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ENTERTAINMENT AND SPORTS LAWYER

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How to Make the Most of Big Deals and Cases

Marketing and media relations
for entertainment and sports
lawyers

DIANE RUMBAUGH

Imagine having just won a big case for your entertainment or sports client or negotiated a multimillion-dollar deal. Can you (or should you) turn that big win into positive publicity for your law practice?

The answer is not that easy.

Before the early 1990s, the old school of thinking was lawyers should not toot their own horns: promoting, advertising and marketing of a law practice and its successes were taboo. That philosophy began to change with increased competition within the legal industry and when the media began seeing legal news as mainstream – especially if the parties involved were well-known individuals. These two factors forced many law firms to rethink their strategies to attract new business.

Gone are the days when lawyers remained with the same firm their entire careers (and kept with the firm their book of business). The practice of law has evolved into something much like any other business. It is much more competitive

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Inside the Music Business:

Mature themes

TOM ROLAND

Though not as glamorous as the pop and rock industries, country music is threaded into nearly every medium that entertainment attorneys represent. Reba McEntire has her own sitcom, the genre is regularly represented on movie soundtracks, and it occupies a major section among CD retailers – particularly at such chains as Walmart and Target.

But many attorneys outside of Nashville may not be aware of Music Row's struggle with its position. The industry has taken strides to gain a hip factor that would make it the equivalent of, say, pop or hip-hop, and in the process, the business finds itself in an internal battle – one that affects many entertainment attorneys and their clients.

Even those in the midst of the battle, however, have often misidentified what's really at stake. Sales successes of Alan Jackson's *Drive* album, the Dixie Chicks' *Home* and the soundtrack to *O Brother, Where Art Thou?* have fueled debates in country circles about a need to return to traditional sounds.

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Whose Ball Is It Anyway?

When Barry Bonds hit his historic 73rd home run of the season, the subsequent melee in the stands led to a million-dollar lawsuit.

An interview with Martin F. Triano, Esq., lawyer for the plaintiff.

What happened?¹

The plaintiff, Alex Popov, alleges that unidentified individuals attacked Alex, so that, individually or in concert with defendant Mr. Patrick Hayashi, they could steal the Barry Bonds' 73rd home run baseball from Alex.

On October 7, 2001, Alex and Mr. Hayashi were in attendance at the San Francisco Giants baseball at Pacific Bell Park. Alex and Mr. Hayashi were located in the Arcade area, in the standing room only seats, behind right field directly in line with the plaque commemorating Barry Bonds 500th career home run. Alex was to the right of Mr. Hayashi by approximately twelve feet.

During the first inning, Barry Bonds hit his 73rd home run of the year, setting a new single-season home run record. The single season home run record is one of the most

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What's the Big Deal About Nashville?

So – I'm listening to Sue Foley's new blues CD, *Where the Action Is* – which I admit to learning about foremost because she's a very talented young artist from my hometown of Ottawa, Canada. Being an insatiable reader, I'm perusing the liner notes as I listen to her absolutely tearing through *Gotta Keep Moving* on her custom Fender Telecaster. Sure enough, the CD was recorded in Ottawa – but five tracks were mixed at the Sound Emporium in Nashville. But wait – this isn't a country CD. It's Austin, Texas-style blues. And, last time I checked, Nashville was rather distant from Ottawa, so why mix there? Of course, working out the kinks in Nashville might make more sense than Ottawa, especially if this was done during the dead of winter.

Nevertheless, this odd fact made me invent a game you might also want to try. It's called "*Where's Nashville?*" Go to your CD collection, start pulling out disparate artists, then study the liner notes. Chances are you'll find a ton of connections to Nashville, Tennessee – no matter what the musical genre.

For example, a very brief random sampling of my CD collection revealed (a) American Rock: check out Bruce Springsteen's new CD, *The Rising*, which features the *Nashville String Machine*, recorded at The Sound Kitchen Recording Studios in Franklin, Tennessee (a charming Civil War town, just south of Nashville, home to several recording studios and home to several country music mega-stars). Or try something older – (b) British Rock, Dire Straits – *Sultans of Swing*, *The Very Best of Dire Straits*, mastered at Georgetown Masters Inc. of Nashville. Or how about (c) Euro Jazz: Acoustic Alchemy's *Arcanum*, edited at Final Stage Masters and mastered at Georgetown Masters, Nashville. Or finally, (d) American Pop: Michael Bolton's *All That Matters*, tracks recorded at The Bennett House, Nashville. You get the idea. Nashville dubs itself Music City, U.S.A., and your own CD collection – like mine – in all probability supports that assertion.

Why is everybody, from Canadian blues artists to mammoth stars like Bruce Springsteen, coming to Nashville? In fact, during the 1990s, even established stars and executives from across the musical landscape began to flood Nashville, including Larry Carlton, Peter Frampton, Al Kooper, Donna Summer, Michael McDonald and Michael Omartian – all hoping to put the genie back in the bottle with the "Nashville Sound."

The Nashville sound began 77 years ago in October when Nashville's *National Life and Accident Insurance Company* started a radio station on the AM dial at 650 with the call sign WSM – which stood for "We Shield Millions." A month later the station began the *WSM Barn Dance*, which evolved into *The Grand Ole Opry*® where artists received \$5 a month to perform. In 1941 *Billboard* magazine introduced the first country music chart calling it "Top Hillbilly Hits." In that same year, *The Grand Ole Opry* began broadcasting from a converted church, the legendary Ryman Auditorium, eventually moving on to its present location at *Opryland Resort* in 1974.

If you're reading this column while attending our Annual Meeting at the *Opryland Resort*, you are experiencing firsthand the amazing culmination of that barn dance broadcast almost a century ago. Moreover, if you've had the privilege of attending a live broadcast of *The Grand Ole Opry*, you'll instantly appreciate why the world loves country music. If you don't believe that assertion, try another game I invented called "*Opryland 60*" – where you

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Mature themes

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The debate might better be centered on Music Row's need to reclaim its traditional audience.

Older consumers, who traditionally have comprised the largest block of country buyers, have more clout at the checkout counter than at any other time in history. Yet in the last decade, as America grew older, Music Row set its sights on a younger demographic. Those younger music buyers – “fad fans,” as music consultant John Hart calls them – have since moved on to other pop sounds, leaving a slumping country market. But the achievements by Jackson, *O Brother* and now the Chicks have some executives refocusing on the genre's traditional, older buyer.

In the early 1980s, it was fashionable to define the typical country consumer as a 38-year-old housewife who listened to a country station while she washed the dinner dishes.

At the time, that audience was not active in record stores. As recently as 1991, consumers over the age of 35 accounted for just 28.3 percent of American music purchases, according to the Recording Industry Association of America. But by 2000, that same 35+ audience purchased 44 percent of the music.

The change in the marketplace coincided with country labels' increasing love of youth. When Garth Brooks, Billy Ray Cyrus and Shania Twain exploded by pulling in a younger audience, Music Row reshuffled its emphasis and targeted kids.

That strategy has not paid off over the long haul. The country genre peaked in 1992 with a 17.4 percent market share of U.S. music sales, according to the RIAA. But in the year 2000, the format's share had dropped to 10.7 percent, its lowest mark in more than a decade.

“For some time, for maybe 15, 20 years, the people over 30 have been left out of musical popular culture,” T Bone Burnett, who produced the *O Brother* soundtrack, observed. “The focus has become younger and younger. Especially in the last five years, I would say the focus of most popular music was between the ages of eight and 16 or somethin' like that and old people, like 30, would walk into a record store and not be able to find their way around.”

Which means a huge, disenfranchised audience was sitting with disposable cash, waiting for new music that would inspire

them. Along came *O Brother*, with its authentic roots music and a movie to help market it, and those older buyers responded.

“I do think that's a big part of the story,” Burnett allowed.

It's also likely a part of Alan Jackson's story. His “Where Were You (When The World Stopped Turning)” reflected in a very mature manner on the biggest news event of the new century. He debuted at No. 1 on the pop album chart for the first time in his career and was certified for shipments of more than 2 million copies of the *Drive* album within the first two months of release.

“I don't know who's buying that,” label consultant Jack Lameier, a veteran of Sony Music, admitted, “and if I were RCA, I wouldn't care. I'd just keep puttin' it in the stores.”

While the advent of SoundScan, a national retail tracking system, has allowed labels to accurately identify sales geographically since 1991, record companies have no sure method of discovering other demographics about the buyers. The RIAA conducts surveys that reflect the ages of album buyers as a whole, but no definitive data exist to differentiate exactly what genre of music each age group purchases.

Labels do know, however, that kids buy a disproportionate amount of prerecorded product. The 2000 census indicates that 21.2 percent of the American population lies between the ages of 10 and 24, yet that same demo accounted for 34.3 percent of the music purchases that year, according to the RIAA.

Meanwhile, the labels agree that the country music that has sold large volumes over the last decade – Brooks, Twain, Faith Hill, The Dixie Chicks, Jackson and even the *O Brother* soundtrack, whose titles were all written at least 30 years ago – had to have picked up a significant youth audience.

“You can't get to these numbers, 4 million units, by saying I only sell to 45-year-old females,” said Joe Galante, chairman of the RCA Labels Group, which released Jackson's album. “When you're gettin' into millions of units, [the audience] is across the board.”

Yet country labels lost that focus during the last decade, entranced by the sales the biggest selling acts demonstrated when they tapped into the youth market. Atlantic Records, which represented such acts as Tracy Lawrence, John Michael Montgomery

and Neal McCoy, focused primarily on buyers in the 18–25 cell. At the label's peak, it had its own office and staff, separate from the rest of the labels controlled by WEA, its parent distribution group.

“They're out of business,” radio/label consultant John Hart, of Bullseye Marketing Research, said. “I think that's the answer to the question.”

Indeed, Atlantic still exists as a label, though it is now handled primarily by the same staff that markets music for Warner Bros., Reprise and Asylum.

The most flagrant example of a label chasing teens came with RCA's signing of 3 of Hearts, a female trio that had not even graduated high school when they joined the company roster. The group released its debut album last summer, brimming with

Country's sales and the aging record buyer

As consumers in their mid-30s and older have bought more records, country's share of music purchases overall has decreased.*



*Numbers from Peter Hart Research analysis, based on survey of 3,051 people each year. Margin of error is 2.2 percentage points.

