

## WASHINGTON MONITOR

### **FCC issues broadcast indecency orders in Janet Jackson and other cases**

The Federal Communications Commission has decided what it says were more than 300,000 consumer complaints about indecent broadcasts on almost 50 television programs, from February 2002 to March 2005.

The FCC upheld its earlier decision against CBS for the broadcast of “indecent material” during the halftime show of the 2004 Super Bowl (*ELR* 26:4:10). That case was triggered by Janet Jackson’s wardrobe malfunction. The FCC rejected CBS’s argument that the pulling off a portion of the singer’s bustier to reveal her breast was not indecent. The FCC also held that CBS “consciously and willfully failed to take actions to prevent the broadcast of the material,” and that CBS is responsible for the halftime show.

Separately, the FCC also found that episodes of “Without a Trace” and “The Surreal Life 2” were “impermissible” under the Commission’s indecency standard, because they contained graphic, sexual images. The FCC has assessed a forfeiture (that is, a fine) of \$32,500 on each of the 110 stations that aired the offending episode of “Without a Trace,” so that if upheld, the fines for that one episode will total more than \$3.6 million.

The FCC also found “indecent”: the broadcast of a movie containing a graphic rape scene; a talk show featuring a female guest who appeared in an open front dress; and several television programs containing offensive language.

The FCC did, however, deny complaints about 28 other television programs. “Although the complained-of material may offend many people,” the FCC said, it concluded that the material in those programs was not “actionable.”

*Action by the Commission, February 21, 2006, Notices of Apparent Liability and Memorandum Opinion and Order* (FCC 06-17), available at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-06-17A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-17A1.pdf); [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-06-18A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-18A1.pdf); and [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-06-19A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-19A1.pdf)

### **DC Comics defeats beverage company’s application to register “Kryptonita” as trademark for alcoholic cocktail**

DC Comics has successfully opposed an application to register the trademark “Kryptonita.” The application was filed by Pan American Grain Mfg. Co., a Puerto Rican company that wanted to register “Kryptonita” as a trademark for a “prepared alcoholic fruit cocktail.” DC Comics is the publisher of “Superman” comic books, and as much as half of its revenues come from licensing.

DC Comics objected to Pan American’s intent-to-use application, because the Puerto Rican company’s proposed mark is the Spanish word for “Kryptonite” – the substance that weakens Superman’s super powers.

In an opinion marked “Not Citable as Precedent,” the Trademark Trial and Appeal Board “sustained” DC Comics’ opposition (so the Patent & Trademark Office will not register the mark). The Board did so, because it concluded that it is likely the “purchasing public [would] believe that [Pan American’s] prepared alcoholic fruit cocktail comes from or is sponsored by or associated with [DC Comics],” even though cocktails are a different product from those DC Comics makes and licenses.

The Board did not find it significant that there are “a very few third-party uses of the mark Kryptonite (generally on the Internet) which have not been stopped by [DC Comics].”

*DC Comics v. Pan American Grain Mfg. Co. Inc.*, Opposition No. 91125404 (TTAB 2005), available at <http://www.uspto.gov/web/offices/com/sol/foia/ttab/2dis/sues/2005/91125404.pdf>

### **Application of novelist Fern Michaels to register her name as trademark is rejected**

Fern Michaels has failed in her bid to register her name as a trademark. “Fern Michaels” is the pseudonym of Mary Ruth Kuczki, the author of 67 romance novels, more than 60 million copies of which have been sold worldwide.

The Trademark Trial and Appeal Board did not object to the fact that “Fern Michaels” is a pseudonym. Trademark law treats pseudonyms and real names alike, the Board concluded.

While “Generally . . . an author’s name, even on multiple books, does not function as a trademark,” the Board noted that authors’ names sometimes may function as a trademark, and when they do, they may be registered. The Board explained that an author’s name “. . . may be registrable for a series of written works, when there is sufficient . . . indicia that the name serves more than as a designation of the writer. . . . This may be shown by providing . . . evidence establishing that the author controls the quality of her distributed written works and controls the use of her name, so as to indicate the quality of those works; or . . . by . . . evidence of

promotion and recognition of the author’s name so that prospective readers, when they see the name, ‘know what they are getting.’”

In this case, though, the Board found that this evidence was not submitted, because all that was shown was that “Fern Michaels” was the name of the author of her books.

