Texas Entertainment and Sports Law Journal

State Bar of Texas
Entertainment & Sports Law Section
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HB 539 Update

As previously reported, House Bill 539 (Thompson) is the latest legislative attempt to deal with the problem of contracts with minors. The issue is especially important for our Section, because sports and entertainment entities often seek out talent under the age of 18.

Since I last reported to you in our Spring 2001 issue of the Journal, the bill has been revised significantly. As I anticipated in my last update, one revision is that court-approved contracts will not automatically terminate when the child reaches 18. Instead, the revised bill provides that it not be construed to authorize the making of a contract that binds a minor beyond the seventh anniversary of the date of the contract.

In its latest form, HB 539 authorizes a court, on petition of the guardian of the estate of the minor, to enter an order approving an arts and entertainment contract, advertisement contract, or sports contract that is entered into by a minor. It authorizes the court to approve the contract only after the guardian of the minor's estate provides to the other party to the contract notice of the petition and an opportunity to request a hearing in the manner provided by the court. It also specifies that the approval of a contract extends to the contract as a whole and any of the terms and provisions of the contract, including any optional or conditional provision in the contract relating to the extension or termination of its term. Each parent of the minor will be a necessary party to the court proceeding.

Of special note is that the revised bill now authorizes the court to require that a reasonable portion of the net earnings of the minor under the contract be set aside and preserved for the benefit of the minor in a trust created under Section 867 of the Probate Code or a similar trust created under the laws of another state. It also authorizes the court to appoint a guardian ad litem for a minor if the court finds that it would be in the best interest of the minor.

If enacted, this new law would be effective September 1, 2001. As I write this update (on May 11) the revised bill has passed the House. The Senate Jurisprudence Committee has recommended it for the Local and Uncontested Calendar.

Rob Carter

In this Issue:

MESSAGE FROM THE CHAIR

This is my last opportunity to write to you all as Chairman of the Section. It's been an honor to serve. I'd like to encourage each and every one of you to consider ways you can help our Section be as useful to our membership as possible. Whether you help out with one of our seminars, contribute to the Journal, encourage another lawyer to join, or simply relay an idea to one of our Council members, your contribution is vital to our effectiveness.

At this writing, we are scheduled to hear from Casey Monahan (Texas Music Office) and Tom Copeland (Texas Film Commission) at our Annual Section Meeting Friday, June 15 at 2 pm at the Austin Convention Center. The Annual Section Meeting is timed to coincide with the Bar's Annual Meeting. If you have registered for the Bar's Annual Meeting, admission to the Section program is free. The program has been approved for 1.5 hours of CLE. Even if you can't stay for our program speakers, I urge you to attend the Section Meeting, when we will vote on new officers.

Special thanks to Mike Tolleson for his work on our Fall entertainment law seminar. He is already working away on our next seminar, scheduled now for early October. Thanks also to Sylvester Jaime for his tireless work on the Journal you now hold in your hands. I'd also like to thank the entire Council for attending our meetings and offering valuable perspectives and support.

I'll still be active in the Section. I'm on the Planning Committee for the next entertainment law seminar, and will still be a member of the Council as Immediate Past Chair (protecting my vast legacy, I presume).

If I may leave you with a parting thought, it would be this: Your Section is what you make it. If you have ideas on how we can better serve the membership, share them. If you can help implement the ideas, even better! I hope to see you at the Annual Meeting, at our seminars, and ultimately, across that negotiating table.

Thanks again for allowing me to serve as your Chair.

Rob Carter

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FROM THE EDITOR

The Texas Entertainment and Sports Law Journal is published quarterly. If you are not on the mailing list and wish to be included, forward your name and address to the Section Treasurer along with a check for $25 payable to the Entertainment and Sports Law Section and indicate that you wish to be included on our mailing list.

We are now accepting advertisements in the Journal. Anyone wishing to advertise in the Journal, should contact the Editor for information on getting your ad in the Journal. Ad rates are: 1/8 page: $50.00; 1/4 page: $100.00; 1/2 page: $150.00; 3/4 page: $175.00 and full page: $200.00.

FOR THE LEGAL RECORD ...

MyTexasbar.com links to the Journal and also provides links to other sports and entertainment resources and articles. Registration to MyTexasbar.com is free and provides access to more than just sports and entertainment ...

POLICE ACTIONS ...

RONALD RAY GIBSON

CHARGE: felony battery after being accused of breaking the arms of a 10 year old football player. The 10 year old flubbed a pass and the "coach" allegedly picked-up the player and threw him against a wall.

SENTENCE: 4 months in jail in Duval County, Florida and 2 years probation.

DAVID HILTON JR.

CHARGE: sexual assault of 2 sisters.

STRIPPED of the World Boxing Council Super Middleweight Title and faced criminal sentencing on May 9, 2001.

RAELYN JACOBSON

CHARGE: amphetamines use at U. S. Fencing Junior Olympics.

SUSPENDED for 1 year by U. S. Anti-Doping Agency.

JUSTIN HUISH

CHARGE: felony charge of selling marijuana.

