

THE *Hollywood* REPORTER

The Comedy Issue

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Hint: It's not just Netflix

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So long, ice queens and gay best friends

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THE **BUSIEST MAN IN COMEDY**

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Susan Ruskin
The American Film Institute Conservatory taps the producer and educator as its new dean, replacing Richard Gladstein, who held the post for only 18 months.



Neal Harmon
The VidAngel CEO loses in court as his "clean movie" startup is ordered to pay \$62 million in damages to studios after a jury found copyright infringement of 800-plus films was willful.



Michelle Rejwan
Lucasfilm taps the *Rise of Skywalker* producer to oversee a new state of *Star Wars* films as well as series for the forthcoming Disney+ streamer.



James and Dennis Wang
China regulators abruptly pull the Huayi Brothers co-founders' \$80 million war epic *The Eight Hundred* from the Shanghai Film Festival, sparking worries of a broader censorship crackdown.

Showbiz Stocks

↑ **\$38.99 (+4%)
DISH NETWORK (DISH)**
The satellite TV firm is reportedly a strong contender to buy assets that Sprint and T-Mobile US must sell to win approval for a planned merger.

↓ **\$45.07 (-2%)
ACTIVISION BLZ (ATVI)**
Some investors worry that the popularity of e-sports isn't boosting financial performance of the video game maker quickly enough.

The Report

Behind the Headlines



Hollywood Faces 'Devastating' Reckoning Over Contract Workers

California's legislature is considering a bill that takes aim at the booming gig economy — but it could render the entertainment industry's tax-lucrative loan-out companies useless

BY ASHLEY CULLINS

This fall, Hollywood studio executives may be in for a shock when it comes to their budgets. A bill winding through California's legislature that takes aim at gig-fueled companies like Uber and Postmates may upend long-standing showbiz practices by reclassifying scores of independent contractors as employees, and could render tax-lucrative loan-out companies useless.

The bill, AB 5, which the state assembly passed May 29, is designed to protect workers from being misclassified as independent contractors and therefore denied such employee protections as minimum wage, overtime pay and workers' compensation. It seeks to codify and expand the California Supreme Court's 2018 *Dynamex* decision, and would presume every worker is an employee — with a few exceptions for people like

barbers and real estate agents — unless a company can show that the worker meets three criteria under the so-called ABC Test. The requirement that makes Hollywood nervous is that the



Newsom

independent contractor must perform duties outside the usual course of the company's business. "That test will necessarily lock talent out of being an independent contractor if it passes in its current form," says talent lawyer **Rick Genow**, whose clients include **Debra Messing**, **Anthony Anderson** and **Henry Golding**. "The economic impact would be somewhat devastating to both talent and the studios."

A doomsday scenario for Hollywood would look like this: A law is enacted with no exemption for entertainment workers; companies opt to treat everyone as employees for all purposes

to avoid complications; and loan-outs are effectively dead in the water. The last bit would be especially painful because 2017's Trump tax cuts killed business deductions for employees.

Tax rules are independent of labor rules and aren't directly addressed by the legislation, which means the status quo could remain for workers in that regard. But Hollywood business manager **Bob Jason** of NKSFB is dubious about whether many companies would opt to treat someone as an employee for one purpose (labor) and an independent contractor for another (tax) — especially when a misclassification carries financial penalties. "The studios, like everybody, act in their own self-interest," says Jason. "If they feel they have exposure, they will unquestionably act to protect themselves, and that would be by treating many, many more people as employees."

Illustration by **Mattias Adolfsson**

ABBAS: GARY GERSHOF/GETTY IMAGES; RUSIN: TOMASO BODOLINI/GETTY IMAGES; WANG: VICKY/GETTY IMAGES; NEVSON: G. FLORIANI/REUTERS; REJWAN: J. WANG; NELSUN: KENNEDY/GETTY IMAGES; C. WANG; VICKY/GETTY IMAGES; NEVSON: G. FLORIANI/REUTERS.

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It's often financially beneficial for talent to form their own corporation, and then that company loans out their services to other employers instead of those employers hiring them directly. Adds business manager **Harley Neuman**, who represents **Ellen DeGeneres** and **Scarlett Johansson**: "It would be catastrophic to our business if loan-outs went away." Neuman used to recommend that anyone bringing in at least \$250,000 a year from multiple sources should form a loan-out to reap tax benefits. Now he sets that bar at \$100,000 — in no small part because it allows the person to deduct commissions paid to agents, managers and other reps. "It would be a double whammy to lose the employee business deduction and lose the ability to use a loan-out," says Neuman.

