Green Hasson Janks

Entertainment & Media

THE HISTORY OF THE LAUGH TRACK

By Steve Herrera

Whether you love or hate the laughter you hear in your favorite sitcoms, you have to appreciate the history and effort that was put into "sweetening" those less than polished gems we call the American sitcom. Over the years, it has become exceedingly difficult to determine which shows use a live studio audience and which shows "sweeten" their audience's reaction by adding or completely substituting artificial laughter. That's right, as inconceivable as it may seem, the laughter you have come to love or hate may have been augmented or artificially implanted into those sitcoms. The concept actually goes back to the 16th century during the Elizabethan era in which Shakespearean plays used "plants" or vested audience members to encourage reactions. In modern times the practice of using pre-recorded laughter has been slightly more sophisticated; however, before we dive into the mechanics of "canned laughter" it might serve us better to understand the psychology behind the laugh track.

Competing theories exist as to why the live studio audience and laugh tracks are conducive to laughter. Anthropologically speaking, prior to formal language it is not unreasonable to surmise that a series of grunts, groans, laughter and bodily expulsions were used to express the most common types of early hominid emotions, such as anger, desire, general approval and indigestion. With this in mind, it is easier to recognize the role that laughter has played in the social sphere of early humans and how it could indicate communal approval and a general feeling of pleasantness towards others within a particular tribe. In keeping with evolution, it has been theorized that the laugh track has been used primarily for shows that attempt to lure you into the characters' world that you are watching, as if you were actually there with the tribe. Shows such as *The Big Bang Theory* or *Seinfeld* are usually filmed showing the full outlay of the setting with a camera placed where the viewer would potentially be if they were there in real time, arguably, attempting

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Featuring people, news and business issues for the entertainment and media industry.

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to share the laughter with the viewer. It is hard to argue the effectiveness of this method. One well-known example is that of the producers of *Hogan's Heroes* whom created two versions the show's pilot. One pilot was deemed comically superior without a laugh track and one was deemed comically inferior with a "sweetened" laugh track. Surprisingly, the favorite amongst the test audience was the comically inferior "sweetened" pilot.

This "sweetening" practice was first used in radio during the late 1940s but found its true home with early single camera television shows in the 1950s. Producers of television shows didn't feel the audience could reliably produce well-timed laughter. The CBS sound engineer, Charley Douglass, who came to recognize the inadequacy of the live studio audience began to add or mute laughter as needed with his newfangled contraption, lovingly known as the "laff box". The prototype of the laugh machine was comprised of a large, 28-inch wooden wheel with a reel of recorded laugh tapes glued to the edge of the wheel and a series of typewriter like keys that would play the taped laughs. The original laugh box was rediscovered on the antiques road show a number of years ago and can be seen on the link provided ***http://video.pbs.org/video/1754622115/***.

The first American television show to incorporate a laugh track was *The Hank McCune Show* in 1950. Thereafter, the benefits of using the laugh track became apparent despite detractors criticisms of it its alleged disingenuousness.

Not only was the laugh track conducive of laughter but cost effective. Broadcasting live and with a live studio audience became more and more cost prohibitive, thus producers came to realize the efficiency of simply taping shows and sprucing up the laughter in post-production. Over the years Charley Douglass' monopoly on laughter held fast while his library of laughter expanded and incorporated the reactions of various live studio audiences spanning the course of over 20 years. Douglass' ingenuity ensured his monopoly from the early 1950s to the 1970s, which was finally challenged by his protégé Carol Pratt.

One might think that the laugh track has seen its day, and generally speaking it is true that the practice has seen its decline in recent years. But upon secondary review of today's most popular TV sitcoms one realizes that laugh tracks are still a valid tool. It's easy to forget which shows are currently using live studio audiences and perhaps our forgetfulness and willful ignorance harkens back to a primitive desire to share laughter, even if it is with a TV show. Current sitcoms using live studio audiences include, *The Big Bang Theory, Two Broke Girls, and Two and a Half Men* and while the producers of these esteemed shows maintain that the studio audience reaction is 100% real, it's not impossible to conceive that these shows have been lightly "sweetened". If you're still not convinced of the impact laughter makes on you're favorite sitcoms visit the link provided ***https://www.youtube.com/watch?v=jKS3MGriZcs***.

