Leisure Industries

Newsletter of the Leisure Industries Section of the International Bar Association Legal Practice Division

NUMBER 29 SEPTEMBER 2011

In this issue

International Bar Association

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From the Chair

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Friends and colleagues,

We've come to the end of my run as Chair, and so this is the last time I'll be writing to you in the *Travel Law Quarterly*. We've also come up to the Dubai conference, which looks like it will be excellent. Thankfully, economic and political turmoil seem to have subsided a bit in the past few months, meaning hopefully many will be able to attend. Dubai is certainly one of the sunnier destinations for the IBA in recent years, so be sure to pack some sunscreen.

The preliminary programme has been in circulation for some time now, and I think the programme will be excellent. Our Space Law session should be one of the most cutting edge issues presented at the conference. I'm particularly looking forward to our day-long programme From Desert to Dessert: Leisure Development in MENA Nations and Beyond. I think there will be some really interesting discussion covering a wide variety of issues in what could be the next big market for leisure. Beyond our section's offerings, it looks like there will be plenty to do and see at the Dubai conference, and I sincerely hope everyone has an enjoyable week.

Of course, as soon as Dubai draws to a close, the section will have to be quickly back to work planning for Dublin. I expect that the new leadership will continue the tradition of interesting, topical sessions drawing from the substantial, diverse talent our section has to offer.

I want to close by saying I've truly enjoyed my time as Chair of the IBA Leisure Industries Section, and I look forward to continuing to work with many of you in the future in other capacities. I'm sure I will see many of you at the IBA meetings for years to come.

Sincerely,

John M Vernon (August 2011)

Football law: State intervention against private abuse

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Law 1445 of 2011, also known as 'the football law', was the result of state intervention against the abuses that took place in the majority of Colombian professional football clubs, a situation which finally led to a financial crisis within the sport.

This article will set out the background of the football law and explain the most important regulations regarding corporate, financial and labour issues that were developed as a result of said law.

The framework regulation regarding sports in Colombia was developed by means of Law 181 of 1995, commonly known as 'the sports law'. As a general outline, this law regulated matters such as:

- the creation and incorporation of the national sports' system;
- general sport principles;
- regulations to encourage sporting and recreational activities in Colombia;
- the competent authority in charge of the supervision of sport clubs in Colombia (*Coldeportes*);
- defining the required corporate structure for functioning as a sport club;
- the minimum financial standards expected of a sports club; and
- the state duty to ensure the fulfillment of labour obligations.

One may ask the following question: if the sports law was so strict in relation to the above matters, how were abuses committed? The answer to this question lies in the fact that the sports law did not impose additional penalties or sanctions for those who did not comply with its provisions, other than the ones already outlined in the Colombian legal system. For example, in cases where labour obligations are breached, such as non-payment of wages, the employer is liable for such debts but no specific penalties in terms of sports are provided for. In contrast, the football law grants greater enforceability by providing for penalties such as the suspension or annulment of a club's recognition as a professional football club when they do not pay their players or staff.

The regulations developed by the football law regarding corporate structures were created to ensure a clear liability regime was put in place in order to prevent

irregularities and maintain control. From all of the existing legal structures, only two types of corporate structure are permitted by law to operate a professional football club in Colombia: the owner has the option of running their football club as a non-profit organisation, regulated by means of the Civil Code, or as a corporation/stock company, which is regulated by means of the Commerce Code. While this may seem odd to an international observer, this type of restriction is common in Colombia for other industries, such as companies that handle financial businesses (banks and insurance companies) which are required by law to be incorporated as corporations/stock companies.

The main difference between these structures is in regard to profit. While the non-profit organisation, as its name states, only seeks to ensure the success of the business for their associates and is not looking to gain any profits, the corporations/stock company looks to address the needs of its stockholders while maximising the profits which are distributed amongst them. By requiring that professional football clubs be either incorporated as a corporation/stock company or as a non-profit organisation, they become akin to a business company and therefore they must comply with the laws of business and the minimum standards and rules of administration businesses must adhere to.

Other restrictions set out in the football law are related to the right to vote, ownership of a professional football club, basic capital rules and the minimum number of stockholders or associates required.