It's unclear how much this bill would cost the entertainment business in total, but the state of California estimates it loses out on \$7 billion in payroll tax revenue each year because of alleged misclassification across all industries. Economist **Chris Thornberg** of Beacon Economics says the bill aims to solve a problem that's been overblown. "California's economy has the lowest unemployment rate it has ever had," he says. "People have options, and they're still choosing to drive Uber or Lyft." He expects film and TV productions would either leave the state or find ways to cut costs. "The reaction is typically lower base pay," Thornberg says. "For the industry to shake out, ultimately people are going to get more in the way of benefits, more in the way of comfort, and less in the way of take-home pay." The language of the bill isn't

final, so some of the potential negative impacts could be avoided through amendments. The deadline to pass legislation before sending it to Gov. **Gavin Newsom's** desk is Sept. 13. The California Chamber of Commerce is lobbying lawmakers to add an exemption for business-to-business contracts — a potential life raft for loan-outs — and another that would allow people to subcontract for short-term projects. CalChamber suggests broader exemptions for people who want to set their own schedule, and calls out videographers, freelance writers and musicians.

The Writers Guild of America on June 12 sent a letter to the bill's author in support of AB 5, expressing its concern that misclassification leads to unfair competition for responsible employers. (Under the WGA's collective bargaining agreement, writers who use loan-outs are guaranteed to be treated at least as well as employees already.) IATSE Local 80 business agent **Thom Davis** says his union's 3,600 members are already treated as employees and likely won't be affected, and SAG-AFTRA declined to comment.

Many of the lawyers, business managers and economists who spoke with *THR* say the industry could face collateral damage in the fight against employee misclassification if the law passes in its current form. "It's always easier to correct course rather than trying to undo something that's already been done," says Genow. Adds Singer Burke tax manager **Greg Zbylut**, "I don't think anyone in Hollywood should be ignoring it. They say bad facts make bad law, and here we have something nightmarish." *THR*

Producer **Walter Parkes** (left) and director **F. Gary Gray** were said to be at odds over the vision for *Men in Black: International*.



The Report

Behind the Headlines

Behind Sony's *Men in Black* Debacle: 'The Urgency Was Never There'

Ahead of a franchise-low \$30M bow, director **F. Gary Gray** nearly exited *International* while its producer remade the script **BY BORYS KIT**

In 2016, Sony Pictures' top executives, including chief **Tom Rothman**, faced a dilemma: reboot *Men in Black* or pursue a crossover with *21 Jump Street*? Initially, Sony tried to make deals for the crossover, but that plan required names such as **Steven Spielberg** and **Walter Parkes** on the *Black* side, and **Chris Miller** and **Phil Lord** on the *Street* side, to forgo rich producing deals. And when *Street* producer **Neal Moritz** refused to compromise on his first-dollar pact, several sources tell *THR*, the studio pivoted to a relaunch. With franchise stars **Will Smith** and **Tommy Lee Jones** absent, the June 14 release *Men in Black: International* fizzled stateside with a



Hemsworth



Thompson

\$30 million opening — a franchise low.

The studio had hoped for much more with the pairing of Marvel Studios' *Thor: Ragnarok* stars **Chris Hemsworth** and **Tessa Thompson**. But when the executive overseeing the project, exec vp production **David Beaubaire**, exited the studio in summer 2018 and was not replaced, a tug-of-war escalated between the film's director, **F. Gary Gray**, and franchise producer **Walter Parkes** over their vision. (Parkes, who wrote such features as the 1980s thriller *WarGames* and the 1992 **Robert Redford** crime caper *Sneakers*, produced the movie with his wife and business partner, **Laurie MacDonald**.)

Early drafts of the script by **Art Marcum** and **Matt Holloway** were described as being edgier, tying the story to the immigration debate. Multiple sources describe Parkes, who had final cut on the movie, as having a heavy hand in overseeing rewrites. One source says new pages arrived daily for the actors. Thompson and Hemsworth then hired their own dialogue writers to deal with the changes. And Gray, who helmed *The Fate of the Furious*, tried to exit the production several times but was convinced to stay by the studio, a source says. Sony eventually tested two cuts — one by Gray, the other by Parkes — with the version by Parkes being chosen.

Rothman, meanwhile, aimed to limit the studio's exposure. The film cost in the \$110 million range, and the executive enlisted Chinese conglomerate Tencent and several other co-financiers. When it hit theaters, the movie was met with a lowly 25 percent score on Rotten Tomatoes and a B CinemaScore. "The urgency to see this was never there," explains a Sony executive who declined to be named, "and the movie needed a greater reason to be."

How a \$10 Million Earner's Pay Could Change

EMPLOYEE	CONTRACTOR
\$1,658,695.93	\$3,167,733.33

For a hypothetical actor earning \$10 million, and paying approximately 30 percent for various reps' fees, Singer Burke tax manager **Greg Zbylut** estimates that the actor could bring home \$1.7 million instead of \$3.2 million due to additional taxes and loss of business deductions.