INTERNATIONAL DEVELOPMENTS

Apple Computer's use of "Apple" name and logo in connection with iTunes online music store did not breach 15-year-old agreement that gave Beatles' record company, Apple Corps, the exclusive right to use "Apple" name and logo in the music business, British judge decides

Apple Computer has defeated a claim by the Beatles' record company, Apple Corps, that the computer company breached an agreement that gave the record company the exclusive right to use the "Apple" name and logo in the music business. In a lawsuit filed in London, Apple Corps asserted that Apple Computer violated their 15-uear-old agreement by using the "Apple" name and logo in connection with the operation of its iTunes online music store. Justice Anthony Mann disagreed, however.

The Beatles' record company has been known as "Apple Corps" since 1968. Apple Computer was founded eight years later, in 1976. In the very beginning, the two companies' businesses were so different, that the existence of two "Apples" caused few if any problems. That was so, however, only in the very beginning.

By 1981, enough conflicts had occurred that the two companies entered into a written agreement with one another concerning the manner in which each of them could use the "Apple" name and logo. That agreement did not resolve things for all time, though.

By 1989, Apple Computer was using the name and logo in ways that Apple Corps contended violated their agreement. As a result, Apple Corps sued Apple Computer. The case went to trial in 1991; but after 100 days of testimony, the two companies settled their differences again. The 1991 agreement gave Apple Computer somewhat more latitude in the use of the "Apple" name and logo. But even that agreement gave Apple Corps the exclusive right to use the name and logo in the music business.

So, when Apple Computer began using the "Apple" name and logo in connection with its iTunes online music store in 2003, Apple Corps sued again. This time, the case was tried to the end, and Apple Computer emerged victorious.

Apple Corps contended that Apple Computer violated their 1991 agreement in several ways. It objected to the appearance of the Apple logo that appears at the top of the browser window when users connect to the iTunes website. It objected to the use of the name and logo in connection with iTunes' distribution of several types of music content. It objected to the use of the name and logo in iTunes video advertising. And it relied on speeches given by Steve Jobs, and documents filed with the SEC by Apple Computer, in an attempt to show that the computer company had indeed gone into the music business.

In a lengthy opinion, Justice Mann interpreted the 1991 agreement to bar Apple Computer from using the "Apple" name and logo in connection with the sale of music "content" owned by the computer company itself. But the Justice concluded that the agreement did not prevent Apple Computer from using the name and logo in the retail sale of music content owned by others.

Justice Mann then considered all of the uses to which Apple Corps objected. He concluded that each of them was a use in connection with the retail sale of content owned by others. From that, the Justice concluded that Apple Computer had not breached the 1991 agreement.

Apple Corps Limited v. Apple Computer, Inc., [2006] EWHC 996 (Ch), available at http://www.hmcourtsservice.gov.uk/judgmentsfiles/j4226/apple_v_apple_hc0 3c02428 0506.htm

IN THE NEWS

UMG Recordings settles New York Attorney General's "payola" investigation

UMG Recordings, Inc., has agreed to end its "payfor-play" practices, as a result of a settlement the company has reached with New York State Attorney General Eliot Spitzer. UMG – "the world's largest record label" – is a subsidiary of Vivendi Universal, and owns Island Def Jam, Interscope, Universal Motown Recordings Group, Uni-South, Universal Nashville and Verve.

The settlement obligates UMG to undertake company-wide reforms, including: immediate cessation of payments and other inducements to radio stations for airplay; discontinuance of independent promoters as a pass-through for securing airplay; hiring of a compliance officer to monitor promotion practices; and implementation of an internal system to detect future abuses.

The company also will also make a \$12 million payment to Rockefeller Philanthropy Advisors which will distribute the money to not-for-profit entities in New York State to fund music education and appreciation programs.

In announcing the settlement, the Attorney General's Office explained that "Radio airplay is the single most effective driver of music sales. The more airplay a song receives, the higher it climbs on published charts that purport to reflect the song's popularity, and the more likely consumers are to buy it. Payola undermines the integrity of the music recording and broadcasting industries. Consumers have a right not to be misled about the way in which the music they hear on the radio is selected. Pay-for-play makes a mockery of claims that only the 'best' or 'most popular' music is broadcast."

