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# Epilogue

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# EPILOGUE

## BIG CHEESES GO HEAD TO HEAD

A battle is raging in Wisconsin over the state's aging symbol of pride - the Cheesehead hat proudly worn at Wisconsin sporting events for almost a decade. Foamation Inc. ("Foamation"), a Milwaukee company that manufactures the headpiece, filed suit against Milwaukee Scofield Souvenir & Post Card Co. ("Scofield") for distributing a similar hat called the Cheesetopper. Foamation alleges Scofield violated federal copyright and trademark laws, which the lawsuit claims as protecting "a wearable sculpture in the form of a cheese wedge, typically molded from polyurethane foam."

In its response to the lawsuit, Scofield asserts that the original manufacturer's claim is invalid. Scofield's President, Tom Wedeward, contends that although the products may be similar, the Cheesetopper is made of different material. In addition, the company points out that Foamation failed to put the copyright symbol on all its products as required when the product was launched in 1987, which thrusts the Cheesehead design into the public domain. Sales of the Cheesehead steadily increased since its 1987 premiere, especially after an incident last year where a Packer fan credited the Cheesehead for saving his life when he used it to shield his head in a plane crash. However, the company says sales recently decreased due to its competitor.

Since the suit, Walgreen Drug Stores in Wisconsin has pulled Cheesetoppers off their store shelves, while Foamation has threatened to file a second lawsuit against stores and vendors continuing to sell the look-alike. Foamation's General Manager, Chris Becker, explains that such measures are justified under the law since the hat is considered "a work of art." In fact, as Becker reveals, even the Smithsonian Institution in Washington has requested one to be displayed in the National Museum of American History. James P. Miller, *Battle Over Those Big Cheese Hats Is Coming to a Head in Wisconsin*, WALL ST. J., Sept. 23, 1996, at B10; *Cheeseheads in Court*, THE CAPITAL TIMES, Oct. 5, 1996, at 8A.

## COURT SAYS RAGU WAITED TOO LONG

A controversy between Prego and Ragu has come to an end, at least in court. The Second Circuit Court of Appeals upheld a lower-court decision to dismiss Conopco's claim that Campbell's comparison advertisement involving their respective pasta sauces was false and misleading under the Lanham Act.

Conopco, the maker of Ragu, brought the suit after Campbell's began running side-by-side comparison's demonstrating that Campbell's Prego was thicker than Ragu. Conopco claimed that while Ragu Old World Style Sauce, which is used in the advertising, is thinner than Prego, other Ragu sauces are thicker, and that the Prego ad is misleading.

The district court's decision to dismiss Conopco's suit did not result from product analysis. Instead, the suit was barred by the defense of laches. The Ragu maker waited five years after Campbell's first ad campaign ran to take any action. In its affirmation of the lower-court opinion, the Second Circuit agreed that Conopco's delay in bringing the suit was prejudicial to Campbell, and that the delay impeded any possibility that Campbell could have developed an alternative marketing campaign to replace the one to which it had committed extensive resources. Conopco, Inc. v. Campbell Soup Co., 95 F.3d 187 (2nd Cir. 1996); Alan Cooper, *False Advertising Claim Barred By Laches*, NAT'L L.J., Sept.30, 1996, at B3.

## ACLU CHALLENGES GEORGIA OVER INTERNET LAW

The American Civil Liberties Union ("ACLU") filed a federal lawsuit Sept. 24, 1996, challenging the new "Georgia Computer Systems Protection Act" which makes it illegal to communicate anonymously on the Internet, and to use trademarks and logos without permission. 1995 Ga. H.B. 1630. This is one of the first suits to challenge the recent upsurge of state legislatures that have attempted to restrict the Internet.