SENTENCE: expected to be six months in jail. The Olympic archery champion, pleaded no contest to selling marijuana from his Ventura, California home.

RUBEN PATTERSON

CHARGE: attempted rape.

SENTENCE: a year in jail, 2 years probation and fined $5,000 plus costs. The Seattle SuperSonics forward was accused of attempting to rape the family nanny.

CHRIS GARCIA

CHARGE: felony assault.

SENTENCE: two years probation, $1,000 fine, and restitution for medical bills for the victims of the assault. The high school soccer player was charged with assaulting a rival coach and rival player, causing a brawl at a high school soccer game in Athens, Georgia.

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CIVIL ACTIONS ...

The Major League Baseball Players' Association wants the SUPREME COURT OF THE UNITED STATES OF AMERICA to hear its appeal of former Los Angeles Dodger/ San Diego Padres first-baseman Steve Garvey's claim for $3 million.

When the owners settled their dispute with MLBPA in 1990, Garvey claimed that he was owed $3 million because despite the Padres' offer to extend his contract for 1988 and 1989, the owners colluded and withdrew the offer to Garvey.

An arbitrator ruled against Garvey, the 9th U.S. Circuit Court of Appeals overruled the arbitrator and the referring federal district court judge ordered the case returned to the arbitrators. Garvey appealed arguing that the case should not have been sent back and Garvey should be awarded the money. The 9th Circuit agreed and ruled that the only result should be an award to Garvey. When the arbitrators awarded $3.1 million to Garvey, the Union appealed to the Supreme Court claiming that the 9th Circuit overstepped its authority and Garvey was not entitled to the award.

...

The Federal government backing a South African native before the Supreme Court? Don King is on the other side!

The Justice Department filed a brief in support of former South African Cedric Kushner's Racketeer Influenced and Corrupt Organization Act claim against Don King individually. Kushner filed a $12 million lawsuit against King in the District Court for the Southern District of New York. After the District Court ruled that King could not be sued individually under RICO without a showing that he was distinct from Don King Productions, Inc., Kushner appealed to the 2nd U. S. Circuit Court of Appeals. When the 2nd Circuit upheld the lower court, Kushner appealed to the country's highest court.

Kushner found support from the Justice Department. Kushner claimed that King interfered with his contract with Hasim "The Rock" Rahman before Rahman became heavyweight champion by knocking out Lennox Lewis. Kushner's attorney Richard Edlin, alleges that King offered Rahman $125,000 to falsely claim an injury and avoid Kushner's promoted fight for Rahman vs. David Tua.

Kushner wants to sue King under RICO, and the Justice Department has agreed with Kushner's argument that by allowing King to hide behind the corporate veil weakens RICO

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We apologize to the author for inadvertently omitting part of his article in the previous issue. This article is being reprinted in it's entirety.

Record Deal Economics

By Yocel Alonso

Mr. Alonso received his undergraduate education at the University of Houston and the University of Salamanca, Spain, and his legal education at the University of Houston law Center. He taught law as an Adjunct Professor at the University of Houston Law center from 1989-1990. He has been in private law practice with the Houston firm of Alonso, Ceronsky & Garcia P.C. over twenty years, representing a diversity of clients in the entertainment business, including recording artists, record companies, publishers, media personalities, venues and promotion companies, the majority of which involves Latin music. He handles entertainment transactions and disputes concerning recording agreements, royalties, music publishing contracts, copyright and other business.

Although Mr. Alonso does not sing or dance professionally, he is a mediocre conga player. He also is the author of the Economics of the Music Industry, which was prepared for the University of California at Davis and University of Houston's Entertainment, Sports and Publishing Law Seminar in 1997, and many other legal articles. He is a member of the State Bar of Texas Entertainment and Sports Law Section Council, the State Bar of Texas and former director of the Hispanic Bar Association.

I. Introduction.

This discussion of music industry economics focuses on record companies and the deals that they make. We'll do this in two parts. First, we'll discuss recording contract royalties and, second, explore the anatomy of compact disc and cassette sales.

II. Recording Contract Royalties.

After a limousine ride to soften you up, the first issue in a record deal is usually the advance and then the royalty rate. After haggling over these issues with the record company, many artist are too exhausted (or sometimes too disinterested) to negotiate the remaining ninety-eight pages of the contract with equal vigor. They'll regret this--I'll tell you why after we get the discussion on royalties out of the way.

A. Advances. Artists typically get advances for signing a contract, walking into a recording studio, or delivering the master recording to a record company. Advances are important, and not for just the obvious reason.

- The Obvious Reason. It's always better to have, than to have not, especially when it's a no interest, non-recourse "loan".
- The Less Obvious Reason. The higher the advance, the higher the record company's risk and, consequently, the higher its commitment to the artist. Conversely, the smaller the advance, the less its interest in the artist, notwithstanding how many "I love you, man"s are exclaimed in your direction.
- The Practical Reason. Many record companies are slow pays. You definitely want to get paid before the Spice Girls' next hit song. (It's been suggested that these chronic payment problems would be cured if the labels' royalty departments were merged with their payroll departments).

