

The Independent View

Report from Las Vegas

By Louise Levison

On a mission to find out what is new in digital and hi-def, I went off to the National Association of Broadcasters annual convention in Las Vegas. Although many of the exhibits only an engineer would find fascinating, here are a few notes that I brought back.

1) Michael Powell, Federal Communications Commission Chairman, strongly suggested that the broadcasters embrace an FCC proposal that would require the nets to air only digital TV channels by 2009. Under current law, broadcasters have until 2006, or until 85% of the nation can receive digital broadcasts, to switch over to digital TV. The government proposes to shut off the analog frequencies that television stations now use. Even Powell, though doesn't think either goal is doable by 2006. Keep in mind that this was the broadcasters' convention. The FCC doesn't control the cable operators. The broadcasters, made public, sent a letter to the FCC saying that the plan would prevent HDTV broadcasts from reaching digital set owners, because the cable companies could degrade the signals to inferior analog channels. Analysts say most cable operators are likely to continue to deliver analog channels to the customers for the foreseeable future to avoid angering subscribers unwilling or unable to upgrade their analog televisions to more costly digital sets.

2) Marc Andreessen (founder of Netscape and co-founder and Chairman of LoudCloud) gave the keynote address for the new media track. "Copy protection won't work, and technically it can't work," he said. "If a file is digital and a computer can see it and play it, then it can copy it." Speaking of the early computer years, he said that all the software companies thought that they could implement copy protection. "They couldn't do it. So it's ironic that software companies now come to Hollywood and say, 'We've got a copy protection solution for you.' They couldn't do it themselves." His solution is to educate people from an ethical, moral and legal standpoint that it's wrong. "Most people don't want to go through their lives thinking of themselves as criminals," he added. The legal part may be right. It appears the only thing that has slowed downloaders is being sued by the record companies!

3) Panavision debuted a high-performance optical system for high-definition video cameras with an unprecedented 300:1 zoom ratio. (The lens also can be mounted on standard-definition cameras, but it is optimized for HD.) The new Panavision 300x HD Compound Zoom lens has a ratio of 7mm to 2100mm. Just to put that into perspective, the next-highest zoom ratio is less than 100 times. Well-regarded for its high-precision spherical and anamorphic optics for filmed entertainment, Panavision de-

ecided to apply its Primo cine optics expertise to new markets. Although the prototype lens is a little too new for use at the Olympics this summer in Athens, Greece, viewers can expect to see it in use in televised Nascar races and eventually in scenes from the Olympics in Beijing in 2008.

4) The DVD Forum has given provisional approval of H.264 (MPEG-4) as one of the codecs for the HD DVD specification. Unlike other proprietary codecs on the market - such as those from Microsoft and Real Networks - H.264 is scalable, allowing content creators to write their own content for everything from 3G phones to HD broadcast. There was a lot of H.264 encoding shown at NAB 2004. The first products will handle standard definition encoding, while high definition encoding products will appear in 2005. There are multiple market opportunities for H.264 in the broadcast and streaming arena. Satellite television providers in the US will use it to provide more HD channels; telcos who are providing TV over DSL want to use it for video compression to extend the reach and the number of streams they can offer; cable operators are interested in compression for HD broadcast and VOD streams; television broadcasters in Japan will use H.264 for digital TV broadcasts to mobile devices.

5) RealNetworks is planning to make its move into the online movie business by going around the studios and catering to indie producers. CEO Rob Glaser told *Daily Variety* that the studios that back MovieLink have been too hesitant to provide content and that system has too many restrictions. "Many individuals at the studios understand the scope of this problem, but they're stuck working at the lowest common denominator of their industry. By working with companies that are not at the center of the movie business [evidently he hasn't watched the Oscars the last three years!], we'll be able to build the critical mass that gets bigger players on board." There is no set time for the company to launch such a service.

Until next time . . .

[Louise Levison is the author of *Filmmakers and Financing: Business Plans for Independents*. (Focal Press, ISBN No: 0-240-80536-4) The updated fourth edition of the book, which includes a CD with worksheets for forecasting revenue, sample distribution agreements and sample synopses, is available now. Levison is the owner of *Business Strategies* (www.movie.money.com), a consulting firm in Sherman Oaks (CA) that specializes in business plans for individual films and film companies. Send comments and questions to louisel@earthlink.net.]



