WASHINGTON MONITOR

Production and distribution of documentary "Fahrenheit 9/11" did not violate election laws, Federal Election Commission decides

Filmmaker Michael Moore did not violate federal election laws by producing "Fahrenheit 9/11," nor did Bob and Harvey Weinstein, Lions Gate Films and IFC Films violate those laws by distributing the documentary, the Federal Election Commission unanimously decided. The Commission therefore dismissed two separate but similar complaints, both of which asserted that "Fahrenheit 9/11" sought to defeat the re-election of President George Bush in the months preceding the November 2004 vote.

Federal election law prohibits corporations from making or financing "electioneering communications." Individuals and partnerships are permitted to do so, but if they spend more than $10,000, they must report their expenditures to the Commission. The complaining parties – two otherwise unidentified fellows named Dale A. Clausnitzer and Jeffrey S. Smith – contended that "Fahrenheit 9/11" and trailers for it were "electioneering communications." If they had been, Lions Gate and IFC would have violated the law, because they are corporations; and Moore and the Weinsteins would have too, because they didn't report whatever money they spent on the film.

But the FEC's General Counsel concluded that the documentary and trailers were not "electioneering communications." And the full Commission agreed.

The Federal Election Act defines "electioneering communications" in a very particular way. They are "broadcast" communications that: clearly identify a candidate; are distributed within specified times before elections; and are targeted at the electorate. "Fahrenheit 9/11" itself was not an "electioneering communication" because it wasn't "broadcast" within the specified period before the election. Though trailers for the film may have broadcast within that period, the trailers did not identify specific candidates.

Federal election law also prohibits corporations from making "independent expenditures" expressly advocating the election or defeat of a candidate. Individuals and partnerships are permitted to do so, but it they spend more than $250, they must report their expenditures to the Commission. Clausnitzer and Smith also contended that "Fahrenheit 9/11" expressly advocated the defeat of President Bush, and thus the costs of producing and distributing the documentary were "independent expenditures." Again, if they had been, Lions Gate, IFC, Moore and the Weinsteins would have violated the law.

But again, the FEC's General Counsel concluded that the costs of producing and distributing "Fahrenheit 9/11" were not "independent expenditures," for two reasons. And the full Commission agreed.

First, to "expressly advocate" the election or defeat of a candidate, phrases such as "vote for the President" or "Smith for Congress" must be used. The General Counsel concluded that "While Fahrenheit 9/11 contains a great deal of political content and criticism, and leaves no doubt about Moore's discontent with the policies and practices of the Bush Administration, the film does not expressly advocate the defeat of President Bush or the election or defeat of any other clearly identified candidate. In fact, the film's criticism is wide-ranging. . . ."

Second, if "express advocacy" is done as a "bona fide commercial activity," money spent doing so is not treated as an "independent expenditure." The General Counsel concluded that the production and distribution of "Fahrenheit 9/11" was a "bona fide commercial activity." He noted that Moore, the Weinsteins, Lions Gate and IFC "are in the business of making, promotion, and/or distributing films," and nothing suggested that they "failed to follow usual and normal business practices and industry standards in connection with Fahrenheit 9/11." All of the transactions between them "appear to have been profit-making, arm's-length commercial transactions. . . ." As a result, the money spent to produce and distribute the documentary was not an "independent expenditure." And that meant it was perfectly legal for Lions Gate and IFC to have spent that money, and perfectly legal for Moore and the Weinsteins not to have reported whatever they may have spent.

In the Matter of Dog Eat Dog Films, Inc., MUR 5474 and 5539 (Federal Election Commission 2005), available at http://eqs.sdrdc.com/eqsdocs/000045EC.pdf (Commission Order) and http://eqs.sdrdc.com/eqsdocs/000045EB.pdf (General Counsel's Report)

NEW LEGISLATION AND REGULATIONS

California enhances its "anti-paparazzi" statute; law may now make editors liable for paparazzis' behavior

California has had an "anti-paparazzi" statute on its books since 1998. The original act makes people liable for "invasion of privacy" if they trespass in order to "capture any type of physical impression" of another person engaging in a "personal or familial activity," and does so in a manner that is offensive to a reasonable person. The law allowed those whose privacy was invaded to recover treble damages, punitive damages, and if done for a commercial purpose, whatever amount the paparazzi may have been paid.

That law, however, seems not to have deterred paparazzi in California. Earlier this year, California Assembly member Cindy Montanez noted that "In recent months there have been a number of incidents . . . in which 'paparazzi' have captured photographs or recordings of celebrities by engaging in what have been described by the press and law enforcement as 'overly aggressive' and 'dangerous' tactics such as surrounding a celebrity and preventing her from moving in any direction or getting to her car, boxing a celebrity's car in with paparazzi cars, and ramming a celebrity's car after chasing her into a dead-end street." This sort of behavior could result in criminal prosecution, but Assemblywoman Montanez introduced a bill designed "to address these situations in the civil liability context."

In support of her bill, Montanez argued that "'paparazzi' have taken their profession of capturing the images of celebrities in a dangerous direction: assaulting the celebrity in order to either capture the victim's reaction to the assault on film or tape, or to use the threat of assault to impede the mobility of a celebrity so that an image may be taken. This trend is best personified in the vehicular assault committed by paparazzi against Lindsay Lohan as she drove her car in downtown Los Angeles. . . . The young actress sped away from the pursuit of the paparazzi, only to come to a dead end. When she made a U-turn in order to escape the parade of paparazzi, one of their number crashed his car into hers, causing her to come to a stop. The incident was captured on film by the rest of the [paparazzi], and pictures of the incident were soon published in many different publications."

Similar incidents have happened to Reese Witherspoon, Jennifer Lopez and Nicole Kidman. "While these rare instances may produce criminal charges. . . ," Montanez noted, "many others go unpunished due to the difficulty of proving criminal assault. And, the financial rewards of the 'right' celebrity photo can be an incentive for the [paparazzi] to continue to push this trend. . . .[P]hotos may sell from $6,000 to $100,000. Recent pictures of Brad Pitt and Angelina Jolie are said to have reaped the photographer $500,000."

Montanez' bill extended the remedies of California's anti-paparazzi act to "victims of assault committed with the intent to take photographs or recordings."

Extending these remedies against paparazzi alone would not have made the bill controversial. But the bill did one more thing too – something that may be far more significant than adding "assault" to the list of activities that invade privacy. The bill also makes the act's remedies – including punitive damages – available against any "person who directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate [the act] for any . . . damages result from . . . said violation." This language could be construed to make an editor who works for a periodical that purchases paparazzi photos, liable to a celebrity if the editor's behavior is deemed to have induced or caused the paparazzi to invade the privacy of a celebrity, even if the paparazzi is not an employee of the periodical.

California Assembly Bill 381 (2005), amending California Civil Code section 1708.8, available at www.leginfo.ca.gov/pub/bill/asm/ab_0351-0400/ab_381_bill_20050915_enrolled.pdf

California, Illinois and Michigan ban sale or rental of violent video games to minors

The states of California, Illinois and Michigan all have enacted new legislation banning the sale or rental of violent video games to minors. The Entertainment Software Association immediately responded by suing all three states, seeking orders declaring the statutes unconstitutional.

