"Entertainment Law".

In Section 1 of this course you will cover these topics:

- Introduction To The American Legal System
- Agents And Managers
- Entertainment Contracts

Topic : Introduction To The American Legal System

Topic Objective:

At the end of this topic student would be able to:

- Understand various industries involved in the study of entertainment law
- Learn about American legal system historical roots in the common law of England
- Recognize the Bill of Rights
- Value the Constitutional Amendments important in the study of entertainment law
- Identify the State And Federal court systems
- Comprehend the role of FCC and the FTC, with regard to entertainment
- Provide an example of a Secondary Legal Reference
- Give examples of print journals for subscription
- Discuss Law-Related internet web sites for legal research
- Understand the American Legal System by non-lawyers

Definition/Overview:

Law of the United States: The law of the United Stateswas originally largely derived from the common law system of English law, which was in force at the time of the Revolutionary War.

Key Points:

1. Various Industries Involved In The Study Of Entertainment Law

Music, television, Internet media, radio, movies and live entertainment and performances are all examples of industries involved in entertainment law. The sports industry also overlaps into the arena of entertainment law.

2. American legal system historical roots in the common law of England

Simply put, the American legal system has its roots in England because the original settlers were primarily from England. The state of Louisiana, of course, had a different settlement history and is based upon the French Civil Code.

3. Bill of Rights

The first ten amendments are known as the Bill of Rights.

4. Constitutional Amendments important in the study of entertainment law

The primary amendments in entertainment law include the First, Fifth and Fourteenth Amendments. Others may apply of course as well.

5. State And Federal court systems

The concept of federalism allows for individual states to deal with state issues, while the federal court system relates to federal issues. Federal laws also address interstate commerce issues and concerns while state laws address private contract, landlord-tenant, and real and personal property issues, for example.

6. Role of FCC and the FTC, with regard to entertainment

Both the Federal Communications Commission and the Federal Trade Commission play a major role in regulating various aspects of the entertainment industry especially in radio and television broadcasts. The role of administrative agencies, generally, is to promulgate and enforce governmental regulations within a particular industry.

7. Example of a Secondary Legal Reference

There are several different types of secondary sources, including books or treatises, articles, encyclopedias, and form books. The Restatement of Torts, Restatement of Contracts and Corpus JurisSecundum (C.J.S.) are popular examples of secondary legal sources.

8. Examples of Print Journals for Subscription

Generally speaking, there are volumes of print journals that lawyers and paralegals may wish to subscribe. However, in the entertainment industry, two of the largest publications include The Hollywood Reporter and Variety. The role and easy access of the Internet, however, has affected the number of print journals that organizations wish to subscribe.

9. Law-related internet web sites for legal research

Legal databases such as www.westlaw.com, www.lexis.com, www.findlaw.com and many others now provide access to the traditional hard-bound volumes of books like never before. Entertainment lawyers can go online to free (findlaw.com) and pay (subscription) sites. Another good source is the Google.com search engine though that is not specific to the law. Other efforts to find general research include exploring yahoo.com, netscape.com, askjeeves.com and so on.

10. Understanding of the American Legal System by non-lawyers

Whether a citizen, business or one who does business that affects American business, it is appropriate to understand the American legal system. One may seek legal redress for an injury or one may be brought to court for alleged instances of criminal or civil impropriety.

Topic : Agents And Managers

Topic Objective:

At the end of this topic student would be able to:

- Understand Role of a talent agent in the entertainment industry
- Learn about The Fiduciary duties owed by a talent agent to the client
- Recognize the Difference between a personal manager and a talent agent
- Comprehend Role of Unions (Guilds) in the entertainment industry

- Identify The two states that regulate agents in the entertainment industry
- Value Codes of ethics that lawyers must follow to maintain their license

Definition/Overview:

Talent Agent: A talent agent, or booking agent, is a person who finds jobs for actors, musicians, models, and other people in various entertainment businesses. Agents make their money by taking a percentage of the money that their client is paid.

Key Points:

1. Role of a talent agent in the entertainment industry

Talent agents are marketing intermediaries: their goal is to secure deals on behalf of their clients (a.k.a. talent). However, there are personal managers, talent agents, booking agents, business managers, lawyers and other intermediaries who act on behalf of talent as well. Sometimes the role of the agents can overlap, but it is important to understand that managers and agents are regulated differently. Some of the larger talent agencies include The William Morris Agency, ICM (International Creative Management), and CAA (Creative Artists Agency). Ultimately, an agent acts on behalf of the principal.

2. The Fiduciary duties owed by a talent agent to the client

Fiduciary duties that are owed to another are often described in various ways. Some of the descriptions of duties in any fiduciary relationship include:

- Duty of Loyalty: The principle that an employer or employee may not divert a business opportunity to themselves or a competitor.
- Duty of Care: An agent must use reasonable skill and diligence when working for the principal.
- Duty of Accounting: An agent must keep an account (and be able to account for) of all money and property received and paid out on behalf of a principal.
- Duty of Good Faith: An agent must be truthful and faithful to promoting the interests of the principal.
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3. Difference between a personal manager and a talent agent

Personal managers are often the closest persons to the talent during their career and often give input and advice as to how to best seek and ultimate select business opportunities in order to generate the most revenue for their client. Managers play the various roles of coach, counselor, publicist and adviser, and they do not negotiate deals for their clients (or they are not supposed to). A personal manager shapes and molds the entertainers career especially for unproven talent. The role of the manager is to package the persona of the entertainer. The personal managers role is often inglorious and often receives little thanks. Personal managers in California may not procure employment for talent. In contrast to California law,New York law has a major exception to licensing known as the incidental booking exception for managers.

4. Role Of Unions (Guilds) In The Entertainment Industry

There are numerous unions in the entertainment industry. Some of the major entertainment related unions include the American Federation of Musicians (AFM) the American Federation of Television and Radio Artists (AFTRA), the Screen Actors Guild (SAG) the National Writers Union (NWU), and the Authors Guild. Entertainment unions organized to assert and expand wages and benefits. Their purposes also include protecting artists from unethical or improper activities by their representatives (including limiting the fees that talent agents can charge for their services and utilizing standard contracts), and conduct by employers such as production studios, for example.

5. The two states that regulate agents in the entertainment industry

California and New York regulate agents more than another other state. This is due to the fact that most of the entertainment industry is found (and focuses) in Los Angeles and New York City.

6. The incidental booking exception in New York

New Yorks incidental booking exception applies only to representatives who function primarily as managers for their clients. This exception has been repeatedly held by the courts to mean that the seeking of employment must be incidental to the provision of management services. California talent agents oppose the incidental booking exception in their state

claiming that it would harm their business. Competition for business in California is quite fierce and agents understandably do not wish to increase opportunities for managers.

7. Codes of ethics that lawyers must follow to maintain their license

Important to lawyers is to avoid a violation of an established state code of professional responsibility such as the 1983 draft of the American Bar Association (ABA) Model Rules of Professional Conduct (MRPC) or the 1974 draft of the Model Code of Professional Responsibility (MCPR). Almost all states use verbatim or variations of the MRPC as the standard for ethical considerations for lawyers. Of particular concern are the regulations related to advertising and solicitation.