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FIVE THINGS TO CONSIDER BEFORE BRINGING A PROFITS OR OTHER CLAIM AGAINST A MAJOR STUDIO

*by **Ronald J. Nessim**, Principal at **Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow***

1 Pre-Litigation Audit

As a litigator, I am often approached by the talent's transactional lawyer and asked to evaluate the talent's potential claims against a major studio. While many claims, e.g., vertical integration and first opportunity rights, are more contractual than accounting in nature, it almost always pays for the talent to do an audit of the participation statements and/or property in question before commencing litigation. Simply, you want to identify all possible claims upfront and claims uncovered in an audit can be an important part of the talent's case and litigation strategy. Since participation accounting is not based on GAAP, the auditor who is hired needs to specialize in participation accounting and know what to look for and where to look for it. Counsel should also consider whether the audit should be a "work product" audit, where the auditor is retained by counsel (it can be the transactional lawyer and/or the litigator), to preserve the confidentiality of communications with the auditor and possibly some or all of the audit results.

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2 Contractual Limitations Period

While the statutory limitations period in California for breach of a written contract is four years and for breach of an oral contract is two years, studios often place contractual provisions in their talent contracts that provide for a significantly shorter limitations period and/or set forth incontestability periods. Shorter limitations periods are generally valid under California law as long as the shorter contractual period is deemed reasonable and six month limitations periods have been found reasonable under certain circumstances. Therefore, litigation counsel needs to carefully examine the contract(s) for such provisions and analyze issues such as when the claim "accrued" as soon as he or she is retained. If necessary, tolling agreements should be entered into pre-litigation.

3 Mandatory Arbitration Provisions

The studios are now adamant about including mandatory arbitration clauses, including designating their particular provider of choice, in their talent contracts. A recent survey we conducted with talent lawyers revealed that almost every major studio now designates JAMS as the provider in its talent contracts and that these clauses are presented to talent on a take it or leave it/non-negotiable basis. The studios are among the largest employers in California and many on the talent side believe that there may be a "repeat provider" effect favoring the major studios in such arbitrations. When we evaluate a claim pre-filing, we always look to see what the dispute resolution states, if there is an arbitration provision, if there are ways to challenge it and, if not, ways to at least mitigate some of its possible negative effects.

4 Careful Preparation and Attention to Detail

Litigation between talent and a major studio, whether in a public court room or in an arbitration, is often very hard fought. This is due to a variety of reasons, including the sums of money involved and that the studio often wants to send a message to the broader talent community that it will be costly (financially and otherwise) to bring a claim against it. Because of this, it is especially important for litigation counsel (in conjunction with the talent's other representatives) to do a careful analysis of the contract(s), potential claims and the evidence (documentary and witness testimony), both for and against, to the extent possible prior to filing a claim. Only after this careful analysis is done can the client make an informed decision as to whether litigation and/or a pre-litigation settlement makes sense.

5 Developing a Story to Tell

Particularly if the case will be heard by a jury, but also to some extent if it will be heard by a judge and/or an arbitrator, litigation counsel, should begin thinking even pre-litigation about a compelling narrative in support of the client's claim. Individual talent can often cast him or herself as the creator of the program in question and as a "David" against the studio's "Goliath." Studios, of course, have their own competing narratives, including that the talent has already been paid millions on the program, does not deserve more and that the studio took all of the financial risk. &

VIDEO GAME DEAL MAKING: PLAYING TO WIN *by Cedar Boschan*

First UK Panelist At Beverly Hills Bar Association

This summer, Green Hasson Janks' Cedar Boschan was honored to present the very first Beverly Hills Bar Association program featuring a video linked panelist from London, esteemed interactive game counselor Vincent Scheurer, owner of Sarassin LLP.

Cedar, an experienced interactive games royalty auditor, questioned Vincent and his world class U.S.-based colleagues: transactional attorney Wayne Kazan of Weintraub, Tobin, Chediak, Coleman, Grodin Law Corporation, as well as experienced trial lawyer Gerard Fox, Esq. of Law Offices of Gerard Fox, Inc. and Activision VP Product Management Enrico D'Angelo.

Their discussion dove deep into:

- Globalization
- Mobile
- In-App Purchases (and Profits)
- Digital Currency
- Independent Publishing
- Regulation
- Fresh Litigation Issues
- Overlooked Deal Points

The talk was a "hit" at the Beverly Hills Bar Association, which is establishing a London Chapter.

Interested in interactive? **Click here** to watch a clip or purchase a video of this engaging panel discussion.

L-R: Enrico D'Angelo, Activision; Gerard Fox, Esq., Law Offices of Gerard Fox; V. Cristina Massa, Esq., FOX; Wayne Kazan, Esq., Weintraub, Tobin, Chediak; Vincent Scheurer, Sarassin LLP; Cedar Boschan, Green Hasson Janks &

Q&A WITH EDWIN F. MCPHERSON, ESQ.

