

Survey of Art and Entertainment Law Current Events

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EPILOGUE

The Epilogue section provides an overview of art and entertainment news items that have interesting and relevant legal implications.

The American Civil Liberties Union (ACLU) brought suit against a Federal Communications Commission (FCC) regulation that limits access to "indecent" programming on cable-leased channels. The ACLU claims that the interpretation of the regulation by the FCC violates the First Amendment rights of cable operators. Unlike obscene material, indecent programming is protected speech. The FCC defines indecent programming as "material that describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards." Dennis Wharton, *Indecency Law Draws Lawsuit*, DAILY VARIETY, February 23, 1993, at 25.

Police in Berlin recently seized 25 computers and six gigabytes of bootleg software, including illegal copies of 250 of the most widely used computer software programs. Raids of this type are reportedly becoming increasingly common as U.S. software companies, movie studios, book publishers and record companies urge foreign governments to fight piracy, a crime that cost these industries an estimated \$18 billion last year. As consumers in some foreign countries acquire more computers, VCRs and tape decks, American movies, music and computer software are in high demand. Pirated copies are generally the cheapest source of these products, as they do not incur overhead expenses such as payments to artists and authors, expenses for research and development or licensing fees. The

International Intellectual Property Alliance, a group of record companies, publishers, software makers and Hollywood studios, is calling for "massive retaliation" through trade sanctions against Thailand and Taiwan, countries where there are large numbers of copyright pirates. Also included among nations with a high incidence of piracy are China, Russia, Germany and Italy. Some countries claim that the United States' strict enforcement of intellectual property rights is a form of cultural imperialism, insofar as it makes developing nations dependent upon U.S. imports. James Cox, *Bootlegging Billions: U.S. Loses Ground in Crackdown*, USA TODAY, Mar. 9, 1993, at 1B.

The Bourne Co., which owns the rights to nineteen songs written by Irving Berlin, has brought suit against Walt Disney for unauthorized use of these songs in video cassettes and advertisements. Berlin's songs are featured in Disney's "Snow White" and "Pinocchio." A New York federal court will decide whether a movie shown in a home on a video cassette, is different from a movie shown in a theater. In a related matter, Boosey & Hawkes Music Publishers, Ltd., holding the copyright to Igor Stravinsky's "The Rite of Spring," brought suit against Walt Disney Co. in a New York federal court. In 1939 Stravinsky granted Disney the non-exclusive right to record "The Rite of Spring" in connection with Disney's movie "Fantasia." The suit alleges that this right is limited to use in the movie and the right extends to use in movie theaters only. Patricia Cohen, *Heigh-Ho, It's to Court Disney Goes*, NEWSDAY, February 3, 1993, at 18. *Walt Disney <Dis.N.> Sued Over Rights To Music*, Reuters, Ltd., January 21, 1993, (Financial

Report).

Proposed copyright legislation to eliminate the requirement of registering copyrights with the Copyright Office before filing suit for copyright infringement would drastically reduce the amount of unpublished collections received by the Library of Congress. Under current law, works published in the United States must be registered with the Copyright Office before filing for copyright infringement, while registration for works published outside of the United States is not required. The legislation seeks to eliminate this difference. However, the Library of Congress, which oversees the Copyright Office, acquires the majority of its collections, including works that are never published, through copyright registration. Changes to existing law would reduce the incentive to register, thereby decreasing the works collected by the Library of Congress. Kim I. Mills, *Rethink copyright law overhaul: Library of Congress*, CHI. DAILY L. BULL., March 4, 1993, at 1.

The United States Supreme Court agreed to hear a case, *Campbell v. Acuff-Rose Music*, involving the unauthorized use of the 1964 Roy Orbison song "Pretty Woman." The Nashville corporation that owns the rights to the song brought suit against the rap group 2 Live Crew for copyright infringement for its parody, released in 1989, of Orbison's original song. The case raises the question of whether a commercial parody can be considered a "fair use" of a copyrighted work, an exception heretofore reserved for criticism, commentary, news reporting, teaching, scholarship and research. A federal court in Nashville held that the parody constituted fair

use, and found no devaluation of the original work. The United States Court of Appeals for the 6th Circuit reversed, however, finding that the parody has a "blatantly commercial purpose," making its use "presumptively unfair." The defendant has the burden of proving that the "parody does not unfairly diminish the economic value of the original." The defendant's lawyer contends that the appeals court failed to consider "the creative nature" of the parody and "the importance of social criticism to American society." Joan Biskupic, *Justices to Rule on 'Pretty Woman' Parody; 2 Live Crew Takeoff on Roy Orbison Song Triggered Closely Watched Copyright Battle*, WASHINGTON POST, March 30, 1993, at A4.

A Jerusalem court held that an Israeli professor has a copyright on a reconstruction of the Dead Sea Scrolls, reportedly establishing for the first time that a copyright could be claimed for a reconstruction of an ancient text. The copyright holder, Dr. Elisha Quimron of Ben Gurion University in Beersheeba, was awarded \$44,000 in damages for copyright infringement by a publisher who used Dr. Quimron's deciphering of one of the 2,000-year-old scrolls without his permission. Although a team of authorized editors of the scrolls are claiming victory, one of the defendants in the case warned that the ruling could inhibit scholars from republishing reconstructed texts for further commentary and interpretation. The scrolls, discovered some 40 years ago in a cave near the Dead Sea, were written between the second century B.C. and 70 A.D. They are the oldest known copies of the Old Testament. Joel Greenberg, *Court Supports Editor on Rights to Dead Sea Text*, N.Y. TIMES, March 31, 1993, at A12.