8. Difference of sports agents from entertainment agents or managers

Sports agents are regulated much differently than talent agents, personal managers, and other intermediaries in entertainment. Beginning in the 1980s, states began to regulate sports agent activity specifically with regard to the recruiting of student-athletes as clients at colleges and universities around the country who had remaining eligibility to participate. The purpose was to avoid sanctions from the National Collegiate Athletic Association (NCAA). In order to avoid confusion among the various state laws, the National Conference of Commissioners on Uniform State Laws (NCCUSL) drafted a model act (2000) for states to adopt known as the Uniform Athlete Agents Act (UAAA). The recently enacted federal Sports Agent and Responsibility Trust Act (SPARTA) providessome of the protections of the UAAA, but is not as comprehensive. SPARTA seeks to prevent agents from luring student-athletes into signing agency contracts with valuable gifts and false or misleading information by subjecting them to FTC regulation.

9. The Uniform Athlete Agents Act

The National Conference of Commissioners on Uniform State Laws (NCCUSL) drafted a model law to provide uniform regulation of agents. This was the result of unscrupulous agent activity with regard to student-athletes with remaining eligibility. Working with representatives from the NCAA and professional players associations, the NCCUSL completed the Uniform Athlete Agent Act (UAAA) in 2000. Over thirty states have adopted the UAAA as of 2005.

10. Agents should be regulated at the federal or states level

This is a matter of opinion. More regulation is not necessarily better. Sports agents today are, in essence, regulated federally with the recent adoption of SPARTA. Sports agents are also regulated by individual players associations such as the NFLPA, for example.

11. The affect of internet on the role and effectiveness of a talent agent

Access to information and the reduction of overhead costs has certainly changed the way in which a talent agent can promote talent over the Internet. Potential purchasers (venues) for talent can simply-with a few keystrokes-book talent from their office computer. The Internet has certainly improved access to talent and has opened doors for entrepreneurs in this field.

Topic : Entertainment Contracts

Topic Objective:

At the end of this topic student would be able to:

- Understand the fundamental elements to form a contract
- Learn about the importance of having a meeting of the minds
- Understand oral contracts and the pitfalls of agreeing to it
- Understand the concerns of minors and contracts
- Understand laws related to minors and entertainment
- Learn about the remedies related to a breach of contract and punitive damages
- Learn about the examples of collective bargaining agreements in entertainment law
- Understand Statute of frauds application to certain types of agreements
- Learn about the consideration of tickets and ticket stubs as contracts

Definition/Overview:

Play contract: A pay or play clause (or guaranteed contract) in an entertainment contract means that the person who is being hired (typically an actor) is guaranteed payment regardless of whether he or she actually works.

Key Points:

1. The fundamental elements to form a contract

Contracts require an offer, acceptance of the offer, and consideration. The contract must also be for a legal purpose and the parties to a contract must have the legal capacity to enter into the agreement.

2. The importance of having a meeting of the minds

A meeting of the minds is vital to show that the contract reflects the parties true intentions and that there was not a mutual (bilateral) mistake of fact.

3. Oral contracts and the pitfalls of agreeing to it

Yes, oral contracts are still used in the entertainment industry, but much less frequently than in the early days of Hollywoodentertainment. As more money and people are involved in a contract, parties to an agreement will often not even begin to perform a contract today until it is in writing and signed by the parties involved. Aside from the fact that certain contracts must be in writing (under the statute of frauds), one of the most important pitfalls of having a contract without a written agreement is proof of what was actually agreed upon, after the fact.

4. The concerns of minors and contracts

Minors are those under the age of eighteen years old. Ultimately the concerns over minors include misappropriation of funds by minors parents, the role of maintaining natural educational progression, and the harshness of losing ones youth in an adult world and its psychological and emotional ramifications.

5. Laws related to minors and entertainment

The entertainment industry deals with contracts to persons under the age of eighteen regularly. Under general contract law principles, these minors may void or disaffirm contracts. States such as New York, California, Florida and others have enacted laws that govern entertainment contracts with minors since minors (or sometimes described as infants) may disaffirm contracts. Minors often serve as models in commercials and advertising media. Hundreds of famous child actors have benefited from the entertainment industrys reliance on

minors for the generation of revenue and profits. Unions such SAG, AFTRA and the Actors Equity Association (AEA) have adopted special work rules that may apply to minors in connection with their services in the industry. Note: In 2003, Tennessee (also known as the third coast) established the Tennessee Protection of Minor Performers Act.

6. Remedies related to a breach of contract and punitive damages

There are several kinds of contract remedies available to the victim of a breach of contract:

- **Compensatory Damages**. Compensatory damages can be defined as the amount of money necessary to make up for the economic loss caused as a result of the breach of contract.
- **Specific Performance**. Specific performance is an order by the court requiring the party that breached the contract to perform its obligation. Similar to an injunction, specific performance orders performance whereas an injunction orders non-performance.
- **Consequential Damages**. Consequential damages are economic loss caused indirectly by a breach of contract.
- **Liquidated Damages**. Liquidated damages are damages specified in the contract itself and are often referred to as agreed-upon damages.

Punitive damages are not allowed for breach of contract since the goal of contract law is to merely put the parties in the position they would have been had the contract been performed.

7. Examples of collective bargaining agreements in entertainment law

Collective bargaining agreements are often the byproduct of serious negotiations in the entertainment industry and include examples, as discussed further in the text, such as the Screen Actors Guild, the Writers Guild, and the Directors Guild Basic Agreement.

8. Statute Of Frauds application to certain types of agreements

The statute of frauds applies only to certain types of agreements as a matter of public policy. Historically, certain types of contracts were ripe with fraud and states (and the UCC) have incorporated this principle to avoid fraud (or proof problems) in contracts.

9. Consideration of tickets and ticket stubs as contracts

Tickets and tickets stubs are usually not considered contracts since the purchase of a ticket did not involve a meeting of the minds. Instead, tickets are treated more as a license to view a performance. Waivers on the back of tickets are almost never held as a viable contract by courts as there was no bargained for exchange.

10. Bankruptcy courts power to avoid certain types of contracts

That is the role of bankruptcy. Recent changes in bankruptcy law, however, will make it much more difficult to use bankruptcy to avoid contracts.

In Section 2 of this course you will cover these topics:

- Constitutional Issues In Entertainment Law
- Administrative Regulation In Broadcast Entertainment

Topic : Constitutional Issues In Entertainment Law

Topic Objective:

At the end of this topic student would be able to:

- Understand Constitutional Issues Are Relevant To The Entertainment Industry
- Learn about Parody and Satire Important In Entertainment
- Understand Various Torts Related To Constitutional Issues In Entertainment
- Understand Right To Privacy And Publicity
- Understand Consideration of using retractions
- Learn about the Effectiveness Of Court Orders Are To End Stalking Behavior And Misconduct
- Understand Broadcast Speech Regulation By The Federal Government
- Understand Concerns Related To Subliminal Speech In Entertainment
- Learn if the paparazzi should be regulated?

Definition/Overview:

Entertainment law: Entertainment law or media law is a term for a mix of more traditional categories of law with a focus on providing legal services to the entertainment industry. The principal areas of Entertainment Law overlap substantially with the well-known and conventional field of intellectual property law.

Key Points:

1. Constitutional Issues Are Relevant To The Entertainment Industry

Freedom of speech and freedom of the press are freedoms that cut to the core of constitutional issues involved in the entertainment industry, an industry that thrives on the communication and expression of ideas. Whether entertainers and artists play roles in films, television, play music or simply serve as spokespersons for products or services, those involved in the entertainment industry ultimately live and die on their performances. Their speech, commentary and expressions often undergo great public scrutiny and criticism. The First Amendment to the U.S. Constitution is the primary focus of constitutional issues in entertainment.