California Talent Agencies Act Expert

By Edwin F. McPherson, Esq. & Cedar M. Boschan
Reprinted from the ***The Auditrix***

Distinguished entertainment litigator Edwin F. McPherson is the foremost expert on California's Talent Agencies Act (the "TAA"). On the heels of a recent Billboard piece - ***"Did the California Labor Commissioner Just Shake Up the Music Industry?"*** *- we share the Q&A below to benefit talent representatives.*

To contact Mr. McPherson, visit ***mcphersonrane.com*** *or call 310-553-8833.*

Cedar Boschan: What is the Talent Agencies Act?

Ed McPherson: The Talent Agencies Act is found in California Labor Code Section 1700 et seq. Essentially, the Act governs the licensing and regulation of talent agents in the State of California. However, what the Act also does is to preclude anyone who is not a licensed talent agent from procuring employment for "artists" in the entertainment industry. The concept of "procurement" has been expanded over time to include any negotiation whatsoever, so that anyone who is not a licensed talent agent may not negotiate any terms of an employment agreement for an artist unless that person does so at the request of, and in conjunction with, a licensed talent agent.

Boschan: How does it impact recording artists and their representatives?

McPherson: The Act was enacted to protect artists. Many questions have been raised in the last several years (primarily by me) as to whether the Act really does what it was designed to do, or whether it actually hurts the very artists that it was designed to protect. Several years ago, professionals in the music industry lobbied to amend the Act to exempt recording agreements from the Acts proscriptions. That amendment went unchallenged for many years until the California Labor Commissioner, in the Dwight Yoakam v. The Fitzgerald Hartley Co., etc., et al., Case No. TAC 8774, determined that, because modern recording agreements include elements such as music videos, there are parts of a recording agreement that are subject to the Act and parts that are exempted from the Act. Now that most, if not all, recording agreements include many other "360" type elements, the so-called "recording agreement exemption" is all but gone.

Unfortunately, there was never an exemption made for the negotiation or procurement of publishing agreements, perhaps because nobody ever contemplated that a publishing agreement could be the subject of the TAA. However, not all publishing agreements are subject to the TAA. If the agreement is a simple licensing agreement, licensing the use of one or more compositions, the procurement of that agreement is not considered to be a TAA violation; however, if the agreement purports to require the services of the songwriter to write songs for a period of time, the procurement of that agreement is typically going to be found to be a violation of the Act.

The unfortunate fact of life in the music industry is that agents in the music industry do not typically negotiate recording agreements, publishing agreements, producer agreements, or even mixing agreements – so the TAA basically leaves a musical artist without anyone who is adept at negotiating such deals, who is legally authorized to do so.

Boschan: What about music producers and mixers, and their representatives?

McPherson: There is now an odd dichotomy between how producer agreements and mixer agreements are construed in accordance with the TAA. There is a case from a few years ago, entitled Lord Alge

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GREEN HASSON JANKS IN THE MARKETPLACE

Akash Sehgal, Director, addresses the California Enacts Film and Television Tax Credit Expansion in a ***Green Hasson Janks State and Local Tax Alert***. &

LES WEBINAR: EMERGING LICENSING GROWTH AREAS

Ilan Haimoff spoke on the ***LES Webinar Panel***: Emerging Licensing Growth Areas for the Entertainment Industry. &

v. Moir Marie Entertainment, Case No. TAC 45-05 (2008), in which the California Labor Commissioner ruled that a management company that essentially did nothing for two mixer partners but procure employment for them was not liable for violating the Act because a mixing agreement is a recording agreement under the recording contract exemption to the Act. Moir Marie actually found an expert witness who testified as such – and I can tell you that there is probably nobody else in the music industry that would say that a mixing contract is a recording contract. In fact, most of the time, mixers do not record anything; they only mix the tracks that have been recorded already. Even the Labor Commissioner thought twice about her decision, and granted Lord Alge's motion for reconsideration. However, unfortunately, the case had already been de novo'd to Superior Court, and jurisdiction therefore removed from the Labor Commissioner. Although it is doubtful that a similar case will be decided in the same way in the future, lawyers unfortunately are still allowed to cite to the case for authority.

More recently, in fact on August 11, 2014, the Labor Commissioner decided Lindsey v. Lisa Marie Entertainment, Case No. TAC 28811 (2014), in which the successor of the same management company, doing exactly the same kind of procurement for a producer client, was found to have violated the Act. The Labor Commissioner determined that a producer deal is not a recording agreement. This, of course, is the proper ruling. However, the interesting thing is that one could argue that a producer agreement is much more akin to a recording agreement than a mixing agreement. The hearing officer in the Lindsey case treaded carefully around the Lord Alge case, paying deference to the hearing officer in that case, simply by saying that his decision was limited to the (producer) agreement at hand.