The Federal Communications

Commission voted to allow the commercial TV networks to own a financial interest in the production of prime-time shows. Although the networks will not be allowed to syndicate programming themselves, the Commission voted to allow them to receive revenue from the resale of programs in which they hold an interest. The Commission's ruling was spurred by a U.S. court of appeals decision holding that the FCC's retention of the "financial interest and syndication rules" had not been justified. Still, some important restrictions remain intact. For example, the big three networks—ABC, NBC and CBS—are restricted from having a financial interest in the syndication of programs for local television stations, such as Phil Donahue and Oprah Winfrey, unless the network produces the program itself. In any case, the networks cannot syndicate these shows directly. Furthermore, restrictions on foreign syndication of shows were eliminated, together with a 40% cap on the percentage of programming a network can produce itself. Cindy Skrzycki, *Ruling Eases Hollywood Grip on TV Syndication*, WASHINGTON POST, April 2, 1993, at F1.

A district court held that a picture of Jesus hanging in the hallway of a Michigan high school violates the First Amendment, barring government establishment of religion. A high school student brought suit, claiming the picture amounted to an endorsement of Christianity. The picture has been hanging in the hallway for approximately thirty years. It was donated in memory of a school secretary. While awaiting appeal, the court has allowed the picture to be covered, rather than removed as initially ordered. The school claims that ordering the removal of the picture amounts to censorship. *Deadline Nears to Cover School's Picture of Jesus*, CHIC.

TRIB., Feb. 28, 1993, at 22.

A Los Angeles Superior Court jury awarded Main Line Pictures Inc. (Main Line), a film company, \$8.92 million dollars when it found that actress Kim Basinger fraudulently breached an oral agreement to play the starring role in Main Line's "Boxing Helena." Near completion of a motion picture before an actor's written contract has been signed is common practice in Hollywood. At trial, Main Line presented a copy of a memorandum that listed thirteen points of the preliminary agreement between Main Line and Basinger. In her defense, Basinger testified that she never approved of the script. Although the jury awarded compensatory damages, punitive damages were not awarded. Basinger will appeal. Kathleen O' Steen, *'Helena' Costs Kim Arm and A Leg*, DAILY VARIETY, Mar. 25, 1993, at 1.

Robert Sam Anson, author of books on Richard Nixon and Vietnam, brought suit in district court alleging the publishing company Simon & Schuster is suppressing publication of his book on Walt Disney. In addition, Anson alleged the company is holding a portion of his advance until he agrees to never publish the material. Anson claims that while researching he discovered material that could be embarrassing to Paramount Communications, which is the parent company of Simon & Schuster. *Author Claims Book Killed Because of Publisher-Studio Tie*, PLAIN DEALER, March 25, 1993, at 10E.

NuTek USA Corporation, based in Cupertino, California, claims that it has developed a circuit board that will enable computer manufacturers to legally produce clones of Apple Computer's Macintosh at lower prices. NuTek reportedly developed the circuit board through reverse

engineering, a process whereby publicly available technical information is used to produce technology that duplicates the functions of a patented product. Apple, however, argues that it is impossible to legally clone the Macintosh without violating its intellectual property rights. The circuit board made by NuTek will sell for \$899 and can be used to produce Macintosh clones for \$1,500 to \$1,700, as compared to a similar computer produced by Apple selling for \$2,000. Ken Siegmann, *Apple Refutes Claim of Mac Clone*, SAN FRANCISCO CHRON., March 13, 1993, at B1.

Six of the largest manufacturers of CDs, accounting for 90 percent of all music sales, unilaterally (without consulting retailers) decided to eliminate the old CD longbox. This 6 by 12-inch box in which CDs are packaged was designed to prevent theft. These manufacturers, after April 1, will only ship CDs in their standard "jewel boxes," and allow retailers

to decide how to package them, or whether to package them at all. The old cardboard CD longbox was said to produce some 40 million pounds of trash last year. According to one estimate, converting from the longbox to some other method will cost the 14,000 music stores throughout the country over \$100 million. Most of the major record stores plan to use reusable plastic keepers similar to those used to package cassettes. It is hoped that this system will not be necessary once a standardized security tag is developed that will be applied at the factory. According to one source, the impetus for the change was financial, not environmental, as the world standard is the jewel box. Five of the six manufacturers of CDs are foreign owned. Richard Harrington, *RIP: the CD Longbox*, WASHINGTON POST, April 7, 1993, at D7.

General Motors (GM) settled its defamation of character suit against NBC with an on-air apolo-

gy to GM by NBC. GM brought suit after "Dateline NBC" aired a segment entitled "Waiting To Explode." The program featured a post-collision fire after a Citation struck a 1977 GM truck. NBC claimed that the collision caused the gas tank to puncture, thereby spilling fuel and causing the fire. However, GM investigations revealed that the fire was the product of remote-controlled ignition of two rocket engines taped to the underside of the truck, not a punctured fuel tank. Jim Kenzie, *NBC Truck Fiasco Shows TV Journalism at Worst*, TORONTO STAR, Feb. 13, 1993, at G3.

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