2. Parody and Satire Important In Entertainment

Satire is a form of literature that uses humor and imitation to ridicule individuals moral and character traits and flaws. A parody is similar, but it can be found in literature, music, art or film for humorous purposes. These two methods have been used for centuries to criticize public figures and politics generally. Again, this involves the First Amendment concepts of freedom of speech, freedom of the press, and the court-made right characterized as freedom of expression. Sometimes referred to as humorous speech, cases involving what would otherwise be considered defamatory statements are given much leeway by courts as long as a reasonable person would know that the statements are made in jest. Statements that are meant to be funny or encourage laughter are all part of living life and are not actionable in a court of law. This is how tabloid magazines and newspapers and their journalists have been able to defend many (but not all) claims against them for what might otherwise have been defamation.

3. Various Torts Related To Constitutional Issues In Entertainment

Defamation has evolved into a civil wrong (tort) as the act of making untrue statements about another which damages his/her reputation and/or deters others from working with or

association with the defamed party. Defamation is an attack on the good reputation of a person or a person's business, by slander or libel. Similar to the concept of actual malice, nowhere in the Constitution is the term defamation found. Such concepts are terms developed by the Supreme Court as it has interpreted the Constitution. In the very important defamation case New York Times Co. v. Sullivan 376 U.S. 254 (1964), the Supreme Court of the United States held that the First Amendment prohibited a public official from recovering any damages for defamation based on criticism of official conduct unless the official proved the statement was made with actual malice. In order to meet the actual malice standard, the Court held that he was required to establish that the defendant published the defamatory material with knowledge of its falsity or acted with reckless disregard for the truth or falsity of the publication. If the defamatory statement is written, printed or otherwise broadcast over the various forms of media it is considered libel. Spoken defamation is considered slander. Slander, essentially an oral communication, requires proof of special damages unless the defamatory statement falls within certain common law categories of slander per se. If a plaintiff in a slander action is unable to prove either special damages or slander per se, the plaintiff is barred from recovery. Some statements such as an accusation of having committed a crime, having a feared disease or being unable to perform ones occupation are referred to as libel per se or slander per se and can lead to damage awards involving punitive damages. Most states provide for a demand for a printed retraction of defamation and only allow a lawsuit if there is no such admission of error. Though public figures and officials must meet the actual malice standard as established in New York Times v. Sullivan in order to recover for a claim of defamation, one method to avoid having to meet such a high legal standard is by suing under a different tort: the tort of intentional infliction of emotional distress. This unique tort has four elements: (1) the defendant must act intentionally or recklessly; (2) the defendant's conduct must be extreme and outrageous; and (3) the conduct must be the cause (4) of severe emotional distress.

4. Right To Privacy And Publicity

The phrase right of privacy is not explicit in the Constitution. However, Justice Brandeis acknowledged this right in the decision of Olmstead v. United States. Brandeis argued that despite the lack of specific language in the Constitution, the framers conferred the right to be left alone as the most comprehensive of rights and the right most valued by civilized men. This right of privacy is not to be confused with the Fourth Amendment guard against

unreasonable searches and seizures by the government (or police). This is the tort of invasion of privacy and celebrities will sue for the tort of invasion of privacy (which encompasses the right of privacy) due to the unyielding nature of some of the members of the media or fans and the like, and due to alleged libelous statements that place the plaintiffs in a false light. The right of publicity sometimes referred to as commercial misappropriation is a court based legal doctrine that prevents the unauthorized commercial use of an individual name, likeness, or other recognizable aspects of one's persona. Right of publicity gives an individual the exclusive right to license the use of their identity for commercial and consequently financial promotion. The right of publicity has been identified by courts as the inherent right of every human being to control the commercial use of his or her own identity. There are four types of invasions of privacy: (1) intrusion, (2) appropriation of name or likeness, (3) unreasonable publicity and (4) false light.

5. Consideration of using retractions

One of the greatest measures of protection for media defendants is called the retraction. It is a defense to defamation. If a publication is made that is false, states may allow the publisher to retract the statement without imposition of penalty. This is important especially for inadvertent statements due to human error. Retractions occur frequently in the press for a variety of reasons including the publication of incorrect facts which are not necessarily defamatory. Whether (or not) the media abuses false publications (knowing that a mere retraction is necessary to avoid a successful lawsuit) is a matter of opinion among readers.

6. Effectiveness Of Court Orders Are To End Stalking Behavior And Misconduct

A matter of opinion, a court order may (or may not) deter stalking behavior. Ultimately, a court order is merely a piece of paper, signed by a judge and enforced only by appropriate governmental authorities.

7. BroadcastSpeech Regulation By The Federal Government

The FCC and the FTC regulate broadcast speech (such as obscene and indecent speech, and advertising).

8. Concerns Related To Subliminal Speech In Entertainment

The primary concern over subliminal speech is that it can influence a persons behavior or attitude subconconsciously. In Waller v. Osbourne, 763 F. Supp. 1144 (M.D. Ga. 1991), the plaintiffs brought a wrongful death action asserting that their son had been incited to commit suicide through the music, lyrics, and subliminal messages contained the song Suicide Solution on the album Blizzard of Oz by John Ozzy Osbourne. The court noted that the presence of a subliminal message (similar to false and misleading commercial speech) has little social value. If the song had subliminal messages, the music would then have no First Amendment protection. The court concluded that the most important characteristic of a subliminal message is that it enters into the brain while the listener is unaware that he or she has heard anything at all. Ultimately, the court held the plaintiff had failed to produce evidence from which one could even infer that there was a subliminal message in the song. In another case involving the group Judas Priest, a trial judge ruled that subliminal speech or music on record albums did not deserve First Amendment protection and that people have the right to be free from this type of speech.

9. Should the paparazzi be regulated?

Probably not by the government, but that is a matter of opinion. The paparazzi (sometimes referred to as the stalkerazzi) are subject to the same laws as other individuals in both civil and criminal matters.

Topic : Administrative Regulation In Broadcast Entertainment

Topic Objective:

At the end of this topic student would be able to:

- Comprehend the specific roles of the FCC and the FTC
- Understand the difference between obscene and indecent speech in broadcasting
- Access knowledge about the effective time limitation for broadcasting indecent speech
- Gain knowledge about the Miller Test
- Study the importance of the decision in the Pacifica case
- Explore the fairness doctrine instituted and repealed
- Understand Webcasting
- Learn about Broadcasting of religious programs
- Value the Telecommunications Act Of 1996 and the Communication Act Of 1934

- Identify the role of the FTC and infomercials
- Identify SDARS and Traditional Radio Broadcasting

Definition/Overview:

The Communications and Media Authority is a government agency whose main roles are to regulate broadcasting, radio communications and telecommunications, and to represent the interests in international communications matters. It also has a role in regulating Internet content standards.

