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ARTICLE

The Scope of Liability Under California's Right of Publicity Statutes: Civil Code Sections 990 and 3344

The right of publicity in California could be limitless, vague, and confusing. It is unclear what conduct was intended to be targeted at common law, what conduct was included by the legislature, and what conduct is actually penalized by the common law/statutory hybrid into which the right of publicity has presently grown. Beginning with an anecdote of a politician's hasty law-making decision and ending with a tribute to the First Amendment and the freedom of "art," the author reveals that the right of publicity is marred by inconsistencies and redundancies. The Article weaves through the maze that is the history of the right of publicity, treating the reader to everything from celebrity cases and tragedies, to philosophers' observations, to the ironies of human nature, finally concluding that the right of publicity logically targets only one set of factual circumstances. The author concludes the right of publicity is defined, clear, and logical at only one end of this maze—when the penalized conduct is limited to false advertisements.

COMMENTS

views the histroy, politics, and theoretical underpinnings of government subsidization of the arts. the author then explores the constitutional problems created by the current NEA grant-making provisions under *Rust, Rosenberger*, and *Reno v. ACLU.* Finally, the author proposes that the NEA return to its original grant-making standard of pure "artistic excellence" in order to expand the marketplace of ideas through the viewpoint-neutral promotion of expression by our nation's most compelling artists.

Cardtoons v. Major League Baseball Players Association: Fair Use or Foul Play?

Rebecca Kwok 315

Whether a celebrity should receive a right of publicity in a certain context involves a complex analysis of factors ranging from basic economics to our not-so-basic First Amendment. This Comment disagrees with the Tenth Circuit's recent holding in *Cardtoons v. Major League Baseball Players Association,* 95 F.3d 959, that publicity rights must yield to commercial parodies when the two conflict. The author begins with an extensive summary of the relevant facts of *Cardtoons*, then presents a detailed analysis of the conclusions reached by the court. The author then critiques the Tenth Circuit's opinion by arguing that it ruled inconsistently with intellectual property decisional authority. Specifically, the author disagrees with the Tenth Circuit's rejection of the efficient allocation of resources rationale for the right of publicity and criticizes the court's conclusion that an impermissible restriction on speech would occur if publicity rights were found to trump Cardtoons' ability to parodize the baseball players.

Tagging or Not?—The Constitutionality of Federal Labeling Requirements for Internet Web Pages

Coralee Penabad 355

The widespread popularity of the Internet has facilitated easier acces to indecent images and text, prompting a public call to block such access by minors. In order to accomplish this task, the author proposes a federal statute that would create a special commission "to study, research, develop and mandate minimum technical standards for screening software and labeling/rating software on the Internet." The author describes existing labeling/rating software for Internet pages, focusing on the Platform for Internet Content Selection ("PICS"). The author then examines the PICS-compatible filtering/blocking software that would be necessary to effectively protect minors on the Internet from indecent information, while allowing unencumbered

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minors on the Internet from indecent information, while allowing unencumbered Internet access to non-minors. The author then argues that, although Internet labeling raises First Amendment free speech concerns, the proposed statute passes constitutional muster. Since the statute requires an Internet label that is informative, but not content-restrictive, it should not be subjected to a strict scrutiny standard. However, the statute would be deemed constitutional even if a court were to apply strict scrutiny, since it is conent-neutral, it serves a compelling government interest, and it is narrowly tailored not to restrict free speech. The author then explores the constraints on the effectiveness of the proposed statute, especially the difficulty of regulating the Internet as a result of its international nature.