

The following is an outline of a presentation given to the Media District Intellectual Property Bar Association on March 20, 1997.

- Outline of Presentation
 1. Nature of Arbitration -- Contractual
 2. Possible Benefits of arbitration
 1. Cost
 2. Time
 3. Confidentiality
 4. Limitation of issues
 5. Easier to schedule
 6. Trier of Fact having knowledge of specific area of law
 7. Parties can select trier of fact
 3. Law governing arbitrations
 1. Domestic
 1. California Arbitration Statute-- Cal. Code Civ. Proc. 1280 et seq.
 2. Federal Arbitration Statute, 9 USC 1 et seq.
 2. International
 1. Federal Arbitration Act
 2. California International Arbitration Statute -- Cal. Code Civ. Proc. 1297.11 et seq.
 3. New York Convention (implementing legislation in 9 USC 201 et seq.)
 4. UNCITRAL Rules
 5. New British statute
 6. Inter American Convention
 3. Rules of specific forums
 4. Neutrality of arbitrator
 1. Disclosure of conflicts
 2. Specific disclosures required by statute
 5. Arbitration Tribunals
 1. AFMA --310-446-1000
 2. WIPO, 34 chemin des Colombettes, P.O. Box 18, 1211 Genve 20, Switzerland, Tel. (41-22) 730 91 11; Fax: (41-22) 740 37 00
 3. AAA-- 213-383-6516; New York 212-484-4000
 4. ICC (International Chamber of Commerce, Paris) 331 49.53.28.28; fax 331 49.53.29.53
 5. London Court of International Arbitration (LCIA)
 6. British Columbia International Commercial Arbitration Centre 604 684-2821; fax 604 641-1250
 7. Hong Kong International Arbitration Centre (852) 2525 2381; fax (852) 2524 2171; email: adr@hkiac.org
 8. Others
 9. Guild Arbitrations
 1. WGA 213 951-4000
 1. Screen Credit determination
 1. Minimum Basic Agreement and Screen Credits Manual
 2. MBA, Article 10, Grievance and Arbitration, pp 37-54 in red book

2. DGA 310-289-2000
 1. Section 2-100 of BA
 1. credit provisions
 2. cutting rights
 3. preview rights
 4. creative rights
 5. unpaid compensation (within stated limits)
 6. arbitrability of disputes
 2. Net and gross proceeds disputes not arbitrable
 3. Standing panel of arbitrators identified in BA
3. SAG 213-954-1600
 1. BA Section 9
 1. Player and producer
 2. Guild and producer
 3. Conciliation within 10 days, then arbitration
 2. Interactive Media Agreement
 1. Section 37, arbitration
 1. Conciliation followed by arbitration
 2. Arbitration is by AAA
4. AFTRA 213-461-8111
 1. Specifics seems to vary somewhat depending on particular agreement
 2. Referral to AAA
 3. Interactive Media Agreement--Section 39
 1. Conciliation followed by arbitration
5. IATSE 213 851-0220
 1. XXXII Grievance and Arbitration Procedure
 1. Conciliation followed by arbitration
 2. Standing panel
10. Non institutional arbitration
6. Arbitration Clauses
 1. Scope of jurisdiction; nature of disputes
 1. First Options of Chicago v. Kaplan, 115 US 1920 (1995)
 2. AT&T Technologies v. Communication Workers 473 U.S. 643 (1986)
 3. Validity, Interpretation, Existence of contract
 2. Power to determine interpretation, validity and existence of agreement
 3. Who is party to underlying agreement; to arbitration proceeding; alter ego issues
 1. Hall, Goodhue, Haisley & Barker v. Marconi Conf. Center Bd. (1996) 41 Cal.App.4th 1551, 1555;
 2. Carpenters 46 Northern Cal. Counties Conf. Bd. V. Zweigle (1982) 130 Cal. App. 3d 337, 341-346
 3. American Builders Assn v. Au-Yang (1990) 226 Cal. App. 3d 170, 179
 4. Moncharsh v. Heily& Blase (1992) 3 Cal. 4th 1, 8.
 4. Discovery allowed?
 1. Scope of discovery
 2. Federal Rules of Civil Procedure
 3. California Code of Civil Procedure
 4. Time frame for discovery

5. who needs to prove particular issues in the case
6. who has economic damages to prove
7. Is proof of sales needed?
5. Preliminary relief
6. Contracts; noncontractual matters; punitive damage issues
7. Choice of law
8. Choice of city
9. Language of arbitration
10. Citizenship of Arbitrator
11. Fees
 1. Share equally
 2. Award to prevailing party
 3. Discretion of arbitrator
 4. Travel and expenses
12. Written Opinions
 1. Findings of fact and conclusions of law
13. Appeal of award
14. Confidentiality
15. Forum
16. Number of arbitrators
17. Punitive damages?
18. Parties bound
19. Waiver of jury
20. Analogous tribunal
7. Fees
 1. Arbitration tribunal filing fees and administration fees
 2. Arbitrator fees
 3. Attorney fees
 4. Attorney fee awards
8. Commencing the Arbitration
 1. Time limits
 2. Demand for arbitration/AFMA request for arbitration
 1. Notice of arbitration
 2. arb. Agent sends, rules, notice and list of arbit.
 3. respodents have 15 days to send back list
 4. 7/5 days to appoint arbitrator
 5. 10 days from notice to change location of arbitration
 1. ny, london paris, rome, tokyo, sydney, muich, stockholm, rio, geneva
 6. 21 days to submit defense statement, counterclaim
 7. 60 days to have arbitration
 8. 45 days to award
 9. correction of award within 20 days
 3. Specifics Rules of individual tribunal
9. Selecting the arbitrator(s)
 1. Lawyer v. Nonlawyer arbitrator
 2. Experience in industry and procedural experience
 3. Selection of panels
10. Preliminary hearings and motions

11. Preliminary remedies
 1. Axel Bosch, Commercial Remedies in International Commercial Arbitration--A Practitioners Handbook, 1994, (call number: K102 B174) available in International Law Section of County Law Library ; 213-629-3531
 2. Loeb & Loeb v. Beverly Glen Music, Inc., (1985) 166 Cal. App. 3d 1110; 212 Cal. Rptr. 830
 3. Ross v. Blanchard, 251 Cal. App.2d 729, (1967)
12. Arbitration Hearing procedures
 1. Documents
 2. Testimony
 1. Telephonic testimony
 2. By affidavits
 3. Prerequisites to introducing evidence
13. The Award
 1. Domestic award
 2. International award
 1. due process
 2. notice
 3. jurisdiction
 4. parties
 5. legal basis for award
 6. amount
 7. costs
 8. attorneys fees and costs of arbitration
 9. avoid punitive damages
 10. Default issues
14. Enforcement of Award
 1. New York Convention vs. Reducing award to judgment
 2. Domestic enforcement of award in Los Angeles
 3. Attitudes of courts outside of the United States
 4. Enhancing the ability to collect on default awards
 1. Due process
 2. Process which comports with the minimum standards in court in which award is to be enforced
 5. Enforcement of International Arbitral Awards, Richard Mosk, The California International Practitioner, 1990-91, at 9.

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