Key Points:

1. The specific roles of the FCC and the FTC

The Federal Communications Commission (FCC) is the federal agency that reports to Congress and regulates interstate and international radio, television, wire, cable and satellite broadcasts. Part of its role is to ensure that obscene language is not broadcast. The FCC is authorized under the Communications Act of 1934 to levy a fine against a broadcast licensee or even revoke the license of a station that aired obscene or indecent language. The prohibition against indecent speech does not apply to programming aired on cable-only television channels or the Internet. The Federal Trade Commission (FTC) is a consumer protection agency with mandates under the Federal Trade Commission Act (15 U.S.C. 41-51) to guard the marketplace from unfair methods of competition, and to prevent unfair or deceptive acts or unfair business practices that harm consumers and is especially noticeable with regard to labeling and advertising.

2. The difference between obscene and indecent speech in broadcasting

Obscene broadcasting is not protected by the First Amendment nor under FCC regulations. Media broadcasts using the public airwaves cannot broadcast obscene material at any time whatsoever. Complaints against broadcasters may be filed with the FCC. In Miller v. California 413 U.S. 14 (1973), the U.S. Supreme Court established a three-pronged test (known as the Miller test) for obscenity prohibitions which would violate the First Amendment. While the First Amendment protects indecent published material and speech, a broadcast deemed indecent is not without governmental regulation. The FCC restricts the television and radio broadcast times of potentially indecent broadcasts to after 10:00 p.m. and

before 6:00 a.m. The FCC has defined indecent broadcasting as language or material that, in context, depicts or describes, in terms patently offensive as measured by the contemporary community standards for the broadcast medium, sexual or excretory organs or activities.

3. The effective time limitation for broadcasting indecent speech

A matter of opinion, it may or may not be effective. With the advent of the Internet and, as many say, declining societal values in general, the time limitation may be merely good publicity. On the other hand it does represent some measure of legitimate government control over speech especially with regard to stay-at-home children who may be watching television or listening to the radio.

4. TheMiller Test

In Miller v. California 413 U.S. 14 (1973) the U.S. Supreme Court established a three-pronged test (known as the Miller test) for obscenity prohibitions related to media broadcasts which would violate the First Amendment:

- Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest (arousing lustful feelings); Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- Whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.
- Of course, this involves a lot of interpreting the meaning of average person and community standards which can change from neighborhood community to state to region and so on, leaving much interpretation to the courts on a case-by-case basis.

5. The importance of the decision in the Pacifica case

The Supreme Court held in FCC v. Pacifica Found., 438 U.S. 726 (1978) that the FCC can restrict indecent speech on the airwaves even though such speech is otherwise protected under the First Amendment. This case involved an afternoon radio broadcast of comedian George Carlins twelve minute monologue entitled Filthy Words, which listed and repeated a variety of uses of words you couldn't say on the public airwaves. The Court found the Carlin

monologue to be indecent and upheld the FCC ruling that the language was indecent and prohibited by 18 U.S.C. 1464.

6. The fairness doctrine instituted and repealed

The fairness doctrine was an FCC policy from 1949 until 1987. This doctrine required broadcasters, as a condition of getting their licenses from the FCC, to report controversial issues in their community by offering balancing viewpoints. In 1984, the Supreme Court finally concluded that the rationale underlying the doctrine was flawed and that the doctrine was limiting the breadth of public debate in FCC v. League of Women Voters, 468 U.S. 364 (1984).

8. Webcasting

Broadcasting radio (and television) over the Internet has become known as webcasting. Webcastinginvolves the traditional over-the-air radio broadcasters who transmit their actual broadcast signals on the Internet in real time from the stations website. Webcasting is also made up of purely Internet-based broadcasters sometimes referred to as cybercasters.

9. Broadcasting of religious programs

As of this writing, there is no federal law that gives the FCC the authority to prohibit radio and television stations from broadcasting religious programs.

9. The Telecommunications Act Of 1996 and the Communication Act Of 1934

President Bill Clinton signed the Telecommunications Act of 1996 into law in February 1996, representing the first major reform since the Communications Act (47 U.S.C. 101 et seq.).This 1996 Act affected broadcast radio and television regulation and other forms of communication including telephone services. As a result of this Act, ownership of broadcast radio and televisions began to consolidate as national ownership limits for radio were eliminated and local ownership restrictions were based on market size. This Act also reflected the FCCs general policy move away from regulation and toward deregulation. With very few exceptions such as university radio stations, broadcasters still need a federal license from the FCC Licenses are temporary and do not constitute ownership rights (although stations themselves can be owned).

10. The role of the FTC and infomercials

The FTC has the authority to prohibit deceptive acts and practices and unfair methods of competition. Many media outlets, especially magazines and television, run ads or infomercials to induce the sales of products. Infomercials come in a variety of sorts including weight-loss products, exercise equipment, hair-loss products, financial and other self-improvement programs, and numerous other potentially untested and/or misleading products or services. While some products clearly are misleading, others are not as well-defined. The FTC has handled numerous cases involving these infomercials, their producers and in some instances the media that broadcast the claims.

11. SDARS and Traditional Radio Broadcasting

Today, Satellite Digital Audio Radio Service (SDARS) is an effective means of transmitting information via radio waves. This satellite-based system utilizes digitally encoded technology to broadcast to Earth-based receivers. In 1997, the FCC adopted service rules for only two SDARS authorizations. This included CD Radio, Inc. (now known as Sirius Satellite Radio) and American Mobile Radio Corporation (XM Satellite Radio). SDAR is similar to FM radio in that it requires a line of sight for effective broadcasting. A studio on Earth creates the program and transmits the audio to the space station or satellite, which relays the program to a station or receiver such as a car radio.

In Section 3 of this course you will cover these topics:

- Antitrust Regulation In Entertainment Law
- Intellectual Property Issues In Entertainment Law

Topic : Antitrust Regulation In Entertainment Law

Topic Objective:

At the end of this topic student would be able to:

- Gain knowledge of specific practices that antitrust laws are designed to prevent
- Understand if all monopolies illegal?
- Learn about the major federal laws related to antitrust
- Identify the Tests used by courts to determine an antitrust violation

- Explore mergers concerns for the governments role in protecting the public interest
- Differentiate between a horizontal and vertical merger
- Gain knowledge about professional baseball and antitrust exemption
- Comprehend if Block booking is legal or not
- Study the establishment of anti-siphoning regulations by FCC
- Value the NFL blackout rule

Definition/Overview:

Antitrust Regulation: Antitrust regulation is used to preserve competition in markets. Whereas American law emphasizes strict competition, European and Japanese law emphasize competition with inter-firm collaboration.

Key Points:

1. Specific practices that antitrust laws are designed to prevent

Antitrust laws are designed to prevent unlawful contracts, combinations or conspiracies that restrain trade. The idea is to protect consumers by promoting competition among manufacturers, sellers, distributors and so on.

2. Are all monopolies illegal?

Contrary to popular opinion, monopolies are not illegal. Monopolistic behavior, however, is. This means agreements to suppress competition which ultimately restrain trade and hurt consumers. Often, courts are left to decide whether or not an illegal monopoly exists.

3. The major federal laws related to antitrust

The major federal laws are the Sherman and Clayton Acts. The Sherman Antitrust Act of 1890 (Sherman Act) is the most fundamental federal law that governs anticompetitive business behavior. Congress enacted the Sherman Act to regulate business practices among competitors affecting interstate commerce. In other words, whenever commerce or trade crosses states lines, antitrust laws apply. The primary purpose of the Sherman Act is to promote competition and to deter monopolistic practices that ultimately hurt consumers. Congress passed the Clayton Act in 1914. This additional antitrust act provides that labor

unions and labor activities are exempt from the Sherman Act. 16 of the Clayton Act allows the government or a private plaintiff to obtain an injunction against anticompetitive behavior if necessary.

