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Recent Developments

RECENT DEVELOPMENTS IN COPYRIGHT LAW

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I. Introduction

Summarized below are selected copyright cases from volumes 50 and 51 of the Bureau of National Affairs, *United States Patent Quarterly*, Second Series.

*132 II. Federal Preemption

A. Right to Control Licensing and Distribution

In *Orson, Inc. v. Miramax Films Corp.*,[1] the Third Circuit reviewed the Pennsylvania Feature Motion Picture Fair Business Practices Law[2] ("Practices Law") to determine whether the law was preempted by the United States Copyright Act.[3] The Practices Law, among other things, prohibits a motion picture distributor from granting to an exhibitor an exclusive first run license for a motion picture unless such license provides for an expansion of the run to other theaters within the same geographical area after no more than 42 days.[4] Thus, the owner of distribution or public performance rights in a motion picture could be forced under sections 203-207 of the Practices Law to grant a license to other theaters within the same geographical area as the theater to which the owner chose to grant an exclusive first run license. By contrast, section 106 of the Copyright Act[5] grants to a copyright owner the exclusive rights to "distribute" and to "perform the copyrighted work publicly."[6] This right also encompasses "the capacity arbitrarily to refuse to license one who seeks to exploit the work."[7]

The court confirmed that a state may not mandate distribution and reproduction of a copyrighted work in the face of the exclusive rights to distribution granted under 17 U.S.C. § 106.[8] Because sections 203-207 of the Practices Law "stands as an obstacle" to the exclusive rights granted to copyright owners under the United States Copyright Act, the court held that the Practices Law was preempted.[9]

B. Community vs. Separate Property

The status of copyright ownership in divorce was addressed in *Rodrigue v. Rodrigue*.[10] The court examined Louisiana's community property laws to determine ***133** whether copyright was separate property of an author-spouse upon creation, or whether ownership of copyright was transferred to the community by operation of law.[11] The artist's spouse claimed co-ownership of all copyrights that arose during the community, and she maintained that she was entitled to an accounting for the artist's use of such copyrights after their divorce.[12]

The court noted that art works created during marriage would qualify as community property under Louisiana law, which provided that property acquired during marriage "through the effort, skill, or industry of either spouse" was community property.[13] However, when community property law affects a federally created property right, the United States Supreme Court has held such law to be preempted.[14] The Federal Copyright Act provides that "[c] opyright…vests initially in the author"[15] and that "[c]opyright in a work created on or after January 1978, subsists from its creation."[16] Stating that community property law "may not defeat the clearly expressed intention of Congress by attributing copyright ownership to a non-author at the time of creation,"[17] the court concluded that copyright would be separate property of the author-spouse upon its creation.[18]

With respect to the claim that ownership of copyright transferred to the community by operation of law, the court found that, under Louisiana law, "a transfer by onerous title must be made in writing and a transfer by gratuitous title must be made by authentic act."[19] In the case at hand, the court found that the author-spouse had registered his copyrights as his sole property, thereby creating a rebuttable presumption of separate property ownership.[20] In so doing, the author-spouse had expressed his intention not to donate his separate property to the community; therefore, no transfer in writing or by authentic act occurred.[21] The court pointed out the myriad issues that would be affected by implying consent to the transfer of copyright to the community. It noted that such an implication would ignore "the author's actual intent, possible disincentives to the author to create, inconsistencies ***134** that might arise in other jurisdictions, whether community property states or not, and the problems that could arise in a mobile society if the author and spouse move to a community property state."[22]

In addition, the creation of a new class of co-owners would place third-party licenses and transferees in the difficult position of having to determine whether community property claims affected the copyrights at issue.[23] This would be contrary to the goal of federal copyright law to "enhance predictability and certainty of copyright ownership, promote national uniformity and avoid the practical difficulties of determining and enforcing an author's rights under the differing state laws."[24] The court pointed out that federal legislative action might be appropriate in the future to provide a non-author spouse with a share in the tangible benefits derived from a copyright, while the author-spouse retained ownership and control over the copyright itself.[25]

