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Rex S. Heinke

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A HYPOTHETICAL: POTENTIAL LIABILITY ARISING FROM THE DISSEMINATION OF VIOLENT MUSIC[†]

*Rex S. Heinke**

Daniel Roberts, a fifteen-year-old fan of heavy metal music, pled guilty to killing a teenage girl in 1998. At his arraignment, Roberts stated that he had committed the crime after listening repeatedly to albums by his favorite heavy metal band. The music on the albums depicted in graphic detail brutal acts that the singer sought to perform against the listener and various “girls” and “virgins.”

The girl’s parents (the plaintiffs) sued multiple defendants: (1) the band; (2) its individual members; (3) its record company; (4) the producer of the albums; (5) the music publishing company that sold sheet music of the band’s songs; (6) the distribution company that distributed the band’s albums; and (7) a separate distribution company that sold the band’s older albums through mail order.

The plaintiffs raised two separate causes of action. First, they alleged that the lyrics of the music caused Daniel Roberts to commit the murder. Accordingly, the plaintiffs alleged that the defendants should be liable for wrongful death. Second, they alleged that the defendants committed unlawful and unfair business practices¹ by disseminating material that is allegedly obscene² and “harmful” to minors³ under California law.

In support of their unfair competition claim, the plaintiffs cite various social science data that suggests that violent music correlates to violent

[†] The following represents a set of hypothetical facts prepared for a panel discussion held in conjunction with the Fourth Annual Entertainment Law Symposium sponsored by Loyola of Los Angeles Law School on February 22, 2002. An edited transcript of the panel discussion appears in this Issue. *A Panel Discussion: Potential Liability Arising From the Dissemination of Violent Music*, 22 LOY. L.A. ENT. L. REV. 237 (2002) (panel discussion transcript).

* Partner, Akin, Gump, Strauss, Hauer & Feld, L.L.P.; Member, Advisory Board of the *Media Law Reporter* and author of the treatise *Media Law* (Bureau of National Affairs). Jessica Weisel, an associate at Akin, Gump, Strauss, Hauer & Feld, L.L.P., greatly assisted in the development of this hypothetical.

1. CAL. BUS. & PROF. CODE §§ 17200–17210 (Deering 2001).

2. CAL. PENAL CODE § 311.1 (Deering 2001).

3. *Id.* § 313.1.

behavior in minors.

The plaintiffs contend studies based in social science show a correlation between delinquent behavior and listening to heavy metal music. Youth in juvenile detention are more likely than other teenagers to claim heavy metal as their favorite music. Other studies show correlations between chemical dependency and preference for heavy metal music.

The plaintiffs also cite government reports that conclude that media violence is a factor in aggressive behavior. Similarly, the Surgeon General has concluded that teen exposure to media violence is a factor in their physically and verbally aggressive behavior and in aggressive attitudes and emotions. However, these studies have found that other factors—child abuse and neglect, victimization, bullying, drug and alcohol abuse, exposure to violence in the home, neurobiological indicators, socioeconomic factors, and access to guns—are more important factors.

In particular, the plaintiffs point to a recent Federal Trade Commission (“FTC”) study that concludes that music like the heavy metal music at issue here is advertised in publications and television programs attracting high percentages of teenage readers and viewers.⁴ Many of these advertised recordings contain parental advisory lyrics. In studying fifty-five explicit content recordings, “all of them were marketed to children under 17.”⁵

The defendant’s main argument in response is that music is protected under the First Amendment. Thus, unless the music on the albums falls into a category of speech that lies outside the scope of First Amendment protection, no liability may be imposed for creating or disseminating the songs. The defendants argue that the music could not “incite” violence. They also maintain the music is neither obscene nor harmful under the applicable California statutes, which restrict only sexual content. If the plaintiffs wish to regulate violence in the media, their arguments are more appropriately directed to the legislature and not to a trial court applying the broadly worded unlawful and unfair competition statute.

With respect to the social science and government reports, the defendants argue they cannot override the first Amendment. In addition, the recording and other media industries have contended that the FTC report equates advertising in a forum possessing a large teenage audience with marketing to minors. However, these forums also provide target

4. This is an actual FTC document. FED. TRADE COMM’N, MARKETING VIOLENT ENTERTAINMENT TO CHILDREN: A SIX MONTH FOLLOW-UP REVIEW OF INDUSTRY PRACTICES IN THE MOTION PICTURE, MUSIC RECORDING & ELECTRONIC GAME INDUSTRIES: A REPORT TO CONGRESS (April 2001), available at <http://www.ftc.gov/reports/violence/violence010423.pdf>.

5. *Id.* at 13.

audiences for adults who are likely to be interested in the advertised products. Thus, for instance, advertising a record album on the MTV show "Total Request Live" not only reaches the majority audience of teenagers, but also the minority group of adult viewers who are likely to have a strong interest in music. Thus, the advertisers argue that equating advertising in these forums with advertising to minors fails to take into account the rights of all viewers, including the adult minority, to receive the advertisements.

