

## INTERNATIONAL DEVELOPMENTS

### **“The Da Vinci Code” does not infringe copyright to non-fiction book “Holy Blood, Holy Grail,” British court rules**

A British court has ruled that Dan Brown’s novel *The Da Vinci Code* does not infringe the copyright to the non-fiction book *Holy Blood, Holy Grail*, by Richard Leigh, Michael Baigent and Henry Lincoln.

The ruling by Justice Peter Smith came at the end of a highly-publicized trial in London. The trial itself was newsworthy because it occurred on the eve of the release of the movie version of *The Da Vinci Code*, and because the trial featured in-person testimony by Leigh, Baigent and Brown, none of whom did well for himself, in the eyes of Justice Smith.

Leigh and his co-author Baigent did not accuse Brown of lifting passages or phrases from their best-selling non-fiction work. (Co-author Henry Lincoln did not join them in the lawsuit.) Instead, they asserted that in writing *The Da Vinci Code*, Brown copied the “Central Theme” of *Holy Blood, Holy Grail*.

According to Leigh and Baigent, *Holy Blood’s* “Central Theme” consists of 15 specific points. These included the notions: that Jesus was of royal blood; that Mary Magdalene was his wife; that at the time of Jesus’ crucifixion, Mary was pregnant with Jesus’ child; that after the crucifixion, Mary fled to France; and that their bloodline survives to this very day.

Brown testified that he did not read *Holy Blood* until after he finished writing a synopsis of *The Da Vinci Code*. Justice Smith was openly skeptical of this testimony, saying in fact that he found parts of it “unconvincing.” What’s more, the Justice faulted Brown for not calling his wife as a witness, because – as other testimony revealed – she did most or all of the research for the novel, and thus she might have read *Holy Blood*, even if Brown did not.

As things turned out, however, it didn’t matter whether Brown’s wife may have read *Holy Blood*, because Justice Smith was even more skeptical – was indeed outright critical – of the testimony of Leigh and Baigent. In his written decision, the Justice said, for example, “I am not sure what Mr Leigh thought was the purpose of his evidence,” and “Mr Baigent was a poor witness.”

The case ultimately turned, though, on the written word rather than on the testimony of any of the parties.

Justice Smith found that the “Central Theme” on which Leigh and Baigent based their case simply did not exist in *Holy Blood*. “I have read [*Holy Blood*] many times (over the 20 years since its publication),” the Justice said, “and to attempt to find the Central Theme . . . by reading the text is a task in my view beyond any reader.”

Justice Smith also found that some of the 15 points of the Central Theme are not in *Holy Blood* at all, other points are not in *The Da Vinci Code*, some are not in either book, and still others are not protected by copyright. For these reasons, Justice Smith ruled against Leigh and Baigent and dismissed their case.

*Editor’s note:* Justice Smith is himself a clever writer, as his lengthy opinion in this case reveals. The manuscript for his decision (the link to which is below) contains what appear to be many errors of typography – not misspellings, but what appear to be misplaced italics and bolding. They are not errors at all, however. Instead, the Justice inserted a code of his own into his opinion – one that reportedly refers to the name of the inventor of the Fibonacci Sequence – a formula for substituting letters that Brown used in *The Da Vinci Code*.

*Baigent v. Random House*, [2006] EWHC 719 (Ch), available at [http://www.hmcourts-service.gov.uk/judgmentsfiles/j4008/baigent\\_v\\_rhg\\_0406.htm](http://www.hmcourts-service.gov.uk/judgmentsfiles/j4008/baigent_v_rhg_0406.htm)

## RECENT CASES

### **“The DaVinci Code” does not infringe copyrights to novel “Daughter of God,” appellate court affirms**

Dan Brown’s best-selling novel *The Da Vinci Code* does not infringe the copyright to Lewis Perdue’s novel *Daughter of God*.

In response to a motion for summary judgment filed by Brown and his publisher, a federal District Court compared the two books and concluded that reasonable jurors could not find them to be substantially similar.

Purdue appealed, but without success. The appellate court reviewed the books for itself and affirmed the dismissal of the case “for substantially the reasons given by the district court.”