*In re First Draft, Inc.*, Serial Number 76420605 (TTAB 2005), available at <http://www.uspto.gov/web/offices/com/sol/foia/ttab/other/2005/76420605.pdf>

## INTERNATIONAL DEVELOPMENTS

### **Operator of mp3s4free.net infringed Australian copyrights by authorizing users to infringe**

The operator of the website mp3s4free.net infringed the Australian copyrights of record companies in that country by linking to other sites from which unauthorized copies of recordings could be downloaded, the Federal Court of Australia has held.

The website operator, an Australian named Stephen Cooper, was not found liable for copying recordings himself, or for “communicating” recordings to the public.

Instead, Justice Brian Tamberlin ruled that Cooper violated a provision of the Australian Copyright Act that makes it an infringement to “authorise” any act, in Australia, that infringes copyright. Cooper “authorized” infringements by users of his website and by operators of other websites that made infringements available, Justice Tamerlin concluded, because “authorise” has been defined in Australia to include “sanction, approve [and] countenance.” And the links and language on Cooper’s website did those things.

*Universal Music Australia Pty Ltd v. Cooper*, [2005] FCA 972, available at <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/federal%5fct/2005/972.html?query=title+%28+%22universal+music%22+%29>

### **Operator of Kazaa infringed Australian copyrights by authorizing users to infringe**

Sharman Networks infringed the Australian copyrights of record companies in that country by “authorising” its users to commit infringements, the Federal Court of Australia has held. Sharman is the operator of Kazaa P2P network.

Kazaa’s *users* infringed the record companies’ copyrights by making unauthorized copies of their recordings and by “communicating” them to the public. But Justice Murray Wilcox rejected the record companies’ argument that Sharman too “communicated” recordings to Kazaa’s users.

Instead, in a very long opinion, Justice Wilcox concluded that Sharman was liable for copyright infringement because it had “authorized” Kazaa’s users to infringe the record companies’ copyrights. The Justice found that there are technical measures that would have enabled Sharman to “curtail – although probably not totally to prevent – the sharing of copyrighted files,” but Sharman did implement those measures because it would have been against its financial interests to do so. “It is in [Sharman’s] financial interest to maximise, not to minimise, music file sharing,” Justice Wilcox explained, because “[a]dvertising provides the bulk of the revenue earned by the Kazaa system. . . .”

The Justice “restrained” Sharman “from authorising Kazaa users to do in Australia any . . . infringing acts. . . .” But he added that the continued operation of Kazaa would not violate his order if Sharman modified the Kazaa software to include “key-word filter technology” and users were “pressure[d]” to upgrade their software to the new version containing that technology.

Rather than do so, Sharman purportedly shut down the operation of Kazaa in Australia by displaying a banner on its website that reads, “Attention Users in Australia: To comply with orders of the Federal Court of Australia, pending an appeal . . . , use of the Kazaa Media Desktop is not permitted by persons in Australia. If you are in Australia, you must not download or use the Kazaa Media Desktop.” Contempt proceedings against Sharman are now pending.

*Universal Music Australia Pty Ltd v. Sharman License Holdings Ltd*, [2005] FCA 1242, available at <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/federal%5fct/2005/1242.html?query=universal+music+a+nd+sharman>

### **BBC television program’s use of tabloid photos of David and Victoria Beckham did not infringe photographer’s copyrights**

The BBC did not infringe the copyrights to photographs of British football player David Beckman

and his wife Victoria (the singer originally known as “Posh Spice” when she was a member of the Spice Girls). Fraser-Woodward, the owner of the copyrights to 14 photos of the famous couple, sued the BBC because it used the photos in a television program titled “Tabloid Tales.”

The photos had been licensed to British tabloids, in which they were published originally. The BBC then used the photos in its TV program – as part of video images of the tabloid pages on which they originally appeared – without being licensed to do so.

The Chancery Division of the UK High Court of Justice ruled that the BBC’s use of 13 of the photos was not infringing because the way in which they appeared in the program satisfied the requirements of the “fair dealing” defense under British copyright law. BBC’s use of another photo wasn’t infringing either, because its appearance in the program was “incidental,” Mr. Justice Mann concluded.

*Fraser-Woodward Ltd v. British Broadcasting Corp.*, [2005] EWHC 472 (Ch), available at <http://www.bailii.org/ew/cases/EWHC/Ch/2005/472.rtf>

## **NEW LEGISLATION AND REGULATIONS**

### **Arizona and New Mexico adopt tax incentives for film and TV production**

The neighboring states of Arizona and New Mexico have adopted legislation intended to attract the production of films and TV programs within their borders. Though both statutes have the same goal, the two laws are different.

