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DCN v Omnilab: ICAA dances with deadly numbersby: [Alex Prior](#)

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Did the Independent Cinemas Association of Australia do the best deal available to its members? Lawyers for Digital Cinema Network are hammering ICAA board members with numbers that suggest the association did the worst deal, not the best. Also remarkable is the ICAA board's refusal to accept the findings of the Federal Court.

In his cross-examinations of ICAA board members Nicholas Hayes (Dendy Cinemas) and Benjamin Zeccola (CEO of Palace Cinemas), Suresh Senathirajah, acting for DCN, introduced a matrix of numbers comparing the deals available to ICAA in 2010, with those it eventually signed up for.

The matrix shows the costs and benefits to independent cinemas of the different Virtual Print Fee agreements.

According to this matrix, the DCN proposal which ICAA rejected in August, 2010, with a total benefit from VPF payments of \$101,000, and a net benefit after costs of \$75,000. The DCN costs were an administration fee of \$9,000, a set up fee of \$1,000 and other yearly charges of \$2,600. Delivered over ten years.

The deal with Omnilab as the integrator, which ICAA did recommend to members, would have given members \$92,400 in payments, and a net benefit of \$64,400. Omnilab costs were an administration fee of \$26,100, a set up fee of \$1,000 and other yearly charges of \$2,800. Delivered over ten years.

The Omnilab agreement was, of course, never completed and collapsed under the weight of litigation from DCN.

ICAA eventually negotiated another agreement with Cinedigm as the digital integrator, which delivered payments of \$67,150 and a net benefit after costs of only \$46,050. ICAA-Cinedigm costs were an administration fee of \$12,250, a set up fee of \$1,800 and other yearly charges of \$2,900. Delivered over seven years.

The DCN legal team argues that these numbers are based on ICAA's own system of modelling, and that as a result, ICAA delivered a far worse outcome to members than it would have if it had proceeded with DCN as the digital integrator and holder of the Virtual Print Fee agreement.

The ICAA board members have been called by the defense, Omnilab Media, and Senathirajah is questioning them to determine why, in August 2010, the board rejected DCN's proposal to become the digital integrator, when it then accepted a more expensive offer from Omnilab Media, which also required Omnilab to (as it turned out) break the law.

In their affidavits of evidence, Hayes, Zeccola and ICAA President, Keiran Dell (CEO of Majestic Cinemas), had all argued that they considered DCN to be "unsuitable" as the integrator. That is, incapable of carrying out the tasks required.

If that is the case, then Omnilab Media, which is facing a claim of \$70 million in damages from DCN, will strengthen its argument and minimise the amount of compensation it is required to pay.

The DCN legal team, however, is arguing that the ICAA board members essentially formed that view after the results of the Federal Court judgement in May, 2011.

That judgement found that ICAA CEO, Mark Sarfaty, was a highly unsatisfactory witness, and the Omnilab had engaged in illegal activity. Mark Sarfaty later committed suicide.

The DCN contention is that the ICAA board is not being truthful in its affidavits, and is acting to protect its own reputation, and that of Mark Sarfaty.

What is remarkable is that all three board members who have been called to date have refused to accept the findings of the Federal Court as accurate.

Each has continued to argue that Digital Cinema Network was not negotiating Virtual Print Fee agreements, despite the judgement of the Court.

UPDATED: Late on Friday (and after this article was filed), when the matrix of costs was put to him, Keiran Dell pointed out that the comparison with the ICAA-Cinedigm scheme was unfair, as between late 2010 (when the Omnilab and DCN schemes had been proposed) the per screen cost of digital conversion had fallen from \$100,000 to closer to \$50,000. The out of pocket expenses for cinema owners from the current scheme are therefore the same or less than they would have been under the earlier schemes.

He did, however, agree that in 2010, the DCN scheme would have been cheaper than the Omnilab scheme that ICAA recommended.

Mr Senathirajah: "It is superior?"

Mr Dell: "It is cheaper, yes."

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