

# **Film and Multimedia and the Law**

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James Sammataro

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# **Film and Multimedia and the Law**

by  
**James Sammataro**



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*For Cristina.*

## ABOUT THE AUTHOR

Admitted in California, New York, Florida, and D.C., James has a national entertainment practice, and represents an array of clients in high-profile legal matters. James' clients include television stations, radio stations, magazines, touring companies, talent, production companies, content providers, underlying rights holders, filmmakers, distributors and financiers in the motion picture, television, live stage, touring, and concert promotion fields.

Recognized as one of *The Best Lawyers in America* in the areas of Motion Pictures & Television, James' practice is split between litigating, negotiating a broad spectrum of film, television, theatrical, music, and new media transactions, and counseling media entities on day-to-day business matters.

James has litigated on behalf of or against a number of media entities and A-list celebrities in copyright, trademark, defamation, right of publicity and privacy, profit participation, unfair competition, idea theft, oral and written contractual disputes, fraud, tortious interference, false advertising, employment, and First Amendment actions in federal and state courts and arbitrations across the country. James is often engaged in TRO and preliminary injunctions either seeking to enjoin or permit the broadcast of particular content.

Immersed in both the independent world and Hollywood, James counsels his media clients in managing their valuable intellectual property rights; in acquiring, developing, financing, producing, and distributing films; and viewing their film footage, television shows, screenplays, and related content for both legal risk and potential brand integration. James has negotiated and drafted a wide-array of entertainment-related agreements, including talent, director, production, co-production, sales and acquisition, licensing, distribution, endorsement, and merchandising agreements. James is also heavily versed in the live stage and concert promotion industries. He

represents a number of Broadway and off-Broadway productions and has assisted several prominent promoters in organizing concert events.

James' reputation for street-smart scholarship has been the topic of recent praise: "Mr. Sammataro is no tourist talking about Entertainment Law from a safe distance. He is in there, dispensing knowledge seasoned by his experience litigating and negotiating for a number of clients that you have either seen on the big screen or danced to. Accompany him backstage, in the boardroom, and at the courthouse to learn everything you need to know about the entertainment biz."

James graduated *summa cum laude* from Cornell University in 1995 and was a Rhodes Scholar nominee. After completing an academic fellowship in New York City, James attended Duke University School of Law.

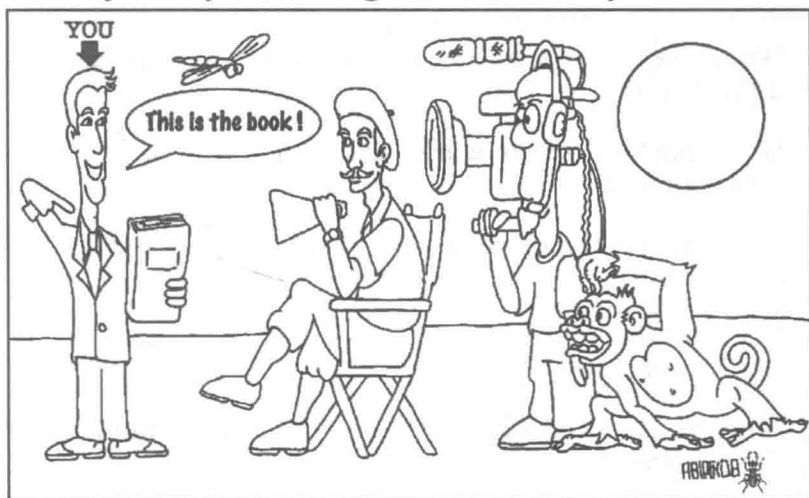
Courtney Caprio, who graduated from the University of Virginia with distinction in 1999 and from the University of Virginia School of Law in 2004, assisted James in writing this edition's case law update.

To learn more about James, Courtney or their firm, visit [www.stroock.com](http://www.stroock.com). James can be reached at:

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## PREFACE

I pray this book spares you the frustration which inspired me to write it. When a documentary film maker asked me if incorporating approximately 16 seconds of footage from an episode of *20/20* into his project would constitute a “fair use,” I thought the answer was just a few keystrokes away. But after consulting the intellectual property treatises and a Google search (one million useless hits), I dug in for hours of case-at-a-time analysis and eventually cobbled together the answer. I concluded that film law—surprisingly broad and exploding with digital developments—warrants its own guide. Four years of research and writing later, this guide was published for attorneys like you advising the film industry.



<sup>1</sup>Illustration by Aaron Block, printed with permission.

*Film and Multimedia and the Law* cites over a thousand cases, every modern entertainment decision of any significance. Where the general intellectual property treatises merely mention, this book expounds. Consequently, the reader may grab basic principles and dash, or loiter and read for depth. Here are the best stories told in

simple language for practical understanding. Come analyze 2 Live Crew's constitutionally-challenging rap lyrics, the pioneering porn *Debbie Does Dallas*, the thematic plot binding the *A-Team*, the *Greatest American Hero*'s similarities to *Superman*, and a druggie portrayal of Mickey Mouse and friends. If you find the story relating to your client's issues, read on for applicable "dos" and "don'ts" and asides. Some basic questions answered include:

Who has to pay for using film clips?

When does a work qualify as a parody?

When are two plots or two characters too similar?

What should you do if you get a "stop story" request?

Does the denial of permission undermine a fair use defense?

When can you trade upon the celebrity of famous individuals?

What parts of other works can you freely incorporate into your own?

When is copying so insignificant as to trigger a ruling of *de minimis*?

When is the name of your movie likely to land you in legal hot water?

How are the producers of *Girls Gone Wild* able to make their movies?

Where is the line drawn between an idea and the expression of that idea?

Can the use of look-alikes result in a violation of one's right of publicity?

What negative things can you say about a person without incurring liability?



## PREFACE

Which portions of a work (*i.e.*, storyline, characters, title) are worthy of protection?

What is the practical effect of a disclaimer warning: "This film is a work of fiction. Names, characters, places, and incidents are used fictitiously"?

This guide shall progress with the law it navigates. Your questions and insights have proved a big help in my ongoing updates and revisions. A million thanks to you in advance for emailing me at [jsammataro@stroock.com](mailto:jsammataro@stroock.com).

Sincerely,  
James Sammataro  
Miami  
April 2013

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