Joined by thirteen other plaintiffs, including a number of public interest groups, the ACLU argues that the Georgia Law is "unconstitutionally vague" and that it is "impermissibly chilling constitutionally protected expression." In addition, the plaintiffs argue that the Georgia legislation illegally imposes state restrictions on interstate commerce, a right that is reserved for Congress. Moreover, the law's opponents stress that allowing state laws to govern the Internet, which has an audience of over 150 countries, would result in hundreds of different and conflicting regulations, and would give every different state the ability to control what is national or international.

Don Parsons, the Republican state representative who sponsored the Georgia bill, says the law is necessary to combat fraud and other on-line problems. Furthermore, the statute's backers point out that the Georgia law is not a blanket ban of anonymity, but targets people who "frequently misrepresent their [Web] site as that of another organization." However, opponents fear that differing interpretations of the law could lead to the prosecution of AIDS patients and child-abuse survivors who use anonymity to ensure privacy when conversing on the Internet. Jared Sandberg, *Suit Challenges State's Restraint of the Internet*, WALL ST. J., Sept. 25, 1996, at B1

## PLAYBOY WANTS A CHANGE IN CUSTOMS' POLICY

Playboy has filed suit against U.S. Customs. The suit is the result of a 1994 incident where the agency refused to disclose information on a company that was caught importing clothing bearing a rabbit's head that appeared to copy the company's famous trademark. In return for donating the seized merchandise to charity, Playboy asked the agency for a sample of the clothing and requested the names of the importer, exporter, manufacturer, and ultimate retailer under the Freedom of Information Act

("FOIA"). Customs rejected the request, however, citing FOIA's exemption for trade secrets. Playboy is concerned as to how information that helps the private sector police its intellectual property rights and stop infringers could be considered trade secrets.

Under current U.S. Customs' policy, the agency is authorized only to notify trademark and copyright owners when infringing goods are seized. The new rule, if Playboy gets its way, would permit U.S. Customs to release the names of the people and entities involved in the production and sale of the infringing good. This would allow trademark and copyright owners to take action against the violators.

The idea to change Customs' policy to permit a liberal release of information is not new to the agency. In fact, it was proposed more than a year ago, and by last September, had received scores of favorable comments. However, a concern that the information from Customs would be used by intellectual property owners to hamper legitimate shipments of similar, but non-infringing goods has kept the policy from being approved by Customs' top lawyers. Harvey Berkman, *Playboy Sues for Data on Infringers*, NAT'L L.J., Sept. 9, 1996, at A12.

## NEW YORK CRIMINALIZING COMPUTER INDECENCY

New York, in an act amending its penal law, has criminalized the dissemination of indecent material to minors through any computer communication system. Effective as of November 1, 1996, communication depicting "actual or stimulated nudity, sexual conduct or sado-masochistic abuse" that is harmful to minors is prohibited.

Under this new act, one who distributes indecent material that invites or induces a minor by means of a computer to engage in sexual intercourse, deviate sexual intercourse, or sexual contact is considered in violation of the new crime of disseminating indecent material to minors in the first degree. A second degree offense criminalizes the mere transfer of any indecent material from one computer to another that is used to initiate or engage in indecent communication with a minor.

The law also creates several affirmative defenses and limitations to shield on-line service providers, creators of World Wide Web pages, and employers that provide access to computer communication systems. For example, if the defendant has made a reasonable effort to obtain the age of the minor, but is unable to do so as a result of the minor's own actions, the defendant is protected. Furthermore, if good faith, reasonable measures such as adult access codes or adult personal identification numbers are employed, the defendant is exempted. 1996 N.Y. Laws 600.

## HEIRS SAY TARZAN IMAGE IS PROTECTED

Tarzan creator Edgar Rice Burrough's family is suing the makers of an interactive sex movie that they say portrays the well-known character as "he wrong kind of swinger." The complaint charges that the movie and CD-ROM "Jungle Heat" shows a Tarzan-like hero in numerous sexual intercourse scenes, which is a complete "antithesis to the good, wholesome and attractive images of Tarzan." The family fears that viewers will confuse "Ape-man," the movie's pornographic hero, with the King of the Jungle, especially since Ape-man wears a loincloth, swings on vines with an animal named Cheeta, rescues Jane from the dangers of the Jungle, and often "emits the famous and unique Tarzan yell."

