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NEW CHALLENGE CASE

Blue Inc. (“**BLUE**”) should pay US\$19,250,000 to Red Corp. (“**RED**”).

ISSUE 1 (New Challenge Case)

SUMMARY OF ARGUMENT

I. BLUE was obliged to provide RED with correct information regarding laws, regulations and practices of Arbitria which may have prevented the movie from being viewable by all generations (“**OBLIGATION**”), in accordance with the CO-PRODUCTION AGREEMENT in Exhibit 7 (“**Exhibit 7**”) for the production of “Designer Zero - New Challenge” (“**NC**”).

II. BLUE breached OBLIGATION when BLUE did not provide RED with correct information regarding laws, regulations and practices of Arbitria which may have prevented the movie from being viewable by all generations.

I. BLUE had OBLIGATION under Exhibit 7 Art 5 (b).

1. There was an agreement between RED and BLUE regarding the production of “Designer Zero - Friendship” (“**Friendship**”) and NC, that the movies must be viewable by all generations in the 10 countries they would be distributed.
 - 1.1. The existence of OBLIGATION above is evident from the fact that BLUE, which initially wanted to work on animation for all generations (¶8), approached RED to jointly produce an animated film for the global market, and both parties agreed to produce Friendship and NC (¶9). Since this was a mutually recognized necessity, BLUE told RED that if the movie review organization in Arbitria were to classify NC as “for adults”, they had to make a choice between canceling the sequel in Arbitria or changing a cigarette to candy (Exhibit 10 email dated August 8th, 2019). BLUE then requested to change the scene.
 - 1.2. In addition, both parties agreed that NC would be distributed in the 10 countries (Exhibit 3 Attachment in email dated January 16th, 2016 and ¶23).



2. In order for NC to be viewable by all generations in the 10 countries, both parties agreed to divide the responsibilities of distribution under Exhibit 7 Art 5 (b).
 - 2.1. Exhibit 7 Art 5 (b) stipulates that “The Picture shall be distributed and marketed by Blue in all markets and media and on a worldwide basis except Negoland... **Red and Blue are responsible for compliance with laws, regulations and practices in the countries for which they are responsible.**” In other words, Art 5 (b) stipulates that RED is responsible for compliance issues regarding the distribution in Negoland while BLUE is responsible for those in the other 9 countries, including Arbitria.
3. The responsibility for compliance under Exhibit 7 Art 5 (b) includes OBLIGATION. This is because, if OBLIGATION is not fulfilled, both parties might breach laws, regulations, and practices of a country in which the movie would be distributed, and NC may not be viewable by all generations, contrary to the mutually recognized necessity described previously in ¶1.1 in RED’s preliminary memorandum.
4. Therefore, BLUE should have performed OBLIGATION.
5. In addition, BLUE clearly recognized its responsibility to fulfill OBLIGATION, as seen from the facts below.
 - 5.1. BLUE mentioned to RED that the modification of a cigarette to candy was “a compliance issue” (Exhibit 10 email dated August 1st, 2019). In other words, BLUE recognized that their suggestion to alter the production was a compliance issue under Exhibit 7 Art 5 (b), not an issue of creative control under Exhibit 7 Art 3. BLUE requested that the cigarette should be replaced with candy in order to distribute NC to all generations because the movie with a cigarette would be classified as “for adults” (Exhibit 10 email dated August 1st, 2019).
 - 5.2. In fact, Swan of BLUE sent an email inquiry to the movie review organization in Arbitria after making the above request to RED (Exhibit 16), showing that they recognized this as part of their responsibility.

II. BLUE breached OBLIGATION, because BLUE did not provide RED with correct information regarding laws, regulations and practices of Arbitria which may have prevented the movie from being viewable by all generations.

