

## **Entertainment and New Media**

**Danielle E. Maggiasco, Esq.**

Frankfurt Kurnit (Moderator)

**Catherine Farrelly, Esq.**

Frankfurt Kurnit

**Jemar Daniel, Esq.**

Vice President and Senior Counsel, Viacom

**Deborah Robinson, Esq.**

VP & Sr. Counsel Anti-Piracy, Viacom

**Adrian D. Stubbs, Esq.**

Assistant General Counsel, CBS Television

**Matthew Winterroth, Esq.**

VP & Intellectual Property Counsel, WWE



# SAMPLE TALENT AGREEMENT

As of [INSERT DATE]

[TALENT NAME]

[TALENT ADDRESS]

Dear [INSERT NAME]:

This letter sets forth the terms of the agreement between [INSERT NAME] ("You") and [NETWORK] ("Producer") for your services with respect to the production of certain programming, and related activities for Producer (the "Agreement").

## 1. Engagement

- (a) Producer hereby engages You during the Term (defined below), and You accept such engagement and agree to furnish all artistic and professional services customarily rendered by hosts, analysts, reporters, and other on-camera talent, and in related capacities, in connection with such sports and entertainment programming as Producer may assign, at any time during the Term of the Agreement, for use in connection with any media coverage, including but not limited to television or Internet coverage, produced or controlled by or on behalf of Producer and/or its affiliates (each, a "Program", collectively, the "Programs").
- (b) In addition, upon Producer's reasonable request, You shall be available for the following: development meetings and media days; videotaping and/or voicing of promotional spots, interstitial materials and sales and marketing materials; on-campus promotional appearances in conjunction with any events You cover; and a reasonable number of interviews (whether via radio, podcasting, print, television, etc.). Further, upon Producer's request, You shall provide regular written contributions to Producer's affiliated websites.
- (c) You shall perform your services on such dates, at such places, at such times, and on such Programs as Producer assigns. Producer shall have full discretion as to your assignments. Your duties to Producer take priority over all other permitted professional and personal commitments. Your services shall be performed competently and efficiently and subject to the reasonable creative direction of Producer.

## 2. Term

The term begins as of [INSERT DATE] and continues through and includes [INSERT DATE] (the "Term").

## 3. Compensation

- (a) In consideration of providing your services and the rights granted hereunder, Producer shall pay You as follows during the Term: [INSERT RATE]. Producer shall make applicable withholdings and deductions as required by law.
- (b) You represent and warrant that You are and will remain at all times during the Term: (i) a citizen or national of the United States; or (ii) an alien lawfully admitted in the United States for permanent residence; or (iii) an alien authorized by the United States Immigration and Naturalization Service to work in the United States. You further represent and warrant that You have completed, executed and delivered to Producer Form I-9, all in compliance with the Immigration Reform and Control Act of 1986. Any breach of this subparagraph is a material breach of this agreement.
- (c) In connection with your services hereunder, Producer may provide You with round-trip coach transportation, accommodations, or reimbursement for travel expenses, as applicable, in accordance with Producer's then current travel policy.

## 4. Work-For-Hire

You acknowledge that your services hereunder and the results and proceeds thereof, including any contributions to Producer's affiliated websites (collectively, the "Materials"), have been specially ordered as part of a multimedia program and shall hereinafter be deemed a work-made-for-hire for Producer. As between You and Producer, Producer shall own all right, title and interest in and to the Materials, including but not limited to the copyright therein, and shall have the right to distribute and exhibit them in all media now known or hereafter created (including but not limited to standard and nonstandard television, video on demand, home video, DVD, wireless, broadband, Internet, print, satellite and over-the-air radio, etc.) by any means transmitted, throughout the world in perpetuity without any further payment to You. You hereby

waive any "moral" or other rights of authorship (droit moral) which may accrue or have accrued to You under any laws of any jurisdiction, including, without limitation, any right to publish or withhold publication, to be or not to be associated with the Programs or to preserve the integrity of the Programs. If for any reason the Materials or any portion thereof are not deemed works-made-for-hire, then this contract will be deemed an irrevocable assignment to Producer of all rights, including but not limited to the copyright, therein. You agree to execute all documents reasonably necessary to evidence the foregoing. If You fail to do so on a timely basis, then You hereby appoint Producer as your attorney-in-fact to execute such documents; such appointment shall be deemed irrevocable and coupled with an interest. Without limiting the generality of the foregoing, Producer and any designee of Producer shall have the exclusive, perpetual and worldwide right to reproduce, edit, change, alter, add to, take from, manufacture, sell, distribute, advertise, license, or publicly perform, in any medium now known or hereafter devised, and/or otherwise exploit the Materials and the Programs, and other reproductions embodying the Materials and the Programs, under any trademarks, or trade names, and to lease, license, convey or otherwise use or dispose of any Materials and/or Programs, by any method, or in any field of use, now or hereafter known, on any terms Producer approves, or Producer may refrain from doing any of the foregoing in its sole and absolute discretion.

5. Promotional Rights

Producer, any sponsor of the Programs, any such sponsor's advertising agency, any distributor of the Programs, and any licensee of Producer, shall have the right, and may grant others the right, to use, in any medium, your name, voice, picture, approved likeness, approved biography, and other identifying attributes of You, as well as portions of the Materials and the Programs, as news information, for the purposes of trade, or for advertising purposes, including but not limited to "institutional" advertising and including but not limited to the advertising, promotion or exhibition of the Materials, the Programs, and/or Producer.

6. Exclusivity

Your services during the Term are exclusive to Producer in all forms of media now known or hereafter created, including but not limited to standard and nonstandard television, video on demand, home video, DVD, wireless, broadband and Internet, print, satellite and over-the-air radio, etc. Without Producer's prior written approval, You shall not perform any media services for, or permit the use of your name, likeness, voice or endorsement by, any person, firm or corporation or on your own account. You shall not engage in any activity of any kind that interferes or conflicts with the performance of your services hereunder or with the rights granted herein.

7. Force Majeure

In the event that, because of: an act of God; inevitable accident; fire; lockout, strike or other labor dispute; riot or civil commotion; act of public enemy; enactment, rule, order or act of government or governmental instrumentality (whether federal, state, local or foreign); failure of technical facilities; failure or delay of transportation facilities; or other cause of similar or different nature beyond Producer's control, the normal telecast and/or program production of Producer is prevented and/or suspended, Producer may suspend the performance of your services and the payment of compensation hereunder during the continuation of such prevention or suspension, and, at its election, may extend the Term for the number of days equal to the number of days of such suspension.