III. Transfer and Licensing

A. Duration of Oral License

In *TV Globo Ltda. v. Brazil Up-Date Weekly, Inc.*,[26] the Southern District of New York ruled that an oral copyright license without a stated term endured for the duration of the copyright.[27] In this case, TV Globo, the largest television producer and distributor in Latin America, entered into an arrangement for Brazil Up-Date to distribute copies of TV Globo's copyrighted programming in the United States.[28] The arrangement began in 1992, but was not memorialized in writing.[29] In 1997, TV Globo sent a letter informing Brazil Up-Date that TV Globo had decided to terminate the agreement.[30] TV Globo sued when Brazil Up-Date refused to discontinue distribution of TV Globo's copyrighted television programs.[31] The court held that a copyright assignment or license that does not expressly describe the term of its ***135** duration will generally be construed, in the absence of contrary evidence, to be effective for the duration of the copyright term.[32] However, upon the presentation of proper evidence, a plaintiff may rebut the presumption that the grant of the license endures for the remaining term.[33]

B. Effect of 35-Year Transfer Termination Provision

In *Walthal v. Rusk*,[34] the Seventh Circuit examined the 35-year transfer termination rule provided in section 203 of the Copyright Act.[35] In 1984, a musical group known as the "Butthole Surfers" entered into an oral licensing agreement with Corey Rusk, pursuant to which Rusk's companies (collectively referred to as "Touch and Go") received a nonexclusive right to manufacture and sell copies of the Butthole Surfers' musical performances in return for a 50% share of the net profits.[36] In 1995, the Butthole Surfers sent Touch and Go a letter terminating the licensing agreement.[37] Touch and Go, however, continued to manufacture and sell copies of the group's performances.[38] The group sued, claiming copyright infringement along with other claims.[39]

Touch and Go asserted that the group was prohibited by section 203 of the Copyright Act from terminating the licensing agreement.[40] The company claimed that section 203 prohibited the termination of a license with an unspecified duration prior to 35 years from the date the license was granted. Under section 203, "the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright…is subject to termination.... Termination of the grant may be effected at any time during a period five years beginning at the end of thirty-five years from the date of execution of the grant...."[41]

The court observed that only one previous appellate court case had interpreted section 203 of the Copyright Act.[42] In that case, the Ninth Circuit interpreted section ***136** 203 to prohibit termination of a license prior to 35 years from its inception, unless the license explicitly specified an earlier termination date.[43] The court noted that the Ninth Circuit decision was sharply criticized by respected scholars, including Nimmer's comments that the decision was "stunning, both for its utter absence of support in law and for the breadth of its error."[44]

Independently examining the statute and its legislative history, the *Walthal* court observed that "[t]he purpose of § 203 is to give authors and their heirs a second chance to market works even after a transfer of rights has been made.... The provision was needed 'because of the unequal bargaining position of authors, resulting in part from the impossibility of determining a work's value until it has been exploited.'"[45] Thus, the court concluded that section 203 did not require a minimum license period under the statute. In addition, the court determined that Illinois law, which governed the licensing agreement at issue, did not conflict with the Copyright Act by allowing the agreement to be terminable at will.[46]

C. Antitrust and "Block-Booking" Licenses

In *MCA Television, Ltd. v. Public Interest Corp.*,[47] the Eleventh Circuit held that "block booking" arrangements are per se illegal under the Sherman Act.[48] Block booking arrangements occur when a copyright holder licenses, or offers to license, one or a group of features on the condition that an exhibitor will also license another feature.[49] In this case, MCA licensed several television programs to a Florida corporation that owned and operated a television station.[50] MCA conditioned the licensing of several popular shows on the inclusion of one untested series as part of the agreement.[51] Citing the 1962 Supreme Court decision in *United States v. Loew's, Inc.*,[52] the court held that, in the television licensing context, block booking arrangements constituted an illegal tying arrangement in violation of section 1 of the Sherman Act.[53]

***137** Further, the *MCA* court held that a party who claims a violation of the Sherman Act based on block booking can only recover damages by proving an "antitrust injury."[54] An antitrust injury is an "injury of the type the antitrust laws were intended to prevent and that flows from that which makes the defendants' acts unlawful."[55] In the block booking context, the claimant that is allegedly injured must show that as a consequence of its licensing of an undesirable program, the claimant suffered tangible financial harm for which it is entitled to damages.[56] In the television context, the claimant could satisfy this burden by showing that it was unable to solicit or be solicited for more desirable programming to fill the slot allocated to the undesirable licensed feature.[57]

