Biz of Acq -- Developing Book Donation Resources

Paul T. Jackson
Trescott Research, Information & Library Development, trescott@umich.edu

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Cases of Note
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Federal Copyright Preemption

Abercrombie said this was really a copyright issue and thus federal Copyright Act preempted state law.


Dude photos are pictorial works of authorship and protected by the Copyright Act. See 17 U.S.C. § 101 (“pictorial... works include...photographs.”). But the squabble is not over the use of LeRoy Grannis’ photos as creative works of authorship that’s at issue. The fight is over the use of dude’s names and likenesses.

The mighty Nimmer weighs in on the issue with: “The ‘work’ that is the subject matter of the right of publicity is the persona, i.e., the name and likeness of a celebrity or other individual. A persona can hardly be said to constitute a ‘writing’ of an author within the meaning of the copyright clause of the Constitution. A fortiori it is not a ‘work of authorship’ under the Act. Such name or likeness does not become a work of authorship simply because it is embodied in a copyrightable work such as a photograph.” 1 Nimmer on Copyright § 1.01[B][1][c] at 1-23 (1999).

Got that? What he’s saying is ‘me, myself & I’ is a persona—an identity—a ‘gosh I’m special’—and owned by me separate from any photo made of me.

Whether Grannis had properly conveyed his copyright interest in the photos for $100 each is a separate thing.

The Fifth Circuit held the same distinction between misappropriation and copyright when a record company used names and likenesses of musicians and song writers on its CD’s, catalogs and posters. See Brown v. Ames, 201 F.3d 654, 661 (5th Cir. 2000).

Likewise the California Court of Appeal in KNB Enterprises v. Matthews, 78 Cal. App. 4th 362 (Cl. App. 2000) in a case involving erotic photos put up on a website for profit and without permission.

Lanham Act

Dudes also brought a claim for trademark confusion under the Lanham Act which the district court nixed. The Ninth Circuit’s holding in AMF, Inc. v. Sleekcraft Boats, 599 F.2d 341 (9th Cir. 1979) puts celebrity confusion on a par with any other commercial confusion.

As the confusion question is factual in nature it’s a pretty natural jury question. Wendi v. Host Int’l, Inc. 125 F.3d 806, 812 (9th Cir. 1997).

Confusion factors to consider:

1. level of recognition of plaintiff in society for whom defendant’s product intended

Surf historian Steve Pezman says the dudes “are considered legends in the surf community and are still highly well-known and regarded.” Making it likely the dudes would be known to the Abercrombie target audience.

2. relatedness of the fame to the product

Dudes are famous because they’re surfers. Abercrombie is selling “Final Heat Tees.”

3. similarity of likeness used to the plaintiff

Of course it was photos of them.

4. evidence of actual confusion

Dudes submitted declarations of folks who believed dudes were endorsing Abercrombie products.

5. marketing channels used

There was only one — the Quarterly.

6. likelihood of purchaser care

Surf apparel buyers could reasonably be seen by a jury as not real careful.

7. defendant’s intent on selecting the plaintiff

Jury could find Abercrombie set out to feign an endorsement.

Now just when you think the district court has flubbed the whole thing, we get to the last issue.

Defamation

Dudes claimed shame and embarrassment at being in a section of the Quarterly with nude and scantily clothed models.

Can you believe they said that with a straight face?

To win this, they must show (1) libelous on its face, or (2) special damages. Libelous on its face means the viewer can figure it out without explanatory matter. Cal. Civ. Code § 45a.

Which given that they weren’t nakid or posed with the nakid models means you’d have to tack on an explanation that the dudes while clothed in the competition photos were frequently nakid après surf.

But the opinion doesn’t say that. Instead it deals with three declarations from “surf industry leaders” and says they don’t accept...continued on page 81

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by Paul T. Jackson (Information, Library, and Organizational Consultant, Trescoitt Research, Information & Library Development) <trescoitt@umich.edu>

Column Editor: Michelle Flinchbaugh (Acquisitions Librarian, Albin O. Kuhn Library, UMBC, 1000 Hilltop Circle, Baltimore, MD 21250; Phone: 410-455-6754; Fax: 410-455-1598) <flinchba@umbc.edu>

Column Editor’s Note: For libraries with limited resources, gifts are often an important source of materials. Paul T. Jackson, as the Library Director of a new prison library in Lapeer, Michigan, developed a library collection almost completely through gifts, acquiring 22,000+ books in three to four years time, with a budget for only 200 books per year. In this article, he shares the expertise he developed on locating and procuring free materials for his collection. Paul has been involved with the start-up, organization, and development of ten libraries (including archives, collections, or library-related organizations). His article is taken from a book he is outlining on “Building a Library,” intended for those faced with starting-up libraries. — MF

When I joined the opening of the brand new prison in Lapeer, MI, in 1987, as Library Director, I was confronted with the task of not only erecting the shelving but ordering and receiving enough books to keep the 500 prisoners, already arriving, with reading materials. The $25,000 start-up money for the library disappeared and I was eventually able to order about $3,000 worth of books, primarily expensive reference works. I needed to find sources of donations. Certain law books that were required under a 1983 consent decree were furnished by the state. But there were additional law books needed for certain types of law research that were not provided. continued on page 81
dress whether average people would find it defamatory. But it doesn’t give us the declarations.