B. Royalty Rates

1. Retail v.s Wholesale. Some labels calculate artist royalties as a percentage of the record's retail price, while others use the wholesale price. Still others use a fixed dollar amount for each sale. The conventional wisdom is that wholesale rates convert to retail rates on a 2:1 basis with the precision of a Fahrenheit to centigrade conversion. Not true. This analysis may not take into account the company's "free goods" policy and other relevant factors. There is no substitute for learning a company's actual price and working out each scenario under the proposed contract. This will tell you precisely how much the artist will receive from each unit sold. Of course, your task would be a lot simpler if the contract specified the dollar amount of royalties to be paid on each unit sold, and some labels actually do this. Regardless of the rate, it is important that you understand the royalty basis.

   a. Royalty basis. This is the amount of record sales to which the royalty rate will be applied. An artist who has

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never been to wonderland may think that he or she will be paid on 100% of actual sales. While some companies do this, others do not. For example, some companies still pay royalties on 90% of sales because fifty years ago, before the introduction of vinyl, there was (10%) percent deduction to compensate for records that broke during shipment. Other companies whack off an additional fifteen (15%) deduction for "free goods" which they may or may not give away.

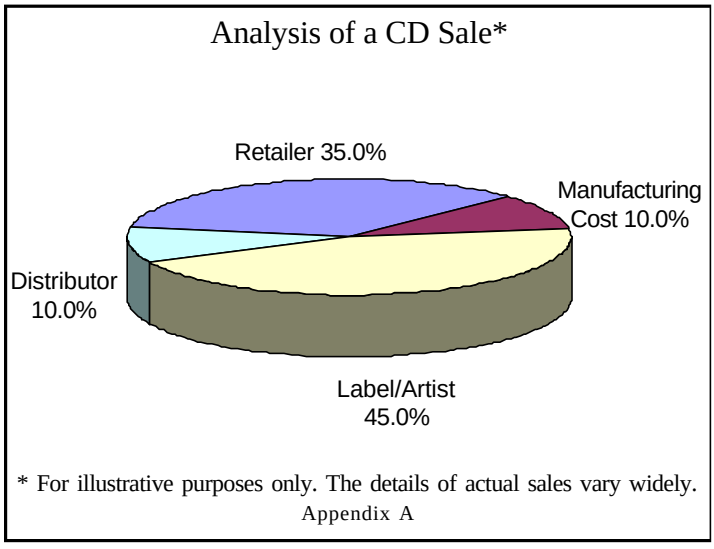
b. Stealth definitions and their fine print. Whatever you do, read every sentence in the recording contract and understand their interplay. Remember the old saying "the big print giveth and the small print taketh away." Question everything and assume nothing-not even that terms have been defined in a matter consistent with their ordinary meaning. They probably haven't and never, ever lose sight of the fact that your job is to know how much your artist will be paid for every unit sold. Alan Siegals' analysis nails this concept dead-center.

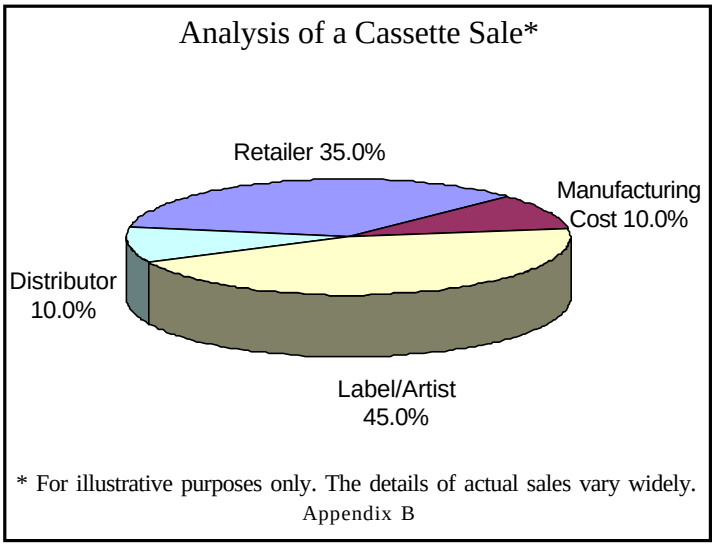
"This is jargon and it will be cast in a style I have just christened *fail-safe convolution*. The style is born of paranoia (not necessarily undeserved) and provides for each unpalatable provision to appear twice, usually widely separated in the text, once in wolf's clothing and once in sheep's clothing. The theory is simple: if the artist's attorney knocks it out once, there is a chance he won't pick it up the second time and at least there will be an ambiguity that can be played with later on." Alan H. Siegal, *Breaking Into the Music Business*, (1990).