Arizona offers eligible filmmakers tax deductions for the state’s “transaction privilege and use taxes” and “credit against income taxes”; and to be eligible, at least 25% of a filmmakers’ employees (in 2006) must be Arizona residents (35% in 2007 and 50% in 2008).

New Mexico offers eligible producers a credit against state income tax, calculated as a percentage of “direct production expenditures” in that state.

In one respect, the two laws are alike: both require productions that have received benefits to include a credit indicating they were filmed in those states.

*Arizona Senate Bill 1347* (47th Legislature, First Sess. 2005), available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/47leg/1r/laws/0317.htm>; *New Mexico Senate Bill 416* (2005), available at <http://legis.state.nm.us/Sessions/05%20Regular/final/SB0416.pdf>

## RECENT CASES

### **BMI license fee to Music Choice to be reconsidered**

A federal appellate court has ordered further proceedings in a rate-setting case between BMI and Music Choice – a cable, satellite and Internet services provider. Music Choice initiated the matter, pursuant to provisions in BMI's consent decree, when it couldn't agree with BMI on the amount of the license fee Music Choice should pay for its public performances of musical compositions in BMI's repertoire.

Appeals Court Judge B.D. Parker, Jr., concluded that the District Court may have "misinterpreted" the appellate court's earlier ruling, requiring it to reassess its calculation of the "fair market value" of the performance rights Music Choice needs to acquire (*ELR* 24:12:10).

Judge Parker said that the District Court could use "any benchmark it deems appropriate," though it also must "explain how it reached a particular rate sufficiently to permit . . . review of the rate for reasonableness. . . ."

*United States v. Broadcast Music, Inc.*, 426 F.3d 91, 2005 U.S.App.LEXIS 21634 (2nd Cir. 2005)

### **Kate Spade ad did not infringe photographer's copyright**

Kate Spade has defeated a lawsuit filed against it by a photographer who complained that the image featured in a Kate Spade ad infringed the photographer's copyright. The ad and the photographer's photo both portrayed a handbag sitting next to a woman's feet, as viewed through the space at the bottom of a toilet stall door.

Despite similarities between the two photos, federal District Judge Denny Chin dismissed the lawsuit, in response to Kate Spade's motion for summary judgment. Judge Chin ruled that many features of the offending photo followed from its basic idea and concept, and were not protected for that reason.

*Bill Diodato Photography, LLC v. Kate Spade, LLC*, 388 F.Supp.2d 382, 2005 U.S.Dist.LEXIS 21360 (S.D.N.Y. 2005)

### **"Bringing Down the House" did not infringe screenwriter's copyright**

The producers of the movie "Bringing Down the House" have defeated most, but not all, of a copyright and trademark infringement suit filed against them by the writer of a screenplay titled "Amoral Dilemma."

Federal District Judge Laura Swain held that the screenplay and movie were not substantially similar, and she dismissed the writer's copyright infringement claim for that reason.

The judge also dismissed the writer's Lanham Act complaint that the producers failed to give her credit as the creator of "Bringing Down the House."

The writer also alleges that screenwriter Jason Filardi, the credited writer of "Bringing Down the House," violated the Lanham Act when he pitched his screenplay by falsely designating "Amoral Dilemma" as his own; and Judge Swain has refused to dismiss that claim.

*Flaherty v. Filardi*, 388 F.Supp.2d 274, 2005 U.S.Dist.LEXIS 20151 (S.D.N.Y. 2005)

### **Video game "Police Trainer 2" did not infringe copyrights to earlier games**

The video game "Police Trainer 2" does not infringe the copyrights to "Police Trainer" or "Sharpshooter," federal District Judge Elaine Bucklo has held. It doesn't, the judge explained, because features of the games that were similar embodied nothing more than ideas or scenes a faire, and thus were not copyrightable.

*Team Play, Inc. v. Boyer*, 391 F.Supp.2d 695, 2005 U.S.Dist.LEXIS 21753 (N.D.Ill. 2005)

### **Patent for online sale of digital music and video not invalid; case settled**

In an opinion just recently published, though it was rendered more than 2 1/2 years ago, federal District Judge Donetta Ambrose refused to declare invalid a patent owned by SightSound.com for a process for online sales of digital music and video.

Judge Ambrose rejected arguments by alleged infringer CDNow that the patents were “anticipated” and were not “enabled.”

On the other hand, the judge held that she could not rule, in response to motions for summary judgment, whether the patents were invalid because they are “obvious.”

