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Who the Independents depend on

Film • TV • New Media

Entertainment Law Circular

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Recent Speaking Engagements

UCLA Extension
Entertainment Studies

PLG attorney **Tony Hanna** imparts his vast knowledge of entertainment industry Labor Unions as a guest speaker at DAP's UCLA-Extension class.

A List actress **Bryce Dallas Howard** ("Jurasic World") and former student of DAP's class also spoke at the UCLA-Extension class with insight into developing indie projects and tips for succeeding as indie producer.

THE ORIGINAL PROGRAMMING BUBBLE: PITFALLS TO AVOID FOR WRITER'S NAVIGATING THE WORLD OF CONTENT ACQUISITION

By Joshua Edwards, Esq.

There has never been a better time to be a writer than 2016. With the proliferation of new media formats and dozens of new networks, the need for new content and original programming is at its peak. In 2016 the total number of scripted series available on broadcast networks, basic and pay cable networks, streaming and over the top (OTT) services, and video game consoles nearly doubled the number of scripted series available in 2010.

In addition to the regular primetime networks (ABC, CBS, FOX, NBC etc..) and premium cable networks (HBO, Showtime, Starz) there are a host of other networks, across multiple platforms, such as Netflix, Hulu, Amazon, Free Form, Youtube RED, Sony Playstation, AMC, FX, OWN, and Lifetime with a need for scripted content, preferably that is original.

Every new network is searching for the next "House of Cards" or "Transparent." Consequently, there are dozens of opportunities for writers to get their best ideas or concepts in front of a creative executive at a network during a so-called 'pitch meeting', or through the script

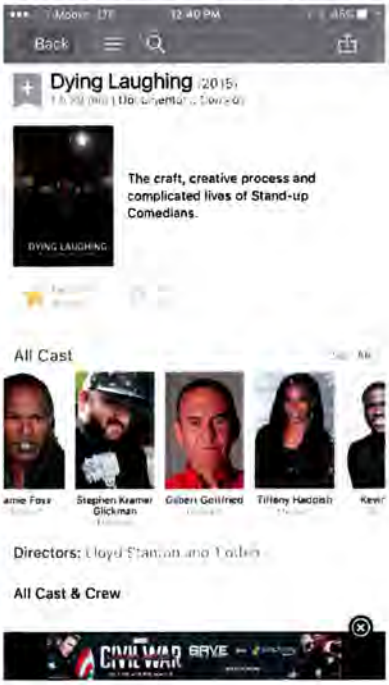
Client **Rachel Sheedy**, owner of Brio Entertainment talent agency was a featured panelist on a pitch panel at this years Catalina Film Festival.

Congratulations To Our Talented Clients

Congratulations to our clients the producers of **"So B. It"** starring **Cloris Leachman, Jacinda Barrett, and Alfre Woodward**. The film premiered in June at the **L.A. International Film Festival.**

Click here to view the trailer.

Also appearing at the **L.A. Film Festival** was the documentary entitled, **"Dying Laughing"** with appearances by Gary Shandling, Chris Rock, Jerry Seinfeld, Gilbert Gottfried, and our own client **Stephen Kramer Glickman**, among others discussing the highs & lows of answering the call to become a comic.



submission process, as this era is quickly becoming the Golden Age of Content Acquisition.

However, many writers have a war chest of ideas and concepts that have not been fully fleshed out into developed scripts but would still like to take advantage of the current opportunities while simultaneously protecting their interests. The following are a few key pieces of advice for a writer to remember while navigating meetings with creative executives and content aggregators:

1. Have some type of written material available.

The first step in making sure your interests are protected is to convert your ideas and concepts into written material because it will be difficult to protect just ideas and concepts alone and even harder to prove that they have been misappropriated.

It is a well-established principal that the Copyright Act protects the expression of an idea and not just idea or concept by itself. The US Court of Appeals for the 9th Circuit recently reaffirmed this notion in one of the most important copyright infringement cases of recent memory, MGA Entertainment, Inc. v. Mattel, Inc., No. 09-55673 (9th Cir. 2010). In this case, Mattel sued MGA Entertainment over its Bratz dolls line when Mattel learned that a former employee in their Barbie dolls department developed the idea for Bratz dolls while still employed at Mattel. The employee was employed under a very strict work-for-hire agreement that assigned all 'ideas and inventions' created during the employment term to Mattel as intellectual property.

The Circuit Court, on appeal, reversed the district court's decision (which initially decided in favor of Mattel) stating that ideas are not protectable, but rather the expression of those ideas, and therefore a company could not own an employee's ideas or conversely have them assigned to the corporation. The court reasoned that ideas are 'ephemeral and often reflect bursts of inspiration that only exist in the mind'.