According to the football law, no person or legal entity can control more than one professional football club, either in their own name or by means of a third party. This restriction is to maintain fair and equal opportunities in any football competition or tournament. Some could argue that such a restriction could limit the freedom of business or enterprise, but this is a relatively unique situation where rights regarding the freedom of fair competition are balanced against fair play on the sports field. Accordingly the legislator protected professional football clubs by focusing on their sporting endeavours rather than seeing them as lucrative businesses for their owners.

As mentioned at the beginning of this article, some professional football clubs suffered financial hardship due to the breach of tax and labour obligations, leading, inter alia, to strikes by professional players. In order to avoid this situation from happening again, the football law established rules as to capital and the minimum number of stockholders or associates allowed within a professional football club. This regulation was intended to create economic stability within clubs and ensure equal participation of all of its shareholders or members, therefore preventing abusive conduct by granting all of its members the same conditions, notwithstanding the amount of their investment.

When a professional football club is incorporated as a corporation/stock company, the regulation is as follows:

Minimum capital (approximately)	Minimum number of stockholders
US$302,598,000	Five

Regarding non-profit organisations, the football law established that within a period of six months, starting from 12 May 2011 (the date on which the law entered into force), no person or legal entity is entitled to more than one vote regardless of the number of association titles they may own. This guarantees that the non-profit organisations will be governed by all of its members in an equal and fair manner.

Before the football law was issued, non-profit organisations were under the surveillance of the Colombian Sports Institute (*Coldeportes*) with regard to issues such as corporate structure and the way they functioned. However, no control was set forth regarding financial matters, giving such entities freedom as to the transactions and business performed. Today, with the advent of the football law, *Coldeportes* supervises the financial operations of the non-profit organisations, preventing them from performing unlawful activities.

Additionally, if a professional football club is incorporated as a non-profit organisation, the regulation regarding the number of associates and capital requirements are as follows:

Capital (range)	Number of associates
US$302,901,000–US$605,197,000	500
US$605,500,000–USD 907,796,000	1,000
US$908,099	1,500

The football law has been something that Colombians have awaited in order to manage sports, especially football, by penalising without exemptions those that do not comply with Colombian laws. The idea of the football law is, primarily, to avoid money that is generated by unlawful means and persons that are related to unlawful activities, having an influence on Colombian sports. Football has been used as a vehicle to launder money and the football law aims to combat this and other types of economic crime.

Other important aspects of the football law include the fact that for the first time, professional football clubs will be jointly liable with their fans for maintaining order and admissible behaviour in the stadiums and public places where acts of vandalism have been caused by fans. It is the first time that drastic measures have been adopted for people that cause disturbances or carry weapons, illicit drugs or drink alcoholic beverages in stadiums. These measures are the only way to prevent antisocial conduct destroying the capacity of sports to unite Colombians.

Hopefully this new law will change Colombian football for the better, at least in relation to compliance with the basic principles and rules that defend the rights of fans and players alike. Nevertheless, it is up to the leaders of Colombian football to put into action such measures and lead Colombian football back to being a respectable and enjoyable sport that makes all Colombians proud.

Leisure Industries Section Congress: A first, and definitely not a last!

The first ever IBA Leisure Industries Section Conference in conjunction with the Global Congress on Legal, Safety and Security Solutions in Travel took place in Houston from August 25–August 28.

With nearly 200 attendees, the Congress was a success also for the Leisure Industries Section that cooperated with Prof. Stephen Barth and his team from hospitalitylawyer.com. Speakers ranging from local consulates to the head of US Travel, from IBA members to corporate counsel, provided a concentrated learning experience and an international exchange of experience and insights.

The next issue of the TLQ will feature a more detailed report on the Congress. Please mark your calendars for next year, as participants and organisers alike were in agreement that the conference deserves many repeats.

Prof. Dr. Hans-Josef Vogel

Conference report
IBA Annual Conference
3–8 October 2010, Vancouver

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Thursday 7 October 2010

From room service to rock band: Exploring the nexus of technology and leisure
Part 2 of 2

Joint session of the Leisure Industries Section with the North American Regional Forum and the Technology Law Committee
Session Co-Chairs
Trevor W Nagel
White and Case LLP, Washington DC
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I am going to talk about online casinos with an Asian flavour.

What is a Chinese visa card and what is the great Chinese firewall?
The first issue in looking at the Chinese market is access. You need approval to get into the market. In 2009, there were only 35 foreign online games approved for use in China. Those imported games accounted for about 40% of 25 billion Yuan in revenue.

