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PIERCE

LAW GROUP LLP


Who the Independents depend on
Film • TV • New Media

Entertainment Law Circular
November/December 2018

PierceLLP.com

(310) 274-9191

Seminars & Speaking Engagements




Out of Court
and the Entertainment Law Section
Present

Blurred Lines Revisited - What the Ninth Circuit's Decision in the "Blurred Lines" Case Means from a Legal and Artistic Point of View

In March 2018, the Ninth Circuit affirmed the copyright infringement verdict against Robin Thicke and Pharrell Williams regarding the song "Blurred Lines." So what does this mean for the music industry and copyright law going forward? Entertainment law impresario Ed McPherson of McPherson Rane LLP, who submitted an Amicus Brief in the case on behalf of 212 songwriters, has gathered an esteemed panel of fellow impresarios to answer that question. Joining Ed is Howard E. King of King, Holmes, Paterno & Soriano LLP, who represented Robin Thicke and Pharrell Williams at the trial and appellate level and will provide a first-hand account of the case, and Grammy-winning producer/songwriter, Harvey Mason, Jr., who will provide the artist's point of view and the "blurred line" between inspiration and infringement. Join us on November 1, 2018 at 12:00 p.m. at Lawry's to hear this all-star panel discuss the impact of the game-changing Blurred Lines case.

Panelists:

Ed McPherson - McPherson Rane LLP
Howard E. King - King, Holmes, Paterno & Soriano LLP
Harvey Mason, Jr. - Producer/Songwriter



On Nov. 1st The Beverly Hills Bar Association Entertainment Law Section hosted a panel at Lawry's entitled, "Blurred Lines Revisited - What the Ninth Circuit's Decision in the "Blurred Lines" Case Means from a Legal and Artistic Point of View."

David Albert Pierce is the Chair of the BHBA Entertainment Section and provided introductory remarks at the event.

On Nov. 7th, David Albert Pierce delivered his annual lecture to The Academy of Television Arts & Science's Visiting Professor's Program covering "Developments in Clearance Issues for Film & TV."



This is the 15th consecutive year that David has been invited to give this

always evolving lecture along with fellow attorney Stephen Fisch.

On Wednesday, Nov. 14th, the Beverly Hills Bar Association's Entertainment Law Section presented a panel entitled "Tax GPS: Navigating the Tax Cuts &



present

Tax GPS: Navigating the Tax Cuts and Job Act for Entertainers

Synopsis: Join our distinguished panel of tax and legal professionals as they discuss how the new tax laws will affect entertainment industry professionals' tax and financial decisions. [Read more](#)

DAP's newest MovieMaker Article Now on Newsstands & Online



to: entity formation, Tax Code Section 199A – Qualified Business Income, and deduction rules.

Speakers:
 Gregory Zbylut – Attorney, Singer Burke
 Paul Husband – Founder, B. Paul Husband, A.P.C.

Wednesday, November 14, 2018
 Registration/Lunch: 12:00 p.m. | Program: 12:30 p.m. – 1:30 p.m.

Beverly Hills Bar Association
 9420 Wilshire Blvd., Second Floor, Beverly Hills, CA 90212
 (Parking at 241 No. Canon Drive)

This event is free for members of [CLO®](#) & The Order of Distinguished Attorneys
 \$25 – BHBA Members who pay in advance
 \$225 – Non-BHBA Members who pay in advance* (\$25 more for each of the door)
 Interested in Membership? [Click Here](#) [Click Here](#) [Click Here](#)
 *Minimum 24 Hours – Refund with 48 hours notice – Seated with 24 hours notice

Entertainment Law Section Chair: David Albert Pierce, Esq.
 Entertainment Law Section Vice Chair: Erin Friedman, Esq.
 Tax Section Chair: Jonathan N. Kohn, Esq.
 Tax Section Vice Chair: Megan L. Jones, Esq.

Taxation Law Legal Specialization Credit

WILL CREDIT This activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California. This activity is not eligible for credit for the State Bar of California. For more information on the rules and regulations for the State Bar of California regarding minimum continuing legal education, please visit [www.sba.org](#).

