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Entertainment Law Circular


September 2016

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FilmLA Raises Permit Rates

Effective **August 1**, FilmLA, the city's film permit office, raised its fees for a wide range of services up to 5.6%, making filming on the streets of LA a lot more expensive for not only professionals, but student filmmakers as well.

FilmLA said on its website that its "[new rates] are set well below the overall increase in consumer prices over the last eight years. . . . [and] [t]he new rates are also set below the average regional rate for like services."

Nonetheless, the increase doesn't help the state's initiative to keep production in California.

UPCOMING SEMINARS

On **October 26, 2016**, California Society of Entertainment Lawyers is presenting a program entitled:



*Membership limited
to attorneys who've won million dollar
verdicts & settlements*



October is blood cancer awareness month!

On October 22, 2016 PLG attorneys and staff will once again participate in the Leukemia Lymphoma Society's Light the Night Walk at LA Live. This is David Albert Pierce's 7th Year serving as a Trustee and Board Member of the Executive Board Greater Los Angeles Chapter of LLS.

In honor of David's on-going commitment and involvement with LLS, Pierce Law Group LLP will match the first \$5,000 in donations made to David's Light the Night campaign via this specific Light The Night Pledge Fund donation portal please: [Matching Light the Night Challenge Donation Page](#)].

This donation portal has been established specifically for David Albert Pierce's LLS Donation Pledge Drive page and matching donation challenge.

For those interested in also actually participating in the

"Con Men In The Entertainment Industry."

The program is moderated by
David Albert Pierce.

The panelists include

U.S. Attorney Eileen Decker, Esq.

Private Investigator Jon Perkins;

Film Finance Guru Schulyer Moore, Esq.
Stroock, Stroock & Lavan

This presentation is appropriate for attorneys, managers, agents, business managers, and all filmmakers interested in learning how not to be ripped off in the motion picture industry.

Price is \$75, but Pierce Law Group client can sign up for the CSEL Member price of \$50.

For more information and registration contact:
sam@piercelawgroupllp.com;

This program is approved for 1.5 hours of MCLE credit, including 0.5 ethics credit.

Capital Records Loses Attempt To Hold Service Provider Vimeo Outside the Protections of the DCMA Safeharbor Rules Despite Multiple Instances of "Red Flag" Knowledge of Infringement

By Samantha Cohen

Recently, Capital Records brought a copyright infringement suit against Vimeo, a video-sharing site, for knowingly encouraging copyright infringement by the sites users and employees. Internal and external email evidence demonstrated Vimeo's lack of regard for copyright law. One email, sent from Vimeo's VP of Product and Development, encouraged Vimeo employees to overlook the use of copyrighted materials. Another email, from a Vimeo employee to a site user, encouraged the site user to knowingly post to the site copyrighted material when he inquired about the rules and regulations of Vimeo's terms of use.

festivities & walk at the Light The Night event on Oct. 22, 2016, which includes a kid friendly "Glow Zone" play center with carnival games and more, contact Katie at Pierce Law Group for more information: katie@piercellp.com



Congratulations!

Congratulations to our client **Stephen Kramer Glickman**, who multiple critics have said steals the show in the new animated film "Storks" in which he stars alongside **Jennifer Aniston, Kelsey Grammer, and Andy Samberg**.

Now playing at a theater near you.



To read more about Stephen's scene-stealing voice-over performance, read his ET online interview [\[click here\]](#).

Congrats also go to our client **Brian Moses**, creator & host of **Comedy Central's Roast Battle**. The special 6 night televised competitive comedic roasting tournament scored big ratings and lots of buzz for Comedy Central. This

Until this case, rights holder plaintiffs like Capital Records found it nearly impossible to successfully hold service providers liable for copyright infringement.

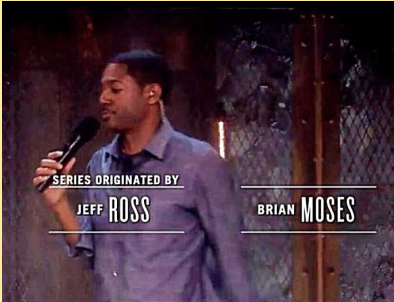
The issue in the case was: Can safe harbor protection be taken away from online service providers under the Digital Millennium Copyright Act (DMCA) when it fails to take action despite multiple "red flags" clearly indicating occurrences of ongoing copyright infringement on its system?

The district court found that Vimeo had "red flag" knowledge of the videos' infringing nature as they contain "recognizable songs by well-known artists" used "in essentially unaltered form," thereby permitting service providers to be held liable and be deemed outside the statutory safeharbor protections normally afforded to a service provider.

