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# Chapter 1

## Fundamental Principles of Entertainment Law

What is entertainment law? Unfortunately, a comprehensive description of the body of law encompassing the activities of the entertainment industry in its totality is impossible to state with any true precision. Because “the entertainment industry” is such a broad term used to describe a variety of business models involving recorded music, live music, books, movies, television, the Internet and its multiple by-products, theatre, dance, commercials, and a myriad of other artistic models designed to entertain, amuse, and enlighten, defining the body of law used to regulate all the moving parts is difficult.

Entertainment law is grounded in several areas of law such as contract, copyright and trademark, federal and state statutes, and the various customs and practices in operation in the subparts of the entertainment industry. Over the past 10 years entertainment law has literally been created on the fly as the industry expands into the ever-changing world of the digital era.

One fascinating aspect of the entertainment industry pertains to its size relative to other industries. Compared to the number of people participating, for instance, in the automotive, oil and gas, and pharmaceutical sectors of the world economy, the income-generating capacity of the entertainment industry is quite impressive. Michael J. Wolf makes an interesting observation in the first chapter of his highly acclaimed book, *The Entertainment Economy* (1999), when he writes

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Entertainment—not autos, not steel, not financial services—is fast becoming the driving wheel of the new world economy. In the United States, which has the most developed entertainment and media industry, entertainment ranks ahead of clothing and health care as a percentage of household spending. Even if you don't count consumer electronics (which means leaving out TV sets and VCRs, which I would argue are bought primarily for entertainment), we are looking at a \$480 billion industry.

Mr. Wolf's statistics are even more compelling considering his book was published in 1999, long before the deluge of the many products spawned by the Internet in recent years. Entertainment is big business, and it is getting bigger every hour of every day all over the globe.

As recently as 10 years ago, if someone mentioned the entertainment industry, discussions usually gravitated to the products of the day, namely, movies, recordings (in a CD format), and television. These were, and had been, the staples of the entertainment industry for previous decades. Now, these products are delivered to a global audience via live, recorded, filmed, printed, and digitized formats. Today, in our entertainment global village, the old staples—movies, records, and television—are dwarfed by the endless emergence of new products. From iPads and iPhones to network, dish, cable, satellite, or Internet TV; satellite or celestial radio; Twitter; Facebook; and Blu-Ray; the products and delivery systems just keep expanding. Even more amazing than the number of entertainment products in existence today compared to 10 years ago is the staggering number of products in development. As sophisticated technologies emerge every year, worldwide audiences and revenues are growing exponentially. The entertainment industry finds itself accelerating at an extraordinary rate.

To understand what is occurring in the entertainment industry one needs only to consider a typical day in the life of an average person. The day starts with a sound bite, maybe from an old clock radio or maybe from a satellite radio, a favorite tune from an iPod, or a pre-recorded TV program. However, each of these devices carries with it certain legal issues in connection with the delivery of entertainment to our homes.

At breakfast the television may be set on a 24/7 news channel, broadcasting news from around the world. The local news has become the national news, with most viewers keenly interested in the events occurring on the other side of the globe, not to mention the happenings in outer space (e.g., space station, incoming asteroids, and so on). In between the news flashes and pundit analysis are commercials of the highest entertainment value, incorporating celebrity actors,

models, artists, and stars from every field imaginable. Every second of each broadcast is scientifically scripted to achieve maximum entertainment value. On the way to work, whether via commuter train or personal vehicle, we stay hooked up to the outside world via satellite radio, iPods, iPhones, BlackBerrys, and other gadgets designed to send and receive a nonstop stream of audio, video, pictures, and text, constantly informing, instructing, and entertaining us. At the office, we immediately go online and are bombarded by e-mails and a vast array of entertainment choices.

At lunch we are surrounded by an endless stream of sights and sounds, all designed to entertain and inform. Music streams in through the overhead speakers while we dine with colleagues. Multiple televisions on the wall display news and sports. En route back to the office after lunch we pass hundreds of briskly moving pedestrians who are soaking in a constant flood of entertainment through headphones hooked to cell phones and media players. All of those sights and sounds come with a multitude of legal issues.

