly infringing copyrighted material using peer-to-peer (P2P) programs. However, the IP addresses did not identify the students themselves, because IP addresses only identify the internet service provider (ISP) providing internet access. In this case, the students' ISPs were the universities in which they were enrolled.

To find out who the students were, the RIAA invoked the DMCA's subpoena power. That is, the RIAA obtained subpoenas from a federal District Court in North Carolina, requiring the universities to disclose their students' identities.

After receiving notification from their universities about the subpoenas, each student intervened and the cases were consolidated. Before the RIAA got the information it sought, the students filed a successful motion to quash the subpoenas. (The outcome of the case is so important to the entertainment industry that several internet, telecommunications, music, and movie companies filed Amicus Briefs on behalf of both the universities and the RIAA.)

Judge Russell Eliason found that the universities function only as a conduit for their allegedly infringing students, because they provide their students only with internet access but not with storage capabilities.

Since the DMCA authorizes subpoenas only where "an ISP was storing, caching, or providing links to copyrighted material," Judge Eliason concluded that the universities fell outside the DMCA's subpoena power. Judge Eliason also stated that "a requirement of issuing subpoenas under the DMCA is an ISP's ability to remove or disable a user's access to infringing material." Since the universities could not remove or disable a P2P user's access to infringing material on another P2P user's computer, both universities escaped the RIAA's subpoenas under the DMCA.

The RIAA was represented by David William Sar of Brooks Pierce McLendon Humphrey & Leonard in Greensboro. The UNC student was represented by Aden J. Fine of Civil Liberties Union in New York. The North Carolina State student was represented by Frederick S. Battaglia, Jr., in Durham. (*KH*)

In re Subpoena to University of North Carolina, 367 F.Supp.2d 945, 2005 U.S.Dist.LEXIS 7936 (M.D.N.C. 2005)

Popular R&B singing group SWV's hit song "You're the One" did not infringe copyright in song "You're the One (For Me)," federal appeals court affirms

Not surprisingly, the lyric "You're the One For Me" has been used in a song more than once. On one particular occasion in 1992, Calvin R. Johnson used it to create a song entitled "You're the One (For Me)" for the group "Special Edition" (which should not to be confused with the popular R&B group "New Edition").

Later, in 1996, SWV used the lyric in the song "You're the One," which landed on the top of Billboard's R&B singles chart. After learning of SWV's success, Calvin filed a copyright application for "You're the One (For Me)" and sued SWV in federal District Court.

District Judge Mark Wolf granted summary judgment in favor of SWV, because the comparable elements of Calvin's song were either dissimilar or "too common" to be treated as protectable expression, and the Court of Appeals has agreed.

Calvin tried to use an unregistered "long version" of "You're the One (For Me)" as a basis to establish that SWV copied the registered "short version" of Calvin's song. However, Court of Appeals Judge Bruce Selya cut Calvin's "long version" argument short by holding that the elements found exclusively in the "long version" cannot form the basis for copyright infringement of the "short version" of Calvin's song.

In short, although SWV's use of the lyric "You're the One For Me" was a melodic variation of the lyric used by Calvin, the judge said that the melodic variation did not support an inference of copying because there was no facial similarity between the melodies.

Calvin was represented by Burton A. Nadler of Petrucelly & Nadler in Boston. SWV was represented by Cynthia S. Arato in New York City. (*MAR*)

Johnson v. Gordon, 409 F.3d 12, 2005 U.S.App.LEXIS 9902 (1st Cir. 2005)

Model's right of publicity claim was not preempted by copyright law, where objected-to use of her photo occurred after expiration of contract that had authorized use of her likeness, 7th Circuit Court of Appeals holds after rehearing model's appeal from dismissal of her case

In a rare reversal of its own opinion, the Court of Appeals for the Seventh Circuit has held that a model's right of publicity claim was not preempted by the Copyright Act after all, where the objected-to use of her photo occurred after the expiration of the contract by which she had once authorized the use of her likeness.

The model in question is June Toney. In 1995 she posed for a photograph for a hair product called Ultra Sheen Supreme. At the time her photo was taken, Toney authorized the company that makes Ultra Sheen to use the photo, but only until November 2000. Nevertheless, after November 2000 came and went, the company continued to use Toney's photo, thus prompting her right of publicity lawsuit.

Initially, a federal District Court dismissed her lawsuit, saying that it was preempted by section 301 of the Copyright Act. That section preempts state law claims if the subject matter of the claim is covered by copyright law, and if the right sought to be enforced under state law is "equivalent" to any of the rights protected by copyright. Then, in an opinion by Judge Michael Kanne, the Court of Appeals affirmed the dismissal of Toney's lawsuit (*ELR* 26:4:8).

Toney petitioned the Court of Appeals for a rehearing, and it granted her petition. The appellate court vacated its earlier opinion, considered supplemental briefs from both parties, and then reversed itself, ruling this time in Toney's favor.

Once again writing for the appellate court, Judge Kanne noted that Illinois' right of publicity statute protects Toney's "identity." And, the judge said, "Toney's identity is not fixed in a tangible medium of expression." As a result, the Illinois statute does cover the same "subject matter" as does the Copyright Act (which protects only works that are fixed in a tangible medium). What's more, the Illinois statute protects the right to control the commercial value of a person's identity, while the Copyright Act protects the right to reproduce and perform works. As a result, the Illinois statute does not protect rights that are equivalent to those protected by the Copyright Act.

"The bottom line," Judge Kanne said, "is that Toney's claim under the Illinois right of publicity statute is not preempted by federal copyright law." So Toney's lawsuit was remanded to the District Court for further proceedings.

Toney was represented by Thomas J. Westgard in Chicago. L'Oreal was represented by John S. Letchinger of Wildman Harrold Allen & Dixon in Chicago.

Editor's note: One of the reasons the District and Appeals Courts got it wrong the first time around is that back in 1986, in *Baltimore Orioles v. Major League Baseball Players Ass'n*, the Seventh Circuit held that the likenesses of those depicted in photographs are within the subject matter of copyright, and that publicity rights are equivalent to those protected by copyright (*ELR* 8:11:7). That opinion has been criticized in *Nimmer on Copyright* and elsewhere (including here (*ELR* 26:4:8)). In his opinion after rehearing, Judge Kanne took the opportunity to respond to the criticism of the *Baltimore Orioles* case by "clarify[ing]" that decision. The Orioles case "simply does not stand for the proposition that the right of publicity as protected by state law is preempted in all instances by federal copyright law," the judge said. "[I]t does not sweep that broadly." How broadly the *Orioles* case does sweep was not made clear, however – quite possibly because (insofar as it based its conclusion on the preemption doctrine) it was just plain wrong.

Toney v. L'Oreal USA, Inc., 406 F.3d 905, 2005 U.S.App.LEXIS 7897 (7th Cir. 2005)

British producers of television show "Wife Swap" may pursue copyright but not trade dress claims against Fox Broadcasting, complaining that Fox's "Trading Spouses" infringes, federal District Court rules

The ability to maneuver between differing legal theories in the courtroom is considered one of a lawyer's greatest assets. When one legal theory fails, another may prevail. In a case filed by RDF Media Limited, this proved to be invaluable.

RDF Media is an English company that created and produced a reality television show called "Wife Swap." In 2002, RDF entered into an agreement with ABC Television to produce an American version of the series. After the show aired on ABC in May 2004, the Fox Broadcasting network aired a similar show called "Trading Spouses" in July of 2004.

Vexed at what it considered to be Fox's blatant imitation and copying of "Wife Swap," RDF filed suit for copyright and trade dress infringement. In response, Fox filed a motion to dismiss all of RDF's claims. Federal District Judge James Otero granted Fox's motion to dismiss RDF's trade dress claims, though not its copyright claims.

In rejecting RDF's trade dress claims, Judge Otero reasoned that "Wife Swap," as a *show*, could not serve as its own trademark. This is so because "trademark is concerned with the protection of symbols or elements; it does not protect the content of a creative work of artistic expression as a trademark for itself." Essentially, said the judge, the substance of RDF's trade dress claims fell within copyright law rather than trademark law.