*Brown v. Perdue*, 2006 WL 1026098 (2nd Cir. 2006), affirming, 2005 WL 1863673, 2005 U.S.Dist.LEXIS 15995 (S.D.N.Y. 2005)

### **Use of sexually coarse and vulgar language by writers of TV series “Friends” did not constitute harassment of female writers’ assistant, California Supreme Court rules**

Warner Bros. has escaped potential liability for the alleged harassment of a female writers’ assistant who was hired to work on the TV series “Friends.” The case that exposed the company, as well as its writers, to such liability was one in which Amaani Lyle, a former writers’ assistant for the show, alleged that she was sexually harassed by things the writers said – not to her, but during writing sessions in which she was present and working.

Initially, Lyle’s case was dismissed by a trial court. But the California Court of Appeal reversed in an opinion that held that Lyle was entitled to trial on her sexual harassment claim, based on things that writers said and did during those writing sessions (ELR 26:4:12).

The California Supreme Court took the case to consider whether the use of “sexually coarse and vulgar language” by the writers of the television series “Friends” could constitute “sex harassment” under California law. When the Court agreed to hear the case, it also indicated it would consider whether imposing

liability under California law, based on things that were said by the show’s writers during writing sessions, would infringe upon their free speech rights under the First Amendment or the state Constitution.

In an opinion by Justice Marvin Baxter, the Court has ruled in favor of Warner Bros. and the writers, on grounds that are more factual than legal.

The Supreme Court concluded that “most of the [writers’] sexually coarse and vulgar language . . . did not involve and was not aimed at [Lyle] or other women in the workplace.” Because “Friends” was produced in “a creative workplace focused on generating scripts for an adult-oriented comedy show featuring sexual themes, we find no reasonable trier of fact could conclude such language constituted harassment directed at [Lyle] because of her sex. . . .”

The Court also found that if “offensive comments were made about women other than [Lyle] because of their sex, we find no reasonable trier of fact could conclude these particular comments were severe enough or sufficiently pervasive to create a work environment that was hostile or abusive. . . .”

As a result, the Supreme Court reinstated the trial court’s summary judgment in favor of Warner Bros. and the writers, “without addressing the potential of infringement on [their] constitutional rights of free speech.”

*Lyle v. Warner Bros.*, 2006 WL 1028558, 2006 Cal.LEXIS 4719 (Cal. 2006), available at <http://www.courtinfo.ca.gov/opinions/documents/S125171.PDF>

### **Use of vulgar language by male coach of University of North Carolina’s women’s soccer team did not sexually harass player, federal appellate court affirms**

Anson Dorrance – one of the male coaches of the University of North Carolina’s women’s soccer team – allegedly used “vulgar language” and participated in “sexual banter” with some of the women he coached; and once, he directed a “vulgar question” at a 17 or 18-year-old player named Melissa Jennings.

Dorrance really ought to have known better, because when Jennings was later cut from the team, the

foreseeable happened: she sued him and the University for sexual harassment.

Jennings' case was dismissed by the District Court. And now that ruling has been affirmed by the Court of Appeals.

Writing for a 2-to-1 majority, Judge James Dever acknowledged that "When the evidence in this case is viewed most favorably to Jennings, the evidence shows that Dorrance used vulgar language and participated in sexual banter at practice with some women that he coached and that he once directed a vulgar question at Jennings."

Nevertheless, Judge Dever noted that "Jennings immediately responded to Dorrance's vulgar question with her own profane reply. . . ." What's more, the judge said, "Dorrance never touched, never threatened, never ogled, and never propositioned Jennings."

For these reasons, Judge Dever concluded that "no reasonable jury could find that Dorrance sexually harassed Jennings."

Judge Blane Michael dissented.

*Jennings v. University of North Carolina*, 2006 WL 925477, 2006 U.S.App.LEXIS 8869 (4th Cir. 2006)

### **Movie "Billy Elliot" did not infringe copyright to screenplay "The Sunday Hat"**

The movie "Billy Elliot" did not infringe the copyright to an unproduced screenplay titled "The Sunday Hat," a federal District Court has ruled.

The movie and the screenplay did have some similarities. "Billy Elliot" was set in England during the 1984 coal miners' strike in 1984 and tells the story of a young boy who wants to dance and eventually is accepted to the Royal School of Ballet. "The Sunday Hat" was set in Europe in the 1950s and tells the story of a young girl who fulfills her dream of becoming a ballet dancer.

