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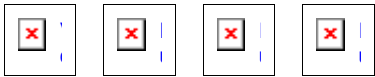
Entertainment Law Circular

September 2015

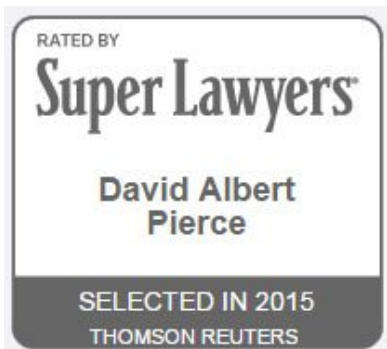
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Goodfellas Actor Loses Suit Against The Simpsons After Fox's Anti-SLAPP Motion Wins Case

By David Albert Pierce, Esq.

In an important entertainment law ruling earlier this month, a California judge upheld Fox Television Studio's right to parody existing characters on its television shows, and dismissed an actor's claims that *The Simpsons* had unjustly used his image on the show.

Frank Sivero, an actor who appeared in several movies in the 1990s, filed a \$250 million lawsuit against Fox in October after noticing that a *Simpsons* character named Louie bore an uncanny resemblance to his character Frankie Carbone from the movie *Goodfellas*.

In his lawsuit, Sivero made several claims against Fox including infringement of his right of publicity, misappropriation of his likeness, interference with prospective economic advantage, and unjust enrichment.

Fox's attorneys fought back against these claims by filing an anti-SLAPP motion against Sivero, forcing him to prove that his lawsuit could legitimately win based on its merits. After weighing the arguments on both sides, Judge Rita Miller dismissed Sivero's complaint, issuing a tentative ruling finding that the doctrine of transformative use protected Fox from the claims in the lawsuit.

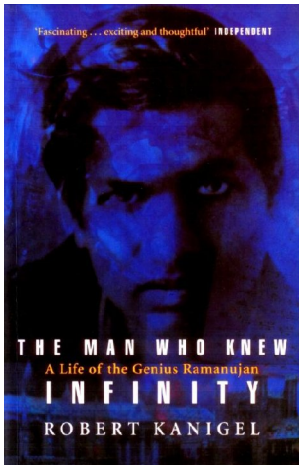
Doctrine of Transformative Use

To the average observer, it seems clear that Louie



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Congratulations to Our Clients With Films at Toronto International Film Festival



Congratulations to our client Jim Young, producer of "The Man Who Knew Infinity," which stars Jeremy Irons and Dev Patel. The film screens in competition at the Toronto International Film Festival at Roy Thomson Hall on Thursday Sept 17th at 6:30 pm. [TIFF screening times - Infinity](#)

Congratulations to our actress client Jess Jacobs, who appears in the film "Freeheld," which is in competition at the Toronto International Film Festival. The film also stars Julianne Moore,

on *The Simpsons* and Frankie Carbone in *Goodfellas* have a similar look. While the cartoon character is not an exact illustration of the actor, Louie is at least a possible caricature of Frankie. However, even though it is plausible that Louie was based on Sivero's character, Fox's creation is still protected as fair use under both copyright laws and the First Amendment.

Sivero's lawsuit began because he alleged that Fox infringed on his right of publicity. California law protects its citizens' rights of publicity, and prevents the unauthorized commercial use of their image. Put simply, a company that uses a person's image to make money (like in a TV show or advertisement) can be forced to remove the offending content and/or pay damages to that person.

While this law does help people control their own likeness, it does not prohibit anyone from ever using a person's image for any purpose whatsoever. Instead, if a company like Fox can show that their use of a person's image or character is transformative in nature, then there is no legal basis for a lawsuit.

Transformative use means that the original image, character or work is changed in such a way that it gains a new message or meaning. For example, in works of parody, the image of a living person or a trademarked character are used for comic effect or ridicule, which transforms their original message.

In the case of Sivero and *The Simpsons*, the show did not take an existing character and appropriate it as their own; instead, they used the character as a parody of mobsters in general, which was a protected transformative use. Judge Miller found that even if the creators of the show admitted to copying Sivero's image in *Goodfellas* as the basis for Louie, which they did not, the lawsuit still could not stand.

Anti-SLAPP Claim Achieves Dismissal

The lawsuit filed by Sivero was stopped in its tracks and was dismissed early because the attorneys for Fox filed an anti-SLAPP motion against Sivero. These motions are used when the defendant, in this case Fox, believes that the sole purpose of the plaintiff's lawsuit is to quash constitutionally-protected free speech.

Because lawsuits can be so expensive and time

Ellen Page, and Steve Carell. It premieres at Roy Thomson Hall on Sept. 13th. [For TIFF Screening times -Freeheld](#)



Congratulations to our client, Willie Hunter!



