

# INDEPENDENT MOVIEMAKING MYTHS AND LEGENDS

IN THIS NEW COLUMN, OUR ENTERTAINMENT ATTORNEY DEBUNKS SOME MOVIEMAKING MYTHS AND LEGAL LEGENDS THAT PLAGUE INDEPENDENTS...

*"My best friend's sister's boyfriend's brother's girlfriend heard from this guy who knows this kid who's going out with the girl who knew a moviemaker who obtained distribution and made a bunch of money without doing any of this legal stuff. So why can't I?"*

**I**'VE PRACTICED LAW FOR 12 YEARS, and for the last eight I have exclusively practiced in entertainment law, primarily counseling moviemakers. In that time, I have repeatedly heard a disturbing number of misconceptions and fallacies about how to successfully get a film produced and distributed.

Are these inaccuracies taught by film school professors? Are they the legacy of an ongoing con perpetrated by earlier moviemakers who suffered pitfalls with their own films and take perverse pleasure in seeing those that follow behind them fall into the same traps? Are they simply the result of an ongoing game of "telephone," where legal advice once heard long ago is reinterpreted and slightly modified by each new ear that receives the information and passes it on to the next unsuspecting ear?

In this column, I'll begin to identify and discuss some of those myths. In future issues of *MM*, I'll be answering your questions and debunking the myths, urban legends and bogus information that most first-time moviemakers treat with the same misguided reverence that Mel Gibson has for the diaries of 18th-century nun Anne Catherine Emmerich.

So here are some of the most common misconceptions and half-truths that this column and future columns will clarify and correct:

- I'm just a kid making a movie—laws don't really apply to me. Besides, I can't afford an attorney on my budget.
- I'm raising money from friends and family, so I can just document that transaction myself (not that a contract is even necessary).
- I'm an independent; my creative vision takes priority over everything else.
- Ethics and moviemaking have nothing in common. As long as no animals are harmed in the making of my film, I've fulfilled my ethical duty.
- All I need to do is get a sales agent on board and a bank will give me a loan to make my movie.
- Completion bond companies are evil, unnecessary and should be avoided at all costs.
- There is no advantage to having a corporation or limited liability company before I go into production.
- I can save a bundle by using an Internet service (or an ad I saw in an airplane magazine) to incorporate myself.
- I can save even more money by incorporating in Nevada. Really, I heard it on the radio.

- I can save a bundle by mailing a copy of my screenplay to myself and that's just as good as filing with the U.S. Copyright Office.
- Registering my screenplay with the Writers Guild of America is the exact same thing as registering it with the U.S. Copyright Office.
- The First Amendment protects me from anything I say or capture on film.
- I can fix it in post!
- I can magically transform any employee into an "independent contractor," or better yet, an "unpaid intern or volunteer," so long as the crew member is cool with this designation.
- This film must be union. Or... this film must be *non-union*.
- Insurance is easy to get, though generally not needed for indies, and can be put off until the last second.
- The distributor will have insurance so we don't need to get it.
- Legal fees are merely an expense and a luxury. My film will be better served putting money "on the screen" rather than in an attorney's pocket.
- I'll save money by waiting to bring a lawyer on at the very end of the process rather than prior to pre-production.

If you're a moviemaker about ready to enter into production and while reading these misconceptions you're asking yourself, "What's wrong with that?," run—don't walk—to the nearest qualified production counsel. For the rest of you simply contemplating a film some time in the future, stay glued to future issues of *MM* and all will be revealed.

Can't wait until the next issue? Then let's have a little debunking party right now.

**MYTH #1:** *I'm just a kid making a movie—laws don't really apply to me. Besides, I can't afford an attorney on my budget.*

Many of my clients are first-time moviemakers. Many graduated from college with a major in liberal arts and went on to obtain a master's in film. These individuals have taken few, if any, business courses during their university tenure, and now have suddenly—via begging, borrowing and burglarizing—cobbled together roughly a half to one million dollars to produce a screenplay that either they or their film school roommate wrote. If the energy that flows from this client could be harnessed, gas prices would be a nickel a gallon. These clients have an infectious good spirit and unbridled enthusiasm that cannot help but make anyone smile. For God's sake, they scored \$500,000 and they have absolutely no track record to justify anyone giving them anything even remotely near this sum of money. Much of what has carried them to this point is their conviction and attitude, which is essentially that of the neighborhood kid devoted to "puttin' on a show" in the barn out

back. The moviemakers who will prove most successful will never lose that attitude and enthusiasm. It's a special breed. These clients genuinely believe in the esprit de corps of everyone rallying together.