6. BLUE told RED in an email that “it is certain that if an important character in a movie is always holding a cigarette, such movie will be classified as ‘for adults’” (Exhibit 10 email dated August 1st, 2019). In fact, even if a film includes a cigarette, the movie review organization in Arbitria would not have classified the movie as “for adults”, as long as a warning about the health hazards of a cigarette was given (Exhibit 17 email dated February 25th, 2022). Thus, BLUE breached OBLIGATION.
7. In addition, BLUE recognized that it was necessary to directly check with the review organization in order to perform OBLIGATION, as it is clearly indicated from the fact that Swan of BLUE was instructed by a superior to directly check with the movie review organization (Exhibit 16). Additionally, when BLUE provided false information to RED, “there was a precedent in the movie review organization’s conclusion that an almost similar



scene had been at issue in another film and there was no problem” (¶24). As such, it is clear that BLUE could have acquired correct information if BLUE had checked with a person in charge of the movie review organization or a specialist law firm directly (¶24), and BLUE could have easily fulfilled OBLIGATION.

8. Therefore, BLUE breached OBLIGATION.

ISSUE 2 (New Challenge Case)

SUMMARY OF ARGUMENT

- I. If BLUE breached OBLIGATION, BLUE is obliged to compensate RED for US\$19,250,000.
- II. There were no reasonable steps that RED could have taken to mitigate the harm caused by BLUE’s non-performance of OBLIGATION.

I. If BLUE breached OBLIGATION, BLUE is obliged to compensate RED for US\$19,250,000.

9. Due to BLUE’s non-performance of OBLIGATION, RED has suffered damages amounting to US\$19,000,000 from the decrease in the box-office revenue of NC (Exhibit 15, Exhibit 17 email dated March 5th, 2022). RED further suffered US\$250,000 in damages from the inability to sell “Designer Zero” clothes (“**DZ Clothes**”) (Exhibit 14, Exhibit 17 email dated March 5th, 2022).
10. RED’s damages for US\$19,250,000 satisfy the requirements of causal relationship, certainty of harm, and foreseeability of harm under the UNIDROIT Principles of International Commercial Contract 2016 (“**UPICC**”) Art 7.4.2 and 7.4.4.

(i) The damage of US\$19,000,000 RED has suffered from a decrease in the box-office revenue of NC.

11. BLUE is obliged to compensate RED for the damage of (i).
12. There is a causal relationship between RED’s damage of (i) and BLUE’s non-performance of OBLIGATION, which fulfills UPICC Art 7.4.2.
 - 12.1. BLUE’s false information directly led to the character design for “Santa” being altered from holding a cigarette to candy, which led to criticism that such modification destroyed the world-building of the original work (¶23). Due to this, the viewership fell off and RED suffered damages of US\$19,000,000 from the reduction of the box-office revenue for NC.
 - 12.2. In addition, in this case, RED agreed to change the scene in the end. However, since the consent was based on entirely false information that BLUE provided to RED, BLUE cannot claim that there is no causal relationship by merely relying on the existence of RED's consent (Exhibit 10 emails dated August 1st, 6th, and 8th, 2019).
13. It is certain that the amount of damage of (i) which RED incurred was US\$19,000,000, which fulfills UPICC Art 7.4.3.
 - 13.1. RED has lost a profit of US\$19,000,000 which is the difference between the profit of US\$52,500,000 that RED gained, in reality, using scenes of candy, and the profit of



US\$71,500,000 that RED would have gained without changing the scenes of a cigarette (Exhibit 15, Exhibit 17 email dated March 5th, 2022).

14. BLUE could have foreseen that BLUE's non-performance would cause the damage of (i), which fulfills UPICC 7.4.4.
 - 14.1. BLUE could have reasonably foreseen at the time of the conclusion of Exhibit 7 that if BLUE provided false information about laws, regulations and practices of Arbitria which may have prevented the movie from being viewable by all generations, it would destroy the world-building of the original work and the box-office revenue would decrease.

(ii) The damage of US\$250,000 RED has suffered from a decrease in the profits from DZ Clothes.

