

Fall 2007

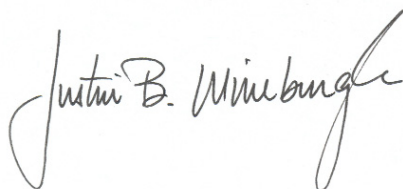
MESSAGE FROM THE CO-CHAIRS

TO THE FRIENDS OF COZEN O'CONNOR:

We are pleased to bring you the Fall, 2007 issue of the Cozen O'Connor *Sports and Entertainment Law Observer*. Our intent is to make you aware of recent developments in the sports and entertainment industries, as well as bring you an update on the recent happenings within our practice at the firm.

Specifically, in this issue, we examine two topics currently at the forefront of the sports and entertainment industries. First, we explore the ongoing strike between the Writers Guild and the Association of Motion Picture and Televisions Producers. Next, we outline the various immigration issues and options for foreign athletes who seek employment in the United States.

We hope to enlighten you on legal issues relevant to your industry, and to provide our insight and analysis into these developments. In the fast paced, ever-changing climate of the sports and entertainment industries, it is important to stay abreast of the relevant issues, and we strive to assist you with this task. We hope you find this publication both useful and informative, and would be pleased to discuss any of the topics with you at your convenience.



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RECENT DEVELOPMENTS

THE WRITERS GUILD VS. THE ALLIANCE OF MOTION PICTURE AND TELEVISION PRODUCERS

THE BATTLE OVER RESIDUAL PAYMENTS



By: Justin B. Wineburgh

Over the past year, the failure of the Writers Guild of America (“WGA”) and the Alliance of Motion Picture and Television Producers (“AMPTP”) to agree on a new contract lead to the conclusion that a strike by the WGA was inevitable. The last strike by the WGA, in 1988, lasted 22 weeks and cost the entertainment industry an estimated \$500 million. According to economist speculation, a similar strike today would cost twice that, an astounding \$1 billion.

The agreement between the two groups, which expired on October 31st, specified that writers be paid residual payments for the reproduction and re-distribution of movies, television shows and other media. These payments occur regardless of whether a movie or show turns a “profit,” and have long been a staple of writers’ compensation in Hollywood since the 1980s when studio executive Lew Wasserman agreed to the current residual structure. The issue that was largely responsible for complicating the negotiation and consummation of new agreement is the manner in which those residual payments would be calculated for previously undefined forms of media – specifically, the internet and other “new media.” In a stand-down reminiscent of the past negotiations between the media conglomerates and the WGA that lead to the prior strike, both sides expressed wildly different views of what they believed should be the share allocated to the writers.

The WGA argued in favor of a residual structure based on the current model, but expanded to incorporate a formula for the internet and other “new media.” Such a revision would expand the jurisdiction of the WGA, and guarantee residual payments for the WGA members in the aforementioned areas. The AMPTP started the negotiations with the notion of eliminating several of the rights already guaranteed to writers under the last contract, while attempting to revamp the payment of residuals in its favor, a resolution that the WGA viewed as blatantly unfair. While the AMPTP argued that profits from original viewings have shrunk exponentially in recent years, the WGA contended that reuse payments should be paid regardless of how much money is recouped by the studios.

After months of fruitless negotiations, WGA members voted overwhelmingly to authorize a strike. Although progress was supposedly made during last-minute talks between the WGA and AMPTP representatives in the final hours leading up to the strike deadline, discussions broke down when the WGA decided to strike as planned, prompting the AMPTP representatives to leave the negotiating table. With that, the strike commenced at midnight on November 5, 2007.

While the strike could last anywhere from a week to a year, Hollywood insiders have said that movie studios may not feel the full impact of the strike for possibly as long as nine months. Television networks, however, are already seeing the effects of the strike. Talk shows, for example, rely heavily on writers due to the nature of the current events discussed in those formats, and have all been suspended until the strike is resolved. Furthermore, sitcoms, which are usually written with much less lead-time than other types of programs, are also expected to be affected almost immediately.

To suggest topics or for questions, please contact Justin B. Wineburgh, Editor at 215.665.2733 or jwineburgh@cozen.com. To obtain additional copies, permission to reprint articles, or to change mailing information, please contact Lori Scheetz 800.523.2900, or at lscheetz@cozen.com.

Comments in the Cozen O’Connor *Sports and Entertainment Observer* are not intended to provide legal advice. Readers should not act or rely on information in the Observer without seeking specific legal advice from Cozen O’Connor on matters which concern them.

In addition to having a profound financial effect on the entertainment industry, the strike also brings up several complex legal issues. Television program writer-producers (or “showrunners”), most of whom are WGA members, have been caught directly in the middle of the strike as their duties are multi-faceted. While most showrunners are contractually bound to produce their television shows, the WGA maintains that, as guild members, they are prohibited from performing any activities which include writing. Additionally, the WGA has implemented a “script validation” program, which requires writers to submit copies of their in-progress scripts to the WGA to ensure that the writers are not working during the strike. Studios and production companies have responded to these WGA actions by sending cease and desist letters to any writers under a production contract, stating that releasing such material to a third party is in violation of their contractual obligations.