SOURCE: Recording Industry Association of America. HYANGSOOK LEE

bright, but shallow, declarations of puppy love. The threesome had some innate talent, but their voices conveyed none of the life experience that has been a traditional hallmark of country recordings.

The act quickly disappeared from the RCA roster and Galante, in fact, is convinced that country music cannot be marketed to teenagers.

“I think that you can market to teenagers,” he qualified, “cause we're seein' that right now in terms of Kenny Chesney, but you don't aim at a teenage market. You aim at a population 18–49 ... and if the kids pick up on it, great. If they don't, you just keep on goin'. We were aiming a lot younger with 3 of Hearts, and I don't think you can sit down and specifically say, ‘I'm gonna market to 16-year-olds with country radio or the country music business.’”

Part of the reason for that is the method with which country gains its greatest

exposure. The target audience for country radio has not changed markedly from that composite 38-year-old housewife who dominated Music Row marketing campaigns in the early '80s.

Radio's centrist listener is still "about a 34- to 36-year-old female," Lameier said. "It doesn't necessarily mean she's a housewife. She might be sitting in the office listening to it, but that's who they're aiming at."

As Music Row started signing artists and releasing singles crafted for a younger listener, it created a problem for country radio. The stations played the younger-leaning music Nashville created ("What else are they gonna play?" Hart asked), but country ratings, measured by Arbitron through a figure called "quarter-hours," declined. The size of the audience did not erode, Hart said, but the country listener tuned in for shorter periods of time, presumably because the music it was hearing did not connect enough to their lifestyle to keep their attention.

"Eighty percent of the listening quarter-hours generated by [country] radio are generated by an audience 35 years and older," Hart, the consultant, said. "It just makes sense, statistically, to go for that audience, even though Nashville has been producing music targeted at a younger audience."

The "18- to 24-year-olds do not listen to country radio," he added, "and for 25- to 34-year-olds, only those who like country music listen to country radio. So why go out there and try to manufacture an audience that's nonexistent? They've done that and they've had their butts handed to them over the last few years."

In fact, older record buyers have more clout at the checkout counter than at any other time in history. Nearly 24 percent of prerecorded music purchases in the year 2000 were made by consumers aged 45 and older, according to the RIAA, and buyers aged 35 and over represented 44 percent of purchases.

It is a tougher audience to reach with new acts. Some of their purchases are gifts for their children, and older buyers are more likely than the younger consumer to buy reissues of older hits. Plus, they are unlikely to galvanize around a specific act in the same manner that teen girls responded to 'N Sync, Britney Spears or The Backstreet Boys.

That poses a problem for major record companies, whose very design requires them to sell in large volumes.

The older audience "may go out and help Alison Krauss get to 500,000 units," RCA's Galante noted. "Yes, there's a buyer for that marketplace, but it's not 5 million."

"They may go out and buy the *Titanic* album," he continued, "and that's their record. They may go out and buy the Santana record and that's their record. They may go out and buy the Enya record and that's their record. It's like every year, there's like two records that they go to and this last year, it sounds like *O Brother* was one of those records. But I can't give you a plethora of those titles."

Nevertheless, when country music has succeeded with younger buyers, it has generally done so by first attracting an adult audience. When LeAnn Rimes started building her young, female fan base, she did so with *Blue*, a single whose sound reflected a 1960s country style. Faith Hill had a firm country foundation before she stretched in pop directions and even *Breathe's* pop success came with a mature view of its sexual topic. Shania Twain connected with a younger audience, but did so with lyrical themes that reflected adult female attitudes. And, musically, Twain's pop influences came from the 1970s and '80s, musical periods that resonate with listeners aged 35-44.

Garth Brooks practically stumbled on the youth audience. Early singles such as *The Dance*, *Much Too Young (To Feel This Damn Old)* and *If Tomorrow Never Comes* had themes that decidedly appealed to the 35+ demo.

"The moment he put out a youth album," Hart said, in reference to Brooks' pop foray, *Garth Brooks... In the Life of Chris Gaines*, "they threw rocks at him."

The Dixie Chicks were the most recent country act to break into the youth market, and Lameier, who worked for Sony at the time of their arrival, recalls them playing to a starkly young California arena crowd.

"They were from six years up," he noted, "and all of 'em were boppin' and all the young girls were in Chicks garb and I have never seen more [merchandise] go out of a hall, other than Garth. Seriously, those little girls were buyin' anything that had Chicks on it."

But, he admitted, the Chicks were not signed because the label believed they would attract kids.

"They were signed to totally go after the sound that they produced," he said, "and if someone wanted to buy that thing, hopefully it would be a younger

demographic. But it was not targeted at that demographic. Their sound, it was thought that the passion button would be pushed on a lot of people and they would need to hear it more than they could hear it on the radio."

In fact, when the Chicks taped their forthcoming NBC special at Los Angeles' Kodak Theatre in August, at least 50 percent of the audience was under age 30. The Chicks played their entire acoustic *Home* album sequentially and though the crowd had never heard the bulk of the songs, it reacted with unbridled enthusiasm, underscoring the notion that Nashville does not have to mimic L.A. pop to siphon its audience. Subsequently, the album debuted at No. 1 on the *Billboard* Top 200 album chart, selling 700,000 in just its first week of release.

With the Chicks, Alan Jackson and *O Brother* exemplifying the kinds of sales possible by making adult music, it seems likely that Music Row will stop aiming at kids. During the first half of 2002, country showed a 1 percent sales increase over the previous year – a modest total, to be sure, but coming at a time when every genre except Christian music lost sales, it suggests that country is on the rise once again. *O Brother* and Jackson were leading the charge.

The adult audience, which is growing in numbers, is already the focal point of country's primary medium, radio. Plus, kids have proven – with Garth Brooks and, most recently, with the Chicks – that they can find their way to specific country acts, even when Nashville did not set out to reel them in.

"The one thing I've learned since we've gone through our 3 of Hearts thing is that you really do have to aim for your natural marketplace," Galante said. "We are a country music record company and when we go to sign somebody, we need to make it the biggest and the best we can out of here. If it works and if it can go someplace else, great. And if it doesn't, we have to live within what we do."

An abbreviated version of this article first appeared in *The Tennessean*.

Roland is a Los Angeles-based freelance writer whose clients include The Hollywood Reporter, The Tennessean, The Orange County Register, the Westwood One Radio Network and Country Weekly. He also authored the 1991 release The Billboard Book of #1 Country Hits. He can be reached at rolandnote@aol.com.

Whose Ball Is It Anyway?

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hallowed records in all of baseball and, indeed, all of sporting endeavors. The home run was hit to right field directly to Alex. Alex successfully caught the baseball in his baseball mitt and brought the mitt containing the baseball to his torso.

Based on the express and implied promises of the San Francisco Giants and Major League Baseball that baseball fans are entitled to keep any balls caught as a souvenir, Alex successfully obtained possession of the baseball.

Within seconds after catching the ball, Alex was attacked, assaulted and battered by no less than six and as many fifteen individuals, including Mr. Hayashi. Alex had the baseball firmly and securely in his grasp before being assaulted and battered by Mr. Hayashi. Many of these individuals



knocked Alex to the cement ground and piled on top of him. Alex landed on his left cheek and left side of his torso. On landing on the ground, Alex felt the baseball in his mitt pressing against his rib cage. Alex began to immediately scream "Get off!" and "Help!"

Alex believes – based on his review of videotape filmed by a television news crew – that Mr. Hayashi piled on top of him. Furthermore, Mr. Hayashi is shown on video desperately attempting to obtain control of the baseball by any means necessary. The video films show Mr. Hayashi reaching with hands and arms into the pile. Furthermore, the video film shows Mr. Hayashi biting the leg of another individual and that individual reacting with sudden movement consistent with pain from a bite.

Alex believes, based on a review of the video and the declarations of witnesses, that Mr. Hayashi was able to obtain control over the baseball approximately 60 sec-

onds after Alex was assaulted and battered by Mr. Hayashi.

Mr. Hayashi obtained control over the baseball by wresting possession and control of the baseball away from Alex. Approximately two minutes after catching the ball, the crowd began to get off of Alex, and he discovered that the baseball was missing. PacBell Park security forces arrived approximately three minutes after Alex caught the ball. Only when security forces arrived did Mr. Hayashi reveal that he now had control over the baseball. Mr. Hayashi was escorted away.

Alex contends that as a direct result of Mr. Hayashi's conduct, Mr. Hayashi was able to obtain control of the baseball, wrongfully converting the baseball to his own use and possession, and that Alex has been damaged by the lost value of the baseball and the loss of a unique, one-of-a-kind baseball.



The Interview

E&SL: How did you land this case? Most sports lawyers would die for a case like this.

Triano: We've built our practice on referrals. The case was referred to us by a client whom we'd just successfully completed a matter for, who called saying their friend needed help – it's the Barry Bonds baseball case. In fact, I didn't meet the client for some time. It was his brother who interviewed me, and we had several conversations before I got to talk to Alex.

E&SL: Was Alex's brother acting as his advisor in this case?

Triano: I suppose you could say that – but they are very close. In fact they both went to the game together when his brother caught the ball. Both are avid baseball fans and went to the game with their gloves hoping to get a chance at Bonds' next home run.

E&SL: You've said you are also a big baseball fan – and didn't you say you were

at PacBell Park when Barry Bonds hit his historic 600th home run?

Triano: Yes – and that was a neat event – until the poor guy who caught the ball came out of the pile. It was sad. For me it was disappointing and deflating to see the guy come out of the stands. He stood up, and the whole side of his face was bloody. I said, "Oh no . . . this is just escalating." Even the Giants Web site shows a kid with his dad with his baseball glove – and they're encouraging kids to come out to the game with their glove to catch a ball.

E&SL: Whom – did you bring suit against?

Triano: We sued Mr. Hayashi (the man who claims he caught the ball) for (1) assault and battery, (2) conversion and (3) injunctive relief to get the ball back. Initially, Alex called him up, following the game, but Mr. Hayashi had already hired an agent, a guy named Michael Barnes, who in



fact had been involved in the sale of Mark McGuire's ball, and he was going out to the media telling them his client was going to sell the ball. So Alex was very concerned, and that's why he called us, because Mr. Hayashi never returned his calls. We made calls to make sure the ball wasn't sold, but when we didn't hear anything either, we went into court and got a TRO and ultimately got a preliminary injunction ten days later.

