

# The Impact of COVID-19 on Media and Entertainment Industry Transactions

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**PRACTICES** Media Entertainment and Sports, Corporate

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As recently reported in the Los Angeles Times, the media and entertainment industry has been significantly impacted by the new normal presented as a result of COVID-19.<sup>1</sup> Production studios, live theaters, cinemas, concert venues, and other media and entertainment companies are considering all of the ramifications of reopening business operations. The industry must also address long-term implications of COVID-19 for business growth through new business models and processes. One example is the recent dispute between AMC and Universal Pictures over allowing movies to be viewed by the public online without first releasing them in movie theaters.<sup>2</sup> Despite the concerns over the existing impact and the long-term implications for the industry, one thing is certain. Each company operating within the industry should prepare for what lies ahead to maintain business continuity and growth. Companies should be careful to consider all legal implications associated with its intended strategy.

## Legal Considerations for Post COVID-19 Business Continuity and Growth Strategies

In the media and entertainment industry, content is the often deemed the most important asset. Therefore, the ability to continue developing quality content is vital to the success of each enterprise. One of the most important considerations going forward is minimizing risks of liability as much as possible while continuing to find innovative ways to develop and distribute content. There are several risk factors to address. A few recommendations of legal strategies to implement while seeking business growth are as follows:

- (1) Review all contractual agreements to ensure adequate protections are in place under “force majeure” provisions. These provisions should specifically include a listing of the events that create the inability of performance.<sup>3</sup>
- (2) Prepare a comprehensive approach for all communications to the public which address public relations, marketing and advertising, and sales. The company must be careful to avoid misrepresentations at every level. This is particularly important for company’s hosting live events with large crowds where there may possibly be concerns for the health and safety of attendees. Those companies should avoid minimizing risks associated with attending events. It is conceivable that any such messaging could fall under the purview of false advertising or deceptive trade practices.<sup>4</sup> Media companies distributing such advertising should also consider including indemnification provisions in their contractual agreements with those companies that create advertising content for products or services where there are possible risk factors involved.
- (3) Media and entertainment companies should consider renegotiating contracts with vendors to adjust timing of production projects if possible. These companies should also insert provisions in future vendor contracts that allow for flexibility in the time of performance whenever possible.

(4) Many companies may now seek to produce content remotely and distribute the content through various digital media outlets. Companies seeking to expand digital media productions, including social media, should ensure the contractual agreements with talent and other contracted parties secures the rights to the intellectual property being captured remotely on that party's digital media platforms. These companies should also establish methods to avoid inadvertently infringing on the intellectual property rights of others. The volume of content readily available makes it challenging to ensure a company has cleared all copyright and trademark hurdles in all productions and communications.

(5) Review all company risk management procedures to timely respond to claims and meet all reporting requirements. Review insurance policies to ensure adequate coverage and consider adding policies as needed. Consider adding insurance policies to address event cancellation, business interruption, and media liability coverage if such coverages are not currently in existence for the company.

(6) The company should review all policies and procedures associated with employment and human relations to ensure adequate protection for the health and safety of existing and future employees and independent contractors and compliance with all current laws and regulations.

## Conclusion

Media and entertainment companies must prepare for the continued growth of digital media in post COVID-19 strategies. The increased use of digital media will require careful consideration of all requirements to protect their own intellectual property as well as avoiding claims for infringement on the intellectual property of others. These companies must also take all necessary steps to minimize risks associated with live events, productions, employee relations, and vendor relationships. If companies can sustain and build growth through these methods, they may also position themselves for greater innovation and strategic planning as the industry evolves.

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<sup>1</sup> Anousha Sakoui and Ryan Faughnder (2020, April 28), [Reopening California: Hollywood is figuring out how to start rolling again](#), Los Angeles Times.

<sup>2</sup> Frank Pallotta, ["AMC bans Universal films from its theaters over 'Trolls World Tour' spat"](#), CNN Business, April 28, 2020.

<sup>3</sup> "[t]he scope and effect of a 'force majeure' clause depends on the specific contract language, and not on any traditional definition of the term." Virginia Power Energy Mktg., Inc. and Dominion Resources, Inc. v. Apache Corp., 297 S.W.3d 397, 402 (Tex. App.—Houston [14th Dist.] 2009, pet. denied). If a specified event is listed, this means that the parties allocated the risk of the specified event to the obligee. If the specified event occurs, the impacted party is excused from performance (One World Trade Ctr., LLC v. Cantor Fitzgerald Sec., 789 N.Y.S.2d 652, 655 (N.Y. Sup. Ct. 2004))

<sup>4</sup> Various federal and state laws could apply, including, but not limited to, Section 5 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 45; Section 43(a) of the Trademark Act of 1946 (Lanham Act), 15 U.S.C. § 1125(a); Intellectual property (IP) laws, including the Digital Millennium Copyright Act (DMCA), 17 U.S.C. § 512.