4. Tests used by courts to determine an antitrust violation

There are three primary tests that courts use to determine whether or not there is a violation of antitrust laws: per se rule, rule of reason, and quick-look analysis. When a court utilizes the per se rule analysis to determine whether there has been a violation of antitrust law, any labor practices that are inherently unreasonable restraints of trade will be invalidated. In Northern Pacific Railway Co. v. United States, 356 U.S. 1 (1958), the Supreme Court stated that there are certain agreements or practices which because of their pernicious effect on competition are conclusively presumed to be unreasonable and therefore illegal. Price-fixing is a per se violation of antitrust laws. Under the rule of reason analysis, a court examines the alleged anticompetitive practice to determine whether or not it is reasonable. Some restraints may be necessary as a legitimate business practice in order to stay in business. The Supreme Court in California Dental Association v. F.T.C., 526 U.S. 756 (1999) upheld the FTCs use of another form of antitrust analysis known as the quick look or structured rule of reason approach. In recent years courts have fashioned an abbreviated or quick-look rule of reason analysis designed for restraints that do not fall within the narrow categories of restraints deemed per se unlawful, but that are sufficiently anticompetitive that they do not require a full-blown rule of reason inquiry either.

5. Mergers special concerns for the governments role in protecting the public interest

In the various entertainment industries such as television, radio and music, and film production, there are often mergers and acquisitions which consolidate formerly separate businesses under a single umbrella. Multimedia mergers are often so large that they could, theoretically, violate antitrust laws by creating a byproduct that is anticompetitive. The governments role in identifying and challenging anticompetitive mergers is a difficult task. Most mergers actually benefit competition and consumers by allowing firms to operate more efficiently. Some mergers lessen competition. That, in turn, can lead to higher prices, reduced availability of goods or services, lower quality of products, and less innovation. Indeed, some mergers create a concentrated market in which the few members may be tempted to collude, while others enable a single firm to raise prices.

6. Difference between a horizontal and vertical merger

In a horizontal merger, the acquisition of a competitor could increase market concentration and increase the likelihood of collusion. The elimination of head-to-head competition between two leading firms may result in unilateral anticompetitive effects. A recent example of this involved Staples, Inc., a superstore retailer of office supplies. Staples attempted to acquire Office Depot, another giant retailer in the same industry and clearly a competitor. In many areas of the country, the merger would have reduced the number of superstore competitors, often leaving Staples as the only superstore in the area. The F.T.C. subsequently blocked the merger and avoiding potentially harmful effects such as increased costs to profits, though Staples would have benefited highly from the merger. Vertical mergers involve firms in a buyer-seller relationship. Put another way, a vertical merger is a merger between two firms, one of which is a supplier or distributor for the other and this can harm competition by making it difficult for competitors to gain access to an important component product or to an important channel of distribution. This is sometimes referred to as a bottleneck.

7. Professional baseball and antitrust exemption

The sport of professional baseball has held a unique exemption from antitrust laws in accordance with the controversial interpretation of the Supreme Court in Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922). The Court held that antitrust laws do not apply to professional baseball as baseball did not involve interstate commerce. Even though players traveled across state lines, Justice Oliver Wendell Holmes held that it was only incidental to the game and baseball was purely a state affair and held to remain exempt from antitrust laws. The Curt Flood Act of 1998 (15 U.S.C. 27(a)) was an attempt by Congress to legislatively override the antitrust ruling in Federal Baseball. However, the Curt Flood Act is limited only to certain activities of baseball and has very little effect on prior court decisions or other practical applications. Still, the antitrust exemption is only repealed as to employment-related activities. In addition, section (b)(2) of the Curt Flood Act specifically excludes the Major League Baseball Constitution from antitrust coverage, including its dealings with minor league baseball. 15 U.S.C. 27a(b)(2).

8. Block booking legal or not

Block booking is illegal today as the Supreme Court declared the practice illegal. Studios forced rental agencies (theatre owners) to pay for a group of films (a block) thus giving the studio a guarantee of a financial return on any film. The theatre owner was required to rent a block of films in order for the studio to agree to distribute the one A film that audiences wanted to see. Studios sold their films in packages on an all-or-nothing basis. This made it extremely difficult for independent producers of films to get their movies into theatres.

9. The establishment of anti-siphoning regulations by FCC

The FCC, as part of its agenda to serve the public interest, adopted regulations coined anti-siphoning to protect programming found on free (i.e., non cable or satellite) broadcast television. Anti-siphoning rules prevented cable television systems (a.k.a. subscription television) from siphoning off (drawing an audience away) programming for pay cable channels that otherwise would be seen on conventional broadcast television. These anti-siphoning rules stated that only movies no older than three years and sports events not ordinarily seen on television could be cablecast.

10. NFL blackout rule

The National Football League (NFL) does have a very limited antitrust exemption of its own which can be found at 15 U.S.C. 1291 and 1292. The NFL is also allowed to issue blackouts of non-local games when local teams are being telecast and when there has not been a sellout. (1292).More specifically, the blackout rule stipulates that games will not be broadcast in home markets (i.e., within a 75-mile radius) unless they are sold out 72 hours in advance of the opening kickoff. The NFL has always maintained that the television blackout rule is necessary to sell tickets because home fans would not watch the games in-person if they knew they could watch them on TV for free.

Topic : Intellectual Property Issues In Entertainment Law

Topic Objective:

At the end of this topic student would be able to:

- Understand Intellectual property and its categories

- Gain knowledge of Fair use of doctrine
- Value License and its importance
- Differentiate between copyrights, patents and trademarks
- Identify Collective mark
- Gain knowledge about Trade dress
- Learn about Piracy in the entertainment industry
- Study Digital Millennium Copyright Act of 1998
- Share knowledge about Cbersquatting and Tposquatting
- Explore the Role of WIPO

Definition/Overview:

Intellectual property: Intellectual property (IP) is a legal field that refers to creations of the mind such as musical, literary, and artistic works; inventions; and symbols, names, images, and designs used in commerce, including copyrights, trademarks, patents, and related rights. Under intellectual property law, the holder of one of these abstract properties has certain exclusive rights to the creative work, commercial symbol, or invention by which it is covered.

Key Points:

1. Intellectual property and its categories

Intellectual property consists of copyrights, patents and trademarks. In the entertainment industry, protecting the rights of artists, producers, entertainers and others is vital to maximize profits and avoid piracy in the peer-to-peer context and elsewhere..

2. Fair use doctrine

The fair use doctrine allows someone to use a copyrighted work without fear of being sued. It is a defense to a claim of copyright infringement. While there is no bright-line test for what is fair and what is not, four factors are considered as to whether the use of anothers work is a fair use: 17 U.S.C. 107 provides four factors to be considered in determining whether the use of another work is, in fact, a fair use:

- The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
- The nature of the copyrighted work;
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- The effect of the use upon the potential market for or value of the copyrighted work.

3. License and its importance

A license is a formal grant of the right to use copyrighted material by the author (license) and usually is conditioned upon a payment of a fee (known as a royalty) for the right to use by the licensee. This is very important in entertainment, obviously, especially in light of music and video piracy which avoid paying license fees altogether, albeit illegally.