Tarzan is not the first character to be transformed into an X-rated star by film makers, and many of those films are protected under satire's legal safeguards. In addition, many characters are thrust into the public domain and are fair game once copyrights have expired. In this case, however, Burrough's took an unusual step of not only copyrighting his written works, but also covered his character in 1923 with a trademark that does not expire. *Heirs Go Ape Over Porno*, NAT'L L.J., Aug. 26, 1996, at A23.

## COURT PROTECTING COPYRIGHT HOLDERS IN THE FACE OF NEW TECHNOLOGY

In an example of an increasing number of cases dealing with the interpretation of well-settled intellectual property principles in disputes involving new technology, the Second Circuit Court of Appeals held that a compulsory phonorecord license under the Copyright Act does not give a producer of a new Karaoke technology the right to publish lyrics from a copyrighted song on a screen.

In *ABKCO Music, Inc. v. Stellar Records, Inc.*, the copyright holder to seven musical compositions including such classics as "Jumping Jack Flash" and "Satisfaction," brought action against co-defendant Performance Tracks Inc., the manufacturer of compact discs employing a new technology for encoding both the music and lyrics on a CD, "allowing the lyrics to be displayed on a video screen in 'real time' while the song is being played."

These "Compact Discs + Graphics (CD+G's)" are similar to the more familiar Karaoke laser discs, except in the fact that the CD+G can be played on any standard audio CD player. Therefore, like other karaoke versions of songs, the Copyright Act requires the producers of CD+G compositions to obtain a synchronization license from the song's copyright holder.

Performance Tracks Inc., who viewed its product as a "phonorecord" under the Copyright Act, declined to obtain any such "synch right," and instead sought a compulsory license, which would permit the manufacturing and distributing of new "cover" versions of copyrighted musical works. Performance Tracks sent ABKCO Music, Inc. ("ABKCO") a CD+G containing the compositions accompanied with a notice of intent to obtain a compulsory license. ABKCO, who had never licensed its songs for use in the Karaoke industry, thereupon, initiated action against the manufacturer arguing that Performance Track's failure to obtain "synch rights" constituted copyright infringement. The district court, in granting ABKCO a temporary restraining order, agreed that the visual display of a song's lyrics constituted an unauthorized publication not within compulsory license provisions.

In affirming the district court's decision, the circuit court noted that "song lyrics enjoy independent copyright protection as literary works, and that the right to print a song's lyrics is exclusively that of the copyright holder." It further pointed out that while a compulsory license permits the recording of a cover version of a song, it does not permit the inclusion of lyrics, which requires separate permission. ABKCO Music, Inc. v. Stellar Records, Inc., 96 F.3d 60 (2nd Cir. 1996).

## LIBEL PROTECTION TO CALIFORNIA LAWYERS

Under a new California law, lawyers will be able to provide the news media with copies of their lawsuits or tell reporters what happened in court without the fear of facing a libel suit. The law, which takes effect January 1, 1997, overturns the 1994 state court ruling in *Shahvar v. Superior Court*, 25 Cal. App. 4th 653 (1994), in which an attorney who faxed a copy of his client's complaint to the San Francisco Examiner was sued for libel based on statements in the fax.

Critics of the *Shahvar* decision argued that it made no sense that members of the press were protected under the "fair report privilege" from defamation suits when reporting on court proceedings or documents, yet the privilege did not protect those who provided the information to the press.

According to the Associated Press, Thomas Newton, counsel for the California Newspapers Publishers Association, said the *Shahvar* ruling had "a tremendous chilling effect on the willingness of attorneys to talk to the press about things that are going on in our open and public judicial system." The new law attempts to prevent this effect allowing for more open communication between the lawyers and the media.