Although RDF's trade dress claims were dismissed, RDF didn't walk away empty-handed. Judge Otero denied Fox's motion to dismiss RDF's copyright claims. That motion was based on the fact that some episodes of the series had not yet been registered for copyright when the complaint was filed. By the time the motion was heard, though, the rest had been too. Judge Otero concluded that since RDF properly registered "Wife Swap" with the U.S. Copyright Office, there was no basis for dismissing RDF's copyright claims.

RDF Media was represented by Daniel Fiore, Stanton L. Stein and Samuel E. Rogoway of Alschuler Grossman Stein & Kahan in Santa Monica. Fox Broadcasting was represented by Lisa E. Stone and Robert H. Rotstein of McDermott Will & Emery in Los Angeles. (*KH*)

RDF Media Limited v. Fox Broadcasting Company, 372 F.Supp.2d 556, 2005 U.S.Dist.LEXIS 12923 (C.D.Cal. 2005)

CBS reality television show Survivor defeats trademark infringement suit brought by Surfvivor Media; where no actual confusion occurs between two marks, there is no infringement, appellate court affirms

Pro surfers who ride and survive gigantic waves are sometimes tagged as "surfvivors." However, in the case of a trademark infringement claim brought by a company named "Surfvivor," it failed to survive the powerful courtroom waves.

Surfvivor is a trademark of a company created by Peter S. Deptula that sells beach-themed products. Survivor is a trademark of the hit television reality show from CBS. Several years after Deptula coined the Surfvivor name, CBS began broadcasting Survivor. After Survivor aired, Deptula encountered a few people who wondered whether his business was sponsored by Survivor. One retailer and one customer mistook Survivor sunscreen for Surfvivor sunscreen and one trade show attendee thought that Surfvivor was endorsed by Survivor's producers. Displeased and infuriated that individuals could confuse Survivor for Surfvivor, Deptula filed suit against Survivor for trademark infringement.

Before Surfvivor could ride its legal wave to trial, Survivor snatched the wave and rode it successfully to summary judgment. The federal district court dismissed the suit in favor of CBS's Survivor on the basis that the marks were not similar enough to cause consumer confusion. Shocked and appalled at Survivor's preemptive strike, Deptula's Surfvivor immediately filed an appeal.

Deptula's second attempt to ride another legal wave resulted in another disastrous wipeout. In an opinion by Judge Johnnie B. Rawlinson, the Court of Appeals affirmed the District Court's ruling and stated that because no actual confusion existed between the two marks, no trademark infringement occurred. Judge Rawlinson reasoned that because only a single retailer and a single customer out of hundreds mistook CBS's Survivor sunscreen as Deptula's Surfvivor sunscreen, "customers were not likely to associate the two products or conclude [they] came from the same source."

Judge Rawlinson also noted that no consumer confusion existed because none of Deptula's Surfvivor's customers thought the products were Survivor goods. In addition, no merchant stopped doing business with Surfvivor on account of confusion with Survivor. Moreover, Judge Rawlinson noted that Surfvivor did not suffer any damages as a result of the asserted infringement.

Surfvivor was represented by Paul Maki in Honolulu. Survivor was represented by Andrew M. White of White O'Connor Curry & Avanzado in Los Angeles. (*KH*)

Surfvivor Media, Inc. v. Survivor Productions, 406 F.3d 625, 2005 U.S.App.LEXIS 7688 (9th Cir. 2005)

National Geographic did not need the consent of freelance photographers and journalists to republish their works in digital format, federal appeals court affirms

National Geographic has successfully defended the victory it won in federal court in a copyright infringement lawsuit filed by freelance photographers and journalists who contributed to the magazine over the years. (*ELR* 26:1:17) The lawsuit was filed because National Geographic did not have a license from journalists and photographers to republish their work in CD-ROMs and DVDs of "The Complete National Geographic: 108 Years of National Geographic Magazine."

The Court of Appeals affirmed the lower court ruling which held that under section 201 of the Copyright Act, the digital versions were a privileged "revision" of the printed issues of National Geographic Magazine. Section 201 gives publishers of collective works a privilege to republish contributions to those works as part of any revision of those works. The court distinguished privileged revisions, like the CNG, from unprivileged revisions.

The court held that they were a revision of National Geographic Magazine because "the original context of the magazine is omnipresent" in the digital versions. Judge Ralph Winter noted that the digital versions use an "almost" identical arrangement of the underlying work as was used in the original print version. On the other hand, an unprivileged revision "precludes the reader from viewing the underlying works in their original context."

The journalist and photographers also argued that their contracts with National Geographic did not authorize digital republication of their works. However, Judge Winter believed that if the photographers and journalists intended to limit their grant to non-digital formats, they should have communicated their intent to National Geographic and negotiated for that specific contractual provision.

The journalists and photographers were represented by Andrew Berger of Tannenbaum Helpern Syracuse & Hirschtritt, by Richard F. Schaden of Schaden Katzman Lampert & McClune, and by Stephen A. Weingrad of Weingrad & Weingrad. National Geographic was represented by Robert G. Sugarman of Weil Gotshal & Manges and by Terrence B. Adamson of the National Geographic Society. (*MAR*)

Faulkner v. National Geographic Society, 409 F.3d 26, 2005 U.S.App.LEXIS 3642 (2nd Cir. 2005)

Copyright Office properly rejected claims filed by MGM and Universal Studios for cable and satellite TV royalties, because claims were mailed using postage meters, did not have U.S. Postal Service date stamps showing they were mailed in July, and arrived after the deadline, federal Court of Appeals affirms

It was a small mistake, really; but it cost MGM and Universal Studios millions of dollars, they estimate. What was at stake were the studios' shares of cable and satellite TV royalties for the year 2000. These are the royalties paid by cable TV systems and satellite TV operators in connection with their retransmission of over-the-air television broadcasts of copyrighted programs and movies.

To get their shares, MGM and Universal had to file claims with the U.S. Copyright Office which they did. But they didn't do it in the manner required by Copyright Office regulations. Those regulations require cable and satellite royalty claims to be filed during the month of July (for the preceding calendar year). Copyright owners may do this in a few different ways: by hand delivering their claims to the Copyright Office by July 31st; by mailing their claims so they are delivered to the Copyright Office by July 31st; or by mailing their claims to the Copyright Office with a U.S. Postal Service postmark showing they were mailed during July, even if they don't actually arrive at the Copyright Office until later.

However, the regulations specifically provide that postage meter post marks – such as those affixed by Pitney-Bowes machines – showing a July postmark are not sufficient, if the claim arrives after July. MGM and Universal mailed their claims on July 30th, but used Pitney-Bowes machines to affix postage; and those claims didn't arrive at the Copyright Office until August the 2nd or 3rd.

MGM and Universal both attempted to establish that their claims had been mailed in July, by submitting elaborate (and uncontradicted) affidavits, including affidavits from the U.S. Postal Service itself, establishing that their claims were mailed in July, that their Pitney-Bowes meters could not be backdated, and that in order for their claims to have arrived at the Copyright Office in Washington D.C. by August 2nd or 3rd, they would have had to have been mailed in July.

When their claims were nevertheless rejected, MGM and Universal filed lawsuits alleging that the Copyright Office had violated the Copyright Act and the Administrative Procedure Act and had denied them their Constitutional right to due process of law. Federal District Judge Rosemary Collyer disagreed with the studios and dismissed their case (*ELR* 26:4:15).

Then, in an opinion by Judge John Roberts, the Court of Appeals affirmed. Judge Roberts ruled that the Copyright Office had not misinterpreted its regulation; that the regulation did not deprive MGM and Universal of due process; and that the Copyright Office's refusal to waive the July mailing requirement was not arbitrary or capricious.

Universal Studios was represented by Randolph D. Moss of Wilmer Cutler Pickering in Washington D.C. MGM was represented by David Evan Kendall of Williams & Connolly in Washington D.C. The Copyright Office was represented by James J. Gilligan of the U.S. Department of Justice in Washington D.C.