Congratulations to our client Willie Hunter, co-creator of the new NBC sitcom "The Carmichael Show," which premiered on Wednesday, August 26th and was the most-watched summer comedy to debut in 8 years!

Can A Studio Be Responsible For Failing To Prevent Off-Set Violence?
By Tony Hanna, Esq.

consuming to defend, it is unfair for people or companies who create works of art to be the target of a new legal battle every time a plaintiff is offended or looking for easy money. When it is clear that a lawsuit is frivolous, and that a person or company's work is protected by law, an anti-SLAPP motion halts the progress of the case and forces the plaintiff to prove that the lawsuit was filed for a legitimate reason.

In this case, Fox's attorneys pursued an anti-SLAPP motion because Sivero's case was so flawed. In addition to Fox's defense of transformative use, several other factors in the case should have made Sivero's attorneys think twice before filing. For example, Sivero would likely have had a serious issue with the statute of limitations, since the character of Louie first appeared in *The Simpsons* nearly 25 years ago. In addition, though the two characters may look similar to each other, they are hardly carbon copies. Even without the transformative use defense, Judge Miller indicated that she did not believe that the character of Louie and Sivero's character were one and the same.

Fox's anti-SLAPP claim meant that Sivero had to prove that it was likely that he would win his case. With so many different valid defenses, this burden was simply insurmountable and Sivero's case had to be dismissed. Bad facts make bad law, and this case attempted to stretch the right of publicity in a way that the legislature never intended.

Traditional right of publicity cases, wherein someone's image has been misappropriated and used to make them a commercial spokesperson against their will, remain viable and important cases to pursue. Pierce Law Group has been a leader in recovering millions of dollars over the past 15 years on behalf of our clients whose rights have been violated, and will continue to work to protect our clients' images and likenesses.

Pierce Law Group LLP is a full service entertainment law firm representing both transactional and litigation clients. Visit us [online](#).

Investors Claim Voltage Pictures Hid Foreign Profits, Misrepresented Proceeds Owed From Dallas Buyers Club
By Trea Lachowicz, Esq.

Dallas Buyers Club ('Picture"), the 2013 Oscar-

Family Of Man Killed By Suge Knight Cites Insufficient Security As Reason For Death

How much responsibility does a movie studio have over what happens off the set? While a film studio can be held responsible for the actions of individuals on the set, can a studio be responsible for damages by simply creating a controversial film, for filming on location in a dangerous area, or for contributing to a potentially dangerous situation off the set?

The widow of the man killed by rapper Suge Knight has filed a lawsuit against Universal Studios alleging that the studio's negligence in failing to provide adequate security led to the wrongful death of her husband.

Straight Outta Compton

Universal Studios recently released a movie called Straight Outta Compton, based on the story of the legendary Compton rap group, N.W.A., and founding members Suge Knight, Dr. Dre, and Ice Cube. In the early 1990s, the rappers formed Death Row Records, an incredibly successful and powerful hip-hop music label. Eventually, Suge Knight and Dr. Dre had a violent falling out, and tensions between both men have been explosive for decades.

When Universal began producing Straight Outta Compton, Dr. Dre and Ice Cube were hired on as consultants. Both men told Universal that Suge Knight was dangerous, and the widow alleges that all parties should have known that creating a movie based on Knight would lead to a confrontation, especially because Knight was upset about his portrayal in the film as a violent individual.

winning biographical film about the AIDS crisis in the 1980s, was almost never produced. Ten weeks before production was scheduled to begin, its financing fell through and the Picture's producers were left scrambling for money.

Joe D. Newcomb, the chairman of Truth Entertainment, LLC, reviewed the script and wanted to be involved in the Picture. Knowing about the time limitation, Newcomb and Truth Entertainment immediately solicited investors, quickly raising \$1.6 million to keep the Picture afloat. In exchange for the investment, Truth Entertainment and its investors were to receive a 15% return on their investment and 35% of the Picture's net proceeds. Voltage Pictures, LLC, was also hired on as a producer and a foreign sales consultant, and contributed a \$3 million investment to finish funding the Picture.

The Picture was a success, lauded by critics, and garnered Matthew McConaughey an Academy Award for Best Actor, and Jared Leto an Academy Award for Best Supporting Actor. The Picture grossed approximately \$27 million in box office sales in the U.S. and Canada, and approximately \$28 million overseas.

After the Picture was released, Truth Entertainment and its investors claimed that the earnings statements showed that Voltage Pictures' full \$3 million investment was returned, along with 15% return. However, Truth Entertainment and its investors claimed they were still short over \$720,000, and had yet to receive any profits.