Attorneys, however, do not have absolute protection against libel. Suits are still allowed where attorneys violate court orders, confidentiality laws, or other state bar guidelines that ban out-of-court statements that can prejudice a case. 1995 Cal. Stat. 1540; *California Law Will Bar Suits Over Lawyer Communications*, THE ASSOCIATED PRESS, October 1, 1996.

## COURT SAYS SCORES ARE NBA'S MOST VALUABLE PROPERTY

In a September 3, 1996 decision, the United States District Court of New York held that defendants Sports Team Analysis and Tracking Systems, Inc. ("Stats") and Motorola, Inc. ("Motorola") misappropriated one of the National Basketball Association's ("NBA") most valuable assets - the excitement of an NBA game in progress.

The Co-defendants are creators and marketers of SportsTrax, an electronic beeper device that provides "real-time" information about ongoing professional basketball games. The defendants also transmit an America On-line site that displays scores and other game stats as they happen.

In its claim, the NBA argued that the defendants' product and on-line site adversely affected the commercial value of the NBA's "live" game broadcasts - a value that the

NBA says would not have existed if not for its years of effort to cultivate a high level of public interest in NBA games. It further points out that the NBA has vigorously protected its property rights in real-time information by actively licensing its rights to real-time stats, by imposing clear restrictions on the media covering NBA games, and by warning patrons through a variety of ways that their license to enter NBA arenas does not include permission to transmit real-time information to others. It claims that by providing fans with an alternative "without having expended any time, labor, and money for the presentation of the games," the defendants misappropriated the NBA's proprietary rights in violation of New York Common Law.

The court, ruling in favor of the NBA, held that the defendants robbed the NBA of the "just benefits of its labors and expenditures in respect to the creation and production of games and public dissemination of accounts thereof," and that the NBA would suffer irreparable harm in the absence of injunctive relief. NBA v. Sports Team Analysis and Tracking Systems, Inc., No. 96 Civ. 1615, 1996 WL 554977 (S.D.N.Y. Sept. 3, 1996).

## FCC ORDER VIOLATES FEDERAL STATUTE

The D.C. Circuit held September 13, 1996, that a Federal Communications Commission (FCC) order permitting a broadcast licensee to restrict campaign ads that are "harmful to children" to times of day when children were less likely to be watching violates §§ 312(a)(7) and 315(a) of the Communications Act of 1934.

In *Becker v. FCC*, 95 F.3d 75 (D.C. Cir. 1996), U.S. House of Representatives candidate Daniel Becker aired a political ad that portrayed images of aborted fetuses. Viewers who saw the ad lodged a complaint with station licensee Gillet Communications of Atlanta, Inc. ("Gillet"). Becker again sought to purchase air time, but the station refused. Claiming that the airing of the ad at the requested time would violate the indecency provision of 18 U.S.C. § 1464, the station told Becker that it could only air the ad within the safe harbor hours of midnight to 6:00 a.m. Becker subsequently filed an application for review with the FCC, but was denied.

The court of appeals, upon request by Becker to review the FCC's order, found that content-based channeling of political advertisements restricted the candidates "ability to fully and completely inform the voters" and inhibited the "full and unrestricted discussion of political issues by legally qualified candidates." The court ruled that the FCC's actions violated the "reasonable access" requirement of § 312(a)(7), thus denying candidates the access to the media envisioned by Congress. Furthermore, the court held that the FCC's discrimination on the basis of content also violated the "no censorship" and "equal opportunities" provisions of § 315(a). Becker v. FCC, 95 F.3d 75 (D.C. Cir. 1996).

## MUSIC COMPANY THREATENS DOLE CAMPAIGN

As if Bob Dole didn't have enough to worry about during his past presidential campaign, Rondor Music International, Inc. ("Rondor"), the music company that owns the blues hit "Soul Man," complained that the Republican's campaign theme song, "Dole Man," violated its copyright. Mimicking the "Soul Man" refrain, "I'm a Dole man" excited crowds at rallies for months, and was even played at the Republican National Convention in San Diego.

