

UCLA

UCLA Entertainment Law Review

Title

[Front Matter]

Permalink

<https://escholarship.org/uc/item/6wc6c1k7>

Journal

UCLA Entertainment Law Review, 11(2)

ISSN

1073-2896

Author

ELR, Editors

Publication Date

2004

DOI

10.5070/LR8112027051

Copyright Information

Copyright 2004 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

UCLA ENTERTAINMENT LAW REVIEW

Volume 11

Issue 2

Summer 2004

ARTICLES

Conflicts of Interest and the Shifting Paradigm of Athlete Representation

Scott R. Rosner 193

The modern day sports agent is more than a negotiator of contracts. The sports agent must also be a psychologist, babysitter, social planner and counselor for his clients. In addition, full service agencies now perform a variety of services for their clients, including financial management and accounting, athletic training, public relations, investment, tax and estate planning and legal counseling. As pressure mounts for individual agents and small agencies to consolidate in order to meet the increasing demands of professional athletes, potential conflicts of interest have increased. This article examines recent structural changes to the sports representation business and the conflicts of interest therein, in order to find possible solutions to the growing pains of this field.

Copyright Class War

Niels Schaumann 247

Until recently, copyright disputes generally arose only among content industry participants. The lack of copyright enforcement against members of the public made copyright issues appear arcane and remote. The advent of digital technology and the internet, however, has upended the former status quo. Digital technology frees content from its physical containers: Where it once was necessary to print, bind, ship, and store cartons of books, text can now be distributed almost instantaneously via the internet. Many content companies have based their business models on the ownership and control of distribution channels that are becoming increasingly irrelevant.

The content industry has responded with an assault, first on the technology that enables digital distribution by consumers, and more recently on consumers themselves. Initial squeamishness about suing one's own customers has given way to lawsuits filed against those who make copyrighted content available online. The result is a confrontation between those who own

copyrights and those who do not. The author provides insight into the developments that are reshaping the content-distribution landscape, and examines two recent books, written for the public, that address copyright policy. He concludes that litigation against copyright have-nots may be the catalyst that causes them to take an interest in the debate over the proper scope of copyright law.

The Right of Publicity Gone Wild

Gil Peles 301

The right of publicity is now utilized more than ever before. This intellectual property right of persons not to have their image, name, or general likeness used commercially is currently recognized in over half the country. At the same time, states have applied differing, and sometimes conflicting, analysis when dealing with right of publicity challenges.

While many of the traditional publicity cases have involved celebrities, modern entertainment has shown a huge rise in popularity of “reality” programs- i.e. a popularization of the average person. In the legal realm, this trend raises new issues regarding the ability of an average person to control widespread profiteering of his or her image. To this end, courts have increasingly struggled to develop a method of balancing the right of publicity with the First Amendment.

This article addresses the modern tension involving the right of publicity with the First Amendment guarantee of expression. More specifically, this article focuses on the difficulty posed by the copy and sale of literal reproductions. Two very recent solutions are presented and evaluated. In *Winter v. DC Comics*, the California Supreme Court utilized a newly developed copyright-based right of publicity test. In *Lane v. MRA Holdings*, the Middle District of Florida relied upon a “related products” test to decide whether a videotaped image of a teenage girl could be internationally marketed and sold for profit within a video series entitled “Girls Gone Wild.” This article proposes an economic test, based on a combination of a Second Circuit test and the newly developed California test, in order to reconcile difficulties imposed by the preceding cases and their proposed solutions.

COMMENTS

Where Madison Avenue Meets Hollywood and Vine: The Business, Legal, and Creative Ramifications of Product Placements

Matthew Savare 331

Due to a confluence of economic, technological, and social transformations, the entertainment and advertising industries have merged. The increased