Second, China has a series of regulations covering online gaming. Recently, additional regulations have been introduced to further regulate the industry. This is a summary:

- The games are considered to be Internet Cultural Products which can only be created by approved cultural operation entities which are defined by the regulations. Market access is barred in China for foreign companies, unless you come in with a domestic partner, and it will be the domestic partner that has to proceed to apply for authorisations, licences and approvals, and you as the content or copyright holder, must grant exclusive copyright licence rights to the Chinese domestic partner.
- It is necessary to obtain approval for content. This is an ongoing issue because there are two authorities and both exercise authority over content approval. The first is the Ministry of Culture; the second is the General Administration of Press and Publications. Generally, with the PRC you must ensure that there is nothing that is going to offend the state and is of good moral content. In the past, some games have been banned because they have made the Chinese military look bad.
- There is some specific content regulation. The main issue besides the protection of the state is the protection of minors. China has in place regulations against horror, cruelty and

excessive violence to ensure that minors don't have access to that content.

In Taiwan, there is a huge online gaming market which is basically unregulated. The issue is jurisdiction – where are your servers located; where are you serving your customers – from a Taiwan website or an overseas website? Most companies do a mix. The big issue we see is in online tournaments in Asia where everything is overseas, but allowing or linking through a Taiwanese site for accounts and to allow registration. Taiwan has a Children and Youths Hazards Protection Act which covers the protection of minors which in Taiwan is anyone under the age of 20, rather than 18. It covers everything you would expect such as graphic content, pornography, violence, depiction of minors in those situations, use of minors, use of children's voices and actors. Taiwan has a video game content ratings system, but it is not really used. The main concern is age verification which is required for access to restricted content.

In China they have required the industry to self regulate; this obligation is placed upon the domestic partner. They must have staff whose responsibility it is to review the content of games to ensure that they comply with Chinese law. If you wish to update or introduce the next version of an approved product, you must go back through the approval system to obtain new approval for the product.

Another issue is the payments system.
In China, the local partner uses a local payments system. As a result, the foreign service provider gives up 30 to 35 per cent of their revenue in taxes and fees. You can't require the players to use international credit cards and in any case, most people don't have them in China. If they do use international credit cards, technically they're not doing business in China.

In Taiwan, there are no such requirements to use a local payments system. Most Taiwanese have six or seven international credit cards. The principal issue there is the contract between the user and their bank, and the service provider. You can use your US credit card to sign up for any number of services in Taiwan.

Online gambling is prohibited in both China and Taiwan
China has restrictions to address the pseudo gambling market such as buying points or credits redeemable for prizes or merchandise. Taiwan has a huge market for that – most sites go through China or through the Philippines which are a little more free and open. The issue for Taiwan is that although online gaming is prohibited, companies who are outside the jurisdiction are affected only if they have a local agent or if they are advertising in Taiwan. If they have an offshore server and use international credit card processing, they are outside the jurisdiction, and the credit card companies will process the payments. In the past, the Taiwanese government has monitored server traffic going back to the overseas website. If they detect on-line gaming, they charge the local punters, give them a fine, and threaten the local representatives of the offshore gaming supplier with detention. Therefore, as a precaution, a lot of offshore companies that take bets in Taiwan ensure they have no local presence and bar their staff from transiting Taiwan in case they are detained.

Taiwan has introduced a Digital Content Act with the aim of actually encouraging and promoting the development of online domestic content for the gaming and other industries. Taiwan has recognised that everything is shifting and

that less regulation and control is the better business model. This has led to considerable opportunities in that market.

In summary – What is the difference between the markets?
Taiwan is very loose and free, mostly left to self-regulation; there is money to be made; and there's a lot more security with respect to payment in that for offshore credit cards, banks will for the most part honour those for online gaming and gambling. In China it is necessary to have a domestic partner; there is a domestic payments system and a series of hurdles for content.

Q & A

Q Are the ISPs forced to block unauthorised content?
A Yes. You will see in a lot of sites they don't have China or the US listed when you sign up for an online account. This is a form of risk management by those companies.

Speaker: John W Crittenden
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I am talking about Social and Casual Games: Trends and recent litigation

A lot of this is anecdotal as there is not much law. Let us start with defining some terms:

Social Games There are half a billion people on Facebook. On Facebook, there are many social games. The features of a social game are that it is a relatively simple game; easy; very accessible; you don't need a lot of skill to play it, but once you get in you can never leave, because they are very, very addictive!