Universal City Studios v. Peters, 402 F.3d 1238, 2005 U.S.App.LEXIS 5664 (D.C.Cir. 2005)

Poor team performance was just "cause" for termination of hockey coach, so team owner didn't have to pay remainder of coach's contract, Montana Supreme Court rules

In 1997, William Martel purchased the Ice Dogs, a Junior A, American West Hockey League team. Martel offered the job of head coach and general manager to David Cole and asked Cole to draw up an agreement. After consulting with an attorney, Cole presented an agreement to Martel that stipulated a term of five years unless Cole was terminated for "cause." The contract also stated in the event Cole were to be terminated for a reason other than cause, he would be entitled to one full calendar year of severance pay.

The 1997-1998 season was a relative success for the Ice Dogs under Cole. But the 1998-1999 season saw the Ice Dogs fall on hard times finishing with a losing record. In the off-season Cole urged Martel to spend more money to improve the team, and Martel did. But unfortunately, the 1999-2000 season started off where the last season had ended, and Cole was fired due to the team's poor performance.

Martel felt he was not obligated to pay any severance money to Cole because he had cause to fire the coach. Cole wanted Martel to pay the remainder of his contract and sued Martel for breach of the employment contract.

In response to cross-motions for summary judgment, the trial court held that Cole was terminated without cause because the contract did not clearly define the term "cause" and a win/loss requirement for Cole was not included in the terms of the deal. As a result, Cole was awarded $199,193 in damages based on the five year contract.

Martel appealed to the Montana Supreme Court. Justice Patricia Cotter, writing for the Court, noted that an employer does not have a right to make an arbitrary or unreasonable decision about terminating an employee when there is an agreement to terminate only for good cause. But Cole failed to produce any evidence suggesting that he was fired for reasons that "were false, arbitrary, or capricious, or unrelated to the needs of the business."

Cole conceded that he was fired for the team's poor performance and admitted this was a common practice in the sports world. Therefore, Justice Cotter ruled that firing Cole for the team's poor performance was a just cause because it constituted a "legitimate business reason." The judgment Cole won in the trial court was reversed, because he was not entitled to recover under the contract.

Cole was represented by Monte D. Beck of Beck Richardson & Amsden in Bozeman, Montana. William Martel was represented by Richard J. Andriolo of Andriolo & Refling in Bozeman. (*JCL*)

Cole v. Valley Ice Garden, 113 P.3d 275, 2005 Mont.LEXIS 188 (Mont. 2005)

Sports leagues win larger percentage of cable TV royalties; Court of Appeals rejects objections by movie and commercial TV program suppliers and public TV programmers, and affirms Librarian of Congress' decision adopting CARP recommendation

Millions of dollars in cable TV retransmission royalties generated during 1998 and 1999 were up for grabs – $216 million to be exact. But the "classes" of copyright owners who had rights to the money could not agree on how to divvy it up. This conflict over royalty distributions pitted sports leagues (the NFL, NBA, WNBA, MLB, NHL, and NCAA) against program suppliers (movie and commercial TV program producers) and public television program producers.

To resolve the dispute, the Librarian of Congress appointed a Copyright Arbitration Royalty Panel ("CARP"). The sports leagues supplied the CARP with "Bortz" surveys from 1998 and 1999. Bortz determines the relative market value of each "class" of programming by asking cable television providers how they would allocate a fixed budget among each "class of programming," if they could negotiate to do so. The sports leagues argued that the relative market value for each type of programming, as shown by the Bortz survey, should be used to fix the percentage of cable TV retransmission royalties that should be distributed to the providers of each type of programming.

The 1998 Bortz study showed that cable providers would spend about 38% of their budgets on sports programming, another 38% on movies and commercial TV programs, and only 4% of their budgets on public television. The 1999 Bortz study produced similar results.

Program suppliers and public TV programmers provided "Nielsen" studies from 1998 and 1999 to the CARP. Nielsen measures the number of viewers who watch each "class" of programming. Program suppliers and public TV programmers argued that Nielsen's numbers should be used to determine the percentage of cable royalties distributed to each class of programming.

The 1998 Nielsen study showed that program suppliers and public television programming had relatively high shares of the viewing public, 59% and 16% respectively, while sports programming only had 9.4% of the viewing public. The 1999 Nielsen study had similar results.

The CARP was persuaded by the arguments of the sports leagues, and it recommended royalty distributions that were similar to the percentages reflected in the Bortz study. That recommendation departed from the pre-1998 practice of using Nielsen ratings as the guide for "class" royalty distributions. Nevertheless, the Librarian of Congress accepted the CARP's recommendation.

Program suppliers and public TV programmers petitioned the Court of Appeals to review of the Librarian's decision, and the royalty allocation that went along with it.

Writing for the Court of Appeals, Judge David Tatel noted that the court would set aside the allocation of cable TV retransmission royalties recommended by the CARP and adopted by the Librarian of Congress only if the evidence "compels" a substantially different award.

Judge Tatel found that the CARP had a "facially plausible explanation" for its focus on the Bortz survey, because previous CARP history revealed a movement away from Nielsen as a basis of determining "class" royalty distributions.

As a result, the Court of Appeals held that the Librarian's decision was reasonable and affirmed it.

The sports leagues were represented by Robert Alan Garrett of Arnold & Porter in Washington, D.C., and Philip R. Hochberg in Rockville, Maryland. The program suppliers were represented by Gregory O. Olaniran of Stinson Morrison & Hecker in Washington D.C. Public TV programmers were represented by Timothy C. Hester of Covington & Burling in Washington D.C. The Librarian of Congress was represented by Mark S. Davies of the U.S. Department of Justice. (*HK*)

Program Suppliers v. Librarian of Congress, 409 F.3d 395, 2005 U.S.App.LEXIS 9886 (D.C.Cir. 2005)

Fiduciary relationship does not exist between Oakland Raiders and NFL or its Commissioner, California Court of Appeal rules in opinion affirming dismissal of issue in long-running lawsuit

The Oakland Raiders and the NFL have clashed in the courtroom for over twenty years (*ELR* 23:11:11, 21:2:10, 8:6:13, 5:10:17). The latest round of litigation involved a claim by the Raiders that the NFL and its Commissioner breached fiduciary duties they owed to the team.

The Raiders alleged that discriminatory actions by the NFL and Commissioner Paul Tagliabue have put it at a competitive disadvantage with other member clubs. According to the Raiders, the NFL breached its fiduciary duties when the team was singled out and treated "disparately and adversely" from other member clubs. The Raiders argued that it was put at a competitive disadvantage, because other member clubs were allowed to violate NFL rules and Raider officials were removed from certain NFL committees by the Commissioner.

The trial court granted the NFL summary judgment, ruling that a fiduciary relationship does not exist between the Raiders and the NFL or the Commissioner. The court also held that the "abstention doctrine" precluded judicial interference with the NFL's actions.

The Raiders appealed the trial court's decision. But in an opinion by Justice Eugene Premo, the California Court of Appeal affirmed both holdings.

Justice Premo determined that no fiduciary relationship exists between the parties, because none arose as a matter of law. The NFL has been described as a unique business organization and its status as an unincorporated not-for-profit organization does not give rise to any apparent fiduciary relationships that would be imposed by statute.

Justice Premo also found that neither the NFL nor the Commissioner undertook any fiduciary responsibilities to the Raiders. The NFL constitution and bylaws clearly grant the Commissioner a great deal of power, but it is the Commissioner's responsibility to act in the best interest of the League and not any one team. In many instances the NFL constitution would require the Commissioner to act "against the best interests of the Raiders as a member club." For example, the Commissioner may have to rule for another member club or with a player in a dispute filed against the Raiders.

Finally, Justice Premo affirmed that courts should abstain from getting involved in "intra-association" disputes within voluntary private organizations. Interference with an organization like the NFL, including judicial interpretation of its bylaws, would produce unintended results that would lead courts to decide matters that the NFL was more competent to handle, the justice reasoned. Justice Premo added that courts should only step in when a constitution or bylaw interpreted by an organization constituted an "unreasonable or arbitrary invasion of private rights." The Raiders admit that their claim does not rest on the breach of an NFL constitution or bylaw.

