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# Entertainment Law & Practice

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*For my family  
Avery, Alec Sasha (z"l), Noah,  
and Stacy Blumberg Garon.*



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# Preface

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In choosing to write, publish, adopt, or study a casebook, the threshold question to be answered is Why this book? The editorial structure of this casebook is an extension of my work attempting to demonstrate that entertainment law is more than a series of generally applicable laws that can be applied to the fun and exciting world of entertainers. Entertainment law has evolved into a discrete body of law whereby other legal doctrines take on unique interpretations. (See, Jon M. Garon, *Entertainment Law*, 76 *TULANE L. REV.* 559 (2002).) Broad areas of law such as copyright, privacy, and free speech have been transformed by or translated through the entertainment industries. This casebook reflects more of the unified or thematic approach to entertainment law than others previously published.

The unified approach to entertainment, however, does not tell the complete story. There are other areas of entertainment practice that are governed by laws specifically written to regulate these industries. There are also historical practices – some centuries old – that dictate the relationships between parties and the structure of the industry. In many situations, these practices bear no relation to entertainment as a whole, but instead focus on practices highly concentrated on one particular industry, such as professional theatre, music publishing or commercial film. As a result, the practice of entertainment is an equally important aspect of study for any serious student of entertainment law.

The law and practice sections of the book reflect the broad dichotomy between those areas where entertainment has reshaped general law and those areas where the entertainment practice is specific to a particular industry or industries. Admittedly, this dichotomy may sometimes be subtle or artificial. The organization is my preferred structure, but each subchapter stands as a complete module, so that each instructor may design the course to fit his or her pedagogy and objectives.

The thematic structure of the casebook may help to explain why the topics covered are sometimes quite different than other books on the topic. One example may help illustrate the approach. Every entertainment law casebook has some discussion of trademark principles and how these concepts apply to film titles and professional credits. This book also includes a specific review of trademark analysis and partnership law as it applies to the ownership of a band's name. Although this topic is central to practitioners' texts and arguably the most valuable asset owned by a musical performer, the unique intersection of trademark, publicity, free speech and partnership law has not previously been addressed in any of the commercially available casebooks.

Useful teaching materials are more likely to come from those developed in the classroom than those created in isolation, and I have been very fortunate to have built this casebook over time as my students worked through the materials selected and provided me with feedback and insight. When teaching Entertainment Law or either of my breakout courses, Law of Motion Pictures and the Performing Arts and Music Management & Licensing, my teaching objectives are to develop the students' problem-solving

skills using issues related to the entertainment industry and business planning; to familiarize students with the intellectual property rights and contractual relationships between the media producers, distributors and authors in these industries and to introduce the deal-making aspects of practice in the entertainment industry; and to track the legal and business structure of the entertainment industries.

The included notes, questions, and problems help focus the reading on the problem solving skills of the students. To this end, some materials are included to illustrate tensions in the law and limitations imposed by legal rules, collective bargaining restrictions, or practical consequences. Other materials simply illustrate industry practice. In addition, the range of cases promotes traditional critical reading and reasoning skills.

Depending on the course hours available, many professors may elect to assign less than the entire text. Part I can be considered sufficient to teach an entire survey course. Alternatively, selected sections of Part II can be integrated with Part I to focus on music, film, television, or theatre, depending on the interests of the course and the instructor.

The entertainment industries rely heavily on copyright, trademark, First Amendment, antitrust, labor law, and telecommunications law. The casebook provides introductions to explain the relevant principles in the context of entertainment law. Questions, hypotheticals, notes, statutes, and historical materials provide a robust context in which to explore the entertainment industries and develop a sophisticated understanding of these critically important and highly complex materials.

Each subchapter provides sufficient context that it can be read without regard to the chapter as a whole. Helpful historical cases and materials are typically left to the notes so that the student can identify the current law or practice instead of tracking the growth of a doctrine or custom through voluminous reading.

Each chapter has a bibliography focused on the general themes of the chapter. Most sections have notes and questions that help focus and refine the topics under consideration. In addition, most sections have a problem – always focused on Bryce, the client who comes to students for advice throughout the book. As Bryce’s career moves through the various entertainment fields and chapters of the book, Bryce’s concerns become more sophisticated, creating an opportunity to integrate the topics being explored. These problems move beyond the materials of the section, often highlighting the intersection of various themes in the book and serving as potential research topics or areas for further study.

To make the student assignments manageable in length, it is necessary to heavily shorten most of the materials. Deletions of textual material are generally noted with ellipses (...), except for footnotes and citations, which are not noted. In addition, some central footnotes have been moved directly into the text where the note would otherwise have been placed. The remaining footnotes are renumbered. Insertions and any editorial changes are placed in brackets ( [ ] ). Where necessary, paragraph breaks have also been added or deleted without notation.

Finally, I have endeavored to edit the cases in a manner that allows the students to see the interrelation between multiple causes of action. Many cases involve a copyright, trademark, unfair competition, and publicity rights cause of action for the same alleged misconduct. The First Amendment is sometimes invoked as a defense to all of these. As a result, fewer but longer cases may better inform students regarding the relationship between the doctrinal legal boxes taught elsewhere. I have attempted to keep the book capable of longer or shorter reading assignments to provide flexibility for instructors who seek to emphasize some topics, but not others.



Like any casebook, particularly one where the area of law and practice is in such a state of transformation, the book is constantly evolving. I appreciate all feedback and suggestions.

Jon M. Garon, editor  
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# Acknowledgments

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I must also acknowledge the reliance I have made on the casebooks I have used throughout my teaching as models and guides for this book. Robert Gorman and Jane Ginsburg, *Copyright Cases and Materials* and Eugene Volokh, *The First Amendment – Law, Cases, Problems, and Policy Arguments* both served as models for me in determining what should be included and omitted from this book.

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# About the Author

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Jon M. Garon is Dean and Professor at Hamline University School of Law. Dean Garon has both taught and practiced in the area of intellectual property, particularly copyright law and entertainment and media law. A Minnesota native, he received his bachelor's degree from the University of Minnesota in 1985 and his juris doctor degree from Columbia University School of Law in 1988. Dean Garon has taught a number of courses in intellectual property, including Entertainment Law, Music Licensing and Management, Law of Motion Pictures and the Performing Arts, Copyright, Multi-Media Licensing, and First Amendment Law. His business courses have included Agency & Partnership, Business Dispute Resolution, Charitable Institutions, Contracts, Contract Drafting, Corporations, Federal Income Tax, and Nonprofit Business Organizations.

Among his publications on intellectual property, Dean Garon has written the following books and law review articles:

## BOOKS

THE INDEPENDENT FILMMAKER'S LAW & BUSINESS GUIDE TO FINANCING, SHOOTING, AND DISTRIBUTING INDEPENDENT AND DIGITAL FILMS, (A CAPPELLA BOOKS/CHICAGO REVIEW PRESS, 2002).

THEATER LAW: CASES AND MATERIALS (CAROLINA ACADEMIC PRESS, 2004) (co-author: chapter contributor on theatrical directors).

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