2. Royalty Deduction

a. Free Goods. These are CDs and cassettes which may or may not be "given away" by record companies for various business reasons, usually without the payment of royalties. The business reason may include:

1. purchase volume
2. reduction of royalty payments; and/or
3. "clean" payola and other questionable transactions. Some companies give away (15%) percent of their product as free goods. This practice may be to the artist's detriment when the royalty is based on the percentage of the retail sales price. Other companies don't give "free goods" but deduct (15%) percent from the artist's royalty base anyway. This practice may be





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detrimental to an artist working under both retail and wholesale royalty provision. Other companies do neither, relying instead on "special free goods" programs.

b. Special Free Goods. Special free goods are CDs and cassettes "given away" by record companies as part of a limited incentive program to increase sales. The amount varies from five (5%) to fifteen (15%) percent.

c. Promotional Free Goods. Promotional free goods are records given away to radio stations, the media, lawyers, and others. Their distinguishing characteristics are either a mutilated jewel box or the ominous warning that they are for "promotional use only-not for sale." Of course, you can find them for sale at a used record shop near you.

d. Packaging. Some record companies add royalties to their cost to package a CD or cassette. However, the actual packaging cost per CD is about ninety ($0.90) cents. By comparison, the typical packaging deduction is ten (10%) to fifteen (15%) percent wholesale and twenty (20%) to twenty-five (25%) retail. On a record that wholesales for $9.00, a fifteen (15%) percent packaging deduction equals $1.35. This translates into $45,000.00 over actual costs fees for every 100,000 units sold.

e. Record Clubs. Record contracts may provide for a reduced royalty rate on sales made by mail order clubs. These sales are generally governed by a licensing agreement between the record company and the club which include an extremely liberal "free goods" policy, typically 100%. Record company contracts may provide for the artist to be paid one-half of their royalty rate on sales. Depending on the artist, you may be able to increase this to two-thirds or, preferably, one-half of the licensing fee paid to the record company. You may also be able to negotiate a limitation on the amount of free-goods, and/or a longer time period between the release of the album and its availability to record clubs.

f. Foreign Sales. These generally pay a lower royalty rate than U.S. sales. How much lower depends on the 1) artist 2) record company, and 3) market. The top artists can usually negotiate a higher royalty based on their high sales. Record companies also have different policies regarding international sales. Subject to the first two factors, the typical rates for each market, stated as a percentage of the artist's U.S. rate:

Canada – 85% to 100%

Major markets – 65% to 75%

Iraq, Cuba and Thunderdome – 50% to 65%

3. "Reasonable" Reserves. Your definition of a reasonable reserve is probably different from that of some record companies. Most of us believe that a reasonable reserve is the amount established by a company's policy, regardless of the actual numbers. If this issue is important to the artist, you should deal with it up front. Otherwise, your only recourse may be a lawsuit to determine "reasonableness".

4. Synchronization Deals. Synchronization deals are agreements for the use of master recordings in movies and television programs. The amount paid varies widely depending on the 1) company, 2) project, 3) how badly they want the song, and 4) whether they've already infringed on your copyright.

III. Anatomy Of A CD Sale.

A. Record Company's Cost (excluding artist royalty). Such costs are the record company's actual manufacturing and out of pocket costs. These costs vary, of course, but include:

1.	Disc manufacturing cost (including jewel box and insert):	$.90 (or less)
2.	"In House" Cost:	$.30
3.	Composer royalties:	app. $.75 (or ¾ of this amount)
	Total:	app. $1.95

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B. Distributor's Cost. This is the price the record company charges the distributor. Depending on the market, it generally ranges from about $7.00 to $10.00.

C. Amount left for the Record Company and Artist. This is what's left to carve up. The amount ranges from $5.00 to $7.00 per CD.

D. Retailer's Cost. This is the amount paid by the retailer to the wholesales. It's about $10.30 - $11.50.

E. Consumer's Cost. This is the amount you and I pay at the record store. This cost is usually about $11.98 to $18.98 and sometimes more. Assuming a retail sales price of $18.00, Appendix "A" shows the flow of money from a CD sale in percentage terms.

IV. Anatomy Of A Cassette Sale.

The comparable numbers for cassette sales are as follows:

A. Record Company's Cost (excluding artist royalty):

1.	Cassette manuf. cost:	$.60 (or less)
2.	"In House" Cost:	$.30
3.	Composer Royalties: (or 3/4 of this amount)	app. $.75
	Total:	app. $1.65

B. Distributor's Cost: app. $4.10 to $7.00 (depending on the market)

C. Amount Left for the Record Company and the Artist: $2.45 to $5.35

D. Retailer's Cost: Generally $6.98 to $12.98. However, many records are not being released on cassette. Assuming a retail sales price of $11.50, Appendix "B" shows the flow of money from a cassette sale in percentage terms.

V. Recoupment.

This is technically the term used to describe the process by which a record company's advance is repaid from the artist's share of record sales. In practice, some record companies use the terms "recoupment" and "profit" interchangeably in conversations with the artist. The obvious implication is that if the company is not recouped, then the record hasn't made a profit. The label might say, "Buy Captain Bucky, how can you expect us to give you 100 promotional CDs when we're not even recouped?" When Captain Bucky asks his manager to call you about this, you'll clear up this obfuscation and explain that the similarities between "recoupment" and "profit" are limited to the fact that both words end with the letter "t". Actually, the worse the deal is for the artist, the easier it is for the record company to recoup and vice versa. Assuming the manager understands, Bucky will realize that "recoupment" is a bogus issue and go back to the label for his promotional CDs, this time with conviction.