E&SL: And that's why the ball is sitting in a safe deposit box in a bank. At least, it's supposed to be the 73rd home run ball . . .

Triano: No – that is *the* ball. A reporter called and said he didn't think it was the real ball after seeing it in *Sports Illustrated*. No – that was the real ball. We spent 5 hours standing in the bank vault doing the *Sports Illustrated* photo shoot. We needed a court order, and both counsel and bank security had to be there to watch.

E&SL: On a side issue, have you hired a public relations firm to help you manage the media in this case?

Elements of Plaintiff's Primary Claims

Assault

- (i) Intentionally causing reasonable apprehension of immediate, harmful, offensive contact
- (ii) Actual physical contact is not necessary; threatening gestures that would alarm any reasonable person may constitute an assault

Battery

- (i) Harmful or offensive contact
- (ii) Intentionally done

Conversion

- (i) Wrongful exercise of dominion over personal property of another:
 - a. Actual interference with dominion
 - b. Any wrongful interference with possession is enough
 - c. Possession alone is enough
- (ii) Act must be knowingly or intentionally done, but wrongful intent is not necessary; thus mistake, good faith and due care cannot be defenses

Injunctive Relief

The purpose of a preliminary injunction is to protect a party from irreparable harm or injury by maintaining the status quo during the pendency of the lawsuit. Usual requirements include (i) a hearing to be held, (ii) notice to adverse parties and (iii) that the party seeking the injunction post a bond.

To obtain a preliminary injunction, the applicant must demonstrate:

- (i) Existence of a cause of action with a reasonably identifiable subject matter, other than a cause of action for money damages or for a permanent injunction. The injunction is generally denied if there is an adequate remedy at law;
- (ii) Likelihood of success on the merits;
- (iii) Irreparable injury;
- (iv) Balancing of the equities in favor of the applicant.

Triano: No. We have handled everything in-house, making our own press kit that includes the Keppel tape, photo sequences, pleadings . . .

E&SL: Yes – having the videotape of the catch – and the brawl – is great luck.

Triano: Yes. The Keppel tape shows frame-by-frame Mr. Hayashi, and it contradicts his deposition testimony. I mean, initially he had a press release the next day saying he caught the ball. Then when he found out there's this tape, he changed to say he "captured" the ball and my client just made a "snow-cone" catch.

E&SL: Since you have this tape showing your client actually catching the ball . . .

Triano: They dispute he caught the ball.

E&SL: Even though everyone saw your client catch the ball on national television?

Triano: Yes. They say he never caught

the ball because a catch is only a catch if you catch the ball, hold onto it, and can get up from under the pile holding the ball above your head.

E&SL: So they say the rules of baseball don't apply in the bleachers.

Triano: Sure, the rules of baseball don't apply in the bleachers. But most fielders don't get "jumped" by twenty people after they catch the ball. I don't think it's the law of the jungle, and they know that. It's not anarchy. It's not the last man standing, women and children beware. No rules? It concerns me. Number 600 – when I saw that guy's face and all the blood on it. What's it going to take? Is it going to take a ten-year-old kid getting trampled in the stands before it stops?

E&SL: So, your policy argument is that what constitutes a "catch" in a public set-

ting should be a low threshold to protect the public? Because if you go with Mr. Hayashi's theory, you are really endangering the public?

Triano: His argument that this is a "contest," and that anything goes, is frivolous. Public policy is that you don't consent to being assaulted. My client caught the ball. I have a video that shows that.

E&SL: Yes, most people I've talked to who have seen the video wonder why there is even a legal dispute since it seems obvious that your client caught the ball.

Triano: We have the video showing my client caught the ball. We have fourteen witnesses who have come forward, under penalty of perjury, to say that my client caught the ball and not only that, saw him pull it down to his chest. And most personally observed him go to the ground with the ball as people were pounding on him. Then it was just a madhouse as everyone tried to get the ball from Alex. Yes, I agree with you. Within days of getting the TRO, I called Mr. Hayashi's lawyer and said we just want the ball back. How can we honor your client? I got an abrupt response. I saw we weren't going in a positive direction. You're not the first person to ask why is this a legal dispute considering the clear-cut video evidence.

E&SL: Are you generally satisfied with how the media reported the case?

Triano: Yes. I was once told, "Keep it simple, absolutely the simple truth," and get back to the media as quick as possible so they can meet their deadlines. I remember the old joke, "Only lawyers think a 120-page document is a "brief." Don't do that! Be short and simple – but that's not easy.

E&SL: How has Mr. Hayashi responded to the elements of your pleadings?

Triano: They deny there was any assault; they deny any biting, any hitting.

E&SL: The fourteen witnesses to the catch – are they also witnesses to the assault?

Triano: We have one witness who has testified, and she contradicts Mr. Hayashi, and we have other evidence showing the assault. But there is such a brawl. The video shows Mr. Hayashi six inches away from Alex, on top of him, with his arms extended into the mass of people. Of course, their assertion is that if you go to a baseball game, you consent to being assaulted and battered in the "contest" to get balls. They're denying the catch, and

they're denying the assault. Our contention is that "but for" the attack on Alex he would still have the ball. They're challenging our claims by saying Alex consented to being mugged. Of course, I asked Mr. Hayashi in his deposition if he consented to being attacked and even he said he did not. So even Mr. Hayashi doesn't agree with his own legal theory.

E&SL: For the elements of conversion, what if Mr. Hayashi claims he didn't know who caught the ball or who stripped the ball from Alex, but that he just "found" the ball lying there after the melee. So it's not a "taking" – he just "found" the ball. Or is this the classic "coat-rack" hypothetical from first-year torts class?

Triano: Let me do this – let me give you a metaphor. You walk out of this building onto Battery Street, and it's busy, and as you're walking along, a group of thugs jumps you. And as you're fighting them off, your watch comes loose and goes about 10 feet away and somebody else comes by and picks up the watch and says, "Wow, great watch," puts it into their pocket and starts walking away. And after fighting off the crowd, you chase after the guy with your watch – are you saying that he can say, "No – that's my watch now – I found it"? Even if he didn't know you just got mugged (but in my example he's walking by while there is a mugging), can he say it's his property now? In our actual case, there was a mugging going on, so even if Mr. Hayashi says he "found" the ball, his proximity to the mugging means he knew someone else had the ball first.

E&SL: And in the video, it shows Mr. Hayashi isn't just walking by. He appears to be actively participating in the mugging.

Triano: Yes, with Mr. Hayashi's proximity to Alex and his participation in the mugging, there's no way he can say he didn't know why or how he just "found" the ball lying there.

E&SL: What about the argument that with so many people bringing baseballs to the game that *the* ball in dispute might not even be the ball your client actually caught?

Triano: *The* ball in the bank vault has been verified as *the* ball. Major League Baseball had an authentication program. Prior to Barry Bonds hitting No. 73, I think as early as No. 66, MLB had set aside 100 balls and specially marked them. And they had a couple of different security markings on each one of these 100 balls.

MLB officials would take one of the specially marked balls to the umpire, who would toss it to the pitcher, and the pitchers would pitch with one of these specially marked balls. *The* ball in the bank vault "looks" like any ball you can buy in a sporting goods store – I haven't touched it – but my cynicism about "official" is gone because they really do look the same. After security got there and it became clear that Mr. Hayashi ended up with the ball, security clamped his hands around the ball and they took Mr. Hayashi away, downstairs, where they had a verification process. They checked for the spe-

Baseball fans who catch a homerun ball don't consent to being assaulted.

cial markings, then after verifying them, they placed a special numbered "holo-gram" on the ball. So it's *the* ball.

E&SL: So you have chain of custody established: MLB marks the special ball, MLB gives it to the umpire, who gives it to pitcher, who pitches it to Bonds, who slams it over the right field fence into Alex's glove – then the melee takes place – then Mr. Hayashi.

Triano: Yes, and I think Mr. Hayashi's participation in the mugging, as shown clearly on the video, is at least aiding and abetting a conversion.

E&SL: When you were developing the case, you chose assault and battery and conversion as your legal theories. Did you also consider any other legal theories or defendant? For example, did you explore including the Giants or MLB as a defendant since they had forewarning of the kinds of dangerous melees taking place after historic home runs, but in this case security arrived almost 15 minutes after the home run – and your client was left to fend for himself against an angry mob.

Triano: Our team spent many, many hours working on this case, but we did not choose to sue MLB or the Giants. When we've spoken to the Giants, they've

always said they do not approve of what happened to my client in the bleachers on that day in October last year.

E&SL: Has Barry Bonds or his representatives contacted you to say, "Talk to us if you win this case – we want the ball?"

Triano: I have not heard from Barry Bonds or anyone on his behalf. But an interesting sidebar: if Barry Bonds wanted to keep the record ball, he didn't need to come up to bat on October 7th. Because on Saturday, October 6th, he had No. 72, which fell back into the field, and the fielder for the Dodgers returned the No. 72 ball to Bonds. So, as of Sunday morning, Bonds *had* the record ball. The season was ostensibly over, they were out of the playoffs, and he could have just sat on the bench and kept the record at 72 and owned the record ball. In contrast, I heard that when Mike Piazza hit his 300th, he sent officials from the Mets into the stands, who made it clear to the little girl who caught the ball and her dad that they had to turn over the ball to them. I think that's theft. The child was no match for a group of grown men.

E&SL: Is there any way to solve this problem of what happens when a multi-million-dollar ball enters the stands? What can MLB do to ensure an atmosphere where folks like Mr. Hayashi don't feel it's OK for there to be a contest – may the last man standing get the ball?

Triano: I don't know. The Giants' stated policy is to have a fan-friendly atmosphere. The Giants' policy manual even says that any ball hit into the stands belongs to the fan – and this policy is announced before every game. I don't know what they should do, but something needs to be done before someone really gets hurt badly.

Notes

1. This section is based on the plaintiff's pleadings. All of the case pleadings are available online at <http://news.findlaw.com/legalnews/documents/#sports>. (The pleading links are halfway down the page.)

Triano practices in San Francisco at the Law Office of Martin F. Triano. His practice is wide-ranging, including business law, contracts, real estate, family law, divorce, wills, probate, trusts and estates, construction law, appeals, and mediation. Mr. Triano is Judge Pro Tem, San Francisco County Superior Court. He has also served as Commissioner, Alameda County Superior Court, 1998–2001. He can be reached at 415/391-2300.