Nevertheless, in a carefully analyzed though unpublished opinion, Judge Michael Mosman concluded that Yvonne Mestre and Michael Manahan, who wrote "The Sunday Hat," failed to show that Lee Hall, who wrote "Billy Elliot," or anyone else involved in producing the movie, had access to "The Sunday Hat" before they created "Billy Elliot."

What's more, even if Hall or the other defendants did have access, Judge Mosman concluded that no reasonable juror could conclude that "Billy Elliot" and "The Sunday Hat" were substantially similar in plot, theme, dialogue, mood, setting, pace, characters or sequence of events.

The judge therefore granted the defendants' motion for summary judgment and dismissed the case. He nevertheless declined to award the defendants any part of

the \$150,000 in costs or attorneys fees they incurred in defeating the case.

*Mestre v. Vivendi Universal*, 2005 WL 1959295, 2005 U.S. Dist. LEXIS 41024 (D.Or. 2005) (merits), 2005 U.S. Dist. LEXIS 41023 (D.Or. 2005) (fees/costs)

### **Most, but not all, claims are dismissed in suit alleging "White Chicks" was plagiarized from screenplay "Johnny Bronx"**

The writers of a screenplay titled "Johnny Bronx" believe it was copied by the Wayans brothers when they wrote the movie "White Chicks." The writers – partners in a company called A Slice of the Pie Productions – submitted their screenplay to the Wayans' agent, twice, allegedly in response to the agent's request. And "Johnny Bronx" and "White Chicks" share a similar concept: in both, African American FBI agents disguise themselves as white.

While this case could have been filed as a pure copyright infringement suit, Slice of the Pie chose to allege a wide variety of additional claims based on state law. For its trouble, all that Slice of the Pie got in return was a defense motion to dismiss those state law claims – a motion that was granted, in large part.

Federal District Judge Janet Arterton dismissed Slice of the Pie's claims alleging breach of fiduciary duty, unfair competition, misappropriation, conversion and violation of the Connecticut Unfair Practices Act.

But the judge declined to dismiss Slice of the Pie's allegation that the Wayans brothers' agent had breached an implied-in-fact contract that required the agent to notify Slice of the Pie if the Wayans made a movie based on "Johnny Bronx." In so ruling, Judge Arterton relied on Slice of the Pie's as-yet unproved assertion that there is a "film industry custom and practice" that "when an agent solicits a script for its client, that soliciation creates an implied promise that the agent will notify the screenwriter if the client uses the screenplay."

*Editor's note:* Because the judge's ruling was made in response to a pre-trial motion to dismiss, no consideration was required or given to the question of what damages Slice of the Pie might have suffered from the agent's alleged breach of that implied-in-fact contract – as distinguished from the later infringement of Slice of the Pie's copyright, if it was infringed.

*A Slice of the Pie Productions v. Wayans Brothers Entertainment*, 392 F.Supp.2d 297, 2005 U.S. Dist. LEXIS 22083 (D.Conn. 2005)

## **Downloading from Kazaa is not a fair use, Court of Appeals rules**

When Cecilia Gonzalez was sued for copyright infringement by BMG Music and others, because she downloaded music from Kazaa, she made a remarkable argument. She asserted that her downloading was a fair use rather than an infringement.

This of course ran directly contrary to the legal principle that formed the foundation of the Supreme Court's "file sharing" ruling last year in *MGM v. Grokster* – a ruling that began with the notion that downloading is infringement and went on to say that inducing downloading is contributory infringement (*ELR* 27:2:10).

Gonzalez attacked that notion head-on by claiming that she downloaded recordings – more than 1,370 of them – simply to see whether she wanted to buy any, and then she deleted them from her computer. The evidence showed, though, that she didn't delete at least 30 songs "until she was caught." As things turned out, it wouldn't have mattered even if she did download, sample, and then delete.

Writing for the Court of Appeals, Judge Frank Easterbrook held that downloading to "try-before-you-buy" is not a fair use, in part because there is a legitimate, licensed, market "in ways to introduce potential consumers to music."

As a result, the appellate court affirmed an order that enjoined Gonzalez from further infringement and awarding the record companies \$22,500 in damages.