Spitzer's investigation determined that UMG and its record labels offered inducements to radio stations and their employees to obtain airplay of recordings by the company's artists, including those by Nick Lachey, Ashlee Simpson, Brian McKnight, Big Tymers, and Lindsay Lohan. According to Spitzer, UMG's pay-forplay strategy included:

- Outright bribes to radio station programmers, including electronics, vacations, airfare, hotel accommodations and tickets to sporting events and concerts;
- Payments to radio stations to cover operational expenses and contest giveaways;
- Retention of middlemen, known as independent promoters (or "indies"), as conduits for illegal payments to radio stations;
- Payments for "spin programs" and "time buys" which is airplay under the guise of advertising.

The Attorney General's office obtained emails showing that UMG executives were not only aware of the payoffs but regularly trained and pressured subordinates to buy airplay.

Radio stations too were aware of UMG's willingness to engage in pay-for-play practices, and were not shy about asking for promotional support. These requests were often part of an explicit or implicit agreement to provide airplay for UMG songs.

Spitzer's ongoing investigation of payola in the music industry previously resulted in settlements with Sony BMG and Warner, and a lawsuit against Entercom Communications Corp.

The 41-page settlement agreement is available at http://www.oag.state.ny.us/press/2006/may/UMG
Assurance of Discontinuance.pdf; and 87 pages of internal UMG documents supporting Spitzer's assertions are available at http://www.oag.state.ny.us/press/2006/may/UMG
Exhibits of Assurance.pdf

RECENT CASES

Book publisher's reproduction of Grateful Dead concert posters in Grateful Dead biography is fair use, appeals court affirms

A publisher's use of reduced-sized images of Grateful Dead concert posters and tickets in a Grateful Dead biography was "fair use" under the Copyright Act, a federal Court of Appeals has ruled.

The images were used by Dorling Kindersley in the book *Grateful Dead: The Illustrated Trip*. Bill Graham Archives owns the copyrights to the images. And though the two companies attempted to negotiate a license, they were unable to reach an agreement.

When Dorling used the images anyway, Graham sued for copyright infringement.

A federal District Court granted Dorling's motion for summary judgment, ruling that Dorling's use of Graham's images was a fair use. Graham appealed, but without success.

In an opinion by Judge Jane Restani, the Court of Appeals held that Dorling's use of the concert posters and tickets as "historical artifacts of Grateful Dead performances" was "transformatively different from the original expressive purpose of [Graham's] copyrighted images."

Though the posters and tickets were "creative" works, and though ordinarily that would count against fair use, in this case that factor's weight was "limited," the judge said, because Dorling "did not exploit the expressive value of the images."

The images were "copied in their entirety," but that did "not weigh against fair use because the reduced size of the images is consistent with the [Dorling's] transformative purpose."

Finally, Jane Restani concluded that Dorling's "use does not harm the market for [Graham's] sale of its copyrighted artwork," and the court did "not find market harm based on [Graham's] hypothetical loss of license revenue from [Dorling's] transformative market."

Editor's note: Bill Graham Archives is in the business of licensing its copyrighted Grateful Dead images; and the Copyright Act gives it the exclusive right to authorize – or not – other versions (which the Act calls "derivative works"), including small versions. Thus, on its face, Dorling committed a garden-variety infringement, unless its use was somehow "fair." To find that it was "fair," the Court of Appeals categorized Dorling's use as "transformative" – a categorization that was central to all four parts of the court's fair use

analysis. It is surprising, though, to read the court's conclusion that reducing the size of a copyrighted work, and including it within another work that contains more material too, constitutes a "transformation." In this case, for example, the book's poster and ticket images look exactly like the originals sold and licensed by Graham. And they are interesting to book readers for the very same reason that Graham's originals are interesting: because they evoke memories of the heyday of the Grateful Dead. On the whole, this opinion doesn't uniformly benefit or harm the entire entertainment industry. Instead, it invites litigation (instead of licensing) on a case-by-case basis. Book publishers (like Dorling) and documentary filmmakers will benefit sometimes, because they will be able to use the copyrighted material of others without paying to do so. But sometimes, publishers and audiovisual copyright owners will be harmed, because this decision will encourage others to use their copyrighted material without paying for it. The difficulty with the "fair use" doctrine – and especially this opinion's expansive notion of "transformative use" – is that determining which uses actually are "fair" requires litigation that almost always will be more expensive than a license would have been.