The three new statutes are similar but not identical.

The California and Illinois statutes, for example, both prohibit the sale or rental of "violent" games to minors, and both require violent games to be labeled with a 2-inch by 2-inch white "18" outlined in black. The

Michigan law, by contrast, prohibits the sale or rental only of "ultra-violent explicit video games."

The Illinois statute also prohibits the sale or rental of "sexually explicit" video games to minors – something the other two states do not do, yet.

The marketing of violent video games to minors has long been a controversial issue. The Federal Trade Commission has issued five reports on the marketing of violent entertainment, including violent video games. In its most recent report, the FTC praised the video game industry for continuing to comply "for the most part" with its self-regulatory limits on ad placements (*ELR* 26:6:5). Industry self-regulation, however, is done by game publishers and distributors. These new state statutes are aimed at retailers.

California Assembly Bill 1179 (2005), adding California Civil Code sections 1746 – 1746.5, available at www.leginfo.ca.gov; *Illinois NB 4023* (2005), amending Illinois Criminal Code section 11-21 and adding Articles 12A and 12B, available at www.ilga.gov/legislation/publicacts/94/PDF/094-0315.pdf; *Michigan Act 108* (2005), adding Michigan Compiled Laws sections 722.685 – 722.693, available at www.legislature.mi.gov

RECENT CASES

Coors Brewing Company must defend suit for infringement of photo of NBA player Kevin Garnett

Federal District Judge Lewis Kaplan denied Coors Brewing Company's motion for summary judgment in a copyright infringement suit brought by photographer Jonathan Mannion, because a reasonable jury could find that a Coors billboard is substantially similar to Mannion's photo of NBA player Kevin Garnett.

Jonathan Mannion took a picture of Garnett for the basketball magazine SLAM. The photo's view is up and across Garnett's body, as if he is towering above the earth. Mannion directed Garnett to pose in a unique manner with his head cocked, eyes closed and hands resting over his lower abdomen. In the photo, Garnett is wearing a lot of jewelry which, in the vernacular, is referred to as "Ice."

After getting permission from Mannion, an advertising company used the Garnett photo in one of its proposed billboard designs entitled "Iced Out." The advertising company placed the Garnett photo on one side of the billboard, with his jewels shining, and a can of Coors Light on the other. Mannion only gave the advertising company permission to use the photo in its proposed billboard designs. "Iced Out" was sent to Coors along with other designs. Coors selected "Iced Out" for its marketing campaign and requested that the advertising company create the final billboard.

The advertising company re-created the billboard, and replaced Garnett with another African-American model. The photo of the model was taken from the exact same angle, with the model posed in the exact same manner as Garnett. The model also wore the same clothes as Garnett. The only difference between the two photos was the type of jewelry.

After Mannion saw the finished "Iced Out" billboard posted over a Los Angeles freeway, he sued Coors for copyright infringement of his Garnett photo. Mannion claimed that Coors copied the arrangement and orchestration of the subject of the photo.

In a motion for summary judgment, Coors asserted the "merger doctrine" in defense of Mannion's claim of infringement.

Judge Kaplan found that a reasonable jury could decide the issue of substantial similarity in favor of either party. Judge Kaplan observed that the "nature and extent" of copyright protection in the photograph depended on the nature of the originality it contained. Copyright protection could extend to the subject of the photograph, if the photographer arranged the scene in an original manner.

In addition, Judge Kaplan found that the merger doctrine did not apply to the case at hand, because the idea represented in the photo – a young African American wearing a lot of jewelry – could be depicted in a variety of ways. Moreover, Judge Kaplan asserted that the underlying basis of the merger doctrine, which is the idea/expression dichotomy, is not useful or relevant for infringement cases involving photographs.

Accordingly, Judge Kaplan denied Coors' motion for summary judgment.

Jonathan Mannion was represented by Mary D. Dorman in New York City. Coors Brewing Company was represented by S. Raye Mitchell of The Mitchell Law Group in Oakland. (*HK*)

Mannion v. Coors Brewing Company, 377 F.Supp.2d 444, 2005 U.S.Dist.LEXIS 14686 (S.D.N.Y. 2005)

Publisher did not infringe copyright by publishing photos of Marilyn Monroe in book "Blonde Heat"

Milton H. Greene Archives failed to prove its copyright infringement claim against the publisher of the book "Blond Heat," because Green Archives was unable to show that it owned valid copyrights in the Marilyn Monroe pictures that appeared in the book, a federal District Court ruled.

In 2001, CPI Communications published the book *Blonde Heat* which included seven Marilyn Monroe pictures without permission from Greene Archives which claimed to own the copyrights to all seven photos.

In fact, in 2003, Greene Archives settled a copyright infringement suit against a third party that had used those Marilyn Monroe pictures. The settlement agreement included language that released any "assigns" of the parties from claims related to the Marilyn Monroe images. And CPI believed that it was one of those "assigns."

Whether or not CPI was one of the released "assigns" could have become important, because after CPI published *Blonde Heat*, Greene Archives sued CPI for copyright infringement.

In response to CPI's motion for summary judgment, Judge Gary Taylor held that factual disputes about whether CPI was one of the released "assigns" prevented him from dismissing the case on that ground. But the judge was able to dismiss it for another reason.

Greene Archives failed to prove that it owned valid copyrights in the seven Marilyn Monroe images published by CPI. Judge Taylor noted that the images at issue were subject to the 1909 Copyright Act. Thus, copyright protection had to be secured by affixing copyright notices to each copy of the work published or sold by the copyright proprietor that included the name of the copyright proprietor.

Greene Archives, however, was unable to provide any admissible evidence of copyright notices affixed to the seven pictures. Furthermore, in response to Greene Archives' argument that notice was not required because the photographs were published for a "limited purpose," Judge Taylor noted that Green Archives had permitted publicists to use the Marilyn Monroe pictures to promote motion pictures, and had permitted the photos to be published in newspapers and magazines. Those uses constituted a "general publication" which required notices to be affixed. Since Green Archives failed to prove that it affixed copyright notices to the seven pictures, their copyrights were forfeited.

Therefore, Judge Taylor granted CPI's motion for summary judgment.

Greene Archives was represented by Glenn H. Johnson of Soni Law Firm in Pasadena. CPI was represented by Andrew J. Thomas of Davis Wright Tremaine in Los Angeles. (*JHI*)

Milton H. Greene Archives, Inc. v. BPI Communications, Inc., 378 F.Supp.2d 1189, 2005 U.S.Dist.LEXIS 14584 (C.D.Cal. 2005)

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

New York State common-law protects ownership interests in pre-1972 sound recordings not covered by the federal copyright act, the New York Court of Appeals has ruled.

Capitol Records and Naxos distribute classical recordings in direct competition with one another, often in the same retail stores. The recordings date from the 1930s when they were made in London pursuant to agreements between The Gramophone Company – the predecessor of Capitol's parent company, EMI Records – and violinist Yehudi Menuhin, cellist Pablo Casals, and pianist Edwin Fischer.