4. Differences between copyrights, patents and trademarks

A copyright is the term used to protect original works that fall under the categories of literature, dramatic, musical, artistic, and intellectual. These works may be published or unpublished, and the Copyright Act of 1976 gives the owner the exclusive rights to reproduce their work. A trademark is used to protect a word, symbol, device or name that is used for the purpose of trading goods (or in the case of services, a service mark). It indicates the source of goods and distinguishes them from the goods of others and avoids confusion by consumers. A patent for an invention grants a property right to the inventor that will prevent anyone else from making, using, or selling an invention, and it lasts for a limited amount of time (usually 20 years from the date the application was filed).

5. Collective mark

A trademark or service mark used, or intended to be used, in commerce, by the members of a cooperative, an association, or other collective group or organization, including a mark which indicates membership in a union, an association, or other organization. Examples of collective marks include the ABA(American Bar Association), AARP, and UAW.

6. Trade dress

Similar to trademark, trade dress represents the total image of a product as opposed to a products individual parts or aspects. Trade dress protection may deal with the totality of features such as size, shape, color, color combinations, texture or graphics. This could involve the design, shape and appearance of a product, including its packaging as long as it is distinctive.

7. Piracy in the entertainment industry

Piracy cuts into the profits of entertainment companies and artists. As a result of unauthorizedpiracy via computers and other advanced technology, lawsuits were brought by the Recording Industry Association of America (RIAA) in 2003 against file-sharers of downloaded music in a highly publicized campaign against pirates of original material. Piracy over the Internet is almost effortless and is only a few keystrokes away for infringers. Most consumers realize that downloading such material is not legal, while others risk not getting caught for an infringement.

8. Digital Millennium Copyright Act of 1998

The Act is designed to implement the treaties signed in 1996 at the World Intellectual Property Organization (WIPO) Genevaconference. The DMCA had as its primary purpose the goal of updating United Statescopyright laws to deal with the digital information age. Major points of the DMCA include, but are not limited to:

- Makes it a crime to circumvent anti-piracy measures found in commercial software and to manufacture, sale, or distribute code-cracking devices used to copy software.
- Limits Internet service providers (ISPs) from copyright infringement liability for simply transmitting information over the Internet. However, the same ISPs must remove material from users web sites that appear to constitute copyright infringement.
- Provides exemptions from anti-circumvention provisions for nonprofit libraries, archives, and educational institutions with some exceptions. It also limits the liability of colleges and universities for copyright infringement by faculty members or graduate students when the schools act as an ISP.
- Requires that webcasters pay licensing fees to record companies.

9. Cbersquatting and Tposquatting

Cybersquatting is the act of registering an Internet address, such as a company name or the name of a famous individual, with the intent of selling it (i.e., extortion) to who the real world would perceive to be the rightful owner of that address. Cybersquatting began in the mid-1990s. Individuals are referred to as cybersquatters. Typosquatting is a form of cybersquatting. An owner speculates that someone will misspell an otherwise legitimate domain name and purchasing that variation on the name in order to make a profit.

10. Role of WIPO

The World Intellectual Property Organization (WIPO) is an intergovernmental organization based inGeneva, Switzerland responsible for the promotion of the protection of intellectual rights throughout the world. It is one of the 16 specialized agencies of the United Nations system of organizations. WIPO seeks to harmonize national intellectual property legislation and procedures, provide services for international applications for industrial property rights, exchange intellectual property information, provide legal and technical assistance to developing and other countries, facilitate the resolution of private intellectual property disputes, and marshal information technology as a tool for storing, accessing, and using valuable intellectual property information.

In Section 4 of this course you will cover these topics:

- Legal Issues In Live Performances
- Legal Issues In Music And Music Publishing

Topic : Legal Issues In Live Performances

Topic Objective:

At the end of this topic student would be able to:

- Understand the Success Off-Broadway and regional theatre productions
- Learn about equity in the context of theatre
- Study if live awards productions are genuine or not
- Explore artwork as a form of entertainment
- Discuss the states that regulate beauty pageants
- Gain knowledge about government regulation of swimsuit contests, fitness pageants and bodybuilding contests

- Identify issues with anti-scalping and other ticket-related laws
- Know the Relation of the First Amendment to live adult entertainment
- Share Relationship between zoning, exotic dancing and the OBrien test
- Relate buffer zone in the context of live entertainment
- Gain insight to freedom given to casting directors and violation of affirmative action

Definition/Overview:

Live Performance in Second Life: A live performance in Second Life is presented by a person who is represented in-world by an avatar, and is creating the performance in real-time, streaming the audio (or audio and video) portions into Second Life as they are being created. Playing back a previously recorded performance, whether audio, video or Second Life machinima,is generally not considered to be a live performance if there are no live elements performed while the audience is watching the show (although even this definition will likely raise some "discussion" from some corners.

Legal Issues: If you choose to stream your own music into SL directly or using a streaming relay host, the content and any copyright/royalty fees and any other possible issues are your responsibility**.**

Key Points:

1. Success Off-Broadway and regional theatre productions

Higher quality productions and less stress with regard to travel to the largest American cities (by audiences) have expanded theatre to the American suburbs. Additionally, often only the highest quality and most profitable productions will result in off-Broadway and regional theatre productions.

2. Equity in the context of theatre

Equity is a general term in the context of theatre. For example, the Actors Equity Association (AEA) is the actors union for stage actors and managers. The contracts involving the former involve the result of union negotiations and the contracts are often referred to simply as an Equity contract (a contract involving members of the AEA, for example). Productions not backed by the AEA are, in fact, known as non-Equity productions.

3. Live awards productions genuine or not

Awards shows today such as Emmy (television), Oscars (film), Tonys (Broadway), or Grammys (music) are genuine. However, they are also big business. Television advertising promoting these events (and during these events) can be quite profitable. There are various other award ceremonies, too, including the Golden Globe Awards (independent films) among others.

4. Artwork a form of entertainment

This is a matter of opinion, but when discussed in terms of the Standard Art Consignment Agreement, the discussion becomes clearer. Museums frequently pay for the right to display artwork in their facilities and often charge a fee for doing so. As such, one can make a strong argument that artwork, in this context, is indeed a form of entertainment.

5. States that regulate beauty pageants

Not really a good explanation here. Maybe other states should? Certainly, regulatory schemes create state control and generate revenue. Regulations also are designed to prevent fraud in live performances and competition.

6. Government regulation of swimsuit contests, fitness pageants and bodybuilding contests

Same as above and a matter of opinion. Subjective decisions and votes by judges can often lead to problems and illicit (or at least unethical) conduct. In addition to generation of revenue to the state or other governmental body, control in the form of a license can give the government the right to pursue wrongdoing in the form of violations of the criminal law.

7. Issues with anti-scalping and other ticket-related laws

Anti-scalping laws have a variety of reasons for their justification.
Reasons include the avoidance of nuisance (and potential injury) around a venue, avoidance of extortion by resellers of tickets for exorbitant prices, minimizing fraudulent (counterfeit) sales, or simply as a measure of basic control by a state, county or city. Some states may not

have addressed scalping as not a vital issue. Other states have enacted (and repealed) anti-scalping statutes as unenforceable or just not worth pursuing.

8. Relation of the First Amendment to live adult entertainment

While the phrase freedom of expression is found nowhere in the Constitution, courts have carved out exceptions to complete freedom of expression when it comes to adult entertainment (live performances, bookstores, video stores) in the form of legitimate land use regulation. Therefore, municipalities may use their police power to regulate the potentially negative aspects of the secondary effects or impacts of adult dancing and live performances.