*BMG Music v. Gonzalez*, 430 F.3d 888, 2005 U.S.App.LEXIS 26903 (7th Cir. 2005)

## **Court refuses to dismiss record companies' copyright infringement claims against alleged Kazaa user, but does dismiss user's privacy and abuse counterclaims**

Record companies have won a potentially important – if preliminary – victory in their copyright infringement case against an alleged Kazaa user named Lindsey Duty.

In an unsuccessful motion to dismiss, Duty argued that despite the existence of unlicensed music files in the Kazaa "sharing" file on her computer, she could not be held liable for distributing those recordings because "there is no liability for infringing upon the right of distribution unless copies of copyrighted works were actually disseminated to members of the public."

Federal District Judge Frederick Martone disagreed. He ruled that "the mere presence of copyrighted sound recordings in Duty's share file may constitute copyright infringement."

Moreover, Judge Martone dismissed Duty's counterclaims for invasion of privacy and abuse of process.

As a result of these rulings, the judge emphasized "For clarity" that "only the Recording Companies' copyright infringement claims remain."

*Interscope Records v. Duty*, 2006 WL 988086, 2006 U.S.Dist.LEXIS 20214 (D.Ariz. 2006)

## **Attempt by granddaughter of author of "Winnie-the-Pooh" books to terminate grant to licensee Stephen Slesinger, Inc., was not effective, Court of Appeals affirms**

Back in 1930, author Alan Milne granted Stephen Slesinger exclusive merchandising rights to Milne's "Winnie-the-Pooh" books. More than 70 years later, in 2002, Milne's granddaughter attempted to terminate that grant by serving Slesinger with a notice of termination.

On its face, the granddaughter's termination notice seemed effective, because during those 70-plus years, Congress had amended the Copyright Act to include a provision that permits authors or their heirs to do just that – terminate pre-1978 grants.

There's a long story that explains why Congress did such a thing. And the story is told by Court of Appeals Judge Consuelo Callahan, in an opinion that held that in this case, Milne's termination notice was *not* in fact effective.

The reason it wasn't effective, Judge Callahan decided, was that in 1983, the granddaughter's father – Christopher Robin Milne (after whom the "Christopher Robin" character was named) – entered into a new agreement with Slesinger that superseded the 1930 grant. The Copyright Act provision permitting terminations applies only to pre-1978 grants, so the granddaughter couldn't terminate the 1983 grant.

The granddaughter hadn't overlooked the deal her father made in 1983. She did, however, argue that the 1983 deal should not block her termination of the 1930 agreement. It shouldn't, she contended, because the provision of the Copyright Act that allows authors or their heirs to terminate pre-1978 grants also says they have this right despite any "agreement to the contrary." Judge Callahan, however, concluded that the 1983 deal was not actually an "agreement to the contrary."

*Milne v. Stephen Slesinger, Inc.*, 430 F.3d 1036, 2005 U.S.App.LEXIS 1036 (9th Cir. 2005)

## **“Bowling for Columbine” did not defame brother of Oklahoma City bomber Terry Nichols**

Filmmaker Michael Moore has defeated a defamation lawsuit filed against him by James Nichols, the brother of convicted Oklahoma City bomber Terry Nichols.

At issue in the case was whether Moore’s film “Bowling for Columbine” defamed Nichols by reporting that he was arrested “in connection with” the bombing.

In response to Moore’s motion for summary judgment, federal District Judge Paul Borman held that the offending statement was substantially true.

Furthermore, the judge found that Nichols was a public figure, which meant that in order to win, Nichols would have to show – but didn’t – that Moore made the offending statement with actual malice.

Judge Borman therefore granted Moore’s motion and dismissed the case.

*Nichols v. Moore*, 396 F.Supp.2d 783, 2005 U.S.Dist.LEXIS 14169 (E.D.Mich. 2005)

## **Enforcement of violent video game statutes in Michigan, Illinois and California all enjoined, on First Amendment grounds**

Michigan, Illinois and California enacted similar (though not identical) violent video game statutes, all of which would have taken effect within a month of one another, in December 2005 or January 2006 (ELR 27:5:5).

The California and Illinois statutes prohibited the sale or rental of “violent” games to minors, and both required violent games to be labeled with a 2-inch by 2-inch white “18” outlined in black. The Illinois statute also prohibited the sale or rental of “sexually explicit” video games to minors. The Michigan law prohibited the sale or rental of “ultra-violent explicit video games.”

