ENTERTAINMENT LAW
SPRING 2016 CLASS INFORMATION

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REQUIRED BOOKS: ENTERTAINMENT LAW: Cases and Materials in Film, Television, and Music, by Elizabeth Henslee & William D. Henslee, Aspen Press available Fall 2017 (The book chapters will be posted on TWEN as they become available. In the event a chapter is not complete, we will review the cases listed on the syllabus for the assignment to be covered.).


RECOMMENDED BOOKS: The Power of Film by Howard Suber (ISBN 1-932907-17-3).


How to Build and Manage an Entertainment Law Practice by Gary Greenberg (ISBN 1-57073-904-8)

Shoot Out by Peter Bart & Peter Guber (ISBN 0-399-14808-6)

GENERAL INFORMATION: Sign up for the class on TWEN. Read the books and watch the movies before the first class. The syllabus is subject to change.

GRADING CRITERIA: A comprehensive final examination on the material will be administered.

LEARNING OUTCOMES:
1. Upon completion of the course, students will understand the relationships between the businesses that run the entertainment industry and the talent that the public encounters as the final product of the business transaction.

2. Upon completion of the course, students will understand the differences in the roles of actors, writers, directors, and producers in the film and television business.

3. Upon completion of the course, students will understand the differences in the roles of the record company, the music publishing company, the talent, and the producer.

4. Upon completion of the course, students will understand the differences in the roles of agents, managers, and lawyers engaged in the entertainment business.

5. Upon completion of the course, students will understand the various sources of revenue generated by a creative project or artist.

6. Upon completion of the course, students will understand the interplay between intellectual property rights, tort law, and the first amendment.

7. Upon the completion of the course, students will understand some of the pitfalls created by the failure to properly secure the intellectual property rights in a project.

8. Upon completion of the course, students will understand how the rights of privacy and publicity protect talent.

**Week 1, Assignment 1:** Introduction to the business of entertainment and the law covered by the course. Read and be prepared to discuss *Entertainment Careers For Lawyers*. The Glossary terms will be used throughout the semester. Read *What Makes Sammy Run?* For a discussion next week. Watch *The Bad and the Beautiful* and *The Player* and be prepared to discuss the film in class.

**PART I: The Business of Entertainment Law**

I. The Business: Studios and Recording Companies

   A. Chapter 1: An Overview of the History of the Entertainment Business
   B. Chapter 2: Film and Television Studios
      1) Actors
         Article: http://historycooperative.org/the-history-of-the-hollywood-movie-industry/
      a) Pay or Play
         2. *Parker v. Twentieth Century Fox Film Corp.*, 474 P.2d 689 (Cal. 1970)
      b) Television
1. **This is Me, Inc. v. Taylor**, 157 F.3d 139 (2d Cir. 1998)

2) Writers


a) Writing Credit and Arbitration
   2. **King v. Innovation Books**, 976 F.2d 824 (2d Cir. 1992)—removal of author credit

3) Directors
   a) **Tristar Pictures, Inc. v. Director’s Guild of America, Inc.**, 160 F.3d 537 (9th Cir. 1998)

4) Producers
   b) Note: **Yari v. Producers Guild of America, Inc.**, 73 Cal. Rptr. 3d 803 (Cal. Ct. App. 2008)

5) Credits
   a) **Loren v. Samuel Bronstein Prods.**, 224 N.Y.S.2d 959 (N.Y. 1962)—credit size

C. Chapter 3: Recording Companies and Music Publishing

1) Songwriters and Producers
   a) **Coles v. Wu-Tang Prods., Inc.**, 916 N.Y.S.2d 100 (N.Y. 2011).
   c) **Goodman v. Lee**, 815 F.2d 1030 (5th Cir. 1987)
      1. Note: **Goodman v. Lee**, 78 F.3d 1007 (5th Cir. 1996)—Lees appealed, decision affirmed

2) Record Company Contracts
   b) **Isley v. Motown Record Corp**, 69 F.R.D. 12 (S.D.N.Y. 1975)
   d) **Far Out Productions, Inc. v. Oskar**, 247 F.3d 986 (9th Cir. 2001)

3) Music Publishing Companies

b) *Globe Music Corp. v. Johnson*, 84 So. 2d 509 (Miss. 1956).