Capitol's right to sell these recordings is documented by agreements signed by Menuhin, Casals and Fischer, in which Gramophone received the "sole exclusive worldwide rights" to their performances. In turn, EMI exclusively licensed to Capitol these rights in the United States.

In contrast, Naxos has no claims or any contractual rights to the recordings. This is so because Naxos obtained the classical recordings by remastering sound recordings from the collection at the Yale University Library; Naxos didn't copy Capitol's own recordings. But since Naxos sells its recordings to the same record stores as Capitol, where they compete for customers, this presented a problem for Capitol.

As a result, Capitol filed a lawsuit in federal District Court in New York City, asserting claims for unfair competition, misappropriation of property, unjust enrichment, and common law copyright infringement – all under New York state law. Because the federal Copyright Act didn't protect sound recordings until 1972, that Act doesn't provide Capitol with a federal claim. (Federal court jurisdiction was based on diversity.) Thus, Capitol decided to pursue its remedies under state law claims because the Copyright Act specifically provides that state law protection for pre-1972 recordings is not preempted and continues to be effective until the year 2067.

Naxos won the first battle at the trial court level. Federal District Judge Robert Sweet granted summary judgment for Naxos. (*ELR* 25:5:10, 25:8:18)

Capitol appealed. On appeal, federal Court of Appeals Judge Jon Newman decided that the question of what protection, if any, provided by New York common law copyright was a question that should be answered by the New York Court of Appeals (that state's highest court). (*ELR* 26:6:8)

In an opinion by Judge Victoria Graffeo, the New York Court of Appeals held that nothing prevented New York common law from applying. Therefore, Capitol could successfully maintain its action against Naxos. In so holding, the court answered three questions:

(1) Whether the expiration of the term of a copyright in the country of origin terminates a common law copyright in New York?

(2) Whether a cause of action for common law copyright infringement includes some or all of the elements of unfair competition?

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

Judge Graffeo answered the first question in the negative by stating that "New York provides common law copyright protection to sound recordings not covered by the federal copyright act, regardless of the public domain status in the U.K., if the alleged act of infringement occurred in New York."

The court answered the second question in the negative and held that the causes of action for copyright infringement and unfair competition are not synonymous under New York law.

Judge Graffeo also answered the third question in the negative, because a product can be deemed to infringe on another's copyright to the extent that it utilizes the original elements of the protected work.

As a result, the New York Court of Appeals held that Capitol could maintain an action against Naxos under New York state law.

Capitol was represented by Philip Allen Lacovara of Mayer Brown Rowe & Maw in New York City. Naxos was represented by Maxim H. Waldbaum of Schiff Hardin in New York City. (*KH*)

Capitol Records v. Naxos of America, 4 N.Y.3d 540, 2005 N.Y.LEXIS 768 (N.Y. 2005)

Appeals court sets aside TVT's multi-million dollar judgment against Def Jam Music over rapper star Ja Rule's recordings

As previously reported in these pages, a jury awarded TVT $24 million in actual damages and $108 million in punitive damages in a lawsuit against Def Jam Music, in a case involving TVT's right to release recordings by Ja Rule (*ELR* 24:11:6). After the verdict, Federal District Judge Victor Marrero reduced the punitive damage award to $29 million (*ELR* 25:9:12). TVT's total judgment then stood at approximately $54 million, but that was before Def Jam appealed and the Court of Appeals ruled in favor of Def Jam and set aside TVT's multi-million dollar victory.

The District Court concluded that Def Jam breached an agreement it reached with TVT. Although Ja Rule had a recording contract with Def Jam, TVT believed that Def Jam would permit Ja to record music for release by TVT.

There were two written contracts that embodied the parties' agreement. Under one contract, referred to as the "Head of Agreement," Ja agreed to record for TVT. Under the other "Side Letter Agreement," Def Jam permitted Ja to record for TVT, but Def Jam never signed the side agreement.

Later, Def Jam expressly prohibited TVT from releasing Ja's music because of his Def Jam contract. And it released the music on its own Summer 2002 teaser album. Def Jam also tried to release the tracks on Ja's then-in-progress album "The Last Temptation," but the District Court granted TVT an injunction barring Def Jam from including the tracks on that album (*ELR* 24:10:9).

At trial, the District Court ruled in favor of TVT on its copyright infringement claim. TVT's claim was based on Def Jam's release of the *TVT Ja tracks* on Def Jam's summer teaser. Def Jam argued that it had a license the release the tracks. Although such a license was part of the overall agreement, District Judge Victor Marrero ruled in favor of TVT. The judge said that a fraudulently induced copyright license is invalid. But the Court of Appeals reversed that ruling because TVT did not "formally" rescind the license, and therefore no infringement occurred, said Court of Appeals Judge B.D. Parker Jr. The Court of Appeals also reversed the District Court's award of attorneys fees in connection with TVT's copyright claim (*ELR* 25:11:28).

The rest of TVT's claims were based on contract. The jury found that Def Jam did breach the agreement it reached with TVT. The jury also found Def Jam liable for tortious interference with TVT's recording contract with Ja Rule. But on appeal, the issue was whether Def Jam was a party to TVT's recording contract with Ja.

Under New York law, a party to a contract cannot be held liable for interfering with that contract. The Court of Appeals ruled that Ja's "Head Of Agreement" and Def Jam's "Side Letter Agreement" were really one agreement because they were "intended to effectuate the same result." As a result, Def Jam was a party to Ja's TVT recording contract. Thus, Def Jam could not be held liable for tortious interference and the court set aside TVT's actual damage award on that claim.

The court also set aside TVT's actual damage award for Def Jam's alleged fraudulent concealment. TVT argued that Def Jam fraudulently concealed that it secretly intended to never permit TVT to release Ja Rule recordings. But under New York law, the failure to disclose an intention to breach is not actionable concealment. Judge Parker said that Def Jam "simply failed to perform" its promise, for which fraud damages were not available.

Last but not least, the Court of Appeals set aside TVT's punitive damage award. It did so, because in New York the defendant's conduct must be directed at the public at large and Def Jam's conduct was not. Judge Parker said that manipulation of the judicial process does not support a punitive damage award.

Def Jam is still liable for TVT's compensatory damages of $126,720 for breach of contract – an award that Def Jam did not appeal.

TVT was represented by Edward P. Lazarus of Akin Gump Strauss Hauer & Feld in Los Angeles. Def Jam was represented Paul G. Gardephe of Patterson Belknap Webb & Tyler in New York and by Andrew L. Frey of Mayer Brown Rowe and Maw in New York. (*MAR*)

TVT Records v. Island Def Jam, 412 F.3d 82, 2005 U.S.App.LEXIS 11147 (2nd Cir. 2005)

Chicago Sun-Times did not defame Michael Jordan's former lover

The Chicago Sun-Times did not defame Michael Jordan's former lover, despite the newspaper's use of language that alluded to prostitution, because the words were reasonably subject to an innocent construction, a federal Court of Appeals has ruled.

When Karla Knafel's affair with Michael Jordan became public, along with his alleged promise to pay $5 million in hush money, the perfect ingredients for a media frenzy were created. Trying to limit damage to his public image, Jordan filed a lawsuit against Knafel for extortion. While Jordan's lawsuit was unfolding, a columnist for the Sun-Times reported numerous unflattering remarks about Knafel, which included statements suggesting prostitution and extortion.