When we return home at the end of the day, we stay connected to the flow of information and entertainment until we arrive at our doorstep. After dinner we relax with the remote control and scroll through hundreds of channel selections broadcasting everything from news to sports, movies, documentaries, and reality television shows.

News, TV, radio, movies, music, Internet, magazines, newspapers, commercials . . . it's all entertainment. The entertainment industry is the conduit for the creative thoughts flowing from the fertile imaginations of songwriters, movie producers, authors, artists, musicians, actors, animators, computer programmers, and graphic designers, to name just some of the contributors to the vast array of entertainment available to us.

Standing in the middle of this creative vortex is the entertainment lawyer. It is the function of the entertainment lawyer to bring organization to the frenetic pace at which the entertainment world moves. Creative clients look to the entertainment lawyer to protect their intellectual property rights while they try to convert creative thoughts and ideas into commercial income. Entertainment lawyers help turn raw talent into products in the form of records, movies, concerts, video games, and so forth. Once these products finally find their way to the marketplace, and most do not, it is the entertainment lawyer who helps protect these properties from pirates and scavengers. The ultimate goal is to provide order and protection for the creative talent and investor clients who are engaged in making the entertainment business a reality.

The legal principles, rules, customs, and practices that help to form the basis of entertainment law have emerged out of commercial necessity and convenience

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as well as principles of reason and fundamental fairness. All of these policies help to draw lines of demarcation between the owners and users of intellectual property and entertainment products. In the end, it is the audience who will determine the success and economic viability of the many products and personalities competing for the ever-expanding entertainment dollar.

A good starting point for an overview of entertainment law is to identify its subparts. While this book will discuss the basic law governing the entertainment industry, this chapter will provide the general practitioner with a frame of reference to begin an analysis of this topic.

A broad look at entertainment quickly reveals five basic areas—music, movies, television, live performance, and the Internet. From these basic categories, the proliferation begins and the snarl of principles, policies, statutes, and practices takes off. Take music, for instance. To effectively review the law regulating it, you must first select live or recorded music. If you select recorded music you go down a checklist of topics such as songwriters, recording companies, producers, engineers, mixers, re-mixers, musicians, recording studios, vocalists, mastering, mechanical licenses, sync licenses, artist royalties, graphic designers, record labels, distributors, promotion and marketing, merchandising, and copyright and trademark issues—to mention just some of the topics pertinent to recorded music.

However, if your issue pertains to live music, then an entirely new checklist of potential topics comes under review. Such a checklist would include personal managers, booking agents, business managers, road managers, sound and light technicians, publicists, musicians, vocalists, dancers, masters of ceremonies, promoters, tour accountants, venues, stagehands, and security and crowd control.

In order to stay focused on pure entertainment law issues, we have omitted from these discussions all sports-related topics. While there is no denying that sports would certainly be considered entertainment, in the interest of streamlining this book, sports issues will not be included here.

To give you an idea of the vast array of topics that fall into the area of entertainment law, the following is a listing of some of the most common areas encountered by the general practitioner in the entertainment industry:

Music	Merchandising
Movies	Venues
Television	Foreign Rights
Internet	Currency Exchange
Music Publishing	Subpublishing
Print Publishing	Mixers

Radio	Engineers
Producers	Songwriters
Dance	Song Pluggers
Art	Record Labels
Royalty Collection	Live Performances
Tour Support	Agents
Personal Managers	Film/Video
Business Managers	Copyright
Road Managers	Trademark
Privacy	Theater
Choreography	Decency Regulations
Endorsements	Sponsorships
Software Development	Graphic Design
Promotion	Licensing
Arbitration	Negotiation
Immigration	Work Visa/Passports
Finance	Media
Insurance	FCC Rules and Regulations
Visual Arts	Art Galleries

We want to emphasize from the outset that this book is written not for lawyers specializing in an entertainment law practice but rather for the general practitioner who, from time to time, will be called upon to deal with an entertainment law issue. This book is designed to be a good starting point for handling such an issue by providing a survey of the various entities and the legal and business environments in which they operate. This book will help the general practitioner seek out the appropriate help and ask the right questions. More importantly, it is designed to help lawyers and their clients maximize their relative legal and business positions and to avoid unwitting mistakes caused by a lack of basic knowledge of the applicable law and business practices. To the extent this book helps achieve these goals, we will have been successful.