The ruling was the second published opinion (*ELR* 24:2:14) in a case that was settled last year for \$3.3 million, according to news reports.

*SightSound.com Inc. v. N2K, Inc.*, 391 F.Supp.2d 321, 2003 U.S. Dist. LEXIS 25503 (W.D.Pa. 2003)

### **Video game “Twisted Metal” did not infringe Frosty Treats’ trademarks**

Sony Computer’s video game “Twisted Metal” does not infringe Frosty Treats’ trademarks, even though there’s a clown graphic on the side of an ice cream truck in the game similar to the graphic on Frosty Treats’ own trucks.

Writing for a federal Court of Appeals, Judge Morris Sheppard Arnold has so held, in an opinion that affirms the dismissal of Frosty Treats’ trademark infringement suit against Sony. Frosty Treats failed to show that its mark had acquired secondary meaning, and the game’s use of the clown graphic was not likely to cause consumer confusion, Judge Arnold affirmed. Nor did the game dilute Frosty Treats’ mark or trade dress.

*Frosty Treats, Inc. v. Sony Computer Entertainment*, 426 F.3d 1001, 2005 U.S. App. LEXIS 15127 (8th Cir. 2005)

### **Mario Andretti did not prove right of publicity damages**

Race-car driver Mario Andretti was awarded an injunction against Borla Performance Industries, barring the company from violating Andretti’s right of publicity. But despite the fact that Andretti is paid \$500,000 a year by Car Sound Exhaust System for his publicity rights, Andretti recovered no damages at all from Borla for its unlicensed use of his name and quote in one of its ads.

A federal Court of Appeals has upheld this seemingly unusual result. But buried in the details of the appellate court’s opinion by Judge Ralph Guy is an explanation: Andretti failed to submit evidence of his damages, in response to Borla’s motion for summary judgment. Documents and declarations were submitted; but for reasons that have everything to do with civil procedure, and nothing to do with the right of publicity, those submissions did not constitute “evidence” of Andretti’s damages.

*Andretti v. Borla Performance Industries, Inc.*, 426 F.3d 824, 2005 U.S. App. LEXIS 22723 (6th Cir. 2005)

### **USA Cable’s Sherlock Holmes TV movie did not infringe IP owned by plaintiff**

USA Cable has prevailed, again, in a copyright and trademark infringement suit filed against it by a company that claims to own the copyrights to the writings of Sir Arthur Conan Doyle, including the IP rights to the “Sherlock Holmes” and “Watson” characters.

In its lawsuit, Pannonia Farms, Inc., objected to the movie “Case of Evil” televised on the USA Cable network, saying that the movie infringed Pannonia’s IP rights. The case was dismissed in response to USA Cable’s motion for summary judgment (*ELR* 27:1:12).

And in a Per Curiam opinion, the Court of Appeals has affirmed. It agreed with the District Court that Pannonia does not own IP rights in Doyle’s works, because the rights it purportedly acquired from another company in 1986, if they “existed at all,” were extinguished by a 1990 settlement agreement.

*Pannonia Farms, Inc. v. USA Cable*, 426 F.3d 650, 2005 U.S. App. LEXIS 22324 (2nd Cir. 2005)

### **Release barred some claims of injured “Wheel of Fortune” contestant**

Sony Pictures has defeated part, but only part, of a personal injury lawsuit filed against it by a contestant on its “Wheel of Fortune” game show.

The contestant alleged that his back was injured when host Pat Sajak “jumped . . . on” him, wrapped his legs around his waist and then “bounced.”

Before the taping, the contestant signed a release form in which he agreed not to “bring any legal action” against Sony “based upon or arising out of [his] participation in the program.” Relying on this release, Sony made a motion for summary judgment, a portion of which federal District Judge John Bates granted.

The judge held that the contestant had waived his right to sue Sony for injuries that were *negligently* caused. But Judge Bates ruled that it would be against public policy to interpret the release to be a waiver of injuries caused by *reckless* or *intentional* conduct.

*Wright v. Sony Pictures Entertainment, Inc.*, 394 F.Supp.2d 27, 2005 U.S. Dist. LEXIS 5194 (D.D.C. 2005)

**Television host may pursue lawsuit complaining he was falsely identified as plastic surgeon patient**

Univision Television host Rafael Jose Diaz Rodriguez is entitled to proceed with his right of publicity and defamation case against the publisher of the Puerto Rican fashion and entertainment publication *Vea Magazine*, and against a cosmetic surgeon who was the subject of a *Vea* “advertorial.”

