



Republic of the Philippines
Department of Trade and Industry
Securities and Exchange Commission
SEC Bldg., EDSA, Greenhills, Mandaluyong City

03 March 2011

SEC-OGC Opinion No. 11-08
Mass Media; Nationalized
Activities; Alien Director

ATTY. NELSON G. LEYCO

Assistant General Counsel
Bigfoot Studios, Inc.
No. 1 Hollywood Boulevard
6015 Lapu-Lapu City, Cebu

Sir:

This refers to your letter dated 06 February 2009¹ seeking clarification whether or not one of your directors, Mr. Matthew Lubetich, an American citizen, is qualified to sit in the board of directors of Bigfoot Studios, Inc.,² whose primary purpose is:

*"To **provide production services**, and specifically to cater to and **act as a producer** for the production needs of international and local clients, and for this purpose, to do all acts and deeds as may be necessary for such production services, including to subcontract, hire, rent, buy, construct and provide all facilities and services necessary to complete the production of radio and television programs and movies; assist in the obtaining government clearances needed for foreign personnel and equipment to be brought in for productions; provide to international and local clients post-production facilities, equipment and services, such as but not limited to, audio mixing for feature films, offering camera and/or light packages, editing commercials and making available soundstages; provide state of the art modern computer-based non-linear editing system and specialized IT infrastructure that encompasses all aspects of computer-generated imaging including but not limited to developing proprietary rendering solutions and other post-production*

¹ Received by this office on 17 February 2009.

² As of the 2010 GIS of Bigfoot Studios, Inc., Mr. Lubetich remains a member of the Board of Directors.

applications for internal workflow execution; but *in all cases without however engaging in mass media.*" (emphasis supplied)³

In addition, Bigfoot Studios, Inc. also was organized to "engage in the creation and production of any and all kinds of motion pictures and radio and television programs including without limitation the pre and post production aspects thereof, as may be permitted under existing laws, rules and regulations, without however engaging in mass media."⁴

The term "mass media" in the Constitution refers to any medium of communication designed to reach the masses and that tends to set the standards, ideals and aims of the masses.⁵ In addition, the term "mass media" shall mean the gathering, transmission of news, information, messages, signals, and forms of written, oral and all visual communications and shall embrace the print medium, radio, television, film, movies, wire and radio communication services, advertising in all its phases, and their business managerial.⁶ The distinctive feature of any mass media undertaking is the dissemination of information and ideas to the public, or a portion thereof.⁷ The citizenship requirement is intended to prevent the use of such facility by aliens to influence public opinion to the detriment of the best interests of the nation.⁸ In fact, "(t)he ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly named and managed by such citizens."⁹

As previously opined, "It is clear from the above definition that 'mass media' covers 'motion pictures' and there is no doubt that such medium of communication plays an important role in the national life as they tend to affect or influence the people's way of thinking and lifestyle. Consequently, *any entity engaged in the production and distribution thereof in the Philippines* is subject to the aforementioned Constitutional restriction which seeks to insure that firms engaged in said line of business are free from foreign influence."¹⁰

A motion picture is defined as: "a series of pictures projected in a screen in rapid succession, with objects shown in successive positions slightly changed so as to produce the optical effect of a continuous picture in which the objects move, whether the picture be black and white or colored, silent or with accompanying sound, on whatever medium and with whatever mechanism or equipment they are

³ Articles of Incorporation and Amended Articles of Incorporation, Primary Purpose.

⁴ *Ibid.*, Secondary Purposes, item (1).

⁵ Ministry of Justice's (MOJ) Opinion no. 24, series of 1986 citing MOJ Opinion No. 163, series of 1973.

⁶ SEC Opinion No. 27-04, citing SEC Opinion dated 15 July 1991 addressed to Myrna Cruz-Feliciano, citing P.D. 36, as amended by P.D. 191 and 197.

⁷ MOJ Opinion no. 24, s. 1986 citing MOJ Opinion No. 120, series of 1982.

⁸ MOJ Opinion no. 24, s. 1986 citing Quisumbing-Fernando, Constitutional Law, 1984 ed., p. 345.

⁹ 1987 Philippine Constitution, Article XVI, Section 11.