Bill Graham Archives v. Dorling Kindersley Ltd., 2nd Circuit Court of Appeals, Docket No. 05–2514–cv, decided May 9, 2006, available at http://www.ca2.uscourts.gov; 2006 WL 1236790; 2006 U.S.App.LEXIS 11593 (2nd Cir. 2006)

Eisenhower's book "Crusade in Europe" was work-for-hire, appeals court affirms, even though publishing agreement was carefully drafted as assignment of manuscript and rights in order to minimize Eisenhower's federal taxes

General Dwight Eisenhower's account of World War II, *Crusade in Europe*, was written for his publisher, Double & Company, as a "work-for-hire," a federal Court of Appeals has affirmed. Its "work-for-hire" status was significant, for a few reasons. First, when the book was first published in 1948, Doubleday registered the book's copyright in the company's own name. Second, when the book's copyright was due to be renewed 28 years later, Doubleday did so, itself.

Eisenhower's heirs never contested Doubleday's ownership or renewal of the book's copyright, so these would have been minor points, even if the book had not been a work-for-hire, but for one further point: in 1953, pursuant to a license from Doubleday, Twentieth Century Fox produced a documentary television series based on Eisenhower's book; but when it came time to renew the *series*' copyright in 1981, Fox failed to do so, and thereby put the *series* in the public domain.

A decade and a half after the Fox series fell into the public domain, another company – Dastar Corporation – decided to edit the series and release its own version. When Dastar did so, Fox got another exclusive license from license from Doubleday, and sued Dastar under the Copyright and Lanham Acts. The Lanham Act claim went all the way to the Supreme Court, where *Dastar* was successful (*ELR* 25:1:7).

The copyright claim went back to the District Court, where *Fox* was successful. That claim asserted that even though the series itself went into the public domain, Eisenhower's book never did; and Dastar's release of its edited version of the series infringed the *book*'s copyright. That would have been so, of course, only if the book's copyright had been properly renewed. Dastar argued it wasn't.

Dastar's argument was based on the Eisenhower-Doubleday contract, which was drafted as an "assignment" of the book's manuscript "and all rights . . . thereto." According to Dastar, this language showed that the book was *not* written as a work-for-hire. The District Court disagreed, however; and in an opinion by Judge Richard Tallman, the Court of Appeals agreed that the book *was* a work-for-hire.

Judge Tallman reasoned that under the 1909 Copyright Act, a work was a work-for-hire as long as it "was created at the 'instance and expense' of the engaging party." The record in this case, the judge said, contained evidence that Eisenhower wrote his book at the "instance and expense" of Doubleday.

Dastar's "rebuttal evidence" was the publishing contract itself. If the book was a work-for-hire, then Doubleday owned its copyright from the moment the manuscript was written; and Eisenhower would not have owned any "rights . . . thereto" to "assign" to Doubleday. The contract was carefully drafted as an assignment, so that the taxes on Eisenhower's royalties would be lower than they would have been if the book were a work-for-hire.

Judge Tallman, however, was "unconvinced that the tax treatment of a publishing deal bears on whether Doubleday and General Eisenhower intended the work to be a work-for-hire."

Judge Dorothy Nelson dissented.

Editor's note: It is remarkable that Judge Tallman was so willing to divorce the tax-motivated language of the publishing agreement from the question of whether Eisenhower and Doubleday intended the book to be a

work-for-hire. Even if it is assumed that divorcing the two is possible for copyright law purposes, doing so – in this case – raises the question of whether General Eisenhower engaged in tax evasion back in 1948 when he signed a contract that purported to assign rights he didn't actually own, simply to reduce the amount of tax he had to pay on the money he received for his book. It's a terrible footnote to append to his legacy, solely in order to impose infringement liability on a video distributor.

Twentieth Century Fox Film Corp. v. Entertainment Distributing, 429 F.3d 869, 2005 U.S.App.LEXIS 24843 (9th Cir. 2005)

Federal anti-bootlegging statute is constitutional, after all, federal District Court rules – after reconsideration – in case filed by KISS against distributor of DVD of 1976 KISS concert performance

KISS has won a remarkable victory in its antibootlegging lawsuit against Passport International, a company that distributes DVDs. Federal District Judge Dale Fischer has upheld the constitutionality of the federal anti-bootlegging statute.

