

Epilogue

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EPILOGUE

COPYRIGHT PROTECTION IN FORMER USSR

Since the collapse of Communism in the former Soviet Union ended the state's monopoly of music, films and publishing, pirating of audio recordings and films has grown to an estimated 90% of the Russian market. One producer, Andrew Tropollo of St. Petersburg, makes records from compact discs of other companies. He claims that his activity is lawful because under Russian law, once a piece of music has been sold to the public, it becomes public property. Foreign audio recordings are not presently protected in Russia, although Russian copyright law does recognize some copyrights of foreign authors and composers.

The International Intellectual Property Alliance, based in Washington and representing the American copyright industry, has been lobbying the Russian government for new copyright legislation. A new general copyright law is expected to pass the Russian Parliament which would establish procedures for royalty collection and distribution, simplify court procedures and increase penalties. The law would also allow Russia to sign the Berne Convention, a treaty guaranteeing international copyright protection. Experts feel however, that it will be some time before there is Soviet compliance with international norms. Celestine Bohlen, *THE NEW YORK TIMES*, July 2, 1993, (Foreign Desk) Section A at 4.

DERIVATIVE OR INFRINGEMENT

"The Subject of Rape," an exhibit at the Whitney Museum of American Art in New York City, raises the question of artistic license and copyright infringement. The work is a collage of images on canvas by Eva Rivera Castro. Photojournalist Donna Ferrato said the collage uses five identical copies of her photograph of a child pointing his finger at a man being led away by police. The photograph was originally published in 1991 in Ferrato's book, *Living with the Enemy*, which was a photographic essay on battered women and their children. There are three other images in Castro's work that appear to have been copied from other photographs in Ferrato's book. In addition to the issues of artistic license and copyright infringement, Castro's unauthorized use of the photographs raises ethical questions. The people photographed had agreed to release their pictures based on Ferrato's intended use, which was a work on the lives of battered women and their children, not rape. William Grimes, *On Display in a Show at the Whitney, A Question of Ownership of Images*, *THE NEW YORK TIMES*, August 20, 1993, (Weekend Desk) at 3.

PROTECTED COMEDY

The National Broadcasting Co., (“NBC”), threatened to sue David Letterman for copyright infringement if Letterman uses comedy material under the names “Stupid Pet Tricks” or “Top 10 List,” or uses the character named “Larry (Bud) Melman” on his late night show on the CBS Television Network. NBC claimed to own the copyrights to Letterman’s former shows on NBC, “Late Night With David Letterman,” and to specific elements in the shows that were developed at NBC. NBC spokeswoman Pat Schultz said CBS attorneys assured NBC they did not intend to violate NBC’s rights. CBS is presently using other names for substantially the same comedy material in Letterman’s new shows. For example, the Top 10 List is called “The Late Show Top 10,” and a routine about meeting celebrities that on NBC had been called “Celebrity Encounters” is now titled “Brush With Greatness.” Jane Hall, *Letterman Needs New Names for Old Shtick*, LOS ANGELES TIMES, August 30, 1993, (Calendar, Part F) at 6.

TEXAS FILM BOARD ABOLISHED

The Dallas Motion Picture Classification Board, which was privately founded in 1932 and government sanctioned since 1965, was abolished by the Dallas City Council on August 11, 1993. Council members agreed with opponents of the board that government had no business rating movies as suitable or unsuitable for children by considering the film’s language, violence and perversion, among other factors. John Trickett, Southern division manager of the film distributor New Line Cinema, said the board was the only government agency in the U.S. requiring submission of films prior to public availability.

Proponents of the board felt its method of rating offered more information to parents than the Motion Picture Association of America’s system of G, PG, PG-13, R and NC-17 ratings.

Susan Kirr, *Big Screen, Little Kids; Do Parents Need Film Boards for Guidance on the Movies?* THE DALLAS MORNING NEWS, August 30, 1993, (Today) at IC.

LENGTHY CONTRACTS DEEMED RESTRAINING

The case of singer George Michael against the United Kingdom unit of Sony Corp. began trial in London. Michael’s suit claims that long-term contracts, such as the contract that ties him to Sony until the year 2003, are a restraint of trade. He contends contracts for shorter periods would allow greater freedom and potentially greater financial returns for some artists. Record companies maintain that the potential for substantial profits from a few superstar artists enables the companies to offer contracts to more fledgling artists, resulting in greater diversity of music offered the public.

The case in the British High Court will affect only British recording companies, but it is expected U.S. lawyers will raise the same issues of financial unfairness and artistic freedom in U.S. courts. Also, Michael requested Sony disclose its confidential recording contracts with other artists, such as superstars Bruce Springsteen, Michael Jackson and Barbra Streisand. However, even if

details of these contracts are revealed, they will be subject to court confidentiality. Jeff Kaye, *Music Industry Eyes on George Michael Suit; The Pop Star is Challenging Sony on the Fairness of Long-term Contracts. Some Say the Outcome Could Change the Future of the Recording Business*. LOS ANGELES TIMES, October 8, 1993, (Financial Desk) Part D at 5.

