

Multimedia: What Is It? Who Owns It?

IP column published in *The Lawyers Weekly*

May 27, 1994

Edward Hore
Hazzard & Hore
141 Adelaide Street West, Suite 1002
Toronto, ON M5H 3L5
(416) 868-1340
edhore@ hazzardandhore.com

Imagine a conference on “Telephones and the Law” in, say, 1900. There’d be talk about how exciting the new gadgets were. Some lawyer might talk about the regulatory and business issues arising from the need to build an infrastructure of telephone cables. But most of what was said would be speculation, because telephones were so new in 1900 that no one knew how they would be used.

The two-day Insight Conference in Toronto on “Developing Multimedia Products: Business and Legal Issues” at the end of April was like that. Something big seems to be about to happen, but no one knows what. The law of intellectual property may change forever. On the other hand, it may not. (All in all, I think not.)

And what exactly *is* multimedia, anyhow?

Multimedia is a newfangled thing to do with computers. What it boils down to is that you can sit at your computer screen and make choices about what you want to see. You get a mixture of sounds, video segments, text or whatever, depending on what you choose.

Take for example the Compton’s Multimedia Encyclopedia. You see a menu. Let’s say you’re interested in the mating habits of warthogs. You choose “Warthogs -Mating”, and you get an article about same on your screen, plus buttons on the screen to push if, for example, you want to hear the noises warthogs make when in heat, or see a video segment of a warthog mating ritual. (Well, this may not be exactly what Compton’s actually has on warthogs, but you get the idea.)

You can now buy multimedia discs of “Jurassic Park”, the Beatles movie “A Hard Days Night”, or others by rock musicians. You get not only the song or movie, but also interviews, extra video clips or photographs, and other stuff to play with.

One day you may be able to interact like this with your TV, or some descendant of your TV. But it will cost astronomical amounts of money to upgrade the existing wire infrastructure (i.e. to build the “information superhighway”) before this can happen, and it

is unclear if consumers want this or are willing to pay for it. Multimedia over the phone or TV wires is therefore a long way off.

So, for now, if you want to try multimedia, you'll probably have to get it on a CD-ROM (Compact Disc - Read Only Memory), a shiny disc about the size of a cookie. You put the shiny cookie in your CD-ROM player, which may be part of your computer, and away you go.

At the moment, there are only about 4.5 million CD-ROM players in the United States. That is, there are not many. The actual CD-ROMs themselves retail for approximately \$50.00. So far, not many people buy them.

In other words, no one has yet figured out how exactly to make real money out of multimedia. But many people think there is money to be made.

Hollywood is involved in a big way already. It worries because fewer and fewer people go to movies. The gross industry revenue from movies is only about \$5 billion dollars a year, while video games generated about \$6.5 billion last year according to *Forbes* magazine last week (\$10 billion according to a speaker at the conference). People, particularly young people, don't want to watch movies anymore; they want to blast monsters. They want to interact with their entertainment. Hollywood therefore sees multimedia as the way to recapture consumers' hearts and minds.

The question is, what content will appeal to consumers? There must have been a time in the early fifties when no one had yet figured out what people wanted to watch on TV. Then along came Lucille Ball with the answer: people wanted to watch dumb sitcoms! *Et Voila* - TV never looked back! Multimedia has yet to find its Lucille Ball.

From an intellectual property law point of view, the big issue is whether anyone owns multimedia. Compton's, creators of the above-mentioned encyclopedia, caused great indignation by obtaining US patent 5,241,671 on August 31, 1993 with the not-so-catchy title *Multimedia Search System Using a Plurality of Entry Paths Means Which Indicate Interrelatedness of Information*. The patent has very broad claims, but essentially it protects a user friendly database search system which retrieves information containing text, pictures audio and animated data. In short, the patent seems to cover the whole multimedia concept. If the patent is valid, anyone making a multimedia product will have to pay Compton's royalties or damages.

Henry Ford once fought a lawsuit brought by someone who claimed to have a patent on the motorcar concept. To many people the Compton's patent is just as outrageous.

The US Patent office has now had second thoughts about the Compton's patent. It re-examined the patent, and then recently pronounced Compton's "invention" unpatentable, reversing its earlier position. Compton's now has an opportunity to make submissions as to why it thinks the patent should stand. If it does so successfully, there will no doubt

then be acrimonious patent litigation in which any defendants Compton's chooses to sue will argue that the patent is invalid. Compton's will be paying their patent lawyers very hefty fees for some time to come - an investment which may or may not eventually result a big-time return in royalties.

Another IP issue which kept coming up at the multimedia conference was the larger issue of whether the world's intellectual property laws are being rendered completely obsolete and useless by the coming of the information superhighway. There was frequent mention of an article to that effect in *Wired* magazine by John Perry Barlow earlier this year.

Some readers may recall that I wrote about the Barlow article in my column of April 8, 1994. I still think, that the world's intellectual property laws are here to stay, although there will no doubt have to be some tinkering to deal with hi-tech issues.

But then I'm a lawyer. Hi-tech people at the multimedia conference, however much they disagreed on anything else, were always in complete accord that lawyers know absolutely nothing about anything.