However, neither the grand bureaucracy of the state of California, the federal government, the assorted entertainment unions or the third party vendors with whom they will contract see it this way. To these entities, my client is an employer of 20 to 40 employees with close to \$1 million in company assets. To these entities, federal securities laws, state blue sky laws, wage-hour laws, workplace safety laws, union regulations, insurance matters and many other real business world matters *matter*. And to all of these entities, your producer hat reads to them as a bulls-eye target with the letters "CEO" emblazoned on it. There is no "I'm just goofing around with my parent's friends' money" exemption to this bureaucracy and red tape.

These very serious rules and regulations exist and apply regardless of whether you are producing films, footballs or frozen yogurt.

Sticking your head in the sand in an attempt to ignore and evade the effects of this vast red tape is not the answer. The better approach is to learn and do what is required of your company or delegate that responsibility to a professional you can trust. If you're using money other than cash stuffed in your sock drawer at home; if you're relying on other people to crew this movie or act in it; if you're shooting in locations other than your own basement; if you're hoping to sell, exhibit or distribute this film to audiences other than your own family, then you need to consult with an attorney. Most qualified production counsel attorneys will provide a free consultation to give you a brief overview of these issues and help design a way to attack these matters within your budget.

If your intent is to make money through the sale or license of your movie, then you need a production attorney. That attorney should be deemed as much a key crew member as your DP, unit production manager or caterer. The securing of a qualified production counsel early in the process will help both first-time and established moviemakers focus on the creative aspects of moviemaking—while the business and legal affairs are left to those who know how to best attend to those affairs. Otherwise, your dreams of distribution will never be more than just that.

How often have you read about a film that was acquired by a big-time distributor at a film festival and never heard of again? Many times the short form deal memo promising a hefty advance, which was signed in the middle of a snow bank, never fully develops into that promised payday and release. Sometimes it's because the moviemaker was unable to produce the necessary "technical deliverables" which the distributor demands (such as an acceptable M&E track). Sometimes the distributors simply return to a lower altitude with thicker oxygen and rethink their decisions. But on other occasions, the sole reason for the deal falling apart was because the moviemaker was unable to produce the equally important "legal deliverables" (such as proof of an unencumbered chain of title in the screenplay or clearance releases for all artwork and set designs featuring trademarks or copyrighted works).

There is a reason why Oliver Stone called the football franchise in *Any Given Sunday* the Miami Sharks instead of the Miami Dolphins, while Warren Beatty was freely welcomed to use many an NFL logo in

*Heaven Can Wait*. Would Vincent Gallo have been able to obtain distribution for *Buffalo 66* if he had not spoken to an attorney before moviemaking commenced to understand the limits of what his set designers and costume designers could and could not do when dealing with the highly protective and litigious National Football League? Probably not. How would Quentin Tarantino re-edit *Reservoir Dogs* if his attorney had not first secured the rights to permit Michael Madsen to groove to the tune of "Stuck in the Middle With You" as he tortures the poor LAPD cop? All of this stuff is the domain of your production counsel. His or her work allows your creative vision to be seen by others.

Entertainment law is highly complex and involves intellectual property rights, rights of privacy, defamation, securities laws, employment law, insurance law, contract law and much more.

If you have any desire to actually exhibit your film to the public—or if you're using the money of other people who hope to see a return on their investment—then the advice of experienced production counsel is essential.

Remember, somewhere there is an attorney who will be so taken by your drive and who will so relate to your story that he or she will fall prey to your unbridled enthusiasm and strike a deal to provide at least some form of legal service, no matter how small the budget. **MIM**

Want David Pierce to answer your legal question? E-mail [counselor@moviemaker.com](mailto:counselor@moviemaker.com)  
Next issue we'll debunk the myths and mystery surrounding film finance.

"...To all of these entities... you're not simply 'puttin' on a show.' Your producer hat has a bulls-eye with the letters "CEO" emblazoned on it. And there's no "I'm just goofing around with my parent's friends' money" exemption to the bureaucracy and red tape."

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