convergence of the “ad biz” with “showbiz” will have profound implications on both industries. The purposes of this Comment are to outline the current business and legal issues surrounding product placements and to investigate how the increased merger of commerce with art will affect the commercial speech doctrine, actors’ right of publicity, and authors’ and directors’ rights of creative control. Part I of this Comment provides an historical examination of the constitutional protections afforded to entertainment and commercial speech and the recent doctrinal developments concerning the latter category. Part II describes the process by which goods are injected into content and outlines current regulatory schemes, including efforts to curtail and regulate the practice. Part III analyzes whether courts should consider product placements commercial speech and the attendant ramifications of such a decision. Part IV examines the ways in which product placements impact the creative community, particularly actors, writers, and directors. Although many of these issues are managed via contract, the potential still exists to affect not only an actor’s right of publicity, but also writers’ and directors’ creative control. In an attempt to resolve potential artistic control issues posed by product placements, Part IV proposes a legislative solution based on a moral rights foundation. Part V concludes that although product integration is now a staple of American entertainment, the fusion of advertising and creative content puts pressure on our traditional notions of commercial speech, may, in certain instances, violate the prohibition of misleading advertising, risks alienating viewers, and has the potential to degrade further the artistry of the entertainment industry. Product placements do, however, serve a useful purpose in artistic creation. The key, as is the case in any creative endeavor, is to find the appropriate balance between art and commerce.

Musicians, Record Labels, and Webcasters: In Need of an International Royalties Collection Society

Cole A. Sternberg 399

Good news: the first performance royalties are now available to U.S. recording artists, through webcast, digital cable and satellite radio performances. But, webcasts come from everywhere and are heard everywhere, so what royalties are available and how are they distributed? This article discusses the burgeoning market of webcast radio and the need for an international performance rights collection society to affectively and fairly distribute royalties to artists worldwide.

“How High Is Up”: Interstitial Dilemmas in Nonexclusive Copyright Licensing Cases in the Ninth Circuit

Boryana Zeitz 429

The Copyright Act is interspersed with gaps which repeatedly surface in litigation involving nonexclusive implied licenses. In recent cases, courts have

taken two divergent approaches in filling those gaps—borrowing the missing term from state law or crafting a “federal,” judge-made definition to fit the particular case. As revealed by a closer look at two Ninth Circuit cases, this dichotomy has led to inconsistent interpretations and ultimately, to a lack of guidance for future litigants.

UCLA ENTERTAINMENT LAW REVIEW

Volume 11

Issue 2

Summer 2004

EDITORIAL BOARD

Editors-in-Chief

THOMAS G. HOFFMAN
JAMIE MORIKAWA

Executive Editors

ERIC F. HARBERT
BRADLEY LEBOW

Chief Managing Editors

TEODORA MANOLOVA

Managing Editors

KATIE APOLLO
DENNIS BENT
BETHANY BOGART
EVAN DWIN
BERNICE HOWSE
JACOB KALINSKI
ZACHARY MAY
KRIS MCFARREN
LESLEY WASSER
HOLLY WILLIAMS

Chief Business Editor

ALICE MILRUD

Business Editor

PHILLIP R. LERCH

Chief Articles Editor

DEBORAH LINTZ

Articles Editors

MATTHEW BUCHANAN
NATHANIEL JACKSON
DAN LUCAS
DONNA MO
YESENIA SANTACRUZ
DAVID SOFFER

STAFF

KEN ASKIN
JAY BARRON
PETER BARTLE
CORY BASKIN
JULIA BEGGS
ADRIAN BETTS
RYAN BLAIR
MICHAEL BROWN
MILLIE CAVANAUGH
YOBANY E. CHACON
TREVOR CODINGTON
JESSE DEBBAN
RENEE DELPHIN
SARA DOOLEY
VINEET DUBEY
JOHN FERRARI
TODD FIGLER
ALISON FISCHER
DOUG FLAHAUT
SCOTT FRENCH
NICOLE GAMBINO
KRISTIN GERWECK
HAWA GHAUS
KRISTEN GRACE
AARON GREENO
CHRISTOPHER GROVE
LYNN HANG

JENNIFER HANSEN
LORETTA HARENBURG
DYLAN HARGREAVES
NOREEN HAROUN
MATTHEW HARVEY
ANDREW HOWARD
EDWARD HSU
MATT HYDE
SHING HWONG
ALUYAH I. IMOISILI
ANGEL JAMES
THOMAS KAO
MERHAWI RUSSOM KEFLEZIGHI
CARY KOTTLER
STEPHEN KRAUS
JENNIFER KU
JILL LEIBOLD
MACEO LEWIS
ALLEN LOEB
KRISTI D.A. MATTHEWS
ANDRA MAZUR
SHONDELLA MCCLELLAN
DANIEL MCKENZIE
SHANNON MCMASTERS
SUZANNA MINASIAN
JENNA MOLDAWSKY
EDWARD MUNDY

