UCLA ENTERTAINMENT LAW REVIEW

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ARTICLES

Broadcasting Industry Ethics, the First Amendment and Televised Violence

John Alan Cohan 1

Today, there is an unprecedented level of gratuitous violence on network television. The broadcasting industry as trustee of the airwaves is required to broadcast in the public interest, with the fiduciary obligation to remedy concerns about gratuitous televised violence. This paper shows a causal link between televised violence and antisocial behavior in children and adults, based on extensive social science data, and argues that televised violence is a public health issue analogous to smoking and cancer. This paper will also discuss how gratuitous violence on television may be regulated in a manner similar to obscenity under *Eclipse Enterprises, Inc. v. Gulotta*, and how a new tort has recently emerged: negligent incitement of harmful or outrageous conduct, or aiding and abetting another to commit harmful acts. This paper will finally offer solutions to the problem, including nonviolent programming, teaching audiences critical viewing, parental responsibility, channeling or zoning, outright banning of violent programming, balanced programming, parental advisories, teaching broadcasting ethics in graduate school, consumer boycotts, and taxing broadcasters for violent programming by charging a spectrum fee for use of the airwaves.

The Statutory Overriding of Controlled Composition Clauses

Mario F. Gonzalez, Esq. 29

It has been well-publicized that the Digital Performance Right In Sound Recordings Act of 1995 accorded copyright owners of sound recordings a limited exclusive right of public performance in their sound recordings by means of a digital audio transmission. However, less attention has been given to the fact that the DPRA also amended Section 115 of the Copyright Act to provide that digital phonorecord deliveries are subject to compulsory licensing under that section. A careful reading of the DPRA suggests that that, insofar as digital phonorecord deliveries are concerned, Congress may have intended for the statutory rates to override the controlled rates in record companies'

recording contracts. Thus, by relying on controlled composition clauses as historically drafted, record companies may be creating tremendous hidden future liabilities. This article reviews the history and current state of compulsory mechanical licenses and controlled composition clauses, examines the language and implications of the DPRA amendments to Section 115, and suggests ways that controlled composition clauses might be drafted in light of these amendments.

Putting the Brakes on The Right of Publicity

Schuyler M. Moore 45

This article suggests a uniform set of defenses to apply to right of publicity claims. Under current precedents, the simplest way to summarize the right of publicity is that there is a prima facie case any time anybody uses anyone's name, likeness, or voice (or imitation thereof) for any reason. Because a right of publicity claim is relatively new, the law has simply not developed a consistent and coherent set of defenses, so the cases are ad hoc and inconsistent. The net result is a muzzling of free speech, since to be sued is to lose. The thesis of this article is that a uniform set of defenses is a critical bulwark to defending the First Amendment.

Comment

The Right of Publicity: Preventing the Exploitation of a Celebrity's Identity or Promoting the Exploitation of the First Amendment?

Joshua Waller 59

In *Zacchini v. Scripps-Howard Broadcasting Co.*, the United State Supreme Court decided the only case involving the inherent conflict between the right of publicity and the First Amendment. The Court's opinion in that case, however, cannot be relied upon by plaintiffs in right of publicity cases because it is narrowly drawn. This lack of Supreme Court guidance has caused confusion among the circuits, leading to decisions like those in *White v. Samsung Electronics America, Inc.* and *Wendt v. Host International, Inc.* that erroneously prioritize the protection of celebrities' identities via the right of publicity over the First Amendment's interest in protecting speech. The Supreme Court denied certoriari in *White* and *Wendt*. However, a petition for writ of certoriari in *Hoffman v. Capital Cities/ABC, Inc.*, *Parks v. LaFace Records*, or *ETW Corp. v. Jireh Publishing, Inc.* would provide the Court with at least one more opportunity to remedy this confusion.

Special Section: The Law & Popular Culture

The UCLA Entertainment Law Review is proud to publish a collection of three student comments on current interactions between the law and popular

culture. These essays were selected from among those presented during the Law & Popular Culture seminar offered by Professors Asimow and Bergman during the Spring of 2001 at the UCLA School of Law.

Introduction by Professor Michael Asimow 87

Attorney Advertising and the Use of Dramatization in Television Advertisements

Daniel Callender 89

Daniel Callender's essay *Attorney Advertising and the Use of Dramatization in Television Advertisements* pursues the issue of whether attorney advertising is inherently misleading when it includes a playlet plugging the sponsor's firm. This article fits snugly within one of the main themes of the seminar—the well documented tendency of mass media consumers to base their opinions on wholly fictitious stories in film and television.

Trial and Errors: Comedy's Quest for the Truth

Rajani Gupta 113

Rajani Gupta's article *Trial and Errors: Comedy's Quest for the Truth* examines a broad swath of legal popular culture—comedic treatments of law. Comedy, she explains, is always destructive, but it can make the dry world of law and lawyers accessible to vast numbers of people who might be uninterested in serious drama. Such classic legal comedies as *My Cousin Vinny, Bananas*, or *Adam's Rib* simultaneously parody and dramatize important legal and political issues. Often, in these films, lawyers undergo a remarkably redemptive experience.

Drugs in Cinema: Separating the Myths from Reality

Paul Iannicelli 139

In his paper *Drugs in Cinema: Separating the Myths from Reality*, Paul Iannicelli takes a different tack. His paper addresses a particular socio-legal problem and studies the way in which popular legal culture has dealt with that theme over a long period of film history. Needless to say, the treatment of illegal drugs in film has usually been inaccurate and stereotypical, often playing on popular fears and prejudices against immigrants and minorities. While filmmakers reflect popular beliefs in their portrayal of the drug problem, they have made it more difficult to achieve the necessary political consensus to end the hopeless "war on drugs" and reform the nation's drug laws.

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