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UCLA ENTERTAINMENT LAW REVIEW

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ARTICLES

A Full 360: How the 360 Deal Challenges the Historical Resistance to Establishing a Fiduciary Duty Between Artist and Lebal

Douglas Okorocha... 1

A recent trend in the music industry is to use 360 deals—a contractual agreement between a recording artist and a record label where the artist grants the label a portion of all revenue garnered by the artist in exchange for monetary support. A potential, unintended legal consequence of this contractual arrangement may be the creation of a fiduciary duty, which would give artists several legal avenues to pursue grievances against their respective record label. While courts have traditionally refused to establish a fiduciary duty among artists and their respective labels, the music business has changed. Notably, since many of the cases that denied finding a fiduciary duty, labels have transitioned from using traditional recording agreements to using 360 deals. This new trend provides an ideal backdrop for courts to revisit the issue of fiduciary responsibility between artist and label.

This Article argues that 360 deals can invoke a fiduciary duty between artist and label, because they can transform the artist-label relationship into a partnership. Under a 360 deal, artist and label operate more like a partnership than two parties bound by contract due to the profit sharing arrangment and the level of joint control. If the relationship is in fact found to be a partnership then, as a matter of law, there are

fiduciary obligations that all partners would owe to each other, essentially transforming the music industry as we know it.

Indianizing Hollywood: The Debate over Bollywood's Copyright Infringement

Hariqbal Basi..33

For decades, the mainstream Indian film industry, known as Bollywood, has remade copyrighted Hollywood films for the Indian audience without legal repercussions. This practice has gone unnoticed by Hollywood until recently, and accusations have since been brought against Indian filmmakers for copyright infringement.

This article provides an in depth analysis of why these potentially infringing films have only become the subject of litigation over the last two years, cultural arguments advanced by Indian filmmakers for why their remakes should constitute original, not infringing, works, and what the effects of litigation have been. As the two industries become increasingly intertwined, litigation may hinder the fosterage of cordial relations and may in effect prioritize the cultural intellectual property interests of one industry over another. Furthermore, while most scholarship in the area suggests Bollywood's culpability and how the Indian film industry should purchase rights or face litigation from Hollywood, this article argues that because of the Indianization defense and the value it adds to the commercial success of a Bollywood film, it is unlikely Hollywood will be able to show damages to the market for their films and receive any desirable remedy. Thus, efforts to litigate may not be worthwhile.

COMMENTS

Sailing Toward a Truly Globalized World: WTO, Media Piracy in China, and Transnational Capital Flows

Amy Lai..75

In the late twentieth century, the term "piracy" grew to include the unauthorized duplication of original commercial products, such as film, music, and computer software. In the last decade, the term has been

used to cover a much more expansive array of activities, such as downloading copyrighted work from the Internet. High-speed information networks have enabled the trafficking of media products, both legal and illegal, across borders with unprecedented ease and velocity. "Piracy" as an ever-expanding metaphor suggests that these acts are contemporaneously equivalent to crossing the high seas, invading a ship, stealing its treasures, and threatening life. However, while intellectual property deserves protection, it might be too much to label pirates of copyrighted works the "foes of mankind."

This comment argues that strict enforcement of American-style copyright law in China is bound to be both oppressive and ineffective and asserts that American scholars have largely ignored the controversy surrounding American copyright law in their fervent advocacy for enforcing American-style copyright law in China. As a result, American scholars have failed to comprehend the fundamental reasons for China's piracy problem and why the enforcement of American-style copyright law there has been ineffective. This comment concludes by proposing a voluntary collective licensing scheme, which would serve to reconcile the interests of American media industries and the Chinese public, thus supporting an ever-expanding sea of media, a source of cultural inspiration and economic opportunities for both nations.