The offending article included a photo of Diaz Rodriguez and identified him as one of the surgeon’s patients, even though it is “undisputed” that he never was.

Federal District Judge Hector Manuel Laffitte has denied the publisher and surgeon’s motion for summary judgment, because there are factual disputes about whether the defendants had actual malice and were unjustly enriched.

*Diaz Rodriguez v. Torres Martir*, 394 F.Supp.2d 389, 2005 U.S. Dist. LEXIS 29048 (D. Puerto Rico 2005)

**Rap artist may pursue defamation lawsuit against radio station that aired rumor he murdered his girlfriend**

Rap artist Travis Riddle is entitled to proceed with a defamation lawsuit he filed against radio station WSEG in Georgia, the Court of Appeals of Georgia has ruled.

Riddle’s suit complained that a DJ aired a telephone call from a listener who asked, on air, whether the rapper had murdered his girlfriend. A trial court dismissed the lawsuit, in response to the radio station’s motion for summary judgment.

But in an opinion by Judge John Ellington, the appellate court held that the evidence did not show that Riddle is a public figure, and thus he only had to show the station was negligent, not that it was reckless, and there was a factual dispute about whether the station had taken “due care” to prevent the spread of rumors about Riddle.

*Riddle v. Golden Isles Broadcasting*, 621 S.E.2d 822, 2005 Ga.App. LEXIS 1102 (Ga.App. 2005)

## DEPARTMENTS

### In the Law Reviews:

The Cardozo Arts & Entertainment Law Journal has published Volume 23, Number 3 with the following articles:

*Reclaiming Copyright* by Christina Bohannon, 23 Cardozo Arts & Entertainment Law Journal 567 (2006)

*The Priestly Class: Reflections on a Journalist's Privilege* by William E. Lee, 23 Cardozo Arts & Entertainment Law Journal 635 (2006)

*A Powers-Based Approach to the Protection of Ideas* by Larissa Katz, 23 Cardozo Arts & Entertainment Law Journal 687 (2006)

*History Turned "Sideways": Granholm v. Heald and the Twenty-first Amendment* by Harris Danow, 23 Cardozo Arts & Entertainment Law Journal 761 (2006)

Loyola of Los Angeles Entertainment Law Review has published Volume 26, Number 1 with the following articles:

*Broken Record: Revising the Flaws in Sony's Fair Use Analysis in Light of the Grokster Decision* by David L. Wardle, 26 Loyola of Los Angeles Entertainment Law Review (2005)

*A Call to Arms: Rescuing Universities and Small Businesses from Fully Loaded Patents* by Zachary L. LaPrade, 26 Loyola of Los Angeles Entertainment Law Review (2005)

*The Need for a New Uniform Standard: The Continued Threat to Internet-Related Student Speech* by Sandy S. Li, 26 Loyola of Los Angeles Entertainment Law Review (2005)

*The Fear Causing Commission and Its Reign of Terror: Examining the Constitutionality of the FCC's Authority to Regulate Speech and the First Amendment* by Shilpa Mathew, 26 Loyola of Los Angeles Entertainment Law Review (2005)

The Virginia Sports and Entertainment Law Journal has published Volume 5, Issue 1 with the following articles:

*Fourteenth Amendment Procedural Due Process Governing Interscholastic Athletics* by Diane Heckman, 5 Virginia Sports and Entertainment Law Journal 1 (2005)

*The Exploitation of African-American Men in College Athletic Programs* by Kathleen B. Overly, 5 Virginia Sports and Entertainment Law Journal 331 (2005)

*Whose Song Is It Anyway? When Are Sound Recordings Used in Audiovisual Works Subject to Termination Rights and When Are They Works Made for Hire?* by Michael P. Matesky, II, 5 Virginia Sports and Entertainment Law Journal 63 (2005)

*Coming Soon to a P.C. Near You: The Past, Present and Future of Movie Copyright Infringement on the Internet* by Stephen Bates, 5 Virginia Sports and Entertainment Law Journal 97 (2005)

The Federal Communications Law Journal, published by Indiana University School of Law-Bloomington and the Federal Communications Bar Association, has issued Volume 58, Number 1

with the following articles:

*Communications Policy for 2006 and Beyond* by Reed E. Hundt and Gregory L. Rosston, 58 Federal Communications Law Journal (2006) (for publisher, see above)

*Costs and Consequences of Federal Telecommunications Regulations* by Jerry Ellig, 58 Federal Communications Law Journal (2006) (for publisher, see above)