Whooaa! I mean, like, this is really shameful, man. We have to ask ourselves here, what would the Big Kahuna do? Special damages are “all damages which plaintiff alleges and proves that he has suffered in respect to his property, business, trade, profession or occupation, including such amounts of money as the plaintiff alleges and proves he has expended as a result of the alleged libel, and no other.” Cal. Civ. Code § 48a(4)(b).

But dudes didn’t lose any business.
And they weren’t drummed out of Surfers for Jesus either.

But they were still in court on all the rest of it.
Biz of Acq
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even though this was my own time spent, it paid for itself by not having to go through an acquisition and grant process. We were more successful with small college's bookstores than the large colleges-universities. It seems small private colleges move their bookstores frequently, if they are growing, and storage is at a minimum.

Distributors
Distributors generally have "returned for credit" hardbound books that will generally be returned to the publisher for credit against copyright fees. This does not necessarily mean they cannot be given as donations. Some of these are what are known as "hurt" items that are soiled, dog-eared, etc. and could only be resold as remainder or dumped.

There is the possibility that the distributor has come to the end of what the publisher -- distributor contract calls allowance for hurt books, and there are more than can be returned for credit to the publisher. By donating these items the distributor hedges a loss. Inquiries should be directed to Customer Services.

Our success with distributors was minimal, except when I went directly to them.

Then they would allow me to take a cart and collect things I might want, they would load them over, tag their records and I was free to go with a shopping cart of materials. Sometimes they would tell me what areas I could glean from.

See below for finding or locating distributors.

Publishers
Review copies of books, music, and recordings are often available as long as those are reviewed for a publication, even if only in your internal newsletter. Academic libraries may also get review copies from professors from time to time, as their collection grows too large, but one needs to solicit that resource constantly. Some of the review books will be uncorrected proofs or advance copies.

In addition, sometimes music publishers need to clear their shelves for new materials and sometimes this includes song sheets, sheet music and demo recordings made for radio stations and promotions to artists. When I was brought on board at TRO, a music publishing group in New York (1967), I found they were overwhelmed with old song sheets and sheet music along with their respective 45 rpm demo recordings that had been hits but were no longer being marketed or promoted to artists and radio stations. In addition, when new songs come out, the publisher has a window in which to have a recording made, and publish a certain number of the sheet music. This required producing sheet music and recordings that might never get used if promotions did not work. The printers and record presses would only do a minimum number (although that may have changed perhaps with CDs and publishing on demand), leaving the publisher sometimes with un-used product. An example, whether a joke or serious, we had extra copies of the song, "Who can I turn to (if nobody loves me)" with the title page reading, "To Whom can I Turn?"

Often, if a library writes a convincing letter to the publisher's PR or Community Affairs director, a copy will be sent gratis. These may be review copies, advanced proofs, or demo recordings, but the letter must specify the title that one wants. Often that which is requested as well as other additional items will be sent. In addition, once you are on their mailing list, you will probably receive more.

We were very successful in receiving advanced proofs, and sometimes when requesting other editions, we would receive the current one instead. Some publishers, from whom we had received many works, eventually changed policy, perhaps because of mergers, and changing demands, and would reject our requests. On balance we did quite well for both the general and the law library. Some single volume law books and pocket books that had not been updated for some time were also available.


This above link includes an E-journal directory as well [see magazines p.83].

Catalog, Dealer/Distributors and Book Clubs

Publishers of book catalogs, such as Publisher's Central Bureau; Barnes and Noble; and Book Clubs will often send donations of books which have been returned because smudged, damaged or mis-bound, and are not re-sellable. Rather than destroying these (required to avoid royalties) they are often anxious to find a source to send them as donations. Again, for the same reasons cited above, giving these as a gift allows them to deduct the gift from taxes as well as avoiding the royalty payments. I would suggest here that a central publisher or library as my experience at the prison was that one day I received three pallets full of 15 to 20 duplicates of perhaps 50 titles of returned hardbound books. It was an enormous task to sort and reship these to other prisons, when a central pick-up place might have worked better.

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2002 Charleston Conference - Issues in Book and Serial Acquisition

Call For Papers, Ideas, Conference Themes, Panels, Debates, Distributors, Speakers, Preconferences, etc. ...