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Job Act for Entertainers."

The program discuss how the new tax laws effect entertainment industry professionals and entities. The speakers were tax attorneys Gregory Zbylut and Paul Husband. David Albert Pierce introduced the panel and delivered the opening remarks.

On Wednesday, December 12, 2018, the BHBA Entertainment Law Section will present a seminar program entitled "Backend Optics: Profit participation Through Different Lenses." This analysis of entertainment profit participation models will be led by Craig Wagner, EVP of Business Affairs at Paradigm Talent Agency, litigator Douglas Johnson, pf Johnson & Johnson LLP, and Steven D. Sills, partner at Green Hasson Janks LLP and will be moderated by Anita Wu also of Green Hasson Janks.

For more information and to register for this event click: [Profit Participation Seminar Registration](#)

Beverly Hills Bar Association **CLE** **eMinutes**
 Corporate Lawyers for Creatives & Entrepreneurs

Entertainment Law Section Presents

Backend Optics: Profit Participations Through Different Lenses

The evolving entertainment landscape is changing the way studios and distributors compensate talent and investors. Mega-disruptors like Amazon and Netflix are affecting everything from negotiating contracts to the predictability of the distribution cycles of traditional media. Meanwhile, the industry as a whole plays constant host to new entrants, departures, and mergers and acquisitions, which may leave those with profit participations feeling either excited or a bit uneasy. This panel will provide the perspectives of a negotiator, auditor and litigator, and offer tips on ways for attorneys to negotiate the deals and navigate their way through the ever-changing surroundings.

Speakers:
Craig Wagner – Executive Vice President, Business & Legal Affairs at Paradigm Talent Agency
Douglas L. Johnson – Partner at Johnson & Johnson LLP
Steven D. Sills – Partner at Green Hasson Janks LLP
 Moderator: **Anita Wu** – Principal at Green Hasson Janks LLP

When: Wednesday, December 12, 2018 Lunch, 12:00 p.m. (Program: 12:30 p.m. – 2:00 p.m.)
Where: Lavy's The Prime Rib (2nd Floor, Free Underground Parking)

\$0 – Members of [eCLO®](#) & The Order of Distinguished Attorneys
 \$45 – BHBA Members who pay in advance*
 \$245 – Non-BHBA Members who pay in advance*
 Interested in Membership? [Click Here](#) [Click Here](#) [Click Here](#)
 *Minimum 24 Hours – Refund with 48 hours notice – Seated with 24 hours notice

Entertainment Law Section Chair: David Albert Pierce, Esq.
 Entertainment Law Section Vice Chair: Erin Friedman, Esq.
 Program Chair: Gregory D. Sills

This is an amazing program about the ins & outs of profit participation and how to best protect artists' financial interests.



David Albert Pierce's latest article in MovieMaker Magazine has just been published in MovieMaker's annual **Complete Guide To Making Movies 2019** is now on newsstands and assessable online at www.Moviemaker.com.

In this issue, David's Indie Law column is entitled, "Make Your Feature's Development Less Dicy With Loyal Legal Counsel and Financing Foresight." It discusses the important legal issues that should be addressed early during the Development Phase of a motion picture.

Development is the time when your indie's budget needs to be put to the test. It's also the time when you may need to properly secure your rights to the literary work or works that serve as the foundation for the film you'll ultimately produce. And, of course, the development phase is when the money for your film is raised.

It's always cheaper to do things right the first time around than to have to mop up legal messes later. Consulting with a production attorney early and often during development can save you a lot in legal fees down the line. Plus, an experienced production attorney can help you in a number of ways well before that "day out of days" production schedule is even established.

To read the complete article, please click here: [Pierce's MovieMaker Magazine article](#).



Charity Donation Request for Leukemia Lymphoma Society

LEUKEMIA & LYMPHOMA SOCIETY®
 fighting blood cancers

David Albert Pierce is entering his tenth and final year as Trustee on the Executive Board of L.A. Chapter of Leukemia Society. In honor of this milestone, our firm has accepted the LLS "Executive Challenge" and is seeking to raise \$10,000 or more for Team Pierce Law Group. Every donation counts.