As a result of the news article's incendiary effect on her, Knafel sued the Sun-Times for defamation. However, what's interesting is that Knafel's suit focused on statements that hinted she was a prostitute, and not at statements regarding extortion.

At the trial court level, Knafel shot an airball. Before the trial started, the court dismissed her claim in favor of the Sun-Times.

Knafel appealed.

In an opinion by Judge Terence Evans, the appellate court held that Knafel failed to prove her defamation claim, because the words contained in the news article were subject to an innocent construction. Judge Evans noted that one possible construction could be that Knafel was a gold digger, a statement that would suggest a woman who wanted a long term relationship with a man because of his money. This interpretation would be the direct opposite of an interpretation that she was a prostitute, in which the relationship is usually a one-time encounter. Thus, Judge Evans explained that although the Sun-Times columnist was severely critical of Knafel, his statements stopped just short of saying she committed the crime of prostitution and allowed other innocent constructions as well.

As a result, the Court of Appeals affirmed the lower court's judgment dismissing Knafel's complaint.

Knafel also has filed a separate lawsuit against Jordan himself alleging he breached his promise to pay her $5 million to keep quiet about their affair and to refrain from filing a paternity suit against him (*ELR* 26:10:12).

Knafel was represented by Michael T. Hannafan of Hannafan & Associates in Chicago. Chicago Sun-Times was represented by Damon E. Dunn of Funkhouser Vegosen Liebman & Dunn in Chicago. (*KH*)

Knafel v. Chicago Sun-Times, 413 F.3d 637, 2005 U.S.App.LEXIS 12900 (7th Cir. 2005)

Madonna's former bodyguard and lover was not defamed by photo and erroneous caption, federal appeals court affirms

It is unlikely that anyone believes Madonna's former lover is homosexual. James Albright, a former bodyguard and lover of Madonna, agreed to and did sell O'Mara Books information about Madonna for an upcoming biography.

The book was published with forty-eight pages of photographs, including one that was a photo of Madonna and two men. The photograph's caption read: "Madonna attends ex-lover Prince's concert with her secret lover and one-time bodyguard Jimmy Albright (left)." However, the man pictured was one of Madonna's backup dancers, who is a known homosexual. Subsequently, *People* magazine published the same photograph along with the erroneous caption. Albright sued O'Mara Books claiming defamation.

Albright alleged that the photograph defamed him because the dancer was an outspoken homosexual who often dressed as a woman. The federal District Court disagreed and dismissed Albright's complaint, finding that no reasonable interpretation of the photograph and text would suggest that Albright is homosexual, and thus the publication could not be construed as defamatory.

Albright appealed, unsuccessfully. Judge Juan Torruella, writing for the Court of Appeals, agreed with the District Court. The miscaptioned photograph is "not reasonably susceptible of a defamatory meaning," Judge Torruella said. The entire context of the photograph would actually suggest that the pictured man is heterosexual because of the caption alluding to an intimate relationship with Madonna.

Albright was represented by Jerrold G. Neeff of The Bostonian Law Group in Boston. Morton was represented by Jonathan M. Albano of Bingham McCutchen in Boston. (*ANC*)

Amrak Productions, Inc. v. Morton, 410 F.3d 69, 2005 U.S.App.LEXIS 10182 (1st Cir. 2005)

Congress had authority to restore copyright protection to foreign works in public domain in U.S., federal courts rule in two separate but similar cases

Once a public domain work, not always a public domain work – so Congress decided, and so two federal courts have ruled in separate but similar cases.

In a case filed in the District of Columbia, Luck's Music Library claimed that the Uruguay Round Agreements Act (URAA) unconstitutionally prevents it from freely distributing certain works that used to be in the public domain in the United States. It does, because the Uruguay Round Agreement – which the U.S. implemented in the URAA – required WTO members to restore copyrights of foreign holders whose works used to be in the public domain in other WTO nations.

Luck's argued that to "pass muster under the [Copyright] Clause [of the U.S. Constitution] a statute must create an incentive for authors to create new works: legislation must 'promote the progress of science.'" Copyright laws that remove works from the public domain do not provide incentives for new creations, Luck's said, because rewarding prior works will not provide any significant incentives to create new works because it will "not change the costs and benefits of doing so."

A federal District Court granted the government's motion to dismiss the case, ruling that Luck's complaint failed to state a cause of action (*ELR* 26:1:10).

Luck's appealed, but the Court of Appeals rejected Luck's argument. Judge Stephen Williams explained that "the expected benefits of creating new works are greater if Congress can remedy the loss of copyright protection for works that have fallen accidentally into the public domain." Moreover, in passing the URAA, the Senate reasoned that its adoption "helped secure better foreign protections for U.S. intellectual property and was 'a significant opportunity to reduce the impact of copyright piracy on [the U.S.]'"

In support of his conclusion, Judge Williams pointed to other, older federal statutes that removed works from the public domain, including laws that gave the President authority to give authors who published works abroad during World War I time to comply with procedural formalities in the United States after the war's end.

In a case filed in Colorado, Lawrence Golan and others who use public domain works in the U.S. filed suit claiming that the Copyright Clause of the Constitution does not permit works to be removed from the public domain.

Early in that case, the government tried to get it dismissed. But the court held that the claims were "cognizable" because the Act removed works from the public domain – something the District Court said the Copyright Clause may not permit (*ELR* 26:1:10).

Because there were no disputed issues of fact, both sides then moved for summary judgment. Federal District Judge Lewis Babcock granted the government's motion and denied Golan's. Judge Babcock rejected Golan's analogy to patent cases that held "Congress may not authorize the issuance of patents whose effects are to remove existent knowledge from the public domain. . . ." The judge noted that copyrights only restrict the use of expressions, while patents restrict the use of ideas themselves; and thus, he concluded, the government is more limited in restoring patent rights.

Judge Babcock also noted that Congress has removed copyrightable material from the public domain many times. "Congress has historically demonstrated little compunction about removing copyrightable materials from the public domain," said.

Judge Babcock also found that Congress had a rational basis in enacting the URAA – to promote protection of American authors by ensuring compliance with the Berne Convention within American borders. Finally, he rejected Golan's claim that the requirement that he pay royalties or fees to owners of restored copyrights violates the First Amendment.

In the D.C. case, Luck's Music Library was represented by Daniel H. Bromberg; the United States was represented by John S. Koppel of the U.S. Department of Justice. In the Colorado case, Golan was represented by Carolyn J. Fairless of Wheeler Trigg Kennedy in Denver; the government was represented by Christopher R. Hall of the U.S. Department of Justice in Washington D.C. (*ANC*).

Luck's Music Library, Inc. v. Gonzales, 407 F.3d 1262, 2005 U.S.App.LEXIS 9419 (D.C.Cir. 2005); *Golan v. Gonzalez*, 2005 WL 914754, 2005 U.S.Dist.LEXIS 6800 (D.Colo. 2005)

Band *NSYNC did not breach contract with company that produced giant-screen "Bigger Than Live" concert film

The band *NSYNC did not breach its contract with the company that produced the giant-screen concert film "*NSYNC Bigger Than Live," despite the band's alleged failure to approve the film on time, because the production company did not notify the band of its alleged breach in the manner required by their contract a federal Magistrate Judge has ruled. Nor did the band defraud the production company, by failing to promote the film in the manner the company had hoped, a federal Magistrate Judge has ruled.