The three statutes “would have taken effect,” if they weren’t unconstitutional. The Entertainment Software Association and the Video Software Dealers Association both thought all three statutes were unconstitutional, and they filed three separate lawsuits so alleging against the governors of all three states.

As things have turned out, the Associations were right. And that is why their effects are described above, in the past tense.

A preliminary injunction was issued against enforcement of the Michigan statute, almost immediately (ELR 27:8:8). Then, in response to the Associations’ motion for summary judgment, federal District Judge George Steeh held that the Michigan statute does violate

the First Amendment. So he has converted his earlier preliminary injunction into a permanent injunction.

The Illinois statute too has been held to be unconstitutional, by federal District Judge Matthew Kennelly who has permanently enjoined its enforcement, also on First Amendment grounds.

The Associations’ case against the California statute is not yet as far along as the other cases. But it is pointing in the same direction. Federal District Judge Ronald Whyte has determined that the Associations are “likely” to be able to show that the California statute violates the First Amendment. So Judge Whyte has issued a preliminary injunction against its enforcement.

*Entertainment Software Association v. Granholm*, 2006 WL 901711, 2006 U.S.Dist.LEXIS 24733 (E.D.Mich. 2006), available at <http://www.politechbot.com/docs/michigan.video.game.decision.040306.pdf>; *Entertainment Software Association v. Blagojevich*, 404 F.Supp.2d 1051, 2005 U.S.Dist.LEXIS (N.D.Ill. 2005); *Video Software Dealers Association v. Schwarzenegger*, 401 F.Supp.2d 1034, 2005 U.S.Dist.LEXIS (N.D.Cal. 2005)

## DEPARTMENTS

### Entertainment Lawyer News:

**Jessica Darraby forms Art Law firm based in Santa Monica.** Jessica Darraby has formed a Los Angeles-based art law firm representing a national and international clientele, with affiliate counsel in New York and other cities, offering clients a full range of art-related services. The practice includes art, architecture, antiquities, artifacts, antiques, internet and web art, arts-related technologies and public art, in matters crossing the legal spectrum, including corporate, copyright, intellectual property, privacy, international, not for profit law, trustee and director fiduciary duties. She has arbitrated and mediated issues on insurance, labor, photographic archives, collections acquisitions, management and loss, valuation and appraisal and been general counsel for a national non-profit arts organization. She has traded art in the international market and advised institutional clients on the acquisition of international collections, worked in Italy and studied Italian. She has worked with museums, government entities and collectors on inventorying and evaluating international collections for domestic acquisition, and gifting collections to international entities, including provenance and due diligence. Darraby has been a court-appointed expert and consultant in civil and criminal matters in state and federal courts on art fraud, counterfeiting and forgery, valuation, appraisal, copyright trade usage issues, including merchandising, feature film and video, artists' rights, public art and architecture. Darraby was a gallerist, the former owner and director of J. Darraby Gallery, an art gallery that represented domestic and international contemporary talent. As a dealer and lawyer, she has handled virtually all media, eras, and genres, from contemporary to antique, the Web, Western art, Asian art, decorative arts, photography, video, textiles, works on paper, installations, murals, site specific works, public art and private commissions. Darraby is the author of the comprehensive treatise *Art, Artifact & Architecture Law* published by Thomson-West and updated annually. Darraby has published dozens of articles in journals, law reviews, newspapers and arts, legal and trade magazines. Her feature on the Getty Museum and the Italian antiquities trial, "To Have and To Hold," is the cover story for the May 2006 issue of *California Lawyer Magazine*; and her works on the European Union, "Current Developments in International Trade of Cultural Property" and "Around the World in

Eighty Ways: the European Community Spin on Global Arts Import-Export Policy," were published in ABA journals. Darraby has been a keynote speaker, moderator and guest lecturer for judges, corporations, governmental agencies, museums, cultural institutions, including the Museum of Modern Art, the J. Paul Getty Museum, Los Angeles County Museum of Art, other museums and bar associations. She has served on boards of directors in the not-for-profit sector, including museum councils. At ArtTable, Inc., she was Treasurer for the Southern California Chapter, elected a National Board member, and appointed Counsel to the organization. She currently sits on the Forum Governing Committee for the Entertainment and Sports Industries of the American Bar Association. Darraby is Chair of the Visual Arts Division in the ABA Entertainment Forum and a member of the ABA International Section. She is a longtime member of the Contemporary Arts Council at the Museum of Modern Art and a donor to *A Soaring Spirit-The Campaign for Ailey*, and a sponsor of Alvin Ailey American Dance Theatre. She is admitted to practice in California, the Ninth Circuit Court of Appeals, and other Circuit Courts of Appeals.

