

Independent ■
Film & Television
■ ■ ■ **Alliance**®

Guide to
IFTA Arbitration™

arbitration

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IFTA Arbitration™
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■ ABOUT IFTA ARBITRATION

In 1984, the American Film Marketing Association®, the global non-profit trade association of producers and distributors of independent film and television programs, created an arbitration system to resolve entertainment industry disputes relating to production, finance and distribution fairly, quickly and economically. After a name change in 2004, the tribunal now known as IFTA Arbitration™ includes an administering agency (acting through its Arbitral Agent), a set of procedural rules, and a panel of arbitrators with specific expertise in litigation, copyright and entertainment transactional law (“the Tribunal”).

Since its establishment, IFTA Arbitration has administered over 2,500 cases involving nearly US\$800 million in claims. It is truly an international system with more than 90 industry experienced arbitrators representing 18 countries. IFTA Arbitration is available to both IFTA Members and non-Members, for both domestic and international arbitrations, provided that the parties have stipulated in writing to use the Tribunal.

Many companies in the independent film and television industry include a consent to arbitrate disputes in their standard form agreements. The service covers any agreement that provides for arbitration pursuant to the IFTA Rules for International Arbitration (“IFTA Rules”) or to any prior name of those rules (e.g., AFMA Arbitration Rules, American Film Marketing Association Arbitration Rules). Agreements incorporating either an “AFMA Arbitration™” or an “IFTA Arbitration” clause may utilize the Tribunal.

■ IFTA ARBITRATION ACTS AS A NEUTRAL ADMINISTRATOR

IFTA Arbitration is a division of the Independent Film & Television Alliance® (“IFTA®” or “Alliance”). The Alliance is not involved in any way in parties’ individual contract disputes. Its role is to ensure that the administrative functions of IFTA Arbitration are carried out effectively and fairly in accordance with the IFTA Rules. To ensure IFTA Arbitration remains neutral, the Alliance has established an international IFTA Arbitration Advisory Committee, comprised of buyer representatives, seller representatives and current IFTA arbitrators, whose mandate is to evaluate and recommend neutral arbitration policies and procedures and to recruit skilled arbitrators for the IFTA Panel of Arbitrators (“the Panel”).

IFTA Arbitration is managed by its Arbitral Agent, who is responsible for notifying the parties when an arbitration is initiated; identifying a selection of eligible arbitrators for the parties; and ensuring that procedural

requirements under the IFTA Rules are met by the arbitrator. The Arbitral Agent has no jurisdiction to act on the merits of any arbitration or make any legal determinations.

■ AN INDEPENDENT LEGAL EXPERT WILL HEAR YOUR CASE

Arbitrators on the IFTA Panel are distinguished, licensed attorneys with substantial experience in litigation and complex entertainment related transactions who resolve disputes quickly and fairly in accordance with the IFTA Rules. IFTA Arbitrators are independent legal practitioners. As such, they are not employees of IFTA and receive no compensation from the Alliance. Arbitrator fees are set in advance in accordance with a schedule promulgated by the IFTA Arbitration Advisory Committee (“Fee Schedule”). Parties pay arbitrator fees to the arbitrator directly. The Panel is reconfirmed annually by the IFTA Arbitration Advisory Committee and arbitrators must qualify each year under the most current criteria and comply with the IFTA Arbitrator Guidelines.

■ RESOLVE A DISPUTE WITH IFTA ARBITRATION

Here’s a step-by-step approach to getting your dispute resolved through IFTA Arbitration:

Step (1): Claimant makes a demand. Send a demand for arbitration (“Notice of Arbitration”) to the party you’re having a dispute with (the “Respondent”). The Notice of Arbitration must state the name, address, phone, fax numbers, and email addresses, if known, for the parties (and for their counsel or representatives, if any), the nature of the dispute, and the remedy sought. In addition, it must include a complete copy of the contract in dispute, and the agreement providing for arbitration pursuant to the IFTA Rules, AFMA Arbitration Rules or American Film Marketing Association Arbitration Rules (if not already in the contract). A sample Notice of Arbitration is available on the IFTA website at www.ifta-online.org.