The Oakland Raiders were represented by Kenneth G. Hausman of Howard Rice Nemerovski Canady Falk & Rabkin in San Francisco. The NFL was represented by James L. Hunt of Bingham McCutchen in San Francisco. (*JCL*)

Oakland Raiders v. National Football League, 32 Cal.Rptr.3d 266, 2005 Cal.App.LEXIS 1182 (Cal.App. 2005)

Punitive damages not available under Copyright Act, federal District Court in Florida rules in case alleging advertising jingle infringed copyright to song "Here Today, Gone Tomorrow"

In 1992, Joie Calio and his band DADA recorded a song called "Here Today, Gone Tomorrow." Years later, Sofa Express created an advertising jingle called "Here Today, Home Tomorrow." Calio sued Sofa Express for copyright infringement, asking for punitive (as well as actual) damages.

Two recent cases in federal court in New York City have ruled that punitive damages may be awarded in certain kinds of copyright infringement suits (*ELR* 25:5:15, 26:8:17). These cases held that if the copyright owner proves willful or malicious infringement, and the copyright owner is barred from receiving statutory damages, punitive damages may be awarded.

Sofa Express opposed Calio's request for punitive damages, on the grounds that the Copyright Act does not allow them.

Federal District Judge Susan Bucklew focused on the express language of the Copyright Act. Judge Bucklew observed that the Copyright Act does not expressly include punitive damages, but does allow for increased statutory damages in cases of willful infringement.

Judge Bucklew also noted that there is conflicting case law even in the Southern District of New York. Some cases allowed punitive damages for infringement actions, while others prohibited them. Because of the confusion in New York, Judge Bucklew examined the statutory interpretations of other jurisdictions and found that the prevailing line of thought prohibits punitive damages in infringement suits.

Judge Bucklew concluded that punitive damages are not available, because they are not mentioned in the language of the Copyright Act, and because the prevailing case law interpreting the statutory language supported this conclusion.

Calio was represented by Joseph Bain of Akerman Senterfitt in West Palm Beach. Sofa Express was represented by Joe Beck of Kilpatrick Stockton in Atlanta. (*HK*)

Calio v. Sofa Express, Inc., 368 F.Supp.2d 1290, 2005 U.S.Dist.LEXIS 11829 (M.D. Fla. 2005)

Claims against Combo Records for unpaid royalties brought by Puerto Rican salsa singer Santa Rosa are dismissed by federal District Court

Salsa singer Santa Rosa – known to his fans as "El Caballero de la Salsa" ("The Gentleman of Salsa") – danced into court alleging that Combo Records exploited his music for two decades without ever paying him royalties.

Rosa claimed that Combo's failure to pay breached their contract. But then Rosa did a back-step when he told the court that "he didn't really know if he had a contract." So federal District Judge Gonzalo Garcia dismissed Rosa's contract claim in response to Combo's summary judgment motion.

Rosa also sued Combo for unjust enrichment. But Judge Gonzalo Garcia ruled that the Copyright Act preempted that claim. Then the judge ruled that Rosa's claims under the Copyright Act were barred by the 3-year statute of limitations.

Rosa's last dance was a claim for infringement of trademark rights in his music. But the judge ruled that trademark protection does not extend to the ideas contained inside the "tangible goods sold in the marketplace."

Santa Rosa was represented by Roberto Sueiro-Del-Valle in San Juan, Puerto Rico. Combo was represented by Juan H. Saavedra-Castro in San Juan, Puerto Rico. (*MAR)*

Santa Rosa v. Combo Records, 376 F.Supp.2d 148, 2005 U.S.Dist.LEXIS 13026 (D.Puerto Rico 2005)

Hispanic College Fund loses challenge to NCAA standard for determining which organizations may sponsor pre-season football games that don't count towards maximum number of allowable games per year

The Hispanic College Fund (HCF) sued the National Collegiate Athletic Association, alleging that its standard for determining the number of football games a year its members could play was both arbitrary and capricious. According to a rule adopted in 1999, teams may play no more than 12 football games a year, including preseason games. Said another way, "the preseason game could be played, but it would be counted toward the maximum allowable games."

About the time this proposal was adopted, the Hispanic College Fund, a nonprofit organization "whose mission is to develop the next generation of Hispanic leaders in the United States," became an NCAA member. In 2001, HFC and other member organizations "sought an exception from the rule so they could hold 'exempt' games during 2002." The NCAA responded by allowing such an exemption only for those organizations that had entered into television broadcast contracts prior to the adoption of the rule in 1999. Only the Black Coaches Association qualified.

The NCAA later allowed more exempt games in 2002, certifying eight preseason games for HFC and other members. But later still, the NCAA went back to allowing only the Black Coaches Association to sponsor exempt games in 2003 and 2004, "because it had a preexisting television contract." HCF was "denied a waiver for 2003 and 2004 even though ESPN had indicated to HCF it planned to broadcast HCF's preseason game annually." That's what prompted HCF to claim that the NCAA's "preexisting television contract" standard was arbitrary and unreasonable and created a "special rule" for the Black Coaches Association.

The NCAA moved for judgment on the pleadings; and its motion was granted, because the court "determined the NCAA is a voluntary membership organization and therefore the court could not interfere with its decisions absent allegations of fraud or other illegality." The HCF appealed, but the Indiana Court of Appeals affirmed.

"Absent fraud, other illegality, or abuse of civil or property rights having their origin elsewhere, Indiana courts will not interfere with the internal affairs of voluntary membership associations," said Judge Melissa May. HCF argued that its membership in the NCAA was not truly voluntary and that it and other members are more like students who "have no voice in [the NCAA's] rules or leadership." Therefore, said HCF, the decision by the NCAA should be scrutinized by the court. Further, HCF argued that "membership in the NCAA was a prerequisite if it was to raise funds and promote its mission by means of a pre-season football contest."

Judge Mays distinguished HCF from educational institutions. "A school that incorporates competitive athletics as part of its educational program might have little choice but to join the NCAA, but HCF 'was not under similar compulsion.'" Added Judge Mays: "There are numerous other ways HCF might raise funds for its mission." As a result, HCF's "choice to promote a college football contest" didn't render its membership to the NCAA involuntary.

The judge added that "when HCF sought and accepted membership in the NCAA it presumably did so with knowledge of the conditions of membership." HCF, the judge said, "voluntarily subjected itself to the NCAA's decisionmaking process," and did not "allege the NCAA's actions were fraudulent, otherwise illegal, or that they abused civil or property rights having their origin elsewhere." Thus, said the court, "We cannot accept HCF's invitation to interfere in the NCAA's internal affairs."

HCF was represented by Thomas F. Bedsole of Locke Reynolds in Indianapolis. The NCAA was represented by Donald L. Dawson of Kightlinger & Gray in Indianapolis. *(AMF)*

Hispanic College Fund v. National Collegiate Athletic Association, 826 N.E.2d 652, 2005 Ind.App.LEXIS 651 (Ind.App. 2005)

Disney is "common carrier" while operating "Indiana Jones" ride at Disneyland, California Supreme Court affirms in wrongful death case

Disneyland may be the happiest place on earth, but executives at the Walt Disney Company aren't smiling. In 2002, the company was hit with a wrongful death claim filed by the estate of Cristina Moreno. The estate alleged that the serious brain injuries leading to Moreno's death were caused by "the violent shaking and stress imposed by" the Indiana Jones amusement ride at Disneyland in Anaheim.

The claim was brought under a California statute that requires a heightened standard of care, "utmost care and diligence," in any ride operated by a common carrier. California legislation provides that "everyone who offers to the public to carry persons . . . is a common carrier."