¹⁰ Letter addressed to Attys. Marievic G. Ramos-Anonuevo, Rose Marie M. King & Angelique A. Santos-Mangaser dated 18 April 1996.

projected, and in whatever material they are preserved or recorded for instant projection, for the purpose of this Act, the material in which the motion picture is contained, preserved, or recorded, forms an integral part of the motion picture subject of this Act."¹¹ On the other hand, a television broadcast is defined as "public showing by transmitting sound or images by television or similar equipment, including cable television, and other limited audience distribution."¹²

It is worth noting that: "Motion pictures are created through the combination of four basic elements: story, direction, camera work and editing. In commercial studios, each of these roles is carried out by different individuals and production crews under the overall supervision of a producer."¹³

Thus, the role that a producer plays from the inception to the realization and subsequent distribution of a film is vital and integral to the filmmaking process because film/television production tends to set the standards, ideals and aims of the masses. Hence, the role of the producer in a film is involved in content creation and/or information dissemination that influences large numbers of people. Notwithstanding the clause "... but in all cases without however engaging in mass media" in your corporation's primary purpose, the nature of the activities your corporation engages in – generally, acting as producer and providing production services including post-production services and facilities, fall within the activities contemplated by mass media, a wholly nationalized activity.¹⁴ As the Commission previously opined, foreign ownership cannot be allowed in this business.¹⁵ Hence, an alien cannot sit on the board of directors.¹⁶

¹¹ Presidential Decree No. 1986 (1985), Sec. 10, Item no. 1.

¹² *Ibid.*, Item no. 2.

¹³ The New Encyclopedia Britanica: Micropedia Ready Reference, Volume 8, 1994 p. 362.

¹⁴ See Executive Order No. 858 promulgating the 8th Foreign Investments Negative List, Annex "A" (No Foreign Equity), Item 1.

¹⁵ SEC Opinion dated 18 April 1996 addressed to Atty. Marievic G. Ramos-Anonuevo.

¹⁶ Presidential Decree No. 715 **AMENDING COMMONWEALTH ACT NO. 108, AS AMENDED, OTHERWISE KNOWN AS "THE ANTI-DUMMY LAW"** (May 28, 1975) provides under Section 2-A: "Any person, corporation, or association, which, having in its name or under its control, a right, franchise, privilege, property or business, the exercise or enjoyment of which is expressly reserved by the Constitution or the laws to citizens of the Philippines or of any other specific country, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, permits or allows the use, exploitation or enjoyment thereof by a person, corporation or association not possessing the requisites prescribed by the Constitution or the laws of the Philippines; or leases, or in any other way, transfers or conveys said right, franchise, privilege, property or business to a person, corporation or association not otherwise qualified under the Constitution, or the provisions of the existing laws; or in any manner permits or allows any person, not possessing the qualifications required by the Constitution, or existing laws to acquire, use, exploit or enjoy a right, franchise, privilege, property or business, the exercise and enjoyment of which are expressly reserved by the Constitution or existing laws to citizens of the Philippines or of any other specific country, to intervene in the management, operation, administration or control thereof, whether as an officer, employee or laborer therein with or without remuneration except technical personnel whose employment may be specifically authorized by the Secretary of Justice, and any person who knowingly aids, assists, or abets in the planning, consummation or perpetration of any of the acts herein above enumerated shall be

The foregoing opinion rendered is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission whether of similar or dissimilar circumstances.¹⁷ If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Mar 02 March 11 4:50pm
VERNETTE G. UMALI-PACO
General Counsel
mb *April 2011 4:15pm*

punished by imprisonment for not less than five nor more than fifteen years and by a fine of not less than the value of the right, franchise or privilege enjoyed or acquired in violation of the provisions hereof but in no case less than five thousand pesos: Provided, however, that the president, managers or persons in violating the provisions of this section shall be criminally liable in lieu thereof: Provided, further, That any person, corporation or association shall, in addition to the penalty imposed herein, forfeit such right, franchise, privilege and the property provisions of this Act; and Provided, finally, That the election of aliens as members of the board of directors or governing body of corporations or associations engaging in partially nationalized activities shall be allowed in proportion to their allowable participation or share in the capital of such entities."

¹⁷ SEC Memorandum Circular No. 15, series of 2003.