15. Blue is obliged to compensate for the damage of (ii).
16. There is a causal relationship between RED's damage of (ii) and BLUE's non-performance of OBLIGATION, which fulfills UPICC Art 7.4.2.
 - 16.1. Since the scene was changed from holding a cigarette to candy as a result of BLUE's false information, which resulted in widespread criticism and a decline in revenue from DZ Clothes (Exhibit 14). Therefore, there is a causal relationship between BLUE's non-performance and RED's damage of (ii).
17. It is certain that the amount of damage of (ii) that RED incurred is US\$250,000, which fulfills UPICC Art 7.4.3.
 - 17.1. The damage RED has suffered from the reduction of the sale of DZ Clothes is US\$250,000 (Exhibit 14, Exhibit 17 email dated March 5th, 2022).
18. BLUE could have foreseen that their non-performance would cause the damage of (ii), which fulfills UPICC 7.4.4.
 - 18.1. BLUE could have reasonably foreseen at the time of the conclusion of Exhibit 7 that if BLUE provided incorrect information about laws, regulations and practices which may have prevented the movie from being viewable by all generations, the world-building of the film would be destroyed, and the sales of merchandise based on the film would decline.
19. Therefore, since BLUE did not perform OBLIGATION, BLUE is obliged to compensate RED for the damages of US\$19,250,000.

II. There were no reasonable steps which RED could have taken to mitigate the harm caused by BLUE's non-performance.

20. UPICC Art 7.4.8 (1) stipulates that "The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps."
21. In this case, there were no reasonable steps for RED to mitigate the harm, such as avoiding the decrease of the box-office revenue in Negoland or the decrease of the sales of DZ Clothes. Thus, there are no damages to be mitigated under UPICC Art 7.4.8 (1).
22. Therefore, BLUE is obliged to compensate the damages of US\$19,250,000 to RED.

BLUE LAND CASE

RED requests that an arbitral award denying the claim of BLUE be rendered.

ISSUE 1 (Blue Land Case)

SUMMARY OF ARGUMENT

RED did not breach its contractual obligation to BLUE concerning the delivery of DZ Clothes to Blue Land.

I. Red fully performed its obligations. RED supplied DZ Clothes on August 20th, 2021 based on the Manufacturing and Supply Agreement between RED and BLUE concerning the manufacture and supply of DZ Clothes in Exhibit 12 (“**Exhibit 12**”).

II. Even if RED breached its obligation, BLUE cannot claim RED’s non-performance since it was caused by BLUE’s acts.

I. RED did not breach its obligation because RED supplied DZ Clothes on August 20th, 2021 based on Exhibit 12.

23. Exhibit 12 Art 4 stipulates “Supplier must manufacture and supply the Products in accordance with this Agreement, in compliance with applicable laws and regulations, and following generally accepted industry practice.”
24. Further, Exhibit 12 Art 8 stipulates “...Supplier warrants that the Products will be manufactured and supplied in compliance with the specifications in Purchase Order and in compliance with all governmental and environmental regulations.”
25. Based on Exhibit 12 Art 4 and Art 8, RED was obliged to manufacture and supply the products in compliance with laws and regulations in Negoland.
26. The terms “applicable laws and regulations” under Art 4 and “all governmental regulations” under Art 8 indicate laws and regulations in Negoland where RED as a supplier is located. This is because, for an international manufacture and supply agreement, it would be unreasonable to burden a supplier with the investigation of all laws and regulations of a country where a buyer is located.
27. As such, if BLUE required RED to comply with laws and regulations in Arbitria, BLUE should have informed RED about the laws and regulations in Arbitria as part of their “clear instructions” under Exhibit 12 Art 2. The reasons are as follows.
 - 27.1. Exhibit 12 Art 2 stipulates “Buyer will make all reasonable efforts to provide clear instructions... to Supplier.”
 - 27.2. BLUE, as the buyer, was more familiar with laws and regulations in Arbitria than RED. Thus, BLUE should have made all reasonable efforts to provide clear instructions to RED, if BLUE had the intention to require RED to comply with “laws and regulations prohibiting a company from selling any products manufactured by using child labor or forced labor in violation of laws in Arbitria or international human rights standards” (Exhibit 18 email dated January 20th, 2022).



- 27.3. However, in this case, even though BLUE recognized that there were such laws and regulations in Arbitria, they did not make any reasonable effort to provide clear instructions requiring RED to comply with them.
28. Thus, under Exhibit 12 Art 4 and Art 8, RED was obliged to manufacture and supply the Products in compliance with laws and regulations in Negoland.
29. In this case, since there is no fact that RED has violated laws and regulations in Negoland, RED did not breach its obligation.
30. Therefore, since RED supplied DZ Clothes on August 20th, 2021, RED did not breach its obligation under Exhibit 12.