Disney made a motion to dismiss the case for failure to state a recognized claim. In its motion, Disney challenged the assertion that it is a "common carrier." The company argued it was not a common carrier because the primary purpose of the ride was "entertainment and thrills," and that transportation of riders was only "incidental." The trial court agreed; it reasoned that although the literal wording of the statute seemed to fit, applying the statute would be "counterintuitive." The trial court therefore dismissed the case.

The California Court of Appeal reversed, relying upon "the plain language of the statute." (*ELR* 25:5:20)

The California Supreme Court granted review, which in California, had the effect of superseding the opinion of the Court of Appeals.

Writing for the Supreme Court, Justice Carlos Moreno affirmed Disney's status as a common carrier. He rejected the argument that the ride's primary purpose (entertainment) should govern its liability status. Instead, he stated that "the [patrons] surrendered themselves to the care and custody of the defendants." This fact, according to Justice Moreno, was more important than the purpose of the ride. As such, amusement ride operators, like ski lift operators, should be held to a higher standard of care.

In its decision, the Supreme Court noted that earlier cases had established the common carrier liability of amusement park attractions as far back as 1962 with "Surrey with the Fringe On Top," and as recently as 1995 with "Pirates of the Caribbean."

Moreno's estate was represented by Barry B. Novack in Beverly Hills. Disney was represented by Richard A. Derevan of Snell & Wilmer in Irvine. (*VG*)

Gomez v. Superior Court, 29 Cal.Rptr.3d 352, 2005 Cal. LEXIS 6557 (Cal. 2005)

Race car driver will get day in court because despite signing a release and waiver agreement, Arizona state constitution makes assumption of risk a jury question "in all cases," Arizona Supreme Court rules

Race car driver Charles Phelps was badly burned when his car crashed into a wall. He claims that his injuries were due, at least in part, to negligent race track employees who failed to rescue him fast enough and didn't provide adequate medical care. Phelps will have his day in court after all, though for a while it looked as though he wouldn't.

Prior to his accident, Phelps had signed a release and waiver agreement with the owner of the race track, Firebird Raceway. The trial court granted summary judgment for Firebird, ruling that the release and waiver agreement absolved it from any responsibility because the language of the agreement barred Phillips from bringing a suit. The Arizona Court of Appeals affirmed the judgment in favor of Firebird, ruling that a provision in the state constitution was not applicable to the case. (*ELR* 26:2:25)

Phelps appealed to the Arizona Supreme Court and argued that the Arizona Constitution provides that "assumption of risk" is a jury question "in all cases." In an opinion written by Justice Michael Ryan, the Supreme Court agreed with Phelps and reversed the decision of the appellate court.

Justice Ryan pointed to the plain language of the provision: "assumption of risk" is a jury question "in all cases whatsoever" and "at all times." Therefore, Justice Ryan held that the provision does apply to express assumption of risk cases, including cases where an injured person has signed a waiver and release agreement. He also noted that at a trial Firebird would still be entitled to the assumption of risk defense and was confident that an "adequately instructed jury would reach an appropriate result when confronted with assumption of risk defenses."

Phelps was represented by David L. Abney of Skousen Skousen Gulbrandsen & Patience in Mesa. Firebird Raceway was represented by Jay A. Fradkin of Jennings Strouss & Salmon in Phoenix. (*JCL*)

Phelps v. Firebird Raceway, Inc., 111 P.3d 1003, 2005 Ariz.LEXIS 53 (Ariz. 2005)

Federal District Court lacks jurisdiction over Swiss-based International Skating Union in antitrust lawsuit filed by World Skating Federation

Perhaps feeling a little sliced up by the power of the International Skating Union (ISU), the World Skating Federation (WSF) sued the ISU for antitrust violations to recover for the ISU's "allegedly monopolistic behavior." The ISU responded by moving to dismiss the WSF's complaint for lack of jurisdiction.

The WSF was formed after the Olympic skating judging scandal of 2002 and is comprised of athletes, coaches and judges. One of its goals is to have the International Olympics Committee accept it as the "international federation for the sport of figure skating" – a designation that currently belongs to the ISU.

According to the WSF, the ISU responded by engaging "in behavior designed to 'virtually eliminate the ability of potential competing organizations to sponsor skating competitions.'" Among other things, the ISU "issued letters and press releases which indicated that any ISU member 'who would join the WSF, or support or endorse its activities' would be acting 'against the integrity, the exclusive role and interests of the ISU' in 'breach of the ISU Constitution and Regulations.'" Also, said the WSF, the ISU's actions have induced television networks not do business with the WSF "or other entities for fear of being blacklisted."

Federal District Judge John E. Sprizzo sided with the ISU and granted its motion to dismiss. The judge rejected both of the WSF's bases for personal jurisdiction: section 12 of the Clayton Act and New York's long-arm statute. The judge noted that the Clayton Act says it only applies against corporate defendants. The ISU, an "association formed under the laws of Switzerland," did not meet this requirement, even though, as WSF argued, that the ISU shared many attributes of an American corporation. "Section 12 as written, and as interpreted, does not apply to entities that simply share common attributes with corporations," said the judge. "It only applies to corporations." Judge Sprizzo ruled that New York's long-arm statute didn't apply, because the ISU did not commit its supposed tortious acts in New York; and the WSF's argument that an event the ISU contracted to hold in New York would satisfy the requirements of the law also was meritless. "[It] is clear that [the WSF's] injuries did not arise out of ISU's sanctioning of this event."

What's more, the judge ruled that "[WSF's] argument that this cause of action arose out of television contracts that [the ISU] entered into several years before the idea of forming WSF had even been conceived borders on the frivolous."

Possibly foreseeing that its arguments would get the boot, the WSF also argued that the court should transfer the case to the federal district court for the District of Columbia or Colorado pursuant to 28 U.S.C. section 1406(a) which allows transfer to a court where the case could have been brought. However, because the WSF offered similar evidence of ISU's contacts with those states as it did with New York, and because those two jurisdictions also require that the "cause of action arise out of the in-state contacts of defendants," Judge Sprizzo held "it is not clear that jurisdiction can properly be found in either district." Moreover, the judge added that he did not believe that transferring would be in the interest of justice. "Section 1406 should not be a panacea for lawyers who bring suits in jurisdictions where they know or should know that they do not belong."

As a result, the judge dismissed the case.

The WSF was represented by Melvyn I. Weiss and Michael M. Buchman of Milberg Weiss Bershad & Schulman in New York. The ISU was represented by Alan R. Glickman, Mary M. Rosewater and Gregory P. Asciolla of Schulte Roth & Zabel in New York. *(AMF)*

World Skating Federation v. International Skating Union, 357 F.Supp.2d 661, 2005 U.S.Dist.LEXIS 1744 (S.D.N.Y. 2005)

Previously Reported:

Jury renders $2 million verdict against Rod Stewart. When last he appeared in these pages, Rod Stewart had won a federal Court of Appeals decision holding that the singer was entitled to a trial on his claim that a force majeure provision in his contract with a Nevada concert promoter entitled him to reschedule a concert he had to cancel for medical reasons, for which he had been paid a $2 million advance. *Rio Properties v. Armstrong Hirsch Jackoway* (*ELR* 26:4:12). The promoter wanted Stewart to return the advance, but Stewart refused to do so, on the grounds that the clause entitled him to reschedule the cancelled performance and keep the advance. The case did go to trial. The jury decided that Stewart must return the advance, and so rendered a $2 million verdict against him.