In June of 2000, *NSYNC entered into a contract with Really Big Film Corp. The contract authorized Really Big to produce a 45-minute, giant-screen movie of the band's concert performances that summer. The agreement gave the band the right to approve the film, and specified what, exactly, the parties were to do, if either of them believed the other wasn't performing its end of the bargain. The movie was finished and eventually released, but it took longer than originally expected. As a result, the band didn't promote the film as enthusiastically as Really Big had hoped. And Really Big licensed the WB Network to broadcast the film earlier than the band thought the contract permitted.

When the WB decided not to broadcast the film, apparently because of inquiries from *NSYNC, Really Big sued the band for breach of contract and fraud, alleging that the band failed to approve the film on time and failed to promote the film adequately.

In response to *NSYNC's motion for summary judgment, federal Magistrate Judge Douglas Eaton has held that *NSYNC did not breach the contract. Judge Eaton noted that the contract recited that neither party's failure to perform would be considered a breach until after the other party gave written notice of the breach, in a specified fashion. The judge found that Really Big had not given the band notice of the breach, and certainly hadn't given notice in the manner required by the contract. Furthermore, Judge Eaton found that the band's failure to promote the film in the way Really Big had hoped was not fraud.

As a result, Judge Eaton granted *NSYNC's motion for summary judgment and dismissed Really Big's complaint.

Really Big was represented by Evans S. Zimmerman in New York City. *NSYNC was represented by Helene M. Freeman of Dorsey & Whitney in New York City.

RBFC One, LLC v. Zeeks, Inc., 367 F.Supp.2d 604, 2005 U.S.Dist.LEXIS 7576 (S.D.N.Y. 2005)

Virtual Technologies' "PGA Golf Tour" video game does not infringe copyright or trade dress of Incredible Technologies' "Golden Tee" video game, federal Court of Appeals affirms

When Virtual Technologies created a video game called "PGA Tour Golf" that is similar to Incredible Technologies' "Golden Tee" video game, Incredible became teed off. So Incredible sued Virtual for copyright and trade dress infringement.

Incredible's request for a temporary restraining order and preliminary injunction were denied. Though the District Court found that Virtual "had access to and copied [Incredible's] original instruction guide and the video display expressions from Golden Tee," it ruled that Incredible "had not shown a likelihood of success on the merits of the lawsuit" for three reasons: because Incredible's control panel design was "not dictated by creativity," but rather by the game's trackball system; "the video displays contain many common aspects of the game of golf"; and Incredible's "trade dress is functional because something similar is essential to the use and play of the video game."

In an opinion by Judge Terrance Evans, the Court of Appeals agreed. Judge Evans acknowledged that it was "pretty clear . . . that [Virtual] set out to copy [Incredible's] Golden Tee game." Nevertheless, the judge noted that there are "several specific limitations to copyright protection" relevant to this case, including the *scenes a faire* doctrine, the principle that copyright doesn't extend to any "method of operation," and the principle that "useful articles and functional elements are also excluded from copyright protection."

These were the elements of the two games that were "most clearly similar," but because they are not protected, they "are not before us," Judge Evans said. He explained that "In presenting a realistic video golf game, one would, by definition, need golf courses, clubs, a selection menu, a golfer, a wind meter, etc." Therefore, Incredible's video display "is afforded protection only from virtually identical copying." But, because "certain items are necessary to making the game realistic, the differences in the presentation are sufficient to make [Incredible's] chances of success on the merits unlikely."

To prevail on its trade dress claim, Incredible would have to "establish that its trade dress is nonfunctional, that it has acquired secondary meaning, and that a likelihood of confusion exists between the trade dress of the two games." Judge Evans concluded that the features Incredible claimed as its trade dress were functional and were unlikely to cause consumer confusion.

The Court of Appeals therefore affirmed the District Court's denial of Incredible's request for a preliminary injunction.

Incredible was represented by Robert J. Schneider of Chapman & Cutler in Chicago. Virtual was represented by Mark D. Flanagan of Wilson Sonsini Goodrich & Rosati in Palo Alto and Thomas K. Cauley, Jr., of Sidley Austin Brown & Wood in Chicago. (*AMF*)

Incredible Technologies v. Virtual Technologies, 400 F.3d 1007, 2005 U.S.App.LEXIS 4262 (7th Cir. 2005)

Rights to Martha Graham's dances created between 1956 and 1965 belong to Martha Graham Center and School, not Graham's heir Ron Protas

The rights to the choreography in the dances created by Martha Graham between 1956 and 1965 actually belong to Martha Graham Center and School, and not to Graham's heir Ron Protas. Federal District Judge Miriam Cederbaum has so ruled, in the latest stage of a long-running lawsuit.

Martha Graham may have been "one of the best dancers and choreographers in her era," but a seemingly never-ending legal jumble may soon overshadow her achievements. Graham died in 1991, leaving Ronald Protas as the heir to her estate. Protas maintains that pursuant to Graham's will, he owns all the rights to her choreographic works.

Protas raised complicated issues in his lengthy complaint, including claims that he owns the rights to the "Martha Graham" name and to 70 choreographies.

Protas lost on the first issue, a battle over the "Martha Graham" name, in 2000. (*ELR* 23:8:17). That ruling was affirmed on appeal. (*ELR* 24:7:28).

The issue involving ownership of the copyrights to 70 dances was more complicated. In a complex 37-page opinion, Judge Cederbaum divided the rights to Graham's dances among the Center and School, commissioning parties not in the action, and the public domain. The judge ruled that Protas only actually owned the rights to one dance. (*ELR* 24:10:11). The appellate court affirmed in part, and remanded the case for determination of seven specific issues. The main issue on remand was the ownership of seven unpublished dances created between 1956 and 1965. (*ELR* 26:8:20).

It was unclear whether those works were Graham's own and thus assignable to Protas, or were works-for-hire and thus the property of the Center and School. The Center and School presented records of expenses for sets and costumes, royalties Graham paid to the school, contracts, letters, and rehearsal tapes all suggesting that these works were made for hire. On the other hand, Protas presented playbills, contracts and paychecks suggesting the rights to the works belonged to Graham. Judge Cederbaum was most convinced by evidence of Graham's intent, holding that assigning the rights to the Center "gave [Graham] what she wished – freedom from the responsibilities of copyright registration and renewal, licensing, collection of royalties, and archival tasks."

As a result, Judge Cederbaum ruled in favor of the Center and School.

Protas was represented by Judd Burnstein in New York. The Martha Graham Center and School were represented by Katherine B. Forrest of Cravath Swaine & Moore in New York. (*VG*)

The Martha Graham School and Dance Foundation, Inc. v. Martha Graham Center of Contemporary Dance, Inc., 374 F.Supp.2d 355, 2005 U.S.Dist.LEXIS 12241 (S.D.N.Y. 2005)

Claims filed by co-authors against publisher of "Misha: A Memoir of the Holocaust Years," resulting in $32.4 million judgment against publisher, were properly brought under state law, and so were not preempted

A lawsuit filed by Misha Defonseca and Vera Lee, the co-authors of the book *Misha: A Memoir of the Holocaust Years*, was properly brought under Massachusetts state law, a state appellate court ruled.