*Why Stovepipe Regulation No Longer Works: An Essay on the Need for a New Market-Oriented Communications Policy* by Randolph J. May, 58 Federal Communications Law Journal (2006) (for publisher, see above)

*Measuring Media Market Diversity: Concentration, Importance and Pluralism* by Brian C. Hill, 58 Federal Communications Law Journal (2006) (for publisher, see above)

*From J.C. Bach to Hip Hop: Musical Borrowing, Copyright and Cultural Context* by Olufunmilayo B. Arewa, 84 North Carolina Law Review (2006)

*How Sony Survived: Peer-to-Peer Software, Grokster and Contributory Copyright Liability in the Twenty-First Century*, 84 North Carolina Law Review (2006)

*Shades of Grey: Can the Copyright Fair Use Defense Adapt to New Re-Contextualized Forms of Music and Art?* by Nicholas B. Lewis, 55 American University Law Review (2006)

*Podcasting and Copyright: The Impact of Regulation on New Communication Technologies* by Edward I. Carter and Scott Lunt, Santa Clara Computer and High Technology Law Journal 187 (2006)

*Geographical Indication of Origin: Should They Be Protected and Why? – An Analysis of the Issue from the U.S. and E.U. Perspectives* by Lina Montan, Santa Clara Computer & High Technology Law Journal 315 (2006)

*"Infringed" Versus "Infringing": Different Interpretations of the Word "Work" and the Effect on the Deterrence Goal of Copyright Law* by Sarah A. Zawada, 10 Marquette Intellectual Property Law Review 129 (2006)

Entertainment Law Review, published by Sweet and Maxwell, www.sweetandmaxwell.co.uk, has issued Volume 17, Issue 2 with the following articles:

*Free Speech Fundamentalism* by Tony Martino, 17/2 Entertainment Law Review 49 (2006) (for website, see above)

*The 21<sup>st</sup> Century Journalist* by Scott Singer and Emma Turrell, 17/2 Entertainment Law Review 55 (2006) (for website, see above)

*Moral Rights in the 21<sup>st</sup> Century: A Case for Bankruptcy?* by Rupert Sprawson, 17/2 Entertainment Law Review 58 (2006) (for website, see above)

*Online Music Licensing: The Calm After the Storm* by Maria Mercedes Frabboni, 17/2 Entertainment Law Review 65 (2006) (for website, see above)

*The "Right to Information" and Digital Broadcasting: About Monsters, Invisible Men and the Future of European Broadcasting Regulation* by Natali Helberger, 17/2 Entertainment Law Review 79 (2006) (for website, see above)

The Marquette Sports Law Review has published Volume 16, Number 1 as a Symposium entitled Alternative Dispute Resolution in Sports with the following articles:

*Keep Your Eye on the Pelota: Sports Arbitration at the Jai-Alai Fronton* by Roger I. Abrams, 16 Marquette Sports Law Review 1 (2005)

*ADR and Drug Testing in Professional Tennis: An Effective Doubles Team?* by Ryan M. Rodenberg & Katie A. Featherston, 16 Marquette Sports Law Review 31 (2005)

*Circumstantial Evidence of Doping: BALCO and Beyond* by James A.R. Nafziger, 16 Marquette Sports Law Review 45 (2005)

*A Proposal for the United States Olympic Committee to Incorporate Formal Mediation Within Its Grievance Process* by Kathleen C. Wallace, 16 Marquette Sports Law Review 59 (2005)

*Rules of a Sport-Specific Arbitration Process as an Instrument of Policy Making* by Hilary A. Findlay, 16 Marquette Sports Law Review 73 (2005)

*Alternative Dispute Resolution in Sports Facility Leases* by Martin J. Greenberg, 16 Marquette Sports Law Review 99 (2005)

*The Role of Arbitrability in Disciplinary Decision in Professional Sports* by Thomas A. Baker III & Dan Connaughton, 16 Marquette Sports Law Review 123 (2005)

*Sports Volunteer Protection Statutes: Moving Toward Uniformity and Providing Volunteer Referees With Medical Training* by Jason A. Kuiper, 16 Marquette Sports Law Review 157 (2005)

*Book Review: Sporting Equality: Title IX Thirty Years Later* by Adam Epstein, 16 Marquette Sports Law Review 177 (2005)

*Why There May Not Be an Extraterritorial Sport Right to Online Gambling* by Ola O. Olatawura, 27 Loyola of Los Angeles International and Comparative Law Review 371 (2005)