Don Biederman Remembered – and Missed

ED PIERSON

The entertainment law community and the Forum on the Entertainment and Sports Industries lost a great friend, a mentor and legend with the passing of Donald Biederman on August 8, 2002.

Don's law practice, writings, teachings and reputation touched most entertainment law lawyers. For many of us he set the standard for aspiration in an entertainment law practice.

Most recently, he was director of the National Entertainment and Media Law Institute at Southwestern University School of Law, coauthor of the textbook *Law & Business of the Entertainment Industries* [see box insert] and editor of another, *Legal & Business Problems of the Music Industry*. Before becoming director of the Institute, Don served for 17 years as executive vice president and general counsel of Warner/Chappell Music, Inc., AOL Time Warner's music publishing company.

As we reflect back on his rich life, the common theme that those of us who had the pleasure to know and work with him recall is that Don Biederman was a man of integrity, whose word could be relied on and who would always do what was right, fair and just. In addition, his legal skills and intellect were unparalleled. No one could write a letter as pithy, clever, powerful and inspired as Don. Some of us who worked with him began to collect "classic" Don-isms that were written with a style all his own. When it came to drafting contracts, Don became respected and recognized for his ability to take the long, complex, unreadable agreement and reduce it to a short and concise agreement that would say what the parties intended in a way all could understand.

Don was a friend to many, and his generosity was boundless. He was always incredibly generous with his time. He helped lawyers, students, musicians and songwriters in countless ways: making recommendations when one was out of work, helping a student understand a concept after hours, helping the struggling musician or songwriter pay the rent. Scores of entertainment lawyers (this author included) can and will say, "I would not have my job today were it not for Don Biederman."

Don was the first Music Chair of this Forum from 1980–1983. In that role he helped many of us learn about music law and to become involved in that committee. At the time he was a partner in the Los Angeles law firm of Mitchell Silberberg & Knupp. Prior to that, he was vice president of legal affairs and administration for ABC Records Inc. from 1977–1979. He entered the field of entertainment law as a general attorney for CBS Records Group in 1972.

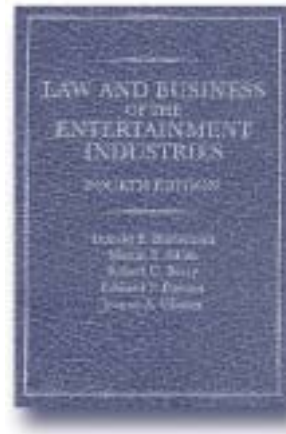
As if his role as a great lawyer, executive, author, teacher, husband and father were not enough to secure his legacy and the respect of his peers, Don Biederman's six-year battle with cancer showed us dignity, courage and bravery that was nothing short of miraculous.

He is survived by Marna (his wife of nearly forty years); his son Charles (Jeff), who is an entertainment lawyer with the firm of Wyatt Tarrant & Combs in Nashville; his daughter Melissa, who is an assistant attorney general in Iowa; and a grandson, William Franklin Biederman.

We shall miss Don greatly – his humor, his friendship, his intellect, his heart and his inspiration. May we all find some of that inspiration in the students that he taught, the lawyers he mentored, the writings he left, the reputation he has and the standard he set.

Contributions in his memory may be made to the Donald Biederman Memorial Fund, Bank of America, Private Bank, Attn: Marsha Hooker, 2049 Century Park East, Suite 200, Los Angeles, CA 90067.

Ed Pierson is Executive Vice President/Legal & Business Affairs, Warner Chappell Music, Inc., Los Angeles. Mr. Pierson is also Adjunct Professor of Law at Southwestern University School of Law, Los Angeles. He can be reached at ed.pierson@warnerchappell.com.



Law and Business of the Entertainment Industries, 4th Edition
Donald E. Biederman, Martin E. Silfen,
Robert C. Berry, Edward P. Pierson,
Jeanne A. Glasser.
ISBN 0-275-96983-5. \$79.

This book has become the standard text used in countless universities for courses on entertainment industry law. Even though this is a textbook, it is not dull, tedious or difficult to read. In fact, it's downright fun, befitting its entertaining topic. The book touches on all the major entertainment law cases and legislation including concise questions, insights and humorous asides.

Part I begins with a review of the wide-ranging law of talent representation, then moves on to talent contracts. As expected, various entertainment-industry California and New York legislation is analyzed and applied.

Established and emerging rights of personality and identity also are covered, followed by acquisition of intellectual property rights, contracts and remedies.

Part II is extremely useful, comprising individual topics including literary publishing, music publishing, sound recordings, theatre, film and television. Added for the fourth edition are many chapters on the Internet, multimedia and emerging technologies, particularly copyright and trademark infringement. All the relevant cases and legislation are collected together under these topics.

Not just for students, this book is one that entertainment law practitioners will want on their shelves when seeking foundational information about entertainment industry topics.

– E&SL

What's the Big Deal about Nashville?

Continued from page 2

take a leisurely stroll through the massive *Opryland Resort* parking lot seeking 60 points by counting unique U.S. state and Canadian provincial license plates. It won't take long to find plates from all 50 states and all 10 provinces, a winning total of 60 (overseas plates get bonus points).

Gaylord Entertainment owns the *Opryland Resort and Convention Center* as part of a giant music, sports and media conglomerate built on the remarkable success of country music. Gaylord's *Country Music Television* (CMT) reaches tens of millions of households throughout the world. In addition to CMT and the hotel/convention center, Gaylord owns *The Grand Ole Opry*, as well as interests in Nashville's new NFL and NHL major-league pro sports teams and stadiums. The success of Gaylord Entertainment is a testament to and mirrors the enduring appeal of country music – this uniquely American art form.

If you played "*Where's Nashville*"

with your CD collection, you know that Nashville is a leading center for all kinds of music, from classical to Christian and everything in between. The Nashville music scene is made up of scores of moving parts:

- songwriters and songwriters' organizations
- studio musicians (some of the finest in the world)
- major music publishers
- independent music publishers
- major record labels
- independent record labels
- performing rights organizations
- recording studios
- demo packaging services
- producers
- showcases and clubs (e.g., *The Bluebird Café*)

Of course, not all of Nashville is involved in the music side of the entertainment industry. For example, other important companies include Ingram Book Company, the world's largest trade book distributor headquartered in La Vergne, Tennessee, just south of

Nashville. A little further south, you'll find the headquarters of Jack Daniels.

Nashville is also home to major health care maintenance corporations. Even software companies call it home, including Juris, a leading law practice management software company headquartered in Brentwood, Tennessee, adjacent to Franklin, just south of Nashville.

Sports

- minor league baseball
- NFL football
- college football
- NHL hockey

Call for articles

If you have an article idea for the *Entertainment and Sports Lawyer*, contact Bob Pimm at rgpimm@aol.com for a free copy of our Submissions Guidelines.

Want to Know More?

Internet Resources

- *Country Music Association*
<http://www.CMAworld.com>
- *Music Row*
<http://www.musicrow.com>
- *Nashville Songwriter's Association International*
<http://www.nashvillesongwriters.com>
- *Country Music Hall of Fame & The Journal of Country Music*
<http://www.countrymusic-sichalloffame.com>
- *Country Music Magazine*
<http://www.countrymusic-magazine.com>

- *Billboard Magazine*
<http://www.billboard.com>
- *The Grand Ole Opry*
<http://www.opry.com>
- *Country Music Television (CMT)*
<http://www.cmt.com>
- *Songwriter's Guild of America*
<http://www.songwriters.org>
- *ASCAP*
<http://www.ascap.com>
- *BMI*
<http://www.bmi.com>
- *SESAC*
<http://www.sesac.com>

- *National Academy of Recording Arts and Sciences (NARAS)*
<http://www.grammy.com>

Books

- *The Songwriter's & Musician's Guide to Nashville*
Sherry Bond
ISBN 1-58115-047-4
Allworth Press
- *Nashville's Unwritten Rules: Inside the Business of Country Music*
Dan Daley
ISBN 0-87951-770-0
Overlook Press

The Songwriter's Craft: How to Write a Classic Country Hit

RANDALL SCHMIDT

Many entertainment and sports lawyers are directly affiliated with the music industry, representing musicians and the companies that shape the music business. But few lawyers are also musicians or songwriters. Nevertheless, understanding your clients' craft is essential, if you want to understand the working vocabulary of your clients and if the focus of your practice is on solving legal problems in context. Thus, I'd like to give you a quick overview of basic song structure and what it's like to create a song. Since this year's Annual Meeting of the Forum on the Entertainment and Sports Law Industries is taking place in Nashville, the home of country music, it's only fitting to talk about the structure of a country song.

"Country Music is three chords and the truth." – Harlan Howard

Structure

A traditional country song, though perhaps not as strongly codified as blues as a musical type, has many easily identified structural features. Traditional country songs often have a simple structure and don't often use the verse/chorus structure, a structure that is more common in pop music. Current country music, which has been deeply influenced by pop and rock music, has a wider variety of types and structures than it had in the past and is much harder to pin down as a type or genre. And so I'll choose as an example a song from the past: I'll talk about the great country song *Crazy Heart*. This classic hit was written by Fred Rose and Maurice Murray and was recorded by Hank Williams in 1951.

Chord progressions

Let's start by talking about chord progressions: the series of underlying chords that form the basic skeleton of a song. Most traditional country songs share similar chord progressions, drawn from just a few archetypal progressions. In the past and now, a songwriter would often draw from this group of traditional chord progressions, drawing from past songs, perhaps modifying a bit to suit the song he's creating. One classic chord progression, used over and over in thousands of songs, is I – IV – V – I. You can hear this progression clearly in *Crazy Heart*. This chord progression forms the fundamental unit of the song.

The major scale

Once the basic underlying chord progression is chosen, the songwriter has a palette of notes to choose from in building the vocal melody and instrument solos. In most country songs, the major scale is used. This is the scale you're familiar with as *Do-Re-Mi*. In *Crazy Heart* the songwriters chose the key of E. And so the song uses the E major scale: E, F#, G#, A, B, C#, D#, E. These are the notes available. Interestingly, blues songs often use a chord progression similar to that discussed earlier. But if this is so, why do country and blues songs sound so different? One big reason is that in most blues songs a minor scale is used, the minor pentatonic, rather than the major scale. Of course, using a minor scale instead of the major scale completely changes the feeling of the song.