"Two Faces Have I: One for Books and One for Bytes"

Wednesday, October 30, 2002 — Preconferences
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If you are interested in leading a discussion, acting as a moderator, co-ordinating the lively lunches or simulation rooms, or would like to make sure we discuss a particular topic, please let us know. The Charleston Conference prides itself on creativity, innovation, flexibility, and informality. If there is something you are interested in doing, please try it out on us. We'll probably love it...

The Conference Directors for the 2002 Charleston Conference include: Rosann Bazirjian, Chair (Penn State University) <rb9@psuallas.psu.edu>, Barbara Dean (Arlington County Public Library), Stuart Grinnell (Ambassador Books and Media) <bookman@quest.net>, Ramune Kubilius (Northwestern Health Sciences Library) <kubilius@nwu.edu>, Heather Miller (SUNY-Albany) <hm766@csnavx.albany.edu>, Jack Montgomery (Western Kentucky University) <jmontgomery@wku.edu>, Marietta Plank (Chesapeake Information and Research Library Alliance) <mplank@deans.umd.edu>, Vicky Speck (ABC-Clio) <vicky.speck@abc- clio.com>, Katina Strauch (College of Charleston) <strauchk@earthlink.net>, Michael Young (SUNY-Albany) <youngm@albany.edu>.

Send ideas by June 30, 2002, to any of the Conference Directors listed above. Or to: Katina Strauch
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internet: <strauchk@cofc.edu>
http://www.against-the-grain.com>
And They Were There

Reports of Meetings — Trends and Traditions featured at SALALM, 2002

by Christine Mueller (Ibero Catalog Librarian, University of New Mexico, Albuquerque NM 87131-1496; Phone: 505-277-8391) <cmunm@yahoo.com> or <cmueller@unm.edu>

Column Editor: Sever Bordeianu (University of New Mexico) <sbordeia@unm.edu>

47th Annual SALALM, 2002 — “Trends and Traditions in Latin American and Caribbean History”

Cornell University, Ithaca, New York, June 1-4, 2002

Report by Christine Mueller and Sharon Moyahan (University of New Mexico)

“Trends and Traditions in Latin American and Caribbean History” was the theme of the Forty-seventh meeting of the Seminar on the Acquisition of Latin American Library Materials (SALALM), June 1-4, 2002. Sponsored by the Latin American Studies Program and the University Libraries of Cornell University in Ithaca, New York, the conference was the annual opportunity for members to meet, share ideas and to socialize in the beautiful green rolling splendor of upstate New York. The Statler Hotel, part of Cornell’s School of Hotel Administration, provided an excellent venue, and Cornell librarians David Block and Cecilia Sercan are to be congratulated for their excellent local arrangements and a conference which was as enjoyable as it was informative.

An initial full day of meetings provided committees and regional consortia opportunities to plan and complete projects and explore new opportunities. Further committee meetings throughout the conference punctuated an excellent program of panels and discussions planned by this year’s president, Denise A. Hibay of the New York Public Library. At the Opening Session, after a gracious welcome by University Librarian Sarah E. Thomas and Debra A. Castillo of the Latin American Studies Program, the José Toribio Medina Award for excellence in bibliography was awarded to Gayle Ann Williams of the University of Georgia. This year’s Enlace participants, recipients of travel awards to encourage participation by Latin American librarians, were introduced. They were Elda Mulholland from the Pontificia Universidad Catolica do Rio de Janeiro who spoke about a library network in Brazil and Victor J. Cid Carmona from El Colegio de Mexico who discussed digital libraries in Mexico. Also introduced was the President’s first time attendee travel grant winner, John Storm of Brigham Young University. The participants were then thoroughly entertained by a fascinating and scholarly keynote address. George Reid Andrews, a University of Pittsburgh historian, explored “Black History in Latin America, 1900-2000.” After focusing on the themes of racial democracy, effective mobilization and what it means to be Black or to try to be Black in society, he ended his presentation with the sound of comparas, the rhythmic drumming of Uruguay. The audience was rocking by the time they left for the opening of the book exhibits.

Salutinsulas look forward to the extensive exhibits which feature SALALM members and visitors. The conference provides an opportunity for the face-to-face contact that keeps materials purchases and blanket order plans functioning smoothly. Exhibitors came from all over Latin America (Mexico, Argentina, Uruguay, Bolivia, Peru, Brazil, Chile, and more), Europe and the United States. Book dealers are active members in the organization and serve on various committees and the Executive Board.

Many panels addressed the concerns of today’s Latin Americanist librarians, and future librarians. Pamela Graham’s (Columbia University) panel “New Traditions and Old, Innovations in the Training of Latin Americanists” featured presentations by Anne C. Barnhart-Park of Lafayette College who has initiated a program of online research journals and searching exercises. Cesar Rodriguez of Yale University spoke of the inadequacies of funding for Yale’s extensive manuscript collections and the need for personnel with the skills to reorganize them and provide better finding aids. Walter Brem of the University of California, Berkeley, discussed professionalization of Mexican history, including the roles of the research institutes which prepared scholars and researchers.

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