The Journal on Telecommunications & High Technology Law, published by the University of Colorado, has released a Symposium Issue on The Digital Broadband Migration: Rewriting the Telecommunications Act with the following articles:

*Rewriting the Telecom Act: An Introduction* by Philip J. Weiser, 4 Journal on Telecommunications & High Technology Law 1 (2005) (for publisher, see above)

*The Digital Migration: Toward a New Telecom Act* by Michael K. Powell, 4 Journal on Telecommunications & High Technology Law 5 (2005)

*Overseeing the Unforeseeable: A Rational Regulatory Approach to 21<sup>st</sup> Century Communications* by Richard C. Notebaert, 4 Journal on Telecommunications & High Technology Law 31 (2005) (for publisher, see above)

*Reforming the FCC and Its Mission: Lessons from the Airline Experience* by Alfred E. Kahn, 4 Journal on Telecommunications & High Technology Law 43 (2005) (for publisher, see above)

*Breaking the Ice: Rethinking Telecommunications Law for the Digital Age* by Kevin Werbach, 4 Journal on Telecommunications & High Technology Law 59 (2005) (for publisher, see above)

*Communications' Copyright Policy* by Molly Shaffer Van Houweling, 4 Journal on Telecommunications & High Technology Law 97 (2005) (for publisher, see above)

The Michigan State Law Review has issued a Children and the First Amendment Symposium issue with the following articles:

*Foreword: Some Thoughts for Discussion* by Amitai Etzioni, 2005/3 Michigan State Law Review 769 (2005)

*The Cost of Errors in the Debate Over Media Harm to Children* by Kevin W. Saunders, 2005/3 Michigan State Law Review 771 (2005)

*Do We Need Censorship to Protect Youth?* by Marjorie Heins, 2005/3 Michigan State Law Review 795 (2005)

*Officials' Obligations to Children: The Perfectionist Response to Liberals and Libertarians, or Why Adult Rights Are Not Trumps over the State Duty to Ensure Each Child's Education* by Steve Sheppard, 2005/3 Michigan State Law Review 809 (2005)

*Filtering Out Children: The First Amendment and Internet Porn in the U.S. Supreme Court* by Mark S. Kende, 2005/3 Michigan State Law Review 843 (2005)

*Television and Young People: Violence, Sex, Booze, and Greed* by Bradley S. Greenberg and Sarah F. Rosaen, 2005/3 Michigan State Law Review 857 (2005)

*The View Outside: What Kind of Expression for Adolescents Outside the United States?* by Edward J. Eberle, 2005/3 Michigan State Law Review 879 (2005)

*Creating a More Child-Friendly Broadcast Media* by Adam Candeub, 2005/3 Michigan State Law Review 911 (2005)

*From Sony to Grokster, The Failure of the Copyright Doctrines of Contributory Infringement and Vicarious Liability to Resolve the War Between Content and Destructive Technologies* by Craig A. Grossman, 53 Buffalo Law Review 141 (2005)

The Journal of the Copyright Society of the USA, [www.csusa.org/html/publications/journal/journal.htm](http://www.csusa.org/html/publications/journal/journal.htm) has issued Volume 53, Numbers 1-2 with the following articles:

*War and Peace: The 34<sup>th</sup> Annual Donald C. Brace Lecture* by Jessica Litman, 53 Journal of the Copyright Society of the USA 1 (2006) (for website, see above)

*Capitol Records v. Naxos of America (2005): Just Another Footnote in the History of Copyright?* by Ronan Deazley, 53 Journal of the Copyright Society of the USA 23 (2006) (for website, see above)

*Why Is a European Directive on Collective Management Necessary? A Perspective from a New Member State of the EU* by Peter Gyertyanfy, 53 Journal of the Copyright Society of the USA 71 (2006) (for website, see above)

*Defusing the Time Bomb Once Again-Determining Authorship in a Sound Recording* by Mark H. Jaffe, 53 Journal of the Copyright Society of the USA 139 (2006) (for website, see above)

*Evolution of Copyright and Neighboring Rights in the Russian Federation in the Digital Era* by Konstantin B. Leontiev, 53 Journal of the Copyright Society of the USA 199 (2006) (for website, see above)

*Reconstructing Reproductive Right Protection in China* by Haochen Sun, 53 Journal of the Copyright Society of the USA 223 (2006) (for website, see above)