Boschan: How do you help clients who are impacted by the Talent Agencies Act?

McPherson: Although I have often criticized the Act, I have represented countless artists against their former managers and others. Although I question whether the Talent Agencies Act is good for the industry as a whole, it would be malpractice for me not to use it to the advantage of talent that I represent when their former representatives come after them for commissions. Similarly, I have represented managers against talent when I do not feel that they have violated the Act, or at least have not violated the Act in a way that permeates the relationship, as defined in the Marathon v. Blasi case.

Boschan: You are a Talent Agencies Act activist. What changes do you think should be made to the act and why?

McPherson: I think that the entire Act should be looked at very closely in light of the entertainment industry as it exists today – not when the law was originally enacted. However, the first priority has to be the Solis v. Blancarte case! &

Ed McPherson has been practicing law for over 30 years. He is licensed to practice law in California, New York, Massachusetts, and Hawaii, and has litigated cases all over the country. He is a partner with the Los Angeles entertainment litigation firm McPherson Rane LLP, which specializes in the (talent side) representation of artists in the entertainment industry. A substantial portion of Mr. McPherson's practice involves the Talent Agencies Act, about which he has written numerous articles, given many panels, and has testified as an expert witness.

DEALING WITH THE WORST-CASE SCENARIO: THE 5 TIPS YOU NEED TO PROTECT YOUR CLIENTS IN DEALING WITH LAW ENFORCEMENT MATTERS

by Lara Yeretsian, Yeretsian Law, APC, *A Criminal Defense Firm*

1. CONSULT WITH A LAWYER FIRST:

Make sure your client consults with a lawyer before talking to law enforcement.

2. HANDLING A SEARCH:

Your client should not consent to a search of his or her person, vehicle or home. Note that consent to a search not only gives law enforcement legal authority to search but it gives them authority to conduct a broader search than a search based on probable cause.

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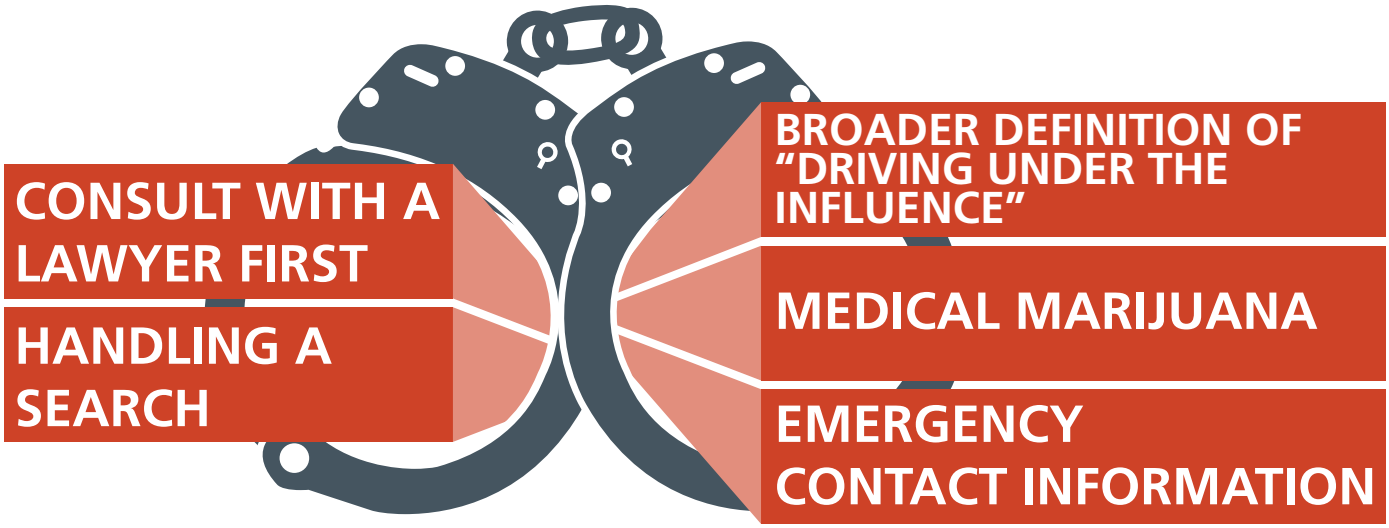
3. **BROADER DEFINITION OF DRIVING "UNDER THE INFLUENCE":** Make sure your client understands that a driver can be arrested for driving under the influence of a prescription drug. There is a misconception that a person can be arrested for a DUI only if the person is under the influence of alcohol or an illegal drug. In reality, a person can get arrested for driving while under the influence of Phenobarbital, Vicodin, Norco, Hydrocodone or other prescription drugs if that person's ability to drive is impaired from such use. Your client should know that law enforcement can arrest a person for driving under the influence even where that person's blood alcohol content is less than .08 percent. In other words, even if a person consumes a small amount of alcohol but as a result has impaired driving, that person can be arrested for driving under the influence.

