



ARI KAPLAN: THE HOT LINE

# MARRIAGE IN THE 'NEW' NEW ECONOMY

**A**S I APPROACH ANOTHER WEDDING ANNIVERSARY, I AM REMINDED of how great married life can be but also how vital communicating expectations is to a relationship. That applies to relationships between e-business partners as well as between married couples. A couple of years ago, when the "old" New Economy was in its heyday, arranged marriages between

dot-coms and brick-and-mortar companies could have rivaled celebrity weddings for all the attention they attracted.

Today, though, in the "new" New Economy, the divorce rate between these former "love birds" is staggering because many of the online parties to these deals are free-falling out of existence and into cyber-lore. Now, many companies are stuck with agreements that failed to address their potential breakups or even hard times.

For those of you planning to take the plunge (for the first or second time) and enter into a strategic e-business alliance, here are some steps you should take to avoid the mistakes made by many others in the first wave of e-business relationships:

- Make sure the agreement specifies the medium to which your e-alliance applies. For example, if the deal is both online and offline, say it. If it also applies to wireless applications, state that

as well. Try not to use generic terms such as "Internet" or "digital" to describe the relationship, as the ambiguity in these terms could mean everything or nothing at all.

- Clearly specify who owns what data, who gets to use that data and how they get to use it.

- Finally, tie continuation of the re-

Try also to include nonfinancial trigger events to indicate a potential breakup, such as significant staff cuts. While you are protecting yourself, consider using escrow accounts to maintain some cash reserves and, in certain deals, to deposit software source code.

So, next time your e-business plans to get hitched, worry less about the flowers and the cake and more about the terms of the engagement. **e**

## IN THE 'NEW' NEW ECONOMY, THE DIVORCE RATE BETWEEN FORMER 'LOVE BIRDS' IS STAGGERING.

lationship to performance using metrics like revenues or click-through rates. If your milestones are not met, state unambiguous termination provisions. It is like having a prenuptial agreement.

*Ari Kaplan is an attorney at the New York law firm of McDermott, Will & Emery. He is concentrating on e-business legal issues. The information in this column is intended for reference only and should not be construed as legal advice.*

(Happy anniversary, Lauren.)