UCLA ENTERTAINMENT LAW REVIEW

VOLUME 19 ISSUE 2 SUMMER 2012

ARTICLES

The NCAA Needs Smelling Salts When It Comes to Concussion Regulation in Major College Athletics

Despite the now commonplace concern surrounding concussions, the widely-recognized long-term cognitive damage caused by on-field head injuries, the preventative steps that youth and professional sports leagues have taken to mitigate these effects, and the plain words of caution spoken by professional athletes themselves, the NCAA has been lethargic, at best, in reacting to the alarm that athletes, doctors, and lawmakers have been sounding about the danger of head injuries from playing contact sports. Congress, state legislatures, sports leagues, and NCAA-member conferences have rallied to the cause, applying themselves to the task of establishing concussion management protocols and funding studies to evaluate how concussions are caused and what can be done to prevent them.

Yet, the NCAA has failed to apply its resources with similar energy, or take independent action to protect its student-athletes from being plagued by cognitive decline in their post-collegiate professional lives. This Article explains the science of a concussion, and presents the reasons why it is imperative that concussions be prevented. This Article evaluates the efforts of other sports leagues – from the NFL to youth leagues to the Ivy League – to implement concussion management plans and devote funds to studying the cognitive effects of multiple head injuries. This Article argues that the NCAA, which purports to prepare student-athletes for success off the field, has

enjoyed great autonomy since its inception – shielded from government regulation and from student-athlete demands. This Article argues that the NCAA's independence has allowed it to fail its student-athletes by not providing proper education, guidelines, and prevention techniques. Furthermore, this Article suggests that the NCAA create an education plan to prepare student-athletes for timely returns-to-play, and urges the NCAA to direct its funds towards research and collaborative opportunities with existing concussion research efforts. Ultimately, this Article concludes that the NCAA has failed to provide proper regulation in this area of collegiate athletics, and urges the federal courts to mandate change.

Social Science, Media Effects & The Supreme Court: Is Communication Research Relevant After *Brown v. Entertainment Merchants Association*?

This article examines the implications of the U.S. Supreme Court's 2011 ruling in *Brown v. Entertainment Merchants Association* for the future use of social science evidence and communication research to supply legislative facts supporting laws that target harms allegedly caused by media artifacts. The *Brown* majority set the bar for the relevance of social science evidence exceedingly high – perhaps too high, the article suggests – while Justice Stephen Breyer, in contrast, adopted a much more deferential approach in a dissent that embraced the evidence proffered by California. The article also reveals an apparent inconsistency in Justice Antonin Scalia's approach to social evidence when comparing his majority opinion in Brown against his opinion just two years earlier in *Federal Communications Commission v. Fox Television Stations, Inc*. Ultimately, the article asserts that communication scientists hoping to influence both legislative bodies and jurists should view *Brown* as a wake-up call to do two things: 1) educate lawmakers and jurists about whether and when social science research can adequately resolve complex questions about media-caused harms; and 2) jettison research that lacks real-world generalizability and legal relevance.

The Artist's Resale Royalty Right: Overcoming the Information Problem

The artist's resale royalty right, commonly called the droit de suite, has proven politically popular in a diverse range of countries. Since France first codified the right into law in 1920, at least fifty countries have followed suit. To date, the United States, with the exception of California, has been notably absent from this picture. But a federal resale royalty law is now on the horizon for American artists. In December 2011, delegates in both the U.S. House of Representatives and the U.S. Senate introduced the Equity for Visual Artists Act of 2011 (EVAA), a bill which would amend the existing copyright law to include a resale royalty provision.

This Article evaluates whether Congress should adopt the EVAA, or some other variation of the resale royalty right, and provides guidance to lawmakers in considering such legislation. Specifically, this Article points out that an informational deficit, which it terms the information problem, looms over the resale royalty right. Scholars and lawmakers must have access to information about sales of artwork in order to evaluate the effect and efficacy of the right in practice. Likewise, the structure of the right requires that various parties have access to information about sales in order to carry out the require-ments of resale royalty laws. However, secrecy norms pervade the art market, especially in the United States, making such information difficult, if not impossible, to come by. This Article considers several possibilities for how federal lawmakers might overcome, or at least minimize, this information problem, and concludes that the most promising scheme would be one that requires parties to disclose relevant information through a registration system.

COMMENTS

Copyright Cartels or Legitimate Joint Ventures? What the MusicNet and Pressplay Litigation Means for the Entertainment Industry's New Distribution Models

Starr v. Sony BMG Music Entertainment illustrates the inherent tension between copyright holders seeking to enforce their exclusive rights and antitrust doctrine. In Starr, competing record labels pooled their copyrights into digital distribution joint ventures, MusicNet and Pressplay. Such collaboration toes a thin line between cartel-like conduct and joint venture legitimacy. Competitors in the entertainment industry have often collaborated to protect their copyrights. While some of these joint ventures have survived antitrust scrutiny, others have not. The result is often guided by the choice of antitrust standard of review: per se or rule of reason.

The current MusicNet/Pressplay litigation demonstrates how the fundamental tenets of competition law become muddied when intellectual property owners attempt to use their monopolies to control new online distribution models. After examining how the choice of antitrust standard will impact the MusicNet/Pressplay litigation, this Comment considers how current digital joint ventures between content owners, Vevo, Hulu and Ultraviolet, would be analyzed under antitrust doctrine. Despite the record labels' apparent anti-competitive conduct in MusicNet/Pressplay, the conflicting statutory policies of copyright and antitrust law, and lack of judicial scrutiny in this area suggests the rule of reason would be more appropriate.

Next-Generation Piracy: How Search Engines Will Destroy the Music Business

This Comment seeks to address the problems that search engines create for the music business in our ever-evolving digital society. Piracy costs are now measured in billions, encompassing lost revenue and job cutbacks. As the world becomes even more dependent on the Internet for entertainment, piracy can only get worse. Although in the United

States piracy has been addressed with respect to P2P file sharing services, record companies are coming upon an era where search engines will enable effective, quick, and simple piracy. This evolution has already taken hold in China, a country where 99 percent of music files are estimated to be pirated, and copyright infringement is as easy as typing a song name into a specialized search engine. The problem is slowly starting to be felt domestically. Although Supreme Court precedents have addressed the issues of P2P file sharing, current statutes and decisions are unequipped to deal with the next generation of search engines.

This Comment argues that although search engines might be held responsible for some of their contributions to piracy through the court system, ultimately, the fundamentals which make up the business model of music companies must change. Statutes, court decisions, and society are comfortable allowing an open and unrestricted Internet, ensuring that search engine capabilities will not be curbed. As the digital age progresses, recording companies will bleed money until they are faced with a choice: adapt or die. This Comment proposes that to survive, recording companies must delve deep into alternative revenue streams, leaving behind their pursuit of pure music in the process. Ultimately, pure music as an art form will vanish.

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