Therefore, the court continued, to grant copyright protection that early in the creative process would be to grant a 'monopoly' over all of the resulting tangible expressions of that

Way To Go Dolphins!

PLG Client Director Lindsey placed 6th in the nation with her women's Division 1 rugby team the Santa Monica Dolphins!

Upcoming Events

PLG attorneys **Azita Mirzaian** and **Vera Golosker** will speak on a panel for California Lawyers for the Arts on **Saturday, August 20, 2016** at **1pm** at the **LA Municipal Art Gallery** located at Barnsdall Art Park. Topics include: **"Intro to Copyright Law for Artists."** More information coming soon!

California Society of Entertainment Lawyers kicks off Summer with a happy hour **Thursday July 7, 2016** at **6:00 p.m.** at **Smith House LA.** This event is open to everyone! For information email: vera@piercelawgroupllp.com.


CALIFORNIA SOCIETY OF ENTERTAINMENT LAWYERS

HAPPY HOUR

Thursday July 7, 2016 at 6:00 p.m.

Smith House LA
10351 Santa Monica Blvd.
Los Angeles, CA 90025

Please join CSEL for an inaugural social mixer.
This event does not have a program agenda and is open to all.

DAP will be in attendance at the Just For Laughs Comedy Festival in Montreal July 27-30. If you will be in Montreal, let us know.

idea. The court further stated that a distinction needed to be made between 'permissible lifting of ideas and impermissible copying of expression.'

Therefore, it is very important that your ideas and concepts are expressed in some type of written format. Even if the idea or concept that you would like to present to a creative executive has not been fully developed into a script, you can create a script outline and a "treatment" that are perfect for pitch meetings.

Treatments are usually three to five pages long (unless you are following Robert McGee's theory of treatments, in which case he states a Treatment should be hundreds if not thousands of pages filled with backstories and information about the world in which the screenplay shows but a small slice). But for selling your idea, the 3 - 5 page treatment is all you need and all the studio executive wants. The treatment will usually include the basic concept of the story as a logline, character names, character bios, and act sequences.

The script outline is used to help organize thoughts, dictate the direction for the screenplay and will usually include a breakdown of the separate acts, scene breakdowns, and scenes in sequential order. These two tools will help flesh out the concept more fully and help distinguish them from other similar ideas and concepts that are too broad to afford protection.

2. Make sure any written material has been registered with the Writer's Guild of America (WGA) AND the Copyright Office.

Both Final Draft and Movie Magic Screenwriter offer easy one-touch WGA registration as a feature of their program so many writers register their works with the WGA. However, many writers neglect to take the extra step of also registering with the Copyright office. In addition to negligence, writers also point to the belief that the copyright office has some type of laborious registration process as a deterrent and an unnecessary duplication of the benefits offered by the WGA registration as the reason for not registering their works. And to its discredit, the WGA does little to clarify this common confusion.

While registering a script with the WGA confers

Farcical Nature of 'American Hustle' Defeats Defamation Claim Based on "Microwave Scene"

By Samantha Cohen, Paralegal

Columbia Pictures' Oscar-nominated film, American Hustle, loosely depicted the FBI's ABSCAM sting of the late Seventies and early Eighties. Multiple lawsuits have arisen from this fictional story based on actual events.

One lawsuit involved the scene featuring Jennifer Lawrence's character, Rosalyn, blowing up a microwave and exasperatedly berating her partner for bringing a dangerous microwave into their home. "I read that it takes all of the nutrition out of our food," Lawrence's character states in defense, "It's not bullshit. I read it in an article, look, by Paul Brodeur."

Paul Brodeur, a former staff writer at The New Yorker, didn't appreciate this reference to him in the film and brought a million dollar defamation lawsuit against the film, claiming damage to "his reputation as him being the source of scare-mongering in the 70s about the health dangers of microwaves."

In April 2016, Brodeur's lawsuit moved through the California's Trial Courts despite objections that movie goers would understand American Hustle to be a "screwball comedy" where the dialogue between characters would not be misconstrued as factual.

The lawsuit found its return in the California Appeals Court earlier this month. Court Justice Elizabeth Grimes found Brodeur's complaint to be

certain benefits to the writer, the benefits are not duplicative and the full scope of copyright protection is only realized when a script is registered with the Copyright office as well.

If you wrote the project "On Spec" than as the copyright owner you are an idiot if you don't register the work with the Copyright Office. You are going to have to eventually file with the Copyright Office and pay its fee if you ever need to go to court. Also, only a pre-infringement filing of the work with the Copyright office will permit you to recover attorney fees in the event subsequent infringement, and you can also receive statutory damages in lieu of actual damages-- all of which can be explained in more detail to you if you are ever unfortunate enough to have your work be the subject of infringement.

