



Dirk Spacek, Dr.iur., Attorney at Law, LL.M., at Walder Wyss

This Month *Lawyer Monthly* benefits from the expert insight of Dirk Spacek, Dr.iur., Attorney at law, LL.M., at Walder Wyss, Zurich – Switzerland. Dirk tells LM about the challenges and rewards of the legal field of Entertainment, as well as voicing his opinions on the current Entertainment Law landscape throughout Switzerland and Europe as a whole.

Dirk Spacek is a Senior Associate in the Information Technology, Intellectual Property and Competition Team of Walder Wyss. His preferred areas of practice include media and information technology, entertainment, intellectual property as well as general corporate and commercial matters. He primarily advises companies of the technology-, industry-, media- and entertainment-sector, as well as banks and insurances with the procurement and integration of complex technology-projects and electronic business models.

What are the most common types of cases you come across within the entertainment and media industry?

Currently, the Swiss copyright act is subject to a comprehensive legislative revision. The purpose is to adapt the statute to the latest technical developments and to combat illicit piracy over the internet. The legislative bill introduces a notice-take-down procedure as already foreseen in the US and in the EU. Nonetheless, the bill remains disputed. We do stumble across talent representation work from time to time, but the most considerable work relates to new digital licensing models of entertainment content (e.g. through streaming, apps, catch-up-TV or similar distribution models). Also, alternative financing mechanisms like crowdfunding have become more relevant in the entertainment, art and fashion sector. We anticipate developments in the radio- and tv-transmission market. Start-ups are penetrating the market with new technical solutions to make broadcasting more individualized. The keywords are 'Intelligent TV' and 'Big Data

Analytics'. On the national media level, one highly debated topic is the strategic joint venture entered into between SRG SSR (the Swiss national broadcaster), Swisscom (the Swiss national telecom provider) and Ringier AG (one of the largest Swiss publishers).

Which segment, from data protection and IP, to antitrust & competition, do you find requires the most attentive considerations and expertise?

All of them. But data protection is clearly on the rise and much more relevant than a few years ago. This stems from the increased amount of data produced but also from the new European Data Protection Ordinance, which is scheduled to come into force on January 2018 with draconian sanctions. IP is a stable fundament and will always remain important in an innovative economic landscape. Antitrust is important where entertainment distribution contracts are concerned or where strategic media partnerships come into play.

What are the key challenges you face within your work and how do you navigate them; particularly on the back of an ever-expanding range of media platforms and legal frameworks?

Keeping up with the pace and new developments in the media/tech & entertainment sector. Also, the expanding range of media platforms raises questions on the convergence between traditional mass communication media and more individualized online-media (like e.g. Youtube). Furthermore, the Internet of Things (IoT), i.e., the increased interconnectedness of physical items with the internet, may turn every potential object (even a car) into an entertainment-transmitter. For instance, we have seen mobile providers offering infotainment through hardware devices installed in cars. These devices connect through a mobile network and communicate with a content-server abroad (machine-to-machine). As a matter of consequence, copyright becomes more involved in this area of the law which has monetary ramifications: Copyright levies are applicable on such new hardware devices based on the tariffs established under the Swiss collective societies' schemes.

How comprehensive are the legal frameworks that regulate these industries?

The legal frameworks are comprehensive, but fragmented. One must be able to manage multiple areas of the law to gain a clear picture, in particular intellectual property law, regulatory frameworks on new technologies, contract law, financing and antitrust. Luckily, Swiss law is of relatively slim nature. No matter how the business environment changes, Swiss law remains suitable to adaptation.

Are there any regulatory changes would you like to see, both in Switzerland and on a European level?

I am not sure whether new statutes bring more clarity in an ever changing area of the law. In the media & tech-sector, new legislation often involves more constrictions than solutions. Mostly, the statutes turn out to be out of date soon. What seems important is that legal frameworks leave room for experimentation. You need bubbles where people can experiment in a secured environment before they enter the hunting ground. I would encourage lower tax and less regulatory burdens to facilitate start-up-activities (which is already the case partially in the canton of Zurich).

Can you tell me about any major cases you have worked on? What were the challenges and rewards therein?

In the last year, we represented a renowned Swiss music artist in a dispute with his record label. His record contract was a notorious 360-Deal comprising multiple, but conflicting elements,

such as publishing, artist-management, booking, merchandising, tour-organization and the discretionary right to use the artists' music for its own purposes as well as extend the contract duration almost perpetually. Based on a settlement, we managed to "liberate" the artist from his record label. The challenge we faced was to see how people actually "live" in this business. It's a very small and collaborative business. Litigating like a bulldozer is not helpful as this causes reputational risks to an artist.

In the year 2013, we represented a Swiss company (Mediapulse) in a dispute initiated by the TV-broadcaster TV 3+ regarding the publication of Swiss viewing figures. The dispute attracted public attention in the media, but is meanwhile settled.

In the year 2015, Tamedia AG (one of the largest Swiss publishers) acquired Ricardo Group (an online-auction-platform) for 240 Million Swiss Francs. We advised Tamedia AG in this transaction on corporate, IP/IT and competition law aspects.

What led you to embark on a career in entertainment and media law?

I don't know. I grew up in a family where both sides, art and tech, were present. I was a musician myself and played in a couple of bands. I guess I am more attuned to these matters than other people. Ultimately, I became an IP/IT-attorney with a certain affinity for this sector. What's important to know: Entertainment looks fancy on the surface, but it's a difficult business. Our task is to help people navigate through this business, show them the pitfalls and diagnose where their leverage is too low and where they should give in. **LM**



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