

# Interview with Larry Stein

## Carsey-Wolf Center at UC Santa Barbara

13-16 minutes

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Larry Stein is recognized as one of the leading litigators in the field of entertainment law and is a senior partner in Liner, Grode, Stein, Yankelevitz, Sunshine, Regenstreif & Taylor, commonly known as Liner Law. Stein has represented such high-profile clients as David Duchovny, Alan Alda, Michael Moore, and Timbaland.

Many of the cases that Stein takes on involve profit participation controversies that are rendered ever more complex by the expanding number of distribution channels and subsequent revenue streams. Moreover, the surge of media conglomeration has meant that producers are often selling their shows to buyers in other divisions of the conglomerate, a form of “self-dealing” that usually favors interests of the conglomerate over those of the talent.

The accounting practices of vertically integrated media conglomerates was a prominent theme to emerge from our conversation when we met with Stein at the Liner Law offices in the Westwood section of Los Angeles. He spoke at length about the studios’ immense power to protect their financial interests

and the particular challenges contract negotiations face in the digital era. We have included excerpts from both discussions below.

## **Consolidating Power**

### **How do you try to structure deals based on potential revenues?**

It's very hard because there's so much unknown right now, and because of conglomeration, there are just so few buyers with such great power. Transactional lawyers are running into brick walls—conglomerates constantly adjust contractual language to protect their profits. For instance, contracts didn't originally deal with self-dealing after the repeal of Fin-Syn until I started bringing lawsuits against the studios. Then, they introduced language that allows for self-dealing that's "presumed fair and just and equitable." Now, it's our burden to prove otherwise. The studios just keep eviscerating the talent's rights. Each time something new happens the transactional lawyers run to me and say, "Larry, Larry, what do we do about this because this is unfair?" I tell them, "Just negotiate as hard as you can to get the best deal for the client." It will take some time. First, we need a product that's sufficiently successful over a few years. Then, we'll need to launch an audit, which will take about another year. Once that's done, we can file a lawsuit, which will require another two years or so before a result comes in. And the truth is, studios work really hard to keep these cases quiet because they don't want these issues public.

## **Do you see the film industry responding any differently to these challenges?**

It's affecting all of the businesses because it's consolidating the power in a very few number of buyers and everybody is frightened about alienating those buyers. Therefore, transactional lawyers can only negotiate much more limited deals for their clients. Similar to television, you don't see too many independent productions anymore. There's so much focus on the bottom line that conglomerates are only interested in big-budget franchises, like *Twilight* or *The Hunger Games*. Studios want products with built-in audiences – book series, sequels, reboots.

Studios don't want to spend money on development anymore. Rather, the types of products they make are dictated by their other interests within the company. *Cars* made a significant amount of money, but they made a sequel because the first films sold so much merchandise, that dwarfed anything they could do at the box office alone. A lot of these companies are launching projects for reasons unrelated to the quality of the product itself.

## **Do different types of talent face different challenges? Do directors face different problems than writers, who face different problems than musicians?**

One thing I want to say is, it amazes me that all of these people don't get together and figure out a way to satisfy everyone's needs. Look at the music industry. I'm going to give you a perfect example of what's going to happen and how we should

learn from history. The RIAA [Recording Industry Association of America] sees the proliferation of avenues of distribution and sees piracy going on, and they think, “We’re going to stop this. We’re going to start suing all of these college students and stop them from illegally downloading this stuff.” If it didn’t work with Prohibition, what makes you think it’s going to work now? And they’re going along that route, and none of the labels or the organizations representing them is doing anything creative. So a guy like Steve Jobs comes along and says, “Hey, I’ve got an idea. How about we charge people 99 cents and let them listen to a good product?” It worked. Nobody in the industry thought about this, just this guy out there in the Internet world, in the technology world, came up with this thing. The industry just has to look at it and go, “This is what people want. Can I create a system for delivering quality product on a timely basis to people?” Because if you give them what they want for a reasonable price, and something of good quality, they’ll pay for it instead of stealing, they really will. But you must give them that product in a timely basis and it must be of good quality, and at a reasonable price. When I teach my class at USC’s law school I ask, “How many of you illegally download?” Eight years ago the numbers were much larger. But now they can get everything. At the time, their view was, “The record companies deserve it.” Why? Because they would want to own one song but had to buy a whole damn album, and albums were \$20 a pop. There was no flexibility.

It’s the same thing that’s happening with movies. All of the movies have very specific release windows. We’ve got domestic

distribution for this length of time, then we're going foreign, then we're going to go to pay-TV, and then we're going to go to video or CDs or whatever. You've got to change the way you're doing business based upon the change in technology and the changing desires of the people who are paying for your product. It is so institutionalized and so slow to change in the entertainment industry. We brought a lot of this on ourselves.