VI. Cross Collateral.

This is another favorite term of some record company executives. They use it more than bankers and some even understand it. It means simply that the income from one record will be used to recoup the advance on another record, and vice versa. Record companies feel naked without it, whether it's necessary or not, and want it in their contracts.

VII. Conclusion.

There's plenty of information out there on music industry economics, some reliable, much of it worthless and, worse, misleading. It's your job to know the facts in order to facilitate informed decisions by your clients on proposed contracts. Otherwise they may be more susceptible to signing their name to a bad deal or rejecting a good one. On the other hand, when your client has the facts, these decisions may be no more difficult than fourth grade arithmetic.

A word of caution. The *perceived* economics of the industry may be different from the *actual* economics, depending on factors such as hype, confusion, and misperception of market conditions. It's important for you not only to know both, but also the difference between them. It's okay to leave something on the table for business and/or personal reasons, but it's not okay to leave something on the table out of ignorance or because you rode in a limousine.

Also, just because you are new to the business, don't assume that everyone knows more than you do. No one else may know what's going on either. Since the field has no real entry barriers, anyone can play. I've met record company executives who started out as stock brokers, insurance salesmen and even attorneys. What a country!

Since the interests of the label and the artist are not always harmonious, the industry has seen its fair share of disagreements. But the artist's relationship with the record company should be collaborative, not adversarial, and the lawyers should help resolve problems, not create them.

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WANTED POSTERS ...

WANTED

TIGER WOODS by General Motors, Rolex, American Express, General Mills, etc., 2000 earnings were over $54 Million for just endorsements!

DEAD OR ALIVE?

CALLAWAY golf products. Nordstrom signed TIGER after he won the Masters (his 4th consecutive major golf title) to replace Callaway golf apparel.

WANTED

NON-MISSISSIPPI location for NCAA championship events.

DEAD OR ALIVE?

The STATE OF MISSISSIPPI when the NCAA voted against staging any championship events in Mississippi after the state's voters opted to keep the Confederate symbol in the state flag.

WANTED

SEATTLE, WASHINGTON and SAN FRANCISCO, CALIFORNIA as new locations for the Oahu and Aloha Bowls.

DEAD OR ALIVE?

HONOLULU, HAWAII as the site for the Oahu and Aloha Bowls. Despite giving up sunny Hawaii's vacation climate, the NCAA bowl certification committee approved moving the Oahu Bowl to Seattle for the (rainy and cloudy?) January 2 game, and the Aloha Bowl to San Francisco for the (cloudy and rainy?) December 30 game. Facing dwindling crowds and high travel costs, the NCAA hopes that by moving the bowls, the NCAA minimum payout of $750,000 per team will increase to the level of stability for the Holiday (San Diego, CA) and Sun (El Paso, TX) Bowls, and eventually to the $2 million payouts enjoyed by the BCS Bowl teams.

WANTED

LOS ANGELES, CALIFORNIA by Al Davis.

DEAD OR ALIVE?

OAKLAND, CALIFORNIA by Al Davis. Davis testified in his ongoing trial against the National Football League that he preferred Los Angeles to Oakland in 1995. Davis insisted that he owned the right to the Los Angeles football market but was forced out by the NFL. Davis is willing to give-up the Los Angeles market if the NFL pays him the more than $1 billion dollars sought in his lawsuit.

WANTED

BETTER VERDICTS by Al Davis.

DEAD OR ALIVE

$1.2 BILLION LAWSUIT, lost by Al Davis when the jury voted 9—3 in favor of the NFL. Superior Court Judge Richard C. Hubbell instructed the jury to reach one general verdict in favor of the Raiders or the NFL. Although Davis prevailed in the 1983 antitrust lawsuit vs. the NFL allowing him to move to Los Angeles,, the jury rejected Davis' breach of contract claims, unjust enrichment and violations of the league constitution and bylaws in finding that the NFL did not act with oppression, malice or fraud in dealing with Davis and his attempt to build a new stadium at Hollywood Park (just outside Los Angeles). Attorney Joe Alioto led the team of Raiders' lawyers and is considering an appeal of the verdict which, for the time being, keeps Davis in Oakland and out of Los Angeles.

WANTED

WEB SITE OPERATORS!

DEAD OR ALIVE?

WEB SITES. With the closing of Total College Sports Network, many colleges face the same problem as the University of Texas, finding a host for the schools' athletic site! RivalNetworks and Enlighten Sports have folded and with them the sites for many big name colleges. Schools and Conferences had arrangements with the web site developers and are now scrambling to maintain contact with their fans via the web. FansOnly Network, has offered various schools host and production opportunities, but with the majority (i. e., all but the big schools) having to pay a publishing fee, which starts at $20,000 per year, schools and conferences, like, Texas and the Big 12, are looking at various options for web hosting, including using their athletic department employees, to emulate the success of SportsLine.comInc. which generated more than $5 million in ad revenue from coverage of the 2001 NCAA men's basketball tournament via the CBS SportsLIne Web site.