An Embedded Solution: Improving the Advertising Disclosure Rules in Television

Edward L. Ong..114

The American broadcast system relies primarily on advertising revenues to subsist. However, the increasing trend of using embedded advertising, or the use of commercial products and services in television programming as opposed to the traditional 30-second advertising spot, has become a real concern to some viewers, nonprofit advocacy groups and even actors. In response to concerns that the Federal Communications Commission's (the "Commission") current disclosure rules are not adequately protecting the viewer's right to know when he or she is being advertised to, the Commission issued a Notice of Inquiry and Notice of Proposed Rule Making ("Notices") to solicit comments on the relationship between current disclosure rules and increasing industry reliance on embedded advertising in television.

This piece is intended to be its own comment to the Notices. After balancing the consumers' right to know the sources of embedded advertising against the broadcasters' First Amendment rights and business needs, this comment proposes that the Commission amend the current disclosure rules to incorporate, by analogy, the more stringent disclosure requirements imposed on political advertising. This proposal both improves the efficacy of the disclosure rules and legitimately takes into consideration all of the concerns of the interested parties that submitted comments to the Notices. This note applies the proposed amended disclosure rules to a variety of instances involving actual disclosures, illustrating how the current disclosure rules can be effectively modified.

To *Infinity* and Beyond: FCC Enforcement Limiting Broadcast Indecency from George Carlin to Cher and into the Digital Age

Blake Lawrence..148

"Okay, I was thinking one night about the words you couldn't say on the public, ah, airwaves, um, the ones you definitely wouldn't say, ever . . . " This remark by the late George Carlin began his infamous "Filthy Words" monologue—a monologue that was broadcast over the "public airwaves" and which became central to famous litigation that is debated to this day. *In re Pacifica* ("*Pacifica*") marked the first instance in which the Federal Communications Commission ("FCC") sanctioned a broadcaster for using indecent language on the air. In the years following *Pacifica*, the FCC heeded Supreme Court guidance and exercised its narrowly tailored power to prohibit Carlin's seven "Filthy Words" from being broadcast on the air. However, during the past decade, the policies of the FCC have dramatically changed and the agency now advises broadcasters to refrain from more speech than ever before. These rules may not, when examined closely, survive constitutional challenge.

This comment argues that FCC enforcement of broadcast indecency has become severely outdated, especially with the internet revolution of the past two decades. In *Fox Television Studios v. FCC*, the Court insisted on upholding the analysis of *In re Pacifica*, which limited indecent speech based on the "unique accessibility" and the "uniquely

pervasive" nature of broadcast television. However, the rise of cable television and internet television (from sites such as YouTube and Hulu) has nullified that rationale. This comment further argues that the FCC's method of enforcement based on complaints does not serve the public interest and limits speech based on the views of a severe minority of television consumers. *To* Infinity *and Beyond* concludes by analyzing the rise of cable network branding techniques and suggesting that broadcast stations mimic those techniques to inform the viewing public of their programming content.

The Publicity Rights of Avatar's Avatars

Christopher Kendall..180

Avatar has been one of, if not the most, successful films of all time and its success will necessitate a new focus on the potential issues associated with actors that will act in subsequent performance-captured roles. With the increasing use of this performance-capture technology, it is likely that the studios will demand contractual permission from actors to produce, copyright, and publish their images. This will then make it possible for studios to reuse aspects of the original performance – including the scanned image of the actor, the actor's movements, etc. – in the future.

In light of this practice, this comment examines the legal claims and business concerns that may arise. Specifically, the merits of potential legal claims are analyzed under (1) California's statutory right to publicity, (2) the common law right to publicity, and (3) copyright. Moreover, with the law as background, business and practical considerations must be taken into account when contracting for an actor's captured performance. Although many actors will have no leverage to dispute or challenge such contractual arrangements with the studios, high-profile actors will do everything they can to maintain ownership over the digital data that composes their captured performances. Ultimately, this comment suggests that actors and studios must bear in mind that good contract drafting and clearly established property rights are essential in order to avoid possible litigation and maximize efficiency in business.