9. Relationship between zoning, exotic dancing and the OBrien test

As above, municipalities may use their police power to regulate the potentially negative aspects of the secondary effects or impacts of adult dancing and live performances. A four part-test (i.e., four factors) was established in United States v. OBrien (1968) which assist in determining whether zoning regulations for adult businesses violate the First Amendment principles of freedom of speech or expression. In determining the constitutional validity of an ordinance or zoning restrictions, courts must consider whether

- The predominant purpose of the zoning is to suppress the sexually explicit speech itself, or rather, to eliminate the secondary effects of adult uses;
- The zoning regulation furthers a substantial governmental interest;
- The zoning regulation is narrowly tailored to affect only those uses which produced the unwanted secondary effects; and
- The zoning regulations leave open reasonable alternative locations for adult uses.

10. Buffer zone in the context of live entertainment

A buffer zone is a state or city law which restricts how close an exotic dancer may display their act. It is considered a valid form of regulation by the government.

11. Freedom given to casting directors and violation of affirmative action

A matter of opinion, while casting directors end up employing individuals to play certain roles, most people would admit that the more authentic the hire for a role in a production, the

more believable the live performance. While some might argue that this violates affirmative action principles, one cannot argue that the same standards for employment in a musical production should be applied in a manufacturing facility, for example. Also, importantly, the concept of BFOQ (Bona Fide Occupational Qualification) carved out an excepting for hiring actors and actresses under federal law.

Topic : Legal Issues In Music And Music Publishing

Topic Objective:

At the end of this topic student would be able to:

- Learn about history of music technology twentieth century - present
- Study the role of the Recording Industry Association of America
- Identify Napster technology and its affects on the music industry
- Discuss sampling
- Explore the role of the various performance rights organizations
- Differentiate between gross and net with regard to royalties
- Gain knowledge of music producers receipt of a percent of the songs production royalty
- Value blanket license and its benefits
- Relate prevention of music piracy through technology

Definition/Overview:

Legal Issues in Sampling: Sampling has been an area of contention from a legal perspective. Early sampling artists simply used portions of other artists' recordings, without permission; once rap and other music incorporating samples began to make significant money, the original artists began to take legal action, claiming copyright infringement. Some sampling artists fought back, claiming their samples were fair use (a legal doctrine in the USA that is not universal). International sampling is governed by agreements such as the Berne Convention for the Protection of Literary and Artistic Works and the WIPO Copyright and Performances and Phonograms Treaties Implementation Act.

License: The right, granted by the copyright holder, for a given person or entity to broadcast, recreate, perform, or listen to a recorded copy of a copyrighted work.

Licensor: The owner of the licensed work.

Licensee: The person or entity to whom the work is licensed.

Performance: For the purposes of this article, the live performance of a musical piece, regardless of whether it's performed by the original artist or in the manner it is best known.

Broadcast: The replaying of pre-recorded works to multiple listeners through various media or in a 'semi-live' setting such as a bar or bookstore, and including radio, TV, webcasting, podcasting, etc.

Performing Rights Organization: Large companies, the best-known of whom are ASCAP, BMI, and to a lesser extent SESAC (there are others as well) whose fundamental job it is to keep track of every single performance or broadcast of all works protected under copyright.

Pre-Cleared Music: Music that has been pre-negotiated for price, distribution and legal use, generally through licensing for film, video, television (commercials and programs), Internet, events, video games and multimedia productions.

Copyright: Literally, 'the right to copy.' Prior to 1886, no effective international law of copyright existed. The first major international copyright law conventions were the Berne Convention for the Protection of Literary and Artistic Works created in 1886.

Synchronization Licensing: The licensing of musical works to be performed as a soundtrack, 'bumper', 'lead-in' or background to a motion picture.

Publisher: For the purposes of copyright, a publisher is the owner of the copyrighted work. It is now standard practice for songwriters of even the slightest prominence to form a 'publishing company' who actually owns the rights to their work; the reasons for this are matters of legal finery and largely not of value to the scope of this article. This phrasing is reflective of the state of media at the time of the Berne Convention, when all music distribution was done on paper as sheet music (or player piano rolls).

Key Points:

1. History of music technology twentieth century - present

Recording technology began wit the phonographic record through the 1920s. This vinyl record was molded into records of various speeds including 78 rpm, 45 rpm, and 33 1/3 rpm. The magnetic audiotape appeared in the early 1950s and this tape recording allowed for multitrack recordings for recording artists. The tape consisted of the 4-track, 8-track and ultimately the cassette tape. Compact Discs were introduced in 1982 and in the 1990s; CDs became the most popular type of home format for playing music. Today, DVDs and MP3s have made significant progress in challenging the CD as the most popular form of recording and listening technology.

2. Role of the Recording Industry Association of America

The RIAA represents 90% of the recording industry and is designed to protect intellectual property rights of artists and others. It is the driving force behind making changes in legislation to prevent unauthorized transmission of copyrighted materials via the Internet with its numerous lawsuits.

3. Napster technology and its affects on the music industry

Napster was an Internet site that allowed users to share recordings via the Internet for free. Numerous other sites copied Napsters approach. Metallica sued Napster for copyright violations in a popular lawsuit which eventually shut Napster down. Still, Napster.com was relaunched as a legal website in 2003 and referred to as Napster 2.0 which requires paying a subscription fee for access to the same music download information.

4. Sampling

Sampling is the term used to describe the taking of a portion of a sound recording (a song) and using it in a newer recording, usually by a different artist. It creates potential copyright infringement of the original song if it is used without permission or the original artist was not compensated. The AFM addressed sampling in a 1995 side letter agreement requiring payment of a license fee as consideration.

5. Role of the various performance rights organizations

All of these performance rights organizations (PRO) represent songwriters and publishers who collect royalties for the public performance of their members copyrighted material. These companies sell licenses and collect royalties as well from radio and television stations and others. The royalties are then distributed to the publishers and authors of the songs. ASCAP is the largest, SESAC is the smallest in terms of membership.

6. Difference between gross and net with regard to royalties

Gross, of course, is total sales before deductions are made. Deductions included fees paid to the recording companies, the recording producers, freebies and others. The money that an artist receives per CD is referred to as the net artist royalty rate and is based upon a contractual arrangement between the artist and the recording company. The more established artist receives a higher rate (i.e., percentage) of the Suggested Retail List Price (SRLP).

7. Music producers receipt of a percent of the songs production royalty

Producers play an invaluable role for recording artists and recording companies. After all, they have a financial incentive to make a project work and sell to consumers. A great production can make producers careers. Less than projected sales could remove a producer from the profession.

8. Blanket license and its benefits

A blanket license is a fee paid to one of the PROs which allow businesses to use any songs within the catalog of music offered from ASCAP, BMI and/or SESAC. The benefit is a larger up-front fee is paid, but a wide variety of songs is licensed rather than having to pay each time of use.

9. Prevention of music piracy through technology

A matter of opinion, many believe that the game of cat and mouse will always prevail among consumers rather than manufacturers or distributors of music. A recent unanimous Supreme Court decision, MGM v. Grokster(2005), held that software companies are responsible for

illegal use of their services if they intend for their customers to use software primarily to swap songs and movies. Still, enforcement will always be a problem in this regard.