According to a September 23, 1996, National Law Journal article, the Los Angeles-based company claimed that such unauthorized use of its copyrighted song is "tantamount to theft," and had sent a letter to the Dole camp asking for a list of exactly when the song was played in order to assess damages. Under federal law, this could cost the Dole camp as much as $100,000 per play.

Generally, parodies, are protected from copyright lawsuits under the theory that reasonable use, defined as comment or criticism, of copyrighted works facilitates a free flow of ideas and is fair use. Rondor, however, argues that the campaign's utilization of the song did not garner any protection since Dole did not use the song to make fun of himself or the song. *Bob Dole Might Lose the Blues*, NAT'L L.J., September 23, 1996, at A23.

## NCAA TO REWRITE BYLAWS

The National Collegiate Athletic Association ("NCAA") is considering legislation that would allow college athletes to write articles for newspapers or magazines and to appear in television or film roles, and get paid for their work. The proposed amendment came in response to a 1996 Spring court case in which the NCAA tried to strip Northwestern's tailback and theater major Darnell Autry from football eligibility if he took an unpaid role in the movie "The 18th Angel." Backing down after a Chicago judge sided with the athlete, the NCAA council plans to propose the "Autry Amendment" at its January 1997 NCAA convention.

In the past, the NCAA prevented athletes from media appearances beyond interviews relating to their sport for fear that the athletes would receive advantages based on their celebrity status. The new rule would enable athletes to participate in media activities - television, radio, films, or stage productions - within a 30-mile radius of the campus, or to participate in writing projects, so long as the activity involved is not a commercial endorsement. The portion of the rule that figures to draw the most opposition concerns the part of the amendment which would allow the athlete to receive "compensation at a rate commensurate with the going rate of the locale" for similar services. Proponents of the amendment claim that the NCAA must take into account that such experiences could be worth more than the paycheck to the athlete. *After Autry's Act, NCAA to Rewrite Script*, CHI.TRIB., October 9, 1996.

## CLASSIC SHORTS OF LEGENDARY DUO WON'T BE RECALLED.

Comedy fans will still be able to obtain a copy of "Laurel and Hardy's Laughing 20's," a 90-minute movie featuring fifteen of the duo's most famous silent "shorts" according to an October 21, 1996, decision in the Second Circuit.

In *Richard Feiner and Co. v. Turner Entertainment Co.*, No. 96-7709, 1996 WL 598963 (2nd Cir. N.Y. Oct. 21, 1996), the court of appeals held that delay by the owner of the licensing rights of the short subject films ("shorts") in bringing a copyright infringement action against the distributor of the picture rendered a preliminary injunction requiring the distributor to recall the movie from over a thousand wholesale and retail vendors as improper.

The suit is based on Feiner's claim that Turner failed to renew its use license for the silent shorts, thereby infringing Feiner's copyright. Under a June 5, 1996, order, the court required Turner to recall the movie from its vendors and to refrain from the manufacture or sale of the film. Turner, on appeal of the portion of the injunction requiring the recall of the movie, argued that Feiner's delay in commencing the action suggested a lack of "irreparable harm," which is a necessary element in obtaining an injunction.

In agreeing with Turner, the court pointed to testimony that proved that Feiner knew about the film, knew of the defendant's use license, and knew of its expiration date for a period of over a year before commencing action, but failed to contact the defendant. Therefore, since Feiner had knowledge of the infringement, the court decided that the year delay in contacting the defendant was unreasonable, and that the court erred in stating that the harm Feiner suffered was so severe as to be considered "irreparable" without injunctive relief. Richard Feiner and Co. v. Turner Entertainment Co., No. 96-7709, 1996 WL 598963 (2nd Cir. N.Y. Oct. 21, 1996).

## NEW YORK ARTISTS ENJOY FIRST AMENDMENT PROTECTION

The streets of New York are safe again, at least for the painters, sculptors, and photographers who challenged a New York city regulation prohibiting visual artists from selling their work in public places without a vendors license.

