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ENTERTAINMENT LAW

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The Arts and Entertainment as a Business

Art has long been romanticized as a virtuous pursuit by individuals creating works for the betterment of culture and society. German artist Martin Kippenberger said that, "Entertainment and art are not isolated. Entertainment is in art like color in pictures." Entertainment is a business and to be a successful artist (or entertainer) you have to treat it like a business.

Since artists need to make money like everybody else, a business must be structured around the art in order to benefit the artists. Although it may be contrary to the idealized vision of art, music, paintings, sculptures, poems and all other types of art are products. In order to sell the art, you have to market it like an attractive product. The artwork is a product and the fans or readers or enthusiasts are the customers.

An analogy may be helpful in viewing art and entertainment as a business. Instead of seeing the art as art, view it as a widget. Think of the song or drawing or novel as a widget. In order to make money selling widgets, first you have to make the widgets. Anyone who helps make the widgets must have a clear understanding of who owns the widgets. You may need to draft an agreement with these people so they know that they can't take the widgets out of the factory and go sell them on their own. Similarly, if you are in a band, all the musicians need to agree on who owns the music. All the band members can own equal parts of the music, but that should be put in writing.

Once you agree on who makes and owns the widgets, you will want to name

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the widget company. Perhaps you call your company World Wide Widgets. But what if there is already a company named World Wide Widgets? It is important to make sure no one else is using the name before you invest in the name by making letterhead, signs, and advertisements with the company name. If no one else is using the name, you can register World Wide Widgets as a trademark so that no one else can use the same name or cause any confusion.

Unlike widgets, art can be copyrighted. A copyright assigns to any original work of authorship fixed in a tangible medium of expression. As soon as you create something, it is copyrighted and you own the copyright to it. That copyright entitles you to be the only person to reproduce the work, create derivative works from the original, distribute the work, and display or perform the work. Protecting and utilizing these rights is how artists can make money off their art!

Back to our widget analogy. When you start making widgets you'll need to market those widgets so consumers know the widgets are on the market and available for sale. You'll probably advertise the widgets so you can sell more of them and make more money. The same principles apply to your art. You need to market the art to people who may be interested in buying it in order to make money. It is crucial to promote your product in order to maximize your potential.

You will likely need someone to distribute the widgets. Your factory may be in Colorado but you can sell widgets from coast to coast - you just have to get them there. Similarly, you can market and sell your art around the world. There are many companies who may try to help you distribute your art but you must be wary of the business deal that goes along with that distribution. You wouldn't fill up a truck with widgets and give someone the key, trusting that they'll sell all the widgets and bring you back the money. So don't give your music or art to someone who says they'll sell it and pay you the money without a written agreement ensuring that they do so.

After selling millions of widgets and making lots of money, you may want to start making and selling cogs. Be smart with your investment! As with any business, be sure to use your funds wisely and securely. The same rings true for art. A successful artist or musician may only be as good as his next work,

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he must be careful with his resources and thoughtful in his actions. Plan ahead and protect yourself.

Leyendecker & Lemire, LLC is a Denver-based law firm offering a full spectrum of Intellectual Property, Business and Entertainment related legal services for entrepreneurs, individual inventors, and businesses of all sizes. We pride ourselves in providing large firm quality, but with personalized service and attention the large firms do not provide to their smaller clients. Our strength is working with a client from the beginning of his/her venture to maximize the venture's value and potential, as well as, help minimize the risk of legal disputes. Call (303) 768-0123 or e-mail us at info@coloradoiplaw.com today to see how we can help you!

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