NCAA post-season tournament rule case settled. The NCAA has settled an antitrust lawsuit filed against it by the Metropolitan Intercollegiate Basketball Association by purchasing, for $56.5 million, the Association's pre- and post-season National Invitation Tournaments. The lawsuit had challenged the NCAA's post-season tournament rules. Before the case was finally settled, a federal District Court had denied both parties' summary judgment motions. *Metropolitan Intercollegiate Basketball Association v. NCAA* (*ELR* 26:10:18)

Court of Appeals reaffirms rap sampling infringement decision. In an opinion handed down last year, the Court of Appeals for the Sixth Circuit held that sampling is copyright infringement, even if the copied portion is *de minimis* and the resulting work is not substantially similar to sampled recording (*ELR* 26:4:7). The case involved the sound track of the movie "I Got the Hook Up" which included a recording that had sampled "Get Off Your Ass and Jam." Though Dimension Films, the company that produced the movie, had a synch license from the publisher of the "Get Off" *composition*, Dimension did not have a master use license from Bridgeport Music, the record company that owns the "Get Off" sound recording copyright. The appellate court's decision was precedent-setting and controversial, and perhaps for those reasons, it granted Dimension Films' petition for rehearing. Nevertheless, after further briefing and argument, the appellate court "adhere[d]" to its earlier conclusion. So, in the Sixth Circuit at least, it continues to be the law that sampling infringes sound recording copyrights, even if the portion sampled is *de minimis* and the resulting work is not substantially similar to the original. *Bridgeport Music, Inc. v. Dimension Films*, 410 F.3d 792, 2005 U.S.App.LEXIS 10140 (6th Cir. 2005)

College wrestling associations still lack standing to challenge Title IX rules. Several college wrestling associations have been trying to challenge U.S. Department of Education rules and policies implementing Title IX. The associations complain that the offending rules and policies discriminate against men, because they have required or encouraged colleges to cap or even cut male athletic programs, including wrestling. So far, the associations have not gotten to the merits of their claims, because federal courts ruled that the associations lacked standing to bring their lawsuit (*ELR* 26:5:22). The associations filed a petition for certiorari with the Supreme Court, but their petition was denied. *National Wrestling Coaches Ass'n v. Department of Education*, 125 S.Ct. 2537, 2005 U.S.LEXIS 4519 (2005). In the meantime, in an effort to cure their lack of standing, the associations added two more organizations to their group – the Juniata Wrestling Club and the Committee to Reinstate Delaware Wrestling – and filed a new lawsuit against the Department of Education. But federal District Judge Emmet Sullivan has ruled that the associations still lack standing, and he dismissed their new lawsuit too. *College Sports Council v. Department of Education*, 357 F.Supp.2d 311, 2005 U.S.Dist.LEXIS 2933 (D.D.C. 2005)

Attorney fee award of $350,000 to Heather Sue Mercer in gender discrimination suit against Duke is affirmed. Heather Sue Mercer proved that Duke University discriminated against her on account of her sex, when it cut her from the football team despite her skill as a place-kicker (*ELR* 24:1:8). The jury awarded her $1 in compensatory damages plus $2 million in punitive damages. But her millionaire status was short-lived, because the Court of Appeals held that punitive damages are not available in under Title IX (*ELR* 24:11:16). Attorneys' fees are available, though, and the District Court awarded her $350,000 in fees, even though, by then, her damages recovery was just $1 (*ELR* 26:3:17). Duke appealed the fee award, unsuccessfully. In an opinion by Judge William Traxler, the Court of Appeals has affirmed the fee award. *Mercer v. Duke University*, 401 F.3d 199, 2005 U.S.App.LEXIS 3441 (4th Cir. 2005)

Attorneys' fee award of $144,000 to Free Speech Coalition in child pornography case is vacated. The Free Speech Coalition successfully persuaded the United States Supreme Court that the Child Pornography Prevention Act was unconstitutional (*ELR* 23:11:5). Then the Coalition persuaded a federal District Court to award it almost $144,000 in attorneys' fees, pursuant to the Equal Access to Justice Act. That, though, is where the Coalition's string of successes ran out. The government appealed the fee award, and in an opinion by Judge Michael Daly Hawkins, the Court of Appeals reversed. The appellate court held that even though the government lost the case, its defense of the Act was "substantially justified," and therefore fees should not have been awarded to the Coalition. *Gonzales v. Free Speech Coalition*, 408 F.3d 613, 2005 U.S.App.LEXIS 9350 (9th Cir. 2005)

Opinion denying Clear Channel's pre-verdict motion for judgment in JamSports Supercross case is published. Last March, a jury awarded JamSports $90 million in case alleging that Clear Channel had interfered with JamSports' contract to produce the motorcycle Supercross series. Clear Channel tried, twice, to prevent the case from going to the jury at all. Before the trial ever began, it filed an unsuccessful motion for summary judgment (*ELR* 26:10:17). And then, during trial, at the close of the presentation of JamSports' evidence, Clear Channel made a motion for judgment as a matter of law, arguing that JamSports failed to prove the essential elements required by Illinois law of its claim for interference with prospective economic advantage. Judge Matthew Kennelly denied that motion too, however, which is why the case went to the jury. *JamSports v. Paradama Productions*, 360 F.Supp.2d 905, 2005 U.S.Dist.LEXIS 4583 (N.D.Ill. 2005)

Supreme Court denies cert. The United States Supreme Court has denied petitions for certiorari in the following previously reported cases: *Federal Communications Commission v. Prometheus Radio Project*, 125 S.Ct. 2904, 2005 U.S.LEXIS 4811 (2005), in which the Court of Appeals affirmed "much" of the FCC order that adopted new rules permitting companies to own more media businesses than before, but remanded "certain aspects" of the order to the FCC for its "additional justification or modification" (*ELR* 26:6:11); *Newton v. Diamond*, 125 S.Ct. 2905, 2005 U.S.LEXIS 4681 (2005), in which the Court of Appeals held that the Beastie Boys' recording "Pass the Mic," which included a licensed sample from James W. Newton's recording of his composition "Choir," did not infringe the copyright to the composition itself, even though composition was not licensed, because the Beastie Boys used only a "de minimis" portion of composition (*ELR* 25:7:12, 26:10:25); and *Ivanova v. Columbia Pictures Industries*, 125 S.Ct. 2914, 2005 U.S.LEXIS 4690 (2005), in which the Court of Appeals held that Mexican film production companies own the restored U.S. copyrights to Mexican movies that once were in the public domain in the U.S., including movies that featured famed Mexican actor Cantinflas (*ELR* 26:12:15).

Opinions published. The following previously reported opinions have now been published: *Tyne v. Time Warner Entertainment*, 901 So.2d 802, 2005 Fla.LEXIS 728 (Fla. 2005) (*ELR* 26:12:9); *Shady Records, Inc. v. Source Enterprises, Inc.*, 371 F.Supp.2d 394, 2005 U.S.Dist.LEXIS 4742 (S.D.N.Y. 2005) (*ELR* 26:12:12); *Keane v. Fox Television Stations*, 129 Fed.Appx. 874, 2005 U.S.App.LEXIS 4507 (5th Cir. 2005) (*ELR* 27:1:11); *Jordan v. Knafel*, 823 N.E.2d 1113, 2005 Ill.App.LEXIS 73 (Ill.App. 2005) (*ELR* 26:10:12).

DEPARTMENTS

In the Law Reviews:

ENTERTAINMENT, PUBLISHING AND THE ARTS HANDBOOK 2005-2006 EDITION, edited by Robert Thorne and published by Thomson West, has been issued with the following articles:

Trademark Licensor Liability for Licensee Products by Lisa J. Peterson, 2005-2006 Entertainment, Publishing and the Arts Handbook 3 (2005) (for publisher, see above)

Emerging Threats: Digital Music Players, Pen Drive & Web-Based E-mail by Zack Zeiler, 2005-2006 Entertainment, Publishing and the Arts Handbook 31 (2005) (for publisher, see above)

The Next Big Threat: Mobile and Smart Phones by Zack Zeiler, 2005-2006 Entertainment, Publishing and the Arts Handbook 37 (2005) (for publisher, see above)

Emerging Threats: WiFi & Digital Music Players by Zack Zeiler, 2005-2006 Entertainment, Publishing and the Arts Handbook 45 (2005) (for publisher, see above)

Using Pre-Tax Money in Retirement Accounts to Purchase Survivorship Life Insurance (SLI) by Maurice R. Kassimir and Robert A. Spielman, 2005-2006 Entertainment, Publishing and the Arts Handbook 53 (2005) (for publisher, see above)

Frankenstein Rule: ICANN, Free Speech, and Potholes on the Path to Involuntary "e-Government" by Grace Davies, 2005-2006 Entertainment, Publishing and the Arts Handbook 65 (2005) (for publisher, see above)