As of the time this newsletter has issued, we have already achieved our initial goal of \$10,000! Now, we are simply looking to see how much further we can go in this final

New Copyright Office Ruling Enhances "Fair Use" Safeharbor for Fictional Features

By Dhara J. Patel, Esq.

Federal Copyright Law permits a copyright holder to control how and when its copyrighted works are utilized. However

looking to see how much further we can go in this final year of fundraising!

If just half the people that read this newsletter were to contribute **\$15**, we would easily become the leading fundraising team in our particular Executive Challenge category.

Leukemia killed David's Dad in 1998. Today, LLS has led the way in making amazing breakthroughs in fighting blood cancers at the molecular level-- and these breakthroughs in turn advance cures for all cancers- including advances in Esophagus cancer which is what David encountered a year ago and 100% beat that little scare completely, thanks to rockstar doctors and medical advances such as that for which LLS is the trailblazer.

Please click on the fundraising page to make a donation. Contributions will be taken until the end of the year, but while it is on your mind now, please click and give today.

To donate to this year's Pierce Law Group/Light The Night Challenge, please go to our LLS Donation page: [click here](#).

Grab Your Yarmulke It's Time For Hanukkah!



Hanukkah begins Sunday night **December 2nd** and continues for 8 crazy nights.

Christmas this year will once again fall on **December 25th** with Christmas eve falling on the night before Christmas.

-- Mark your calendars.

DAP Set To Get Shanghai'ed Again

David Albert Pierce will be returning to **Shanghai, China** to once again present a full day seminar program on "**The Nuts & Bolts of International Film Finance and Production**."

This program is presented by **Uing Business School** (operated by the Chinese Studio known as **Uing Media**) as part of its **Sino-US Entertainment Law Studies** program and its **Chinese Cultural Study Tour**. This event will occur on **December 22, 2018** in Shanghai.

While in China, David will also be meeting with entertainment business leaders from **Alibaba** and will be touring their production facilities, as well as, meeting with other Chinese entertainment executives.

www.uingmedia.com

Chinese Cultural Study Tour - Uing Media

now and into the future. However, a Fair Use defense has always provided an exception to that general rule.

Generally, defining Fair Use has been a question for the courts based on its interpretation of how Congress has defined "fair use" via the Copyright Statutes. However, from time to time, the Copyright Office has developed certain "safeharbor rules" that if followed can provide certainty and peace of mind to those looking to use copyright material under the Fair Use exemption. After these safeharbor rules are adopted, the Copyright Office is required to reexamine them every three years, to determine whether the rules are working well or whether anything in the safeharbor needs to be altered, changed or otherwise revisited.

In 2010, Copyright Office first extended an exemption to documentary filmmakers to allow documentarians to use portions of copyrighted material that were relevant to establishing the thesis of their documentary. On October 26, 2018, the Copyright Office extended the exemption to include fictional filmmakers. As a result, fictional filmmakers can also use portions of materials from copyrighted works in the same fair use manner that non-fictional documentary filmmakers could use such otherwise protected works.

In specific, the safeharbor exemption permits fictional filmmakers to use copyrighted works without permission if the use is intended as a "parody or for its biographical or historically significant nature" encompassed in the fictional film. This is a significant advancement for producers of feature films. However, running a full Fair Use analysis is still recommended to ensure that you don't exceed the parameters of the new safeharbor and remember this rule is required to be revisited by the Copyright Office in October of 2021.

The nature and extent of the use is still critical, as it allows a filmmaker to use copyrighted material without seeking permission from the copyright holder if the use is deemed "fair use." The traditional four factors that come into play when determining "fair use" are: (1) purpose and character of the use (i.e., whether the nature of the use is commercial, educational, commentary, or criticism); (2) nature of the copyrighted work; (3) the amount and substantiality of the work used in relation to the whole (i.e. did you use 2 seconds of the copyrighted work or 2 minutes?); and (4) the effect of the use on the market for or value of the copyrighted work (i.e. will the use financially harm the original copyright holder?). Since there is no bright line rule for what use constitutes "fair use" each use is evaluated on a case-by-case basis. However, most "fair use" arguments typically fall into one of two categories: (1) comment and criticism; and (2) parody (alters the copied work in such a way that "ridicules a well-known work by imitating it in a comedic way").