The *MCA* court also found that the damages provision in the licensing contract was unenforceable.[58] The contract provided that in the event of a breach by the licensee, MCA would be entitled to: 1) receive full payment of the entire contract price, regardless of the number of shows that had yet to be aired at the time of breach and 2) revoke the licenses for the balance of the unaired shows and pursue a claim for copyright infringement.[59] The court held that MCA could not recover both ways.[60] By demanding the full contract price as liquidated damages for breach, MCA had effectively ratified the contract, saying that the contract existed and that MCA was owed a recovery for the breach.[61] However, by revoking the broadcast licenses and suing in copyright, MCA had also tried to rescind the contract because the damages provision stated that the rights established in the contract no longer existed.[62] Thus, the damages provision required the licensee to pay the full licensing fees for the broadcast, and at the same time held the licensee liable for the showing of unaired programs that the licensee had already paid for.[63] The court held that the damages clause was an unenforceable penalty under contract law because MCA effectively ratified the contract by requiring payment of the full contract price and effectively rescinded the contract by revoking the license and suing under copyright.[64]

*138 IV. Infringement

A. Registration as Prerequisite to Suit

The U.S. District Court for the District of Kansas dismissed a copyright infringement suit because of the plaintiff's failure to obtain an actual receipt or denial of a registration certificate from the Copyright Office prior to instituting the action.[65] In *Goebel v. Manis*,[66] the plaintiff asserted that the defendant copied and sold replicas of plaintiff's fabric snowman named the "Little Fat One."[67] After filing an application for copyright registration of her work, the plaintiff instituted a copyright infringement action against the defendant.[68] The copyright application was still pending at the time suit was filed.[69]

The court observed that some courts, such as the Eleventh Circuit, have required actual completion of the registration process, while others, such as the Fifth Circuit, have found subject matter jurisdiction to exist when the plaintiff has initiated the registration process.[70] However, the court found that the plain language of the statute required actual completion of the registration process through issuance or denial of a registration certificate.[71] Section 411(a) of the Copyright Act provides that "[N]o action for infringement of the copyright in any work shall be instituted until registration of the copyright claim has been made in accordance with this title.... [H]owever, where…registration has been refused, the applicant is entitled to institute an action for infringement if notice thereof, with a copy of the complaint, is served on the Register of Copyrights."[72] With a note of regret, the court stated that it favored the approach of allowing a claim to proceed if a plaintiff had a pending registration on file, but found itself compelled to follow the "plain language of the statute."[73] Consequently, the action at hand was dismissed without prejudice, and the ***139** plaintiff was required to obtain a certificate of registration or denial of same before re-filing her action.[74]

B. Abandonment of Infringing Works

In *In re Pilz Compact Disc, Inc.*,[75] the United States Bankruptcy Court for the Eastern District of Pennsylvania addressed the question of whether abandonment of an unlicensed inventory of musical compact discs by a bankruptcy trustee constituted copyright infringement.[76] The debtor in this case had been engaged in the business of manufacturing compact discs for sale.[77] After the debtor filed for bankruptcy, the bankruptcy trustee attempted unsuccessfully to negotiate a licensing agreement for the inventory.[78] Because the inventory remained unlicensed, the trustee could not sell it.[79] Accordingly, the trustee sought to abandon the inventory because it was not a useful asset to the bankruptcy estate.[80]

The Harry Fox Agency, a music licensing, royalty collection, and auditing company, objected to the proposed abandonment, alleging that it would constitute copyright infringement as a "distribution" of unlicensed material.[81] Under the circumstances of this case, however, the court concluded that the trustee's abandonment of the unsalable inventory would not constitute a distribution of unlicensed material because abandonment would cause all rights in the inventory to revert to the debtor as if the bankruptcy had never occurred.[82] Accordingly, the property interest in the inventory would be treated as if it had remained with the debtor at all times, and the trustee would not be considered as having distributed the unlicensed property under federal copyright law.[83]

***140 C. Protectability of Computer Programs**

In *O.P. Solutions, Inc. v. Intellectual Property Network, Ltd.*,[84] the court provided a thorough discussion of the "abstraction, filtration, comparison" test to determine whether non-literal elements of two computer programs were substantially similar such that the defendant's program constituted an infringement of the plaintiff's copyright in its program. The plaintiff ("OPS") designed, developed, marketed and serviced computer programs that catered to law firms with intellectual property practices.[85] The defendant ("IPN") developed and marketed management programs for trademark practices.[86]