**Do you see a context where you could get everybody to the table and start to hammer some of these things out? Can you give an idea of what it might look like and whether there's something like that on the horizon?**

The most successful of the transactional lawyers have tried dealing with the guilds, and tried dealing with the studios, and tried dealing with the networks, all trying to get people together. It hasn't succeeded yet. But that's where we have to go. I think if the litigation becomes destructive and distracting enough, and I hate putting it in those terms, but that probably will be the agitation that gets people to do it. Either that, or the economics become so horrendous that at some point the big media companies will have to say, "Maybe we have to go into this kind of system because we just aren't making it without it. So fighting against the tide probably doesn't make sense and let's see if we can get in line with technology instead of trying to prevent it." I think the situation is going to have to get worse. The transactional lawyers probably have the best chance because as you probably know, there are probably 10 or 12 transactional entertainment law firms with between 10 or 20 lawyers who represent probably 85 to 90 percent of the creative people in

this town. If those transactional entertainment lawyers and their counterparts at the studios, networks, and record companies start to cooperate with each other, some serious and significant change can be made. But it's going to take that kind of cooperation.

## **Negotiating in the Digital Age**

### **What are things that you think everybody should know if they are negotiating a deal in the digital age?**

The key is to not rely upon the existing law but to recognize that it's going to change. You have to build into the contract a fair way of compensating the creative talent as platforms change or modes of distribution change and therefore revenue streams change. If you're attempting to obtain a percentage of a particular revenue stream and that revenue stream suddenly becomes less valuable or non-existent and you haven't anticipated other revenue streams, then you've got a real problem. Most people would not have the power to negotiate the kinds of terms you need because there's too much consolidation on one side and not enough consolidation on the other. So you have disparate bargaining power. Every transactional entertainment lawyer knows now that they should be making sure that VOD is at 100 percent, not 20 percent, royalty. Every transactional entertainment lawyer knows that your client should be compensated whether it's given to Hulu or a dot-com or the networks. They all know they can't get that automatically in their negotiation. What you have to do is try to be creative and look ahead. At one point, merchandising was nothing and people

would give away merchandising for an extra couple of bucks up front. Now, recognizing that the industry has changed, merchandising can be for some sorts of product the most revenue-generating stream. So they're smart enough to say they want to participate in the merchandising. And if they're really smart they'll say, "Not only do I want to participate in the merchandise, but I don't want self-dealing between you and a subsidiary of yours because I'm somehow getting cut out of my fair share." That's the sort of stuff they do in contracts, but it's going to be damn tough to get the studios to give talent the revenue talent deserves.

**What do you think of the position of Netflix right now in terms of its power in the distribution space?**

I have a view that I don't think is shared by a lot of people. A lot of people are really big on digital distribution. A lot of people that have digital distribution think they're going to control the industry. I don't think so. I think digital distribution is going to allow so much competition in the area of distribution and exhibition that I think that with all of those digital distributors, the people who are going to have real power are the content providers. As the digital distributors become more and more prevalent and dispersed, they are going to be the ones who are going to have to keep lowering their profitability and giving more and more to content providers. It kind of switched around. Content providers at one time were powerhouses. Now the distributors have a lot of power and are growing. But I think it's all going to come back to the content; I see everything in economics and in life as kind of a pendulum swing, and I think

it's going to swing back. And if it doesn't, there are going to be lawsuits in order to help regulate.

**How has your thinking about piracy and intellectual property changed in this digital environment?**

I'm kind of an interesting case because I was an ACLU [American Civil Liberties Union] pro bono lawyer of the year, so obviously I care about the First Amendment and freedom of speech and information. At the same time, I represent creative people who create content and I don't like seeing stuff that my clients create being pirated and misused. I'm kind of in a strange place. My view is that piracy is not the result of an inherent flaw in human nature that wants something for nothing; rather, it has resulted from the inability of the industry to provide quality product for a reasonable price on a timely basis. I think that we have to learn to do that. It's more complicated on the international level because we're dealing with different cultures and different people. Different countries have to get together and realize that those countries that are now using our product or pirating our product will be creating their own product and will want to protect it at some point. And we have to do an educational process internationally about that. Piracy has always had the greatest impact on the music industry but it will have a significant impact on the rest of the entertainment industry if we don't change the way we do things. This new technology requires us to have new ways of doing things.

**What is the nature of the litigation you're doing in respect to piracy and intellectual property issues?**



There are two kinds of piracy that I see. One is the kind when people really do just pirate other people's work and try to sell it as their own, or pretend that their product is the real product. I've always been involved in that kind of straightforward litigation. The other kind is where someone will rip off someone else's idea and get away with it. That's why we have what are called "idea submission cases" in California, which is different than copyright. Because copyright can only protect the *expression* of the idea whereas the concept itself is an idea, and the courts consider free as the air. But ideas, even if not developed into a script, can be valuable. The reason why we have idea submission cases is that Hollywood realized that when you enter into a contract with someone basically by saying, "I will tell you my idea," you should be able to get legal protection for that idea if the other person agrees to it by saying, "I'll compensate you for it." That's the concept of idea submission cases. The studios tried to kill idea protection by claiming copyright pre-empts and therefore, eliminates idea submission lawsuits. But in the Miramax case the court decided that copyright does not preempt idea submission. So there are two very different types of "rip-off" cases going on now in Hollywood.

[Read the complete transcript of our conversation with Larry Stein in \*Distribution Revolution: Conversations about the Digital Future of Film and Television\*.](#)