8. Termination Rights

- (a) Producer may terminate this Agreement at any time upon five (5) days written notice to You for any reason or no reason (other than those set forth in subparagraph (b) below which shall be governed by that subparagraph). In such case, Producer shall pay You for all work performed up to the date of termination.
- (b) In addition, Producer may, at any time, upon written notice to You, terminate this Agreement or suspend, withhold and/or reduce compensation hereunder, if: (1) You breach your material obligations hereunder, which breach, if capable of cure, remains uncured for a period of five (5) days following your receipt of Producer's written notice thereof; (2) You commit any willful or egregious action which would constitute an act of moral turpitude or which would otherwise constitute public humiliation to Producer; (3) You are arrested or charged in connection with embezzlement, fraud or any other crime; or (4) in Producer's judgment, You are unable to or have failed to fully perform the services required of You. Without limitation, "failure to perform" shall include: (i) inadequate preparation for or lack of punctuality

in attending scheduled work sessions, tapings and live telecasts and rehearsals or preparation therefor; (ii) intentional or continual activities (whether by commission or omission) contrary to the instructions of Producer's President or his delegate; and (iii) your "incapacity," which shall mean any material physical, mental or other disability which renders You incapable of fully performing all services required to be performed by You, or any material physical alteration or change of your facial or physical appearance or any material impairment of your voice. If Producer terminates this Agreement in accordance with this paragraph 8, it shall be under no further obligation to You except to pay You for all work performed by You up to the date of termination. Any termination by Producer hereunder will not be deemed a waiver of any other rights that Producer may have.

11. FCC Regulations

Reference is hereby made to Section 507 of the Federal Communications Act which makes it a criminal offense for any person to accept or pay, or agree to accept or pay, any money, services or other valuable consideration for the inclusion of any material or play as part of a television program without disclosing the fact of such payment or agreement. You acknowledge that You are familiar with the requirements of the Act and agree that You will not accept, pay or agree to accept or pay any money or other valuable consideration, other than the compensation payable hereunder, for the inclusion of any material or plug as part of the Materials.

12. Representations and Warranties

You represent and warrant that: (i) You have no existing endorsement, sponsorship or similar agreements concerning your services or name or likeness, and You shall not enter into any such endorsement, sponsorship or similar agreement during the Term of this Agreement; (ii) except for any material Producer provides to You, the Materials (including, without limitation, all ideas or materials of any nature which You furnish hereunder) will be your sole original creation and will not, that You know of or with reasonable diligence could discover, violate or infringe any rights of any third party, including without limitation, a defamation, libel, slander or violation of any right of privacy or publicity; (iii) You have the full right, power and authority to enter into and completely perform your obligations hereunder and to grant all rights granted herein; and (iv) there are no rights or commitments of any nature outstanding in favor of any person, firm or corporation that would or might impair, interfere with or infringe upon the rights herein granted and You have obtained or will obtain all required permission or grants of authority necessary with respect to your obligations hereunder.

13. Indemnification

You shall indemnify, defend and hold harmless Producer, Producer's parent, subsidiaries and affiliated entities and their respective officers, directors, employees and agents, sponsors and advertising agencies, any stations or systems over which the Programs are telecast and/or exhibited and any licensee of Producer from and against any and all claims, damages, liabilities, costs and expenses, including reasonable counsel fees, arising out of: (i) the use of any material or services furnished by You in connection with the telecast and/or exhibition of the Programs unless specifically approved by Producer; (ii) any acts done or words spoken by You, unless such acts or words have been specifically supplied or approved by Producer; and (iii) any breach by You of any warranty, representation or agreement made by You herein.

14. Confidentiality

In connection with your engagement hereunder by Producer, Producer anticipates that You may be provided with or exposed to certain non-public information concerning Producer, its affiliates, assigns or licensees, which information, together with notes, analyses, compilations, studies or other documents prepared by Producer based upon, containing or otherwise reflecting such information, is hereinafter referred to as the "Confidential Information." You shall, except to the extent permitted below, keep such Confidential Information strictly confidential in perpetuity. As such, You shall not, during the Term or any time thereafter, use for your own purposes, or disclose to or for the benefit of any third party, any trade secret or other Confidential Information of Producer, its affiliates to a third party (except as may be required by law or in the performance of your duties hereunder consistent with their respective policies) and shall comply with any confidentiality obligations of Producer, its affiliates, whether under agreement or (to the extent known to You) otherwise. All Confidential Information disclosed by Producer and its affiliates is and

shall remain the property of Producer or its affiliates, as applicable. Notwithstanding the foregoing, Confidential Information does not include information which: (i) is or becomes generally available to the public other than as a result of a disclosure by You or any other person who directly or indirectly receives such information from You or at your direction; or (ii) is or becomes available to You on a nonconfidential basis from a source which is entitled to disclose it to You. Further, You and your respective agents agree that the specific terms and conditions of this Agreement are confidential, and, therefore, shall not, except as may be necessary to comply with any applicable law, be made available to third parties without the prior written consent of Producer. You agree that You shall cause your agents to comply with this confidentiality provision in the same manner as if they have signed this Agreement.

15. Miscellaneous

- (a) You acknowledge that your services are of a special, unique, extraordinary and intellectual character, which gives them peculiar value, and that a breach of any provision may cause irreparable injury to Producer, which may not be adequately or reasonably compensated in damages in an action at law. Therefore, You agree that Producer may seek injunctive relief to prevent such breach in addition to all other rights or remedies it may have.
- (b) This Agreement may be assigned by Producer to any company controlling, under common control with or controlled by Producer, or which assumes the assets or operations of Producer, provided that Producer shall remain liable for its obligations hereunder unless such assignment is in writing and the assignee assumes all of Producer's obligations hereunder. This Agreement may not be assigned by You.
- (c) All notices required to be given hereunder shall be given in writing, by personal delivery or by certified mail, return receipt requested, by overnight courier, signature required, or by facsimile with verification of receipt, at the respective addresses of the parties hereto set forth above, or at such other address as may be designed in writing by either party, and, in the case of Producer, to the attention of its Executive Vice President and General Counsel. Any notice given by mail shall be deemed to have been received on the date of actual receipt as evidenced by signature or other proof of delivery.
- (e) This Agreement shall constitute the entire understanding between the parties with respect to its subject matter and shall supersede any and all prior agreements and understandings between the parties with respect to the subject matter. This Agreement may not be modified, altered, or amended except in writing signed by both parties.
- (f) This Agreement has been entered into in the [INSERT STATE] and shall be governed by [INSERT JURISDICTION] law applicable to contracts executed and performed entirely therein (without regard to the conflicts of law principles).