If you are dealing with something like pitching a television show even if the pitch is wholly original to you, filing with the WGA may also have some usefulness, as union signatory company studios essentially give the WGA a great deal of say in regard to determining who among the many creators of a show actually should be deemed the creators of a show.

However, if you are writing the project on assignment (i.e someone is paying you to write it with them as the copyright owner, not you) then you as the mere writer-for-hire cannot claim copyright. But, you can file your work with WGA to ensure your rightful credit when several other work for hire writers take a stab at the work and a dispute arises concerning attribution over the final work. In such situations the WGA is often called upon to utilize its criteria and arbitration process for determining who deserves credit on the final work (and with it certain union dictated rights to residuals and passive payments on derivative works).

Much can be discussed about the many differences between WGA registration and Copyright registration. Suffice it to say, for less than $100 you can do both in less than 30 minutes, online and from the comfort of your home. So do both of you actually own the project as opposed to being a mere work for hire.

3. If you have no written material and time is of the essence then try obtain a promise

unsuccessful, potentially infringing on the First Amendment rights' of the producers. In order to come to such conclusion, the Appeals Court had to find the Trial Court wrong on certain counts.

The Court must first find that the complained-about activity targets speech on a matter of public interest. In her decision, Grimes writes that "the microwave oven scene plainly drew on an issue of public interest in the 1970's, and plaintiff was an integral part of that issue at the time. Whether we consider the public interest in the movie as a whole - which is conceded and undeniable - or the public interest in the particular topic being discussed in the scene at issue - which likewise existed during the era being depicted." During the 1970s, Paul Brodeur was a well-known author in the environmental and science field writing for The New Yorker. It is likely that Mr. Brodeur could have been writing about the dangers of the use of various electrical devices.

The Court then looked at the societal role of Paul Brodeur and to what extent was he a part of the debate. The Appeals Court distinguished between public and private figures.

Mr. Brodeur's attack included a likeness to the case of Troy Dyer who sued the 1990s classic, Reality Bites, over the slacker character named Troy Dyer. Grimes dismissed this likeness: "Here, plaintiff is, by his own evidence, a public figure - not a private figure like Mr. Dyer, who did nothing to insert himself into the discussion of any public topic or debate."

Paul Brodeur was also under the spotlight to establish that Rosalyn's statement, one, was untruthful, and two, harmed his reputation. Brodeur attempted to cite a 1978 interview between him and People magazine in which he stated that there was no known danger in eating food produced in a microwave. As to whether Brodeur actually believed that microwaves left the integrity of food intact, the court was inconclusive.

Neither can the Food and Drug Administration's own statements about the dangers of microwaves diminish believability from Rosalyn's statement in the 1970s. As Grimes writes, "Of course the FDA document does show that, in 2015, we knew that, contrary to Rosalyn's

to pay in exchange for your ideas and concepts - Sometimes, despite having the best representation and having numerous pitch meetings, success in the Film and TV industry boils down to being in the right place at the right time. A writer never knows when he will meet a well-known producer, director or showrunner at a non-traditional place such as Starbucks or a random restaurant. At that moment, depending on the conversation, the writer will only have two minutes to give the so-called 'elevator pitch' of his best ideas and concepts. Unfortunately, the ideas conveyed during 'elevator pitch' are highly susceptible to misappropriation except in rare circumstances where the pitch represents a bona fide offer that is accepted by either express or implied actions. Under these specific circumstances, and pursuant to a breach of the resulting contract, the courts will permit the non-breaching party to pursue a so-called Desny claim.

In 1956, the California Supreme Court in Desny v. Wilder, 299 P.2d 257 (1956), recognized that writers have an implied contractual right to receive compensation for ideas submitted to producers when there was a mutual understanding that the writer would be compensated if the ideas were used, regardless if the ideas had been reduced to written material. As noted earlier, the Copyright law does not protect ideas. Consequently, in theory Desny claims deal with an entirely different concept (idea theft) as opposed to the Copyright claims (misuse of specific expression of ideas).