However, on appeal the Second Circuit created a test which, unfortunately for rights holders, is near certain to permit continued rulings in favor of defendant service providers. The Second Circuit held that Vimeo could not have had "red flag" knowledge based on the new test set by the Court. In this test created by the second circuit, Capital Records would have to prove that (1) the employee's viewing was not brief; (2) the purpose of the viewing was for business purposes specifically regarding copyright infringement; (3) that the music was "recognizable . . . or even *famous*" to an ordinary individual with no experience or specialization in the music field; (4) that the employee was able to distinguish between infringements and parodies in fair use law; (5) that the employee had knowledge of the poster's authorization (or lack thereof) to post the copyrighted materials, and (6) that the service provider had asked employees to police potential infringements and to bring them to the attention of a supervisor.

Under the Second Circuit's new test, it will be nearly impossible for a plaintiff to bring forward enough evidence that will meet all six prongs of the test. It is not enough to avoid the DMCA safe harbor because "red flags" were flying to suggest knowledge of infringement, rather actual knowledge must be established.

summer's televised tourney also featured other Pierce Law Group clients, including the always funny and caustic **Tony Hinchcliffe** as a competitor, as well as **Jeremiah Watkins** and **Willie Hunter** as part of the show's "jeerleader" troupe known as "the Wave."



Accolades for our long list of comedic actor clientele also include shout outs to:

Willie Hunter, writer/co-creator of **The Carmichael Show** which commences production on its 3rd season.

Leslie Jones who is returning to **SNL**, with her well overdue bump from "featured player" to "star."

The lovely and talented **Christina DeRosa** with her scene stealing role in this summer's blockbuster hit "**Bad Moms**."

Summer Photo Gallery



DAP & comedian client Jesus Trejo dine in style in Montreal. Jesus was named by Just For Laughs Comedy Festival as one of the new Faces of Comedy.

Samantha Cohen, is a certified paralegal at Pierce Law Group LLP who works closely with the attorneys in the litigation and intellectual property practice groups.

What the Kanye West / Taylor Swift Feud Can Teach Us About California's Privacy Laws

By David Albert Pierce

The Background

In February, Kanye West released the song "Famous" in which Kanye notoriously raps a verse about Taylor Swift: *"For all my Southside ni***s that know me best / I feel like me and Taylor might still have sex / Why? I made that bitch famous."*

When Taylor publicly disapproved of the song, Kanye swore Taylor cleared the use of her name in the lyrics in advance. No one knew who to believe and the scandal died down for a few months. That was, up until this summer when Kanye's wife, Kim Kardashian, posted a video which contained audio of Kanye talking to Taylor over the phone, asking her for permission to use the song lyrics.

Different fan camps still debate over whether and what portions of the lyrics were and were not pre-approved by poor Taylor. However, little more seems to have come from the issue than some good tabloids fun and no legal issues have arisen nor are they anticipated to arise.

However, this celebrity squabble provides a wonderful opportunity to discuss the very real liability that can result from taping conversations without the other party to the conversation knowing about it.

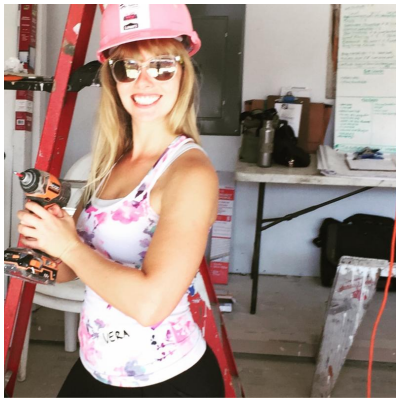
And, while Taylor Swift may not desire to pursue legal action against Kanye, if you tape someone's conversation without his or her knowledge, the assorted factors that led Taylor to refrain from suing (concern of fan reaction, concern for continuing the longevity of the news story, etc.) may not apply in your situation. In which case, yes, you can be sued for such conduct in



Sony powerhouse business affairs attorney Daniel Yankelvits and DAP enjoy the Ghostbusters premiere afterparty.



Annual PLG clients & friends dinner, at the Toronto International Film Festival



Attorney Vera Golosker looking stylish as she helps rebuild homes with Habitat for Humanity

A Busy Summer of Speaking Engagements for PLG Attorneys

On August 13th, DAP spoke on the topic of Legal Issues For Filmmakers at the Marina del Rey Film Festival at the Cinemark 18 Los Angeles at Howard Hughes.

On August 20th, DAP was also a featured speaker on one of the several Comedy Industry Panels at

California.

The Privacy Implications of Kardashian's Post

Because the video was recorded without Taylor's knowledge or permission, issues concerning the privacy laws in California arise. California has one of the most stringent privacy laws in the country; particularly with regards to audio recordings of phone conversations.

Generally, in California a party cannot record a conversation unless all parties to that conversation are aware the conversation is being recorded.

Hence that little warning while you are on hold with customer service alerting you that the call may be monitored for customer satisfaction and training purposes.

California Law Penal Code § 632 states that it is illegal to monitor or record a "confidential communication," whether the communication takes place in person or by means of telephone or some other device. The term "confidential communication" includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.