### In the Law Reviews:

THE UCLA ENTERTAINMENT LAW REVIEW has published Volume 13, Issue 1 with the following articles:

*Music Composition, Sound Recordings, and Digital Sampling in the 21<sup>st</sup> Century: A Legislative and Legal Framework to Balance Competing Interests* by Jeremy Beck, 13 UCLA Entertainment Law Review (2005)

*I Know, It's Only Rock and Roll. But Did They Like It?: An Assessment of Causes of Action Concerning the Disappointment of Subjective Consumer Expectations Within the Live Performance Industry* by Brian A. Rosenblatt, 13 UCLA Entertainment Law Review (2005)

*Flagrant Foul: Racism in "The Ron Artest Fight"* by Jeffrey A. Williams, 13 UCLA Entertainment Law Review (2005)

*Balancing Free Speech Interests: The Traditional Contours of Copyright Protection and the Visual Artists' Rights Act* by Matt Williams, 13 UCLA Entertainment Law Review (2005)

*In the Shadow of Mt. Olympus: Could a Revision of 17 U.S.C. §§ 1202-1204 Bring Them Into Daylight?* by Eric F. Harbert, 13 UCLA Entertainment Law Review (2005)

COMM/ENT, HASTINGS COMMUNICATIONS AND ENTERTAINMENT LAW JOURNAL has published Volume 28, Number 1, with the following articles:

*A Bipolar Copyright System for the Digital Network Environment* by Alexander Peukert, 28 Comm/Ent, Hastings Communications and Entertainment Law Journal (2006)

*Reformulating the On Sale Bar* by Frank Albert, 28 Comm/Ent, Hastings Communications and Entertainment Law Journal (2006)

*As a Matter of Fact, It's a Question of Law: A Case for De Novo Review of the Likelihood of Confusion in Trademark Cases* by Richard A. Dilgren, 28 Comm/Ent, Hastings Communications and Entertainment Law Journal (2006)

*The Reporter's Privilege: The Necessity of a Federal Shield Law Thirty Years After Branzburg* by Leila Knox, 28 Comm/Ent, Hastings Communications and Entertainment Law Journal (2006)

FORDHAM INTELLECTUAL PROPERTY, MEDIA & ENTERTAINMENT LAW JOURNAL has published Volume 16, Number 1 with the following articles:

*The Naked Newscaster, Girls Gone Wild, and Paris Hilton: True Tales of the Right of Privacy and the First Amendment* by Brian D. Coggio, 16 Fordham Intellectual Property, Media & Entertainment Law Journal 35 (2005)

*Unforced Rhythms of Grace: Freeing Houses of Worship From the Specter of Copyright Infringement Liability* by Brian D. Wassom, 16 Fordham Intellectual Property, Media & Entertainment Law Journal 61 (2005)

*Crisis of Indefinite Consequence: How the Derivative Works Exception and the Lanham Act Undercut the Remunerative Value of Termination of Transfers* by Ashok Chandra, 16 Fordham Intellectual Property, Media & Entertainment Law Journal 241 (2005)

*Copyright Infringement in the Digital Age: The Issue of Unfixed Works* by Hazel Malcolmson, 16 Fordham Intellectual Property, Media & Entertainment Law Journal 297 (2005)

VANDERBILT JOURNAL OF ENTERTAINMENT AND TECHNOLOGY LAW has published Volume 8, Number 1 with the following articles:

*Navigating into the New "Safe Harbor" Model Interest Surveys as a New Tool for Title IX Compliance Programs* by John Almond and Daniel Cohen, 8 Vanderbilt Journal of Entertainment and Technology Law (2005)

*The Needle and the Damage Done: The Pervasive Presence of Obsolete Mass Media Audience Models in First Amendment Doctrine* by Mehmet Konar-Steenberg, 8 Vanderbilt Journal of Entertainment and Technology Law (2005)