Louise Levison

Law 101 . . .

Protecting Your Stories Borrowed Elements or Stolen Ideas?

by Mark Litwak
Attorney At Law

When writers submit their work, they become vulnerable to theft. As an entertainment attorney I often hear from writers who believe that they have been ripped off. Usually the writer is a novice without representation who submits a script to an established production company. The company passes on the script or does not acknowledge its receipt. Months or years go by and one day the writer stumbles upon a movie that closely resembles his story and the credits show a recipient of the writer's script made it. The writer is convinced that his work was stolen and his copyright infringed. This may or may not be the case.

Many writers do not have a solid understanding of the nature and extent of what copyright law protects, and they may not know that they can also protect their interests under the principles of contract law. Let's begin with a discussion of copyright law.

Copyright does not protect story ideas, concepts or themes. So ten authors can write different stories about a doomed romance between lovers from dissimilar backgrounds, resulting in *Romeo and Juliet*, *West Side Story* and other variations. Also, facts and historical incidents are not copyrightable, so numerous authors could each write a biography on George Washington based on the same facts and incidents.

What copyright law does protect is the "expression of the author," the particular manner in which the writer tells the story, his approach to the material, his voice. In other words, what is protected is the embellishment on the idea, not the idea itself.

Consequently, others are free to borrow uncopyrightable elements from your work. But if they borrow your expression, then they have crossed the line. Granted it may be difficult to tell when an idea has been sufficiently embellished upon that the resulting work is considered an expression of an author and protected, but generally the more detailed the story, the greater the protection you will receive.

So how can a writer protect his ideas? By contract. While ideas are not protected by copyright, they are a form of intellectual property, and the recipient of an idea can agree to pay the provider for it. Such an agreement can be an enforceable contract.

In order to understand how a writer's idea can be protected by contract, let us first review some legal principles. There are different kinds of contracts. Some are written, others are oral. Contrary to popular belief, oral contracts may be valid. However, it is usually advantageous to have a written agreement, if only because it's evidence as to what the parties agreed.

The best way for a writer to protect himself would be to have the recipient of a story idea sign a written agreement. However, it may be awkward for a writer to begin a meeting with such a request. Some producers might be offended or worry about liability. They might want to consult their lawyer. Since writers often experience difficulty just getting in the door to see a powerful producer, asking for a written agreement may



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I am telling you this idea with the understanding that if you decide to use it, I expect to receive reasonable compensation." The producer most likely will nod her head yes or say "of course," in which case you have a deal. If the producer indicates that she does not agree to these terms, leave without presenting the story.

Since a contract made under these circumstances isn't in writing, there might be a problem proving its existence and terms. That's why it's advisable to have a witness or some documentation. You could bring a co-writer, agent or associate along to the meeting. After the meeting you might send a letter to the producer reiterating your understanding. The letter should be cordial and non-threatening. You could write: "It was really a pleasure meeting with you to discuss my story about singing cat. As we agreed, if you decide to exploit this material, I will receive reasonable compensation." If the terms set forth in your letter are not disavowed by the recipient, the letter could be considered of your agreement. Since the letter has not been signed by the producer, her agreement is implied from the fact that she didn't object. Of course, if the producer confirms these terms in writing, that would give you even better evidence.

But what if the producer listening to your pitch doesn't steal your story but repeats it to another producer who uses it? You can protect yourself by also stating: "I am telling you my idea with the understanding that you will keep it confidential and will not tell it to anyone else without my permission." If the producer nods her head okay or says yes, you have a deal, and you can sue if she breaches her promise.

[Mark Litwak is a veteran entertainment attorney and Producer's Rep based in Beverly Hills, California. He is the author of six books including: *Reel Power*, the *Struggle for Influence and Success in the New Hollywood*, *Dealmaking in the Film and Television Industry*, *Contracts for the Film and Television Industry*, and the recently published *Risky Business, Financing and Distributing Independent Film*. He's the author of the CD-Rom program *Movie Magic Contracts*, and the creator of the *Entertainment Law Resources* website where he can be reached: www.marklitwak.com]



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