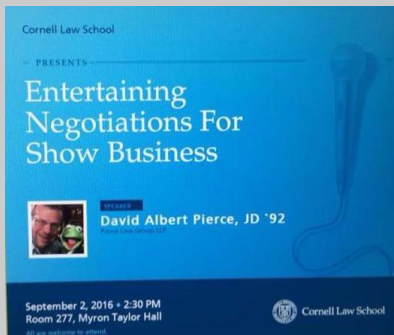
A violation of Penal Code § 632 can lead to a criminal fine of up to \$2,500 and/or imprisonment for up to a year (misdemeanor) and civil liability reaching up to \$5,000 or up to three times the amount of any actual damages that result from the recording.

So, if Taylor was unaware that Kim Kardashian was recording Taylor's conversation with Kanye, it would likely be deemed that Taylor had a reasonable expectation that the phone call would remain confined between them. Of course with this particular fact pattern, an enterprising attorney may try to argue that no one has a reasonable expectation of privacy when dealing with Kardashians and other celebrities that seem to be continuously recorded. Ultimately, whether or not Taylor had a reasonable expectation of

the Burbank Comedy Festival at Flappers Comedy Club.

On August 20th, Azita Mirzaian and Vera Golosker spoke on a panel for California Lawyers for the Arts at the LA Municipal Art Gallery at Barnsdall Art Park. The panel was entitled "Intro to Copyright Law for Artists."

On September 2nd, DAP delivered a seminar entitled, "Entertaining Negotiations for Show Business" at Cornell Law School. The program was presented by the Cornell Law Entertainment & Sports Law Association.



On September 6th, DAP was a guest lecturer for students enrolled in the Screenwriting Program at State University of Buffalo.

On September 8th, Vera Golosker served as the moderator for the Beverly Hills Bar Association IP, Internet & New Media section's panel entitled "Street Art: The New Legal Landscape."

Grant Program for Environmental Themed Projects

privacy on the phone call would be up to the determination of the trier of fact.

Closing Thoughts

While most publicists would bet it's unlikely the dispute between Kanye and Taylor will escalate to litigation given the public backlash that would likely result; their Hollywood feud should serve as a helpful public reminder about California's privacy laws.

It is important to remember that in California the criminal and civil ramifications of recording someone without their knowledge are significant.

Remember that little notice stating "This call may be monitored. . ." is there because the state of California insists that it be there. If you have specific questions about which states permit unknowing audio recordings, contact Pierce Law Group LLP.

Willie Hunter Wins "Voice Award" for his Comedy Script with a Message

Congratulations Willie Hunter! The episode entitled "The Blues," which Willie wrote, of The Carmichael Show, was bestowed a "Voice Award" by the national Substance Abuse and Mental Health Services Administration, which issues this award to outstanding entertainment programs that help change public acceptance and understanding about people with behavioral health conditions. The awards were presented on August 10th at a ceremony held at UCLA's Royce Hall.

Pictured below, Willie delivering his acceptance speech.



The Redford Center launched a new program that will provide grants, mentorship opportunities, and networking support for filmmakers with environmental themed projects.

For more information please click [here](#) to visit The Redford Center's website.

Join Our Mailing List!

If not automatically receiving our newsletter directly, then get with the game and click here!



DAP alongside SUNY-Buffalo students and Screenwriting Professor Jeffrey Hirshberg

Still Time to Enroll in DAP's Popular UCLA Extension Program on How to Run an Entertainment Production Company

UCLA Extension Class MGMT X 402.32 "Starting Your Own Entertainment Production Company," which has been jointly taught for over 15 years by attorneys David Albert Pierce and Patrick J. Gorman, returns for the Fall Semester.

The course is a practical primer on starting a business, staying in business, and thriving in the entertainment industry. The course meets for 10 weeks each Monday from 7 pm - 10 pm. Last day to register is October 3rd 2016.

For more information: [click here](#)

PLG TEAM MEMBERS ON THE MOVE

PLG-LLP wishes much success to departing employee **Eric Schuller** who has accepted a position as an Assistant at Innovative Artists.

Likewise our beloved client director **Lindsey Henderson** has joined the Hospitality Division of Starwood Hotels.

Katie Raymond is our new Client Director and we are confident that you'll adore her! Katie is a recent graduate of Loyola University of Maryland with a Bachelors Degree in her dual majors of Economics and Theater. She is originally from Louisville, Kentucky.

Congratulations to our client EuropaCorp on the worldwide theatrical release of *Nine Lives*, a family comedy starring Kevin Spacey & Jennifer Garner.



About Pierce Law Group LLP

Pierce Law Group LLP is a full service entertainment law firm with eight attorneys. It practices in the areas of entertainment law, intellectual property (copyright, trademarks, right of publicity), film finance, securities law, production counsel, and labor & employment issues affecting the entertainment industry, with an emphasis on film, television, and new media.

The firm also represents various artists including producers, actors, writers, directors, numerous accomplished comedians, and other creative entrepreneurs.

Our client list includes both Academy Award and Emmy Award winners. The Firm's academic and analytic approaches to contract negotiations and litigation seek to obtain creative solutions for achieving our clients' desires.

Practice Areas

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