## PROGRAMMING AGREEMENT

1. Event. The “Event” is [INCLUDE DESCRIPTION OF EVENT].
2. Licensed Territory. The [INSERT TERRITORY] (the “Licensed Territory”).
3. Term. The term begins on the [INSERT DATE] and continues in full force and effect through [INSERT DATE] (the “Term”).
4. Programs. Licensors shall produce and deliver to Licensee [INSERT NUMBER OF PROGRAMS] fully-produced thirty (30) minute programs of the Event (each, a “Program” and collectively, the “Programs”), each formatted in [INSERT NUMBER OF SEGMENTS] segments totaling [INSERT MINUTES] minutes of content per Program, closed captioning, and formatted for commercial breaks as directed by Licensee. Licensee may add any of its own elements to the Programs, such as lead-ins, intros and similar elements (collectively, the “Licensee Materials”) at its own expense and discretion.
5. Grant of Rights. Licensors hereby grants Licensee the following irrevocable rights during the Term:
  - a. Telecast Rights. With respect to each Program, Licensors grants to Licensee an irrevocable, perpetual, right and license to telecast, exhibit, distribute and license for transmission and exhibition the Programs, and any material included in the Programs, in any and all media, technology and distribution methods, including over any form of television, interactive and online media (whether currently in existence or hereafter developed) (all such rights collectively referred to as the right to “Telecast”).
  - b. Exclusivity. Licensee’s rights in and to the Event and the Programs are exclusive. Licensors has not and will not grant to any third-party any of the rights granted to Licensee hereunder, including, but not limited to, the right to Telecast any part of the Event and the Programs.
  - c. Excerpt Rights. During the Term and thereafter in perpetuity, Licensee may Telecast excerpts of each Program in new programming and in connection with advertising, marketing, sales, research, and promotion of the Programs and/or the Network.
6. Licensee Graphics. Licensee shall provide Licensors with a complete graphics package (the “Licensee Graphics”) for use in the Programs. Licensors has no other right in and to the Licensee Graphics. Licensors acknowledges and agrees that it shall not combine any other graphic elements with the Licensee Graphics, shall not alter the Licensee Graphics in any manner, including proportions, font, design, arrangement, colors or elements nor may it morph or otherwise distort the Licensee Graphics in perspective or appearance. Licensors further acknowledges and agrees that the Licensee Graphics and/or any portion thereof may not be used in any offensive, vulgar, sexually explicit, obscene, defamatory or otherwise objectionable manner, as determined by Licensee in its sole discretion
7. Copyright. Licensors at all times and in perpetuity owns all right, title, and interest, including, but not limited to, all copyrights, in and to the Programs.
8. Payment Obligations. In consideration of the rights and licenses granted to Licensors hereunder, Licensors shall pay to Licensee the total amount of [INSERT FIGURE], as follows: [INSERT PAYMENT SCHEDULE]
9. Exhibitions and Scheduling. Licensee has the right to an unlimited number of Telecasts of each Program on [NETWORK] (the “Network”), and the elements thereof in perpetuity, at dates and times scheduled by Licensee within its sole discretion. Notwithstanding the foregoing, Licensee



acknowledges and agrees that it shall air each Program on the Network at least [INSERT NUMBER] during the Term (each, a “Guaranteed Telecast,” together, the “Guaranteed Telecasts”) on specific day and time slots to be determined by Licensee in its sole discretion.

10. Production and Deliverables. In addition to Licensor’s obligations otherwise set forth in this Agreement, Licensor shall do the following at its sole cost and expense:
  - a. Provide the fully-produced Programs (in accordance with Section 4 above) to Licensee [INSERT DELIVERY INSTRUCTIONS]
  - b. Consult with Licensee regarding talent, with all talent subject to Licensee’s approval;
  - c. Clear all elements included within each Program for Telecast by Licensee as set forth herein, including, but not limited to, the rights to use the names, voices and likenesses of the participants, as well as any logos of any sponsor and any branding appearing in the Programs, and any music included in the Programs; and
  - d. Secure and deliver to Licensee music cue sheets for any music used in the Programs, and signed releases and/or licenses with respect to any footage and/or photos used in the Programs.
11. Sponsorships/Sponsor Enhancements/Billboards/Commercial Inventory.
  - a. Sponsorships. Licensor has the exclusive right to sell the title sponsorship to the Program. Licensee has the exclusive right to sell the presenting sponsorship to the Program.
  - b. Sponsor Enhancements. In each Program, Licensee shall provide Licensor with [INSERT NUMBER] of the in-program sponsored elements for use by the designated sponsors of the Event. Each sponsored element supplied by Licensor is subject to Licensee’s standards and practices (“Licensee’s Standards and Practices”) and Licensee’s prior approval. Licensee retains the unfettered right to sell separately or packaged with commercial inventory all remaining in-program sponsored elements in each Program.
  - c. Billboards. In each Program, Licensee shall provide Licensor with [INSERT NUMBER] of the in-program billboards for use by the designated sponsors of the Event. Each billboard position will include a graphic and an on-air read. Each billboard position supplied by Licensor is subject to Licensee’s Standards and Practices and Licensee’s prior approval.
  - d. Commercial Inventory. Licensee shall provide Licensor with [INSERT NUMBER] thirty (30) second units of commercial inventory in each Guaranteed Telecast of each Program. Licensee retains all remaining commercial and promotional inventory in each Telecast of each Program. Licensor’s commercial inventory within the Programs is to be used for the Event designated sponsors. Each party retains the proceeds from its sale of such inventory, provided, however, that all commercial units supplied by Licensor are subject to Licensee’s Standards and Practices. Placement of the commercial units is subject to Licensee’s sole discretion, in each instance.
12. Promotion and Marketing Support. Licensor shall cooperate with Licensee on the marketing and promotion plan for Licensee and its Telecast of the Programs. In connection therewith, Licensor shall: [INCLUDE MARKETING OBLIGATIONS]
13. Publicity; Trademarks. Licensor grants to Licensee the right to issue and authorize advertising and publicity in connection with the Event, each Program, and the Network, including the names, photographs, likeness, acts, poses, voices and other sound effects of the participants, including the Event logos, the sponsors, and all other persons rendering services in connection with the Programs. On a non-exclusive basis, Licensor hereby licenses to Licensee, and Licensee has the right to use, the trademarks, service marks, logos, copyrights and related rights owned or controlled by Licensor



and/or the Event owners in connection with the advertising, marketing, and promotion of the Programs and the Network.