After Truth Entertainment began investigating the situation, Truth Entertainment and its investors pressed Voltage Pictures for information concerning the foreign returns. According to Truth Entertainment, Voltage Pictures had yet to provide them with the actual foreign return agreements, and had not accounted for millions of dollars in foreign guarantees. Also, Truth Entertainment and its investors alleged that the income statements they received indicated that Voltage Pictures did not collect any money for foreign pay-per-view

On January 29, 2015, Knight visited the set looking to confront Dr. Dre and representatives of Universal about his role in the film and the amount of money he was receiving from the film. After being thrown off the set, Knight found and confronted Cle "Bone" Sloan, another member of the N.W.A., and Terry Carter, described to have been a community liaison of sorts. Carter allegedly tried to calm Knight and resolve the confrontation when Knight rammed his pickup truck into Carter and Sloan, injuring Sloan and killing Carter. Knight has insisted that he was acting in self-defense.

Carter's widow alleges that Universal created a tense situation by bringing together Knight's propensity for violence, the dangerous nature of the neighborhood, and the longstanding feud between Knight and the other N.W.A. consultants. Therefore, she claims Universal is responsible for Knight's violence. Carter's widow claims that if Universal had hired additional security, Knight would not have been allowed on the set, and there may have been security present where Carter was killed.

Can A Studio Be Liable?

Film studios or production companies have a responsibility to make sure that their filming does not endanger the people or property around the filming location. Usually, this is done through the permitting process, hiring security or by taking precautions to prevent damage surrounding areas.

When filming does injure property or people, the film studio could be held responsible. However, in this case, the actions of a third party, outside of the filming location,

or video sales.

In response, Truth Entertainment and its investors filed a lawsuit against Voltage Pictures alleging fraud, breach of contract, and breach of fiduciary duty. Truth Entertainment and its investors are seeking a full accounting of the Picture's foreign income and the amounts paid to Voltage Pictures, as well as the proceeds that they are owed and damages for the breach of contract.

For its part, Voltage Pictures has alleged that the foreign markets are not as profitable as Truth Entertainment believes, and that they are missing proper documentation from their foreign contracts.

The dispute between Truth Entertainment and Voltage Pictures boils down to mistrust between the parties.

Therefore, when investors provide their money to a film, they may receive a return on their investment if the film is profitable. When a film is clearly profitable, but the lines of communication between the producers and the investors are broken and there seems to be a lack of transparency, investors get nervous and will likely file a lawsuit to protect their investment.

Keeping investors happy ensures that future projects have a better chance of being financed. If you are producing a film, or investing in a film, it is important to set clear expectations on both sides; to provide detailed contracts, which outline each party's responsibilities, as well as to issue updated financing income statements after the film's release.

Before you seek financing for your film project, make sure that you understand your rights and obligations, whether or not a film is successful. Contact the experienced entertainment attorneys at Pierce Law Group LLP; our entertainment lawyers can assist you in securing the rights you need in the applicable financing agreements, and can help defend you in a

brought about the death of one person and the injury of another. Whether or not the studio can be held responsible under these facts is a matter for the judge or a jury.

The attorneys at Pierce Law Group LLP help producers, directors, and entertainment companies navigate complicated legal issues. If your film project resulted in an injury on or off set, or you need advice or representation about an issue on your film, speak with an experienced entertainment lawyer. Pierce Law Group LLP can help you negotiate tricky situations, and will assist you in making sure that your rights are protected.

Anthony Hanna is a Member of Pierce Law Group specializing in union issues, OSHA and workplace safety, as well as child labor matters. He can be reached at tony@piercelawgroupllp.com

Click here for firm website



Congratulations to PLG Attorney Azita Mirzaian for her dedicated service on the Syllabus Committee for the 2015 Institute On Entertainment Law & Business

lawsuit if you are unsure of what you owe or are owed after a film is released.

Trea Tran-Lachowicz is a Member of Pierce Law Group LLP specializing in film finance and distribution matters. In addition to Trea's law degree, she holds a Legal Masters in Tax Law. Prior to joining Pierce Law Group she was a partner in a theatrical production & distribution company specializing in films for the Vietnamese-American community.

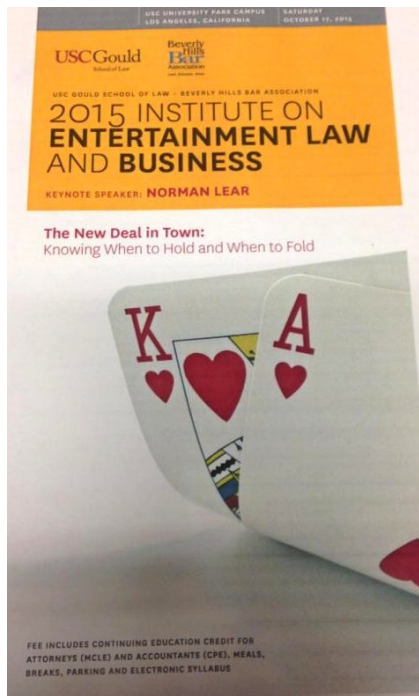
For more information on film finance & distribution, contact either Trea at trea@piercelawgroupllp.com or David Albert Pierce at david@piercelawgroupllp.com

Seminars, Conferences, & Events

On September 10, 2015 The Toronto International Film Festival kicks off. PLG attorneys Brian Hewitt and David Pierce will be in attendance.