The statute was enacted in 1994 in order to satisfy the United States' obligations (under the TRIPs Agreement) as a member of the World Trade Organization (*ELR* 17:2:6).

The remarkable thing about the judge's ruling is that earlier in this very case – before it was assigned to Judge Fischer – Judge William Rea had held that the antibootlegging statute was *un*constitutional (*ELR* 26:12:10).

After Judge Rea issued his opinion, he passed away, and the case was reassigned to Judge Fischer. KISS then made a motion for reconsideration which Judge Fischer has granted.

Judge Fischer's disagreement with Judge Rea was not mere quibbling. Thusfar, the statute's constitutionality is something of an open question. Two other cases also have split on this issue. In *United States v. Moghadam*, the Court of Appeals for the Eleventh Circuit upheld the constitutionality of the statute (*ELR* 21:5:11). But in *United States v. Martignon*, a federal District Court in the Southern District of New York held that it is unconstitutional (*ELR* 26:4:8).

The reason courts have not seen eye-to-eye is that the anti-bootlegging statute provides seemingly perpetual protection for live – that is, unfixed – performances. Therefore, it is clear that Congress did not have the power to enact the statute under the Copyright Clause of the Constitution. That clause empowers Congress to enact copyright legislation only for limited times and only for fixed works.

The question litigated in the KISS case is whether Congress had the power to enact anti-bootlegging legislation under the Commerce Clause of the Constitution. Judge Fischer concluded that Congress did.

KISS Catalog, Ltd. v. Passport International Productions, 405 F.Supp.2d 1169, 2005 U.S.Dist.LEXIS 37671 (C.D.Cal. 2005)

Russian hockey club fails to enjoin Alexander Ovechkin from playing for NHL's Washington Capitals, despite Russian arbitration ruling in Russian team's favor

Hockey player Alexander Ovechkin of the NHL's Washington Capitals never agreed to a new contract with his former Russian team, so he was able to continue playing for the Capitals. A federal District Judge has so ruled, in a case filed by the Moscow Dynamo, the Russian team for which he had earlier played.

Ovechkin was the Washington Capitals' number one draft pick in June of 2004. The National Hockey League lockout forced the 2004-2005 season to be canceled. As a result, in July of 2004, Ovechkin signed a one-year deal with the Moscow Dynamo of the Russian Professional Hockey League. The contract included a provision calling for arbitration of any disputes.

The Ovechkin-Dynamo contract expired on April 30, 2005. The Dynamo sent the player an offer of another one-year deal, with a pay increase; but Ovechkin never responded.

Instead, when the NHL lockout continued through June of 2005, Ovechkin signed a one-year deal with the Avangard Omsk of the Russian League. That contract too had an arbitration clause, and it had an "out clause" if Ovechkin signed with the Capitals prior to July 20, 2005.

The Dynamo reacted to that signing by sending Ovechkin a letter on July 1, 2005 which stated the team had exercised its "matching rights." Under Russian League rules, "matching rights" gave the Dynamo exclusive rights to Ovechkin, if it sent a qualifying offer and matched Avangard Omsk's financial terms. Ovechkin did not respond to that letter either.

The NHL settled its dispute on July 14, 2005; and the Capitals resigned Ovechkin on August 5, 2005. After that signing, the Dynamo advised the Capitals that it had exclusive rights to Ovechkin. The Dynamo also sought relief from a Russian arbitration committee which found in favor of the Dynamo, even though Ovechkin had never signed a new contract with the Dynamo. The arbitration ruling was based on the qualifying offer the Dynamo sent on April 30th, the signed Avangard Omsk contract, and the matching rights exercised by the Dynamo.

After the Russian arbitration ruling, the Dynamo filed a petition in federal District Court seeking to enjoin Ovechkin from playing for the Capitals during the 2005-2006 season. The Russian team's petition was based on a treaty known as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Ovechkin countered by filing a motion to dismiss for lack of subject matter jurisdiction.

Judge Emmet Sullivan decided that although the United States does adhere to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, he was not under any obligation to recognize the Russian arbitration award in this case. Judge Sullivan noted that after Ovechkin's 2004-2005 contract expired, no other contract between Ovechkin and the Dynamo was ever agreed to or signed. Because both parties must agree to arbitration for it to be binding, the arbitration ruling was not binding on Ovechkin.

As a result, Judge Sullivan granted Ovechkin's motion to dismiss the Dynamo's petition.