It's as simple as A-A-B-A: You can't own a song's structure under U.S. copyright law

It looks as if the Carter Family, America's first family of music, is out of luck. Under U.S. copyright law, what may or may not be protected is highly selective. Although the difference between what is and is not protectable under U.S. copyright law is difficult to discern, Section 102 (b) of title 17 of the United States Code precludes whoever discovered the basic structure of a classic country hit from a successful claim of copyright to its underlying musical structure.

Copyright protects only "original works of authorship" that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device. The list of copyrightable works includes *only* the following categories:

1. literary works
2. musical works, including any accompanying words
3. dramatic works, including any accompanying music
4. pantomimes and choreographic works
5. pictorial, graphic and sculptural works
6. motion pictures and other audiovisual works
7. sound recordings
8. architectural works

Material not entitled to federal copyright protection

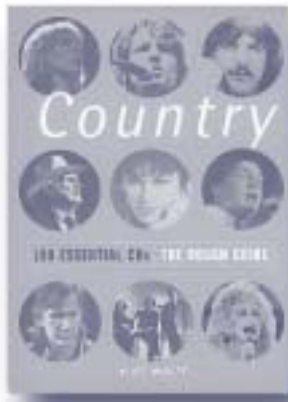
However, countless categories of material are not entitled to federal copyright protection, including, but not limited to: (a) works that have not been fixed in a tangible form of expression (e.g., choreographic works that have not been notated or recorded or improvisational speeches or performances that have not been written or recorded); (b) titles, names, short phrases and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listings of ingredients or contents; (c) *ideas, procedures, methods, systems, processes, concepts, principles, discoveries or devices, as distinguished from a description, explanation or illustration*; and (d) works consisting entirely of information

that is common property and containing no original authorship (e.g., standard calendars, height and weight charts, tape measures and rulers and lists or tables taken from public documents or other common sources)

Ideas, methods or systems are not subject to copyright protection

U.S. copyright law does not protect ideas or procedures for doing, making or building things; scientific or technical methods or discoveries; business operations or procedures; mathematical principles, formulas or algorithms; or any other concept, process or method of operation. Section 102(b), title 17, United States Code states, "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle or discovery, regardless of the form in which it is described, explained, illustrated or embodied in such work." Thus, copyright only protects the particular expression chosen by the author and gives the copyright owner no exclusive rights in the idea, method or system involved.

- E&SL



Rough Guide to Essential Country CDs
Kurt Wolff.
ISBN 1-85828-602-6. \$5.

The Rough Guide essential CD series is an amazingly compact, affordable way to become instantly informed about major musical genres. Kurt Wolff's book about country music takes you from Roy Acuff to Dwight Yoakam, spinning through the recordings that shaped country music. Get the story behind the artists and recordings -- new and old -- in this terrific introduction to a foundational American musical form.

- E&SL

The hook

Now for the hook or refrain. This is the most memorable part of the melody of the song, the "payoff." It's often placed at the spot where the tension created in the chord progression is resolved, at the end of the progression; where the progression resolves back to the I chord, where it started from. In many songs, this hook often contains the title of the song. In our example, these are the lyrics:

"...go on and break you crazy heart..."

which are sung over the V chord and conclude as the V chord resolves to the I chord. Now the chord progression is repeated a couple of times, with the lyrics over it. Each time the cycle ends, the hook is sung.

The A-A-B-A structure

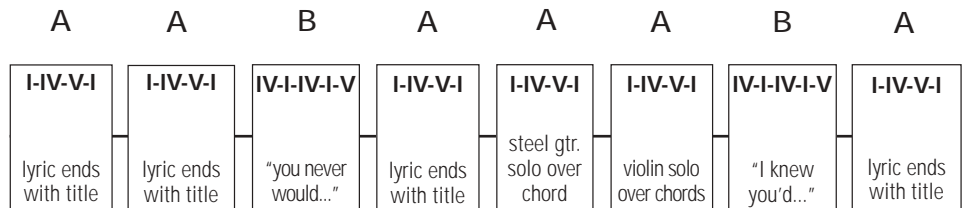
But this cycle structure can get repetitive. To avoid this repetitive feeling, many songs will follow what is called the A-A-B-A structure. The main progression we've been discussing so far (represented by the letter A) is repeated twice; and then for a breath of fresh air, there is what is called a bridge (B), which has a different chord progression and which does not end with the title hook. In *Crazy Heart* you can hear the bridge with the lyrics:

*"you never would admit you were mistaken,
 you didn't even know the chances you were taking"*

The bridge

In *Crazy Heart*, the chords in the bridge are IV-I, IV-I-V. After the bridge, the main progression is repeated again, once more ending with the title hook. In the case of *Crazy Heart*, this entire A-A-B-A structure is then repeated again and that's the whole song.

And so, here's a diagram of the structure of the whole song, *Crazy Heart*:



This in a nutshell gives you an overview of the basic structure of one archetypal country song and perhaps a tiny glimpse into the process of writing a country song. Listen to country music with these points in mind and you'll start to notice this structure or similar structures emerging over and over again.

But in the end the song's structure is only the framework on which the song's feeling is built. If you listen to the classic works of the great country musicians – Hank Williams, the Carter Family, Jimmie Rodgers, Roy Acuff, Lefty Frizzell, Johnny Cash, the Stanley Brothers, Bill Monroe, Willie Nelson, Merle Haggard, George Jones, Tammy Wynette, Lorretta Lynn – you'll hear these fundamental ideas and variations used time and again, in endlessly inventive ways. But most importantly you'll begin to hear and feel just how deep and soulful country music can be.

Schmidt is a guitarist, singer and songwriter based in Oakland, and his band Cheap Date plays all over the Bay Area. Randy has written many songs, including country music. Visit the Cheap Date Web site at www.dnai.com/~schmidt/cheapdate. When Randy's not gigging, he's a practicing architect. He can be reached at rwschmidt@rocketmail.com

Issue Spotting Your Guitar

NATE COOPER

Cooper (Boalt '98) practiced law at Latham & Watkins, San Francisco, before leaving to practice on his own (mostly music). While doing transactional work for small Web development companies, he studied fingerstyle guitar with guitar greats Duck Baker and Peppino D'Agostino. Currently, he continues to study, write and perform music and serves as California Lawyers for the Arts' Legal Services and Education Coordinator. When Mr. Cooper is not practicing law he teaches fingerstyle acoustic guitar.

Issues Re: Use of Guitar

- First Amendment: Freedom of expression
- Copyright of songs
- Agent/manager/attorney agreements
- Band partnership agreements
- Recording, publishing and royalties, licensing agreements
- Insurance for the instrument
- Nuisance laws (theoretically, depending on your bandmates)

Check your guitar to find legal issues we missed. Send your findings to Naubreycooper@aol.com.

1. Trademark of logo

2. Tuners: Patent of design, trademark of company name and logo

3. Strings: Patent of string designs and any coatings, patent of string packaging (i.e., protective plastic to prevent corrosion)

4. Pickup: Applicable patents, trademarks and copyright for any pickup system installed in the guitar

5. Wood: International trade, import/export regulations for woods (i.e., Indian & Brazilian rosewoods)

6. Environmental: any regulations regarding wood harvested for guitars

7. Employment/labor laws: For each part of the guitar, including any OHS and worker's comp issues, taxes, insurance, etc.

14. Trade dress

13. Trade secret

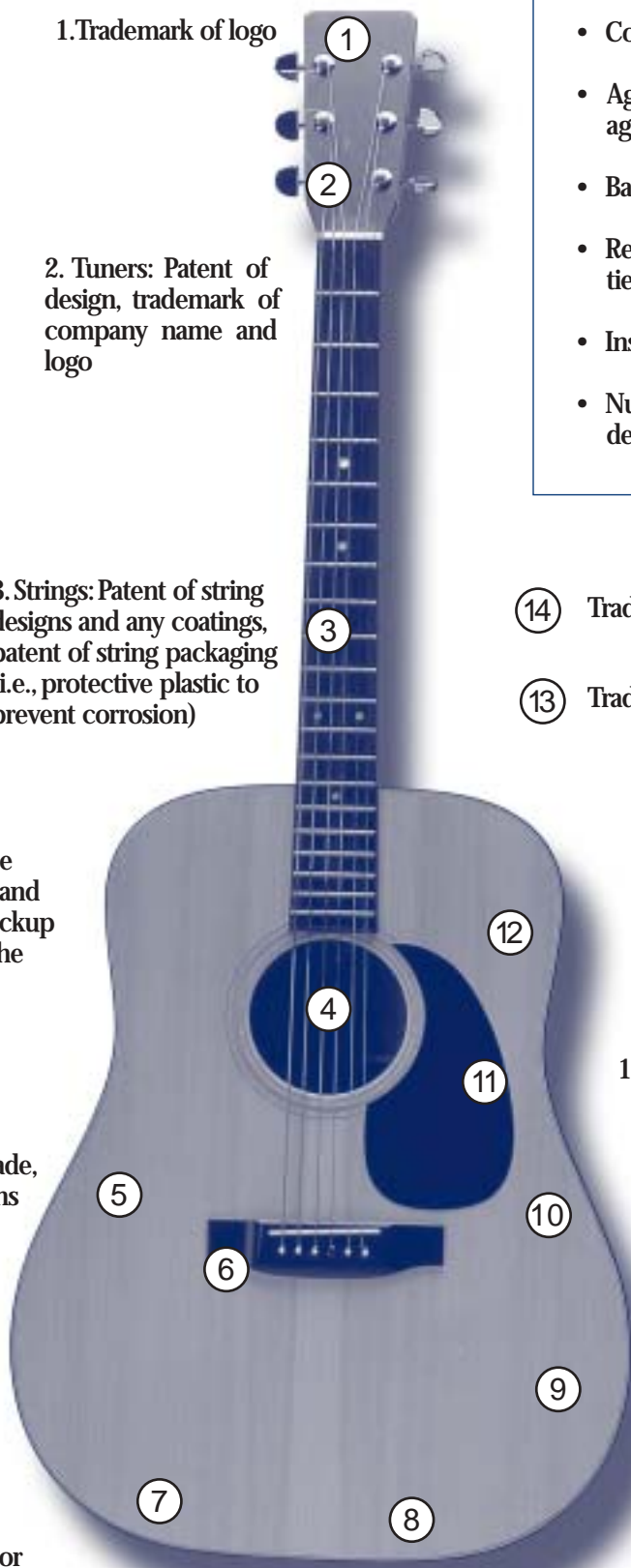
12. Licensing/publicity (i.e., Santa Cruz's "Tony Rice" model)

11. Warranty covering the instrument

10. Other copyrights/patents/trademarks for parts of the guitar or products used in the design such as glues, lacquer, etc.