"OLDIES" BATTLE AFTRA

A group of recording artists from the 1960's has filed a lawsuit in federal court against major record companies and the American Federation of Television and Radio Artists for failure to enforce the terms of a 1958 contract in reporting the artists' earnings for pension credit and health insurance. The contract requires record companies to pay a percentage of an artist's gross income into the AFTRA benefits fund for pensions and health insurance. The lead plaintiff Sam Moore and others, including Curtis Mayfield, members of the Shirelles and the Drifters, Brian Hyland and the estates of Jackie Wilson and Mary Wells, allege the record companies consistently underreported the singers' earnings. Moore claims AFTRA has not credited him with any earnings for years in which he had record sales and TV appearances. Richard H. Perlman, an attorney for the plaintiffs, said the reporting procedures were inaccurate and the system lacked accountability. Perlman is seeking class action status for the suit. Leonard Pallats, *'60s Recording Artists Sue Over Low Pension, Health Benefits*, ST. PETERSBURG TIMES, October 31, 1993, (Entertainment) at 8B.

ARTISTS' ENVIRONS ADDRESSED

The British Columbia Advisory Committee on the Status of Artists has issued a 15-page discussion paper recommending specific new protections and benefits for artists' working conditions. Generally artists are independent contractors. They are not protected by the Employment Standards Act and visual artists seldom have written contracts with their dealers. The Committee, established by the former minister responsible for culture Darlene Marzari, researched the status of artists and surveyed their needs.

The Committee's discussion paper asks for a governmental policy on the arts, an arts council, and for funding to be directed to artists rather than art bureaucrats. The Committee recommends changes in the labor code, Worker's Compensation Act, and the Employment Standards Act, including provisions for child performers and the registration of entertainment agents. It also calls for legislation establishing minimum provisions for art agency contracts and changes in the School Act to specifically recognize culture. The Committee will present their recommendations to the provincial government in late November. Peter Wilson, *Arts Community Rallies for Support Act*, THE VANCOUVER SUN, October 29, 1993, (Entertainment) at C8.

BULLS AND WGN v. NBA

The Chicago Bulls basketball team and WGN Continental Broadcasting Co. filed suit in district court against the National Basketball Association (NBA). This case continues a lawsuit the Bulls and WGN had won against the NBA in 1990 in district court, affirmed by the 7th U.S. Circuit Court of Appeals in April 1992. The Bulls and WGN are seeking to void the NBA's contracts with NBC and Turner Broadcasting which would leave only fifteen games to WGN and other national stations for the 1994-95 season. Individual basketball teams are allowed to negotiate with local television stations. The problem arises because WGN is both a local station and a superstation broadcasting in several states. The Bulls and WGN contend the NBA cannot interfere with an individual team's broadcast negotiations. In 1990 the district court ruled such limits amount to an illegal restraint on trade. Bulls' attorney Joel G. Chefitz maintains the NBA's new contracts with NBC and Turner are further violations of antitrust laws. *Bulls, WGN take the Court Against NBA*, CHICAGO DAILY LAW BULLETIN, October 18, 1993, at 1.

MALCOLM GETS SECOND TRIAL

A new libel trial was granted writer Janet Malcolm, after an inconclusive verdict on libel for fabricating or distorting five quotes of psychoanalyst Jeffrey Masson. U.S. District Judge Eugene Lynch said retrial on all issues is required because evidence of the harm allegedly suffered by Masson cannot logically be separated from evidence on whether Malcolm libeled him. Masson is seeking \$7.5 million in damages.

Malcolm wrote an article about Masson's firing as projects director of the Sigmund Freud Archives. She testified that she had combined statements Masson made at different times and places into an unbroken monologue as a literary convention, but she denied making up any quotations. The quote Masson's attorney stressed had been most damaging was found not to be libelous. This quote has Masson saying that the elders of the Freud Archives considered him an "intellectual gigolo."

Judge Lynch held the suit against The New Yorker Magazine should be dismissed, although he delayed the formal dismissal until after the retrial. This is because the court upheld the jury's findings that Masson failed to prove magazine employees knowingly published false quotations or that Malcolm was a staff employee rather than an independent contractor. *Psychoanalyst's Libel Case Needs Retrial, Judge Rules*. CHICAGO TRIBUNE, September 10, 1993, Section 1 at 20. Gail Diane Cox, *Malcolm Case Turns on Money*, THE NATIONAL LAW JOURNAL, June 21, 1993, at 1.

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