5 TIPS YOU NEED TO PROTECT YOUR CLIENTS IN DEALING WITH LAW ENFORCEMENT MATTERS



4. **MEDICAL MARIJUANA:** Make sure your client understands that even if a person has a medical marijuana recommendation or card, an officer may arrest that person if the amount carried is more than what is expected for personal use.

5. **EMERGENCY CONTACT INFORMATION:** You should have the contact information, including the mobile phone number, of a criminal defense lawyer, doctors, and family members of your client, just in case! &

To contact Lara Yeretsian , please call (310) 254-9745 or (818) 741-1220, fax (818) 441-5296, email ***firm@laralaw.com***, or visit ***laralaw.com*** or ***yeretsianlaw.com.***

2ND ANNUAL ENTERTAINMENT & MEDIA INDUSTRY FORUM RECAP

On October 8th, attendees heard highlights from our 2014 Entertainment and Media Industry Survey: Emerging Trends In Television, including industry tracking, cord cutting, new players, financing and advertising.

Click here to view Green Hasson Janks' entertainment and media whitepaper, which gives an overview of the survey findings and other industry research.

Click here for recent industry news on cord cutting: a new standalone version of HBO. &

US TAX TREATIES ROYALTY WITHHOLDING

*by **Polina Chapiro***

When making royalty payments to recipients in other countries, US payors generally must withhold US tax at 30% from the amount paid. However, the US income tax treaties in many cases provide for reduced withholding tax or eliminate withholding tax altogether. In order to obtain withholding at treaty rates, a recipient of the royalties must provide the payor a statement that verifies entitlement to receive treaty benefits (for individuals form W-8BEN and for entities W-8 BEN-E). Following are the current withholding rates under the treaties in effect between the United States and various foreign countries:

ROYALTY WITHHOLDING BY COUNTRY

Country	Percent Withholding
Armenia	0%
Australia	5%
Austria	10%
Azerbaijan	0%
Bangladesh	10%
Barbados	5%
Belarus	0%
Belgium	0%
Bulgaria	5%
Canada	0% (cultural works), 10%
China	10%
Cyprus	0%
Czech Republic	0% (copyright), 10%
Denmark	0%
Egypt	15%
Estonia	5%, 10%
Finland	0%
France	0% (film sound or picture recording), 5%
Georgia (Republic of)	0%
Germany	0%
Greece	0%
Hungary	0%
Iceland	5% (trademark/ motion picture), 0% (other)
India	10%, 15%
Indonesia	10%
Ireland	0%
Israel	10% (film & copyright), 15%
Italy	0% (copyright), 5% (computer & other software equipment), 8%(other)
Jamaica	10%
Japan	0%
Kazakhstan	10%

Country	Percent Withholding
Kyrgyzstan	0%
Latvia	5%, 10%
Lithuania	5%, 10%
Luxembourg	0%
Malta	10%
Mexico	10%
Moldova	0%
Morocco	10%
Netherlands	0%
New Zealand	5%
Norway	0%
Pakistan	0%, 30%
Philippines	15%, 25%
Poland	10%
Portugal	10%
Romania	10% (films), 15%
Russia	0%
Slovakia	0% (films), 10%
Slovenia	5%
South Africa	0%
South Korea	10% (motion pictures), 15%
Spain	5%, 8% (films), 10%
Sri Lanka	5%, 10%
Sweden	0%
Switzerland	0%
Tajikistan	0%
Thailand	5%, 8%, 15%
Trinidad & Tobago	15%
Tunisia	10%, 15% (films)
Turkey	5%, 10%
Turkmenistan	0%
Ukraine	10%
United Kingdom	0%
Uzbekistan	0%
Venezuela	5%, 10%

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Please click for more information about our services to the entertainment and media industry: motion picture and television participation services, royalty and licensing audit services, expert witness and litigation support, transaction advisory services, assurance and advisory and tax planning and compliance.

*To submit future topics or provide feedback, please contact Ilan Haimoff at **ihaimoff@greenhassonjanks.com***

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