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FOREWORD

The entertainment industry enjoys a unique prominence in American business, a prominence due in substantial part to the fact that the products of the industry have become woven into the fabric of our lives. Certainly entertainment has always been important; we are not different from the people of any other age in our taste for diversion. But the forms our entertainments take differ significantly from those of the past. A hundred years ago entertainment might have been provided by an impromptu family concert, amateur theater, or an occasional traveling show. Today, on the other hand, entertainment is principally the product of a highly centralized industry that stands in sharp contrast to the diffuse and informal sources of entertainment of the past. With the rise of mass media and the development of technology, the entertainment industry has become complex and diverse in ways that could scarcely have been envisioned even a few decades ago.

The articles in this symposium can be divided into two groups, a division which roughly reflects two related, but somewhat separate concerns of the industry. One important area of concern obviously has to do with the business of entertainment—that is, with the operation of the industry—and the other with entertainment itself—the product which the industry markets.

Consider first the product, which from a lawyer's perspective, can be seen as the stuff of "intellectual property." Intellectual property has always been a conceptually difficult area both in the academy and in practice. The portion of this symposium which addresses some of these difficulties has an antecedent in the Spring 1954 symposium of *Law and Contemporary Problems* entitled *Literary and Artistic Products and Copyright Problems*. In the *Foreword* to that issue, Professor Robert Kramer set forth the two primary conflicting considerations in this area of law:

Certainly in our democratic society it can hardly be questioned that literary and artistic products should be given enough legal protection so that private enterprise, encouraged by the financial rewards made possible by such protection, will be willing to create, develop and use them On the other hand, an essential element of our democratic society is the transmission, development, and use of intellectual products in the finest possible manner and with the fewest possible restraints.¹

1. Kramer, *Foreword*, 19 LAW & CONTEMP. PROBS. 139, 140 (1954).

The need to balance artistic freedom against the legitimate interests of free enterprise remains equally important today. The question of how and where to strike this balance provides the focus for three of the symposium's articles. Contemporary fiction has provided the material for a number of libel suits in recent years. Professor Vivien Wilson considers this phenomenon in *The Law of Libel and the Art of Fiction*. Thomas R. Leavens examines copyright infringement actions from the perspective of a practitioner with a knowledge of defense. He outlines the scope of copyright protection and the judicially defined boundaries of permitted takings. And Professor David Lange comments on the need for a clearer recognition of individual interest in the public domain.

The remainder of the symposium deals with questions that arise in a business context. Many areas of business law have specific applications in the fields of entertainment and sports. Three such areas—taxation, antitrust and labor law—are considered as they apply, respectively, to entertainers, motion pictures, and professional sports.

Taxation is a subject of obvious importance in any business endeavor, but its relation to entertainment is, in some ways, unique. The entertainer may work sporadically, alternating periods of high pay with periods of unemployment. At times he may also require a considerable assemblage of supporting employees. Los Angeles attorney George C. Short examines the singular position of entertainers and how they may employ the current tax laws to greatest advantage.

*United States v. Paramount, Inc.*² may be the one decision whose influence upon the motion picture industry has been felt most profoundly. The consent decrees issued after *Paramount* compelled a drastic reorganization of that industry. In 1960, Professor Michael Conant published an inquiry into the operations and effect of these decrees. Professor Conant contributes to this symposium a further consideration of the effect of the decrees from a current perspective.

Finally, the interaction of antitrust and labor law, which has caused substantial confusion in determining the status of player restraints in professional sports agreements between team owners and players' unions, is the subject of an article by Professor John Weistart.

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2. 334 U.S. 131 (1948).

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