ambiguous statute.[19] Difficulties of administration created by the instant case, may well call forth Congressional overhauling of the Act.[20]

TELEVISING MOTION PICTURES AS COMMERCIAL ADVERTISING

In two contracts now expired plaintiff, Roy Rogers, had given defendant-producer the perpetual right to use his name, voice and likeness in the exhibition of pictures in which plaintiff had appeared, including exhibition on television, and the perpetual right to exploit the films. But the right to use plaintiff's name and personality for commercial advertising was given only for the contract term. In an action to restrain defendant from licensing the televising of motion pictures featuring plaintiff, *held*, injunction granted. Televising films to an audience which pays no admission charge or fee is a use for the commercial advertising of the sponsor's product if the program is sponsored, or of the television station if it be a sustaining program. As defendant's rights with respect to commercial advertising lapsed with the expiration of the contracts, such unauthorized use would constitute a violation of plaintiff's property and contract rights and would also constitute unfair competition. *Rogers v. Republic Productions, Inc.*, 104 F. Supp. 328 (S.D. Cal. 1952).

It is generally held that a contract for the use of an actor's name, voice and likeness in a motion picture confers on its producer full ownership of the motion picture for any purpose,[1] unless the artist expressly reserves rights in the contract. Violation of such reserved rights, or similar rights in the artist absent a contract, has been held actionable on the basis of contract,[2] property right,[3] right of privacy[4] or unfair competition,[5] and even a statu-

19. *See* Guessefeldt v. McGrath, 342 U.S. 308, 319 (1952).
20. *See* instant case at 162 (dissenting opinion).

1. Gene Autry v. Republic Productions, Inc., 104 F. Supp. 918 (S.D. Cal. 1952); Chavez v. Hollywood Post No. 43, Amer. Legion, 16 U.S.L.Week 2362 (Cal. Super. Feb. 3, 1948); Lillie v. Warner Bros. Pictures, Inc., 139 Cal. App. 724, 34 P.2d 835 (1934); *cf.* Nash v. Alaska Airlines, 94 F. Supp. 428, 431 (S.D.N.Y. 1950); Noble v. One Sixty Commonwealth Ave., Inc., 19 F. Supp. 671 (D. Mass. 1937); see Silverberg, *Televising Old Films—Some New Legal Questions About Performers' and Proprietors' Rights*, 38 VA. L. REV. 615 (1952).

2. Lillie v. Warner Bros. Pictures, Inc., 139 Cal. App. 724, 34 P.2d 835 (1934); Bennet v. Gusdorf, 101 Mont. 39, 53 P.2d 91 (1935); Fairbanks v. Winik, 206 App. Div. 449, 201 N.Y. Supp. 487 (1st Dep't 1923) (by implication).

3. Uproar Co. v. N.B.C., 81 F.2d 373 (1st Cir. 1936), *cert. denied*, 298 U.S. 670 (1936); Pittsburgh Athletic Co. v. KQV Broadcasting Co., 24 F. Supp. 490 (W.D. Pa. 1938); U.S. Life Ins. Co. v. Hamilton, 238 S.W.2d 289 (Tex. Civ. App. 1951). *Contra:* Lillie v. Warner Bros. Pictures, Inc., 139 Cal. App. 724, 34 P.2d 835 (1934).

4. Sinclair v. Postal Telegraph and Cable Co., 72 N.Y.S.2d 841 (Sup. Ct. 1935); *cf.* Waring v. W.D.A.S., 327 Pa. 433, 456, 194 Atl. 631, 642 (1937) (concurring opinion). *But see* Chavez v. Hollywood Post No. 43, Amer. Legion, 16 U.S.L. Week 2362 (Cal. Super. Feb. 3, 1948).

5. Chaplin v. Amador, 93 Cal. App. 358, 269 Pac. 544 (1928); see Warner, *Unfair Competition and the Protection of Radio and Television Programs*, [1950] WASH. U.L.Q. 297, 498.

tory cause of action exists in some jurisdictions.[6] But where the right reserved pertains to commercial advertising, it is still unsettled whether exhibition on television is a breach thereof. A very recent decision held, on facts indistinguishable from the instant case, that exhibition on a sponsored television program does not constitute commercial advertising.[7] In substantial accord with this decision is the holding that a between-halves performer in a televised football game can not object to his performance being televised on the ground that it would violate the commercial advertising right reserved in the employment contract.[8]

In the case of newspapers,[9] magazines[10] and even calendars,[11] a distinction is drawn between the reproduction of a name or likeness primarily for entertainment or information purposes and a use solely or primarily for advertising. Only if the reproduction is physically incorporated in the advertisement is it said to be a use for commercial advertising.[12] It would be difficult, therefore, to categorize all reproductions of name, voice or likeness in television entertainment as a use in commercial advertising, unless a distinction is drawn, as was done by the instant court,[13] between the television audience which pays no admission fee and the newspaper, magazine or motion picture theater audience which does.