14. Representations and Warranties.

- a. Licensors represents and warrants that:
  - i. Licensor has the right to enter into and perform this Agreement and grant the rights granted herein; has taken all necessary action to authorize the execution and delivery of this Agreement; and this Agreement does not and will not violate any provisions of any other agreement to which it is a party;
  - ii. Licensor has sole and exclusive control of any and all media rights worldwide to the Event;
  - iii. There are, and will be, no claims, liens, encumbrances or rights of any nature in or to the Licensed Footage or any part thereof which can or will impair or interfere with the rights, privileges or licenses of Licensee hereunder. "Licensed Footage" shall be defined as the Programs and each and every element thereof, including Licensor Ancillary Materials but specifically excluding Licensee Materials;
  - iv. The use and exhibition of the Licensed Footage and each and every part thereof, including the sounds and music synchronized therewith, and the exercise of any right herein granted to Licensee, will not violate or infringe upon the trademark, trade name, copyright, patent, literary, dramatic, music, artistic, personal, private, contract, civil or property right, right of privacy or publicity, or any other right of any person or constitute a libel or slander of any person, and the Licensed Footage will not contain any unlawful or censorable material;
  - v. Licensor has not and will not sell, assign, transfer, convey or hypothecate to any person or company, any right, title, or interest in or to the Licensed Footage, or any of the other rights granted to Licensee;
  - vi. No lawsuits are, or shall be, threatened or pending in connection with the Licensed Footage;
- b. Licensee represents and warrants to Licensor as follows:
  - i. Licensee has the right to enter into and perform this Agreement;
  - ii. Licensee has taken all necessary action to authorize the execution and delivery of this Agreement; and
  - iii. This Agreement does not and will not violate any other agreement to which Licensee is a party.

15. Indemnification. Licensor agrees to indemnify and hold Licensee (and Licensee's affiliates, exhibitors, assignees, licensees, and its respective directors, officers and employees) harmless against any liability, damage, costs and expenses (including reasonable attorneys' fees) arising out of any claim, demand or action in connection with the following: (i) a breach of any representation, grant, warranty or agreement assumed by Licensor hereunder; and (ii) personal injury to or death of a person or damage to property to the extent caused by the acts, errors and/or omissions, or the willful misconduct of Licensor or Licensor's officers, directors, agents, employees, subcontractors or volunteers. Licensee will give Licensor prompt notice of any claim to which the foregoing indemnity applies. Licensee may participate in the defense of the same, at its expense, through counsel of its choosing. The final control and disposition of the same remains with Licensor, but no such claims may be settled by Licensor in a manner prejudicial to Licensee's rights hereunder without the consent of the Licensee, not be unreasonably withheld. This section survives the termination or expiration of this Agreement.

16. Insurance. [INSERT INSURANCE REQUIREMENTS]

17. Compliance with Law; FCC Regulations. Licensor warrants and represents that the Programs comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to,

the rules and regulations of the Federal Communications Commission ("FCC"). Specific reference is hereby made to Section 507 of the Communications Act of 1934, as amended (the "Communications Act") which makes it a criminal offense for any person to accept or pay, or agree to accept or pay, any money, services or other valuable consideration for the inclusion of any material or play as part of a television or radio program without disclosing the fact of such payment or agreement. Licensor acknowledges that it is familiar with the requirements of the Communications Act and agrees that it shall not accept, pay or agree to accept or pay any money or other valuable consideration for the inclusion of any material or plug as part of the Programs, without written notice to Licensee and without adequate disclosure as required by the Communications Act and the rules and regulations of the FCC. This section survives the termination of this Agreement.

18. Termination. Licensee has the right to terminate this Agreement in the event of any material breach by Licensor of any provision, agreement or obligation hereunder that is not cured, if capable of being cured, by Licensor within ten (10) business days of receiving notice of such breach.

19. Miscellaneous.

- a. Force Majeure. Notwithstanding anything herein contained to the contrary, neither party is liable to the other in damages because of any failure to perform hereunder caused by any cause beyond its control, including, but not limited to, natural disaster, accident, casualty, labor controversy, civil disturbance, embargo, war, threat of war, act or threat of terrorism, act of God, any government ordinance or law, the issuance of any executive or judicial order, or any failure or delay with respect to transmission equipment or apparatus.
- b. Relationship. Nothing contained herein is construed so as to constitute a partnership, agency or joint venture between the parties. Instead, the relationship between the parties is at all times that of independent contracting parties. As between each other, each party is fully responsible for all persons and entities it employs or retains, except as otherwise specifically provided in this Agreement.
- c. Notices. All notices and other communications required or permitted to be given under this Agreement must be in writing and deemed to have been duly given if: (i) delivered personally; (ii) mailed, via certified or registered mail with postage prepaid; or (iii) sent by next-day or overnight mail or delivery. All such notices will be deemed given on the date actually delivered (except if such date is a Saturday, Sunday or legal holiday, in which case it will be deemed given on the next business day). If a party delivers any notice to the other party in a manner that does not comply with this Subsection 19(c), then the same will be deemed delivered on the date, if any, on which the other party actually receives such notice. Each party's address for notices is as set forth in the preamble above or, in each case, at such other address as may be specified in writing to the other parties hereto.
- d. Confidentiality. Each party recognizes and acknowledges that it may receive certain confidential information and trade secrets concerning the business and affairs of the other party and/or its trustees, officers, executives, and affiliates which may be of great value to the disclosing party ("Confidential Information"). As such, the receiving party agrees not to disclose, unless either party is required by a court, tribunal or governmental or regulatory agency, or by law or legal order, any Confidential Information of the other party, or any of the terms or conditions of this Agreement (including this Agreement in its entirety or any documents delivered in accordance herewith), to any third-party other than the receiving party's legal and/or financial advisors who need to know such information in order to render services on behalf of the receiving party, or in any way use such information other than as reasonably necessary to perform this Agreement. If disclosing such information in response to a law or legal order, the receiving party shall give prior

written notice within a reasonable time to the disclosing party and make a reasonable effort to protect and/or limit such information from unnecessary disclosure or use. Notwithstanding the foregoing, Licensee may disclose the terms hereof to any parent or sister company who will be under the same confidentiality obligations as detailed herein. This Subsection 19(d) survives the termination of this Agreement.