IPN did not challenge the validity of OPS' copyright registration for its program. Thus, the issue at hand was whether IPN infringed OPS' registered work by copying "original constituent elements" of the program.[87] The court applied a two-step approach to assessing possible infringement. The court used the term "probative similarity" to describe the standard that one would initially use to determine if the defendant, as a factual matter, had copied the plaintiff's work.[88] The court stated that probative similarity was "a less-demanding standard than 'substantial similarity' - the standard for determining whether copying is actionable as a legal matter."[89] When assessing probative similarity, the court stated that the works would be examined in their entirety for "similarities that, in the normal course of events, would not be expected to arise independently in the two works."[90] Once a plaintiff has established actual copying through a showing of probative similarity, it must then satisfy the more stringent test for copyright infringement by showing that there is substantial similarity between the defendant's work and the *protectable elements* of the plaintiff's work.[91] The court also addressed the protectability of compilations, noting that protection for compilations extended only to the new materials contributed by the compilation author and to the "selection, coordination, or arrangement" of the compilation's elements.[92]

With respect to computer programs, the court examined both the literal and the non-literal elements of the programs. Literal elements consist of actual programming ***141** code, while non-literal elements consist of the "structure, sequence, and organization" of the program, including such things as the program's screen displays, user interfaces, menus and the like.[93] To determine whether the non-literal elements of the two programs were substantially similar, the court applied the abstraction, filtration, comparison test.[94] The abstraction portion of the test required the court to separate the non-protectable ideas and processes of a program from the elements of expression, which allowed a comparison of only those portions of the work that would be eligible for copyright protection.[95] OPS presented the court with a list of features of its program that it believed to be protectable, and the court found this list to satisfy the abstraction phase of analysis.[96] Turning to the filtration phase, the court "filtered" the abstracted elements to determine whether any copyright doctrines would limit the scope of protection.[97] In its filtration analysis, the court examined whether the elements (i) were original as required by the Constitution, (ii) were expression rather than ideas or processes, (iii) were unprotectable because of the concept of "merger,"[98] (iv) were merely "scenes-a-faire,"[99] or (v) were taken from the public domain and as such were no longer protectable.[100] Finally, the court compared each element that survived the filtration phase with the corresponding elements of the defendant's work, to determine whether a jury could reasonably find infringement as to each element.[101]

D. Retransmission of Television Programming

In *National Football League v. PrimeTime 24 Joint Venture*,[102] the National Football League ("NFL") sued a satellite carrier that transmitted network television programming.[103] The NFL alleged that the satellite carrier committed copyright infringement by capturing broadcast signals in the United States and retransmitting ***142** those signals to satellites for further retransmission abroad without the NFL's permission.[104] The court noted that, under the Copyright Act, the NFL's copyrighted telecasts were audiovisual works that it had the exclusive right to perform publicly.[105] The NFL argued that by retransmitting its telecasts to locations outside the United States, the satellite distributor publicly displayed or performed the NFL's copyrighted telecasts without permission.[106] By contrast, the satellite distributor argued that its retransmissions were not prohibited public performances under the Copyright Act because the Act only applied to public performances within the United States.[107]

The court rejected the satellite carrier's argument, holding that a satellite carrier's first transmission of signals captured in the United States was a domestic predicate act that could itself be an act of copyright infringement.[108] In cases when an individual has committed an act in the United States that would permit further reproduction abroad, a United States court could assert jurisdiction over those foreign acts.[109] The court noted that under the satellite carrier's analysis, anyone in a foreign nation could "reach into the United States, capture the first transmission of signals from the United States, and retransmit those signals for public viewing within its borders without liability under the United States Copyright Act to the holder of the United States copyright."[110]

The *NFL* court further noted that by passing the Satellite Home Viewer Act,[111] Congress intended to prohibit satellite carriers from capturing signals in the United States and transmitting them abroad without authorization.[112] The Satellite Home Viewer Act gave satellite carriers a license to retransmit primary transmissions of certain network stations only to households located in the United States.[113] The court's holding recognized that if satellite carriers had the right to capture network signals in the United States for transmission abroad without the copyright holder's permission, international licensing arrangements would be unnecessary.[114]

Footnotes

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1 189 F.3d 377, 51 U.S.P.Q.2d (BNA) 1818 (3d Cir. 1999) (en banc).

