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## Literature Update: Selected Art and Entertainment Law Review Article Summaries

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# L I T E R A T U R E   U P D A T E

This compilation includes brief overviews of particular articles appearing in other art and entertainment law journals within the past year which may be of use or interest to the DePaul-LCA Journal of Art and Entertainment Law's readership. Please note that this list does not contain all of the articles appearing in the particular volumes of the journals mentioned.

## Cardozo Arts and Entertainment Law Journal

1991 Vol. 9, No. 2

Aoki, *Contradiction and Context in American Copyright Law*. [pp. 303-387].

The movement to protect industrial designs through copyright law materialized with the 1909 Copyright Act. This article traces the development of this fluctuating area of law with a focus on the mounting tension between the courts and the Copyright Office due to the Copyright Act of 1976. The author concludes that this tension will only be alleviated when the Copyright Office recognizes the compelling need for specific industrial design protection.

## Cardozo Arts and Entertainment Law Journal

1990 Vol. 9, No. 1

Glen B. Manishi, *An Antitrust Paradox for the 1990's: Revising the Role of the First Amendment in Cable Television* [pp. 1-14].

This article examines the "anti-trust paradox" of the 1990's and the cable industry's use of first

amendment arguments to address issues which traditionally fall within the realm of antitrust law. Manishi primarily argues that these industries do not actually engage in the expression of ideas; they only possess the technology which enables such expression to occur. Accordingly, he concludes that these issues should not be approached as first amendment concerns, but rather as antitrust and competitive policy issues.

## Cardozo Arts and Entertainment Law Journal

1990 Vol. 9, No. 1

Michael B. Landau, *"Works for Hire" After the "Community for Creative Non-Violence v. Reid": the Need for Statutory Reform and the Importance of Contract*. [pp.107-150].

This article contains an examination of the copyright law doctrine of "work for hire". This doctrine, which determines copyright ownership of works prepared by employees and independent contractors, has been extremely controversial; with the definition of the "employee" at the core of the confusion. Landau compares the legislative history of the Copyright Act of 1976 to the interpretation and application of such intent by the courts. He believes this comparison reveals that the definition of "employee" for purposes of a work made for hire should be limited to a "formal, salaried employee". Further, commissioned works, regardless of type, should be excluded from this definition.

## Columbia – VLA Journal of Law and the Arts

1990 Vol. 14, No. 4

Blum, *Tax-Free Exchanges of Appreciated Art*. [pp. 557-571].

Due to the 1986 Tax Reform Act's high tax on the sale of art work, the exchange or barter system has become a wise alternative when acquiring art. This article focuses on the tax implications of such exchanges. The author argues that Section 1031 of the Internal Revenue Code, which makes the exchange of "like-kind" property tax exempt, be applied to make the exchange of art tax free. Based on the Code's definition of "like-kind" property, he advises that the individual first establish himself as an investor, rather than a collector, of art. This can be done by showing that the primary motive of the acquisition was profit. He concludes with a list of general things a taxpayer can do to place himself in the category of an investor and thereby avoid taxation.

## Columbia – VLA Journal of Law and the Arts

1990 Vol. 14, No. 4

Pacher, *The Motives Behind "Law and Literature"*. [pp. 587-614].

This article analyzes the utility of literature works as an aid to legal scholars and lawyers. Pascher states that references to literature and law can be traced back over 70 years and uses the hermeneutic, utopian, and political planes to delineate the increasing contexts in which law and literature are utilized today. He concludes that the use

of literature may provide the exact intellectual stimulation necessary to enhance and refine our current legal system.

### Columbia – VLA Journal of Law and the Arts

1990 Vol. 14, No. 3

Thomas F. Lane, *Proposed Statutory Amendment to Laws Regulating Employment Agencies in New York*. [pp. 379-395].

This article compares the laws regulating employment agencies in New York and California, focusing on a proposal which would bring the New York statute in conformance with the preferred California statute. Lane is primarily concerned with the impact of the New York statute on the music industry, emphasizing its problems and its adverse effect on struggling new artists. He criticizes the current New York employment agency statute and recommends that it be modernized through the adoption of a provision of the California employment agency statute which exempts the activity of procuring contracts for artists from the burdens of government regulation. Lane has drafted a proposed amendment to the New York statute, which at the time of this publication, was before the New York State Assembly.

### Columbia – VLA Journal of Law and the Arts

1990 Vol. 14, No. 3

Suzanne Rosencrans, *Fighting Films: A First Amendment Analysis of Censorship of Violent Motion Pictures*. [pp.451-475].

This is an interesting examination into the issue of censorship of violent films, featuring a public policy, case law, and constitu-

tional analysis. The author discusses the issues on both sides, looking at arguments for and against government regulation in this area. The author explains that there is much uncertainty as to the sociological data linking the viewership of violence to the subsequent act of violence in the street. This article touches on such related topics as unprotected speech, the doctrine of prior restraint, the application of the "fighting words" exception, and the theory that violent films advocate illegal conduct.

### Loyola Entertainment Law Journal

1991 Vol. 11, No. 2

Quigley, *Freedom of Expression in the Soviet Media*. [pp. 269-293].

This article examines the recent reform legislation in the Soviet Union entitled Law on the Press and Other Forms of Mass Information (Law on the Press) which declares that the "press and other forms of mass media are free" and "censorship shall not be permitted." The author presents an interesting discussion on the practical implications of the legislation with a focus on the reform in government which enables the legislation to be enforced. He concludes that the post-1989 reforms have injected a freshness into the Soviet Union that has not been present for decades.

### Loyola Entertainment Law Journal

1990 Vol. 11, No. 1

Ralph M. Baruch, *Proprietary Interests in Television Shows: A Production Company's View*. [pp. 1-9].

This article is the transcript of a speech delivered by Ralph M. Baruch, Chairman of the Pro-

gram Producers and Distributors Committee, to the National Academy of Television Arts and Sciences. In his speech, Baruch praises the result of The Financial Interest/Prime Time Access Rule enacted by the FCC to create diversity in programming through the creation of new companies and increased competition. According to Baruch, the networks are seeking to eliminate the Rule and once again retain financial interest in programs which they license for broadcast. Baruch claims that there is no reason for elimination of the rule as it has worked effectively since its implementation and allowed more production companies to enter the market.

### University of Miami Entertainment and Sports Law Review

1990 Vol. 7, No. 2

Vicki Gerl Neumeyer, *The Right of Descendibility*. [pp. 287-307].

This article deals with the right of publicity and the theoretical and legal controversy regarding its descendibility. The article examines the relevant case law, much of which involves the estates of celebrities such as Laurel and Hardy, Agatha Christie, the Marx Brothers, and Elvis Presley, and concludes that the trend is to identify the right of publicity as a devisable property right rather than a non-devisable personal right. Lastly, the author discusses proposed solutions to the controversy, including an absolute rule against descendibility, analogies to copyright or trademark law rather than to privacy or property law, and a federal statute recognizing a descendible right of publicity. Ω

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