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ARTICLES

All Four Quarters: A Retrospective and Analysis of the 2011 Collective Bargaining Process and Agreement in the National Football League

Chris Deubert, Glenn M. Wong & John Howe.....1

The NFL survived the 2011 offseason despite being bombarded by a sports law perfect storm. The National Football League Players Association (NFLPA or the Players) decertified itself as the bargaining representative of NFL players on March 11, 2011, hours before the expiration of the collective bargaining agreement that the NFL and the NFLPA agreed to in 2006 (the 2006 CBA). That night, nine current NFL players and one prospective NFL player, led by New England Patriots quarterback Tom Brady, filed an antitrust lawsuit against the NFL and its 32 Clubs.

The Brady lawsuit was just part of a litigious 2011 in professional football. The NFL responded to the Brady lawsuit with a "lockout." Players could not report to work, Clubs could not have any contact with players and, eventually, games could have been missed. In addition to the Brady lawsuit, the Players sought damages related to the NFL's television contracts that allegedly violated the 2006 CBA, retired players fought for their rights in the labor negotiations, and the NFL contended that the NFLPA had failed to bargain in good-faith in a proceeding before the National Labor Relations Board.

The NFL and NFLPA ultimately reached a settlement of the various

lawsuits and agreed to a new CBA (the 2011 CBA) without missing any regular season games. This Article examines the history of labor negotiations in the NFL, provides a thorough examination of the most recent labor dispute and its related legal actions, and concludes with a detailed analysis of the 2011 CBA.

Shedding Light on Copyright Trolls: An Analysis of Mass Copyright Litigation in the Age of Statutory Damages

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Copyright law and the Internet are at an impasse. The looming question is how to approach unlicensed distribution of copyrighted works in the age of peer-to-peer networks. To supplement profits from copyrighted works, copyright holders have devised a mass-litigation model to monetize, rather than deter, infringement. Because of the existence of statutory damages, plaintiffs utilize the threat of outlandish damage awards to force alleged infringers into quick settlements.

Statutory damages incentivize litigation-based businesses and encourage copyright holders to waste judicial resources by litigating even when actual damages are nominal. This Article presents an analysis of the legal and policy issues that arise in a mass-litigation model primarily through filings in federal district courts. After a discussion of the original purposes of U.S. copyright law, this Article concludes that statutory damages should be removed from the 1976 Copyright Act.

The Aesthetics of Copyright Adjudication

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The American legal system is unable to continue avoiding the question of art versus non-art. In particular, questions of copyrightability often hinge on art-status. Yet art is a constantly evolving, reflexive field in which artists and philosophers continually challenge the status quo. Judges would benefit from analyzing claims to art-status under the objectivity provided by well-developed aesthetic theories, aided by expert testimony when needed. After reviewing several major philosophies of art, this article proposes a framework for adjudicating

art-status based on an aesthetic theory known as the Historical Definition of Art. Furthermore, to balance copyright law's purpose of protecting innovation with its need to promote public availability of copyrighted works, this article proposes the creation of a new statutory exception to provide a defense for "utilitarian adaptations" of copyrighted three-dimensional works. This statutory defense would serve to encourage innovation and stimulate production of novel goods.

ESSAY

Correcting Digital Speech

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The market for information has changed dramatically in the past decade with the popularization of the Internet, the exponential growth in number and variety of speakers, and the increased democratization of speech. These shifts have made digital media particularly vulnerable to harm from information pollution; the information market is not as capable as it once was of ensuring that the truth prevails. Anecdotal evidence suggests that information consumers are not looking for the truth, but rather, for information that confirms their own pre-existing biases. Moreover, there is significant evidence that people are resistant to changing their minds from what they had previously believed, even if it is later proven to be false. Combined, market failures in disseminating information and personal heuristics in interpreting information suggest that the remedy of more speech to combat false or defamatory speech is not as effective as once thought. Instead, First Amendment jurisprudence should be rebalanced to allow for a general right of correction for digital speech.

COMMENT

A Public Press? Evaluating the Viability of Government Subsidies for the Newspaper Industry

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Despite the availability of information from online news organizations and new media outlets, newspapers remain the primary contributor of new content to the marketplace of information and ideas—integral in

setting the agenda for public discourse, connecting readers with their communities, reducing the costs of citizen oversight on elected officials, and producing investigative and local news reports. But newspaper economics have sparked massive reductions in editorial operations and threaten the press's role in American democratic society. The strong public interest in preserving the newspaper industry should compel Congress to stabilize the press.

Journalists, politicians, and legal scholars have discussed many possible solutions. This Comment evaluates the practical and constitutional questions raised by two potential public subsidy programs—direct government funding and indirect support by facilitating newspaper conversion to nonprofit status—and whether such programs could be administered without jeopardizing the Fourth Estate's independence. This Comment argues that direct subsidies, though they could be tailored to survive constitutional challenge and to protect editorial independence, cannot deliver a feasible long-term solution. Indirect subsidies likely would only be available to newspapers following an amendment to the U.S. tax code and even then would provide limited benefit to qualifying newspapers until they have developed a fundraising base. Yet, this Comment concludes that subsidies could stabilize the press practically if Congress combined direct funding and tax-based incentives into a hybrid similar to that utilized by public radio.