- e. Severability; Waiver. Nothing contained herein is construed to require the commission of any act contrary to law, and wherever there is any conflict between any provisions contained herein and any present or future statute, law, ordinance, or regulation contrary to which the parties have no legal right to contract, the latter prevails; but, the provision of this Agreement which is affected is curtailed and limited only to the extent necessary to bring it within the requirements of the law. Failure of any party at any time to require performance of any provision of this Agreement does not limit the party's right to enforce the provision, nor does any waiver of any breach of any provision be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
- f. Construction. The laws of [INSERT STATE] govern all matters arising under or relating to this Agreement, without regard to its conflict of law principles. The parties agree that any legal action brought with respect to this Agreement must be brought in the state or federal courts in [INSERT JURISDICTION] and hereby submit to the jurisdiction of such courts.
- g. Assignment. Licensor shall not assign any right nor delegate any obligation under this Agreement. Any attempted assignment or delegation by Licensor is null and void. Licensee may assign any right or delegate any obligation under this Agreement to any corporate successor or any entity controlled by, under common control with or controlling Licensee. This Agreement binds and benefits the parties and their respective permitted successors and assigns.
- h. Entire Agreement. This Agreement is the final and exclusive agreement between the parties on the matters contained in this Agreement. All previous and contemporaneous negotiations, representations and agreements, whether written or oral, between the parties concerning the subject matter of this Agreement are merged into this Agreement. The parties may amend this Agreement solely by written agreement, signed by both parties.

This Agreement is hereby executed by a duly authorized representative of each party as of the Effective Date.



# Entertainment and New Media

2019 NYSBA Annual Meeting, IP Section

New York Hilton Midtown

January 15, 2019

Frankfurt Kurnit Klein + Selz PC

## Introductions

- Jemar Daniel, Esq.: Viacom
- Catherine Farrelly, Esq.: Frankfurt Kurnit
- Deborah Robinson, Esq.: Viacom
- Adrian D. Stubbs, Esq.: CBS Television
- Matthew Winterroth, Esq.: WWE

Frankfurt Kurnit Klein + Selz PC

# New Media and Enforcement Issues

Deborah Robinson, Esq.

VP & Senior Counsel, Anti-Piracy, Viacom

Frankfurt Kurnit Klein + Selz PC

**TYPES OF SITES AND PLATFORMS**

- UGC SITES**: vimeo, YouTube, Dailymotion
- LIVE STREAMING/OTT**: twitch, NETFLIX
- CYBERLOCKERS**: RAPID, GATOR, uploaded
- HYBRID SITES**: GorillaVid, 4shared
- P2P PLATFORMS**: BitTorrent
- TORRENT SITES**: ExtraTorrent
- LINK SITES**: Tuner, watchseries
- SEARCH ENGINES**: Google, bing

PRIVILEGED AND CONFIDENTIAL

Logos visible in the background include: FILEUPUP, cloudZer, CYBERLOCKER, Datael, CosmoBook, BAYFILES, snips, FileToBox, FILESONIC, FileShare, FileFlyer, FileSend, FILEMEGA, EXTABIT, Fileover.net, Qerys File, Glumba, FILEBAND, filefat, FILEGAG, File Uploader, File Dropper, files in, FILEPLANETA, FILESAVE, File Reactor, Filehost, PASTEMING, DEFEND, filecloud.io, ExoShare, File-bit, 迅雷方向, 人人网, EXCLUSIVEFANS, IDUP.IN, KICKLOAD, 迅雷看看, 优酷, 土豆, kong, f, v, drive, 激动网.