The Journal can be accessed on-line at:
www.stcl.edu/txeslj/txesljhp.htm

Sylvester R. Jaime—Editor

FIND US ON THE WEB

This and previous published Journal issues may be accessed on the web at www.stcl.edu/txeslj/txesljhp.htm

The Section attempts to maintain and update the Journal on-line in conjunction with South Texas College of Law. Although we endeavor to be current, we apologize if there is a lag from the time the Journal is published and the Journal is updated on-line.

Student Writing Contest

The editors of the TEXAS ENTERTAINMENT AND SPORTS LAW JOURNAL ("Journal") are soliciting articles for the fourth annual writing contest for students currently enrolled in Texas law schools for the best article on a sports or entertainment law topic.

The winning student's article will be published in the Journal. In addition, the student may attend either the annual Texas entertainment law or sports law seminar without paying the registration fee.

This contest is designed to stimulate student interest in the rapidly developing field of sports and entertainment law and to enable law students to contribute to the published legal literature in these areas. All student articles will be considered for publication in the Journal. Although only one student article will be selected as the contest winner, we may choose to publish more than one student article to fulfill our mission of providing current practical and scholarly literature to Texas lawyers practicing sports or entertainment law.

All student articles should be submitted to the editor and conform to the following general guidelines. Student articles submitted for the writing contest must be received no later than May 15, 2002.

Length: no more than twenty-five typewritten, double-spaced pages, including any endnotes. Space limitations usually prevent us from publishing articles longer in length.

Endnotes: must be concise, placed at the end of the article, and in Harvard "Blue Book" or Texas Law Review "Green Book" form.

Form: typewritten, double-spaced on 8½ x 11" paper and submitted in triplicate with a diskette indicating its format.

We look forward to receiving articles from students. If you have any questions concerning the contest or any other matter concerning the Journal, please call Andrew T. Solomon, Professor of Law and Articles Editor, Texas Entertainment & Sports Law Journal, at 713-646-2905.

RECENT CASES OF INTEREST

Prepared by the South Texas College of Law Students
Sports and Entertainment Law Society

Sports Bookmaking Can Lead To Federal Prosecution

United States v. Stewart raised the legal question of whether a Mississippi statute prohibiting the unlicensed operation of a sports gambling business was sufficiently criminal in nature to support a federal criminal indictment. 205 F.3d 840 (5th Cir. 2000). The case arose after three men were convicted under a federal statute which prohibits illegal gambling businesses. 18 U.S.C. § 1955. According to the statute, "whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both." The section defines an "illegal gambling business" as one which "is a violation of the law of a State or political subdivision in which it is conducted." Gambling includes, but is not limited to, "pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein." Here, three Defendants were convicted for operating an illegal gambling business in violation of Mississippi Code § 97-33-1 which provides that "anyone who encourages, promotes, wagers, or bets on anything for money or anything of value, at anything other than a dog fight, shall, upon conviction, be fined and immediately pay up to five hundred dollars or such person shall be imprisoned for up to a ninety-day period, unless the conduct is otherwise legal under Mississippi law." Since the applicable federal statute defined an "illegal gambling business" as one which operates in "violation of the law of a State" and because the Defendants' conduct violated Mississippi's State wagering law, their conduct was grounds for indictment under the federal statute.

The Defendants brought this appeal challenging the nature of the State's gambling statute. The Defendants maintained that the State gambling statute was regulatory, not criminal, and therefore could not serve as the basis for a criminal indictment under the federal statute. In support of their argument, Defendants relied on section 97-33-29 of the Mississippi criminal code, which provides that gambling and gaming laws are "are remedial and not penal statutes, and shall be so construed by the courts." However, the Court rejected the Defendants' argument, noting that the gambling statute in question appears in Mississippi's criminal code, and also provides for "conviction, fines, imprisonment, and prohibitions, which by their plain meaning suggest criminal proceedings." Although the Court acknowledged the regulatory aspects of the statute, the Court maintained that only the statute's exceptions were regulatory in nature and the exceptions did not apply in this case.

Defendants further argued that the Mississippi Gaming Control Act of 1990, requiring a gaming license "to deal, operate, carry on, conduct, maintain or expose for play in the State of Mississippi any gambling game, including without limitation any gaming device, slot machine, race book, or sports pool," made sports betting legal in the State, subject only to State licensing and regulation. The Fifth Circuit, however, noted that bookmaking was legal only if licensed. Here, Defendants conceded that they were not properly licensed in accordance with the State statute, but they contended that their conduct was otherwise legal in light of the 1990 legislation. The Defendants' main contention was that their bookmaking activities only violated regulatory, and not criminal, State laws. The Fifth Circuit, however, dismissed this argument and noted that unlicensed, unregulated gambling "was clearly criminal and illegal" and against the State's public policy. The Court, influenced by other Circuit court decisions, determined that the Defendants' reliance on a "criminal/prohibitory-civil/ regulatory test" was contrived and inappropriate. Consequently, the Court affirmed the Defendant's convictions and held that the Mississippi statute was sufficiently criminal in nature to support the Defendants' federal indictments.

