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RICKY ANDERSON AND WALT CHAMPION

ENTERTAINMENT LAW

Cases, Documents, and Materials

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WALT CHAMPION

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This book is dedicated to my mother and father,
Ms. Cherry Anderson and the late Robert Anderson, Jr.
They both taught me well. Thank you Mom, for the continuous church experiences; and thank you Dad, for the inspiration and discipline.

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First, I must thank GOD, for Your guidance and allowing me to do Your work daily.

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Thank you Attorney Wendle Van Smith. It's been a joy working with you for the past 28 years, my Omega Psi Phi fraternity brother.

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To my many, many family members, Omega Psi Phi fraternity brothers, and friends, who are too many to include or the publisher will terminate my publishing agreement, please know that you are loved and appreciated.

Attorney Ricky Anderson
July 2015
www.AttorneyRickyAnderson.com

FOREWORD

It was a little over ten years ago and about my 15th year in the entertainment industry that I was, for the first time, analyzing the efforts of the representation around me, i.e., agent, management, legal, etc. A pivotal moment in my life was when Sidney (my husband) and I were in a meeting with managers and legal counsel, and it was stated to us that "Talent comes and goes, but the big businesses are here to stay, and it would behoove them (management, legal counsel) to maintain those relationships so when the 'Artist' is gone, the business relationships would still remain." At that moment my husband looked at me and said, when a person tells you how they operate, it is important that you believe them, and he asked me had I ever had an interaction with an attorney in this business, that I had a great experience with, but for whatever reason was not using them now? After giving it a little thought, I said, "Yes, with a brother named Ricky Anderson," and Sidney said, "Why aren't you still using him?" I said for no reason; I just went in the direction the agents sent me—he actually set me up with a great deal with literally no heavy lifting on my part. The light bulb went off in both of our minds, and we realized the best attorney to deal with Hollywood lives in Houston, Texas and his name is Ricky Anderson—and the rest is history, but still in the making.

It is a pleasure and honor to share my experiences about an individual who is writing a book for you aspiring lawyers to be, who are looking to make a big impact in the "Business," and are learning the creative and necessary language to make the best deals for your future clients. However, the best deal you can ever make for your client is the deal Ricky Anderson made with himself, and this is not something that he said to Sidney and me, but on the contrary is what he shows us daily, and that is to be honest, relentless, unafraid of the proverbial "Big Boys," and to hold your family dear. Also, despite all of the clients you may have in the future—and I'm sure you will have many if you paid attention to Attorney Anderson—most importantly you must make them feel like each client is your only client. You achieve that, you will be replicating the actions of the man who authored this book. Attorney Anderson is proof positive that the best things in Hollywood are so far from Hollywood, which is why aside from my husband in terms of representation, Ricky Anderson is the only representative I've ever written into my speech and that I ever thanked when I received an award for my performances, as he is the only one aside from my husband who, through their efforts and actions daily, have inspired me to do so. If you get nothing else from this commentary I hope you get this: It is better to be a great person than it is to be a great entertainment attorney; however, if you mirror what Attorney Anderson has done in his career, and who he is, you

will find out that it is even far better to be both a great attorney and a great person!

Good luck to all who read this book, and we'll see you at the top!

Mo'Nique
Actress/Comedian

P.S. We love you Ricky Anderson, and thank you for everything!

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CHAPTER 1

ENTERTAINMENT LAW GENERALLY

Entertainment law (or media law), as defined by the encyclopedia, is "legal services to the entertainment industry." Entertainment law overlaps with intellectual property law (especially trademarks, copyright, and the so-called "right of publicity"), but the practice of entertainment law often involves questions of employment law, contract law, torts, labor law, bankruptcy law, immigration, securities law, security interests, agency, right of privacy, defamation, advertising, criminal law, tax law, international law (especially private international law), and insurance law.

Much of the work of an entertainment law practice is transaction based (i.e., drafting contracts, negotiation and mediation). Some situations may lead to litigation or arbitration.