Step (2): Claimant files its claim. Send a written copy of the Notice of Arbitration and appropriate filing fee to the Arbitral Agent. If you elect to use the pre-arbitration settlement procedure, the Arbitral Agent will send a letter to the Respondent providing for a 10-day period for the parties to attempt to negotiate a resolution of the dispute. At the expiration of this period, the Arbitral Agent will contact you to determine whether you intend to proceed to formal arbitration. You may ask for additional time to make this decision in the event that the parties have begun settlement negotiations. If you wish to proceed with formal

arbitration, you must advise the Arbitral Agent and pay the balance of the filing fee. The Arbitral Agent will then transmit a copy of the Notice of Arbitration and applicable IFTA Rules to the Respondent, and notify the parties that the arbitration is formally initiated. The Respondent will have 21 days from the date it receives the Notice of Arbitration and the IFTA Rules from the Arbitral Agent to respond to the demand. The Respondent may also file a counterclaim or cross-claim with its response, but the Respondent must pay a separate filing fee for such claim or it will not be included in the case.

Step (3): Parties select an arbitrator. The Arbitral Agent will send the parties a list of proposed arbitrators that have been determined by the Arbitral Agent to be available. If an arbitrator has disclosed the existence of any conflicts of interest to the parties or any additional information, it will be included in the list of proposed arbitrators. The parties will have five business days to submit their preferences. The arbitrator who receives favorable acceptance from all parties will be designated. If no arbitrator can be designated, the Arbitral Agent will notify the parties and submit a second list of arbitrators. The parties will have five business days to submit their preferences. If there is no arbitrator who receives favorable acceptance from all parties, the Arbitral Agent will designate an arbitrator who has not yet been submitted to the parties.

Step (4): Parties advance fees and submit materials requested by the arbitrator. The designated arbitrator will receive a copy of any materials that have been submitted by the parties and a copy of the applicable IFTA Rules. Each party is also required to pay an initial US\$1,500 deposit against the arbitrator’s fees. If a party does not pay the deposit against the arbitrator’s fees, that party may be held in default and the arbitration may proceed without the participation of that party. However, the participating party may be responsible for all or part of the defaulting party’s share of the arbitrator’s fees, which may be recovered in the Final Award. Once the arbitrator receives the fees from at least one party, he or she may set a schedule for the arbitration. The arbitrator may request further written materials from the parties, including legal arguments, as and when needed during the course of the proceeding.

Step (5): Parties attend a hearing. The arbitrator will set a hearing where the parties may present their case. Hearings are held in the forum designated by the parties’ agreement. If none is designated, the hearing will take place in Los Angeles in accordance with the IFTA

Rules, or the parties may agree upon an alternate forum. The arbitrator may hold the hearing by telephone or other teleconferencing methods, or the parties may request to submit written materials only instead of holding a hearing. If only the Claimant participates in the hearing, the arbitrator may declare the Respondent to be in default. The Claimant must still prove its claim (including legal basis for calculation of any monetary award sought) by presenting evidence and supporting legal arguments, including briefing relevant legal cases. If the Claimant cannot prove its case, the arbitrator may dismiss the matter.

Step (6): Parties receive the Final Award. The arbitrator must deliver a Final Award to IFTA within 45 days after all of the evidence is submitted and received unless such time is extended for good cause by the Arbitral Agent. The Arbitral Agent will then distribute the Final Award to the parties (or their legal counsel). IFTA Arbitration Awards are enforceable in the U.S. and internationally (under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards). However, the relevant procedures vary between jurisdictions and parties should consult with local legal counsel for advice on confirming and enforcing their awards. If a party requests a “certified copy” of an arbitration award, the Arbitral Agent will prepare a declaration attaching a copy of the award, which can be notarized for a nominal fee. IFTA also periodically publishes an Arbitration Award Enforcement Guide that provides an overview of enforcement of arbitration awards in various territories. The Arbitration Award Enforcement Guide is available for purchase online at www.ifta-online.org.