9. Patents on any construction processes or tools used in construction, copyright and/or patent on the design of the guitar, perhaps a trademark on the design (theoretically).

8. Agreements with authorized retailers and service centers



Music Copublishing and the Mysterious 'Writer's Share'

JILL A. MICHAEL

The concepts of “writer” and “publisher” shares, as well as their origins, remain a mystery in music publishing, even to many music industry and entertainment law professionals. The key to unlocking this mystery stems from recognizing and understanding the basic principle that music publishing rights initially attach to the copyright holder of the musical composition. The U.S. Copyright Act grants the following exclusive rights in a work to the copyright owner:¹

- reproduction in copies or phonorecords;
- derivative works;
- distribution;
- public performance; and
- public display.

With respect to musical works and publishing income, the most important of these rights are the reproduction, distribution and public performance rights, which are the sources of the four publishing income streams payable to the copyright owner for the various uses of the work.

There is a difference between the copyright in a musical composition (the composition) and the copyright in the master recording embodying such musical composition (the sound recording). U.S. copyright law protects both. All of the exclusive rights vest in the owners of both compositions and sound recordings.²

However, music publishing rights belong only to the owner of the copyright in the composition. Initially and unless the composition is written as a work for hire,³ the writer of the composition owns the copyright in the composition and is its sole publisher. The

writer/copyright owner may then, if he or she desires, enter into an agreement with a third-party publisher in which the copyright and some or all rights that accompany it are assigned, in whole or in part, to such third-party publisher. Generally, a writer/copyright owner will want to take this step in order to have another more experienced party handle the collection, accounting and distribution of publishing income (or the “administration,” as this article will later discuss). Additionally, the writer/copyright owner will usually receive a cash advance from the third-party publisher for the assignment of these rights.

The sound recording, on the other hand, is owned by the creative contributors (musicians) who perform on the

Mechanicals and public performance income vie for top positions on the earnings scale.

sound recording or by those, such as record companies, who purchase or finance the performance embodied in the sound recording as a work-for-hire. This article examines the exploitation of the composition only, how the world of music publishing views the “publisher” and “writer” shares and the “copublishing” relationship between a writer and his or her third-party music publisher.

Music publishing income is derived from four separate sources. Royalties or fees are payable to the copyright owner in exchange for the copyright owner’s grant to a third party of a specific publishing right held under the Copyright Act. These income sources are generated from the exploitation of the composition in print, public performances, mechanical recordings and synchronizations.

Print, mechanical and synchronization rights are all related to the copyright owner’s right under the Copyright Act to “reproduce the copyrighted work in

copies or phonorecords”⁴ and to “distribute” such copies or phonorecords to the public.⁵ Print rights refer to the right to reproduce and distribute the words and music of a musical composition in sheet music and song folios. Mechanical rights allow reproduction and distribution in phonorecords (including digital downloads) and synchronization rights allow a song to be combined with a visual image, reproduced and distributed as part of a motion picture, television production, video or DVD. Public performance rights in musical compositions are specifically granted in the Copyright Act⁶ and refer to the copyright owner’s exclusive right to broadcast a musical composition, whether by radio, television or the Internet. In addition, the right applies to the live public performance of the composition.

In the late 1800s and early 1900s, before records and radio existed, sheet music was the dominant royalty-producing revenue source for writers. Early mechanical royalties were paid to writers and publishers on player piano roll sales. The concept of a mechanical royalty for the reproduction of a musical work in records came into being with the 1909 Copyright Act.

Public performance royalties did not become a meaningful source of publishing income until well after 1914, when ASCAP was formed by a group of writers and publishers for the specific purpose of collecting income for the performance of their music. In 1921, ASCAP made its first royalty distribution to writers and publishers. In 1923, ASCAP began licensing radio stations. The situation has completely shifted in the 21st century. Sheet music is now the smallest revenue-producing source, while mechanicals and public performance income vie for top positions on the earnings scale.

The calculation of royalties for each of the publishing exploitations and income sources is generally calculated following standards within the industry. Domestic print royalties are usually calculated as a flat penny rate, per copy sold, with a higher per-copy rate for folios or, in some instances, a percentage of net print receipts. With respect to foreign print royalties or copies sold by licensees of the publisher, the royalty rate is usually a percentage of net print receipts.

Mechanical rates are dictated by the U.S. Copyright Act⁷ and equal a fixed penny rate per song per record made and distributed (with per-minute increases for songs more than five minutes in length); these rates have been continually increased biannually by the U.S. Copyright Office.

The Copyright Act also incorporates newly enacted provisions to encompass, within compulsory mechanical licensing schemes, the copyright owner's right to distribute phonorecords embodying the underlying copyrighted work by digital transmission.⁸ Royalty rates for such digital transmissions after December 31, 1997, have not yet been finally determined.

Synchronization royalties are generally a flat fee for the use of the composition. The "synch fee" varies, depending on the amount of the composition used, its popularity and the writer's clout.

Writers began to demand a larger share of the publishing pie.

Calculating public performance royalties is a bit more complicated. ASCAP, BMI and SESAC, the three U.S. public performance societies, negotiate license fees and issue licenses, typically "blanket licenses" (for which one fee allows access to all compositions licensed by the society), to the users of music (that is, radio, television, cable, Internet sites, bars, clubs, restaurants, shopping malls, concert halls, airlines, orchestras, etc.). A blanket license grants the licensee, for an annual fee, the right to broadcast unlimited nondramatic performances of the entire catalog of the particular society's musical works.

The societies then use elaborate data, polls and surveys to determine what songs are being performed and to distribute the license fees collected from the licensees to the respective writer and publisher members whose works were performed. The value of each performance is determined by several factors, including the amount of license fees

collected in a medium, the type and significance of the performance and the amount of the license fee paid to the society. The general arrangement is for each performance dollar payable by the society for a particular work to be paid half to the writer member and half to the publisher member.

It was, in fact, the early concept of a 50/50 sharing of publishing income between a writer and publisher that is mostly responsible for the latter-day confusion. Early songwriters entered into agreements with third-party publishing companies to print sheet music and player piano rolls under a partnership theory, whereby publishing income was equally split between the two "partners" – the writer who created the work and the publisher who printed it, distributed it, promoted it, secured its success and collected any publishing revenues generated by the work.

The 50 percent share payable to the writer under such agreements became known as the "writer's share," while the other half retained by the publisher for his or her efforts was known as the "publisher's share." The responsibility for the collection, accounting and distribution of income became known as "administration."

ASCAP furthered the 50/50 income-sharing/partnership approach. Formed in 1914 in New York, by a group of writers, publishers and New York lawyer Nathan Burkan, ASCAP sought to protect copyright interests and to collect fees for the performance of music written by its members. The ASCAP board of directors was, and continues to be, composed of 12 writers (elected by the writer members) and 12 publishers (elected by the publisher members). The board elects a president and chairman (who has traditionally been a writer member).

The writer's share of public performance income was the half payable to the writer(s), while the publisher's share was the half payable to the publisher(s). ASCAP's reasoning behind carving out a specific writer's share was more than simply an extension of the writer/publisher partnership concept. It was a protection for writers from overreaching publishing contracts, which provided for a writer member to be paid his or her share of public performance royalties directly, with no interference from the publisher.

In fact, until approximately 1990, the writer's share of public performance royalties was nonassignable under any circumstances. ASCAP now allows assignment by the writer, with ASCAP's written approval, but only under certain very specific conditions: (i) to repay a sum certain (loan or advance) to another ASCAP writer or publisher member or to a bank or lending institution; or (ii) to make an assignment to a writer's own corporation (must be at least 95 percent owned by the writer). In any case, the assignment is revocable at any time by the writer.

Early publishing agreements, although based on the 50/50 income-sharing/partnership theory, generally required writers to assign 100 percent of the copyrights in their compositions, as well as full exploitation and administration rights, to the publisher, in exchange for a 50 percent writer's share of the publishing income collected, which is generally described as a full publishing agreement. As the industry evolved, however, hybrid deals became more widely accepted.

Depending on the extent of the copyright and administration rights assigned to the publisher, the new agreements were structured either as a copublishing/administration or copublishing/coadministration arrangement, as opposed to a full publishing and full administration agreement. Most hybrid agreements required the writer to assign to the publisher at least 50 percent, but not all, of the copyright ownership, together with complete control of the exploitation and administration rights.

As publishing income increased and as bands began to write and record their own music, the publisher's function of placing music with performers became less important. Writers began to demand a larger share of the publishing pie. As discussed earlier, the standard publishing agreement had been previously based on the 50/50 income-sharing/partnership concept, where 50 percent of the net publishing income (gross monies collected less expenses) was paid to the writer (writer's share) and 50 percent of the net publishing income was retained by the publisher (publisher's share). Because public performance income was already divided into 50/50 writer and publisher shares by the performance societies, the writer collected the writer's share of public performance

income directly and the publisher collected and retained the entire publisher's share.

More recently, however, no matter how the copyright control and administration issues have been handled, publishing agreements commonly have begun to allocate a greater share of the net publishing receipts, commonly 75 percent, to writers.

As a result, a host of agreement-drafting challenges have ensued. Those parties that seek to maintain the traditional 50/50 partnership theory have couched their writer-royalty language in terms of a writer's share (or "songwriter royalties") of 50 percent of gross publishing income collected plus copublishing royalties equal to an additional 50 percent of net publishing income collected (defined as gross publishing income less expenses and the writer's share paid to the writer). The result is that a total of 75 percent of publishing income collected by the publisher is paid to the writer. With respect to public performance royalties, the agreements typically provide for the writer's share to be paid directly to the writer by the public performance society and the "publisher's share" to be split 50/50 between the writer and publisher. The result is that a total of 75 percent of public performance royalties collected is paid to the writer (that is, 50 percent [writer's share] + $\frac{1}{2}$ of 50 percent [publisher's share] = 50 percent + 25 percent = 75 percent).