In *Bery v. City of New York*, No. 95-9089 and 95-9131, 1996 WL 580938 (2nd Cir. N.Y. Apr. Oct. 10, 1996), the United States Court of Appeals for the Second Circuit reversed a district court order that denied a group of visual artists a temporary restraining order and preliminary injunction against the enforcement of New York's General Vendors Law. The artists, who claimed they had been arrested, threatened, and harassed by law enforcement officials for attempting to display and sell their art, argued that their constitutional rights were violated since they are entitled to the same full First Amendment protection afforded to political speech and verbal expression. In response, New York argued that the visual art of these vendors is mere "merchandise" and lacks communicative aspects or ideas. Furthermore, it claimed that the license requirement facilitates the flow of traffic, keeps sidewalks free of congestion, and ensures safe public passage on streets.

Disagreeing with the district court, the court of appeals found the city's interpretation of the First Amendment restrictive. Furthermore, in striking the regulation, it held that since in New York, forums for the artists to display their art are drastically limited, the sidewalks must be available in order for the artists to reach their public. Bery v. City of New York, Nos. 95-9131 and 96-7137, 1996 WL 580938 (2nd Cir. N.Y. Oct. 26, 1996).

## PROPOSED BILL PITS SONGWRITERS AGAINST THE RESTAURANT LOBBY

A new bill that would exempt restaurants and retail stores from paying licensing fees for using radio or television broadcasts as background music has the music industry singing the blues. Currently, radio and television stations, bars, restaurants etc., rather than contacting each artist for permission to use copyrighted music, buy blanket licenses from organizations that allow the licensees to use any of their songs for one year. The licensing fees then go into a pool, and royalty checks are distributed quarterly to writers and publishers who pay annual dues to the licensing body. The amount of the check is based on who gets played and how often, which is determined by surveying techniques such as disc jockey logs, electronic monitoring of broadcasts, and jukebox meter readings. If passed, the "Fairness in Music Licensing Act" would abolish blanket licensing payments, and is backed by over thirty organizations including the powerful National Restaurant Association.

Proponents of the bill claim that bars and restaurants are paying for music that has been paid for many times over. For example, if a song is used on a commercial, the national broadcaster pays to air it; the affiliate pays to carry it; and, finally, the restaurant, by merely turning on the television to that channel, has to pay as a final user. Restaurant lobbyists claim this is unfair, and that the end user should not have to pay for rebroadcasted material.

In response, licensing bodies such as the American Society of Composers, Authors, and Publishers ("ASCAP") argue that the bill threatens thousands of songwriters, possibly cutting their income by as much as thirty percent. They say the bill would create a loophole that would allow businesses to avoid copyright payments by claiming their use to be incidental television or radio ambient music. Furthermore, the licensing organizations point out that small businesses have been exempt from licensing fees under the "Home Style Exemption" passed almost two decades ago, and that only big restaurant chains and large establishments are subject to paying such royalties.

First proposed in February, 1995 by U.S. Representative James Sensenbrenner (R-Wis.), the bill is stalled in committee, and it is unlikely that it will be voted on until next year. Sensenbrenner first got involved with this issue three years ago after receiving calls from business owners accusing the licensing companies of using "disruptive, goonish behavior" to force businesses to buying a license. As a result of similar reports, eighteen states including Illinois, Alaska, Florida, Indiana, New York, and Texas enacted music licensing reform. However, the licensing groups deny such tactics by their agents, and claim that new bars or businesses get introductory letters and phone calls about the procedure.