Moscow Dynamo v. Ovechkin, 412 F.Supp.2d 24, 2006 U.S.Dist.LEXIS 1320 (D.D.C. 2006)

Penn & Teller did not defame religious group members on Showtime TV program, despite criticizing their belief that Creationism should be taught in public schools

Viacom defeated a defamation lawsuit filed against it, complaining about statements made on the Showtime TV series "Penn & Teller: Bullshit" in March 2003.

The offending statements were during an episode titled "Creationism," which dealt with the then-ongoing public debate before a Georgia School Board regarding whether Creationism or evolution should be taught in public schools.

The episode included interviews and film clips from the media's coverage of the public debate. It also featured acerbic commentary from Penn and Teller criticizing the views of those who favored the teaching of Creationism in public schools. One of those whose views were criticized was a fellow named Russ Brock, who had appeared before the School Board at its public hearing to advocate the teaching of Creationism.

Angered that Penn and Teller publicly ridiculed their firm belief that Creationism should be taught in school, Brock and others sued for defamation.

Viacom responded with a motion to dismiss, which the District Court granted.

Judge Charles Pannell, Jr., held that the offending statements were not in fact "false." Instead, statements made by those who opposed the teaching of Creationism were "opinions," and were therefore protected under the First Amendment, the judge concluded.

Brock v. Viacom International, 2005 WL 3273767, 2005 U.S.Dist.LEXIS 12217 (N.D.Ga. 2005)

City of San Juan violated First Amendment rights of producers of play "Boys Singing and Naked" by canceling previouslyauthorized performances

The Municipality of San Juan violated the First Amendment rights of the producers of a play, when it revoked permission to stage the play, because San Juan did not have a procedure to review prior restraints of expression. A federal District Court in Puerto Rico has so held, in a lawsuit filed by the producers of the play "Chicos Cantando y Desnudos" – in English: "Boys Singing and Naked."

The producers had applied for and received municipal authorization to produce the play. But before the play was performed, the Director of the city's Arts and Culture Department received many phone calls from people who were upset because the play deals with men's sexuality. Religious organizations too said they would protest every day the play was presented.

Worried that public unrest would ensue, the Arts Director asked the Municipality's Board members to attend the final rehearsal of the play and review its content. After watching the rehearsal, the Board canceled the play.

The producers sued the city, successfully. Federal District Judge Carmen Cerezo held that the city had engaged in an unconstitutional prior restraint when it canceled the play, because the city didn't have a review procedure.

Editor's note: This case was at least the second time a city in Puerto Rico was found to have violated the First Amendment by canceling performances of this very play. Earlier, the play's producers won a case against the city of Aguida (ELR 26:4:18).

Gerena v. Municipality of San Juan, 382 F.Supp.2d 282, 2005 U.S.Dist.LEXIS 16244 (D.P.R. 2005)

DEPARTMENTS

CD-ROM Review:

Talent Agency Act Decisions: Decisions of the California Labor Commissioner Compiled by Max J. Sprecher

California law makes an important distinction between talent agents and personal managers: agents must be licensed; managers need not be. The law that makes this distinction is known as the California Talent Agency Act. It is codified as California Labor Code section 1700. And on its face, the Act seems to make the difference between agents and managers a clear one. Agents get jobs for their clients, while managers do not (though managers may get recording contracts for their clients).

In practice, however, the difference between agents and managers has been the subject of unending controversy, litigation and commentary. Over the years, the *Entertainment Law Reporter* itself has published four bylined articles on this topic, in addition to countless reports on individual cases. (Don Biederman, *Agent or Manager? There is a Difference . . . Isn't There? (ELR* 15:9:3); Chester L. Migden, *Arsenio Hall Case - The Novel Aspect (ELR* 14:5:30); Philip R. Green and Beverly Robin Green, *Talent Agents and the New California Act (ELR* 9:4:3); Fred Jelin, *The Personal Manager Controversy: Carving the Turf (ELR* 7:1:3))

The difference between agents and personal managers matters a lot, especially to managers, because if a manager gets jobs for clients (or tries to) without being licensed, the contract between the manager and his or her client may become unenforceable. More serious yet, the manager may have to refund commissions previously received from the client, even though those commissions were fairly earned for services actually rendered. Arsenio Hall's former manager was ordered to refund more than \$2 million in commissions because his former manager was held to have procured employment for Hall without being licensed as a talent agent. (*ELR* 15:5:4)

Despite the Act's significance, most disputes between talent and their managers are *not* litigated in court. The Talent Agency Act is administered by the State Labor Commissioner, and the Commissioner has jurisdiction to decide – at least as an initial matter – whether a manager should have been licensed as an agent. As a result, talent-manager disputes are litigated first, in arbitration-like proceedings, before the

California Labor Commissioner; and the Commissioner issues written opinions in those cases. Surprisingly few of the Commissioner's decisions are taken to the California Superior Court.

