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Articles

Understanding the Evolution of Signing Bonuses and Guaranteed Money in the National Football League: Preparing for the 2011 Collective Bargaining Negotiations

Chris Deubert and Glenn M. Wong 179

When National Football League (NFL) owners voted 32-0 to opt out of the NFL-National Football League Players Association (NFLPA) collective bargaining agreement (CBA) on May 20, 2008, it spelled doomsday for the state of professional football and its role in America. The NFL, the "Big 4" league that had gone the longest without a work stoppage, was considered the preeminent professional sports league in the United States. Yet, the owners that had voted 30-2 in favor of the current CBA were now opting out of it only 26 months later. What went wrong?

NFL clubs utilize debt to finance signing bonuses, which are large sums of money paid upfront, in cash, to players upon signing with the club. Historically, the signing bonus served merely as an incentive to sign. However, over the years, clubs have attempted, either through litigation, arbitration or contract language, to obligate (or at least obligate a good faith effort for) future performance. Both the terms of the signing bonuses themselves, as well as the CBA, contain forfeiture provisions that dictate and control remedies in the event that a player fails to perform. However, the clubs' and league's inability to enforce the forfeiture provisions has resulted in large amounts of unearned cash remaining in the pockets of players either incapable of or unwilling to continue playing under the terms of their contracts.

This article traces the history, legal battles, and attempted solutions surrounding the problems caused by different forms of compensation given to NFL players and recommends ways to prevent future controversies and allow for a fair and reasonable bonus forfeiture procedure in the NFL.

The Bloody Case That Started From a Parody: American Intellectual Property Policy and the Pursuit of Democratic Ideals in Modern China

Robert S. Rogoyski and Kenneth Basin 237

In 2006, Chinese video blogger Hu Ge attained cult fame in China by publishing on the Internet *The Bloody Case That Started from a Steamed Bun*, a parody of director Chen Kaige's tepidly-received film *The Promise*. By recasting Kaige's historical epic as a news report about a murder spurred by a steamed bun — and fending off a threatened copyright infringement and defamation lawsuit from the spurned director — Hu Ge opened a debate about the social role of parody in a healthy society. But just as *e'gao*, a web-based movement of film and music parody, began to take off, the Chinese government clamped down. Some new regulations required anyone wanting to post short videos on the Internet to seek government approval, while others required the submission of music that had been modified from its original form to the Ministry of Culture, even if the changes were made for non-commercial purposes.

This Article argues that Chinese copyright law provides insufficient protection for parody and other transformative uses, that existing American foreign policy objectives regarding intellectual property are in conflict with American democratic ideals and democratic foreign policy objectives, and that the United States can and should pursue specific revisions to China's copyright law to implement a democratically-minded intellectual property policy agenda.

Not for Entertainment Only: Fair Use and Fiction as Social Commentary

Michael Coblenz 265

The borderland between the First Amendment and copyright law is known as fair use. Both the First Amendment and copyright law protect speech, though in different ways, and the underlying purpose of both is to ensure the widest range of public debate over the political, social, scientific, cultural, philosophical and historical issues that are important to understand in a functioning democracy. In general, the more factual the underlying work, the less protection it receives against infringement. The current view of fair use, however, protects fiction more that non-fiction. This means that a work of fiction that engages in social or political debate will end up with a greater degree of protection than a work of non-fiction that addresses the same topic. This seems to ignore the purported goal of the First Amendment.

This Article argues that if authors present, discuss, or debate important public issues through fiction, there must be a way to ensure that those works are not unduly protected from subsequent use, criticism and commentary, even where

that subsequent use takes the form of fiction. To do this, courts should assess whether or not there is an underlying political purpose to a work of fiction: the greater the political purpose, the more the work should be subject to widespread comment and criticism as allowed under the fair use doctrine; works of fiction that do not engage in commentary, in contrast, should retain the highest degree of protection from copying currently afforded by the copyright law.

COMMENTS

The Media SLAPP Back: An Analysis of California's Anti-SLAPP Statute and the Media Defendant

London Wright-Pegs 323

Should the media—i.e. the press—be entitled to the same level of protection as local citizens are for its free speech rights, or is the media already too powerful and intrusive? Since the 1980s, the public gradually has grown anxious over lawsuits designed to "silence" or "punish" a party from exercising free speech or their "right to petition the government". These suits are called Strategic Lawsuits Against Public Participation ("SLAPP"). Often brought by large powerhouse corporations and organizations, these suits arise when individual citizens are sued to discourage their complaints—where the corporations feel they have either been defamed or had their right to privacy invaded by a party's constitutional right to exercise free speech. As a result, many states have passed anti-SLAPP legislation based on the large corporation versus individual citizen scenario. However, of the 26 states and one territory that have anti-SLAPP legislation, California is one of a minority of states with a broad statute whose language potentially allows media defendants to use it.

This Comment will argue that in order to effectively protect citizen participation in government, the anti-SLAPP statute must include language protecting the media. It also will propose a more tailored anti-SLAPP law allowing use by media defendants as the broad California statute does, while being tailored enough to stay true to the legislature's intent and prevent any abusive usage of the statute that California's law has otherwise allowed.

Network Television and the Digital Threat

Lisa Lapan 343

The network television industry has long had two major components to its business model: content and distribution. The content business involves the development, production and exploitation of entertainment product; distribution is the dissemination of that entertainment product across proprietary and non-proprietary television stations. Recent innovations in

digital technologies have threatened to destroy much of network television's distribution business, and, as a result, the industry has shifted its focus to content. Hence, the much repeated Hollywood mantra is that "content is king." But digital technologies also threaten television's content business. Digital technologies have democratized content creation, leading to an explosion in the content supply. With audiences fragmenting and looming TV/internet convergence, the networks have seen their profit margins grow thin. In the face of these challenges, can network television survive?

This Comment argues that with the economics of the industry continually shrinking, the networks' current business model is simply not sustainable. The networks, and television providers in general, will have to adapt and transform to thrive in the changing media ecosystem, perhaps radically. This Comment also examines the networks' response to the digital threat, proposes additional strategies they may pursue, and considers the future of network television and consequences for television audiences.

Can the First Amendment Stop Content Restriction in State Film Incentive Programs?

Scott Ahmad 395

In order to attract filmmakers and maximize in-state film industry spending, forty-two states offer major motion picture filmmakers generous financial incentives; however, at least thirty-seven of those states also place various content restrictions on films they fund in order to ensure that state-funded films portray their state as an ideal place to film, work, visit, and live. Until the 1990s, the Supreme Court and lower federal courts wavered on their position regarding the constitutionality of content restrictions in government benefit schemes. In the 1990s, the Court established three categorical rules for determining the constitutionality of content restrictions in government benefits in *Rust v. Sullivan*, *Rosenberger v. Rector and Visitors of the University of Virginia*, and *National Endowment for the Arts v. Finley*. The Rust, Rosenberger, and Finley rules permit varying levels of content restrictions in government benefits depending on the identity of the speaker and the type of benefit.

This Comment identifies and categorizes the content restrictions that currently exist within state film incentive programs and argues that the strongest arguments and modern trend of the law favor the application of the Rust rule to state film incentive programs. Accordingly, the First Amendment cannot stop content—or even viewpoint—restrictions in state film incentive programs.