

Australian court slams Omnilab and Michael Smith for collusion in VPF scandal

BY **ANDREAS WISEMAN** | 27 MAY 2011

Former DCN director could face 5 years imprisonment for breaching Corporation Law

The Federal Court of Australia has found that media company Omnilab Media knowingly assisted a former director of Digital Cinema Network (DCN), Michael Smith, to provide it with Virtual Print Fee (VPF) contracts belonging to DCN.

Judge Justice Gordon found that Omnilab Media knowingly assisted DCN's former director Smith to hand over DCN's contracts and its negotiations to Omnilab behind the backs of fellow DCN directors Martin and James Gardiner.

Gordon noted: "The breaches of fiduciary duty by Smith were dishonest and fraudulent." A breach of the Corporations Law have potential criminal consequences with a maximum penalty of 5 years imprisonment.

Justice Gordon found that Omnilab Media entered the digital transition market from a 'standing start' before improperly acquiring DCN's proprietary information from Smith. Omnilab maintained at trial that it was unaware Smith was breaching his duties. However Justice Gordon dismissed this argument and found that Omnilab had played a knowing and deliberate role in Smith's conduct.

Despite Omnilab maintaining that its conduct was effectively inadvertent, the judge found that '[Omnilab] planned it and then executed it'.

DCN's Managing Director Martin Gardiner said: "Justice Gordon has sent a clear message - corporate piracy is unacceptable."

According to Gardiner, the VPFs being negotiated by DCN were almost ready to sign last July when those negotiations were derailed by the actions of Smith and Omnilab. He said: 'Independent cinema owners should be outraged at the actions of those involved in this debacle, as it

has put at risk a crucial opportunity for the independent cinema industry'. Further, Gardener said 'It appears unfortunately, that some key players in the industry have decided to put their personal and/or corporate interests before all else.'

DCN is currently considering its position after the judgment, including the forms of relief it will be seeking. It will also request that Justice Gordon refer the case to Australia's corporate regulator, the Australian Securities and Investments Commission for further investigation.

Executives from several of the major Hollywood studios, who offer the contracts as a rebate scheme to encourage the migration to digital cinemas, were called to give evidence in the case.

DCN began negotiating the VPF contracts in 2008.