A more modern method of articulating the new standards for dividing the publishing pie is to structure the writer-royalty language in terms of a straight 75 percent of net publishing income (gross less expenses) collected by the publisher. Public performance royalties paid to the writer, however, have remained as the sum of the writer's share (paid directly) and 50 percent of the publisher's share collected by the publisher.

An even more basic drafting approach is exemplified by the simplest form of publishing deal: a straight-net-income-division formula or a pure administration agreement. Publishers most often enter into this type of agreement when a song or writer has been successful, where there is considerable publishing income in the pipeline and where the writer simply needs a publishing entity to collect it on his or her behalf. For such services, the publisher is paid a nominal

administration fee of 10 percent to 20 percent of net publishing income collected.

The writer still may be required to assign at least 50 percent of the copyright in the work to allow the publisher to administer it, but the publisher's power to control, license and/or exploit the song is severely limited. As in other

Publishing agreements have begun to allocate a greater share of the net publishing receipts, commonly 75 percent, to writers.

situations, the writer's share of public performance income is paid directly to the writer while the publisher retains only the 10 percent to 20 percent (as negotiated) of the publisher's share of public performance income collected.

By way of example, a recent major music publisher's 75/25 co-publishing agreement drafted in accordance with the old theory of the 50/50 writer/publisher income-sharing/partnership separates royalties into two sections as follows:

Traditionally drafted 75/25 copublishing agreement

Writer royalties

Publisher shall credit writer's royalty account with an amount equal to the following royalties for the actual reproduction and all other exploitations of the compositions:

- Fifty percent (50 percent) of any and all net sums received for each copy of sheet music in standard piano/vocal notation and each dance orchestration printed, published and sold by publisher or publisher's affiliates or licensees, for which payment is received by publisher in the United States, after deduction of returns;

- Fifty percent (50 percent) of any and all net sums received from each

printed copy of each other arrangement and edition printed, published and sold by publisher or publisher's affiliates for which payment is received by publisher in the United States, after deduction of returns;

- Fifty percent (50 percent) of any and all net sums received (less any costs for collection) by publisher in the United States from the exploitation by licensees of mechanical rights, "grand" performance rights, electrical transcription and reproduction rights, motion picture and television synchronization rights, dramatization rights, print rights and all other rights therein (except the print rights referred to above and the public performance rights referred to below), whether or not such licensees are affiliated with, owned or controlled by publisher, in whole or in part;

- Writer shall receive writer's public performance royalties throughout the world directly from the performing rights society with which writer is affiliated or of which writer is a member and shall have no claim whatsoever against publisher for any royalties received by publisher from any performing rights society which makes payment directly (or indirectly other than through publisher) to writers, authors and composers except if publisher receives the so-called songwriter's share of performance income, it shall be remitted to writer without any offset in the next regularly scheduled accounting.

Copublishing royalties

In addition to the royalties payable to writer above, publisher shall account for and pay to writer's publishing designee royalties in an amount equal to fifty percent (50 percent) of publisher's "net receipts." The term "gross receipts" shall mean the aggregate amount of monies received by publisher in the United States (or credited to publisher's account) from the actual reproduction or other exploitation of the composition(s) under this agreement. The term "net receipts" shall mean gross receipts, less the following:

- Royalties credited to writer's royalty account under this agreement pursuant to the paragraph above and royalties payable to any other person, firm or corporation having an interest in the composition(s) concerned on reproductions and exploitations; and

• Actual expenses paid or incurred by publisher to administer and exploit the composition(s), including, without limitation, copyright registration fees, approved advertising and promotion costs related to the composition(s) or promotion of writer, reasonable and customary costs of transcribing the composition(s) on lead sheets, and the costs of producing demos of the composition(s), to the extent those costs are not recoupable from writer's royalties.

This language illustrates the division of writer and publisher shares with a 50 percent "writer royalty" paid to the writer in addition to a 50 percent "co-publishing royalty" (that is, 100 percent of the publishing income collected, less expenses and the 50 percent "writer royalty"). The writer receives 50 percent + 1/2 of 50 percent (25 percent), for a total of 75 percent of the publishing income collected by the publisher.

Regarding public performance royalties, the agreement provides for the "writer's share" to be paid directly to the writer by the appropriate public performance society, while the "publisher's share" becomes a "co-publishing royalty," split 50/50 between the writer and the publisher, for a total of 50 percent ("writer's share") + 25 percent (1/2 of "publisher's share") or 75 percent of public performance royalties, to be paid to the writer.

The modern version of the 75/25 copublishing agreement makes no distinction between songwriter royalties and copublishing royalties. It bases all royalties on net publishing income, as is demonstrated by the following language from another major music publisher's recent copublishing agreement:

The modern version of the 75/25 copublishing agreement

Royalties

Provided that you have fully complied with all of your material warranties, representations and obligations provided for in this agreement, following recoupment of advances hereunder, publisher shall credit your royalty account with the following royalties with respect to its exploitation of the compositions throughout the territory.

• *Mechanical income.* 75 percent of net income derived from publisher's exploitation of the compositions for use in

phonograph records (except that publisher shall pay you 60 percent of such net income derived from cover recordings).

• *Synchronization and commercials income and video uses.* 75 percent of net income derived from publisher's exploitation of the compositions in commercials, motion pictures, television programs, videos and other audiovisual works.

• *Public performance income.* 50 percent of net income derived from the publisher's share of public performance income collected by publisher with respect to performances of the compositions.

• *Other income.* 75 percent of net income derived from publisher's exploitation of the compositions not specifically referred to in this paragraph, including, but not limited to, print income.

The elements to which a copyright interest in a musical composition may be claimed are lyrics and melody in equal parts.

This agreement provides for a straight-percentage payment to the writer from all net publishing income collected by the publisher. It splits the "publisher's share" of public performance royalties 50/50 between the writer and publisher but does not address the direct payment of the "writer's share" of public performance royalties to the writer by the applicable public performance society. Instead, it creates an exclusion in the section that grants administration rights to the publisher:

Administration

With respect to the compositions, publisher and its licensees will have the

sole and exclusive right and license during the term and retention period throughout the territory to

• Collect all monies payable during the term and the retention period with respect to the compositions and all performance royalties payable to you with respect to the compositions by ASCAP, BMI or any other applicable performing rights society, but excluding any songwriter share of public performance income.

Further simplification is apparent in the pure administration agreement, although in such cases the publisher's function is generally limited to that of a collection agent. The following excerpt from another recent major music publisher's administration agreement provides streamlined royalty payment language:

Royalties

Provided that you have fully complied with all of your material warranties, representations and obligations provided for in this agreement, publisher shall credit your royalty account with the royalties specified in this paragraph with respect to its exploitation of the compositions throughout the territory.

• *Public performance income.* 90 percent of net income derived from the publisher's share of public performance income collected by publisher with respect to performances of the compositions.

• *Mechanical income.* 90 percent of net income derived from publisher's exploitation of the compositions for use in phonograph records.

• *Synchronization and commercials income and video uses.* 90 percent of net income derived from publisher's exploitation of the compositions in commercials, motion pictures, television programs, videos and other audiovisual works.

• *Other income.* 90 percent of net income derived from publisher's exploitation of the compositions not specifically referred to in this paragraph, including, but not limited to, print income.

Much like the modern 75/25 copublishing agreement, the direct payment of the writer's share of public performance royalties to the writer by the applicable

public performance society is not mentioned and the publisher's right to collect it is excluded:

Administration

With respect to the compositions, publisher and its licensees will have the sole and exclusive right and license during the term and retention period throughout the territory to

- Collect all monies derived from any source whatsoever during the retention period with respect to the compositions, but excluding any songwriter share of public performance income.

Resolving the dilemma

The elements to which a copyright interest in a musical composition may be claimed are lyrics and melody in equal parts. A practical issue often arises where multiple songwriters (as well as nonwriters) collaborate in business (such as rock bands). A fair and reasonable arrangement to split publishing income among them needs to be devised.

This dilemma may be creatively resolved in several ways. First, publishing income, regardless of the source, can be equally divided among the band members. If the contribution to writing is not equal, this option may not be acceptable. A solution in such a case may be to recommend that nonwriters or nonsubstantial writers receive a predetermined flat percentage (anywhere from 5 percent to 20 percent) of all publishing income, other than the writer's share of public performance income and that the major writers take a larger share of the remainder. The writer's share of performance income would be paid only to the actual writer(s) of the compositions, in the true percentages of authorship.

Other bands may prefer that performance royalties as a whole (that is, both writer and publisher shares) be paid only to the actual songwriters. Finally, in the case where a band is formed and run by a strong singer/songwriter, the remaining band members may receive no share of the publishing income unless they actually write. This is an option (and most often the choice) in situations where the other band members are viewed as employees ("side-men") and are just paid a salary.

Of course, anything can be negotiated or renegotiated. Publishing shares may

be increased and former nonwriter members may begin to write. If the band is successful and the founding members want to keep the rest of the band content, they will often increase the benefits by enlarging their shares of the publishing pie. Additionally, one must keep in mind that, if a publishing agreement has been entered into with a third-party publisher, there will be considerably less publishing income to divide.

Because the concepts of a writer's share and publisher's share have developed more through custom and less by way of statutes and precedent, the nature of their application in an aggressively evolving, entrepreneurial and technically fueled industry makes a basic understanding of these concepts even more vital.

Endnotes

1. 17 U.S.C. § 106.
2. 17 U.S.C. § 102.
3. 17 U.S.C. § 201(a)-(b).

4. 17 U.S.C. § 106(1).
5. 17 U.S.C. § 106(3).
6. 17 U.S.C. § 106(4). Although not addressed here, 17 U.S.C. § 106(6) (as amended) now grants to the copyright owner of a sound recording the exclusive right to publicly perform such sound recording by means of a digital audio transmission.
7. 17 U.S.C. § 115(c).
8. 17 U.S.C. § 115(c)(3). The Digital Performance Right in Sound Recordings Act of 1995 (codified as amended at 17 U.S.C. §§ 106(6), 114, and 115) grants exclusive performance rights to copyright owners of sound recordings that are digitally transmitted and provides certain limitations of such exclusive rights, as well as licensing procedures and provisions for the allocation of royalty proceeds from digital transmission licensing.

