

The Necessity of
Mediation and
Arbitration in Film &
Media Disputes & Bird & Bird

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"The industry has enjoyed significant success in recent years. UK box office takings reached a record-breaking £944 million last year, and will almost certainly break the £1 billion barrier this year"

Ed Vaizey, 29 November 2010

Film Production in the UK

- 125 films with budgets of more than £500,000
 - 22 Co-productions
 - 71 Domestic Features
 - 32 Inward Investment features
- £956,900,000 aggregate UK spend in 2009
 - £32 million Co-productions
 - £169.2 million Domestic UK features
 - £752.7 million Inward Investment
- 110 qualified as "UK films" (£915.9 million UK spend)

Source : UK Film Council Research and Statistics Unit

Film Production in the UK

- Split between US Studio and Independent Films in 2009
 - 26 US Studio films
 - 99 Independent films
- Majority of UK spend accounted for by US Studio films
 - £728.5 million US Studio films in 2009
 - £228.4 million Independent films in 2009
- Median budgets on Independent UK films in 2009 £1.9 million
 - Down from £3.4 million in 2004

Source : UK Film Council Research and Statistics Unit

Broad range of projects and parties

- Single studio funded / Multi-party financing arrangements
- Global corporations / small independent production companies
- Multiple jurisdictions potentially involved
 - Locations
 - Sources of financing
 - Domicile of Artists/technicians
- Varying project sizes
- Short Production times
 - Small Independent (a few months)
 - US Studio (***Iron Man 2*** : 1 year)
- Unknown value – "Blockbuster" or "Straight to DVD"

"In some areas of civil litigation costs are disproportionate and impede access to Justice"

Rupert Jackson, December 2009

Types of disputes that go to Court?

- Artist/talent agreements – *Crosstown Music Company v Rive Droite* [2010] EWCA Civ 1222
- Music copyright disputes – *Hadley and others v Kemp and another* [1999] All ER (D) 450
- Distribution agreements – *International Asset Control Limited (t/a IAC Films) v Films Sans Frontiers SARL* [1998] EWCA Civ 1579
- Merchandising agreements - *Gumball 3000 Films Ltd v Revolver Films Ltd* [2010] EWHC Ch 1190
- Confidentiality and non-disclosure agreements
- TV and other media formats – *Celador v Melville, Boone v ITV, Baccine v Celador* [2004] EWHC 2362; *Burrows v Smith* [2010] EWHC 22

Why Court might not always be the answer

Value of the claim

- Dispute arises before success of film is known
- Value of film might not justify the expense and time investment of litigation
- Parties unable to afford it
 - Gowers IP Review
 - SMEs unable to afford High Court litigation– another forum required
 - Recommended cheaper, fast-track litigation for IP cases
 - IPCC/PCC

Nature of dispute may not be suitable for adversarial proceedings

Length of Proceedings and effect on production timetable

...Even in larger value disputes

- Open Court v Confidential
- Speed
- High Court Judge v Sector specialist mediators/arbitrators

Complex disputes – have to weigh-up the pros/cons

Similar Problems in another field - Domain Names

- "Cybersquatting gives rise to disputes between trade mark owners and domain name registrants, which present features stretching the capacity of the ordinary judicial system."
- "Judicial system is territorially based and thus cannot always provide a comprehensive solution to a conflict of global dimension."
- "Court litigation can be slow and expensive, factors that can produce a de facto situation in which it may be quicker and cheaper for a trademark holder to buy back its rights to a domain name from a cybersquatter, rather than seek to retrieve those rights through litigation."

WIPO Arbitration and Mediation Center

Domain Name Dispute Resolution Process

- ICANN adopted the Uniform Domain Name Dispute Resolution Policy (UDRP) in 1999. Applies to .com, .org and .net registrations.
- Competing dispute resolution forums administer the UDRP on ICANN's behalf, all have their own supplemental rules:
 - WIPO – the first to be accredited by ICANN
 - National Arbitration Forum
 - Asian Domain Name Dispute Resolution Centre; and
 - Czech Arbitration Court.
- World Wrestling Federation Inc v M.Bosman [D-1999.0001]
 - www.worldwrestlingfederation.com

WIPO- Domain Name Dispute Procedure

- Both parties make written submissions
- Case decided by an independent panel consisting of one or three members appointed by WIPO Center
- Procedure normally completed within two months of the date WIPO receives the complaint
- 19,592 cases since 1999
- Involving 35,507 domain names

Results

- 4,446 terminations – 22.6% of total cases
- 12,179 transfers – 62.2% of total cases
- 207 cancellations – 0.02% of total cases
- 1,990 complaints denied – 0.1% of total cases

Statistics taken from www.wipo.int on 19 January 2011

WIPO - Domain Name Dispute Procedure

- Single mechanism for resolving a domain name dispute regardless of where the registrar, the domain name registrant, or trade mark owner is located
- Time and Cost effective given size of disputes and international context
- Mandatory implementation. No international enforcement issues
- Transparent – WIPO Centre posts all disputed domain names, case status and full text decisions on its website.
- Without prejudice to Court adjudication. Either party may commence a lawsuit before, during or after a UDRP proceeding. BUT in practice this is rare.

Necessity of Mediation and Arbitration in Film and Media disputes ?

- Increasing value of film production activity in the UK
 - Although lower median spend for independent films
- Short duration projects
- Involvement of SMEs
- Uncertainty as to eventual value of film/media project
- Potential for involvement with more than one jurisdiction
- Success of alternative dispute procedures in similar situations

Thank you & Bird & Bird

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