



November 2013

PRESIDENTIAL ADDRESS

Welcome to winter which arrived in southeastern Ontario last night with our first shovel-able amount of snow of the 2013-2014 season. With wintry weather comes our usual slowdown in client work as outdoor shoots diminish and folks start taking their holiday down-time. The fall here was quite busy; in fact, I began this newsletter in September but had to put it aside and next thing I know we are staring at December.



I was able to speak with the Queen's University production class again this fall, scaring the bejeezus out of them before they strike out across Kingston with cameras in hand and now desperate to avoid anything on-camera that looks like a brand name or proprietary item of any type (even got into discussion about rights issues for a ride-along project with the Kingston Police department).

As the school year began, we lost our wonderful summer intern Jane Mundy from Ryerson University but the new year delivers to us a new intern, this time from Queens' Film & Media program. We look forward to a busy 2014 and wish all of you the best holiday ever, full of family and rest and food.

FOR 20th ANNIVERSARY - PLATINUM OR CHINA

Eastern Script hit the fine age of 20 years old on the 3rd of September 2013. The business began its life in a spare bedroom before the world wide web was screaming through anyone's walls; the only webs in the office then were those created by spiders in that very old building. It had a dark low-ceilinged wood-beamed dirt floor basement in which I once saw what I was pretty sure was a ghost. I remember actually talking with people by phone all day at work (a vague but not unpleasant memory), back when the word "email" was not yet in any dictionary. Telephones still had a little wire on them that connected to a wall outlet. Not long after plugging in the phone



celebrating 20 years of quality service

I recall getting a CompuServe email account which had a lot of numbers in it. On my desk was something old-fangled called a "rolodex:" a metal contraption that had wheels inside it with lots of little cards zipping around when you spun the outside dials. Was probably listening to something like an early REM hit on the radio as I sat there staring at lots of shelves filled with BOOKS, I remember those too. We used to have 3 walls covered with them, now it's down to about 4 shelves worth. Things have e-changed.



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FEATURED ARTICLE - RISKS & RIGHTS CIRCA 1952

On the coast of Maine a few summers ago, I was in a used book store when I came across a book that might still be sitting there under its dust if I hadn't grabbed it: [Risks & Rights in Publishing, Television, Radio, Motion Pictures, Advertising and the Theater](#), author Samuel Spring. First published in 1952, its preface tells the reader that the book "was decided on while I was preparing a law text on 'Personality Rights'; it seemed to me that a book for laymen, dealing with the various rights involved, might be desirable." Now here was some juicy reading for my summer vacation!

There are chapters on topics as intriguing, relevant to our work, and varied as: "Privacy as a New Legal Right," "Distinctions between Entertainment and News," "Realities of Modern Defamation," "Publicity as Property," and (probably ground-breaking at its 1952 publication) a chapter on "Television's Problems." Obviously, people attended plays and read books and watched movies on a regular basis before the existence of television. Although the current driving need for our clearance reports comes from the exposure created by today's massive broadcast and cable television audience, the issues those clearance reports address existed prior to television.

One of the foremost issues of concern is that of accidental naming (of actual people, businesses, and products). Mr. Spring writes over 60 years ago that: "One of the great concerns of authors and their publishers, and of radio and television writers and stations, is the danger of committing purely accidental invasions of privacy and disseminating name similarities resulting in defamation... If the identification is purely accidental though actual in the public's mind, should the author be held liable for damages for privacy invasion and should his work be subject to prohibition of publication by injunction? ... A medieval rule of absolute liability is used in defamation: the test is 'not who is meant, but who is hit'."

That test – "not who is meant but who is hit" – is still applied today. To be even more precise, today's clearance reports prepared for producers' insurance purposes are designed to avoid the hit entirely. Clearance researchers look at every cast name and that character's attributes (profession, educational degrees, current and former places or residence) and comb through sources to discover if there is anyone out there who could come forward and make a claim of being "hit." In the days preceding the clearance company, this job fell on motion picture studio lawyers and their staff.