United States v. American Library Association: How Congress Tried to Ban Porn from Libraries, but Got Rid of Humpback Whales Instead by Silvia J. Esparza, J.D., 2005-2006 Entertainment, Publishing and the Arts Handbook 85 (2005) (for publisher, see above)

Webcams in Jail: A Violation of Privacy and Due Process by Neha Mehta, 2005-2006 Entertainment, Publishing and the Arts Handbook 111 (2005) (for publisher, see above)

Taking a Glance at New Media Deals in the Music Industry by Dina LaPolt, 2005-2006 Entertainment, Publishing and the Arts Handbook 137 (20050 (for publisher, see above)

The Fear Causing Commission and Its Reign of Terror: Examining the Constitutionality of the FCC's Authority to Regulate Speech Under the First Amendment by Shilpa Mathew, 2005-2006 Entertainment, Publishing and the Arts Handbook 147 (2005) (for publisher, see above)

Artist Management Contracts and Related Issues by Kent Newsome, 2005-2006 Entertainment, Publishing and the Arts Handbook 177 (2005) (for publisher, see above)

Don't Strap Your Hands on My Engines: Who Should Own the Video Game Software Tools & Game Engine? by Alan J. Haus, 2005-2006 Entertainment, Publishing and the Arts Handbook 203 (2005) (for publisher, see above)

The Economics of Developing and Maintaining an Entertainment Law Practice by Kenneth J. Abdo, Esq., 2005-2006 Entertainment, Publishing and the Arts Handbook 215 (2005) (for publisher, see above)

What Some Celebrities Consider No Big Deal Can Be the Biggest Deal They Will Ever Sign by Robert J. Nachshin and Scott N. Weston, Certified Family Law Specialists, 2005-2006 Entertainment, Publishing and the Arts Handbook 219 (2005) (for publisher, see above)

LOYOLA OF LOS ANGELES ENTERTAINMENT LAW REVIEW has published Volume 25, Number 3 with the following articles:

A Test Case for Newsgathering: The Effects of September 11, 2001 on the Changing Watchdog Role of the Press by Amanda S. Reid and Lawrence B. Alexander, 25/3 Loyola of Los Angeles Entertainment Law Review (2005)

Control Content, Not Innovation: Why Hollywood Should Embrace Peer-to-Peer Technology Despite MGM v. Grokster by Timothy K. Andrews, 25/3 Loyola of Los Angeles Entertainment Law Review (2005)

The Dissonance of Work for Hire in Commissioned Sound Recordings: Boulez v. Commissioner Revisited by Charles Coker, 25/3 Loyola of Los Angeles Entertainment Law Review (2005)

Duet of Discord: Martha Graham and Her Non-Profit Battle Over Work for Hire by Anne W. Braveman, 25/3 Loyola of Los Angeles Entertainment Law Review (2005)

THE JOURNAL OF THE COPYRIGHT SOCIETY OF THE USA, 352 Seventh Avenue, Ste. 307, New York, NY 10001, has published Volume 52 Number 3, with the following articles:

Copyright in Computer-Composed Music: HAL Meets Handel (Nathan Burkan Memorial Competition First Prize Paper) by William T. Ralston, 52 Journal of the Copyright Society of the USA 281 (2005) (for address, see above)

Transforming the News: Copyright and Fair Use in News-Related Contexts by Matthew D. Bunker, 52 Journal of the Copyright Society of the USA 309 (2005) (for address, see above)

Peer-to-Peer Technology as Infrastructure: An Economic Argument for Retaining Sony's Safe Harbor for Technologies Capable of Substantial Noninfringing Uses by Brett M. Frischmann, 52 Journal of the Copyright Society of the USA 329 (2005) (for address, see above)

Debunking Fair Use Rights and Copyduty Under U.S. Copyright Law by David R. Johnstone, 52 Journal of the Copyright Society of the USA 345 (2005) (for address, see above)

Selected Law of Copyright Assignments and Licenses by Stanley Rothenberg, 52 Journal of the Copyright Society of the USA 403 (2005) (for address, see above)

VANDERBILT JOURNAL OF ENTERTAINMENT LAW & PRACTICE has published Volume 7 Number 2, with the following articles:

Taking One for the Team: Should Colleges be Liable for Injuries Occurring During Student Participation in Club Sports? by Nick White, 7 Vanderbilt Journal of Entertainment Law & Practice 193 (2005)

The NCAA's Regulations Related to the Use of Agents in the Sport of Baseball: Are the Rules Detrimental to the Best Interest of the Amateur Athlete? by Richard T. Karcher, 7 Vanderbilt Journal of Entertainment Law & Practice 215 (2005)

Representant Les Etats-Unis de'Amerique: Reforming the USOC Charter by Christopher T. Murray, 7 Vanderbilt Journal of Entertainment Law & Practice 233 (2005)

Sola, Perduta, Abbandonata: Are the Copyright Act and Performing Rights Organizations Killing Classical Music? by Amanda Scales, 7 Vanderbilt Journal of Entertainment Law & Practice 280 (2005)

Termination Rights and the Real Songwriters by Geoffrey P. Hull, 7 Vanderbilt Journal of Entertainment Law & Practice 301 (2005)

DEPAUL-LCA JOURNAL OF ART AND ENTERTAINMENT LAW has published Volume 15, Number 1 with the following articles:

The Perfect Fake: Creativity, Forgery, Art and the Law by Michael J. Clark, 15 DePaul-LCA Journal of Art and Entertainment Law 1 (2004)

Soviet World War II Trophy Art in Present Day Russia: the Events, the Law and the Current Controversies by Lina M. Montén, 15 DePaul-LCA Journal of Art and Entertainment Law 37 (2004)

Hold on Tighter/Let Go Sooner: A Review of Free Culture and an Argument for the Synthesis of Public Domain Preservation and Moral Rights Adoption by Christopher Madden, 15 DePaul-LCA Journal of Art and Entertainment Law 99 (2004)

Mixed Media: Conflicting Community Standards for Indecency for Broadcast, Cable and the Internet by Dana Duffield, 15 DePaul-LCA Journal of Art and Entertainment Law 141 (2004)

The Risk of Using Secondary Liability Legislation as a Means of Reducing Digital Copyright Infringement by Julie Erin Land, 15 DePaul-LCA Journal of Art and Entertainment Law 167 (2004)

Rights Management in Digital Media Content: A Case for FCC Intervention in the Standardization Process by John Matthew Williamson, 3 Journal on Telecommunications & High Technology Law 309 (2005) (http://www.colorado.edu/law/jthtl/)

The Impossibility of Technology-Based DRM and a Modest Suggestion by John Black, 3 Journal on Telecommunications & High Technology Law 387 (2005) (for website, see above)

P2P and the Future of Private Copying by Peter K. Yu, 76 University of Colorado Law Review (2005)

Copy Right and Copy Wrong: DVD Jon and 321 Studios Take on the Movie Industry by Stephen Liu, 39/1 The International Lawyer 161 (2005) (abanet.org/intlaw/publications)

THE JOURNAL OF INTELLECTUAL PROPERTY LAW, published by University of Georgia http://www.lawsch.uga.edu/jipl/, has issued Volume 12, Number 2 with the following articles:

Falling on Deaf Ears: Is the "Fail-Safe" Triennial Exemption Provision in the Digital Millennium Copyright Act Effective in Protecting Fair Use? by Woodrow Neal Hartzog, 12 Journal of Intellectual Property Law 309 (2005) (for publisher, see above)

Nobility of Interpretation: Equity, Retrospectivity, and Collectivity in Implementing New Norms for Performers' Rights by Antony Taubman, 12 Journal of Intellectual Property Law 351 (2005) (for publisher, see above)

The King James Copyright: A Look at the Originality of Derivative Translations of the King James Version of the Bible by Jason L. Cohn, 12 Journal of Intellectual Property Law 513 (2005) (for publisher, see above)

