Cases of Note - Copyright - Sea Divers Implied-in-Fact Contract

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A written contract was ever rate in a pilot film. No derwater photographer. For 22 years.

After a last minute agreement, SiriusXM agreed to the legislation that prevented the bill from returning to the Senate. The 50-50 split payment was easily agreed upon by the artists and record labels for the pre-1972 recording payments because prior payments from the SiriusXM did not include the artists. Finally, the company was concerned about the terrestrial radio royalty agreement that would require the company to provide royalties to music publishers and writers.

A significant aspect of the Music Modernization Act is the public accessible database, which would be more efficient for academic libraries to locate copyrighted materials and secure music licensing agreements for patrons faster. The database would also provide transparency, as well as convenience. Another aspect of the act, is the new standards in royalty payments that could possibly make some music more affordable and accessible.

An issue with the act has been noted that includes the public accessible database, which is required by the law to provide a database of each copyright owner in order to pay the royalty. This is the mechanical licensing collective system that receives payments, identifies the copyright holders, and distributes royalties to the owners of the rights. The mechanical licensing collective has to create a public accessible database that contains the information of the copyright owner, as well as maintaining the database, which is important to ensure that the database is accurate and the owners receive their royalty payments.

In addition to maintaining the database, the legislation changed once the Senate revised the legislation. The House bill required an independent group to oversee the mechanical licensing collective that would be selected by the U.S. Copyright Office. In addition, the House bill required a group that would consist of members from all stakeholders to evaluate the mechanical licensing collective. Instead, the Senate bill provides an audit every five years, which the information is reported to the mechanical licensing collective board of directors that includes music publishers and songwriters.

Furthermore, the Music Modernization Act’s pre-1972 recordings are under the Federal regulations, which excludes state laws regarding the fair use, the first sale doctrine, and protections for libraries and educators do apply.

**Bibliography**


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**MINNIEAR v. TORS. 266 Cal. App. 2d 495; 1968 Cal. App. LEXIS 1536**

_In the September ATG, our edge-of-the-seat exciting column made a glancing reference to “Sea Hunt,” the TV show that launched the career of Lloyd Bridges. Now our intrepid legal analyst has chosen to delve deeply._

Mid-decade of the 1950s, Harold Minniear dreamed up an underwater adventure series for TV. He had been in the picture business as a writer for 22 years.

Minniear brought in Lamar Boren, an underwater photographer. They agreed to collaborate in a pilot film. No written contract was ever executed, but Minniear was to bring ideas, talent, cast, writers, directors, script, film editor and artsty stuff. Boren would use his technical skills to film the pilot.

Next, Minniear hired Thomas Scott to edit and cut the film. Scott had worked for Ivan Tors and Ziv Television Programs. Scott worked at the Ziv lot on his own time. This was known to other Ziv employees. And Sea Divers was completed.

In 1956, Minniear held a showing of the pilot on the Ziv lot. Ivan Tors was invited. Tors was a seasoned producer for Ziv TV and at the time was doing a series called _Science Fiction Theatre_.

Tors pronounced the pilot excellent and said he was interested in doing a series on underwater skindivers. “Where do we go from here?” he asked.

Minniear said he had enough ideas for a full season and described one where a jet pilot is trapped underwater. Producer Tors began _Sea Hunt_ for _Ziv_. And hired Boren for underwater photography. And tried to hire Minniear’s leading man as an actor.

This actor’s name has vanished from history. Was he being ethical in his refusal? If so, why didn’t he warn Minniear?

Not knowing what was going on, Minniear was unsuccessfully trying to sell Sea Divers. Boren announced he wanted nothing more to do with the Minniear/Boren project. Boren then sold the trapped jet pilot idea to Ziv for the first episode of _Sea Hunt_.

_Is it a ruthless world or what?_ _Sea Divers and Sea Hunt_ both feature an ex-Navy frogman named Mike, commissions for dangerous underwater work, and California honeys in bathing attire.

The pilot of _Sea Divers_ has Mike hired to find a canister of smuggled diamonds. Episode one of _Sea Hunt_ has the trapped jet pilot.

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Another Ziv episode of Sea Hunt has gold dust recovered from the ocean floor. Minniear felt this was stolen. The court found the only similarity was underwater adventure, ex-Navy frogman, and decorative honeys. So not a substantial similarity copyright case.

Yes, Minniear sued. Otherwise, we wouldn’t be reading this. Minniear got a “nonsuit” at the trial court level which led to an appeal.

And surprise! We don’t need copyright and that old idea v. expression thing.

Minniear’s Legal Theory

Minniear said there was an implied-in-fact contract which was common in the industry. He had shown the pilot, and it was an industry understanding to pay for ideas or material used.

The leading California case on this is Desny v. Wilder, 46 Cal.2d 715. Ordinarily, an idea is not protectable under copyright law, but “[i]n the field of entertainment the producer may properly and validly agree that he will pay for the service of conveying to him ideas which are valuable and which he can put to profitable use.” Desny at p. 738.

“It is not essential to recovery that plaintiff’s story or synopsis possess the elements of copyright predictability if the fact of consensual contract can be found.” Desny at p. 744. This is to say the idea that becomes the subject matter of the contract need not be novel or concrete.

The — I guess — “implied” meeting of the minds is found by the idea man submitting the idea or material with the reasonable expectation of payment and the producer listening to the idea understanding the expectation of payment.

The appellate court agreed there was substantial evidence that Minniear expected payment and Ziv knew it. Remember Tors’ “where do we go from here?”

Pilots are made for prospective purchasers. Producer Tors was present at the showing and he requested mimeographed (yes it was pre-Xerox) copies of future series ideas. Ziv kept the pilot film for over a year.

An underwater adventure series will have unavoidable basic elements. I mean, we have to have bikini beauties after all and underwater spear gun fights. But there were “sufficient plot ideas, themes, sequences and dramatic ‘gimmicks’” between Sea Divers and Sea Hunt for a jury to infer Minniear’s pilot inspired Sea Hunt.

Minniear got his reversal.

But what a can of worms to determine the value of his ideas. I am unable to find whether it was retried or settled and for how much.

Sea Hunt was a four season pop phenomenon. Larry Hagman, Bruce Dern, Robert Conrad, Ted Knight and Leonard Nimoy all guested. Lloyd’s sons Beau and Jeff Bridges had their first roles.

Lloyd Bridges was later asked to play Captain Kirk in Star Trek, but he declined, giving us William Shatner.

Among the scuba crowd, there is a group that likes to use the antiquated scuba gear of the show and reenact scenes at the Silver Springs, Florida locale.

Ivan Tors tried to repeat his success with Malibu Run, but it was pitted on Wednesday night against Wagon Train and died a hard death after a season.


It was such a merchandising bonanza that Tors ran with the cutesy animal genre and became a TV legend. Gentle Ben. Daktari. Zebra in the Kitchen. Clarence the Cross-Eyed Lion. And fizzled as the Baby Boomers outgrew cute animals.

But he did the underwater filming for the James Bond Thunderball.