Defonseca's story of survival is inspirational. Seven-year old Defonseca fled her home when the Nazis seized her parents. She was soon discovered by the German army and sent to the Warsaw Ghetto for the next four years. Defonseca partly attributes her survival to the aid of a pack of wolves who amazingly "adopted and protected her, providing food, companionship, and affection."

Jane Daniel, the founder of a small publishing company called Mt. Ivy Press, convinced Defonseca to write a book about her life. Daniel promised Defonseca that she would use her financing and experience to promote the book. Daniel also promised Defonseca all rights to the novel's French translation. A contract was signed to that effect.

Daniel also convinced her neighbor, Vera Lee, who was an experienced author, to co-write the book with Defonseca by promising that Lee's name would be on the cover. Lee signed a contract nearly identical to the one Defonseca signed.

As drafts of the manuscript were turned in, Daniel began to believe it would become a best-seller. Daniel then plotted to remove Lee from the project so as to obtain a personal interest in the book. Daniel falsely complained about the quality of Lee's writing; and as Lee submitted her drafts, Daniel rewrote them. In the end, Daniel never included Lee's name on the cover. Moreover, Daniel embittered Lee against Defonseca so that "it would be easier to defraud them." Finally, Daniel tricked a French publishing company into including her in the contract over the rights to the novel's French translation.

In 1998, Lee filed a suit against Defonseca, Daniel, and Mt. Ivy alleging seven claims including breach of contract, interference with contractual relations, and fraud. Defonseca cross-claimed against Daniel and Mt. Ivy with similar claims.

The trial court ruled against Daniel on each of the claims. Daniel was ordered to pay $9.9 million dollars to Lee, and $22.5 million to Defonseca.

Daniel filed an appeal claiming that the trial court, a state court, never had subject matter jurisdiction over the case. Daniel argued that federal copyright law preempted all of the claims Defonseca and Lee had brought under state law.

Writing for the Appeals Court of Massachusetts, Justice Marc Kantrowitz disagreed with Daniel and affirmed the trial court's findings. Under the United States Copyright Act, for a claim to be preempted by federal copyright law: (1) the work in which rights are claimed must come within the subject matter of copyright as defined by the Copyright Act, and (2) the legal or equitable right asserted under state law must be equivalent to one or more of the "exclusive rights" provided by the Act.

Judge Kantrowitz found Daniel's preemption claims "complex and convoluted." Ordinarily, preemption claims require a claim-by-claim analysis. Here, however, Daniel only offered analysis for four claims. Upon closer analysis, Justice Kantrowitz found that even those "sparsely-alluded-to claims" were not preempted.

The appellate court therefore affirmed the trial court's judgment, and held that Defonseca's claim was properly brought under Massachusetts state law.

Misha Defonseca was represented by Ramona J. Hamblin. Vera Lee was represented by Frank J. Frisoli, Jr., of Frisoli & Frisoli in Cambridge. Mt. Ivy was represented by David J. Daly of Daly Cavanaugh in Wellesley. (*VG*).

Lee v. Mt. Ivy Press, L.P., 827 N.E.2d 727, 2005 Mass.App.LEXIS 470 (Mass.App. 2005)

World Championship Wrestling's victory over employee "Sid Vicious" in contract and tort case prompted by in-ring injury is affirmed by Georgia Court of Appeals

Professional wrestler "Sid Vicious" wasn't as vicious in the courtroom as he was in the ring. In 1999, Sid Vicious, whose actual name is Sidney Eudy, entered into a three-year contract with World Championship Wrestling, Inc. (WCW). The contract provided that if Eudy couldn't wrestle due to physical inabilities for more than 30 days, WCW could terminate the contract, but until it was terminated, WCW could pay him 50% of his regular compensation.

In 2001, Eudy sustained a career ending injury during a WCW match when he performed a move choreographed by another WCW employee. WCW then reduced Eudy's pay by 50% and eventually terminated him. Subsequently, Eudy brought contract and tort claims against WCW.

The trial court granted WCW's motion for summary judgment on Eudy's contract claim and tort claims. The trial court, however, denied WCW's motion for summary judgment on Eudy's claim for unjust enrichment.

The Court of Appeals of Georgia affirmed the trial court's granting of summary judgment to WCW on Eudy's breach of contract claims. The court disagreed with Eudy's argument that he was coerced into performing the move that ended his career, because he admitted that he agreed to perform the move to prove himself to WCW's owners. Furthermore, the court concluded WCW acted properly in paying him the reduced salary, because the contract allowed it to do so.

The appellate court also ruled that Eudy was precluded from bringing all of his tort claims (negligence, negligent infliction of emotional distress, tortious interference with contractual relations) against WCW, because the parties agreed in the contract that Eudy's exclusive remedy for injuries sustained during the term of the contract was worker's compensation.

The Court of Appeals, however, reversed the trial court's denial of summary judgment to WCW on Eudy's unjust enrichment claims. Eudy claimed that the WCW's television airings of his final match and receipt of earnings from its disability insurance policy unjustly enriched WCW. While the trial court concluded that the television replays were outside the scope of the contract, the Court of Appeals found that they were expressly addressed in the contract. Thus, because Eudy's persona as Sid Vicious was a "work-for-hire," WCW retained all distribution and broadcast rights, and Eudy's claim for unjust enrichment failed.

Eudy was represented by Stephen G. Weizenecker of Weizenecker Rose Mottern & Fisher in Atlanta. The WCW was represented by James A. Lamberth of Troutman Sanders in Atlanta. (JHI)

Eudy v. Universal Wrestling Corp., 611 S.E.2d 770, 2005 Ga.App.LEXIS 232 (Ga.Ct.App. 2005)

Release signed by tattoo artist's client did not waive invasion of privacy claim complaining of publication of photos in magazine, because release applied only to claims arising from client's decision to obtain a tattoo, appeals court decides

Wendy Minnifield went to tattoo artist Greg Ashcraft to get a tattoo on her upper right breast. Before he began work on the tattoo, Ashcraft had Minnifield sign a release that stated, "I agree not to sue . . . based upon injuries or property damage to or death of myself or any other persons arising from my decision to have tattoo or piercing related work done."

After completing the tattoo, Ashcraft took two pictures of it and sent the photographs, without Minnifield's permission, for publication in a national tattoo magazine. The magazine published the photos with a caption that listed Ashcraft's name and business. Minnifield felt these photographs "embarrassed, degraded, and demeaned her," and sued Ashcraft claiming an invasion of privacy by commercial appropriation.

In his defense, Ashcraft argued that the photographs were of legitimate public interest. He also relied on the release signed by Minnifield. An Alabama trial court agreed with Ashcraft and granted his motion for summary judgment.