*Legal and Practical Aspects of Music Licensing for Motion Pictures* by Vlad Kushner, 8 Vanderbilt Journal of Entertainment and Technology Law (2005)

*Arresting Vaulting Pole Technology* by Russ VanSteege, 8 Vanderbilt Journal of Entertainment and Technology Law (2005)

*Copyright Issues for Sound Recordings of Volunteer Performers* by Stephen Adams, 8 Vanderbilt Journal of Entertainment and Technology Law (2005)

*Upon Further Review: Why the NFL May Not Be Free after Clarett, and Why Professional Sports May be Free from Antitrust Law* by Darren W. Dummit, 8 Vanderbilt Journal of Entertainment and Technology Law (2005)

*The Reality of Reality Television: Understanding the Unique Nature of the Reality Genre in Copyright Infringement Cases* by J. Matthew Sharp, 8 Vanderbilt Journal of Entertainment and Technology Law (2005)

THE ENTERTAINMENT LAW REVIEW, published by Sweet and Maxwell, [www.sweetandmaxwell.co.uk](http://www.sweetandmaxwell.co.uk), has issued Volume 17, Issue 3 with the following articles:

*Can I Protect My TV Format?* by Charlotte Hinton, 17/3 Entertainment Law Review 91 (2006) (for website, see above)

*Targeting Website Advertising: A Web of Issues?* by Phil Lee, 17/3 Entertainment Law Review 94 (2006) (for website, see above)

*Running Rings Around Olympics* by Pauline Dore, 17/3 Entertainment Law Review 96 (2006) (for website, see above)

*Rapper's Delight?* by Marcus Hughes, 17/3 Entertainment Law Review 98 (2006) (for website, see above)

*Public and Private Sectors Focus on DRM and Copy Protection* by Catherine Stromdale, 17/3 Entertainment Law Review 101 (2006) (for website, see above)

*A Question of Musical Interpretation* by Tanya Theobald, 17/3 Entertainment Law Review 104 (2006) (for website, see above)

*Book Review: Performers' Rights* by Richard Arnold, 17/3 Entertainment Law Review 107 (2006) (for website, see above)

EUROPEAN INTELLECTUAL PROPERTY REVIEW, published by Sweet and Maxwell, www.sweetandmaxwell.co.uk, has issued Volume 28, Issue 3 with the following articles:

*Digital Rights Management in the 21<sup>st</sup> Century* by P. Akester and R. Akester, 28/3 European Intellectual Property Review 159 (2006) (for website, see above)

*Dilution Down Under: The Protection of Well-Known Trade Marks in Australia* by Maurice Gonsalves and Patrick Flynn, 28/3 European Intellectual Property Review 174 (2006) (for website, see above)

THE JOURNAL OF INTELLECTUAL PROPERTY LAW, www.lawsch.uga.edu, has published Volume 13, Number 1 with the following articles:

*A Positive Externalities Approach to Copyright Law: Theory and Application* by Jeffrey Harrison, 13 Journal of Intellectual Property Law 1 (2005) (for website, see above)

*Images of Public Places: Extending the Copyright Exemption for Pictorial Representations of Architectural Works to Other Copyrighted Works* by Andrew Inesi, 13 Journal of Intellectual Property Law 61 (2005) (for website, see above)

*Who Owns Kim Basinger? The Right of Publicity's Place in the Bankruptcy System* by Judy Campbell, 13 Journal of Intellectual Property Law 179 (2005) (for website, see above)

*Digital Photography and the Internet, Rethinking Privacy Law* by Jim Barr Coleman, 13 Journal of Intellectual Property Law 205 (2005) (for website, see above)

THE JOURNAL OF LEGAL ASPECTS OF SPORT, published by the National Sports Law Institute, Marquette University School of Law, www.law.marquette.edu, has issued Volume 16, Number 1 with the following articles:

*Arbitrators Hearing Grievances Under the National Football League's Collective Bargaining Agreement Should Require Grievances to Be Timely Filed* by Aaron J. Sobaski, 16 Journal of Legal Aspects of Sport 1 (2006) (for website, see above)

*Gender, Employment, and Sexual Harassment Issues in the Golf Industry* by Barbara Osborne, 16 Journal of Legal Aspects of Sport 25 (2006) (for website, see above)