In Section 5 of this course you will cover these topics:

- Legal Issues In Television
- Legal Issues In Motion Pictures

Topic : Legal Issues In Television

Topic Objective:

At the end of this topic student would be able to:

- Relate examples of fraud in television
- Discuss legal issues particular to live talk-shows
- Gain knowledge of closed-captioning
- Understand that DVRs are legal
- Speak about Americans with Disabilities Act to television broadcasting
- Narrate V-Chip
- Understand syndication
- Know the affect of cable television on American life
- Share child protection from television broadcasts
- Make out if televisions should be allowed in state and federal courtrooms

Definition/Overview:

Copyright owners: Copyright owners have the right to control or restrict the publishing of "derivative works" based on their material, though they do not receive ownership of those works.

Key Points:

1.**Examples of fraud in television**

Shows from the late 1950s including Twenty-One, The $64,000 Question, and Dotto all are frequently cited as examples of game shows where some of the contestants were prepped with answers to questions before the show went on the air. Most infamous was Twenty-One which became the focus of the movie Quiz Show (1994) which won an Academy Award.

2. Legal issues particular to live talk-shows

The shock-value of live talk-shows, including reality-television, has presented legal concerns related to intentional infliction of emotional distress, fraud and misrepresentation, negligence and in some cases criminal misconduct. Some shows have been so egregious that torts related to talk shows have been referred to as talk show torts or ambush television.

3. Closed-captioning

Closed-captioning is the system in which a television broadcast signal is a hidden caption which allows subtitles for persons with hearing disabilities. This includes both online captioning (from a script), offline captioning (done from a studio), or electronic news technique (ENT) for news broadcasts.

4. DVRs are legal

DVRs (Digital Video Recorders) are legal and slowly but surely gaining momentum in consumer markets. In addition to DVRsoffered by cable companies themselves, popular DVR services have included TiVo, ReplayTV, and Echostar.

5. Relationship of Americans with Disabilities Act to television broadcasting

The ADAand television are primarily related in the area of closed-captioning. While the ADA does not require all television programming to be captioned, all public service announcements produced or funded by the federal government must be closed captioned.

6. V-Chip

The V-Chip reads information encoded in a rated television program and blocks programs from the television set based upon the rating selected by the parent. This applies to all televisions 13 inches or larger in accordance with FCC rules.

7. Syndication

Syndication is the process of selling the rights of the presentation of a television program. In the United States, this means repeated sales or reruns. Syndication can be quite profitable

since the shows are merely rebroadcast and little or no further costs are associated with airing the program.

8. Affect of cable television on American life

With hundreds of channels available to cable subscribers, cable television expanded programs to consumers and viewers. Most cable channels air almost 24 hours per day. Information such as stock prices, weather and breaking news, including sports, provides viewers with perspectives on American and international lifestyles not seen prior to the late 1970s.

9. Child protection from television broadcasts

Again, the V-Chip and the voluntary Television Rating System (The TV Parental Guidelines) provide information to parents to assist in the screening of violent (or other) programming content. Ratings include TV-Y, TV-Y7, TV-G, TV-PG, TV-14 and TV-MA. Further, commercial television broadcast licensees must identify specific programs aimed toward children aired between 7:00 a.m. and 10:00 p.m. Ultimate responsibility is in the hands of parents or guardians, however.

10. Televisions should be allowed in state and federal courtrooms

Opinions differ as to the role of television cameras in the courtroom. While all states allow cameras in the courtroom under various conditions, the federal courts do not yet allow television access. This will likely change, however, as access to information on the Internet (for example) continues to publish and broadcast to consumers who have an insatiable appetite for knowledge and information.

Topic : Legal Issues In Motion Pictures

Topic Objective:

At the end of this topic student would be able to:

- Study the role of Hollywood movie studios
- Discuss various unions involved in the motion picture industry
- Explore Motion Picture Association of America and its impact
- Understand Hays Production Code

- Gain knowledge of the Voluntary Movie Rating System
- Comprehend colorization process and legal and ethical concerns
- Share concerns of adult film industry
- Value the Visual Artists Rights Act of 1990
- Study affect of piracy issues on motion picture industry
- Learn about True Name and Address statutes

Definition/Overview:

The main legal issues that Motion Pictures will likely face that are related to copyright, publicity rights and trademark issues.

Key Points:

1. Role of Hollywood movie studios

The role of the studios is to make a profit for its shareholders and investors by producing films (video) which sell. The studios accomplish this by selecting scripts, producing films and then distributing them as well. Since the productions influence so many people, including children, a voluntary rating system has been instituted to notify parents of language, sex and violence issues.

2. Various unions involved in the motion picture industry

Unions are quite prevalent in the motion picture industry. Some of the larger unions (sometimes called guilds) include the Writers Guild of America (WGA), the Directors Guild of America (DGA), and certainly the Screen Actors Guild (SAG). Other unions include the Producers Guild of America (PGA). Unions, of course, bargain collectively on behalf of their members (who pay a fee to maintain membership).

3. Motion Picture Association of America and its impact

The Motion Picture Association of America (MPAA) and its international counterpart, the Motion Picture Association (MPA), advocate on behalf of motion picture, home video and the television industries. The MPAA has developed a voluntary rating system (1968) geared toward parental disclosure of film content. This system has influenced production of films,

particularly during the editing process, to avoid scenes or ratings which might cut into the profits of a film.

4. Hays Production Code

This Code, also known as the Hays Code, was established in 1934 (named after Postmaster General Will H. Hays), as a voluntary measure to control violence, sex and criminal conduct on film. Somewhat controversial in that it was a form of censorship, the Hays Production Code evolved ultimately into the MPAAs voluntary movie rating system in 1968 which focused on disclosure rather than censorship.

5. The Voluntary Movie Rating System

As mentioned before, the voluntary movie rating system was instituted by the MPAA to provide parental guidance as to the content of films. While the system is entirely voluntary, most mainstream films adhere to this standard. The categories include G: General Audiences; PG: Parental Guidance Suggested; PG-13: Parents Strongly Cautioned; R: Restricted; NC-17: No One 17 and Under Admitted.

6. Colorization process and legal and ethical concerns

Colorization is a computerized process which adds color to a black-and-white film. This process was met with great resistance by film purists until the enactment of the National Film Registry which required (1988) the labeling (for viewers) as to whether a film had been colorized or not.

7. Concerns of adult film industry

Still met with resistance by Hollywood traditionalists, the adult (porn) industry continues to generate greater profits for its participants. Though it is not considered mainstream per se, there is no doubt that this industry is profitable. Some concerns in this industry including the destruction of societal morals, transmission of communicable diseases, and the use of underage participants in sexually explicit acts.

8. The Visual Artists Rights Act of 1990

An amendment to the Copyright Act of 1976 (and known as 106A), VARA allows authors of visual art to control the use of their names in conjunction with a work of art by providing the right of attribution.

9. Affect of piracy issues on motion picture industry

Piracy and illegal camcordinghave made significant cuts into the profits of the motion picture industry. The state of Californiamade illegal recording of a feature film in a movie theater a crime, all designed to combat digital piracy.

10. True Name and Address statutes

True Name and Address Statutes impose criminal penalties for the rental or sale of videos that do not bear the true name and address of the manufacturer. This is state law. Pirates who fail to identify themselves as the manufacturer of illegally duplicated videos violate these statutes.