By: Jaffray Mintz

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Stadium-Seating Movie Theaters Need Only Provide Unobstructed Views For Wheelchair Patrons To Comply With The ADA

The Fifth Circuit recently determined that Cinemark's movie theaters met the American Disabilities Act (ADA) requirement for providing equal seating to wheelchair-bound patrons. Lara v. Cinemark USA, Inc., 207 F.3d 783 (5th Cir. 2000). The dispute arose after a group of disabled persons, and two advocacy groups for the disabled, brought suit alleging that the construction of Cinemark's movie theaters did not conform with provisions of the ADA. Cinemark has developed numerous "stadium-style" movie theaters which seek to emulate a sports stadium with sloped seating. This design eliminates the usual obstruction caused when one individual sits in front of another patron. As part of the construction of these stadium-style movie theaters, Cinemark only provided wheelchair seating at the bottom, flat portion of the theater. Although this seating was located amongst the general seating, the Plaintiffs claimed that it was inferior because it forced wheelchair-bound patrons to "uncomfortably crane their necks to watch movies."

The ADA provides that an individual shall not be discriminated against based on a disability in the "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns or operates a place of public accommodation." 42 U.S.C. § 12182(a). The Department of Justice has developed a series of regulations for enforcing the ADA. The main regulation at issue in this dispute required persons seated in wheelchairs to be given "lines of sight comparable to those for members of the general public." *See* ADA Accessibility Guidelines, 28 C.F.R. pt. 36, App. A at 4.33.3 (1999).

The Fifth Circuit concluded that the "comparable lines of sight" regulation meant an unobstructed view, not comparable viewing angles or sloped seating. Since the regulation at issue did not impose a specific viewing angle, the Court refused to impose such a burden. Cinemark's seating complied with the ADA because patrons in wheelchairs had lines of sight comparable to members of the viewing public; their views were unobstructed and located amongst general seating.

By: Lora Reeves

Soccer Facilities and Antitrust Law

The Fifth Circuit in Eleven Line, Inc. v. North Texas State Soccer Association, Inc., recently addressed whether the Defendants, various soccer organizations, violated antitrust law by requiring players, coaches, and referees to play soccer exclusively at sanctioned facilities. 213 F.3d 198 (5th Cir. 2000).

In 1980 the president of Eleven Line, Inc., Tom Higginson, opened the Permian Basin Sports Center, an indoor soccer facility in Midland to service Midland-Odessa soccer enthusiasts. Permian Basin Sports Center ran both adult and youth leagues, charging $350 per team for an eight game season. In return, Permian Basin Sports Center provided "player ID cards, maintained league standings, ran competitions, disciplined players, and coordinated with other Higginson-run facilities on interstate tournaments."

Two Permian Basin Sports Center "competitors" were the Midland Soccer Association and Odessa Soccer Association. Both the Midland and Odessa Soccer Associations were run by volunteers and were members of the North Texas State Soccer Association, a national state association which is a ember of the United States Soccer Federation. The United States Soccer Federation regulates soccer and participation in the Olympics under the Amateur Sports Act.

During the 1980's, North Texas State Soccer Association promulgated an eligibility rule which prohibited teams and players from participating in unsanctioned play. Violators would have their North Texas State Soccer Association registration revoked. Unsanctioned play was defined as a league or tournament not sanctioned by North Texas State Soccer Association or another United States Soccer Federation affiliate, or "any game with a non-United States Soccer Federation affiliate."

Permian Basin Sports Center was not a sanctioned facility

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because it was not a member North Texas State Soccer Association and was not a United States Soccer Federation affiliate. As a result, some Midland Soccer Association and Odessa Soccer Association coaches refused to compete with Permian Basin Sports Center, even though there was no evidence that the unsanctioned play rule was ever enforced against violators. Thereafter, Permian Basin Sports Center's membership declined and it eventually it closed. Permian Basin Sports Center then sued the North Texas State Soccer Association, the Midland Soccer Association, and the Odessa Soccer Association asserting three allegations. First, Permian Basin Sports Center alleged that the Defendants were one entity that "conspired with the players, coaches, and referees to enforce the unsanctioned play rule" with the ultimate goal of running Permian Basin Sports Center out of business. Second, Permian Basin Sports Center asserted that the Defendants unreasonably restrained trade by prohibiting play at unsanctioned facilities. Last, Permian Basin Sports Center alleged that the Defendants held a monopoly designed to eliminate competitors such as Permian Basin Sports Center. After the jury found the Defendants violated sections 1 and 2 of the Sherman Act which prohibits any unreasonable restraint of trade and illegal monopolies, the Defendants appealed.

The Fifth Circuit first considered whether the Amateur Sports Act exempted the Defendants from antitrust law violations The Court found no express antitrust exemption in the Amateur Sports Act and noted that an implied exemption should only be granted where it is necessary to the "statutory scheme, and then only to the minimum extent necessary." The Court then noted that the North Texas State Soccer Association rule prohibiting unsanctioned play was not necessary to the statutory scheme because North Texas State Soccer Association was the only organization in the nation with this rule. As a result, the Court held that Amateur Sports Act did not exempt the Defendants from the antitrust laws.