The court held that the primary function of television entertainment is to advertise the station, network or sponsor's product whereas advertising in a motion picture theater is merely "incidental."[14] While advertising may be incidental to entertainment in motion picture theaters, it is quite essential to the functioning of other mass media such as newspapers and magazines, despite the fact that the audience is charged "admission." The intimate association of magazine entertainment and advertising has not prevented the courts from separating those magazine reproductions of name or likeness which are commercial advertising from those which are not.[15]

In the case of television, differentiating between use for entertainment and use for advertising may be somewhat more difficult, especially where the juxtaposition of the name, voice or likeness and the advertisement imply endorsement of the advertiser's product. The difficulty, however, does not

6. N.Y. CIV. PRAC. ACT §§ 50, 51; UTAH CODE ANN. § 103-4-9 (1943); VA. CODE ANN. § 8-650 (1950).
7. Gene Autry v. Republic Productions, Inc., 104 F. Supp. 918 (S.D. Cal. 1952).
8. Gautier v. Pro-Football Inc., 278 App. Div., 431, 106 N.Y.S.2d 553 (1st Dep't 1951).
9. Lahiri v. Daily Mirror, 162 Misc. 776, 295 N.Y.Supp. 382 (Sup. Ct. 1937).
10. Maloney v. Boy Comics Publishers, 277 App. Div. 166, 98 N.Y.S.2d 119 (1st Dep't 1950).
11. O'Brien v. Pabst Sales Co., 124 F.2d 167 (5th Cir. 1942).
12. Sharkey v. N.B.C., 93 F. Supp. 986 (S.D.N.Y. 1950) (newspaper advertisements).
13. Instant case at 333, 338.
14. *Id.* at 338.
15. See Maloney v. Boy Comics Publishers, 277 App. Div. 166, 98 N.Y.S.2d 119 (1st Dep't 1950).

seem insurmountable and suggests merely the need for nicer factual distinctions. In any event, where the parties, as in the instant case, have differentiated between television rights and commercial advertising rights in the contract of employment, the courts would seem precluded from the determination that any use on television of name, voice or likeness is commercial advertising.

APPLICATION OF FEDERAL VENUE STATUTE TO FOREIGN CORPORATIONS

Defendant, a Maryland corporation with its principal office in the Southern District of New York, appointed an agent for the service of process in accordance with New York law. It did no business, however, in the Eastern District where this action was brought. On motion to quash service or alternatively for transfer on the ground of improper venue, *held*, motion denied. Venue is properly laid wherever a defendant resides, which, in the case of a corporation, includes any district where it is licensed to do business. Having designated a statutory agent for the service of process, the instant defendant was licensed to do business throughout the state including the Eastern District. *Bertha Building Corp. v. National Theatres Corp.*, 103 F. Supp. 712 (E.D.N.Y. 1952).

Venue of action over which the federal courts have jurisdiction lies in the judicial district of which the defendant is a resident or, where the jurisdiction is based on diversity of citizenship, in the district where either the plaintiff or defendant resides.[1] Until enactment of the new Judicial Code in 1948,[2] the residence of a corporation was limited to the state of its incorporation[3] despite the fact that such juristic residency often bore no relation to the corporation's places of business. As a result, it frequently occurred that venue in an action against a corporation lay only in a district inconvenient to the plaintiff and remote from the place where the cause of action arose. The Supreme Court lessened this inconvenience somewhat when, in 1939, it held that a foreign corporation, by appointing an agent for the service of process in accordance with New York law, "consented to be sued in the courts of New York, federal as well as state . . . ,"[4] and thereby waived its privilege to insist on proper venue.

1. 24 STAT. 552 (1887), as amended, 28 U.S.C. § 1391 (Supp. 1951).
2. 28 U.S.C. (Supp. 1951).
3. Seaboard Rice Milling Co. v. Chicago, R.I. & P. Ry., 270 U.S. 363 (1925); Shaw v. Quincy Mining Co., 145 U.S. 444 (1892).
4. Nierbo Co. v. Bethlehem Shipbuilding Corp., 308 U.S. 165, 175 (1939).