What I like best about the book is its inclusion of many examples of clearance issues from the early to mid-20th century. Here is one from the year 1909 in the U.K. related to "liability by accidental identity of names:"

"The London Sunday Chronicle published a 'gossipy' current news account of motor races at Dieppe, wherein its reporter added a curving quip:

There is Artemus Jones with a woman who is not his wife, who must be, you know – the other thing. Really, it is most surprising how our fellow-countrymen behave when they go abroad.

"The reporter made up the name Artemus Jones to avoid pillorying an Englishman bearing a different name at whom he was actually looking as he wrote. But another and actual Englishman who happened to be named Artemus Jones, and who was not at Dieppe (incidentally a lawyer), bobbed up out of the correspondent's unknown world and claimed libel because the finger of philandering ignominy had falsely been pointed at him. He recovered heavy damages."

And I will leave you with another example, this from 1942: "Here, a publicity employee of a motion-picture theater mailed a letter on pink stationery in a feminine hand to 1000 men in Los Angeles, which read: (*article continued pg.3*)



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*(continued from pg.2) Dearest:
Don't breathe it to a soul, but I'm back in Los Angeles and more curious than ever to see you. Remember how I cut up about a year ago? Well, I'm raring to go again and believe me I'm in the mood for fun.*

*Let's renew our acquaintanceship and I promise you an evening you won't forget. Meet me in front of Warners Downtown Theatre at 7th and Hill on Thursday. Just look for a girl with a gleam in her eye, a smile on her lips and mischief on her mind!
Fondly,*

*Your ectoplasmic playmate,
Marion Kerby*

"An actual Marion Kerby, an actress and concert singer and the only Marion Kerby in the Los Angeles telephone directory, sued. The chief character in the motion picture thus advertised was also Marion Kerby. The publicity employee did not know of the actual Marion Kerby's existence and his employer pleaded lack of intent. Recovery was nonetheless allowed against the motion-picture theater for invasion of privacy. The court applied the defamation rule, 'what controls is he who is hit, not he who is intended!'"

Excerpted from RISKS AND RIGHTS IN PUBLISHING, TELEVISION, RADIO, MOTION PICTURES, ADVERTISING, AND THE THEATER by Samuel Spring. Copyright © 1952, 1956 by Samuel Spring. With permission of the publisher, W.W. Norton & Company, Inc.



FAMOUS! A MEDIASCAPE INTERVIEW

Earlier this year we discussed the doctoral project of Michael Kmet at UCLA who has undertaken a study of the history and contributions of the clearance industry (see our Winter 2013 newsletter for more details). He and I corresponded for a while and he asked me after some back-and-forth if he could publish the correspondence in interview format for the blog page of Mediascape (UCLA's Journal of Cinema and Media Studies). Free publicity? You know it – of course I willingly consented!

Visit the blog to discover answers to the following questions:

1. What led you to decide to start your own clearance firm, and what led you to establishing it in Canada and Massachusetts?
2. I'm curious about the division of labor at Eastern Script. Are you and your employees responsible for your own projects or is the note process more collaborative?
3. For Kellam de Forest...the mechanisms of script clearance never really changed. He ran a research library, and if more expertise was needed than could be found in his books, experts were consulted over the phone. You, on the other hand, have been in the business through a variety of technological changes. How have they changed script clearance?
4. Before the 1990s, script clearance and research was typically uncredited. Since that time, however, that practice seems to have changed. Do you have any insight into the process of getting screen credit? Have you ever had to fight for it?

For the curious, visit <http://www.tft.ucla.edu/mediascape/blog/?p=1967> to find your answers. Happy reading!



