

## When Worlds Collide: "Take Me to Your Lawyer"? (UCLA Extn. Ent. Studies, Fall 2002)

By Jonathan Handel



It's been about ten years since the funny green men and women from Up There—Silicon Valley, that is—landed in Hollywood and stepped out of their pie plate spaceships. All at once, three things happened that marked the beginning of an interplanetary exchange that continues today. (1) Al Gore came to town to help present a conference on what was then quaintly called the "Information Superhighway." Gore's advisors had neglected to mention that "superhighway" in L.A. is just another word for "parking lot." (2) Terminator 2 was released, with computer graphic special effects that seemingly cost almost as much as Arnold did. Remember liquid metal? (Remember Arnold?) (3) Movie and TV mogul Barry Diller left Hollywood to run a home shopping company in suburban Pennsylvania, convinced that what we now call "e-commerce" would allow communication directly with audiences.

Before you could say "Klaatu barada necto," Hollywood had to understand tech. As with any interplanetary exchange program, learning alien culture and language has been key. Which brings us to today's question: How are the lawyers, NoCal, and SoCal, coping with the new world of convergence? The fairest answer is probably "Needs Improvement." These are still two worlds separated by a common language and distinct terminology.

Take intellectual property (IP), for instance. Both industries—tech and Hollywood—depend vitally on IP, whether scripts and movies or software and hardware. In traditional Hollywood, when the studio buys a director's work product, i.e., a finished movie, it buys essentially all rights in the work product. But when the studio buys software, or the output of software, such as special effects, it can't obtain all rights in the software, because the effects house would have nothing left to sell to its next customer. The bits and pieces of software that a tech company creates over the years are its intellectual capital—the rough equivalent of a studio library. The studio lawyers are still learning this.

Or look at back end. In pre-digital Hollywood, the back end was strictly deferrals, residuals, net profits (if any, a big if) and, for the stars, gross profits. The definition of profits was typically almost as long as the rest of the contract. In the tech business, profits can be defined in a sentence or two, but profits are only for companies. For individuals, the back end is usually stock options, or perhaps bonuses.

Terminology is another great divide. Words like "credit," "lender," "billing," and "option" have very different meanings in the digital and analog worlds. Other terms, such as "source code," "API," and "engine," are new to Hollywood and still may be mysterious to its lawyers, while tech lawyers doing Hollywood deals are still learning about "principal photography" and "above the title." Even customary contract clauses differ wildly. Confidentiality, non-competition, and limitation of liability clauses are standard in tech contracts, but were unknown in Hollywood until recently. Provisions such as "no obligation to proceed," waiver of injunction, and detailed suspension/termination clauses are unique to Hollywood, and might well surprise the tech attorney. Hollywood deals are often subject to the jurisdiction of a guild or union, which automatically applies a multi-hundred page collective bargaining agreement to the terms of the individual contract. Silicon Valley, in contrast, is unlikely ever to understand the mystery and beauty of the WGA Minimum Basic Agreement.

Finally, there's culture. In Hollywood, a signed deal, if there is one, is often considered a good beginning for renegotiation; but in Silicon Valley, most deals actually get signed, and relatively few are renegotiated. Studio lawyers still exchange contracts by fax, whereas tech lawyers use email and send long faxes only when their servers are down. One group may still wear black suits, while the other favors black polo shirts. Clearly, although it's been ten years, it's still two different worlds, and the fun is just beginning.

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