

Kluwer Arbitration Blog

Inaugural California International Arbitration Week: A Discussion on the Recent Developments and Trends in the Film and Entertainment Industry

Giorgio Sassine (Musick, Peeler & Garrett LLP) · Monday, April 4th, 2022

The inaugural California International Arbitration Week (“CIAW”) took place on March 14 through 18, 2022 and highlighted the attractive features of arbitrating international commercial disputes in California. What better way to begin CIAW than in Hollywood, with a discussion on recent international dispute developments and trends in the film and entertainment industry. The panel featured legal experts from California in the film and entertainment industry and was hosted by the American Arbitration Association – International Center of Dispute Resolution (“AAA-ICDR”). The presentation comprised Eric Tuchmann (Senior Vice President, General Counsel, and Corporate Secretary of the AAA), Susan Cleary (Vice President and General Counsel of the [Independent Film & Television Alliance](#) (“IFTA”) in Los Angeles), Dimitar Nikolov (Senior Vice President, Business and Legal Affairs of IM Global in Los Angeles), and Howard Frumes (partner of Alexander, Lawrence, Frumes & Labowitz LLP in Los Angeles). This blog highlights aspects of the discussion and offers some further comments on the topic.

The AAA-ICDR’s Partnership With IFTA Is A Welcome Addition to International Arbitration

Ms. Cleary and Mr. Tuchmann discussed the [brand new partnership between IFTA and the AAA-ICDR](#), effective January 4, 2022. According to a January 2022 press release, “IFTA and the ICDR worked together to promulgate new Rules for IFTA Arbitrations, tailored to resolve international disputes in the independent film and television industry and to allow a seamless transition for all industry stakeholders.” Ms. Cleary stated that the new rules will integrate the best and most current international arbitration procedures and entertainment industry practice from the AAA-ICDR and IFTA to deliver efficient, economic, and fair arbitration proceedings. Mr. Tuchmann added that he is excited about the new partnership with IFTA, especially given the need to resolve film and entertainment disputes expeditiously and a desire to tap into people who have subject matter knowledge and expertise relevant to the film and entertainment industry.

As an introduction to those who do not know IFTA, Ms. Cleary explained that IFTA started its arbitration services in 1984 to resolve international production, distribution, financing, sales agency, and other related disputes in the motion picture industry. Over the years, IFTA has established a roster of arbitrators with extensive experience in entertainment, intellectual property,

copyright, and transaction law from jurisdictions worldwide. Since its inception in 1984, Ms. Cleary stated that IFTA has administered 3,050 cases. She informed the audience that the types of cases administered run the gamut, including breach of contract, fraud, and specific performance. The parties involved range from producers, distributors, sales agents, financiers, banks/lenders, and completion guarantors, whose role is to ensure a program will be completed and ready for delivery for those who license the film. Given the nature of Hollywood's reach to jurisdictions outside of the United States and the growing stature of international films, IFTA's administration of arbitral disputes in the international context has expanded over the years.

The AAA-ICDR's partnership with IFTA is a welcome addition to international arbitration. Many international arbitration practitioners may not consider the great expanse of international transactions that occur in the film and entertainment industry, which has a knock on effect on disputes and likely business for attorneys. The AAA-ICDR likely sees the growing number of international disputes as an important reason to enter into its partnership with IFTA. Notably, Mr. Tuchmann noted that 360 international arbitrations were filed in California during 2021. San Francisco and Los Angeles saw the largest number of arbitrations, with San Diego hosting some arbitrations as well. The figure was quite stunning. Overall, he noted that California ranked in the top three of states in the United States where international arbitrations were seated. Such numbers indicate that California is truly on the rise as an international arbitration hub, including in the film and entertainment industry.