Minnifield appealed, successfully. Judge Sharon Yates, writing for the Alabama Court of Civil Appeals, found that the photos were not published for a "legitimate newsworthy public interest" reason, and therefore the "legitimate public interest exception" to the right to privacy did not apply.

The judge also found that the release was ambiguous, because it was unclear if the release included the intentional tort of invasion of privacy. Construing the ambiguous release against Ashcraft, because he was the "drafting party," the court found that Minnifield's claim for invasion of privacy was not “based upon injuries or property damage to, or death arising from [Minnifield’s] decision to have tattoo or piercing related work done,” and therefore, the release didn’t apply.

Minnifield was represented by Scott P. Hooker in Birmingham. Ashcraft was represented by Paul J. DeMarco of Parsons Lee & Juliano of Birmingham. (*HK*)

Minnifield v. Ashcraft, 903 So.2d 818, 2004 Ala.Civ.App.LEXIS 908 (Ala.Civ.App. 2004)

Breach of restrictive covenant in PR firm’s shareholder agreement may be enjoined, even though PR firm could not show it lost business of any particular movie studio

The breach by one the principals in a motion picture public relations firm of a restrictive covenant in the firm’s shareholders’ agreement may be enjoined, even though the firm could not show that it lost the business of any particular movie studio, a federal Court of Appeals has ruled.

Hess Newmark Owens Wolf, Inc. – which calls itself HNOW for short – was formed in 1998 by four veterans of the motion picture promotion business: Mary Hess, Barry Newmark, Doris Owens and Stuart Wolf. Each of the four had previously owned his or her own independent agency. But when they formed their jointly owned company, they all signed a shareholders agreement that contained a restrictive covenant. The covenant provided that all of them would do movie-promotion work only for the new company, so long as they were shareholders and for three years thereafter, in any part of the country where the new company offers its services or plans to, with one exception. Owens – who was expected to be the new company’s “principal rainmaker” – was permitted to continue doing business independently in Ohio, Kentucky and Indianapolis.

Despite the restrictive covenant, Owens did consulting work for Terry Hines Associates – one of HNOW’s business rivals – by helping it set up offices on the east coast, outside the area where Owens was permitted to continue working independently.

When Hess found out what Owens had done, he told her: “You are *so* fired!” And then HNOW sued Owens for violating the restrictive covenant.

Following a five-day hearing, the trial court found that Owens had violated the restrictive covenant. But the trial court held that HNOW was not entitled to an injunction against Owens, because the firm had failed to prove that it had lost any particular studio’s business to Terry Hines Associates as a result of the consulting Owens did for it.

HNOW appealed. In an opinion by Judge Frank Easterbrook, the appellate court held that HNOW’s inability to show that particular business had been lost “does not foreclose equitable relief.” He explained that “a legal rule that irreparable injury can be established *only* by a concrete demonstration along the lines of ‘we lost the Philadelphia advertising business of Warner Bros. to [Terry Hines Associates] as a result of Owens’s work for our rival’ would make injunctions useless as a practical matter.”

Nor was Judge Easterbrook troubled by HNOW’s request for a nation-wide injunction. In the shareholders agreement, Owens had acknowledged that the “geographic coverage of these covenants is reasonable.”

The Court of Appeals therefore reversed the judgment and remanded the case to the trial court for further proceedings, because one question remained unanswered: whether HNOW was offering its services on the east coast or planned to. If so, the appellate court instructed the trial court to issue an injunction enforcing the restrictive covenant against Owens.

HNOW was represented by Shelly B. Kulwin of Kulwin & Associates in Chicago. Owens was represented by David L. Miller of Dykema Gossett in Chicago.

Hess Newmark Owens Wolf, Inc. v. Owens, 415 F.3d 630, 2005 U.S.App.LEXIS 13971 (7th Cir. 2005)

South Carolina’s attempt to prohibit dissemination of obscene material to minors via Internet violates First Amendment and Commerce Clause

South Carolina’s attempt to prevent minors from viewing obscene material sent over the Internet does not pass constitutional muster. A federal District Court in South Carolina held that the statute blocks too much constitutionally-protected speech and also places too great a burden on interstate commerce.

In July 2001, former South Carolina Governor Jim Hodges signed an amendment to a statute that prohibits the dissemination of harmful sexual material to minors via the Internet. The amendment defined “material” to include obscene “digital electronic files.” Southeast Booksellers, along with organizations that represent artists, writers and others who use the Internet to engage in expression, sued to permanently enjoin enforcement of the statute.

Both parties filed motions for summary judgment. Southeast Booksellers argued that the statute contained content-based restrictions that violate the First Amendment, specifically alleging that the statute is overbroad because it prevents adults from viewing and sending constitutionally protected images over the

Internet. Further, Southeast Booksellers allege that the statute violates the Constitution's Commerce Clause because the statute's enforcement methods too greatly burden interstate commerce.

Ruling on both summary judgment motions, Judge Patrick Duffy agreed with Southeast Booksellers. The judge found that the statute's age verification enforcement method violates the First Amendment because it is not the least restrictive means of achieving the statute's compelling interest of preventing obscene material from reaching minors. He also agreed with Southeast Booksellers' Commerce Clause claim. Judge Duffy found the statute "invalid because it places an undue burden on interstate commerce by regulating commerce occurring wholly outside of South Carolina."

As a result, Judge Duffy granted Southeast Booksellers' motion for summary judgment and denied South Carolina's motion for summary judgment.

Southeast Booksellers was represented by Armand G. Derfner of Derfner Altman & Wilborn in Charleston. South Carolina was represented by Charles M. Condon of the Attorney General's office in Columbia. (*ANC*)

Southeast Booksellers Association v. McMaster, 371 F.Supp.2d 773, 2005 U.S.Dist.LEXIS 13952 (D.S.C. 2005)

DEPARTMENTS

Entertainment Lawyer News:

Carole Handler joins Foley & Lardner. Carole E. Handler has joined the Foley & Lardner's Intellectual Property Department in its Los Angeles office. She will serve as vice chair of the Intellectual Property Litigation Practice Group and will be a member of the Entertainment & Media Industry Team. Handler is a trademark and copyright intellectual property litigator. She has tried cases for a variety of corporate clients in such industries as entertainment, high technology, telecommunications, pharmaceutical, medical devices, weight loss and energy. A unique area of her practice is the interface between copyright and antitrust, particularly competitive issues that arise from exploitation of intellectual property rights. She has tried numerous entertainment, trademark, copyright, and antitrust cases in state and federal courts in California, New York and Pennsylvania. Among those are significant copyright cases of first impression that established the motion picture industry's exclusive rights to control the distribution and performance of their copyrighted works in new media. She represented one of the world's most prominent character-based entertainment companies in its recent successful battle to reclaim the motion picture rights to its signature character, and continues to represent the company in other disputes concerning its intellectual property. Handler recently has been lead counsel in several significant energy antitrust cases and has also tried antitrust cases involving sports, pharmaceuticals and medical devices. She has worked on antitrust cases for one of the primary U.S. sports leagues and defended major studios against a variety of antitrust claims, including "block booking" and "tying." She won a landmark case for the motion picture industry when she succeeded in having a portion of a Pennsylvania state statute declared unconstitutional. She also led an eight-week pro bono jury trial on behalf of Irene Gut Opdyke, a noted Holocaust rescuer, to reclaim the rights to her remarkable life story. She was named one of the "Top Women Litigators in California" by *The Daily Journal* in 2002-2005, and was one of the attorneys featured in *Super Lawyers* magazine in 2005. In 2001, Handler was one of *California Lawyer's* "Lawyers of the Year." Handler received her undergraduate degree in history and literature, with honors, from Harvard University-Radcliffe College, and a Master of City Planning degree from the University of Pennsylvania. She received her law degree from the University of Pennsylvania Law School. She is admitted to practice in both California and Pennsylvania. She teaches intellectual property and antitrust law at the University of Southern California Gould School of Law, and frequently lectures on copyright and antitrust law for the Practising Law Institute, Aspen Publishers and the American Law Institute-American Bar Association.