*"Anonymous, Untitled, Mixed Media": Mixing Intellectual Property Law With Other Legal Philosophies to Protect Traditional Cultural Expressions* by Molly Torsen, 53 *Journal of the Copyright Society of the USA* 287 (2006) (for website, see above)

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## Educational Programs Calendar:

**Trademarks, Copyrights, and Unfair Competition for the General Practitioner and the Corporate Counsel**, April 27-28, Hotel Contessa, San Antonio. This 15<sup>th</sup> Annual ALI-ABA Course of Study for Inside and Outside Counsel will examine Trademark Fundamentals; Protecting Trademarks: Common Law, Statutes, and Treaties; Trademark Searching: Selecting Available, Strong, and Enforceable Trademarks; Trademark Preparation and Prosecution: The Trademark Registration Process; Copyright Fundamentals; Trademark Enforcement Theories: Likelihood of Confusion and Dilution; Challenges to Trademark Registration: Oppositions and Cancellations; Trademarks and Copyrights in Cyberspace: How to Address Cyberpiracy (Including a discussion and analysis of MGM Studios, Inc. v. Grokster, Ltd.); Licensing: Monetizing Trademarks and Copyrights; Ethics in Trademark and Copyright Practice; and Presentation and Roundtable Discussion-The Outer Limits of Trademark and Copyright Protection: Fair Use. For additional information, see [www.ali-aba.org](http://www.ali-aba.org), or call 800-CLE-NEWS.

**Film Distribution, New Technology and Piracy: Thriving in a Brave New World**, May 18-19, Palais des Festivals, Cannes. Sponsored by the ICC, the International Chamber of Commerce, this 20<sup>th</sup> Annual Conference on International Audiovisual Law, will look at New Business Models and Changing Economics for Film Distribution and the Interaction with Piracy. Speakers will include Dan Glickman, chair of the MPAA, The Chief Executive Officer of the New Zealand Film Commission, Ashwin Navin, the co-founder and President of BitTorrent, the executive director of the Marche du Film, France, the EU Commissioner for Information Society and Media in Brussels and the President of the Association de Lutte contre la Piraterie Audiovisuelle in France. There will be sessions entitled *Film Piracy-the Industry's Worst Nightmare?*; *The Big Picture on Film Distribution-What is This New, Morphing Beast?*; and *Getting It Out There-the New Contractual Landscape for Film Distribution*. For additional information, go to [www.iccwo.org/events](http://www.iccwo.org/events).

**Advertising Law**, June 21-22, Swissotel, Chicago, IL. This 17<sup>th</sup> National Advanced Corporate Counsel Forum, presented by the American Conference Institute and sponsored by Loeb and Loeb and Documents by Davis & Gilbert, focuses on maximizing brand exposure & revenue while avoiding scrutiny & conflict. Session include *Shaping the Future for the Advertising World-Must Enter to Win*; *Keeping It Real-Avoiding Puffery When Substantiating Claims*; *Identifying Ads that Contradict Regulatory Schemes and Avoiding Common Claim Substantiation Pitfalls*; *Litigating Advertising Claims-Results My Vary*; *Playing the Sweepstakes and Promotions Game Without Taking a Gamble-No Purchase Necessary*; *The Changing Nature of Sponsorships-A Sophisticated Look at How Marketers are Leveraging Their Investments in the world of Sports and Entertainment*; *Imperative Regulatory & IP Issues You Cannot Avoid When Structuring Brand Integration Deals*; *Wait! There's More! Negotiating Competitive Structures for Brand Integration Deals in Film, Television, Video Games and Wireless Phones*; *Challenges to Expect When Your Advertising Crosses Borders*; *Advertising in Canada*; *Recent Developments in Advertising & Marketing in the UK and EU*; *Negotiating Talent Agreements, Working With Unions, and Managing Talent*; *The Ads Are On...Do You Know Where Your Children Are?*; *Advertising and Marketing to Children*; *Putting the Food on the Table Without Getting Burned-A Close Look at Food Ads that Target Children*; *Getting the Green Light to Use Music in Your Advertising*; *Fair Use: Void Where Prohibited by Law*; *Fair Use of Copyrights*; and *Are You Suffering or Profiting from Web-Illusions? A Master Class* will follow presented by partners at Alston and Bird in Atlanta on *Fair Use in Copyrights, Trademarks & Right of Publicity*. For additional information, go to [AmericanConference.com/adlaw](http://AmericanConference.com/adlaw), e-mail [customer-care@americanconference.com](mailto:customer-care@americanconference.com) or call 888-224-2480.