Over the last 30 years, the Labor Commissioner has issued hundreds of written opinions. Those opinions are not binding on courts, or even on the Commissioner. But they nevertheless are of great interest to lawyers who represent talent and managers. Yet, the Commissioner's decisions have never been published – not by the Commissioner, or even by Lexis and Westlaw.

Now, at last, the void has been filled. California lawyer Max J. Sprecher has collected more 200 of the Commissioner's decisions, and has published them on CD-ROM. In doing so, Sprecher used a very clever and very useful technology. The opinions were scanned, and when they appear on a user's computer monitor, they look like digital photocopies. They look, in other words, just the way they looked when they arrived in the offices of lawyers who handled the cases.

The scans are not mere images, however: they are full-text searchable. In addition, if users know the names of the cases they are looking for, or simply want to browse the collection, the CD-ROM has a hyperlinked index of case names, arranged chronologically.

For further information, go to www.sprecherlaw.com.

Entertainment Lawyer News:

Joshua S. Wattles joins Dreier LLP in new Los Angeles office. Josh Wattles has become Of Counsel in the Entertainment Department of Dreier LLP in the law firm's new Los Angeles office. Prior to joining Dreier LLP, Wattles was the Deputy and Acting General Counsel of Paramount Pictures where he was responsible for the studio's highest profile talent and content agreements and major litigation such as the Buchwald "net profits" case. He also was the parent company's senior intellectual property lawyer advising film, book publishing, sports and cable television units. He played key roles in creating the film industry's anti-piracy programs during its transition to videocassettes and in the creation of the industry's collective licensing organization for cable and satellite retransmissions of television programs and films in the EU. He continues to represent traditional media ventures and enjoys many significant relationships in the film and television

industry. Wattles began his legal career in the music industry working as an in-house litigator for the American Society of Composers Authors and Publishers (ASCAP). He also worked on the first Copyright Royalty Tribunal proceedings. Later, at Paramount, he ran all of its music operations including soundtracks and its music publishing company, The Famous Music Publishing Companies, fort which he acquired the Duke Ellington catalog. He helped create the business and legal structure for the modern film soundtrack with the groundbreaking contributions of Flashdance, Footloose, Beverly Hills Cop, Top Gun and others. He shared responsibility for breaking the longest running number 1 single in history, End of the Road, by Boyz 2 Men. After Paramount, Wattles launched a number of Internet ventures. He is the founding President of Mixonic.com, an active on-line CD replication company, and he contributed a groundbreaking legal strategy for the most disruptive play so far in the ringtone space, Xingtone, subsequently funded by Siemens AG. His current clients include the largest visual artist community ever assembled, deviantART, with millions of Internet users. He participated in MGM v. Grokster as counsel to LimeWire, a leading P2P application, and to the developers of the Gnutella protocols who appeared together as amici beginning in the federal District Court. Wattles is an Adjunct Professor at Southwestern University Law School in Los Angeles, where he recently taught a course in Music Publishing Law. He also was an adjunct at Loyola Law School in Los Angeles where he taught courses in entertainment law. He is a past President of the Los Angeles Copyright Society and is on the advisory board of the Future of Music Coalition. Wattles earned his law degree from George Washington University Law School. He received his bachelor's degree from Mills College in Oakland, California, cum laude, in American Studies, where he was Phi Beta Kappa and was distinguished as being the only male ever awarded an undergraduate degree by that college. He also attended the University of California, Berkeley. He is a member of the Bar of the States of California and New York.

