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DCN v Omnilab: Carry On Up The Courtroom

by: [Alex Prior](#)

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Moments of slapstick comedy punctuated the proceedings in Melbourne's Federal Court yesterday, as counsel for Omnilab Media cross-examined Martin Gardiner, one of the two directors of Digital Cinema Network.

In a small courtroom, with a large bench for the judge, from whence Justice Michelle Gordon surveys her domain, a bench for her court staff, a long table for the eight lawyers representing the contending parties (barristers facing the judge, solicitors on the other side, facing their own counsel). Michael Smith, representing himself, is squeezed in at the end. There is a witness box on the right, and only enough room for four rows of seats.

Those seats are largely unoccupied apart from a lonely but attentive Screen Hub scribe, and the occasional spare lawyer who can't find a place at the top table. The seats are movable, and have been squashed back to create more room.

More room for the vast quantities of paperwork that this two-year case has generated. Paperwork in triplicate. Each set of lawyers has trolleys of files behind them - their own and the opposition's - entirely blocking the first row of seats. The court itself has trolleys full of files stacked against one wall.

It is, in fact, too much paperwork!

It is a Marx Brothers amount of paperwork. It is Laurel and Hardy in its dimensions. And it is moving.

As Martin Gardiner sits in the witness box in a grey suit and yellow tie; and

as Mr Sullivan stands at the lawyers' table in a black gown, the paper is gently wafting from the trolleys and stands of the courtroom and accumulating in the witness box.

There is Affidavit One and Affidavit Two (a substantial white ring-bound folder for each). There is the Court Bundle (volumes one through four, ditto

with the white folders) containing the paperwork that will be entered into evidence. There are printouts of email chains and of financial spreadsheets.

There is paper. And it is accumulating on the witness stand as Mr Sullivan for Omnilab tries to adduce the contradiction between what Mr Gardiner said in paragraph 1,675 of his second affidavit and the Business Plan which can be found on page 33 of the fourth volume of the Court Bundle, "the eighth page of the business plan, Mr Gardiner."

"Is there much more of this to go?" Her Honour asks. "This is not an efficient use of time or money."

She adjourns the court for thirty minutes so that the lawyers can agree on what they agree on, and let her know. It should save time... and (just maybe) paper.

The farce of the cinema screens

There is an argument over the number of independent cinema screens available in Australia. Mr Gardiner, from the witness stand, politely asks the court whether he can have a calculator and some paper. Possibly even a pen? The court produces a calculator.

The judge has a calculator. The Omnilab team has a calculator. Everybody calculates.

Twenty minutes later it is clear that Mr Sullivan has used the Screen Australia figures from 2010, while Mr Gardiner has used the Screen Australia figures from 2011 (ultimate source Rentrak, anyway, Mr Gardiner points out). There is a difference of three screens.

Aha! Says Mr Sullivan in a non-literal kind of way. Aha! But your business plan says that there will be one hundred new screens!

There is a loud bang as some of the folders in the court's stack of documents fall over. A clerk goes to set it right.

Aha! yourself, says Mr Gardiner, in a metaphysical kind of way. Are the 1,991 cinema screens that existed in Australia in 2011 the same as the 1994 screens that existed in Australia in 2010? Did some screens close and some new ones open?

Australia is resolved, but what about New Zealand. Are their 222 screens, 158 screens or 171 screens?

And how many existing screens have been "grandfathered" in to the Virtual Print Fee agreements. There are documents. There is a discrepancy of seventeen screens. Can Mr Gardiner explain the discrepancy?

The top of Gardiner's head is just visible behind a mound of folders.

"Can we take some of this stuff away, Mr Sullivan, and give the witness some room?" Her Honour asks. Stuff is taken away and Gardiner re-emerges.

The number of independent screens available is important. The number of screens that had been converted to digital (or not) as of August 2010 is important. Those numbers will help determine how much money Omnilab owes to Digital Cinema Network.

Omnilab, Mr Sullivan admits, was only able to sign up 400 screens to its VPF scheme, even with the Independent Cinema Association of Australia's backing. How did DCN expect to sign up 823?

"Yes. Omnilab was only able to get 400 screens to sign a contract for a non-existent VPF," Mr Gardiner says.

Lunch is called. The court allows Mr Gardiner access to a computer so that he can look at his original (not printed) spreadsheets and work out what the hell Mr Sullivan is talking about.

Finance versus Technology

With documents almost under control, Mr Sullivan returns to the attack, and this time he is on the solid, familiar ground of finance, rather than the tricky subject of cinema screens.

He neatly pins Martin Gardiner on how the Nett Present Value (the amount sought in compensation) was calculated ("asked the lawyers"); on DCNs cashflow position and whether it was a viable company; and on Gardiner's projected market share.

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