Let us start with an example of a social game on Facebook called *Happy Island*, which is published by CrowdStar. This game is a simulation – the idea is that you create your island resort by building different attractions and then you draw more tourists to your island. There are ways you can advance, and one of them is by getting other people that you know to become your neighbours and friends. This is a common theme among these social games. So your Facebook friends will join and they will also have islands. You don't have to play with them at the same time for it to be a social game but you are constantly going to get messages on your Facebook newsfeed from your friends who have got to another level, or acquired something. At some point, you're going to get frustrated because you can't get the widget or the thing or the attraction that you really need to make your island great. That is when you use your virtual currency, and that is when these companies start making their money.

At the top of the interface page you will see advertising for other games that CrowdStar puts out such as *Top Girl*, *It Girl*, *Happy Pets* and so forth. They encourage you to continue to build your own empire in each of those games.

Casual Games Casual games are the very simple, extremely accessible games that you play by yourself, originally included with a PC. The traditional solitaire game is a good example of a casual game. Another casual game published for the Game Boy was *Tetris*, developed in Russia. It is a very simple game, the kind of thing you can play for short periods of time while on your way to work. Now we have casual games designed for smart phones like *Strike Knight*, which is basically bowling. You can play that on your iPhone.

Online social activity has really mushroomed. Something like one third of

time spent online is for social networking, Facebook and online games. There is Twitter, the MMO games such as *World of Warcraft*, Skype and Internet telephony, but social networking is significant, and is now dominated by Facebook. On the Facebook domain, we have big games like *FarmVille* and *Happy Farm*. *FarmVille* is the most popular internet game. At the end of 2009 there were 75 million people playing.

What are some of the aspects of social gaming and trends?

There are several popular genres: there's farm simulation; there are Mob games like *Mafia Wars*; there are aquarium games and island resort games like *Happy Island*. Companies keep imitating each other. In addition to those simulation type games there are also tools for user generated games such as the *Make a Quiz* game. That is basically not an internet game in itself, but a software application that you can download and use to make your own quiz, asking silly questions like – which city should you live in, or which member of the Beatles are you most like? People make up these games totally unscientifically, but they become viral as more people play them and more people are encouraged to come into the loop.

What is important about these games is that there is a viral growth of the player base. So you play one of these quizzes and you get your result and you are encouraged to publish it on Facebook. Then all of your 150 or so friends on Facebook know that this quiz says the perfect city for you is, for example, Toronto. That encourages more people to come and play the game. If you stay in the loop, with one of the publisher's games like CrowdStar or Zynga, it feeds on itself and creates more and more customers, and more and more revenue. Where is that revenue coming from? – it is advertising, and also the sale of virtual goods, and the simulation games. You also see promotion of the publisher's other games. There is frequent imitation by competitors large and small.

In the industry itself, we are starting to see some major transactions. The industry is made up of small companies that started up as groups of creative people. Now they are attracting the attention of major players in the traditional entertainment fields. For example, Disney making an investment in Playdom, Electronic Arts and Playfish and Google investing in Zynga. What these companies are seeing is that many people are going to spend more of their time, and maybe more of their money, playing with the game that is delivered to them on their computer as opposed to something that they need to buy software for and a platform device.

We are seeing a trend to payments using Facebooks credit. Zynga is using the Facebook's currency, which creates more money for Facebook because it gets a 30 per cent cut.

What litigation have we seen?

There's not much in the way of reported cases, but because you have all this similarity, and because the competition is so keen, we've seen a number of cases involving major players in the field. Here are some examples:

- Psycho Monkey is an outfit that created a game called *Mob Wars*, a mafia simulation. *Mafia Wars*, created by Zynga, is very similar, so that led to litigation, which resulted in an undisclosed settlement. *Mafia Wars* continues to operate, so presumably there was a payment of some kind to *Mob Wars*.
- CrowdStar brought a lawsuit against WonderHill, whose *Aquarium Life* game

was extremely similar to *Happy Aquarium*. The question arises – why sue them because there are four or five aquarium games out there? This is one of the challenges in this field – you have imitation due to people being inspired by someone else's creative work. The problem is that if you copy the original expression, then that is a violation of copyright law. The case filed against WonderHill was for breach of copyright law, and as a result, *Aquarium Life* is no more!

