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Crowdfunding an Independent Film Project

BY [MATTHEW STRONG](#) / ON JANUARY 14, 2015

Crowdfunding describes the collective cooperation, attention and trust by individuals who network and pool their money via a preferred Internet platform to support efforts initiated by other people or organizations. The “crowd” in crowdfunding is comprised of online donors from a web platform. Though crowdfunding crosses the lines of commercial, political and non-profit campaigns, it’s been most notable as a haven for philanthropic opportunity, namely the broad area we call “the arts.”

Crowdfunding is attractive to both the artist and the prospective crowd, or individual contributor, as the small contributions of backers are critical to the leveraging of a project. A filmmaker may choose to crowdfund for a particular aspect of their project’s budget, or their project as a whole. Typically, filmmakers have had more success honing in on one aspect of a greater project budget like equipment, marketing or distribution.

The most notable or familiar crowdfunding sites include [KickStarter](#), [IndieGoGo](#) and [Crowdfunder](#). Crowdfunding sites, contrary to popular belief, do not provide the honeymoon project support they’re often associated with. In order to maximize use of a crowdfunding platform, there are several important legal questions to address.

First and foremost, by utilizing the new crowdfunding paradigm and circumventing the traditional equity-investor model of friends, family and private investors, prospective filmmakers can maximize the value proposition of the pooled-backers model. What makes the crowdfunding model unique is the sense of community it builds for investors who feel like they have a stake in the project. Further, crowdfunding gives the filmmaker the opportunity to sell an ownership interest in the project. The “coolness” factor of being a part of an independent film has been an inherent selling point for independent filmmakers in securing the budgets they desire for their projects.

Any crowdfunding-seeking filmmaker must consider certain legal precautions before hosting their project on their web platform of choice. The backing of a corporation or limited liability corporation (LLC) may be advantageous so that the filmmaker has the protection of a legal entity. A trademark clearance search may also be conducted to ensure the potential project name is not already in use; a last-minute name change can be detrimental to funding and branding.

While crowdfunding has no ceiling or fundraising limit, with history as its witness, the higher the project budget, the less likely a client is to secure their desired budget. However, the catch with crowdfunding a project is that the project must reach its funding goal before the

timeframe runs out, or else the money runs dry and no money changes hands. At the same time, the client must be ready to jump at a successfully funded project. Once the funding goal is reached, the project must be started or the money must be returned to the backers.

Independent film projects conducted through various crowdfunding mediums must also deal with the legalities of taxation. Although federal film tax incentives are no longer available in most states, each state is different and may have specific requirements to be met in order to qualify for the incentive. Awareness of potential tax incentives may assist with budgetary planning for a film or project.

Since President Obama signed the [Jumpstart Our Business Startups Act](#) (the "JOBS Act") in 2012, individual investors have expressed concern over troublesome provisions of the law that relate to crowdfunding. Under current U.S. federal law, the sale of securities to the public, as an investment, like on a crowdfunding platform, is regulated by the Securities and Exchange Commission (SEC). It is illegal to receive a return on an investment unless the company is approved by the SEC.

The SEC has not yet released crowdfunding rules for public comment that will address the system the SEC will put in place exercising its authority under the JOBS Act. One of the central provisions of the Act was to instruct the SEC to find ways to exempt crowdfunding from the onerous provisions of the SEC. Crowdfunding has had to face, head on, provisions that restrict access to funds from non-registered securities offerings by non-accredited investors, or "the crowd."

Each crowdfunding platform includes explicit conditions regarding the legal liability of a fully funded project that is unable to be completed. Specifically, Terms of Use require not only completion of the project, but fulfillment of offers made in accordance with the initial campaign. A client must refund any backer whose reward they do not, or cannot fulfill. Crowdfunding requires a significant baseline of communication with backers as to update them on potential timeline challenges and allocation of funds.

Though crowdfunding may seem to be restrictive, or difficult, its redeeming qualities are what have made it such a hit with independent artists. Crowdfunding is a great way to rally passionate consumers around an idea, product or cause they believe in and many filmmakers from independent to documentary to celebrities have found success using the pooled-backers model.