

UCLA ENTERTAINMENT LAW REVIEW

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ARTICLES

The Expressive Workplace Doctrine: Protecting the Public Discourse from Hostile Work Environment Actions

Jonathan Segal 1

Fear of hostile work environment litigation has led employers involved in expressive enterprises such as television production to institute speech codes that make it difficult for employees to participate in the sorts of off-color, graphic, or painfully honest discourse that the creative process demands. In the quest to protect litigious workers' sensitivities, adult comedy might be less edgy; historical dramas might be less realistic; advertising less effective; the news of a political sex scandal might be less detailed; immigration debates might be less lively; even the nudes at a museum might be less nude. Consequently, curtailing certain kinds of speech within a workplace might have the effect of curtailing speech outside it as well.

To minimize the extent to which harassment concerns deter constitutionally protected speech and to resolve the tension between the First Amendment and workplace harassment laws in expressive workplaces, legislatures and courts should give these employers a limited exemption from hostile work environment claims. This Article develops a rule called the Expressive Workplace Doctrine that would strike a needed balance between hostile work environment protections and First Amendment interests. The Expressive Workplace Doctrine tilts the hostile work environment balance toward greater speech protection.

Inside the FBI Inspections of Adult Movie Company Age-Verification Records: A Dialogue with Special Agent Chuck Joyner

Clay Calvert & Robert D. Richards 55

This Article is intended as a companion piece to the *Legacy of Lords* article published in the UCLA Entertainment Law Review's Summer, 2007 issue (Volume 14.2). In particular, the new Article features an exclusive interview

conducted by the authors with FBI Supervisory Special Agent Chuck Joyner at the FBI office in Los Angeles.

Whereas the *Legacy of Lords* article addressed the FBI raids of adult movie industry age-verification records from the point of view of those working within the industry, this Article explores an alternative point of view of the searches: that of the FBI and the government.

No Trust at the NFL: League’s Network Passes Rule of Reason Analysis

James J. LaRocca 87

Last Thanksgiving, the NFL Network, a new cable television channel owned and operated by the National Football League, exclusively televised its first of eight football games for the 2006-07 season. Unfortunately, thousands missed the premiere because three of the country’s largest cable operators declined deals with the NFL.

While the NFL is willing to provide its network to the cable operators (for a fee), the league insists that each operator offer the station to its customers as part of its basic cable package. The NFL believes that once thousands of disappointed people realize they cannot access the games it exclusively carries on its network, they will pressure their cable providers to carry the station, creating significant advertising revenue for the league. The NFL’s plan has sparked a Senate Judiciary Committee hearing to examine possible antitrust violations.

This Article defends the NFL’s actions from an antitrust perspective. It argues that the NFL’s plan passes a “full-blown” rule of reason test since the plan is pro-competitive: it provides the public with broader access to games, at no additional costs, and is necessary for the network’s survival.

SPECIAL MUSIC INDUSTRY SECTION

The New (Record) Deal

Zac Locke 105

Most new artists eventually become disenchanted with their record deals, and never see a penny of income after their initial advances. While some observers would like to get rid of record labels altogether, this Note suggests that drastically changing the system instead of eliminating it may be the answer. After all, labels still provide valuable marketing for artists, helping them break through the ever-increasing clutter. Thus, this Note suggests a new model for recording contracts between labels and new artists. The proposed record deal is one of limited exclusivity, with a comprehensive revenue sharing model, based on a number of deliverable songs. The Note posits that the system could

be simpler, fairer, and actually force labels and artists to work together to develop the artists' careers while providing both with new revenue sources.

Dollars, Downloads and Digital Distribution: Is “Making Available” a Copyrighted Work a Violation of the Author’s Distribution Right?

Kristy Wiehe 117

Recent litigation initiated by members of the Recording Industry Association of America asserts that “making available” a copyrighted sound recording on a peer-to-peer (P2P) file-sharing network is a violation of the copyright holder’s exclusive right of distribution. The RIAA’s “making available” theory is too broad, and contradicts both the plain language and legislative history of the Copyright Act, which give authors a narrow distribution right. This Note proposes a solution both to the narrow legal issue as well as to the broader business issues facing the recording industry today: namely, that the music industry must provide an economic rationale for consumers to purchase music. The Note concludes by proposing potential incentives that the industry could use to entice consumers to purchase music instead of illegally downloading it.

An Alternative Operating Model for the Record Industry Based on the Development and Application of Non-Traditional Financial Models

Vivek V. Mali 127

The days of monster profits for record labels have come to an end, partly as a result of technological advances and the availability of affordable, powerful personal computers that have removed barriers to entry into the music marketplace. The Note proposes using private equity funds that invest in musicians’ intellectual property as a viable alternative operating structure for the record industry in the face of this democratization of ownership. The flexible, dynamic and diverse characteristics of a private equity fund and the low barrier to enter the marketplace for individual musicians, taken together with the numerous digital distribution channels and virtual ‘venues’ available, could influence the record industry’s move towards this model.

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