Peer-to-Peer and Substantial Noninfringing Use: Giving the Term "Substantial" Some Meaning by Richard M. Myrick, 12 Journal of Intellectual Property Law 539 (2005) (for publisher, see above)

Defining Overcriminalization Through Cost-Benefit Analysis: The Example of Criminal Copyright Laws by Geraldine Szott Moohr, 54 American University Law Review (2005)

Revisiting the Visual Artists Rights Act of 1990: A Follow-Up Survey About Awareness and Waiver by RayMing Chang, 13 Texas Intellectual Property Law Journal 129 (2005)

The NCAA's Initial Eligibility Requirements and the Americans with Disabilities Act in the Post-PGA Tour, Inc. v. Martin Era: An Argument in Favor of Deference to the NCAA, XLVI Number 2 Boston College Law Review (2005)

From Locker Rooms to Legislatures: Student-Athletes Turn Outside the Game to Improve the Score by Michael Aguirre, 36 Arizona State Law Journal (2004)

Revisiting the Sports Broadcasting Act of 1961: A Call for Equitable Antitrust Immunity from Section One of the Sherman Act for all Professional Sports Leagues by Lacie L. Kaiser, 54 DePaul Law Review (2005)

Trademarks-Internet Pop-Up Advertisement Triggered by Competitor's Trademarks Is Not Infringing "Use in Commerce" of the Marks by Leanne Stendell, 58 SMU Law Review 215 (2005)

ART ANTIQUITY AND LAW, published by www.kluwerlawonline.com, has issued Volume 10, Number 2 with the following articles:

Flying Mercury Comes Home to Pavlovsk: Perspectives on the Return of Wartime Cultural Trophies in Austria and Russia by Patricia Kennedy Grimsted, 10 Art Antiquity and Law 107 (2005) (for website, see above)

Freedom of Artistic Expression and the Human Rights Act 1998 by Dawn Watkins, 10 Art Antiquity and Law 147 (2005) (for website, see above)

Switzerland's New Federal Act on the International Transfer of Cultural Property: An Update and a Perspective from Collectors and the Art Trade by Georg von Segesser and Alexander Jolles, 10 Art Antiquity and Law 175 (2005) (for website, see above)

The "Inherent Risk" Doctrine, Amateur Coaching Negligence, and the Goal of Loss Avoidance by Timothy B. Fitzgerald, 99 Northwestern University Law Review (2005)

Due Process and the NCAA: Are Innocent Student-Athletes Afforded Adequate Protection from Improper Sanctions? A Call for Change in NCAA Enforcement Procedures by Mathew M. Keegan, 25 Northern Illinois University Law Review (2005)

Overview of China's New Regulation on the Collective Administration of Copyright by Simon Teng, 50 Copyright World 8 (2005) (www.ipworldonline.com)

Plugging the Gap: Implications of Recent Cases between Novello and Keith Prowse Music Publishing by Robert Wegenek and Matthew Pryke, 50 Copyright World 12 (2005) (for website, see above)

Editing Companies vs. Big Hollywood: A Hollywood Ending? by Jennifer J. Karangelen, 13 University of Baltimore Intellectual Property Law Journal 13 (2004)
Proving Dilution: Survey Evidence in Trademark Dilution Actions by Matthew D. Bunker, James G. Stovall, and Patrick R. Cotter, 13 University of Baltimore Intellectual Property Law Journal 37 (2004)

THE AUSTRALIAN INTELLECTUAL PROPERTY JOURNAL, published by LawBook Company, 44-50 Waterloo Road, N. Ryde NSW 2113, Australia, has issued Volume 16, Number 2 with the following articles:

Monopoly Versus Freedom of Ideas: The Expansion of Intellectual Property by Justice Ronald Sackville, 16 Australian Intellectual Property Journal (2005) (for address, see above)

The Interface Between Intellectual Property and Antitrust: Some Current Issues in Australia by Justice Kevin Lindgren, 16 Australian Intellectual Property Journal 76 (2005) (for address, see above)

The Concept of "Sign" in Australian Trade Mark Law by Patricia Loughlan, 16 Australian Intellectual Property Journal 95 (2005) (for address, see above)

Bend It Like Beckham and Real Women Have Curves: Constructing Identity in Multicultural Coming-of-Age Stories by Linda C. McClain, 54 DePaul Law Review 701 (2005)

Educational Programs Calendar:

The 2005 IP and the Internet Conference, Friday, October 14, The Santa Clara Westin Hotel, Santa Clara, California. The program, sponsored by the Copyright and Computer Law Subcommittees of the Intellectual Property Law Section of the State Bar of California, delves into Liability in a Software Intensive World; Cable Law Update; Open Source in Corporate Environments; Closing the Time-Assurance Gap, the luncheon presentation by Zafar Khan of Rpost US, Inc.; Keyword Advertising and Pop-Ups; International Privacy Laws v. Internet Business; and Grokster and the Future of P2P. For online registration, go to www.calbar.ca.gov/ipsection or call 415-538-2508.

15th Annual Entertainment Institute Legal and Business Aspects of Music, Motion Pictures, and Digital Entertainment, October 21-22, Omni Hotel, Austin, Texas. The Texas Bar CLE offers a state of the industry review of hot legal issues presented by leading professionals, Lon Sobel, editor of the Entertainment Law Reporter, Steve Winogradsky of the Winogradsky Company, William Krasilovsky, author of This Business of Music, Stan Soocher, editor of Entertainment Law and Finance, Susan Butler, legal editor for Billboard Magazine and many others. Topics will include Global Copyright Protection; Copyright in a Digital World; Royalty Collections at Home and Abroad; Recording Contracts; Ethics for Entertainment Attorneys; Estate Planning Issues for Copyright Owners; International Trademark Protection; Drafting Entertainment Industry Contracts; Money for Movies; Producing Musical Theater; and Film Production and Distribution Case Studies. For more information, to register, or to view the program, please go to www.TexasBarCLE.com.

The Sound of the Deal: 2005 IPELS 29th Annual Symposium, October 29, Hotel Bel Air, Los Angeles. Sponsored by the Los Angeles County Bar Association's Intellectual Property and Entertainment Law Section in conjunction with the Southwestern University School of Law's Donald E. Biederman National Entertainment and Media Law Institute, the panels will examine Artist/Publishing Deals; Royalties, Rights and Remuneration; Future of Digital Distribution and Keynote Speaker Les Bider. For further information, register online at http://calendar.lacba.org, call (213) 896-6560 or mail to Member Services Department, Los Angeles County Bar Association, PO Box 55020, Los Angeles, CA 90055-2020.

Copyright-From Traditional Concepts to the Digital Age: A Panoramic Overview of the Highly Dynamic Landscape of Copyright Law, November 7-8, The Downtown Conference Center at Pace University, New York City. Presented by Lexis-Nexis, the program will provide state-of-the-art insight into copyright law by the experts David Nimmer, author of Nimmer on Copyright, and of counsel to Irell and Manella; UC Berkeley Boalt Law School Professor and Director of the Berkeley Center on Law and Technology Peter Menell; and Southwestern University Professor and Editor and Publisher of the Entertainment Law Reporter Lon Sobel. The sessions examine The Copyright Navigator: Analysis of This Useful Tool to Help You Be More Effective in Your Practice; Big Picture Overview of Copyright: From the Printing Press to the Digital Age; Protecting and Limiting Doctrines; Ownership including Duration, Termination of Transfer and Foreign Ownership; "A Comprehensive History of American Copyright Law in 40 Minutes (or Less)"; Digital Copyright including Anti-circumvention; Copyright Management Information; ISP Safe Harbors; Indirect Liability (Grokster) and Enforcement; Copyright Companions and Preemption including the Right of Publicity, Idea Protection and Trademark Law; Licensing, Traditional, Digital and Open Source; and Copyright Assets including Security Interests, Bankruptcy and Insurance. For additional information, call 1-800-MEALEYS or (610) 768-7800; FAX (610) 768-0880; e-mail mealeyseminars@lexisnexis.com or online at www.mealeys.com/conferences.