The History of Arbitration in the Film and Entertainment Industry

After discussing this exciting new partnership, Mr. Frumes discussed the history of arbitration in the industry, which tracks the increased use of arbitration in other business sectors. In particular, Mr. Frumes explained the [International Alliance of Theatrical Stage Employees](#) ("IATSE") attempted to include an arbitration provision in its 1926 collective bargaining agreement with studios, but this effort unfortunately failed. However, in 1947, IATSE succeeded in adding an arbitration provision to its collective bargaining agreement with studios. Other guilds soon followed, including the [Screen Actors Guild](#) ("SAG"), which Mr. Frumes added made sense in the context of that fact that most guilds are unions that require a cost-effective, efficient, and confidential process of resolving employer-employee disputes. Seeing the beneficial use of arbitration in collective bargaining agreements, the Motion Picture Association of America ("MPAA"), now the [Motion Picture Association](#) ("MPA"), began to advocate for the inclusion of arbitration agreements in its contracts starting in the 1980s. With the advent of IFTA's panel of highly respected arbitrators in the industry around the same time and the fact that today arbitration provisions are regularly included in film and entertainment contracts, foreign investors, including for example those from China, have greater comfort with their agreements, knowing that any future disputes would be adjudicated by arbitrators who are experts in entertainment-related disputes.

The Practical Advantages of Arbitration Agreements in the Film and Entertainment Industry

It was in this light that Mr. Nikolov then discussed the practical advantages of arbitrating disputes in the film and entertainment industry, including from the perspective of independent film and

foreign sales of Hollywood films. In this respect, disputes often can arise after a film has been delivered or made. Mr. Nikolov stated that administering arbitrations through IFTA has made settling disputes very practical, in particular, parties in the film industry prefer to use IFTA because it is much more time-efficient as compared to litigation. This is an important feature because as he noted, the value of a film may drop if legal disputes are not settled quickly. Moreover, Mr. Nikolov underscored the general idea that international disputes are more often better resolved in arbitration, and disputes in this industry benefit for the same reasons.

Mr. Nikolov further explained that Los Angeles is the most common seat for such arbitrations. This makes sense, given that most of the film and entertainment industry hails from Hollywood. However, when cross-border contracts are entered into, studios in Hollywood may be amenable to arbitrations seated in the United Kingdom, Germany, or France, where parties negotiating contracts with Hollywood from these countries view U.S. law as not favorable in the context of post-license payment. To remedy this, Mr. Nikolov has seen contracts drafted with applying U.S. law pre-license payment and then German or U.K. law for example post-license payment.

Pandemic Struggles and Post-Pandemic Outlook in the Film and Entertainment Industry

As many will know, the entertainment industry has been affected by the COVID-19 pandemic and has raised new legal issues. Mr. Frumes explained that force majeure clauses have been used more often than in the past, as has been seen in other industries. Mr. Frumes also noted that the pandemic came at a very interesting time in the entertainment industry. Streaming has changed people's habits and there is greater desire to stay at home to enjoy entertainment rather than going to the theaters. Mr. Nikolov added that the pandemic caused issues with distributors, who paid a lot of money for films that were supposed to be released in theaters and never were, but noted that it has been difficult to address these issues since it was clearly no parties fault that the pandemic caused such delays. In addition, Ms. Cleary discussed the impact on trade groups. She noted that the cancellation of megaevents, such as Cannes Film Festival and Sundance Film Festival, caused a gap whereby buyers and sellers of films were unable to meet in person to negotiate the terms of specific contractual arrangements. Ms. Cleary is hopeful that within the post-pandemic entertainment and film industry it will be possible to rekindle the warm industry relationships that were previously often built over dinner.

Concluding Remarks

Overall, the presentation on the developments and trends related to disputes in the film and television industry was interesting, as it provided insight into an industry that many international arbitration practitioners do not consider. The AAA-ICDR's partnership with IFTA is a welcome addition to the international arbitration field of law, and there may be a newfound interest in the role that international arbitration practitioners may play in this burgeoning field.

More coverage of California International Arbitration Week is available [here](#).

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