2 73 PA. CONS. STAT. §§ 203-207 (1993).

3 17 U.S.C. §§ 101 *et seq.* (1994 & Supp. IV 1998).

4 *See Orson*, 189 F.3d at 379, 51 U.S.P.Q.2d at 1819 (citing 73 PA. CONS. STAT. §§ 203-207 (1993)).

5 17 U.S.C. § 106 (1994 & Supp. IV 1998).

6 *Orson*, 189 F.3d at 379, 51 U.S.P.Q.2d at 1819 (citing 17 U.S.C. §106 (1994 & Supp. IV 1998)).

7 *Id.* at 385, 51 U.S.P.Q.2d at 1824 (citing Stewart v. Abend, 495 U.S. 207, 228-29, 14 U.S.P.Q.2d (BNA) 1614, 1624 (1990)).

8 *See id.* at 386, 51 U.S.P.Q.2d at 1825.

9 *See id.* at 386-87, 51 U.S.P.Q.2d at 1825.

10 55 F. Supp. 2d 534, 50 U.S.P.Q.2d (BNA) 1278 (E.D. La. 1999).

11 *See id.* at 536, 50 U.S.P.Q.2d at 1279.

12 *See id.*

13 *Id.* at 539, 50 U.S.P.Q.2d at 1282 (citing LA. CIV. CODE arts. 2336 & 2338 (West 1985)).

14 *See id.* at 538, 50 U.S.P.Q.2d at 1281 (citing Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979)).

[15] *Id.* at 541, 50 U.S.P.Q.2d at 1283 (citing 17 U.S.C. § 201 (1994)).

[16] *Id.* (citing 17 U.S.C. § 302(a) (1994 & Supp. IV 1998)).

[17] *Id.*

[18] *See id.*

[19] *Id.* at 544, 50 U.S.P.Q.2d at 1285 (citing LA. CIV. CODE art. 2343.1 (West 1985)).

[20] *See id.*

[21] *See id.*

[22] *Id.* at 544, 50 U.S.P.Q.2d at 1286.

[23] *See id.*

[24] *Id.* (citing Community for Creative Non-Violence v. Reid, 490 U.S. 730, 749, 10 U.S.P.Q.2d (BNA) 1985, 1994 (1989)).

[25] *See id.* at 546, 50 U.S.P.Q.2d at 1287.

[26] 50 U.S.P.Q.2d (BNA) 1478 (S.D.N.Y. 1999).

[27] *See id.* at 1479-80.

[28] *See id.* at 1478-79.

[29] *See id.* at 1479.

[30] *See id.*

[31] *See id.*

[32] *See id.*

[33] *See id.* at 1480.

[34] 172 F.3d 481, 50 U.S.P.Q.2d (BNA) 1311 (7th Cir. 1999).

[35] 17 U.S.C. § 203 (1994 & Supp. IV 1998).

[36] *See Walthal*, 172 F.3d at 482, 50 U.S.P.Q.2d at 1312.

[37] *See id.*

[38] *See id.*

[39] *See id.* at 482-83, 50 U.S.P.Q.2d at 1312.

[40] *See id.* at 483, 50 U.S.P.Q.2d at 1312.

[41] *Id.*, 50 U.S.P.Q.2d at 1312 (citing 17 U.S.C. § 203 (1994 & Supp. IV 1998)).

[42] *See id.* at 483, 50 U.S.P.Q.2d at 1313 (discussing Rano v. Sipa Press, Inc., 987 F.2d 580 (9th Cir. 1993)).

[43] *See id.*

[44] *Id.* (citing 3 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHTS § 11.01 (1998)).

[45] *Id.* at 484, 50 U.S.P.Q.2d at 1313-14 (citations omitted).

[46] *See id.* at 485, 50 U.S.P.Q.2d at 1314.

[47] 171 F.3d 1265, 50 U.S.P.Q.2d (BNA) 1321 (11th Cir. 1999).

[48] 15 U.S.C. § 1 (1994 & Supp. IV 1998).

[49] *See MCA Television*, 171 F.3d at 1277, 50 U.S.P.Q.2d at 1339.

[50] *See id.* at 1268, 50 U.S.P.Q.2d at 1322.