In 2004 the Ninth Circuit court explained the distinction in Grosso v. Miramax Film Corp., 383 F.3d 965 (9th Cir. 2004) by reasoning, "the contractual claim requires that there be an expectation on both sides that use of the idea requires compensation, and that such bilateral understanding of payment constitutes an additional element that transforms a claim from one asserting a right exclusively protected by federal copyright law, to a contractual claim that is not preempted by copyright law." The court further reasoned that contract and copyright law claims, while normally inclusive of each other, may contain additional elements that are mutually exclusive of each other as contracts provide for personal rights between a limited number of parties, whereas copyright confers "a

comment, microwave ovens do not 'take all the nutrition out of our food.' But the document says nothing about the state of understanding on that point in the 1970s, and plaintiff produced no evidence that the statement was known to be 'scientifically unsupportable' in the 1970s."

The Justices agreed that the comment made by Lawrence's character isn't reasonably susceptible of defamatory meaning towards Mr. Brodeur. As a public figure and popular environmental writer at the time discussing popularly held fears (regardless of validity), Brodeur's case was found unsubstantial.

The final conclusion that the Justices came to was discussed in the opinion: "American Hustle is, after all, a farce. The stage was set at the beginning of the film. ("'Some of this actually happened,' is the line that appears on screen to start things off, and it sets the tone perfectly." (Turan review, supra.)). The character who utters the allegedly defamatory statement is portrayed throughout the movie as "slightly unhinged" and "a font of misinformation," and Irving and Rosalyn both refer to the microwave oven as the "science oven." We doubt any audience member would perceive any of Rosalyn's dialogue as assertions of objective fact."

Tip For Clients: Thousands and thousands of dollars could have been saved had the producers merely researched the facts they were attributing to a real live person in their script. If the real person didn't say the statements attributed to him, have a researcher find out who did make such statements in the 70s or alternatively attribute the quote to a entirely fanciful cleared name. Such is the value of having a meaningful clearance report prepared by a Clearance Reporting Service AND reviewed by attorneys skilled in interpreting the raw data created by those reports.

We Are Honored

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right against the world." Therefore, the purpose of the contract is to provide further protection for the Owner's ideas beyond those already protected by the Copyright Act.

To prove a Desny (or Grosso) idea theft claim, the aggrieved party must show that (1) the ideas were communicated to the breaching party; (2) the disclosure of the ideas were conditioned on an agreement to pay for any of the ideas eventually utilized by the breaching party; (3) the breaching party knew or should have known of the condition; (4) the condition was accepted; (5) the idea was actually used; and (6) the idea had value. California case law on this topic is widely varied. It is also highly unlikely that, absent an express acceptance in writing, any producer or executive will admit to an agreement to pay for an undeveloped idea. Although, an implied in fact contract is far easier to prove if the idea was pitched in a studio office at a meeting specifically held with the executive charged with hearing pitches for development as opposed to pitching an idea at a cocktail party when the executive can claim it was merely cocktail banter.

4. Email is the friend of truth.

Another great way of establishing who said what to whom and what was expected between the parties is to document every understanding with an email shortly after its discussed. Give the party the opportunity to rebut the information that you believe accurately conveys what occurred and what the parties intentions were. And remember, not all disputes are the result of evil intention. Often times people simply talk over one another, hearing what they want to hear. By providing a written memorial of the verbal conversations shortly after they occur--even by something as simple as a friendly email--both sides can hammer it out there and then and clarify any confusion in one person's mind until they achieve agreement and are left with an email that forever documents that agreement.

5. Consult with Counsel.

Remember the cliche, its not show friendship, its show business. Consult with an entertainment attorney before you reach any agreement even with a trusted friend. All too often we see friendships fall apart as a result of one taking

Avvo 10.0 Rating Superb

RATED BY Super Lawyers David Albert Pierce SuperLawyers.com

Million Dollar Advocates Forum

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About Us

Pierce Law Group LLP practices in all area of litigation and transactional matters affecting film, TV, new media, and the business of creative entrepreneurs across many industries.

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Motion Picture/TV Production Counsel ♦ Production, Talent, Licensing, and Distribution Agreements ♦ Clearances and Use Licenses ♦ Talent Agency and Management Agreements ♦ All aspects of New Media

INTELLECTUAL PROPERTY
License and Use Agreements ♦ Copyright Law ♦

advantage of another and no paper trail to prove it.

DAP's Journey To China

In mid-June, DAP attended the Shanghai International Film Festival & Market.

Banging the gong at the Film Market.

The beautiful ornate convention center where the Shanghai Film Market was held.

DAP then travelled via bullet train to Beijing

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where he spent 2 days solidifying the Firm's new affiliate relationship with the Beijing office of CKR International which specializes in financing and intellectual property law.

Pictured above DAP and CKR Beijing Managing Partner Dong Wang pose at Tiananmen Square as a soldier photo bombs the shot.

Below is DAP with some of the top notch attorneys at the CKR Beijing office along with the CEO of Xing Le Pictures, Justin Jiang.

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