UCLA ENTERTAINMENT LAW REVIEW

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ARTICLES

A new bright-line rule in copyright law in the Sixth Circuit digital sampling case of *Bridgeport Music v. Dimension Films* (decided in 2004 and rearticulated in June 2005) not only misinterprets legislative intent, but also demonstrates little understanding or knowledge of the larger history and methodology of music composition. Digital sampling and issues of copyright infringement continues to spark fervent debate; unfortunately, the literature tends to ignore or misunderstand the practice and precedent of music composition as it has existed in Western practice for over a thousand years. Sampling is merely a newer technique in the continuing development of that practice. This article analyzes and considers sampling within the larger history of music composition in order to provide a better sense of balance and perspective in the continuing discussion.

Additionally, the article argues that a broader middle ground - encompassing the doctrines of *de minimis* use and fair use as well as a compulsory license scheme in certain situations - would both satisfy competing economic interests and encourage the growth of a healthy creative environment and culture. In contrast to court decisions such as that of the Sixth Circuit, this legislative and legal framework better reflects the spirit and intent of the original purpose behind the copyright provision of the Constitution.

What role should Judges and Juries play in addressing claims for disappointment of consumer expectations within the live concert industry?

The article was inspired by, and partially based on, a class action case successfully defended in the Chancery Division of the Circuit Court of Cook County, Illinois. The case, Berenz, et. al. vs. Creed Music, Inc. (Diamond Road, Inc.), USA Interactive (Ticketmaster), and Jeff Hanson Management & Promotions, Inc., No. 03 CH 07106, was filed by Plaintiffs over, ostensibly, a less than spectacular concert performance by the rock band Creed. The Plaintiffs essentially alleged that the band's lead singer was either intoxicated or inebriated to the point that his performance was so lackluster that it was tantamount to a non-performance, and accordingly all patrons in attendance should have been entitled to a refund of the ticket price. While the article studies this case in particular, it also looks at the more global aspect of the viability of lawsuits based upon a disappointment of consumer expectations within the live performance industry. Equally applicable to live sporting events as well, the article diffuses the mysteries of exactly what a ticket constitutes, thereby defeating claims for breach of contract, and ultimately suggests that for disappointed consumers, their recourse lies not with the court system, but rather in the market. Fans and consumers are entitled to stop buying music from a specific artist, and can refuse to attend any further concerts, but our courts should not be playing the role of "rock critic".

Flagrant Foul: Racism in "The Ron Artest Fight"

With under a minute left in the Indiana Pacers-Detroit Pistons basketball game, Pacer Ron Artest was called for a hard foul on Detroit star Ben Wallace, prompting Wallace to shove Artest forcefully with two hands. Thus began a brawl that would engulf the teams, the fans, and eventually the NBA, NBPA and the sports world nation-wide. Media reaction to the fight was clear in its focus on Artest but incautious in its entrance into the cultural contest, contributing to an acknowledgement that the incident was emblematic that lacked an understanding of what precisely it reflected.

Flagrant Foul focuses on the influence of racial bias in framing "the Ron Artest Fight" and its impact in the severe suspensions that followed. Criminological or economic explanations are lacking, lending clarity to the racial dimensions of the media and league responses. More, the reflection of market bias in addressing player misconduct is widespread, with racially charged incidents attracting increased scrutiny and violence against women and other ills often going unaddressed. League policies should be reformed to be less discretionary and more proportionate to the severity of the offenses even if, as in the steroids debate, federal legislative action is necessary.

COMMENTS

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