If you have any questions concerning fair use or additional copyright matters, contact Pierce Law Group's **John R. Baldivia, Esq.** at john@piercellp.com, **Dhara J. Patel, Esq.** at dhara@piercellp.com or **David Albert Pierce, Esq.** at david@piercellp.com

The new safeharbor ruling can be found here: [Copyright Safeharbor Federal Register 1026018](#)

New IATSE Bargaining Unit...."Script Coordinators and Writer's Room Assistants"
By Tony Hanna, Esq.

That's right, we said IATSE not WGA.

While many are unaware, as of February 4, 2018 a new bargaining unit was created for those historically not represented. The new bargaining unit is called "2017 IATSE Local 871-Script Coordinators and Writer's Room Assistants." However, there is a limitation as to the scope and geographical coverage. If employees are full-time in the county of Los Angeles, on live-action, scripted dramatic television motion pictures or live action scripted dramatic new media, then Local 871 likely cover them. However, there is a long list of productions that are not covered, such as a movie-for-television, live musicals and several other exceptions which Pierce Law Group LLP can determine if your production may be affected.

If you have a writer's room with Writer's Assistants or use a Script Coordinator, and you are working in Los Angeles, it would be prudent to determine in advance if your employees fit within the narrow eligibility. IATSE defines a script coordinator as "...a person who reports to the Showrunner or Head Writer and whose primary duties in connection with the production of a motion picture are the editing of copy, formatting and distribution of scripts." Writer's Assistants are assistants designated to the Writer's Room. The odd aspect of all of this is that most members of the bargaining unit will be transient, in that few people seek to devote a career as a Writer's Assistant, and once they become a full fledged Writer their membership in this new IATSE bargaining unit will become moot as the WGA contract will then be applicable.

For further information, contact Tony Hanna at Pierce Law Group LLP: tony@piercellp.com. For the full terms of the new IATSE contract, see: [IATSE Writer's Assistant Agreement](#).

An Afternoon at the Theater Watching One Of Our Youngest Clients Mezmerize the Crowd



10 year old **Griffin Mancini** wows audiences at the **Dixie Canyon Performing Arts Charter School's** as **Willie Wonka**.

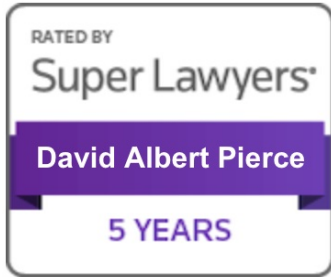
Headed To Park City In January? Let Us Know!



Sundance Film Festival runs from January 24, 2019 through February 3, 2019 and Slamdance Film Festival runs from January 25th - Jan. 31st. Pierce Law Group will once again be at the Festivals and will be conducting Daily Legal Clinics at the Slamdance Headquarters at Treasure Mountain Inn.

Pierce Law Group will also be hosting its annual friends & clients steak dinner on Sunday January 27th. If you will be at Sundance and would like to join us for our invite dinner, please contact: [Client Liaison PLG-LLP](#)

Pierce Law Group LLP recognized as industry leader by peers and professional associations



About Pierce Law Group LLP

Pierce Law Group LLP is a full service, boutique entertainment law firm that provides both transactional and litigation legal services. Our practice areas include 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. We represent production companies and other creative businesses as well as artists including producers, actors, writers, directors, comedians, and other entrepreneurs. Our client list includes both Academy Award and Emmy Award winners. We utilize an academic and analytic legal approach to accomplish creative solutions to our clients' goals.

DISCLAIMER

The information you obtain in this newsletter is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters, and electronic mail. Contacting us does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established.

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