The Court next considered whether Defendants violated federal antitrust law. The Court first noted that this was "a most unusual antitrust case" because the Defendants were non-profit soccer organizations that did not have an economic motive to stymie soccer events. In fact, the development of the sport, to which the organizations were committed, depended upon increasing player participation, creating more teams, and more leagues. After briefly analyzing this "ponderous and unusual antitrust" claim, the Court decided to "preserve the issues for a future day." Instead, assuming that an antitrust violation had occurred, the Court held that the Plaintiff could not prove it suffered any compensable damages. The Court noted that the soccer arena had never made money during the five and one-half years before the allegedly anticompetitive conduct began. As a result, the Court reversed the damage award.

By: Shawna Yvette Martin

ENTERTAINMENT & SPORTS LAW ANNUAL SECTION MEETING

Austin

Friday, June 15, 2001, 2 PM,

Austin Convention Center

I. Election of Officers

Nominees:

Chair:	**J. Edwin Martin**
Chair-Elect/Treasurer:	**Evan Fogelman**
Secretary:	**June Higgins Peng**
Council:	**Susan Benton Bruning †**
	(term expiring 2003)
	Deborah Van Browning † †
	(term expiring 2004)
	Tamara Lovell † † † †
	(term expiring 2004)
	Sylvester R. Jaime
	(term expiring 2004)

II. CLE Program (1.5 hours)

Recent Developments and Emerging Trends
Casey Monahan, Texas Music Office
Tom Copeland, Texas Film Commission

Mark Your Calendar!

11TH Annual Entertainment Law Institute

October 12th & 13th, 2001 - Omni Hotel, Austin, Texas

9 CLE Hours

(To be held in conjunction the the Austin Film Festival.)

CONTACT MIKE TOLLESON FOR MORE INFORMATION

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POLICE ACTIONS ...

STEVE WEINBERG

CHARGE: using another agent's name on a player contract and getting his agent's fee paid directly by an NFL team from the client's payment.

SENTENCE: $10,000 fine. The 20 year veteran NFL agent was fined by the NFL Players Association disciplinary committee. Weinberg, resubmitted a player contract, following the union lowering the agent fee from 4% to 3%, with an additional agent's name because he was working with the other agent. Weinberg also received permission from the player to receive the payment from the team. Despite the explanations, and despite no complaint from the player, Weinberg was fined by the committee. NFLPA General Counsel Richard Berthelsen noted that although the receiving of money from a team is not listed as one of the 22 items of prohibited agent conduct in the NFLPA regulations, it is listed in an appendix to the regulations and is still a violation of the rules.

PRAIRIE VIEW A&M FOOTBALL

CHARGE: 1998 rules violation

SENTENCE: One year's probation, public reprimand and censure. The Panthers will be allowed to compete for the 2001 Southwestern Athletic Conference football championship with no loss of scholarships. The NCAA found violations of financial aid and extra benefits under former head football coach Greg Johnson whose reign included the ending of the Panthers' 80-game losing streak. However, because of A & M's self disclosure, cooperation (including terminating Johnson's employment) and the limited scope of the irregularities, the penalties were less severe than could have been imposed by the NCAA Committee on Infractions.

Sylvester R. Jaime—Editor

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CIVIL ACTIONS ...

because organized crime families could use the corporate structure to be protected from prosecution under RICO when they simply incorporate and make members of the family officers of the corporation.

...

Chief Circuit Judge Joel M. Flaum ruled that a track athlete could not use RICO to recover for claims asserted against the United States Olympic Committee (USOC), based on its role in administering drug tests. Ruling that the athlete failed to state a civil RICO or RICO conspiracy claim, Judge Flaum also ruled that her state law claims were preempted by the federal Amateur Sports Act because USOC is solely responsible for determining eligibility. See Slaney v. The Inter. Amateur Athletic Federation, 2001 WL 290511 (C.A. 7-Ind.).

...

The University of South Florida was accused of racism in its basketball program. Eight women sued USF for $395,000 in damages. The 8 separate lawsuits claim the women were the victims of racism by women's basketball coach Jerry Ann Winters. The coach and athletic director Paul Griffin resigned in face of the allegations.

...

Tapping into the new 11-year $6 billion television deal with CBS, the NCAA paid the final $35 Million to restricted-earnings coaches. The 1991 lawsuit resulted in about 1,700 assistant coaches receiving a portion of the $54.5 million paid by the NCAA following a federal jury finding that the NCAA violated antitrust laws by capping the salaries of the assistant coaches.

Sylvester R. Jaime—Editor

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Compiled by Monica Ortale, Faculty Services & Reference Librarian
South Texas College of Law Library

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The "Entertainment & Sports Law Journal", published three times a year by the Section, contains articles and information of professional and academic interest relating to entertainment, sports, intellectual property, art and other related areas. The Section also conducts seminars of general interest to its members. Membership in the Section is from June 1 to May 31.

To join the Entertainment & Sports Law Section, complete the information below and forward it with a check in the amount of $25.00 (made payable to ENTERTAINMENT & SPORTS LAW SECTION) to Susan Benton Bruning, Teasurer, 1227 Strathmore Drive, Southlake, Texas 76092

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