## Types of Infringements



**LINEAR/TV  
CONTENT**



**APPS &  
GAMES**



**ONLINE  
CONTENT**



**SOCIAL  
MEDIA**



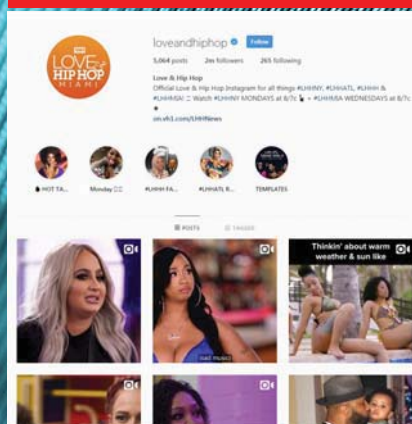
**CONSUMER  
PRODUCTS**



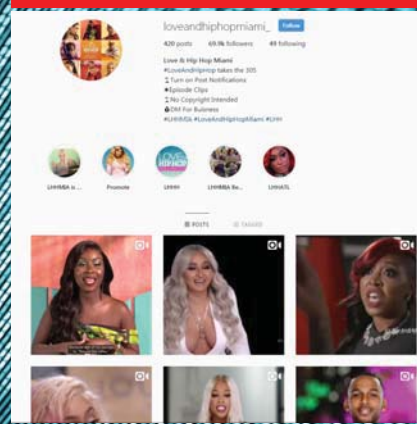
**TICKETS  
& EVENTS**

## FAKE SOCIAL MEDIA ACCOUNTS

### OFFICIAL INSTAGRAM PAGE



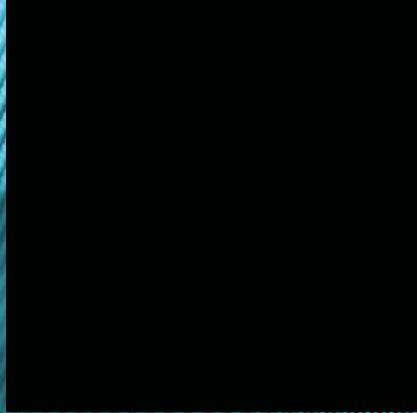
### INFRINGING INSTAGRAM PAGE



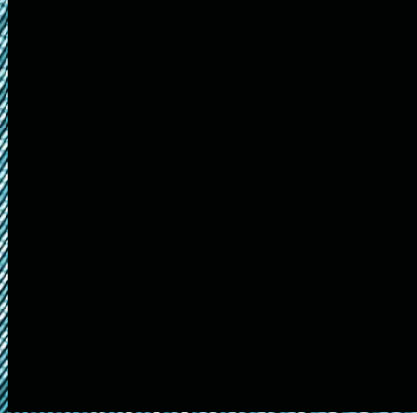


# INFRINGING VIDEO?

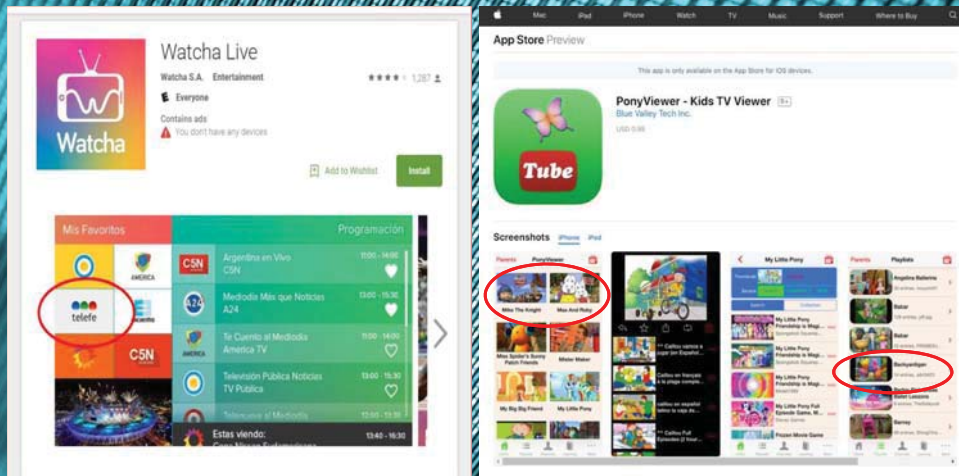
PAW PATROL VIDEO

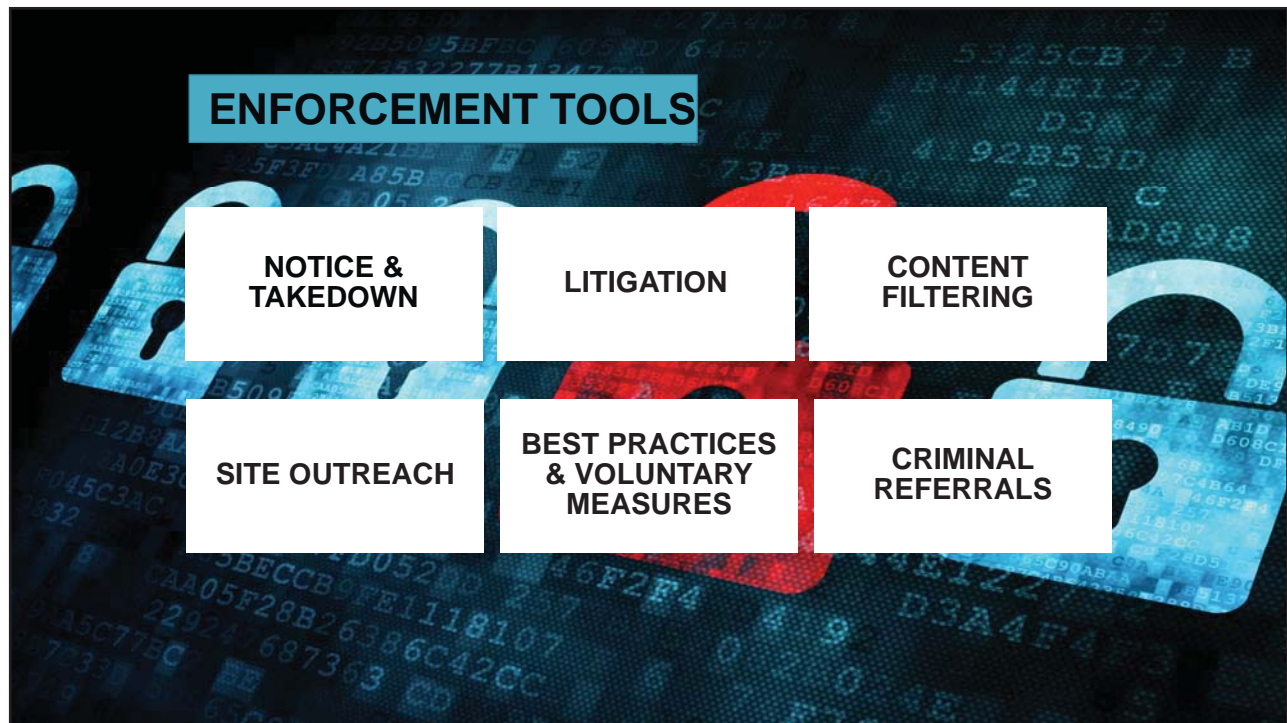
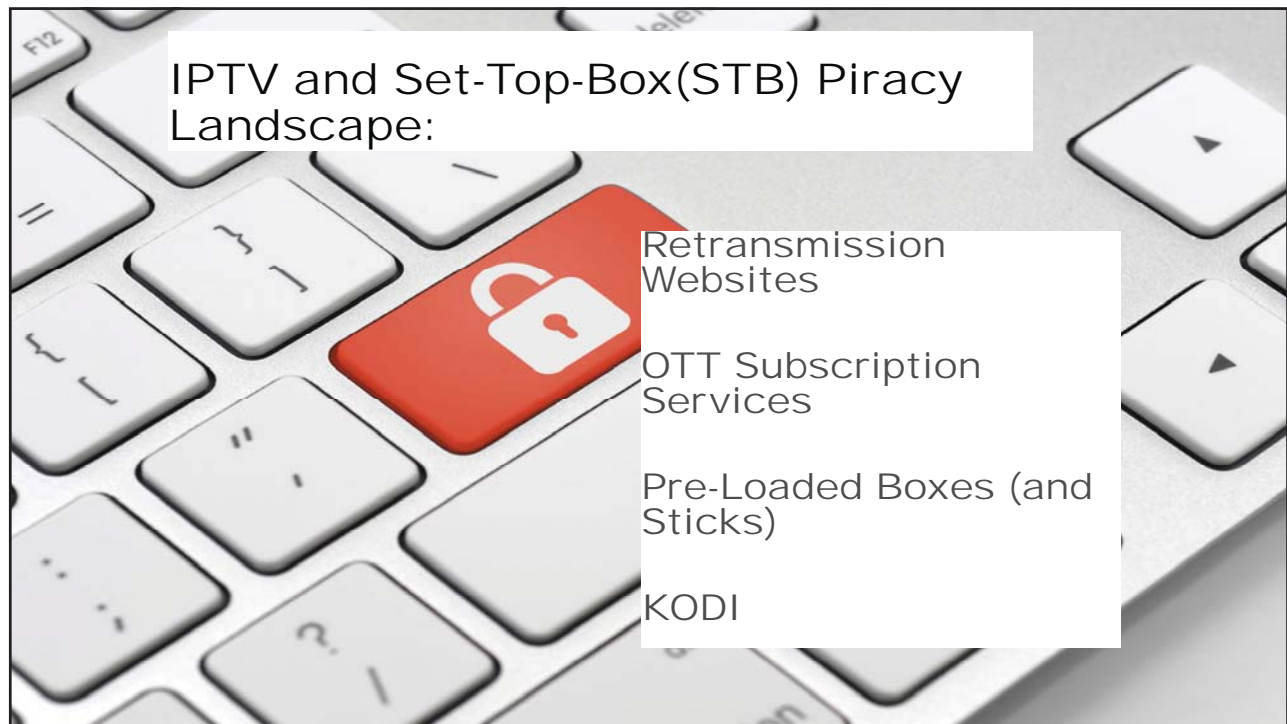


PAW PATROL GAME PLAY



# INFRINGING MOBILE APPS





# IP Enforcement Cheat Sheet

Matthew Winterroth, Esq.  
VP, Intellectual Property  
World Wrestling Entertainment, Inc.