The licensing companies are not alone in their battle against the bill. The Chicago

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Tribune reports that in a June 25, 1996 letter to the House, ASCAP described the proposed bill as "dangerous legislation" that is not about helping small businesses, but "about legalizing the greed of big users of music at the expense of America's songwriters." In support of ASCAP, fifteen artists and composers, including Billy Joel, Carly Simon, Randy Travis, and Quincy Jones, signed their name to the letter agreeing that the bill is an incursion on their basic privilege of performance rights. Lou Carlozo, *The Sound Of Money When a Bar or Bistro Plays Recorded Music, Should the Owner Have to Pay Royalties? That's the Issue in a Noisy Battle Between Songwriters and the Restaurant Lobby*, CHI. TRIB., August 12, 1996.

## ILLINOIS DECISION THROWS A CURVE INTO LIBEL LAW

In an October 24, 1996, decision that one justice claims could have serious ramifications with respect to First Amendment free speech rights, the Illinois Supreme Court held that a woman could sue a magazine for publishing a fiction story that allegedly labeled her a "slut."

The court, in its 8-1 decision in *Bryson v. News America Publications, Inc.*, No. 79712, 1996 WL 616225 (Ill. Oct. 24, 1996), decided that Kimberly Bryson could sue the parent company of Seventeen Magazine for defamation. In her complaint, Bryson claimed that the 1991 fiction piece written by Lucy Logsdon, a woman who lived in the same Southern Illinois county as Bryson at the time, referred to her as a "slut," which implied that she was an "unchaste individual." Furthermore, the plaintiff argued that the readers could identify her as the subject of the article since a footnote at the end of the article identified Logsdon as a "native of Southern Illinois," and since "Bryson" was an uncommon name.

The defendant magazine and Logsdon countered that Bryson had not been defamed because the word "slut" could innocently be construed as describing Bryson as a "bully"and is not always taken to mean sexual promiscuity. In addition, the lawyers argued that the article was a fiction piece, which does not purport to describe any real person, and that the article did not use Bryson's first name, thereby making it possible that the article was about someone else. Finally, they argued that even if the statements could be considered actionable per se and are not susceptible to innocent construction, the comments were nevertheless opinion, which is protected under the First Amendment.

A trial court agreed with the defendants and dismissed the case, and an appeals court upheld the dismissal. However, the Illinois Supreme Court, in analyzing the context in which the word slut was written, held that the word was used to describe the character's sexual proclivities and could amount to defamation. Furthermore, the court said that the labeling of the article as fictional did not make it unreasonable for a person to interpret the story as referring to the plaintiff, and that First Amendment protection only applies when an article cannot be "reasonably interpreted as stating actual facts."

Disagreeing with Chief Justice Michael Bilandic's majority opinion, Justice Mary McMorrow argued that the court's decision turns libel law on its head, and that "it may pave the way for frivolous lawsuits whenever something caustic is written, even in a fictional story." Bryson v. News America Publications, Inc., No. 79712, 1996 WL 616225 (Ill. Oct. 24, 1996).

### JET-SKIS ARE RUNNING OUT OF GAS IN COURTS

It is slow sales for the water-bike industry due to an outbreak of legislation aimed at restricting the use of their products. Proponents of the movement claim an aggressive regulatory environment is necessary to ensure the safety of swimmers and boaters, to protect the rights of waterfront property owners, and to preserve natural resources. In response, the water-bike industry argues that the bikes are just another type of boat, and should not be singled out for restriction based on "a few bad apples."

The most severe of the regulations was proposed in Washington state's San Juan County. The county's commission voted on October 16, 1996, to appeal a trial court ruling than had prohibited a two-year ban on water-bikes in the Puget Sound archipelago. In deciding to appeal, the commission claimed the issue to be resolved is whether the citizen's right to ride a water-bike outweighs the government's right to use its police powers. Claiming that the "local government had a responsibility to protect its people," it announced that San Juan County and the state legislature had the duty to explore legislation that would authorize local governments to regulate water-bikes at "times, places, and manner that are not inconsistent or incompatible with the local community."