- There have also been trade mark infringement cases. Zynga went after Playdom for use of the *Mafia Wars* trade mark in Playdom's advertising: 'Like *Mafia Wars*? Then play Mobsters!' In the US, most people would say that use of another's trademark to identify the other company's product in comparative advertising is fair use. I know the rules are a little different in other parts of the world. The suspicion is that this lawsuit is motivated for competitive reasons.
- Digital Chocolate has since sued Zynga for trademark infringement over the *Mafia Wars* trade mark. Digital Chocolate in fact had a game called *Mafia Wars* before Zynga launched its game. That case is pending.
- There is also a trade secret case between Zynga and Playdom which arose from the fact that Playdom hired some creative persons who used to work at Zynga.

To sum up

We are in a kind of a Wild West frontier in the social and casual gaming world! These are some anecdotal observations that I and others have made:

- There are low barriers to entry. It is not that hard to create a game and put it up on the Facebook platform. It is certainly not like what is involved in creating a software game, and then finding a publisher, and then trying to obtain distribution through some big chain such as Best Buy, Wal-Mart or Toys-R-Us. All you have to do is to create it and put it up on Facebook or the iPhone app store. The financial rewards for these viral games are huge. If you can get a loop going and more people to feed into your game, you have no further cost, but the revenues are going to mount rapidly. What is the downside if you are caught infringing? You don't have to recall any product from stores, you don't have to repackage or sticker or destroy product – you just take it down and go back and create another game.
- The low budget developers don't have the resources to do trademark and copyright clearance. They don't have the incentive either, because of the reasons just mentioned.
- We have also observed that there is this kind of rebellious attitude amongst very young developers – what they call *copyleft* mentality – the opposite of copyright. They take the view that if it is out there it's fair for us to augment or make our own derivation. There are mantras such as "If I only take this much, this is not an infringement." In most cases they are wrong but this attitude does continue to prevail.
- Another thing we often see is that young developers may inadvertently violate the right of publicity. This is a concept that is not common to most countries in the world. It is not a national law in the US. It is peculiar to jurisdictions like California, New York and Tennessee (the home of the late Elvis Presley) that have a lot of celebrities. The right of publicity is like the

celebrity's brand – the right of the celebrity to control his or her image, likeness, voice, name and so forth in a commercial context. So where you have creative people wanting to pay a homage to a celebrity that could be a violation of the right of publicity.

- In the US we have the Digital Millennium Copyright Act. There are similar laws in other countries which are designed to provide a means for dealing with infringement by user generated content. That will protect a provider like Facebook or other internet platforms against liability. So the platforms are going to take a hands off approach.
- Finally, the sheer number of smart phone applications increases the chance of infringement because it is very simple to create a game and load it up.

Q & A

Q Does the analogy of the Wild West shootout apply to the way that the litigation is being played out?

A Yes, some of the litigation such as the Zynga litigation against Playdom, is very aggressive. There is a sense of lawlessness – you have everyone copying everyone else's game; or being inspired by it. There is a grey area between what is appropriate – taking inspiration from something and running with it and creating your own new original work – and misappropriating somebody else's creativity.

Q By analogy the Impressionist Movement in France in the late 1800s, was based on drawing inspiration from other artists, but did not become tied up in litigation.

A Exactly, but copyright law has changed over the years. In the US, the copyright term used to be 28 years, and it keeps getting longer – thanks to the efforts of Disney and other copyright holders.

Q Do you think there is a blurring of IP rights in view of similarly themed games?

A You have to look long and hard at whether something is truly an infringement of one's own original expression of an idea, or just another take on an idea. In the *Happy Aquarium* case that we filed, why did we go after the WonderHill game, and not all other five or six other aquarium games? The reason was that the Wonderhill game was an almost identical template, right down to the choreography of the dance that the two fish do when they mate and have offspring. This was what they call slavish copying. If somebody is asked to create an aquarium game, in a perfect world you would have a clean room where the creator would not be exposed to prior work. But this is not possible these days.

Q A game has been introduced which simulates all of the National Athletic Collegiate Association (the NCAA) colleges. Do you think we may see more of that such as purchasing John Deere tractors in FarmVille or where you can go into a city game and build a hotel brand?

