The American Bar Association’s Legal Guide to Independent Filmmaking

By Michael C. Donaldson & Lisa A. Callif
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The American Bar Association’s Legal Guide to Independent Filmmaking\(^1\) operates as a handbook guiding independent filmmakers through all steps of production. Independent filmmaking encompasses films produced outside of the major studio system, often at moderately lower budgets than studio films. Working on this smaller scale, financing plays a key role to ensure the film fulfills its creative vision, is marketed properly, and distributed so the public may see the work. Directors and producers of independent films are at a significant advantage if they understand the fundamentals of the legal aspects of filmmaking, including the numerous forms and contracts involved. Legal setbacks are likely to arise if filmmakers are uninformed, and while the Legal Guide to Independent Filmmaking is not a substitute to hiring an attorney, it aims to provide the knowledge to better grasp the work of the entertainment lawyer and “stretch” filmmaker’s “legal dollars.”\(^2\)

Author Lisa Callif is an entertainment attorney and adjunct professor at Southwestern Law School. She specializes in representing independent filmmakers. Author Michael C. Donaldson is the former President of the International Documentary Association and has authored and contributed to several books relating to copyright law, negotiation, and other

\(^2\) See Donaldson & Callif, supra note 1, at Introduction xv.
subjects. The collaboration provides invaluable advice based on the authors’ expertise in entertainment law and independent filmmaking.

The book is outlined into six chapters, providing information on the six specific stages of production: idea, financing, development, principal photography, distribution, and delivery. The first chapter begins with the moment when the idea for a film is conceived. An idea alone is not enough to begin production or be protected under copyright laws, requiring additional measures to be taken to express the idea. Ideas for motion pictures, in most cases, stem from an existing work such as a book or completed screenplay, a life story, or the idea may be to write an original screenplay. As each type of work is described, the contracts required to formally secure these works are explained in depth. Standard option and purchase agreements, a life story rights agreement, collaboration agreement, and a writers agreement are printed in their entirety, with explanations of complicated contractual provisions highlighted within the contracts to place the information into laymen terms. The advice is both legal and creative by clarifying legal jargon in addition to the extra advice of creating good relationships with the parties that a filmmaker is contracting and ideas on how to create a marketable film.

The second chapter turns to financing the film. The first recommendation is to separate the film’s finances from personal finances, since the film is a business and should be treated as such. Creating a separate entity often entails setting up a fictitious name, opening a separate bank account, and keeping separate records. Next, the decision to form a business entity is addressed, and suggests a Limited Liability Company as the authors’ preferred method. Financing and forming a business entity is a crucial step in beginning the filmmaking venture,

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3 See Donaldson & Callif, supra note 1, at 159.
4 See Donaldson & Callif, supra note 1, at 159-60.
5 See Donaldson & Callif, supra note 1, at 160.
and the essential benefits are stated in addition to printing an operating agreement and
highlighting of important provisions with explanations of the significance of particular
provisions, mostly the ones that involve investor’s precautions. The information regarding
financing is minimal in comparison to other chapters, but since the topic of film financing could
be its own book, the information presented is very effective.

Chapter three moves on to “assembling the talent,” which includes the cast and crew that
form “above-the-line” and “below-the-line” employees. Each person involved in creating a film
holds their own essential part of the overall picture, no matter how large or small their part is.
Additionally, each cast and crew member requires a contract to formalize duties, compensation,
and credit. Service agreements are provided for key creative personnel, including a Director’s
Agreement, Casting Director Services Agreement, Actor Services Agreement, and Composer
Agreement, which contain background and explanatory information within the contracts.

Each contract follows an overview of the roles and duties of the respective employee.

Principal photography, or the actual making of the film, is addressed in the fourth
chapter, focusing on the “below-the-line” crew members’ contracts. These employees’
agreements differ from previous contracts in the sense that their employment status may last for
the entire shooting period or they may be replaced “at-will.” These contracts are tailored to the
respective positions, and the addition or omission of provisions regarding expenses and
insurance depends on the duties required. A Crew Deal Memo, or the contract required for

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6 See Donaldson & Callif, supra note 1, at 161-77.
7 See Donaldson & Callif, supra note 1, at 181.
8 See Donaldson & Callif, supra note 1, at 181.
9 See Donaldson & Callif, supra note 1, at 185-123.
10 See Donaldson & Callif, supra note 1, at 125.
11 See Donaldson & Callif, supra note 1, at 125.
12 See Donaldson & Callif, supra note 1, at 125-26.
outlining the services of the crew members is provided, as well as the agreement for the Music Supervisor. Several other contracts are printed, which relate to contracting with persons outside of the crew, such as obtaining permission to use a location, props or other materials. The end of the chapter pertains to the notices and releases involved in documentary filmmaking.

The fifth chapter covers distribution, or taking the completed film and choosing the means in which to display the film, allowing the public to see the work. Initially, the chapter discusses the numerous ways to get the film out there, and emphasizes that this work should not wait for the film to be finished. Thinking about distribution and marketing should be a priority from as early as possible to gain an audience that is anticipating the release of the film. Other books on distribution are recommended, and the authors choose to leave the strategies to other sources, while focusing instead on the legal role of distribution. The people hired to sell the film and their roles are discussed, including producer’s representatives, foreign sales agents, and domestic distributors. After their roles are explained, advice is given as to whether either of them are necessary and the decision to work with them. The chapter concludes by explaining the options of assigning film rights, the various ways to release the film, and negotiating tips. This chapter, unlike the others, contains real life stories as examples of several filmmakers’ different approaches to distribution and how their strategies proved successful.

The book concludes with its final chapter on delivery, which, while being one of the most important parts of filmmaking, is often overlooked. Delivery is “providing the agent or distributor with all the elements of the film, technical and paper, which are necessary to actually

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13 See Donaldson & Callif, supra note 1, at 153.
14 See Donaldson & Callif, supra note 1, at 153-54.
15 See Donaldson & Callif, supra note 1, at 181.
get the film in front of an audience.” 16 This chapter demonstrates that while it may seem obvious that the actual film print will be required to show the film theatrically, the delivery agreement and delivery schedule may require additional materials, and some extra diligence may be necessary to ensure that all that is asked for is delivered. The documents required upon delivery generally secure the film and its underlying works have met their legal requirements and the documentation of the chain of title, errors and omissions insurance, clearances, copyright report and registrations, and other clearances comfort the distributors that the film has taken adequate measure to prevent any future legal dilemmas.

This book reveals the numerous legal requirements that coincide with producing an independent film in an easy to comprehend handbook. In addition to the in-depth explanations of the essential paperwork required, the book provides a CD that contains these contracts to download and use. It serves as an excellent resource for an independent film producer, as well as the whole production team, anyone planning to make a film or even for those simply researching to gain information on the process. The fundamentals of the legal requirements are not assumed, but explained. While all ventures in film production are not successful, The American Bar Association’s Legal Guide to Independent Filmmaking embraces an optimistic outlook that not only makes a reader further inclined to follow the information provided, but to follow the vision that led them to research this interesting topic in the first place.

16 Donaldson & Callif, supra note 1, at 181.