If such litigation is successful, it could have far reaching effects on water-bike makers. In fact, San Juan's county commission claims hundreds of antiwater-bike groups and municipalities have already asked for information on its proposed ban, including groups from as far away as Philippines and Germany. A Marin County, California organization has since asked the government to ban water bikes from the 30-mile coastline north of San Francisco's Golden Gate Bridge, while a ban in the Monterey Bay National Marine Sanctuary in California has withstood judicial scrutiny. On the East coast, a task force appointed by Maine's legislature has mentioned a water-bike ban as a way of preserving the coastline's habitats, and New Jersey has proposed keeping water bikers 100 feet from the shore, setting speed limits, and prohibiting them from towing water-skiers.

Watercraft trade groups contend that renters and not owners of water bikes are responsible for the problems, and are in support of universal mandatôry rental-education programs that would detail how the bikes operate, safety precautions, and rules of the sport. *Washington State County to Appeal Jet-Ski Ruling*, DOW JONES NEWS SERVICE, October 17, 1996; *Water Bikes are Losing Speed in Courts*, DOW JONES NEWS SERVICE, September 17, 1996; *Jet-Skis- More Locales Consider Restrictions*, DOW JONES NEWS SERVICE, September 13, 1996.

NEW YORK SENATOR HOPES TO SCORE WITH STADIUM LEGISLATION

As soon as Congress is back in session, Senator Daniel Patrick Moynihan of New York plans to reintroduce stadium-reform legislation that has team owners crying foul. The Stop Tax-Exempt Arena Debt Issuance Act ("STADIA") would prevent the financing of professional sports facilities through tax-exempt bonds. Instead, the bill encourages teams and municipalities to build stadiums using private funds coming from the rental of luxury skyboxes and leased seats, long-term advertising contracts, revenue percentages from concessionaires, and construction loans from banks.

With over a dozen stadium renovations and construction projects worth over $6 billion planned across the country, Moynihan's plan for private financing has jolted Capital Hill. STADIA's critics point out that Congress failed in its previous 1986 attempt to limit public financing for stadiums because the lawmakers found it difficult to draw a line between permissible and impermissible uses of tax-exempt bonds. One problem with the previous legislation was that it did not answer whether "the bonds could be used to fund a public skating rink on which a professional team practices." Frank Shafroth, director of policy and federal relations for the National League of Cities, argues that Moynihan's legislation contains similar ambiguities. For instance, private financing may not work in all locations, especially if the city has never before hosted a professional sports team and is unsure of fan response. Another concern for team owners and municipalities is that even if the team is established and has sold out every game for years, with all the changes in technology, it is impossible to predict what people will do in their spare time in the future. This is problematic considering that the financing of a stadium involves long-term financing deals.

Moynihan, however, says that it seems like every day, another sports franchise demands a new stadium to be built, which is fine by him. He contends that his goal is not to put a on stop stadium renovation and construction projects, but to prevent team owners from placing the burden of paying for the stadium on the American taxpayer. Xander Mellish, *World Series Game 7 - Steinbrenner v. Moynihan*, DOW JONES NEWS SERVICE, November 1, 1996; Harvey Berkman, *Skadden's Team Pitches Private Stadium Financing. The Season of Publicly Financed Ballparks May Be Ending. So Lawyers Are Warming Up Alternative Funding Solutions*, NAT'L. L. J., August 26, 1996, at B1.

PATENT COMPENSATION EXTENDED TO INCLUDE COST

On October 19, 1996, the President signed H.R. 632, 110 Stat 3814 (1996), an act that he hopes will enhance fairness in the process of compensating owners of patents used by the United States. The Amendment provides that just compensation for the government's use of patents should include reasonable costs, including "reasonable fees for expert witnesses and attorneys" when the owner of the patent is an independent inventor, a nonprofit organization, or an entity that had less than 500 employees during a five-year period preceding the United State's use of the patented invention. The government, however, is not without any safeguards. The amendment also states that such costs and fees won't be compensated if the court finds that the United States was "substantially justified" in its position or that "special circumstances would make the award unjust." 110 Stat 3814 (1996).

*Sophia Moraitis*