II. Even if RED breached its obligation, BLUE cannot claim RED's breach since it was caused by BLUE's act.

31. UPICC Art 7.1.2 stipulates that "A party may not rely on the non-performance of the other party to the extent that such non-performance was caused by the first party's act or omission or by another event for which the first party bears the risk."
32. In this case, taking into account the four facts listed below, RED's non-performance of its obligation was caused by BLUE's act of introducing BLACK to RED without investigating BLACK's actual working conditions.
 - 32.1. BLUE did not investigate BLACK's working conditions when they introduced BLACK to RED.
 - 32.2. BLUE referred BLACK to RED as a perfect subcontractor without investigating BLACK's actual working conditions.
 - 32.3. BLACK was a company where Mr. Work Black who used to be a department manager at BLUE was a president (Exhibit 13, email dated Jan 18th, 2021).
 - 32.4. When RED said "if you say Black Inc. is trustworthy, we really wish to outsource manufacturing to Black Inc.", BLUE replied "We think Black Inc. is trustworthy"(Exhibit 13, emails dated Jan 19th and 20th, 2021).
33. Therefore, BLUE cannot claim RED's non-performance because it was caused by BLUE's act of introducing BLACK to RED, without investigating BLACK's actual working conditions.

ISSUE 2 (Blue Land Case)

SUMMARY OF ARGUMENT

Even if there was non-performance by RED, RED is not obliged to compensate BLUE.

I. Even if RED breached its obligation, RED is not obliged to compensate BLUE because this case does not involve any damages that must be compensated for by RED under UPICC Arts 7.4.2 and 7.4.4.

II. Even if RED is found to be liable for damages, since BLUE could have taken reasonable steps to mitigate the damage, RED is obliged to compensate for the damage to the extent that BLUE could have reasonably mitigated it.

I. Even if RED breached its obligation, RED is not obliged to compensate BLUE because this case does not involve any damages that must be compensated under UPICC Arts 7.4.2 and 7.4.4.

(iii) The damage of US\$800,000 which BLUE has suffered from the return of DZ Clothes.

34. RED does not have to compensate BLUE for the damage of (iii)
- 34.1. There was no reasonable foreseeability of BLUE's damage of (iii), which does not fulfill UPICC Art 7.4.4.
- 34.2. This is because, at the time of conclusion of Exhibit 12, RED did not know that laws and regulations in Arbitria required a company that sold products produced with child and forced labor to accept returns upon customers' request (Exhibit 18 email dated January 25th, 2022).
35. Therefore, RED is not obliged to compensate BLUE for the damage of (iii).

(iv) The damage of US\$15,000,000 which BLUE has suffered from closure of Blue Land for 12 days

36. RED is not obliged to compensate BLUE for the damage of (iv).
37. There is no causal relationship between RED's non-performance and BLUE's damage of (iv), which does not fulfill UPICC Art 7.4.2.
- 37.1. This is because the 12 day closure of Blue Land was not caused by RED's non-performance of its obligation, but rather by BLUE's business decision in response to criticism in Arbitria.
- 37.2. Furthermore, the reason for the closure was the demonstration by Arbitria's citizens, and the demonstration was caused by a news article (§27). RED had no control over what the newspaper published, and how factual it was. Therefore, there is no direct causal relationship between the non-performance and Blue Land shutting down.
38. In addition, RED could not reasonably have foreseen that its non-performance would result in BLUE's damage of (iv), which does not fulfill UPICC Art 7.4.4 for the following two reasons.
- 38.1. Since Blue Land is a complex of attractions, commercial facilities and hotels, it was not reasonably foreseeable at the time of the conclusion of Exhibit 12 that a fault in one clothing item would lead to the closing of the entire Blue Land.
- 38.2. Furthermore, there was a difference in public awareness of human rights issues in Negoland and Arbitria. Thus, RED, as a company in Negoland, could not have foreseen at the time of conclusion of Exhibit 12 that RED's non-performance would lead to the closure of Blue Land (§30).
39. Therefore, RED is not obliged to compensate BLUE for the damage of (iv).

