

BOOK REVIEW

THE ABA LEGAL GUIDE TO INDEPENDENT FILMMAKING, By Michael Donaldson and Lisa A. Calif, published by The American Bar Association
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By Cynthia Close

Would you believe me if I told you it was possible to get good, informative legal information from a respected source, practically free? Probably not. We, in the film business, expect to pay thousands of dollars on legal fees every time we set out on a new venture. It goes with the territory you say. Also it is human nature to respect what you pay for, the more you pay, the more value we place on the information, or item of our desire.

But this does not have to be the case. Michael Donaldson (whose earlier book on clearance and copyright I also reviewed in this space) and Lisa A. Calif, two knowledgeable legal minds, have written this book under the auspices of the American Bar Association, “to provide an authoritative guide through the legal morass of producing an independent film.” This sense that we, as filmmakers, need to stick with telling our story the best way we know how, and not start mucking around in the “legal morass” because it will suck out all our creative energy, is pretty pervasive.

Too often these all-important issues, if not dealt with from the get go, may, in the end, prevent your film from ever seeing the light of day. If you’ve been working on a film for three years, based on a book that you failed to option the rights to, those might be three wasted years if the owner of the rights has sold them to someone else. We’ve all heard the horror stories of the filmmaker who became wedded to a piece of music, figuring they could deal with copyright issues “later” only to discover that the astronomical costs to license it were well beyond their reach.

It is the fear that we can’t possibly understand all the legal mumbo jumbo involved in getting an independent film made that keeps us from even trying. But what if there was a guidebook that filled the role of friend and coach, someone who knew the ropes and was there to help you when you needed it? This book takes that tone. It is collegial. It is as though the authors were talking to a producer, writer or director of an independent film.

The book is structured on a very logical time line that presents the right information that corresponds to where you are at each stage in the process of making your film. This indicated to me, right away, that these were lawyers who understood the creative process, from “The Lightbulb Moment” (chapter one) right on through to delivery of master materials and registering the copyright of your finished work. They knew the way films evolved.

The first essential concept I always find I must clarify with filmmakers when they are seeking support for a new project is that “copyright law does not exist to protect ideas.”

Your ideas must be “fixed in a tangible form” if they are to be protected, which means **YOU HAVE TO WRITE THEM DOWN!** Taking pen to paper, or clicking the keyboard costs you nothing, but the more you write, the more you are taking ownership of that idea. A well-developed treatment is an essential step in raising the money to make your film, so it’s unavoidable. Once you have that, you can register it with the Writers Guild of America, as we are told here in chapter one.

The mantra that courses through the book “get it in writing” is essential at every step of the game in making a movie. It is advice that is so often ignored, in part because we don’t have a clue what format that writing should take. This book tells you, at critical junctures, “*Use this form*” leaving no doubts and nothing to the imagination. So you want to option someone’s autobiography? – Use form 1.01: Option and Purchase Agreement provided for you right on page 2.

Now let’s imagine you’ve already obtained the rights to make your film, you’ve formed your business entity, and your financing is in place (all this is covered in great detail in chapters 1 and 2). You’re ready to pull your talent together to produce your film, your “above-the-line” and “below-the-line” personnel. Do you know who belongs above or below this line in the budget and what the ramifications of being in one place or the other means? The authors take the time to explain this as well as all the other terms in all the documents you might encounter as you progress. I confess, although I’ve helped filmmakers prepare budgets using these terms for personnel I didn’t understand which of these were more likely to demand a piece of the income from a film, or how essential “work-for-hire” provisions are, even for such roles as prop makers, set designers, costume designers, or choreography. The role that unions (i.e. SAG – Screen Actors Guild, The Directors Guild or the Writers Guild etc.) play when negotiating contracts is explained and how that impacts your budget may dictate whether you use union or non-union personal.

The authors raise the issues we should be thinking about at each step along the way, and then clearly and succinctly provide options and solutions right up to that moment of **DELIVERY!** – Deliverables are those things we distributors need from filmmakers in order to get their work in front of audiences, the ultimate goal.

By providing this invaluable information to filmmakers, for nothing more than the cost of this book, the American Bar Association is to be congratulated for helping filmmakers be more informed negotiators and smarter consumers of legal services, a better situation for us all.