A There are a lot of examples of where we have seen branded products come into a game. I have seen in one of the resort games where they had brought in an AMC Theatre. That would probably be a trade mark infringement. Whether it is actionable would boil down to whether the user thinks there is some association between the product and the game. From the user's perspective, it would most likely appear

to be a product placement, which would create an association and maybe liability. It is different in a live action movie where the camera pans past the John Deere tractor – it might or might not be product placement. The more the control by the publisher and the developer over what goes in the product, the more necessary it is to be careful about product placement and obtaining end licences.

Speaker: Chris Holder
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I will be speaking about Technological Law in the leisure industry. I will be applying an English and European law perspective. I will start with some general themes about what leisure companies should be aware of, and then talk in detail about some specific areas relevant to the leisure industry.

You can develop technology in any number of ways

You can develop it yourself if you have the in-house capability or you can use third-party contractors. In England, where you are using third-party contractors for bespoke development make sure that there is specific assignment of copyright so that the rights move with you, to enable the software developed that is paid for to be exploited. A customer may desire to be an exclusive user, but this will involve a higher payment to cover all the R & D costs, and commercial exploitation rights.

You can buy technology off-the-shelf but make sure that it is fit for purpose. There are many examples of persons who have bought applications for one area trying to squeeze them into another, which has caused all sorts of issues. Also be aware that taking software off-the-shelf might turn you into an integrator of the software and the hardware to make the system work.

For joint ventures and joint development, there are issues around who owns what, and who can exploit what, where. Usually these issues come to the fore when the relationship falls apart for some reason.

Specific technology issues in the leisure industry

For website booking systems in the travel industry, and in the hotel industry, online terms of use need to be compliant with a variety of e-commerce legislation such as Distance Selling Directives, E-commerce Directives, Payment Card Industry Standards, Data Protection and consumer law legislation. From a behavioural advertising perspective, be aware of what comes through on the website in the jurisdiction where people are accessing your website. For example, because gambling is an issue in many jurisdictions, you may wish to restrict gambling advertisements from springing up all over your booking site.

Where a company has telephone and call centres, be aware of where the call centre is located from a data protection perspective. You might have a lot of personal information being passed on to companies and as far as the EU is concerned you have to make very clear to individuals that their data is being transferred outside of the borders.

Call charge revenue-sharing and exclusivity are things that are coming to the fore. A lot of companies are looking at applying premium phone rates but codes of conduct apply to these.

From a content perspective in relation to broadcasts of film, music, games and the like, when you are dealing with in-flight, cruise or hotel entertainment, you need to make sure that you have the correct licence to distribute that content.

Be aware of territorial scope issues: do those content licences actually travel; are you allowed to do what you are doing elsewhere around the world?

You also need correct licences for onward distribution of content. In the EU there was a case in 2006 which involved Spanish hotels where the European Court of Justice ruled that a hotel that transmitted a television broadcast that it was receiving from one spot to all the TV sets in the hotel was communicating the broadcast to the public for the purpose of the EU Copyright Directive. As a result, hotels need consent from the broadcaster to do so, because they are effectively copying the content.

Mobile content

There are interesting issues around copyright and content licensing with these three terms: time-shifting, place-shifting and format-shifting.

When talking about *time-shifting*, I am talking about the ability to copy and record something for listening or viewing at a later stage using DVD & VHS recorders. *Place-shifting* refers to the ability in real time to have a broadcast come into one place but streamed into another place. A situation may be where I am in England receiving a sports broadcast through my Sky system, and using a device such as Slingbox to stream this to PCs that I can access from all over the world. *Format-shifting* is effectively copying media from one format to another. For example, CD format to PC Hard Drive, CD format to iPod, MP3, MP4.

In the UK, we have the Copyright, Designs and Patents Act which deals with ownership of copyright. "The owner of the copyright has the exclusive rights to copy that work." Any copying without their consent will form an infringement of the copyright holder's rights. This includes storing in any media by electronic means. So, in the digital age, you have to look at the copyright from these three perspectives.

From the *time-shifting* perspective, there is an English House of Lords case from 1988 in which CBS sued Amstrad. Amstrad produced a twin deck device that allowed the user to put in cassette tapes and record using those cassette tapes. CBS said that Amstrad was authorising its customers to infringe its copyright. The House of Lords held that Amstrad was not authorising its customers to do that, it was only providing them with the power to do that. It was perfectly permissible for Amstrad to allow its customers to record for their own private and domestic use.

