

[Home](#) > [Current News and Features](#) > Stories

INDUSTRY NEWS

DCN v Omnilab: Omni tactics becoming clear

by: [Alex Prior](#)

Screen Hub

Friday 1 November, 2013

After four days, it is becoming clear that Omnilab has two primary aims in the case: to attack Digital Cinema Network's technical competence, and to discredit their business plan, while a key piece of law is still to be decided. Palace Cinema's Benjamin Zeccola is about to get his first day in court.

This is the damages phase of the case. The Federal Court, and a full bench of the Federal Court on appeal, has already found that Omnilab did bad deeds. This phase of the case is only about how much, if anything, Omnilab should pay DCN in compensation.

A Key Piece of Law

And it's that "if anything" that is fueling the case and keeping it running.

Lawyers for Omnilab have argued that the correct way to assess the case is a 50 per cent hurdle.

In their case, DCN must prove that it had a greater than 50 per cent chance of signing the [Virtual Print Fee agreements](#) and implementing the network operations centre (NOC).

DCN's lawyers, on the other hand, argue that the court can find that DCN had a less than 50 per cent chance of completing, and assess damages on that basis. So in this instance, if the court decided that DCN had only a 20 per cent chance of completing the deal, it could award DCN 20 per cent of \$70 million (\$14 million).

Omnilab is betting that it can walk away from the case without having to

pay DCN anything. Or as Suresh Senathirajah, the barrister acting for DCN put it: "The mantra now before you is that notwithstanding their [Omnilab's] conduct, my client did not suffer any loss."

But whichever way the judge rules on that one, DCN has a neat counter-argument: "We were the only party... all the way up to 2010. We were the



only party... negotiating with the Hollywood studios for a VPF agreement, and that chance was taken away from us by the behaviour of Omnilab and [former DCN director, Michael] Smith."

That, DCN argues, gives it a 100 per cent chance of signing the VPF agreements at that point, and in turn, that is why Omnilab is attacking on other fronts, to convince the court that DCN was not technically competent to carry out the work.

Digital Cinema Network was technically incompetent
Central to administering a Virtual Print Fee network is the ability to accurately report screenings back to the distributors, to give them assurance that a film has been played.

The software that drives that function (and a lot more, such as film and advertising scheduling) at the cinema end is called the Theatre Management System (TMS).

Using a trove of emails from Ross Entwistle's Limelight Cinema in Canberra, Alan Sullivan has relentlessly attacked both Martin and James Gardiner, the principals of DCN, over the reliability of the TMS, based on the problems documented at Limelight.

The Gardiner's defense has been that the Limelight site, together with three other installations of the TMS, including Cinema Nova in Melbourne, were beta tests, supplied at a discount, and that the problems were those that would normally be expected as part of software development.

That has led to a side-argument about whether these were full commercial installations or beta-tests, and late yesterday afternoon, Michael Smith drove a hole in the DCN argument.

Smith, a former director of DCN who was found to have breached his fiduciary duties in favour of Omnilab, is representing himself. And despite a [rocky start](#), he is turning out to have a flair for cross-examination.

Unlike the Omnilab lawyers, he also has a detailed understanding of DCN's business and history, and as an exhibitor himself and the owner of the Sun Theatre in Yarraville, was the primary salesperson for the company.

That combination allowed him to turn the DCN argument about beta sites by forcing James Gardiner to admit that the price charged for the Cinema Nova installation was a full, un-discounted commercial price.

DCN, however, received support in its development argument from Peter Williams, the former General Manager of Edge Digital Technologies. Edge had also announced that it was intending to negotiate a VPF deal back in 2010.

As a possible installer and seller of a DCN Theatre Management System, Williams was clear in his evidence that bugs were routine. "In any new product, especially a complicated system [bugs] wouldn't be unexpected."

Without ICAA support

The other central plank of the case is how much DCN would have made if it had been successful in achieving VPF agreements with the Hollywood studios - which leads directly to the question of how much Omnilab and Michael Smith owe in compensation.

Omnilab's barrister has consistently attacked on the number of independent cinema screens that would have been available to the DCN scheme, and that attack is expected to continue today, with the first of the witnesses from the Independent Cinema Association of Australia set to

witnesses from the Independent Cinema Association of Australia set to debut.

During the original case and appeal, Omnilab consistently argued that DCN had no opportunity because it did not have the support of ICAA. The court rejected that argument then, but it looks set for a re-run now.

Palace Cinema`s Benjamin Zeccola (Vice President of ICAA) is set down as a witness for today, Friday, and he will be succeeded on Monday by ICAA President and Majestic Cinemas general manager, Keiran Dell.

Alex Prior

Alex Prior is the Managing Director of Screen Hub.

news@screenhub.com.au

<http://www.screenhub.com.au>

[Comments](#) — [Post a new comment](#)

[- Posted: 08/11/2013 11:47:43 AM](#)

Other Recent Industry News Items

[ADG Conference 2013: the power and the passion - 08/11/2013 10:47:16 AM](#)

[NZ Woes: industry gathers to fight nasty decline - 08/11/2013 10:13:15 AM](#)

[Auckland: forum to discuss woes - 08/11/2013 9:51:58 AM](#)

[Blood Punch: leads more Kiwi actors to a cabin in the woods - 08/11/2013 7:06:17 AM](#)

[Omnilab: posts loss of \\$24.9 million as revenue plummets - 07/11/2013 4:54:04 PM](#)

[NZ Box Office: week ending 6 November 2013 - 07/11/2013 2:14:14 PM](#)

www.screenhub.com.au | For Australian screen professionals | Copyright Screen Hub / JPA 2013

By using this site, you have agreed to the [conditions of use](#) and [privacy policy](#)