These are but a few examples of the harsh realities created by the strike. Most certainly, there are countless more legal issues that have been implicated, which will only serve to fuel the discord between these two groups as the strike continues. Hopefully the impasse will be resolved quickly because, with history possibly being the best predictor of what lies ahead, the impact of a continued strike will undoubtedly be tremendous.

For more information please contact Justin B. Wineburgh at jwineburgh@cozen.com or 215-665-2733.

OPTIONS FOR ATHLETES WHO SEEK EMPLOYMENT IN THE UNITED STATES



By: Vincent R. McGuinness and Elena Park

In the area of immigration, the federal government has sent a clear, concise and unambiguous message that employers must

ensure that persons they hire hold proper visas or green cards. Recently, the U.S. Immigration & Customs

Enforcement Bureau announced that employer compliance with immigration laws will become a top priority: “Effective worksite enforcement plays an important role in the fight against illegal immigration and in protecting our homeland”.

Many athletic organizations seek to employ foreign athletes on a temporary or permanent basis. Employers seeking to place the foreign athlete on an expedited basis should consider a variety of non-immigrant petitions. Employers can use the “O-1” visa when employing staff “pros” upon a showing that the employee demonstrates “extraordinary ability in the athletic field”. Similarly, the “P-1” visa may be used if the employee will compete individually or as part of a team at an internationally recognized level. To the extent the employer can demonstrate the position constitutes a “specialty occupation”, the H-1B visa is available, but quite difficult to secure. Employers should consider the E-3 “Australian Specialty Occupation” visa which applies only to nationals of Australia coming to the United States to perform a “specialty occupation”. A specialty occupation is one that cannot be performed without a Bachelor’s Degree or higher. The “TN status/NAFTA visas” can also be pursued for Canadian and Mexican professionals who are in designated professions of high need. The TN category is similar to the H-1B.

All of these non-immigrant petitions may be filed for “premium processing,” which provides that the U.S. Citizenship and Immigration Services will act on the Petition within 15 days upon filing the \$1,000 premium processing fee. Otherwise, petitions will be reviewed within a 3-4 month time frame.

Athletes may also consider filing for green cards under a First Preference upon demonstrating skills at an extraordinary level. Alternatively, the employer may file on behalf of the athlete as a Second Preference filing. However, unlike the Petitions for Non-Immigrant Workers, the process to secure a green card is time consuming and complex.

For more information please contact Vincent R. McGuinness at vmcguinness@cozen.com, 215-665-2097 or Elena Park at epark@cozen.com, 610-941-5400.

HAPPENINGS

SPOTLIGHT ON...

Aaron Georghiades has joined the Firm's New York office. Aaron received his law degree from the University of Wales, School of Law in 2001 and worked at Deloitte Touche in London before coming to the United States to represent clients in the media, television, entertainment and publishing industries. Aaron has worked as litigation and production counsel for numerous television programs and films, including *Borat The Movie*, as well as television shows for Discovery, A&E and Animal Planet, and advising on and litigating in such areas of law as copyright, invasion of privacy, defamation and trademark.

Welcome Aaron.

Justin B. Wineburgh, Co-Chair of the Sports and Entertainment Practice at Cozen O'Connor, was recently appointed to the Law Firm Advisory Board of the Association of Media and Entertainment Counsel (AMEC). AMEC was created to further the development of lawyers within the entertainment industry. Being on the board, Justin will serve as a consultant to AMEC and assist in the planning of programs in Los Angeles and New York. Kristin Holland, Chair of the Advisory Board, stated, "Justin shares our commitment to recognizing and supporting the important work of in-house counsel at major entertainment and media companies. His experience in the representation of global entertainment clients will serve the Board and AMEC well."

IN THE MEDIA

Our Entertainment Law Practice members frequently make appearances in the media as well as lecture on a variety of issues affecting the entertainment industry. Some of our recent appearances, as well as the topics covered, include the following:

Jennifer A. Brandt



The Comcast Network – *"Your Morning"*,
"It's Your Call with Lynn Doyle"

CNN – *"Showbiz Tonight"*,
"Headline News"

Fox News Channel – *"Fox News Live"*,
"The Big Story", *"The Live Desk With Martha MacCallum"*

Scott B. Schwartz



International Trademark Association's Administrator's Conference – "Client Development: Pitching for Success,; and "The Crossroads: When Marketing and Trademarks Meet."

The Comcast Network – "Your Morning"

Justin B. Wineburgh

Temple University Film School – "Legal Issues in the Entertainment Industry"

Pennsylvania Bar Association – "Legal and Intellectual Property Aspects of the Entertainment Industry"

"The Well Advised Woman Radio Show" – Women and the Entertainment Business

Widener University School of Law – "Intellectual Property Law and Its Future"

NBC Television – *"All That & More"*

Fox News Channel – *"Good Day Philadelphia"*

The Philadelphia Inquirer – "Let the Movie Cameras Roll, and the Cash Will Follow"



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