II. The People You Need

A. Chapter 4: Agents, Managers, & Lawyers

1) Managers

a) Film and Television

i) *Marathon Entertainment, Inc. v. Blasi*, 70 Cal. Rptr. 3d 727 (Cal. 2008)

2. working with minors

i) *Berg v. Traylor*, 56 Cal. Rptr. 3d 140 (Cal. Ct. App. 2007)

b) Music


2. *Ahern v. Scholz*, 85 F.3d 774 (1st Cir. 1994)


2) Agents

a) Music


2. *International House of Talent, Inc. v. Alabama*, 712 S.W.2d 78 (Tenn. 1986)

b) Film & Television

1. *Grammer v. Artists Agency*, 287 F.3d 886 (9th Cir. 2002)


3) Lawyers

a) Music


b) Film and Television


III. Other Ways of Making Money: Financing, Compensation, Merchandising, Tours

A. Chapter 5: Film and Television Financing, Compensation and Merchandising

1) Film Financing


2) Net Compensation

3) Merchandising and product placement
   b) Rey v. Lafferty, 990 F.2d 1379 (1st Cir. 1993)—would prefer not to use the case, but it’s in the original textbook
   c) Note: Leonard v. Pepsico, Inc., 210 F.3d 88 (2d Cir. 2000)—kid sues for a Harrier Jet after Pepisco lists it as being 7 million points—I just want it in the book
   g) Note: http://www.nytimes.com/2010/04/05/business/media/05screen.html?_r=0 NY Time article on product placement

B. Chapter 6: Music Touring and Merchandising
   1) Merchandising Contracts and Illegal Use of Trademark
      a) Elvis Presley Enter., Inc. v. Capese, 141 F.3d 188 (5th Cir. 1998)
   2) Tours
      a) Failure to Perform Touring Agreements
   3) On Tour: Violence and Tort Liability
c) *Dickinson v. Bizkit*, 2004 WL 149357

### PART II: Rights of Expression and Rights to Intellectual Property

#### IV. The Devil Made Me Do It: Use of Tort Law and First Amendment to Restrain Media

**A. Chapter 7: Magazines, Movies and Television**

1) **Magazines and Books**
   3. Note: *Herceg v. Hustler Magazine*, 814 F.2d 1017 (5th Cir. 1987)

b) **Censorship:**

2) **Movies**

b) **Censorship:**
   1. *United Artists Corporation v. Maryland State Board of Censors*, 210 Md. 586 (Md. 1956);

2) **Television**

b) **Censorship:**
   2. [http://content.time.com/time/arts/article/0,8599,1531249,00.html](http://content.time.com/time/arts/article/0,8599,1531249,00.html)

**b) Censorship:**

2. **Writers Guild of Am., West Inc. v. ABC, Inc.**, 609 F.2d 355 (9th Cir. 1979)

**B. Chapter 8: Music and Video Games**

1) **Music:**

6. **Note: Weirum v. RKO General, Inc.**, 123 Cal. Rptr. 468 (Cal. 1975)

2) **Censorship and Regulation:**

1. **Luke Records v. Navarro**, 960 F.2d 134 (11th Cir. 1992);
2. **Marilyn Manson v. N.J. Sports & Exposition Auth.**, 971 F. Supp. 875 (D.N.J. 1997);
3. **DA Mort., Inc. v. City of Miami Beach**, 486 F.3d 1254 (11th Cir. 2007);

3) **Video Games**

1. **James v. Meow Media**, 300 F.3d 683 (6th Cir. 2002)
3. **Watters v. TSR**, 904 F.2d 378 (6th Cir. 1990)