On September 11, 2015 The Beverly Hills Bar Association's IP, Internet & New Media Law Section is presenting a seminar entitled, "IP Issues for Musicians." The program will discuss new developments and court decisions in copyright and trademark law affecting composers and musicians, as well as current changes in licensing practices to meet the new technological landscape, digital services and changes in deal-making and their impact on the performing rights societies. Pierce Law Group's own Azita Mirzaian serves as Vice Chair for this section of the BHBA. For more information [click here](#).

On October 8, 2015 The Beverly Hills Bar Association's IP, Internet & New Media Law Section is presenting a seminar entitled, "Right of Publicity Litigation: The Past, Present, and Future." Pierce Law Group's own Azita Mirzaian



The full-day event of lectures and panels is Saturday, October 17th at USC Gould School of Law. To see the full program for the 2015 Institute, [click here](#).

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Dedicated to finding treatments for paralysis.
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is the planing co-chair of this program - more information and a registration link will be available on BHBA's website soon!

On October 10, 2015 PLG staff will participate in the LLS Light the Night Walk at LA Live. To make a donation to help our Firm reach its goal of raising \$2,500 please [click here](#) to go to our LLS Donation Pledge Drive page.

On October 17, 2015 The Institute on Entertainment Law & Business will hold its annual all-day seminar program, which this year features keynote speaker Norman Lear. Pierce Law Group's Azita Mirzaian serves on the Syllabus Committee for this prestigious event. [click here to enroll](#).

On October 17, 2015 The Leukemia Lymphoma Society hosts its annual Dream Halloween event at the Egyptian Theater in Hollywood. This year, in addition to carnival games and food, LLS will be screening Transylvania University 2. Pierce Law Group is proud to be a premiere sponsor of this annual event. More information to come in October.

On October 17, 2015 The Tierra Del Sol Foundation hosts its 13th annual fall festival picnic in Sunland, CA. For more information click [here](#).

On October 19, 2015 David will be speaking on the Digital Hollywood panel, *Crowdfunding Update: Exploring Innovation in the Crowdfunding Film-TV-Start-up Process* at the Ritz Carlton in Marina del Ray at 2:30pm. For more information click [here](#).

ENROLLMENT IS NOW OPEN FOR David Albert Pierce's UCLA-Extension course entitled "Organizing, Financing and Operating A Start-Up Entertainment Production Company." This is a 12 session course that meets Monday nights from 7 pm - 10 pm commencing on September 21st and ending on December 7th. Early Enrollment Tuition is \$635 before August 21st, the Tuition price after August 21st is \$695. 34 hours of MCLE credit is



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awarded to attorneys that take the class. The program also provides 4 credit units for UCLA-Extension Certificates for both its Producing Program and Business & Management of Entertainment Program. David has taught this course since 1998. For more information click here: [Enroll in Course](#).

Pierce Law Group Summer Fun



DAP at Burbank Comedy Festival with PLG clients -- the immensely popular producer-writer-actor Ray William Johnson, along with the newest host of Ray's "Equals 3" web comedy series, the charismatic and beautiful Kaja Martin.

PLG Laser Tag





Awareness & Outreach aimed at families, government & the public. [Donate Here]



Providing jobs, education and opportunities for the developmentally disabled. [Donate Here]



Providing economically challenged women with the tools to re-re-enter the workforce. [Donate Here]

LLS Light The Night Kick-Off Party



PLG employees battled it out in the laser tag arena as a fun team-building summer activity.

Burbank Comedy Festival



DAP and fellow panelists at the 2nd annual Burbank Comedy Festival. The panel focused on alternative revenue streams for comedians to monetize their craft.

Cornell At The Hollywood Bowl



On August 29, 2015 PLG participated in the Leukemia Lymphoma Society's Light the Night Team Spirit Kick-Off Party at Lucky Strikes Bowling.



DAP joined fellow Cornell alums for a summer night of high culture and cartoons with Bugs Bunny at the Hollywood Bowl.

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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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LAW GROUP LLP

SUITE 225 EAST TOWER
9100 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA 90212
T 310 274 9191 F 310 274 9151
WWW.PIERCELAWGROUPLLP.COM

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