

Acting in the Virtual World

By Peter Goddard

IN the new "Cyberwood", the big winners will be the lawyers while the big losers will be the actors, if you consider the following scenario.

There was no questions who they'd get for the Humphrey Bogart role for the remake of *Casablanca*—Bogie himself. Cyber-Bogie, of course. Even at that, the asking price was \$20 million until Bogie's agents came down substantially when Universal threatened to use Robert Patrick's body—his reproduction rights were on loan from Carolco, which produced *Terminator 2: Judgment Day*—and then scan in Bogie's original face on it. Ingrid Bergman was blown out of the deal when her people asked for a location change. Her estate's Revlon contract restricted her replication in only up-scale environments and Morocco, past or present, wasn't one of them. So Gwyenth Paltrow was rushed on board for big points and the guarantee she'd be scanned into the original *Casablanca* with Bergman being erased. Hearing that Paltrow was being scanned, Paul Henreid's heirs threatened to sue Warner Bros. Paltrow playing Ilsa would make him look even older than Bergman did, an important concern for a guy who's now dead and really has to worry about his image. As an accommodation, Warners agreed to add several new scenes, including one where Henreid flattens Claude Rains in a bar fight at Rick's. (They used the same team that cloned the late Brandon Lee in *The Crow*.) The rest of the cast remained the same as the original, with Peter Lorre, Sydney Greenstreet and Conrad Veidt. However, Rufus Wainwright was chosen to play Sam, instead of a computer-generated Dooley Wilson. That way Universal's recording division, Polygram, could release an album of duets.

Techno know-how or ghoulish reproduction won't prevent "Cyberwood" from conjuring up the above scenario, but the law might, says Joseph Beard of St. John's University, a law professor who has published groundbreaking material on the legal questions surrounding what has become known as "the creation and exploitation of digital actors." It was a chance meeting with Steve Williams which started Prof. Beard thinking about the tangle of actors' rights issues arising from the digital recreation of living actors and "the digital resurrection of deceased performers and totally imaginary actors." Williams was terrified that Hollywood, scarcely his favourite place, would see the enormous commercial advantage in using a digital cast. He explained the technological potential for "vactors" (virtual actors) to Beard. Without real actors, the business wouldn't have to worry about whopping great fees, agents or drug-related delays.

Certainly ACTRA, the Screen Actors Guild, agents, the estates for late actors and living actors themselves are, however, alarmed by what the film and TV industry could do with or without their participation. The World Intellectual Property Organization is trying to set standards internationally, but no

one holds out much faith in its succeeding everywhere. "The question always is, can [actors' digital rights] be enforced?" asks Garry Neil, a Toronto-based policy advisor to ACTRA. "Even in Canada, we do not have a full regime of copyright protection for performers. Then there's the matter of the creation of 'vactors' and the impact they'll have on work opportunities. We already have a situation where they are creating virtual extras. It happened in *Titanic* and *Babe*."

Thinking like this has created cyber-panic. "Every actor I know is having him or herself digitally scanned," said an agent I know in Los Angeles. Motion-capture is not covered by SAG in the United States or ACTRA in Canada, either," says Neil. "The issue is this: Is it a performance? The question is not yet resolved, although it is part of the current round of bargaining with Canada's producers." But this is just the beginning of the moral and legal questions raised by Neil and Beard. I borrowed the *Casablanca* analogy from an article Beard had contributed to the *Entertainment, Arts & Sports Law Journal*. He borrowed it, quoting Philip Noyce, the director of *Clear and Present Danger*. Noyce was not happy that TV's *JAG* used scenes from *Clear and Present Danger* without permission. "Contracts will need to make it clear who owns the digital data captured by digital cameras, cyberware or other motion-picture devices," says Beard. "Is the owner the actor, the digital-effects folks or the production company?" And who's to stop a digital clone of a famous actor showing up in a porn clip? Bugs Bunny having hairy sex with Marilyn Monroe—it's possible and gives new meaning to "What's up, doc?"

Who's to stop a physical part of an actor being used as scanning fodder for a new, digitalized creation? One California CGI company, Electric Sandbox, scanned various parts of different women for what it called its "Digital Eve." And it's one thing for Robert Zemeckis to digitally resurrect dead presidents in *Forrest Gump*, but what if the resurrection was used in a less than innocent manner. What if you want Pierre Trudeau shouting, "Vive le Quebec libre!" from that famous balcony? Hey, no problem. What happens when a digital creation looks one heck a lot like a famous actor? Okay, so the digital guy has biggish ears with a fabulous smile, sort of like Tom Cruise. Let's even say that these very recognizable parts were "borrowed" from a famous actor only to be reassigned to the fictional creation? Who owns what? Who is who?

Prof. Beard reckons that we've got some time to sort out issues about who owns what when it comes to actors now dead. "However," he goes on, "with respect to the digital clones of living actors, the legal issues are of immediate concern. Whether by contract or guild agreement, the digital replicas of current actors need to be guarded against misappropriation and misuse." ●