4) **Censorship**
V. Intellectual Property
   A. Chapter 9: Copyright Ownership
      1) Originality
         2. Herzog v. Castle Rock Entertainment, 193 F.3d 1241 (11th Cir. 1999)
         3. Murray v. NBC, Inc., 844 F.2d 988 (2nd Cir. 1988)
         4. Miller v. Universal City Studios, Inc., 650 F.2d 1365 (5th Cir. 1981)
         6. Atari Games Corp. v. Oman, 979 F.2d 242 (D.C. Cir. 1992)—creativity for copyrightability very low
      2) Derivative Works
         4. Lewis Galoob Toys v. Nintendo, 964 F. 2d 965 (9th Cir. 1992)—Game Genie add on product (allowed users to modify games) did not infringe on Nintendo’s copyright because it did not create a derivative work

b) Notes:
   1. Twin Peaks Prods., Inc. v. Publications Intern., Ltd., 996 F.2d 1366 (2d Cir. 1993)
   2. Micro Star v. FormGen, Inc., 154 F.3d 1107 (9th Cir. 1998)--Δ marketed new levels for “Duke Nukem 3-D”, which were created by users using material in the game. Δ made them available for free on Internet—ct. found derivative work

3) Copyright Ownership and Transfer
a) Joint Works and Joint Ownership
1. *McCants v. Tolliver*, 2011 WL 2893058 (N.D. Ohio July 15, 2011)—sued brother for copyright infringement stating joint authors of sampled work—court found even if joint authors, cannot infringe against yourself so doesn’t matter
2. *Aalmuhammed v. Lee*, 202 F.3d 1227 (9th Cir. 2000)
3. *Thomson v. Larson*, 147 F.3d 195 (2d Cir. 1998)—Rent—claimed co-authorship
4. *Childress v. Taylor*, 945 F.2d 500 (2d Cir. 1991)—my favorite case—transition to works for hire

b) Works for Hire

c) Assignment Rights
1. *Silvers v. Sony Pictures Enter., Inc.*, 402 F.3d 881 (9th Cir. 2005)

B. Chapter 10: Copyright Infringement and Remedies
1) Infringement
   b) *U.S. v. Wise*, 550 F.2d 1180 (9th Cir. 1977)—constitutionality of §104 & §27
   c) *Columbia Pictures Television v. Krypton Broadcasting of Birmingham, Inc.*, 106 F.3d 284 (9th Cir. 1997)
   d) Supreme Court granted cert, *Feltner v. Columbia Picture Television, Inc.*, 523 U.S. 340 (1998), and decided that Seventh Amendment allows right to jury trial on all issues pertinent to the calculation of damages in copyright infringement action
2) Total Concept and Feel Test and the Subtractive Approach
overall concept and feel, but controller sequences were not copyrightable


3) Fair Use


4) Reverse Engineering

a) *Sega v. Accolade*, 977 F.2d 1510 (9th Cir. 1992)—reverse engineering of code allowed for video game to be compatible with Sega Genesis—fair use element—disassembly of copyrighted code is fair use if it provides the only means of access to those elements of the code that are not protected by copyright and the copier has a legitimate reason for seeking such access)

5) DMCA

a) *Lenz v. Universal Music Corp.*, 572 F. Supp. 2d 1150 (N.D. Cal. 2008)
b) *Viacom v. YouTube*, 676 F.3d 19 (2d Cir. 2012)
c) *Perfect 10 v. CC Bill*, 488 F.3d 1102 (9th Cir. 2007)

C. Chapter 11: Trademark

1) What is a Trademark?

a) *Oliveira v. Frito-Lay, Inc.*, 251 F.3d 56 (2d Cir. 2001)—Astrud Gilberto (Girl From Ipanema) sues Frito Lay for using her “signature song” in a television commercial—claims trademark in her performance of song

2) Illegal Use of Trademark

a) *Elvis Presley Enter., Inc. v. Capese*, 141 F.3d 188 (5th Cir. 1998)
b) *New Kids on the Block v. America Publications, Inc.*, 971 F.2d 302 (9th Cir. 1992).