Entertainment law covers an area of law which involves media of all types (e.g., TV, film, music, publishing, advertising, Internet and news media, etc.), and stretches over various legal fields, including but not limited to corporate, finance, intellectual property, publicity and privacy, and First Amendment. For film, entertainment attorneys work with the actor's agent to finalize his or her contracts for projects. After an agent lines up work for a star, the entertainment attorney negotiates with the agent and buyer of the actor's talent for compensation and profit participation. Entertainment attorneys are under strict confidentiality so the specifics of their job are kept secret. But some entertainment attorney's job descriptions have become comparable to those of a star's agent, manager, or publicist. They are not limited to legal paperwork, rather assisting in building a client's career.

There have been early cases like Lumley v. Wagner, 1 De G.M. & G. 604, 42 Eng. Rep. 687 (1852), and Wood v. Lucy, Lady Duff Gordon, 222 N.Y. 88, 118 N.E. 214 (1917), that were clearly "entertainment law" cases. That is, one of the parties involved was an "entertainer." So, does the "law" follow the participants? If so, then must we also include "celebrities," like Lucy Lady Duff Gordon, maybe the first "reality" star? See Walter T. Champion, "Oh, What a Tangled Web We Weave: Reality TV Shines a False Light on Lady Duff-Gordan," 15 Seton Hall J. of Sports & Ent. L. 27 (2005). If that's the case, then should we also include the celebrated writer/"celebrity" Oscar Wilde and his trial of the (19th) century for sodomy, which is comparable to O.J. Simpson (athlete, actor, pitchman) and his "trial of the [20th] century" for the alleged murder of his wife and her friend.

Lumley v. Wagner is the famous case of a renowned opera singer who was enjoined from providing services as a singer for any other party. This

concept of negative injunction was signed into sports, where it was discovered that athletes are also entertainers and their services are unique and can be enjoined upon breach of the threat to do so, because of their "fan appeal." Baseball Superstar Napoleon Lajoie's contract prohibited him from playing professional baseball with any other club. This ability to enjoin him from performing for anyone else was a part of the consideration for his employer's agreement to pay his salary. The injunction was issued since his services were unique, which rendered them of a peculiar value to the club. In other words, Napoleon Lajoie, like Johanna Wagner, was a unique entertainer and his services could not be duplicated. Consider Frank Sinatra, Michael Jordan, Bob Marley, Angelina Jolie, Steve Harvey, Maggie Smith, etc. (See Philadelphia Bell Club v. Lajoie, 51 a. 973 (Pa. 1902); and Walter T. Champion, Jr., Sports Law: Cases, Documents, and Materials 8-10 (NYC: Aspen, 2005)).

Entertainment law involves "talent" in the various mediums (e.g., TV, radio, film, music), including writers in the various mediums and the technicians, location people, studio musicians, editors, etc. We will loosely call these associated people and entities "handlers" (or enablers, associates, and in some cases staff, maybe even hangers-on or, collectively, posse). Sometimes, there is not much difference between the talent and their handlers; that is, both are creative.

So, in the entertainment business or industry, we have talent and those who are associated with that talent. We will loosely define talent as a person possessing a particular and unique skill based on popularity, acumen, or skill set. What marque name assures a standing room only crowd at the Bellagio in Las Vegas? What above title actor guarantees financial backing and box office success? Can box office success ever be truly guaranteed? Today, globalization and foreign box office receipts must be included in bottom line prognostications and results. What ties this all together? The answer is "entertainment law."