(v) The damage of US\$5,330,000 which BLUE has suffered due to the halving of views of Friendship on Blue Net as a result of BLACK's problems

40. RED is not obliged to compensate BLUE for the damage of (v) which does not fulfill the requirements of UPICC Art 7.4.4.



41. Since RED could not have reasonably foreseen BLUE's damage of (v) at the time of conclusion of Exhibit 12, which does not fulfill UPICC Art 7.4.4, RED is not obliged to compensate BLUE for the damage of (v). The reasons are as follows.
 - 41.1. In general, there are various factors that affect the number of views. Hence, it was not possible to foresee that the number of views would be halved only due to RED's non-performance of its obligation.
 - 41.2. Since DZ Clothes were manufactured to be delivered to Blue Land, RED could not have foreseen at the time of the conclusion of Exhibit 12 that RED's non-performance would affect not only Blue Land business, but also the number of views on Blue Net which is a completely separated business of BLUE.
42. Thus, RED is not obliged to compensate BLUE for the damage of (v).
43. Therefore, even if RED breached its obligation, RED is not obliged to compensate BLUE because this case does not involve any damages that must be compensated for.

II. Even if RED is found to be liable for damages, since BLUE could have taken reasonable steps to mitigate the damage, RED is not obligated to compensate for the damage to the extent that BLUE could have reasonably mitigated it.

44. UPICC Art 7.4.8 (1) stipulates "The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps."

Mitigation of the damage of (iv) for US\$15,000,000

45. BLUE could have mitigated the damage of (iv) caused by the closure of Blue Land by taking reasonable steps. This is because, by holding a news conference on December 23th, 2021 before closing Blue Land (¶27) to make a public apology and defusing the criticism immediately (¶30), BLUE could have continued the operation of Blue Land while ensuring the safety of visitors.
46. Thus, since BLUE could have mitigated the damage of (iv) by taking such reasonable steps, RED is not liable for BLUE's damage of (iv).
47. Therefore, even if RED is liable for its non-performance, RED is only obligated to compensate BLUE for US\$6,130,000 as a sum of (iii) and (v).

CARD CASE

Claim of RED regarding jurisdictional issues

The arbitral tribunal has jurisdiction over Card Case.

Claims of RED

- (1) RED seeks a declaration that BLUE has no right to distribute NC through Blue Net or to sell the famous scene cards ("Cards") of NC and Friendship at Blue Land.
- (2) BLUE shall pay to RED part of the revenue which BLUE has generated from the



distribution of NC through Blue Net and the sale of Cards.

RED’s motion for interim measures

(3) RED seeks an injunction ordering BLUE to cease the distribution of NC through Blue Net and the sales of Cards at Blue Land.

ISSUE 1 (Card Case)

SUMMARY OF ARGUMENT

The arbitral tribunal has jurisdiction in relation to the Card Case.
 I. The arbitral tribunal has jurisdiction over the sale of the Friendship Cards.
 II. The arbitral tribunal has jurisdiction over the online distribution of NC, as well as the sale of Cards of NC.

The disputes regarding Cards should be divided into the cards of Friendship and NC. This is because the CO-PRODUCTION AGREEMENT between RED and BLUE regarding Friendship (“**Exhibit 4**”) only applies to disputes related to Friendship, and Exhibit 7 applies to those related to NC.

I . The arbitral tribunal has jurisdiction over the sales of Cards of Friendship.

- 48. The dispute related to the Cards of Friendship satisfies the requirements under Exhibit 4 Art 21 (f) to submit it to arbitration.
- 49. Exhibit 4 Art 21 (f) stipulates “All disputes in connection with this Agreement or the execution thereof shall be settled in a friendly manner through negotiations. In case no settlement can be reached, the case may then be submitted for arbitration in Japan to arbitration...”
- 50. In this case, no settlement was reached through negotiations on June 15th and June 20th (Exhibit 19 email on June 25th, 2022). Therefore, this case can be submitted to arbitration in Japan and the arbitration tribunal has jurisdiction over the dispute of Cards of Friendship.

II . The arbitral tribunal has jurisdiction over disputes regarding the online distribution of NC, as well as the disputes of Cards of NC.