3) Battle Over Band Names

a) *Robi v. Reed*, 173 F.3d 736 (9th Cir. 1999)
b) *Far Out Productions, Inc. v. Oskar*, 247 F.3d 986 (9th Cir. 2001)

4) Use in Video Game

a) *Universal City Studios v. Nintendo*, 746 F.2d 112 (2d Cir. 1984)—no consumer confusion between Donkey Kong and King Kong

b) *Frosty Treats, Inc. v. Sony Computer Enter. Am., Inc.*, 426 F.3d 1001 (8th Cir. 2005)—“Frosty Treats” logo failed to acquire secondary meaning and did not cause consumer confusion.
c) **E.S.S. Entertainment 2000, Inc. v. Rock Star Videos, Inc.,** 547 F.3d 1095 (9th Cir. 2008)—Owner of strip club brought suit against video games claiming depiction of club on video game violated trademark.

VI. Right to Privacy

A. Chapter 12: Right to Privacy

1) Film & Television:

   a) **Leopold v. Levin,** 259 N.E.2d 250 (Ill. 1970).

   b) **Bosley v. Wildwett.com,** 310 F. Supp. 2d 914 (N.D. Ohio 2004)—television news anchor videotaped in various states of undress while participating in a wet t-shirt contest. She won, but it destroyed her career.

   c) **White v. Samsung Electronics Am., Inc.,** 971 F.2d 1395 (9th Cir. 1992)

   d) **Carson v. Here’s Johnny Portable Toilets, Inc.,** 698 F.2d 831 (6th Cir. 1983)

   e) **Guglielmi v. Spelling-Goldberg Prods.,** 160 Cal. Rptr. 352 (Cal. 1979)—right of publicity expires upon the death

   f) **Presley’s Estate v. Russen,** 513 F. Supp. 1339 (D.N.J. 1981)—Under NJ law, singer can license/assign the right of publicity and it survives death—theatrical production

   g) **Comedy III Prods., Inc. v. Saderup,** 106 Cal. Rptr. 2d 126 (Cal. 2001)—First Amendment protects work if it is transformative enough and the value is not derived from the celebrity’s fame.

   h) **Abdul-Jabbar v. General Motors Corp.,** 85 F.3d 407 (9th Cir. 1996)

   i) **Midler v. Ford Motor Co.,** 849 F.2d 460 (9th Cir. 1988)

   j) **Notes:** Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977)—newsworthiness does not trump right of publicity

   k) **Notes:** Lugosi v. Universal Pictures, 160 Cal. Rptr. 323 (Cal. 1979)—must exercise right of publicity during lifetime, not assignable

   l) **Notes:** Burck v. Mars, Inc., 571 F. Supp. 2d 446 (S.D.N.Y. 2008)—naked cowboy sues manufacturer for creation and display of a cartoon character dressed in his signature costume.

2) Music:

   a) Right of Publicity


3. *Parks v. LaFace Records*, 329 F.3d 437 (6th Cir. 2003)—Rosa Parks sued LaFace Records for using her name as a title for a song—argued risk of confusion that the song was about her—found viable claim for confusion.

4. *Note: Apple Corps Ltd. v. A.D.P.R., Inc.*, 843 F. Supp. 342 (M.D. Tenn. 1993)—Apple sued lookalike group of the Beatles on grounds that there would be public confusion

5. *Note: Ward v. Klein*, 809 N.Y.S.2d 828 (N.Y. Sup. Ct. 2005)—woman sues for defamation after being featured in a KISS documentary where Simmons discusses he was a man whore and screwed everyone—flash her picture—she was unhappy

3) Video Games:
   a) Rights of Publicity
      2. *In re NCAA Student-Athlete Name & Likeness Licensing Litigation*, 2013 WL 3928293 (9th Cir. July 31, 2013) --former QB for AZ State filed for inappropriately using the image of college sports players in video games in violation of NCAA rules
      3. *Hart v. Electronic Arts*, 717 F.3d 141 (3d Cir. 2013)—former college football player alleged misappropriation of likeness and identity for commercial purposes against video games
   
   b) Likeness & Consent
      2. *Facenda v. N.F.L. Films, Inc.*, 542 F.3d 1007 (3rd Cir. 2008)—misuse of voice in promo video of a video game—violated