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ARTICLES

The Right of Publicity in Digitally Produced Images: How the First Amendment is Being Used to Pick Celebrities' Pockets

Carissa Byrne Hessick 1

In *Hoffman v. Capital Cities/ABC, Inc.*, the Ninth Circuit restricted a celebrity's right to recover in a publicity suit for the unauthorized publication of a celebrity's image that has been digitally altered. Applying traditional First Amendment doctrine, the Hoffman Court, held that a celebrity cannot recover unless the image was published with the intent to create a false impression in the mind of the reader that the image had not been altered. This article discusses the new privacy and property interests implicated by digitally altered images, including the possible effect on a celebrity's ability to obtain compensation for posed photography sessions. The article ultimately concludes that property-based arguments may prove successful against a publication's First Amendment defense, thus protecting a celebrity's right to control the publication of her digitally altered image.

Revised UCC Article 9 and the Negative Pick-up Deal

David L. Wardle 19

The new Article 9 to the Uniform Commercial Code clarifies that recordation in the U.S. Copyright Office is an alternative, and not a preemptive, method of perfecting a security interest in copyrighted material. This clarification, in conjunction with recent court cases, dramatically changes the way in which security interests in motion pictures are perfected, particularly with respect to negative pick-up and pre-sale deals. This article examines these transactions, identifying the parties involved, their respective security interests, and then explores the implications for such transactions in light of the new law.

Digital Transmissions: To Boldly Go Where No First Sale Doctrine Has Gone Before

Brian Mencher 47

The First Sale Doctrine, codified in section 109(a) of the Copyright Act of 1976, grants the lawful purchaser of a copyrighted work the authority to sell or otherwise dispose of the particular copy. In the music industry, when analog formats (cassette tapes) and digital formats(compact discs) are sold, the original owner no longer has possession of the copyrighted work. With the advancement of technology, the doctrine is being tested in new ways. MP3 technology enables the lawful purchaser of a musical work the ability to dispose of that work by digital transmission. Currently with this format, however, when the copy is sold through a digital transfer, the original owner still retains a copy of the work - a clear violation of the reproduction right under the Copyright Act. Technology is being developed that will perform digital transmissions without reproducing the transmitted work. This article explores the First Sale Doctrine and examines whether it applies to digital transmissions, considering the business of the music industry. Ultimately, this article presents a business model for facilitating the First Sale Doctrine in the digital landscape.

COMMENT

The Environmental Cost of Filmmaking

Peter Flanigan 69

This article demonstrates that filming on location can have adverse environmental consequences. Despite the lack of regulatory restrictions or case precedent, filmmakers can face severe penalties for environmental damage in the guise of negative publicity, lawsuits and decreased grosses. The way to minimize environmental damage is to draft a document similar to an Environmental Impact Statement, which will focus the filmmaker's attention on potential environmental damage thereby reducing the possible damage.