ENTERTAINMENT LAW

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YOUR ENTERTAINMENT LAW LEGAL TEAM

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Starting an Indie Record/Film Company

Since this is a legal website and I am a lawyer, this discussion focuses on the legal issues you want to address when starting an indie record or film company. As for finding the bands or film makers to sign with your company - sorry, but I'm not much help there. I would think you would want to hang around a lot of bars and movie theaters.

I do know about the legal aspects you should consider when embarking on one of these new adventures. In the Arts and Entertainment as a Business section we discuss the delicate balance between artistic inspiration and business acumen that is needed to navigate the often shark-infested waters of the entertainment business. While the legal aspects of the business are important, those aspects should not dominate the creative process. Let's start with the bedrock of an indie record or film company: the business entity.

Step 1: Establishing a Business Entity

It is important to officially form the company early in the life of any business - entertainment or otherwise. Some may argue that forming the company doesn't have to be the first step. I feel that it efficiently focuses the participants on what the business is really going to be about. How is it run? Who makes the decisions? How are profits/losses allocated among the owners? What if one owner wants to get out and sell his interest? All of these issues are addressed

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in the formation process.

Additionally, the formation of an LLC or corporation provides the owners of the company with personal liability protection from the debts or obligations of the company. This means that personal assets such as the owner's house or car cannot be used to satisfy the business obligations of the company. This liability protection is subject to the rule of law concerning piercing the corporate veil. For a more in depth discussion of piercing the corporate veil please see our Virtual Business Consultation.

Early formation of the entity also provides for a centralized collection of the company's assets. This means that all contracts, agreements, intellectual property, and other assets are owned by the company and are in the company's name. The problem with forming the entity later on is that all of the assets, contracts, and debts need to be transferred to the new entity. For some things like trademarks, copyrights, production contracts, artist contracts, and distribution contracts, it may not be a big problem - it will just cost the company money to have all of those agreements assigned. If the company has any debt, it may be harder. The bank may not allow the new company to assume the old debt. If you signed on the obligation personally, even if they allow you to put the debt in the company's name, they will still want you personally liable. Starting the process with the new entity in place can eliminate the personal guarantee of the debt or limit your personally liability.

In addition, as your business grows you may want to use the original company as a parent company and create subsidiary companies underneath it. This employs a risk minimization and asset segregation strategy to protect valuable company assets to the fullest extent possible.

Step 2: Getting Your Documents In Order

Entertainment companies run on paper. There are more documents and contracts than you can imagine. These agreements secure the rights to the royalties or intellectual property that is the life blood of your company. These documents will determine your rights as well as the rights of others. Quality

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documents are always important. Record companies need artist contracts, copyright assignments, royalty agreements, distribution agreements, and producer contracts just to name a few. Film companies will have actor contracts and releases, director contracts, producer contracts, distribution contracts, agreements with actor's guilds, financing contracts, and more. These agreements will define your company and must be given special attention.

Step 3: Intellectual Property

Intellectual property comes in two forms. First, securing copyrights to works such as scripts, permission to use music samples, synchronization licenses to use musical pieces in films, or copyrights for a film's music. Second, securing trademarks for your company. Proactively protecting your trademarks will protect you when you make it big. When you're famous people will look to ride on your coattails by using your trademarks to make consumers think that they are you. Having strong registered trademarks puts you in the best position to enforce your intellectual property rights.

Step 4: Ongoing Maintenance

There are always legal issues surrounding entertainment companies. Be as prepared as possible so when issues arise you are in the best position to deal with the situation. Periodic meetings with your legal team to look at the state of affairs is always advisable.

Well, that's a quick and dirty run down on the types of legal issues that entertainment companies should think about. Let us know if you would like to come in for a consultation to discuss how we can help you with the legal needs of your record label or film company.

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

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