■ KNOW YOUR RIGHTS

To ensure that its arbitrations are fair to all parties, IFTA Arbitration has adopted the following Parties’ Bill of Rights:

Parties’ Bill of Rights

- You have the right to designate in your contract where the arbitration will be held, and what country’s or state’s law will apply to the arbitration;
- You have the right to courteous, efficient, and impartial administration of your case;
- You have the right to obtain a copy of the applicable IFTA Rules;
- You have the right to file a statement of defense, and counterclaim, if desired;
- You have the right to have an attorney represent you;
- You have the right to submit your preference for a neutral arbitrator from a list of arbitrators who have been determined by the Arbitral Agent to be available and who have reported the existence of conflicts of interest;
- You have the right to adequate notice of the hearing;
- You have the right to a fair hearing;
- You have the right to request that the arbitrator’s decision will be based upon telephonic testimony or written materials, subject to the approval of the arbitrator;
- You have the right to ask for an itemized account of the arbitrator’s fees and costs, and to challenge the arbitrator’s fees; and
- You have the right to receive a copy of the Final Award.

■ FREQUENTLY ASKED QUESTIONS

What is arbitration?

Arbitration is the resolution of a dispute by a neutral third person who hears arguments, reviews evidence, and issues a legally binding decision called an arbitration award. Depending upon the issues to be decided, it is less formal and generally less expensive and more expedient than litigating the dispute in court. The Independent Film & Television Alliance administers IFTA Arbitration pursuant to the IFTA Rules.

Who is the Arbitral Agent?

The Arbitral Agent is an IFTA staff member designated by the President of the Alliance to act as the neutral administrator for all arbitration and pre-arbitration matters conducted by IFTA Arbitration. The Arbitral Agent does not have authority to make any substantive decisions, but is empowered to make certain procedural decisions pursuant to the IFTA Rules and to carry out any acts required for the efficient administration of the arbitration procedures.

Do I have to be an IFTA Member to use IFTA Arbitration?

No. As long as all parties have agreed in writing to resolve their dispute through IFTA Arbitration (or AFMA Arbitration or American Film Marketing Association Arbitration), they may use the service.

My contract does not have an IFTA Arbitration clause. Can I still use the service?

Yes, if all parties submit a written agreement requesting that their dispute be resolved through IFTA Arbitration. If your contract provides for AFMA Arbitration or American Film Marketing Association Arbitration, you may also use the IFTA Arbitration service without any supplemental agreement. A sample Agreement to Use IFTA Arbitration is available online at www.ifta-online.org.

Must I have an attorney represent me?

No, but attorney representation or consultation is recommended because the arbitrator will require arguments or written briefs of the legal issues citing relevant statutory or case law. The Alliance does not recommend or refer attorneys, but parties may contact attorneys who are on the IFTA Panel of Arbitrators (who are not acting as arbitrators on their cases) for recommendations. The current IFTA Panel of Arbitrators is available online at www.ifta-online.org.

I live outside the United States and cannot attend a hearing in Los Angeles. Can I still participate in the arbitration?

Parties can identify the forum and the governing law for the arbitration at the time of signing a contract containing an IFTA Arbitration clause. IFTA Arbitration maintains a panel of more than 90 arbitrators representing 18 countries around the globe. IFTA may also use neutrals from the World Intellectual Property Organization, if needed. Parties may determine that the arbitration shall take place in a different location by mutual agreement in writing with a copy of that agreement filed with the Arbitral Agent prior to selection of the arbitrator. If no forum or governing law is selected, the arbitration will be held in Los Angeles pursuant to California law. The IFTA Rules provide that, upon the parties' request, the arbitrator may conduct a hearing by reviewing the parties' written submissions and/or telephonic or teleconferencing examination. However, such decision is within the sole discretion of the arbitrator.

Do the IFTA Rules provide for interim relief?

Yes. At the request of a party, the arbitrator may take any interim measures where necessary to safeguard the subject matter of the dispute. Additionally, the IFTA Rules will not preclude any party from applying to a court of appropriate jurisdiction for an interim order for the sole purpose of maintaining the status quo or otherwise preserving the rights of a party. Please see the IFTA Rules which are available online at www.ifta-online.org for more information.