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The Lighter Side



"As your attorney, I must strongly advise you against bringing the high beat."

Courtesy the New Yorker. ©2001 Alex Gregory, cartoonbank.com.

How to Make the Most of Big Deals and Cases

Continued from page 1

as lawyers and their clients move from firm to firm. Law firms need to find ways to attract and keep good lawyers and loyal clients and continually reach out to those who can use their services or refer business to them. This means they must know how to market.

Institutional marketing

Entertainment and sports lawyers have two avenues of marketing available to them. The first is a traditional "institutional"-type marketing campaign geared toward reaching lawyers, business managers, accountants and others who make up a solid referral base. A public relations plan to reach referral sources and, in some cases, potential clients directly can consist of:

1. writing bylined articles to appear in publications reaching the above targeted audiences;
2. speaking before industry trade groups on legal subjects geared toward the interests of their members;
3. preparing and distributing informative mailings (i.e., newsletters, e-mailings, article reprints) to the firm's database;
4. holding general one-on-one meetings to cultivate and foster referral relationships;
5. sponsoring or cosponsoring seminars for targeted audiences;
6. developing Web page content/brochures that discuss the services the firm provides;
7. joining and participating in trade groups to develop new contacts and generate referral business.

This list of marketing activities is typical for most types of legal practices. When implemented consistently in a marketing campaign over the long term, the firm should be rewarded with an increase in business activity.

Media relations

The second means of marketing a law firm, and one many law firms still shy from, is media relations. The relationship between lawyers and the media must always be a cautious one. An inappropriate comment appearing in print or on the evening news can inadvertently harm a client or tarnish rather than enhance your reputation. Yet the rewards for an active media relations

campaign can be great. Key public relations activities involving the media include:

1. acting as a media source for legal comments;
2. contacting the media through news releases, news conferences and media alerts concerning successful cases.

The lawyer as media source

Acting as a legal source for the media can provide a positive message about yourself and your firm. When you are quoted in newspapers, magazines or on radio or television news programs, most people automatically assume you are an expert in your field. A third-party endorsement from the media helps establish or cement your credibility.

How do the media decide whom to call when they want an on-air sound bite or quote for tomorrow's newspaper? There are literally hundreds of thousands of lawyers around the country who could provide the same information as you. First, the media have to know about you.

Target the media you want to reach and begin a relationship. Depending on the availability of the newsperson, you could begin with a quick call or a lunch. Other options include sending the news editors and reporters information on issues that would be of interest to them, information about yourself and areas of expertise and suggestions for story topics. In other words, present yourself as an experienced resource for reliable information.

You could also take advantage of services offered by *BusinessWire* and *PRNewswire*. These news release distribution companies offer programs that enable reporters to announce their particular need for expert sources when working on a story. Lawyers can monitor these services and send information to the media making requests for legal sources. For example, a *PRNewswire* item indicates that a reporter is writing an article on current California state legislation on the "7-year rule" involving musicians and their contracts with record companies. The reporter is looking for music lawyers who could comment on the legislation. Lawyers who fit the bill would then contact the reporter, and the reporter would select the lawyer or lawyers to interview. While the *BusinessWire* service is free to all *BusinessWire* members, the *PRNewswire* service costs several thousand dollars a year. However,

PRNewswire's service, called *ProfNet*, is much more widely used by the media.

Promoting a case

The media also learns about legal sources from cases. Filing a complaint involving a noted celebrity will almost always trigger media interest. If your client gives you the go-ahead, you have the opportunity to generate media interviews and exposure resulting from the case filing. In these situations, lawyers must once again use caution.

Rules of Professional Conduct

Rule 5-120 of the Rules of Professional Conduct talks about trial publicity. The rule states

A member who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the member knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

At first read, it would appear the rules dictate that a lawyer cannot make any statements about an impending trial. However, the rule includes a slew of exceptions.

Rule exceptions allow lawyers to disseminate the facts of the case as outlined in public documents. This means a news release announcing a filing of a complaint is permissible as long it does not inject what would be considered prejudicial comments. Once written, news releases about a case filing can be distributed through wire services and individually to targeted media outlets for maximum widespread release. Wire services send the releases to newspapers, magazines, television and radio stations and Internet outlets. When the case warrants it, a news conference may be held to announce the filing.

If the opposing side makes public comments that are derogatory to your client, the gloves are off. Rule 5-120 states: "a member may make a statement that a reasonable member would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the member or the member's client."

During many celebrity trials, requests for media interviews of your client will come in droves. Be accessible, even if your client

isn't (or shouldn't be talking to the media). Take and return calls from media immediately even if what you have to say is limited. Your comments may be tempered by gag orders or comments in general by the judge, in which case the amount of ongoing trial publicity should be evaluated and tailored appropriately.

Once a case or nonconfidential settlement is completed, lawyers are allowed to say much more than prior to or during trial or negotiations. If the end results are positive, the win will result in a favorable impression of your client and your law practice. Losses will require a public relations strategy that involves damage control. Even then, if the message is crafted properly, the public damage can be muted.

Many media work on a 24-hour, seven-days-a-week news cycle. Timing of any news dissemination is important. What is news today is often not news tomorrow. Lawyers are notorious for waiting days to release case news, often dicker about a word here or there in a news release. This can cost the firm news coverage and prevent your side of the story from being told. As soon as a case is decided, a news release, containing all the pertinent facts about the case and quotes from you and your client, must be prepared and disseminated. Once again, wire services come in handy for fast

distribution. If the announcement will be made at a news conference, make sure the news release, judge's decision (if appropriate), or settlement agreement is available for all media who attend and to those media who cannot attend.

Conclusion: Eighty percent of success is showing up

Woody Allen once said, "Eighty percent of success is showing up." Much of the same can be said of media relations. By showing up and being accessible to the media, you have the opportunity to tell your client's side of the story. Rest assured, reporters will be talking with opposing counsel. Without your comments, any news reports could be slanted to favor your opposition. If you are uncomfortable talking with the media, hire a media trainer to help you. These individuals, usually with video camera in tow, will train you to think in sound bites, help you understand the type of information the media need, and, just as important, make sure your message gets across.

Entertainment and sports lawyers should implement many of the same marketing and public relations techniques as lawyers in other practice areas. Thrown into this mix, however, is the media factor when representing high-profile clients. Treat each

reporter with respect and patience, and the resulting positive media exposure you receive will pay marketing dividends.

Rumbaugh is a Thousand Oaks, California, public relations and marketing consultant. She has represented lawyers and law firms since the mid-1980s. She can be reached at 805/493-2877, Rumbaugh@earthlink.net.

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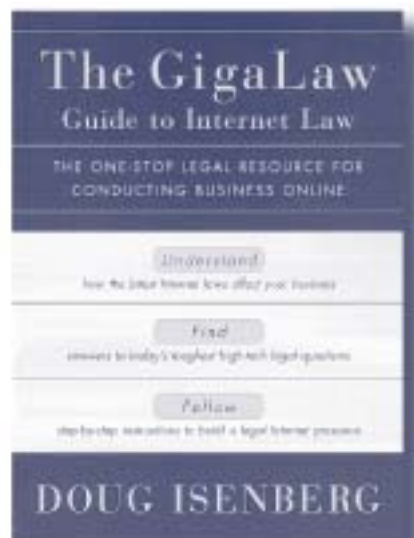
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In the News

E&SL contributor Doug Isenberg has a new book on sale this month – *The GigaLaw Guide to Internet Law*. We may be biased, but we really like this book, and our enthusiasm is not isolated. Prepublication reviews are glowing, including one by Stanford Law School Professor Lawrence Lessig (author of the highly influential *The Future of Ideas*), who says of Isenberg's book, "This beautifully written text teaches its subject well. It is an excellent introduction for both beginner and expert alike."

The book is indeed an outstanding introduction to a rapidly changing and wide-ranging legal discipline. Its scope is all-inclusive, and the treatment is exceptionally up-to-date. Right from the Foreword, by Dave Baker, V.P. Law and Policy at Earthlink, we are introduced to a fascinating debate about the USA Patriot Act of 2001 and the effect of post-September 11, 2001, security legislation on



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Internet service providers and their customers.

This user-friendly book is primarily targeted at corporate executives, programmers, Website developers and lawyers. Lawyers new to this area of the law will benefit from the book – and experienced lawyers will like its quick reference functionality. For example, lawyers might keep a copy on their shelf as a context-sensitive treatment to guide them to further research. Also, lawyers may want to recommend this book to corporate and Internet creative clients as a clear roadmap to follow as the lawyer steers the client through an Internet law matter.

A few of the book's myriad topics include copyrights and trademarks for the Internet, domain names and disputes, patents, free speech and the First Amendment, privacy, spam, eCommerce taxation, high-tech employment law and cyberspace contracts.

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And Another Thing . . .

This issue is of *Entertainment and Sports Lawyer*, Volume 20, No. 3, celebrates our 20th year of continuous publication by introducing an exciting new design by Andrew Alcala. Andrew is our Art Director, and he is part of the American Bar Association's design department. He is responsible for redesigning many of the ABA's new look publications, and we are greatly indebted to him for the significant extra time and effort he has invested in providing us with a flexible, up-to-date design.

The redesign was developed over a five-month period by a team that included Susan Yessne, Director of ABA Periodicals; Russell Glidden, Director of ABA Publishing Design & Production Department; Andrew Alcala, Art Director; Ray DeLong, ABA Staff Editor; and myself. On behalf of the Forum on the Entertainment and Sports Industries I would like to extend my heartfelt thanks to these dedicated folks at the ABA for sharing their experience and working so hard on this redesign.

The purpose of this new design is to apply modern magazine design practice to (1) better facilitate expansion of the publication's coverage of the entertainment and sports industries, (2) improve the readability and visual interest of the publication and (3) accommodate many new features, including a variety of lengths and article formats (e.g., *Issue Spotting Your Guitar* in this issue). This issue brings the publication up-to-date on the calendar, too. Expect *Entertainment and Sports Lawyer* to remain on schedule, offering quarterly issues in January, April, July and October.

I trust you will find the new features fun, engaging to read – and also of practical benefit to your legal practice. As always, we want to hear from you. Our mission is to be highly responsive to your needs. Please let us know how we can continue to improve with every issue.

Bob Pimm
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