David Stanley joins Greenberg Glusker. David G. Stanley has joined Greenberg Glusker's Entertainment Practice, where he will lend his decades of experience as a television lawyer, studio executive and producer to augment the Firm's representation of clients in the television industry. Stanley began his professional career as a litigator, practiced as a transactional attorney at Armstrong & Hirsch, and subsequently served as a legal/business affairs executive at NBC, MGM/UA, Metromedia, Lorimar, Telepictures and Warner Bros. Stanley handled the day-to-day legal responsibilities for dozens of producers and independent production companies before starting Stone Stanley Entertainment, an independent television production company, where he executive produced dozens of pilots and more than 2500 television series episodes. Stanley oversaw the business and financial needs of many network primetime dramas, including "Dallas," "Knots Landing" and "Falcon Crest," comedies "Perfect Strangers," "Full House," and "Family Matters," and syndicated series "The People's Court" and "Love Connection," before establishing himself as one of television's leading independent producers of reality programming, including ABC's "The Mole," WB's "Popstars," Comedy Central's "The Man Show" and MTV's "Loveline." Stanley's eclectic background also includes having served as the Mayor of the City of Hidden Hills, California and having composed, performed and produced much of the music for his own shows.

Alan Friedman joins Katten Muchin Rosenman. Alan R. Friedman has joined the Entertainment and Media Litigation Practice of Katten Muchin Rosenman. He will practice in the firm's New York office and will also regularly work out of the firm's Los Angeles office. Immediately prior to joining Katten Muchin Rosenman, Friedman spent six years as general counsel, executive vice president of Miramax Film Corp. As general counsel, he oversaw all of the company's litigation and presided over the successful resolution of a flurry of lawsuits that followed "Shakespeare in Love's"

Academy Awards Best Picture win, which included three unrelated claims for copyright infringement. He also was integral in successfully heading off challenges to Miramax's rights to many of its other celebrated films, including Best Picture winner "Chicago" and Best Picture Nominee "The Cider House Rules." During his tenure, he advised Miramax on numerous, wide-ranging trademark, copyright, privacy and contractual matters with respect to its films, books and development projects. In addition, Friedman also led the company in successfully overcoming a wide variety of challenges to such other well known and successful films as the "Scream" and "Scary Movie" releases, "Chocolat," "Mimic," "Bad Santa," and many others. He also oversaw the company's legal disputes with the main industry guilds, including the DGA, WGA and SAG, and was responsible for all legal matters concerning Miramax's operations and personnel. Apart from his litigation role, Friedman also was involved in many of Miramax's corporate transactions, worked with many of the company's important distribution and vendor relationships, and was one of the active negotiators of the agreements relating to the separation of co-chairs Bob and Harvey Weinstein from The Walt Disney Company. He also led the company's efforts in policing and preventing piracy of the Company's many popular releases, working closely with both law enforcement personnel and the MPAA. Friedman joined Miramax following nearly 20 years of commercial, securities and entertainment litigation experience at White & Case and Gold Farrell & Marks. As a partner for nearly ten years at Gold Farrell & Marks, a New York-based litigation boutique law firm, Friedman handled numerous contract, copyright, trademark and royalty disputes for companies in the music and motion picture industries, including successful litigations for The Beatles-owned company Apple Corps Ltd., Billy Joel, Miramax and Polygram. In addition, he regularly represented clients in a wide range of other commercial industries and in the securities industry, including Credit Suisse First Boston and CIBC Oppenheimer. Friedman graduated *cum laude* from the Georgetown University Law Center in 1981, where he was an editor of The Georgetown Law Journal. He received his undergraduate degree from the University of Pennsylvania in 1978, where he graduated *cum laude* with Distinction in Economics.

Jenny Li and Rob Rader join Mitchell Silberberg & Knupp. Jenny S. Li and Rob Rader have joined Mitchell Silberberg & Knupp Los Angeles. Li returned to the firm's Labor & Employment Practice as a partner after three and a half years at Sony Pictures Entertainment where she was Vice President, Human Resources, International Operations. Before going to Sony, she worked at Mitchell Silberberg from 1997 to 2002. Li represents employers in labor and employment matters, including labor arbitrations, administrative proceedings, and litigation of wage and hour, discrimination, privacy and wrongful termination claims. She also counsels employers about personnel policies, leave issues, strategic planning and reductions in force. Rob Rader is Of Counsel in the firm's Entertainment & New Media Practice. He represents studios, producers, talent and distributors in connection with acquisition, development, production, promotion, distribution and licensing of video games, mobile phones, television programs, consumer products, themed entertainment, videocassettes, DVDs, and websites and online content production. Previously, Rader was a Senior Executive Business Consultant and Vice President of Business Affairs with MGM Studios.

Former FCC Media Bureau Chief Ken Ferree joins Sheppard Mullin Richter & Hampton. W. Kenneth Ferree has joined Sheppard Mullin Richter & Hampton as a member of the Entertainment and Media group to lead the firm's new communications practice in Washington, D.C. He previously served as Chief of the Media Bureau at the Federal Communications Commission where he developed and administered the policy and licensing programs relating to electronic media, including cable television, broadcast television and radio, and broadband services. He also steered four major FCC merger reviews: EchoStar/DirectTV, Comcast/AT&T, HBC/Univision, and NewsCorp./DirecTV, and was credited with adding rigor to the review process while resolving each matter in the timely fashion required by Congress and the markets. Ferree played a key role in advancing the DTV transition, developing a watershed plan to end the transition. Ferree also managed the FCC's entry into anti-piracy and copy protection matters, helped create the FCC's Media Security and Reliability Council, directed the first comprehensive overhaul of media ownership rules in decades, and oversaw the creation of a regulatory framework for terrestrial digital radio. Ferree previously practiced at Goldberg Godles Weiner & Wright in Washington, D.C., specializing in communications-related litigation, including FCC complaint and rulemaking proceedings. Most recently, he served as Executive Vice President and Chief Operating Officer of the Corporation for Public Broadcasting. Ferree earned his law degree, *summa cum laude*, from Georgetown University Law Center in 1992, graduated from San Jose State University with an MBA in 1988 and Dartmouth College with a BA in 1983.

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The Press Complaints Commission - Are We Safe in its Hands? by Jonathan Coad, 16/7 Entertainment Law Review 176 (2005) (for website, see above)

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