Frankfurt Kurnit Klein+Selz PC



## DMCA: Quick Recap

- The Digital Millennium Copyright Act (DMCA), 17 U.S.C. §§ 512, was created primarily as a solution for online service providers (OSPs) such as YouTube, Facebook, Twitter and Dailymotion that host content uploaded by third parties rather than solely create their own original content.
- OSPs benefit from the DMCA because it provides “safe harbor” from liability in the event content uploaded to their site infringes another’s copyrights, so long as they adhere to certain provisions, including:

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## DMCA: “Safe Harbor” Provisions

- Submit an OSP agent designation with the Copyright Office -- 17 U.S. Code § 512(c)(2)
  - The database is useful for determining the appropriate party to contact in the event a takedown notice needs to be filed.
  - <https://www.copyright.gov/dmca-directory/>

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## DMCA: “Safe Harbor” Provisions

- Establish notice and takedown procedures -- 17 U.S. Code §§ 512(c)(1)(C), 512(c)(3)
  - Copyright owners may submit a list of allegedly infringing content to an OSP’s designated agent. Once an OSP has been made aware of infringing content, the content must be “expeditiously” removed, and the uploader be notified of the takedown.
  - The uploader can then file a counter-notification to contest the filing of a notice and takedown after content has been removed -- 17 U.S. Code §§ 512(g)(3). Doing so requires the uploader to give their true contact details and consent to jurisdiction of Federal District Court.
  - The content would then be restored, and the only way for the copyright owner to force content removal would be to file a lawsuit.

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# Evolution of Notice and Takedown

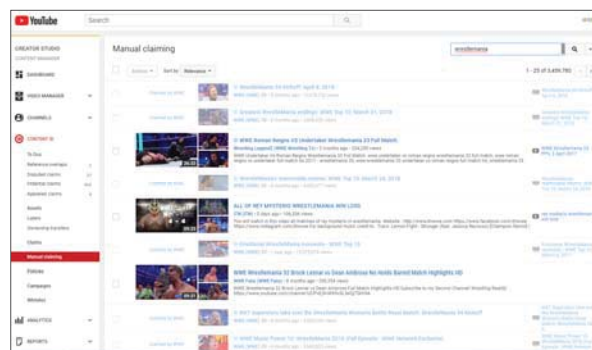
- As a result of the popularity of User Generated Content (UGC) and the progression of video, many OSPs evolved and have created forms for mass © takedowns and other IP rights.
- Others have more formal business relationships with copyright owners and formed more robust rights managers, allowing for asset fingerprinting and automated monetization and blocking of content.

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## YouTube CMS and Content ID – Gold Standard

- As the copyright owner, you provide YouTube with a reference copy of your eligible content. YouTube uses the reference to scan uploaded videos for matching content, UGC and streaming. When a match is found, YouTube applies your preferred policy: to monetize, track, or block the video in question. Reporting/analytics is available.
- <https://support.google.com/youtube/answer/3244015?hl=en>
- <https://www.youtube.com/watch?v=9g2U12SsRns>



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## Other Ways to Enforce on YouTube

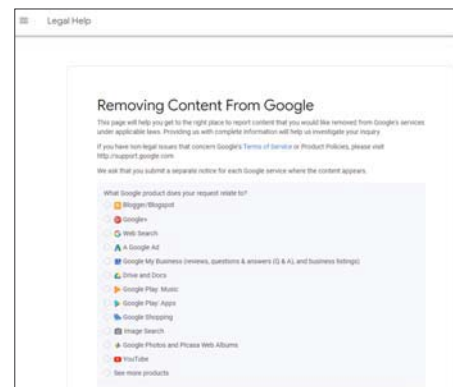
- Content Verification Program (CVP):  
<https://support.google.com/youtube/answer/6005923>
  - designed especially for copyright owners to issue multiple removal requests.
- Send a one-off DMCA takedown notice for content on YouTube:  
[https://support.google.com/youtube/answer/2807622?hl=en&ref\\_topic=2778544](https://support.google.com/youtube/answer/2807622?hl=en&ref_topic=2778544)
- Takedowns concerning other IP/legal violations (e.g. TM, counterfeit, privacy) : <https://www.youtube.com/reportingtool/legal>

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## Other Google sites

- Each sub-site under the Google umbrella (e.g. Blogger, Search, Google Play, etc.) has a different method and form to request content removal
- <https://support.google.com/legal/troubleshooter/1114905?hl=en>



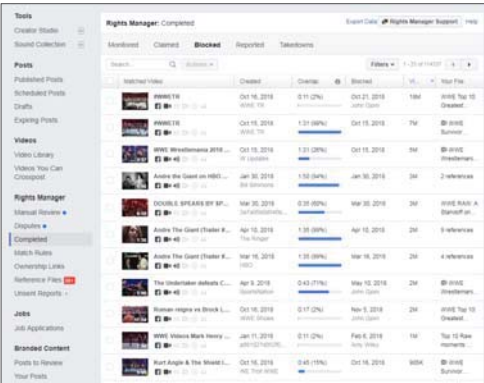
*In response to a complaint we received under the US Digital Millennium Copyright Act, we have removed 2 result(s) from this page. If you wish, you may read the DMCA complaint that caused the removal(s) at [LumenDatabase.org](http://LumenDatabase.org).*

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# Facebook/Instagram Rights Manager

- Similar to YouTube's CMS, Rights Manager is for content creators wanting to upload reference content and protect their works on Facebook or Instagram at scale.
- Newer and less robust than YouTube CMS. Monitors and enforces on UGC and streaming content. Reporting/analytics is available.
- <https://rightsmanager.fb.com>



Video Title	Date	Duration	Status
WWE: WrestleMania 2018 ...	Oct 16, 2018	0:11 (2%)	OK
WWE: WrestleMania 2018 ...	Oct 16, 2018	1:31 (38%)	OK
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WWE: WrestleMania 2018 ...	Oct 16, 2018	1:31 (38%)	OK

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## Other Ways to Enforce on FB/IG