Lisa Weiss joins New York office of Morrison & Foerster. Lisa Weiss, the former General Counsel of Sony BMG Music Entertainment, has joined the New York office of Morrison & Foerster as a partner. During her tenure at Sony Music, she was instrumental in structuring the merger that established Sony BMG as the world's second-largest recording company. In addition to handling numerous transactions during her five years at Sony Music and Sony BMG, Weiss oversaw the company's role in major entertainment industry litigation and investigations. Prior to joining Sony Music, she was a partner at Rosenman & Colin in New York, where she was a member of the corporate department and a founding member of the media and communications practice group. While at Rosenman, she advised Sony on

its \$2 billion acquisition of CBS Records in 1988 and, in 1995, helped structure the formation of Sony/ATV Music Publishing, Sony's music publishing joint venture with Michael Jackson. Weiss also worked on transactions involving film production, cable television, electronic publishing, magazines and in-flight entertainment and digital radio, as well as Internet and wireless properties, including cross-border transactions in Europe, Asia and Latin America. At Sony Music, Weiss' transactions included the formation and later sale of the Pressplay digital music distribution service and the sale of the Columbia House direct mail business. As chief legal officer, she also supervised Sony BMG's and Sony Music's role in music industry litigation involving music downloading, such as Grokster and Napster, as well as lawsuits brought by the Recording Industry Association of America against music uploaders. Weiss earned her J.D. from Columbia University in 1983 and her B.A. from Yale in 1980.

In the Law Reviews:

COMM/ENT: HASTINGS COMMUNICATIONS AND ENTERTAINMENT LAW JOURNAL has published Volume 28, Number 2 with the following articles:

At the Intersection of Comic Books and Third World Working Conditions: Is It Time to Re-Examine the Role of Commercial Interests in the Regulation of Expression? by David Kohler, 28/2 Comm/Ent: Hastings Communications and Entertainment Law Journal 145 (2006)

The Economics of Build-Out Rules in Cable Television by George S. Ford, PHD, Thomas M. Koutsky, Esq. and Lawrence J. Spiwak, Esq., 28/2 Comm/Ent: Hastings Communications and Entertainment Law Journal 207 (2006)

The RAVE Act: A Specious Solution to the Serious Problem of Increased Ecstasy Distribution: Is It Unconstitutionally Overbroad? by Erin Treacy, 28/2 Comm/Ent: Hastings Communications and Entertainment Law Journal 229 (2006)

Rationalizing Software Patents: Suggestions for a Livable System by Shane Glynn, 28/2 Comm/Ent: Hastings Communications and Entertainment Law Journal 287 (2006)

From Hockey Gloves to Handcuffs: The Need for Criminal Sanctions in Professional Ice Hockey by Tracey Oh, 28/2 Comm/Ent: Hastings Communications and Entertainment Law Journal 309 (2006)

Idea Protection in California: Are Writers Too Readily Compensated for Their Screenplays? by Kelly Rem, 28/2 Comm/Ent, Hastings Communications and Entertainment Law Journal 333 (2006)

THE COLUMBIA JOURNAL LAW & THE ARTS has published Volume 29, Number 2 with the following articles:

Filmmaking in the Precinct House and the Genre of Documentary Film by Jessica, Silbey, 29 The Columbia Journal of Law & the Arts 107 (2005)

Restoration of Copyrights: Dueling Trolls and Other Oddities Under Section 104A of the Copyright Act by William Gable, 29 The Columbia Journal of Law & the Arts 181 (2005)

Using the Morals Clause in Talent Agreements: A Historical, Legal and Practical Guide by Noah Kressler, 29 The Columbia Journal of Law & the Arts 235 (2005)

Educational Programs Calendar:

Advertising Law, June 21-22, Swissotel, Chicago, IL. This 17th 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 , e-mail customercare@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.. 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, 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. 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, or by phone at 1-800-260-4PLI.

Visual Arts & the Law, August 10-11, Inn and Spa at Loretto, Santa Fe. This 8th Annual Conference, sponsored by CLE International, presents Copyright Basics and the Visual Artist's Rights Act of 1990; Digital Issues for Art Professionals; Infringement; Current Legal Developments and Decisions in Art and Antiques for 2005/2006; Art Fraud, Misrepresentation and Gobbledygook; Buying and Selling Art; Protecting Your Interests in Collateral and Consigned Art; Native American Art; Building the New de Young; So You Want to Do Some Art Business in Canada; Estate Planning for Artists and Collectors; and Ethics. For further information, contact CLE International by calling 800-873-7130 pr e-mail registrar@cle.com.