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UCLA ENTERTAINMENT LAW REVIEW

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Articles

Branding as an Antidote to Indecency Regulation

Kristin L. Rakowski 1

In the wake of CBS's broadcast of a bared breast during the 2004 Super Bowl and Fox's airing of the isolated, unscripted expletives Nicole Richie and Cher uttered during their speeches at the 2002 and 2003 Billboard Music Awards, the Federal Communications Commission (FCC) drastically changed its policy on television indecency. Among other changes, airing fleeting expletives would now be met with hefty fines. In addition to being an arbitrary and capricious shift in policy, such zealous regulation violates the First Amendment.

When the Supreme Court last considered broadcast indecency regulation, thirty years ago in FCC v. Pacifica Foundation, the Court considered surprise to be one of the central justifications for giving broadcast less First Amendment protection than it gives to cable—and all other media. The idea was that viewers flip through channels frequently and could never be warned properly of the indecency to come, warranting curtailed First Amendment freedom for the broadcaster who was intruding upon their home. But now that broadcast television networks are establishing for themselves narrow niches (in terms of content and the level of indecency permitted), and familiarizing the public with those niches through branding techniques, the "surprise" rationale is undercut because brands warn viewers of what to expect from the network. Because viewers are no longer "surprised" by indecency, stringent regulation of broadcast television is unconstitutional. Further, cable's deeply defined brands provide a powerful reason to think that cable viewers know what they are getting when they tune into a particular network, and that the FCC's strict regulation of broadcast television cannot constitutionally be extended to cable.

This Article argues that television networks warn viewers of their content through "branding," providing an alternative to FCC regulation of broadcast television and concludes that the strength of network brands undermines the justification for regulation of broadcast television and precludes extending it to cable.

An Analog Solution in a Digital World: Providing Federal Copyright Protection for Pre-1972 Sound Recordings

Michael Erlinger, Jr. 45

In a paradox that escapes most of the public and many law practitioners, pre-1972 sound recordings are not eligible for federal copyright protection; rather, these sound recordings are protected by state law. While the protection afforded by federal copyright law is relatively clear, determining the scope of protection afforded by state law is a difficult, uncertain, and frequently fruitless endeavor. The legal distinction between pre-1972 and post-1972 sound recordings results in a patchwork scheme wherein the availability and strength of protection varies significantly from state to state. The inherent complications are magnified and exponentially compounded when sound recordings are digitally reproduced, distributed and used.

This Note reviews the history of protection afforded to pre-1972 sound recordings, and advocates for the adoption of a uniform national protection scheme and an amendment to the Federal Copyright Act.

How to Save the Recording Industry?: Charge Less

Zac Locke 79

People want to own music. Even if they only own the bits of data on a hard drive, consumer behavior indicates users still desire to have an ownership interest in their music. This means that as the CD goes the way of the pay phone, online retailers who offer perpetual rights to music will become increasingly important. As online retail becomes the way of the future, record labels, music publishers and music e-tailers must find the ideal price point for their product. Apple's iTunes, the most popular music e-tailer, has sold hundreds of millions of songs at ninety-nine cents per unit. However, digital music sales still only account for about 30% of music sales and, surprisingly, the growth rate of digital music sales has been tapering off of late. This ceiling on growth suggests that iTunes' famous ninety-nine cent price point may not be ideal.

This Article defines the ideal price point as the price where profit is maximized while minimizing the economic obstacles that lead to music piracy. The lower the price of music, the less likely consumers will spend time trying to find free illegal downloads or get it from their friends, and the more likely they will be to buy music themselves. The music industry should stop focusing its energy on continued CD sales, and should develop a more viable, cheaper, online delivery system. The music industry needs to give music to consumers at a price – yes, close to free – that will increase demand and propensity to pay for it.

Securities Regulation in a Virtual World

Shannon L. Thompson 89

The introduction of stock exchanges into virtual worlds like Second Life raises a multitude of issues for its users and real world financial regulators like the Securities and Exchange Commission. This Article describes the recent phenomenon of virtual worlds, and argues that the financial instruments traded on virtual stock exchanges are securities for the purpose of federal securities laws and that under these laws, virtual world securities should be subject to registration requirements and anti-fraud liability.

It is likely that the cost of compliance with the federal securities laws would cause the virtual exchanges to cease to exist, potentially resulting in a loss of valuable research opportunities. Thus, although virtual securities are subject to the federal securities laws, the SEC should consider abstaining from enforcement. This Article proposes that improved methods of virtual world self-regulation, such as the development of effective trust networks or risk reduction methods, will serve to ensure that investors receive information about a company's business and are protected from fraud.

COMMENTS

The NCAA Should Adopt a Uniform Student-Athlete Discipline Policy

T. Matthew Lockhart 119

While the NCAA aims to regulate and issue punishment in a uniform fashion to protect its integrity, it is letting the issue of arrests and convictions slip through the cracks. Under the current system, the NCAA can suspend an athlete for accepting bail money from a school booster, but can do nothing about the underlying arrest or the resulting conviction. This Comment asserts that it is time for the NCAA to adopt a student-athlete discipline policy that each of its member institutions must follow. The integrity of each member institution, and college athletics in general, will continue to take a back seat to wins and losses in a system where the NCAA has the power to do more to an athlete who gets a discount on shoes than to an athlete who steals them.

Image as Personal Property: How Privacy Law Has Influenced the Right of Publicity

Robert T. Thompson, III 155

The law known as the right of publicity gives people the right to control the use of their names and likenesses for commercial purposes. For years, courts struggled to define the nature of publicity because of its dual influences—

privacy and property. This Comment argues that the right of publicity cannot be considered exclusively as a property or privacy right, but instead a combination of the two. This Comment proposes a synthesis to interpret future right of publicity cases, arguing that the infusion of a privacy-based rationale helps to explain modern publicity case law.