ALEXANDRA MURRAY
JUSTIN NATOLI
GLENN NIEVES
ELIZABETH OH
ALISON ORENDACH
MONIQUE K. PARDO
JACOB PATTERSON
GREGORY PEARMAN
NICOLE PETERSON
MELANIE PHILLIPS
AURA REINHARD
MARK ROBBINS
CORIE ROSEN
LUCY DUNN SCHWALLIE
IAN SINK
MICOL SORDINA
ERIN L. SPARKUHL
KEVIN TREDWAY
LUKE VANDERDRIFT
JAKE VELTMAN
JOHN VUONG
ALEX WHITE
LAURIE WILSON
SEAN WILSON
JIHOON YOO
STEPHANIE YU
DARIUS K.C. ZOLNOR

Subscription Price: \$20 per year, \$12.50 for a single issue.

Published twice a year by the School of Law, University of California, Los Angeles. Subscriptions are accepted on a volume basis, starting with the first issue. If notice of termination is not received before the expiration of a subscription, it will be renewed automatically.

The *UCLA Entertainment Law Review* welcomes articles and student comments on topics of interest to the entertainment legal community. Manuscript submissions via electronic mail are preferred. They may be directed to <elr@lawnet.ucla.edu>. Manuscripts may also be addressed to the Editor-in-Chief, *UCLA Entertainment Law Review*, UCLA School of Law, P.O. Box 951476, Los Angeles, California, 90095-1476. Manuscripts will not be returned unless postage is provided. No responsibility will be assumed for unsolicited manuscripts. Address subscription inquiries to the Business Editor of the *UCLA Entertainment Law Review*. Please send all changes of address with the most recent mailing label to the Business Editor.

The views expressed in articles printed herein are not to be regarded as those of the *UCLA Entertainment Law Review*, the editors, The Regents of the University of California, or the Editorial Advisory Board. The *Review* has asked contributing authors to disclose any financial interests or other affiliations which may have affected the positions taken in their works. Such disclosure will be found in the author's footnote accompanying the article.

Citations conform generally to *The Bluebook: A Uniform System of Citation* (17th ed.), copyright by the *Columbia, Harvard, and University of Pennsylvania Law Reviews* and the *Yale Law Journal*. Variations exist for purposes of clarity and at the editors' discretion.

Please cite this issue as 11 UCLA ENT. L. REV. – (2004).

EDITORIAL ADVISORY BOARD

FACULTY ADVISOR

EUGENE VOLOKH
UCLA School of Law

ADVISORY BOARD

BARBARA D. BOYLE
Boyle-Taylor Productions

GARY O. CONCOFF
Troy & Gould

DAVID R. GINSBURG
Citadel Entertainment

SAMUEL N. FISCHER
Ziffren, Brittenham, Branca & Fischer

HELENE HAHN
Dreamworks SKG

LINDA LICHTER
Lichter, Grossman & Nichols

SHELDON W. PRESSER
Warner Bros.

MICHAEL S. SHERMAN
Jeffer, Mangels, Butler & Marmaro

LIONEL S. SOBEL
Loyola University School of Law

ALLEN E. SUSMAN
Rosenfeld, Meyer & Susman

JOHN S. WILEY
UCLA School of Law

KENNETH ZIFFREN
Ziffren, Brittenham, Branca & Fischer

The *UCLA Entertainment Law Review* would especially like to thank the following groups that have contributed to the founding of this journal:

CONTRIBUTORS

Kenoff & Machtinger
Kramer & Goldwasser
Rogers & Harris
Shapiro, Posell, Rosenfeld & Close
Trope and Associates
Wolf, Rifkin & Shapiro
Wyman, Isaacs, Blumenthal & Lynne

PATRONS

Gipson Hoffman & Pancione

FOUNDERS

Ziffren, Brittenham, Branca & Fischer
The Matthew Bender Company, Inc.

The *UCLA Entertainment Law Review* would also like to thank the Graduate Students' Association for its support of this publication.

Amicus Brief of Michael Crichton et al. in *McFarlane v. Twist*

Eugene Volokh*

* Professor of Law, UCLA School of Law (volokh@law.ucla.edu). Many thanks to Erik Jaffe, who graciously agreed to be my counsel of record, and who provided invaluable editing advice, both substantive and technical, as well as guidance on formatting and filing; and to Stuart Banner, Lisa Bittan, Lawrence Grobel, Michael Kahn, Aaron Lamb, Karen Newman, Anne Volokh, and Jeremy Williams.