[51] *See id.*

[52] 371 U.S. 38, 135 U.S.P.Q. (BNA) 201 (1962).

[53] *See MCA Television*, 171 F.3d at 1279, 50 U.S.P.Q.2d at 1331. *See also* Sherman Act, 15 U.S.C. § 1 (1994).

[54] *See id.*

[55] *Id.* (citing Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489 (1977)).

[56] *See id.* at 1279, 50 U.S.P.Q.2d at 1331.

[57] *See id.*

[58] *See id.* at 1276, 50 U.S.P.Q.2d at 1329.

[59] *See id.* at 1273, 50 U.S.P.Q.2d at 1326.

[60] *See id.* at 1275, 50 U.S.P.Q.2d at 1327.

[61] *See id.*

[62] *See id.*

[63] *See id.* at 1275, 50 U.S.P.Q.2d at 1329.

[64] *See id.*

[65] *See* Goebel v. Manis, 39 F. Supp. 2d 1318, 50 U.S.P.Q.2d (BNA) 1537 (D. Kan. 1999)

[66] *Id.*

[67] *See id.*

[68] *See id.*

[69] *See id.*

[70] *See id.* at 1319-20, 50 U.S.P.Q.2d at 1538-39 (citing M.G.B. Homes, Inc. v. Ameron Homes, Inc., 903 F.2d 1486, 1488-89, 15 U.S.P.Q.2d (BNA) 1282, 1284-85 (11th Cir. 1990) and Apple Barrel Prods., Inc. v. Beard, 730 F.2d 384, 386-87, 222 U.S.P.Q. (BNA) 956, 957 (5th Cir. 1984)).

[71] *See id.* at 1320, 50 U.S.P.Q.2d at 1539.

[72] *Id.* at 1319, 50 U.S.P.Q.2d at 1537-38 (citing 17 U.S.C. § 411(a) (1994 & Supp. IV 1998)).

[73] *Id.* at 1320, 50 U.S.P.Q.2d at 1539.

[74] *See id.*

[75] 50 U.S.P.Q.2d (BNA) 1567 (Bankr. E.D. Pa. 1999).

[76] *See id.*

[77] *See id.* at 1569.

[78] *See id.* at 1570.

[79] *See id.*

[80] *See id.* at 1571.

[81] *See id.*

[82] *See id.* at 1574-75.

[83] *See id.* at 1575.

[84] 50 U.S.P.Q.2d (BNA) 1399 (S.D.N.Y. 1999).

[85] *See id.* at 1400.

[86] *See id.* at 1401.

[87] *Id.* at 1402.

[88] *See id.*

[89] *Id.*

[90] *Id.* at 1402-03.

[91] *See id.* at 1403.

[92] *Id.* at 1406.

[93] *Id.* at 1404.

[94] *See id.* at 1405.

[95] *See id.*

[96] *See id.*

[97] *See id.*

[98] Under the "merger" doctrine, expression is not protected when there are so few ways to express an underlying idea that protection would deny others the use of that idea.

[99] Under the "scenes-a-faire" doctrine, incidents, characters or settings which are as a practical matter indispensable, or at least standard, in the treatment of a given topic are considered unprotectable by copyright because it would be natural for them to appear in works dealing with similar subjects or situations.

[100] *See id.* at 1405-06.

[101] *See id.* at 1415.

[102] 50 U.S.P.Q.2d (BNA) 1461 (S.D.N.Y. 1999).

[103] *See id.* at 1462.

[104] *See id.*

[105] *See id.* (citing 17 U.S.C. § 106(4) (1994 & Supp. IV 1998)).

[106] *See id.*

[107] *See id.* at 1463.

[108] *See id.* at 1464.

[109] *See id.* (citing Fun-Damental Too, Ltd. v. Gemmy Indus. Corp., 41 U.S.P.Q.2d (BNA) 1427 (S.D.N.Y. 1996)).

[110] *Id.*

[111] Satellite Home Viewer Act of 1988, 17 U.S.C. § 119(a) (1994 & Supp. IV 1998).

[112] *See National Football League*, 50 U.S.P.Q.2d at 1464-65.

[113] 17 U.S.C. § 119(a)(7) (1994).

[114] *See National Football League*, 50 U.S.P.Q.2d at 1465 n.4.