- 51. Exhibit 7 Art 21 (f) stipulates “If a disagreement or dispute arises between the parties... they shall attempt to resolve it through good faith negotiations, and **if no resolution is reached after a period of three months, they shall attempt mediation by a mediator appointed by both parties.** If the matter is still unresolved, or if the dispute remains unresolved for a period of six months, the parties may apply for arbitration.”
- 52. The time requirement in Art 21 (f) is intended for disagreements regarding the production of a film. This is because when RED and BLUE entered into Exhibit 7, both parties set the time requirement in Art 21 (f) on the premise that “it would be better to go through negotiation and mediation with professionals with the situation where the parties have different opinions on a



matter concerning the production of the movie” (Exhibit 19 email dated June 8th, 2022). Thus, the scope of Art 21 (f) is limited to disagreements over film production. And, since BLUE clearly recognized that this provision is applicable only to disagreements regarding the production of the movie, it should be interpreted that the time requirement only applies to a dispute about production of the movie (Exhibit 19 email dated June 10th, 2022). Therefore, it does not apply to this dispute regarding the distribution of NC and Cards of NC, since it is not about the production of the film.

53. Even if the time requirement stipulated in Art 21 (f) is not limited to disputes about the production of the movie, if there was no prospect of resolution through negotiation or mediation, the dispute can be submitted to arbitration without fulfilling such time requirement. This is because, if the time requirement must be fulfilled under situations where there is no prospect of resolving the dispute by negotiation or mediation, it allows an infringing party to unreasonably prolong the dispute.
54. In this case, there is no prospect of resolution through negotiation or mediation.
 - 54.1. In the negotiation on June 15th and 20th in 2022, BLUE repeatedly stated “a difference in viewpoints” and “our company is not to blame” (Exhibit 19 email dated June 25th, 2022), and no settlement was reached through the negotiation. After that, when RED suggested moving to mediation on June 25th and 30th, 2022, BLUE stated that “we cannot accept mediation” (Exhibit 19 email dated July 1st, 2022). Thus, there is no prospect of a solution through mediation (Exhibit 19 emails on June 30th and July 1st, 2022).
55. Thus, since the requirements to submit the dispute to arbitration under Exhibit 7 Art 21 (f) are satisfied, the arbitral tribunal has jurisdiction over the disputes regarding the online distribution of NC and the sale of Cards of NC.
56. Therefore, the arbitral tribunal has jurisdiction over Card Case.

ISSUE 2 (Card Case)

SUMMARY OF ARGUMENT

If the arbitral tribunal has jurisdiction over Card Case, RED’s Claims (1) and (2) and the motion for interim measures (3) should be accepted.

I. (1) BLUE does not have the right to distribute NC through Blue Net or to sell Cards at Blue Land.

II. (2) BLUE shall pay RED 50% of the revenue BLUE has generated from the distribution of NC and the sales of Cards.

III. (3) RED’s motion for interim measures regarding the distribution of NC and the sale of Cards should be granted because the requirements under the UNCITRAL Arbitration Rules (“UNCITRAL Rules”) Art 26 (3) (a) and (b) are satisfied.



I. (1) BLUE does not have the right to distribute NC through Blue Net and sell Cards.

57. BLUE does not have the right to distribute NC and sell Cards of Friendship and NC since the distribution of NC and such Cards fall under Exhibit 4 Art 3 (d) (i) and Exhibit 7 Art 3 (d) (i) “Ancillary Rights” and BLUE has not obtained consent from RED regarding these issues.
58. Exhibit 4 Art 3 (d) (i) and Exhibit 7 Art 3 (d) (i) stipulate “Blue and Red shall have mutual creative control with respect to the creation and design of any Ancillary Rights...”
59. This article merely stipulates that if the decision is made to produce “Ancillary Rights”, both parties have the right to express their opinions on the production and design. Thus, it was necessary for both parties to separately agree and enter into a contract as to whether or not to distribute and produce the film. This is evidenced by the fact that, for distributing Friendship, RED and BLUE entered into an agreement on March 1st, 2019 (Exhibit 8).
60. Thus, in this case, since there is no agreement or contract between RED and BLUE regarding the distribution of NC and the sale of Cards, BLUE does not have the right to distribute NC through Blue Net and sell Cards.
61. Therefore, BLUE does not have the right to distribute NC through Blue Net and sell Cards at Blue Land.

