

UCLA ENTERTAINMENT LAW REVIEW

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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.

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

Eugene Volokh*

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