Our working definition of entertainment law can be grossly summarized as those contracts that connect talent to their associated handlers in an effort to bring a creative product to the public so as to generate profits. Entertainment is a multi-, multi-billion dollar business. Remember Cuba Gooding, Jr.'s line in *Jerry Maguire*: "Show Me the Money!" How does the talent get paid? They get paid through the nuances of copyright law, which is a legal field that also includes patents, trademarks, trade dress, etc. Copyright law generates the royalties and percentages that pay the talent. Copyright law also protects original works of authorship (or creative "genius") in a tangible medium of expression. A work must be within the constitutional and statutory definition of a work of authorship, it must be in a tangible form of expression, and it must be original. The copyright concerns in the entertainment business seem endless; they include TV, film, radio, video, music, and Internet productions and performances, not to mention screenplays, literary property, theatrical plays,

syndication, broadcasts, rebroadcasts, etc. (See Champion, Fundamentals of Sports Law 643). One huge difference between sports law and entertainment law is that in sports law, you cannot seek specific performance when there is a breach of contract; that is, good luck on "forcing" our temperamental star shortstop to play. (That dog won't hunt.) However, it is certainly possible for a court to order a producer to give above title billing to a temperamental movie star.

Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952), which follows, asks: What is sacrilegious? This case highlights the First's Amendment's ability to "shape" entertainment law. Is the N.Y. statute an unconstitutional abridgement of free speech and free press? Why is entertainment law important?

> It cannot be doubted that motion pictures are a significant medium for the communication of ideas. They may affect public attitudes and behavior in a variety of ways, ranging from direct espousal or a political or social doctrine to the subtle shaping of thought which characterizes all artistic expression that importance of motion pictures as an organ of public is not lessened by the fact that they are designed to entertain as well as to inform. Even though the production, distribution, and exhibition of motion pictures are a large-scale business conducted for private profit they are still a form of expression whose liberty is safeguarded by the First Amendment.

(Burstyn at 501.)

Copyright is not the only form of intellectual property that shapes entertainment law. Trademarks, branding, marketing, ambush marketing, and product placement are also important, as well as the right of publicity. We can envision entertainment law as a constant struggle to either support or disavow our First Amendment freedoms of free speech and free press. Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977), involves Hugo Zacchini, the "human cannonball," and what was to him a family business. It was all he had, packaged in a 10-second act. Hugo brought an action against a TV station to recover damages that he allegedly suffered when the station videotaped and broadcasted his entire performance. The First Amendment does not privilege the press (and their First Amendment protections) so as to give them the right to broadcast Zacchini's act in violation of his state-protected right of publicity.

JOSEPH BURSTYN, INC. v. WILSON
No. 522
343 U.S. 495
Decided May 26, 1952

Mr. Justice CLARK delivered the opinion of the Court.

The issue here is the constitutionality, under the First and Fourteenth Amendments, of a New York statute which permits the banning of motion picture films on the ground that they are 'sacrilegious.' That statute makes it unlawful 'to exhibit, or to sell, lease or lend for exhibition at any place of amusement for pay or in connection with any business in the state of New York, any motion picture film or reel (with specified exceptions not relevant here), unless there is at the time in full force and effect a valid license or permit therefor of the education department * * *.' The statute further provides:

> 'The director of the (motion picture) division (of the education department) or, when authorized by the regents, the officers of a local office or bureau shall cause to be promptly examined every motion picture film submitted to them as herein required, and unless such film or a part thereof is obscene, indecent, immoral, inhuman, sacrilegious, or is of such a character that its exhibition would tend to corrupt morals or incite to crime, shall issue a license therefor. If such director or, when so authorized, such officer shall not license any film submitted, he shall furnish to the applicant therefor a written report of the reasons for his refusal and a description of each rejected part of a film not rejected in toto.'

Appellant is a corporation engaged in the business of distributing motion pictures. It owns the exclusive rights to distribute throughout the United States a film produced in Italy entitled 'The Miracle.' On November 30, 1950, after having examined the picture, the motion picture division of the New York education department, acting under the statute quoted above, issued to appellant a license authorizing exhibition of 'The Miracle,' with English subtitles, as one part of a trilogy called 'Ways of Love.' Thereafter, for a period of approximately eight weeks, 'Ways of Love' was exhibited publicly in a motion picture theater in New York City under an agreement between appellant and the owner of the theater whereby appellant received a stated percentage of the admission price.

During this period, the New York State Board of Regents, which by statute is made the head of the education department, received 'hundreds of letters, telegrams, post cards, affidavits and other communications' both protesting against and defending the public exhibition of 'The Miracle.' The