II. (2) BLUE shall pay RED 50% of the revenue BLUE has generated from the distribution of NC and the sales of Cards.

62. Under Exhibit 4 Art 8 and Exhibit 7 Art 8, BLUE must pay RED 50% of the revenue it has generated from the distribution of NC.
63. Exhibit 4 Art 8 and Exhibit 7 Art 8 stipulate “Net Receipts from Picture shall be divided equally, with fifty percent (50%) to Red and fifty percent (50%) to Blue. Net Receipts shall be the amount of one hundred percent (100%) of all revenues, money or other consideration from the exploitation of (i) the Picture throughout the universe; and (ii) all Ancillary Rights relating to such Picture.”
64. In this case, the revenues from the net distribution of NC and from the sales of Cards fall under “Ancillary Rights”. Thus, the revenue should be split on a 50% basis.
65. In addition, BLUE was aware that if BLUE had distributed NC and sold Cards, BLUE was obliged to pay RED at least a portion of the proceeds from them as consideration. This is because BLUE stated “We would like to discuss with your company the division of revenue from these sources” (Exhibit 19 email June 3rd, 2022) regarding the division of profit of the distribution of Blue Net and the sale of Cards.
66. Therefore, BLUE shall pay RED 50% of the revenue BLUE has generated from the distribution of NC and the sale of Cards.

III. (3) RED’s motion for interim measures regarding the distribution of NC through Blue Net and the sales of Cards at Blue Land should be granted because the requirements under UNCITRAL Rules Art 26 (3) (a) and (b) are satisfied.

67. UNCITRAL Rules Art 26 (1), which is the procedural rules applied to this case, stipulates that “The arbitral tribunal may, at the request of a party, grant interim measures.”



68. In order for the arbitral tribunal to grant the interim measures, it must satisfy three requirements stipulated under UNCITRAL Rules Art 26 (3) (a) and (b).
- Requirement (1):** Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered (the first sentence of Art 26 (3) (a)).
- Requirement (2):** Such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted (the last sentence of Art 26 (3) (a)).
- Requirement (3):** There is a reasonable possibility that the requesting party will succeed on the merits of the claim (Art 26 (3) (b)).
69. RED's motion for interim measures meets Requirement (1).
- 69.1. If the interim measures were not granted, the harm RED suffered would be the damage to the quality and artistic value of the film which cannot be fully compensated by an arbitration award.
- 69.2. The form and timing of distribution and the content of Cards have a significant bearing on the quality and artistic value of the film. Thus, if secondary use was made without the consent of the producer, the quality and artistic value of the film would be easily damaged, resulting in damages which cannot be fully recovered by an arbitral award of damages.
- 69.3. Therefore, if the interim measures were not granted, RED would suffer the harm which cannot be fully compensated by an arbitration award.
70. RED's motion for interim measures meets Requirement (2).
- 70.1. If the interim measures are granted, the harm BLUE would suffer is limited.
- 70.2. The harm BLUE would suffer from the interim measures is only the inability to distribute NC and to sell Cards which is merely a type of merchandise until the arbitration award is issued. Hence, such harm is minor and reparable by an arbitration award of damages.
- 70.3. In addition, the harm that the number of views for Friendship would decrease due to suspending the distribution of NC is also reparable by an arbitration award of damages.
- 70.4. Hence, the harm RED suffers as stated in ¶69.1 through ¶69.3 in RED's preliminary memorandum are serious and irreparable by an arbitration award, on the contrary BLUE's harm is limited and reparable by the award. Thus, RED's harm greatly outweighs BLUE's harm.
71. RED's motion for interim measures meets Requirement (3).
- 71.1. As stated in RED's preliminary memorandum, since there are concrete facts that support RED's arguments, there is a reasonable possibility that RED will succeed on the merits of this case.
72. Therefore, because the requirements under UNCITRAL Rules Art 26 (3) (a) and (b) are satisfied, RED's motion for interim measures regarding the distribution of NC and the sale of Cards should be granted.