Contrast this with *place-shifting*, and you will see the law is playing catch up with the technology. In the UK, it is an infringement of copyright. There is no place-shifting exemption under English law. In some other jurisdictions, such as Germany, France and Spain, you are allowed to do this so long as you pay copyright levies which are often attached to the purchase price of the products. In Australia and New Zealand, legislation has been passed to allow the use of this media for private and domestic purposes and not fall foul of copyright laws.

Turning to *format-shifting*, this is similar to place-shifting and in the UK it is an infringement of copyright. Content licensing restrictions apply. In 2008 and 2010, the Intellectual Property Office in the UK was asked to look at place-shifting and format-shifting and to provide guidance at how best the law could be changed to deal with this situation. The office has referred this to the European Union to deal with.

Q & A

Q You talked about place-shifting using Slingbox, and the lack of statutory protection. In the US we have a fair use carve-out in copyright law. Is there something analogous to that in UK law which could be used?

A Yes, I think the authorities will allow the use of the 'for domestic use purposes' exemption as fair use. The definitions will need to be tightened up, especially domestic use, and specific references to specific technology. There is the territorial aspect to this – some of the content that may be streamed into other jurisdictions may cause problems.

Leisure Industries Section

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Chair
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IBA Annual Conference, Dubai 2011

This is the preliminary programme of the Leisure Industries Section that has been put together for the IBA Annual Conference in Dubai 30 October–4 November 2011.

Tourism in space and insurance: now that we are doing it, what are the legal pitfalls?

Joint session with the Insurance Committee and the Space Law Committee

This interactive session will involve roundtable discussions of different segments of the growing space tourism business, representing insurers, tourism companies, facilities providers and tourists. Using a hypothetical scenario of a collision of a space transportation vehicle with a satellite, participants will discuss issues and negotiate possible solutions, each to protect their unique interest in the venture. Then, participants will watch a short video of the actual launch and its consequences. Finally, the session's expert panel will identify the legal issues stemming from the scenario and incident. Who was adequately protected? Where are the gaps in the law?

Insuring these commercial space ventures raises practical and expensive hurdles because the industry depends upon unproven technology and there are hardly any track records to assess the risks involved. Customers are likely to be high net worth individuals, many of them still professionally active. The threat that a fatal accident could result in a multimillion-dollar award has been shadowing the space tourism business since the beginning. Drawing on waivers used in other leisure activities, recent laws in the United States intend to set barriers to bar or limit future liabilities. Whether these historical tourism laws will be enforceable for space activities is untested.

The licensing conditions of a spaceport provider pose other legal problems associated with space tourism.

The session will consider the civil law implications, insurance dilemmas and licensing conditions of space tourism.

Tuesday 0930–1230

From desert to dessert: leisure development in MENA nations and beyond

This interactive session will involve panel-based roundtable discussions of a variety of topics related to hotel expansions into the MENA (Middle East-North Africa) countries. The day-long session will be broken into a morning and an afternoon sub-session, each with its own co-sponsor committee and topic set.

Joint session with the Real Estate Committee

The morning session will cover the real estate and financing issues presented by expansion into MENA countries. A full range of commercial development issues will be considered, with particular focus on leisure development. Discussion will likely include the continuing issue of condo hotel development and the unique challenges in the real estate realm posed by these kinds of developments in MENA countries in particular. Other current global trends in leisure property development will also be addressed.

Another major topic of discussion will be private equity, and Islamic finance and the impact that alternative finance systems like Islamic finance have on leisure developments. This portion of the discussion will be highly focused on issues in MENA countries, but will likely also address the continued expansion of Islamic finance and growth of private equity into other countries.

Joint session with the International Franchising Committee

The afternoon session will look at the more operational issues that present themselves in the MENA countries, and other emerging issues in hotel and leisure property operations. One prime example will be the new trend of branded hotels, such as the Armani Hotel, focusing on tie-ins with other major, non-hotel brands in the leisure space. Other issues to be discussed are the current state of franchise laws in the MENA countries and their impact on hotel operations and hotel management agreements in those nations.

A good part of this session will take a comparative approach to analysing franchise disclosure and the viability of various management models given the particular regulatory regime in the country. The session will further explore the ability to harmonise compliance documents multinationally, and the most recent developments and difficulties in multinational operations that can result.

Thursday 0930–1730

30 OCTOBER - 4 NOVEMBER 2011

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