I have been named as a Respondent, a Counter-Respondent, a Cross-Respondent or a Cross-Claimant in an arbitration. Can I file a statement of defense, counterclaim or cross-complaint?

Yes. The Respondent may file a statement of defense or a counterclaim or cross-complaint not later than 21 days after receipt of a copy of the Notice of Arbitration and the IFTA Rules from the Arbitral Agent. A Counter-Respondent, Cross-Respondent or Cross-Claimant may file a statement of defense or a counterclaim or cross-complaint not later than 14 days after receipt of a copy of the counterclaim or cross-complaint and the IFTA Rules from the Arbitral Agent. A counterclaim or cross-complaint shall set forth the same matters as required for a Notice of Arbitration. The fees for filing a counterclaim or cross-complaint are the same as the fees for filing an arbitration and are set forth in the Fee Schedule which is available online at www.ifta-online.org.

What happens after the arbitrator issues a Final Award?

Under the IFTA Rules, the arbitrator must transmit the Final Award to the Arbitral Agent. The Arbitral Agent will send the Final Award to the parties via email, to be followed by USPS certified or registered mail (if a party would like to receive the Final Award via courier mail, it must provide its courier account number). Any party has the opportunity to request the arbitrator to correct any computational, clerical or typographical error, provided that party gives notice to the other party or parties, and makes the request within the time period provided in the IFTA Rules. Any party may seek confirmation of and/or file or register the arbitrator's award with any court having jurisdiction to confirm the award. IFTA Arbitration Awards are enforceable in the U.S. and internationally (under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards). Information about the Convention and the countries that have ratified it can be found at www.uncitral.org. The Alliance has also published an Arbitration Award Enforcement Guide that contains basic information on confirming and enforcing arbitration awards in various countries. The Arbitration Award Enforcement Guide is available for purchase online at www.ifta-online.org.

Can I receive a copy of an arbitration award for an arbitration to which I was not a party?

No. Only parties to an arbitration may receive an original award or a copy of an award from the Arbitral Agent. However, summaries of Final Awards issued from January 1, 2007 onward are posted online at www.ifta-online.org. The summaries are solely intended to provide general information about IFTA Arbitration Awards and are not intended for any other purpose, including but not limited to, precedential value or any reference as legal authority. All other information regarding specific arbitrations is considered by IFTA to be confidential as among the parties. No information is provided with regard to arbitrations that were initiated but did not proceed to a Final Award.

Does IFTA Arbitration have the authority to prevent a party from attending the American Film Market?

No. The American Film Market® ("AFM®") is operated under its own Market Rules and Guidelines. However the AFM's Market Rules and Guidelines currently provide that a party that fails to satisfy a final confirmed IFTA Arbitration Award may be barred for up to two AFMs upon the request of the Prevailing Party. In addition, an arbitrator may ask that a party be barred from the AFM if that party fails to pay the arbitrator's fees. These provisions are intended to support the integrity of the AFM and are not remedies made available by IFTA Arbitration. For further

information, please consult the AFM Guidelines which can be found at www.americanfilmmarket.com.

Does IFTA have a mediation program?

The Alliance does not have a formal mediation program. The IFTA Rules provide that the arbitrator may participate in settlement discussions with the parties if the parties initiate such discussions and request that the arbitrator act as a mediator. However, if mediation fails and the parties go forward with arbitration, the mediator will be prohibited from acting as the arbitrator for that matter. Additionally, IFTA Arbitration offers a complimentary and unique pre-arbitration settlement procedure for IFTA Members (which is also available to non-Members for a nominal fee) whereby the Arbitral Agent, upon request, will send a letter to the Respondent providing for a 10-day settlement period before the arbitration is formally initiated.

■ IFTA ARBITRATION CONTACT INFORMATION

IFTA Arbitration established an Arbitration Advisory Committee comprised of a proportional representation of film and television content buyers, sellers and IFTA Arbitrators. The Arbitration Advisory Committee reviews policy and procedures as well as establishes criteria for IFTA Arbitrators. A current list of Arbitration Advisory Committee Members is available online at www.ifta-online.org.

To find out more about IFTA Arbitration, contact:

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