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**ANOTHER HELPFUL BOOKMARK -
THELEGALARTIST.COM**

I found another great website full of lively articles related to the clearance process: thelegalartist.com. It is the online home to American lawyer Greg Kanaan's many blog entries, ever-evolving as he continues to explore how "law and art intersect in our culture." I first visited the website because the title of this funny and cautionary fable caught my eye: *Fairly Useful, Part Deux: Why It's Always Better To Ask Permission Than Beg Forgiveness*. That was all I needed to see, off to the website I went and I spent a while there enjoying the material. [To locate the article, enter "fairly useful" in the search box at his home page.]

Here is a sampling of other intriguing titles:

- "Quincy Jones: Steve Wynn Did Not Threaten to Kill Joe Francis and Bury Him in the Desert" (September 2012)
- "Ellen Page And The Strange Case Of The Misappropriated Likeness" (November 2013)
- "Vince Gilligan Thinks Piracy Helped Breaking Bad, Turns Out He Might Be Right" (November 2013)
- "Topless Celebrity Photos! Or How To Get Sued Like A Paparazzo" (March 2013)

Kanaan's insights come from his experiences as both producer and lawyer. A bonus is his engaging writing style which features personal anecdotes in a humorous yet informed delivery. Another refreshing element is his intense appreciation for movies; there is a film critic living at this website as well as a knowledgeable entertainment lawyer and a former filmmaker. Those 3 hats sit so smoothly on his head at the same time! thelegalartist.com is the place to go to get your movie review, your constitutional law primer, and your producer's hindsight comedy all in the same gulp.





BIG SCREEN:

Heartbeat - IMDb's plot synopsis: "After her boyfriend leaves town, Justine, depressed and unfulfilled, picks up her neglected guitar which takes her on a journey that gets her heart beating for the first time in years." Produced by Bill Niven, long-time NS-based filmmaker (**Marion Bridge, Rollertown**).

Pirate's Passage - from the press release: "Donald Sutherland's production company, Martin's River Ink, Inc., announces start of production of a new, animated movie, **Pirate's Passage**, with animation work by PIP Animation Services Inc. in Ottawa. Upon completion it will air on CBC Television. '**Pirate's Passage** is a thrillingly exhilarating adventure, a glorious coming-of-age-story, rich in both imagination and history, in perception and truth,' said producer, screenwriter and star Donald Sutherland. 'I couldn't put the book down. It resonated with the clearest image of the man inside every boy's being that I could imagine.' "

SMALL SCREEN:

Astroblast - "the first collaboration between Scholastic and Sprout -- is described as an interplanetary comedic television series for kids ages 2-5 that's inspired by the books of the same name by author and illustrator Bob Kolar." (Kimberly Nordyke, **The Hollywood Reporter**).

Chozen - "Imagine if 'Archer' was an ex-con turned rapper instead of a spy. And he was gay (out in the open anyway). The suits at FX are gambling that this concept will be compelling television. FX will be premiering a new cartoon show about a gay rapper named 'Chozen' in January 2014. The show is being produced by the people behind **Eastbound & Down** and is every bit as rude as you'd imagine." (Jerry L. Barrow, **The Urban Daily**).

Derek Miller's Guilt Free Zone - From Canadian musician and actor Derek Miller's website, "**The Guilt Free Zone** is a music, performance, and variety show with one simple rule - no guilt allowed. Enjoy the music, laugh at the comedy, stay up late, and just enjoy some quality time with Derek Miller and his revolving door of guests and recurring characters."

Remedy - "The high stakes, prime-time medical drama promises a distinctive 'upstairs/downstairs' glimpse behind the scenes of a downtown hospital, and goes beyond the OR and the ER to reveal the compelling community who together make the healing happen." (from official press release by CNW)

Sensitive Skin - "Kim Cattrall is returning to series TV for the first time since **Sex and the City** ended in 2004. Cattrall will star in and executive produce an adaptation of the 2005 British comedy series **Sensitive Skin**, about a woman's mid-life crisis." (Geoff Berkshire, **From Inside the Box** blog at zap2it)