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TESLAW THE STATE BAR OF TEXAS **ENTERTAINMENT & SPORTS LAW SECTION**

July 17, 2015

TESLAW E-Newsletter

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Issue No. 15

Dear TESLAW Members,

Craig Crafton passed the leadership of our section to me at the State Bar of Texas Annual Meeting and I'm excited about building on his exceptional work. Remember that our section is not limited to those who practice entertainment or sports law. It's open to those who enjoy or make music, play or watch sports, read or write books or scripts, make or watch movies or television programs...well, you get the idea. So invite your colleagues and lawyer-friends to join TESLAW. The more the merrier!

We put on outstanding events ranging from fun CLE programs including a SXSW mixer for the Annual Entertainment Law Institute. Our journal and e-newsletter are first-rate, with cutting-edge articles and helpful information. As the most "entertaining" and "athletic" section of the State Bar of Texas, let's use our charm and muscles to continue TESLAW's growth together.

Respectfully,

[Sally Helppie](#), Chair
[Entertainment and Sports Law Section](#)

Requesting Member Input!

Help us brand our e-newsletter! Send us your ideas on catchy, creative titles for our quarterly e-newsletter by August 1, 2015. If the TESLAW council chooses your title, you will receive a 50 percent discount off the registration fee for the 2015 Entertainment Law Institute in November! Send submissions to [Victoria Helling](#), e-newsletter editor-in-chief.

Spotlight on Victoria Helling

Victoria believes in the power of storytelling and the impact that film and television have in delivering the narrative. In stories, the human condition is brought to life, in stories we find ourselves. She currently serves as head of business development / legal counsel for [The Agency Dallas](#), a SAG-franchised talent agency located in the historic south side of Austin on Lamar. Working in conjunction with owner/agent Sooze Johnson, she is striving to help make Texas an integral part of the industry by providing superior talent in front of and behind the camera. She believes that by strengthening our talent pool (and incentives), we can attract more significant projects to the Lone Star State.



In addition to her work with The Agency Dallas, she provides litigation support to [Greenberg Traurig](#) in the areas of antitrust and securities litigation. She currently serves on the board of [Tall Castle, Inc.](#), a 501(c)(3) film production company dedicated to producing films that inspire human potential and cultivate tolerance; as a TESLAW council member and Editor-in-chief of the quarterly *TESLAW E-newsletter*; and as vice-chair for the Dallas Bar's ESL Section. She graduated from Texas Christian University with a B.B.A. in entrepreneurial management and received her J.D. from Texas Wesleyan School of Law. She is admitted to practice in Texas and her admission is pending in California. You can reach Victoria via [email](#).

Is It Lights Out for Distribution Clearances in the Film Industry?

by [Beverly J. Davis](#)

In April 2015, the *Los Angeles Times* and *The Dallas Morning News* reported that the Department of Justice (the "DOJ") is investigating the three largest movie theater chains in the United States – Regal Entertainment Group ("Regal"), American Multi-Cinema, Inc. ("AMC")¹, and Cinemark Holdings ("Cinemark") (collectively referred to herein as the "Big Three"). The investigation stems from alleged antitrust violations related to the Big Three's practice of negotiating "clearances" with distributors to gain exclusivity in showing first-run movies.²

Distribution Clearances are agreements between movie theater owners ("exhibitors") and film distributors that arise when exhibitors want to have exclusive rights to show a new movie in a specific geographic area for a specified period of time. In a clearance agreement, the distributor agrees to license a film to an exhibitor for a certain price, duration, and cut of box office receipts. In exchange, the distributor agrees not to license the film to other exhibitors in the designated zone for the agreed upon period of time.

Clearances have been used in the film industry for more than 60 years and are legally permissible restraints of trade as long as they are used among competing exhibitors and do not extend beyond a reasonable geographic area or duration of time.³ Courts use the rule of reason to determine whether clearances constitute unreasonable restraints of trade.⁴

This story is one to watch for three reasons:

1. If the DOJ finds sufficient evidence to file suit against the Big Three, it may signal that the competitive landscape in film exhibition has shifted such that the use of clearances by the Big Three, or at all, is too detrimental to competition and should be modified or outlawed. If either is true, it will be a historic change in the film exhibition industry.
2. The DOJ's investigation may have interesting political impact and implications, given the fact that AMC, the nation's second largest movie theater chain, is now owned by a Chinese company and the investigation is occurring just as the U.S. is gearing up for the 2016 election cycle.
3. Recent antitrust lawsuits against AMC and the failed merger between National CineMedia ("NCM") and Screenvision in March 2015, which involved the Big Three as joint 54 percent owners of NCM, seem to have common threads that, depending on where you land in this argument, may be viewed as an overreaction to business as usual or a pattern of behavior that evidences a desire to dominate the film exhibition industry possibly through unlawful means.

Regardless of the outcome of the investigation the issue of competition in the film industry will entertain us for years to come, so stay tuned.

[1] American Multi-Cinema, Inc. is a subsidiary of AMC Entertainment, Inc., which is a wholly owned subsidiary of AMC Entertainment Holdings, Inc., which is an indirect subsidiary of Dalian Wanda Group Co., Ltd., a Chinese private conglomerate. AMC Entertainment, Inc., Form 10-K Annual Report, Part 1, Item 1. General Development of Business (Mar. 31, 2015).

[2] [A Luxury North Dallas Multiplex's Complaint Led to a Federal Investigation of Theater Chains](#), *The Dallas Morning News*, April 23, 2015.

[3] *U.S. v. Paramount Pictures, Inc.*, 334 U.S. 131, 145 - 147 (1948); *Three Movies of Tarzana v. Pacific Theatres, Inc.*, 828 F.2d 1395, 1398 (9th Cir. 1987).

[4] *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 885 (2007).

Beverly J. Davis is the founding member of Davis Law, PLLC, a law firm providing legal services to businesses, nonprofits, and creative professionals in entertainment, trademark, copyright, labor, and employment law. She currently resides in Washington, D.C., where she represents clients in television and film production, music, live events, and management-side labor and employment matters. Beverly is licensed to practice in Texas, California, and the District of Columbia. Beverly can be reached via [email](#), on Facebook, and on Twitter @DavisLawPLLC.

Practice Document

Please find attached to this e-newsletter a [Song Writers' Split Acknowledgment](#) to clarify ownership of a musical composition provided by Danica Mathes. Although additional agreements are typically entered into with the songwriters as well, this document provides substantiation to obtain copyright registrations, register songs with public performance organizations, and provide instructions for how royalties should be split. Furthermore, without a signed agreement to the contrary, under the U.S. Copyright Act, all co-writers own an equal share of the musical composition. Danica is a partner with [Bell Nunnally](#) in Dallas, Texas, and her practice focuses on entertainment, advertising, intellectual property, and new media law.

Send questions, comments, and submissions for the TESLAW E-Newsletter to [Victoria Helling](#), E-Newsletter Editor-in-chief.

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