- Facebook IP reporting portal:  
 ©: <https://www.facebook.com/help/contact/1758255661104383>  
 TM: <https://www.facebook.com/help/contact/1057530390957243>  
 Counterfeit: <https://www.facebook.com/help/contact/628238764025713>
- Facebook takedowns concerning other legal violations and community standards violations:  
[https://www.facebook.com/help/181495968648557?ref=community\\_standards](https://www.facebook.com/help/181495968648557?ref=community_standards)
- Instagram infringement reporting portal:  
<https://help.instagram.com/535503073130320>

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# Twitter/Periscope

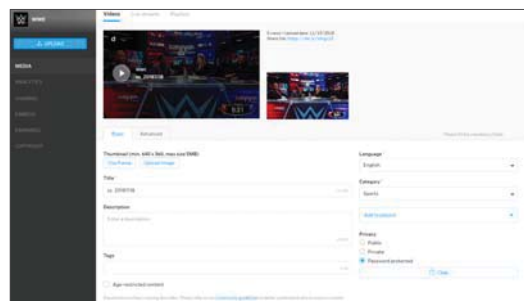
- Twitter/Periscope currently does not have a content ID or rights manager program for content creators. Below are reactive tools to remove infringing content, but vs. other OSPs, Twitter is quite slow to react and requires more back and forth.
- Twitter/Periscope IP reporting portal:  
©: <https://help.twitter.com/forms/dmca>  
TM: <https://help.twitter.com/forms/trademark>  
Counterfeit: <https://help.twitter.com/forms/counterfeit>
- Twitter takedowns concerning other legal violations and community standards violations:  
<https://help.twitter.com/en/rules-and-policies/twitter-report-violation>

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# DailyMotion

- DailyMotion is a video sharing platform, based in France, and owned by Vivendi. DailyMotion has a content management system, but it is not nearly as robust as YouTube's or even Facebook's:  
<https://faq.dailymotion.com/hc/en-us/articles/203921173>
- Copyright reporting portal:  
[https://faq.dailymotion.com/hc/en-us/requests/new?ticket\\_form\\_id=136048&request%5Bcustom\\_fields%5D%5B30150188%5D=copyrightform-notification](https://faq.dailymotion.com/hc/en-us/requests/new?ticket_form_id=136048&request%5Bcustom_fields%5D%5B30150188%5D=copyrightform-notification)
- DailyMotion policies concerning other legal violations and community standards violations:  
<https://faq.dailymotion.com/hc/en-us/categories/200290417-Copyright-Content-Policies>



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## Other Popular OSP Enforcement Tools

- **Twitch:**

©: <https://www.twitch.tv/p/legal/dmca-guidelines>; e-mail to [dmca@twitch.tv](mailto:dmca@twitch.tv)

TM: <https://www.twitch.tv/p/legal/trademark-policy>; e-mail to [trademarkclaims@twitch.tv](mailto:trademarkclaims@twitch.tv)

- **Vimeo:**

©: <https://vimeo.com/dmca/claim> or e-mail to [dmca@vimeo.com](mailto:dmca@vimeo.com)

TM: <https://vimeo.com/help/violations/trademark>

Privacy: <https://vimeo.com/help/violations/privacy>

- **Snapchat:**

©: <https://support.snapchat.com/en-US/co/report-copyright>

TM/counterfeit: <https://support.snapchat.com/en-US/a/infringement-trademark-general>

Right of Publicity: <https://support.snapchat.com/en-US/a/infringement-publicity>

Frankfurt Kurnit Klein + Selz PC



## Growing and Protecting Your Brand

Adrian D. Stubbs, Esq.

Assistant General Counsel, CBS Television

Frankfurt Kurnit Klein + Selz PC

# Trademark Clearance

Catherine M.C. Farrelly, Esq.

Partner, Frankfurt Kurnit Klein + Selz

Frankfurt Kurnit Klein + Selz PC

## Trademark Clearance and Filing

- **Clearance Searches** – Search in each territory or accept business risk of conflict.
- **Filing Considerations** – International nature of esports and other businesses conducted online, particularly where they have international viewership and related merchandise.
- **What To File** – Depending on the country and your business plans, file either an application in each country or a multi-national filing, in territories such as Europe, where that is available under an international treaty.
- **Where To File** – Prioritize regions or countries, or search and file in waves. Consider trademark squatting issues.



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# Platform Specific Content Review Considerations

Jemar Daniel, Esq.

VP & Senior Counsel, Business Legal Affairs, Viacom

Frankfurt Kurnit Klein + Selz PC

## Linear Content Review Considerations

Each platform presents unique considerations that can elevate or mitigate the risks of receiving a claim on the content distributed

### Considerations for linear programming that elevate risks:

- Difficult to remove show from programming schedule on request (court ordered or based on settlement agreement)
  - Negatively impacts the Ad-Sales team who sells commercial space adjacent to the removed program
- For now- still the dominant means of content consumption which means more visibility and possible legal exposure

### Considerations for linear programming that mitigate risks:

- Longer content review window
- Structured production process and well developed information exchange between Production, Legal, and other network stakeholders
- Trained personnel in production management and creative groups
- Solvent 3<sup>rd</sup> party prodco partners to indemnify network in legal matters

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# Digital Content Review Considerations

## Considerations for digital programming that elevate risks:

- Shorter content review window
- More programming volume given the low production cost
- Generally project based production staff and high turnover from project to project
- Generally less experienced (sometimes less solvent) 3<sup>rd</sup> party prodco partners
- Generally heavier reliance of “fair-use” on content created specifically for digital consumption
- Heavy incorporation of 3<sup>rd</sup> party assets or marks (e.g., Instagram, FB, YouTube, Snap, etc.) in show content
- Lower budgets to pay out jury awards or settlements

## Considerations for digital programming that mitigate risks:

- Easier to take down if not subject to advertiser commitment
- Slightly lower visibility (not as popular as linear (yet))
- Content produced specifically for digital consumption can get lost in the sea of other content available digitally



Frankfurt Kurnit Klein + Selz PC

# Social Media Influencers and Endorsements

Catherine M.C. Farrelly, Esq.

Partner, Frankfurt Kurnit Klein + Selz

Frankfurt Kurnit Klein + Selz PC



Frankfurt Kurnit Klein + Selz PC



Frankfurt Kurnit Klein + Selz PC

# Questions?

Frankfurt Kurnit Klein & Selz PC  
488 Madison Avenue  
New York, NY 10022  
(212) 826 5577  
[dmaggiacomo@fkks.com](mailto:dmaggiacomo@fkks.com)  
[cfarrelly@fkks.com](mailto:cfarrelly@fkks.com)



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