*Navigating the Public Relations Minefield: Mutual Protection Through Mandatory Arbitration Clauses in College Coaching Contracts* by Brent C. Moberg, 16 Journal of Legal Aspects of Sport 85 (2006) (for website, see above)

*The National Football League and Its "Culture of Intoxication": A Negligent Marketing Analysis of Verni v. Lanzaro* by Richard Southall & Linda Sharp, 16 Journal of Legal Aspects of Sport 121 (2006) (for website, see above)

*Book Review: Cases, Documents and Materials* by Adam Epstein, 16 Journal of Legal Aspects of Sport 149 (2006) (for website, see above)

*Compulsory Licenses in Peer-to-Peer File Sharing: A Workable Solution?* by Michael Botein & Edward Samuels, 30 Southern Illinois University Law Journal 69 (2005)

*Cyber Chaos: The Clash Between Band Fansites and Intellectual Property Holders* by Krissi J. Geary-Boehm, 30 Southern Illinois University Law Journal 87 (2005)

*A Transactional View of Property Rights* by Robert P. Merges, 20 Berkeley Technology Law Journal 1477 (2005)

*Peer-to-Peer Networks, Technological Evolution, and Intellectual Property Reverse Private Attorney General Litigation* by David W. Opperbeck, 20 Berkeley Technology Law Journal 1685 (2005)

*Intellectual Property Rights in Digital Media: A Comparative Analysis of Legal Protection, Technological Measures, and New Business Models under EU and U.S. Law* by Nicola Lucchi, 53 Buffalo Law Review 1111 (2005)

*Putting the Community in Communication: Dissolving the Conflict between Freedom of Expression and Copyright* by Carys J. Craig, 56 University of Toronto Law Journal 75 (2006)

*Whither Copyright? Transformative Use, Free Speech, and an Intermediate Liability Proposal* by John Tehranian, 2005/5 Brigham Young University Law Review 1201 (2005)



*Emphasizing the Copy in Copyright: Why Noncopying Alterations Do Not Prepare Infringing Derivative Works* by Michael K. Erickson, 2005/5 Brigham Young University Law Review 1261 (2005)

*Constitutionality of Testing High School Male Athletes for Steroids Under Vernonia School District v. Acton and Board of Education v. Earls* by Thomas Proctor, 2005/5 Brigham Young University Law Review 1335 (2005)

*Clarett v. National Football League: Defining the Non-Statutory Labor Exception to Antitrust Law as It Pertains to Restraints Primarily Focused in Labor Markets and Restraints Primarily Focuses in Business Markets* by Ronald Terk Sia, 4 Pierce Law Review 155 (2005)

*The Long and Winding Road: Convergence in the Application of Antitrust to Intellectual Property* by Makan Delrahim, 13 George Mason Law Review 259 (2005)

*Legal Protection for Literary Titles* by Terence P. Ross, 9/2 The Green Bag: An Entertaining Journal of Law, published in cooperation with George Mason School of Law (2006)

## **Educational Programs Calendar:**

**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.

**Understanding Basic Copyright Law 2006**, July 17, PLI Conference Center, San Francisco, July 24, PLI Conference Center, New York City and July 17, Live Webcast at [www.pli.edu](http://www.pli.edu). Presented by the Practising Law Institute, the program provides an Overview of Basic Principles of Copyright Law and Copyright Office Practice; Enforcing Copyrights; Ethics; Notable New Cases in Copyright Litigation; and Web and Streaming: Music on the Internet. For further information, contact PLI on the web at [www.pli.edu](http://www.pli.edu), or by phone at 1-800-2604PLI.

**Understanding Basic Trademark Law 2006**, July 18, PLI Conference Center, San Francisco, July 25, PLI Conference Center, New York City and July 18, Live Webcast at [www.pli.edu](http://www.pli.edu). This second Practising Law Institute program which may be attended with the Understanding Basic Copyright Law session described above, lays out an Overview of Basic Principles of Trademark Law and Unfair Competition; Trademarks in Practice: Searching, Clearance, Application Process and Strategies in the U.S. and Abroad; Creating a Trademark Protection Program in the U.S. and Abroad: A Cost-Benefit Analysis; Trademark Infringement Primer; and Litigation Alternatives-Trademark Office and UDRP Proceedings. For additional information, contact PLI on the web at [www.pli.edu](http://www.pli.edu), or by phone at 1-800-260-4PLI.