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SEC's Issues New Equity Crowdfunding Rules - Although, PLG Continues To Advise Filmmaker Clients To Say Far Away From Equity Crowdfunding By David Albert Pierce, Esq.

After over two years of deliberation, the Securities and Exchange Commission (SEC) has promulgated regulations that will allow companies to solicit investments from the general public over the internet.

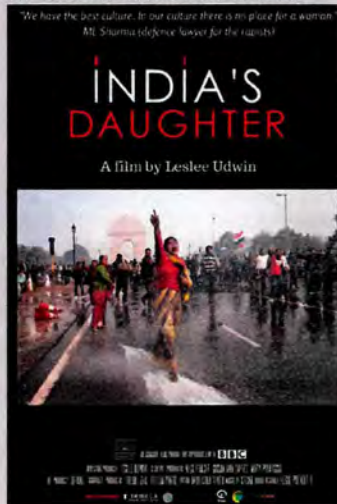
As predicted by Pierce Law Group LLP, the rules render equity crowdfunding via the internet an expensive and dangerous proposition. While crowdfunding may work for potentially high reward investments in the tech world, it will prove a disaster for the world of low-reward film investments.



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Client Projects Now Showing

Executive Producer Lorna Auerbach's documentary "India's Daughter" plays in select theaters and PBS this month as it contends for Oscar consideration.



The Dangerous Change in Equity Crowdfunding

Prior to the JOBS Act, businesses were allowed to solicit investors for their companies or projects only via two distinct paths -- Public Offerings which are governed by SEC Reg A or Private Placement Exemptions to the Public Offering Rules commonly set forth by SEC Reg D. In the Private Placement world, small businesses and independent producers generally were limited in who they could approach and, depending on the exemption, how many potential investors they could approach by state and federal regulations. Exemptions to these requirements were sometimes available for such things as the pre-existing relationship the company had with the potential investors or if the investors were "Accredited Investors" (those who either earn over \$200,000 a year or have a net worth (excluding their primary residence) of over \$1 million). These rules were designed to help protect those most vulnerable to fraud and prevent them from getting involved in investments that had not undergone the full vetting of the SEC through the Public Offering process.

The new so-called Equity Crowdfunding Rules, which have been dubbed "Reg A+" now allow companies to raise up to \$50 million, split into two tiers: up to \$20 million in 12 months (Tier 1), and up to \$50 million in 12 months (Tier 2). However, the SEC has limited the amount that non-accredited investors may invest under Reg A+; a non-accredited investor who earns up to \$100,000 can only contribute a maximum of 5% of his or her net worth/income, or \$2,000, whichever is greater.

Unlike the existing Reg D Rules governing private placement offerings, the new Reg A+ rules will allow stock promoters to solicit funds from random unaccredited people via the internet, where the potential investor has no prior connections or relationship to the promoters of the stock.

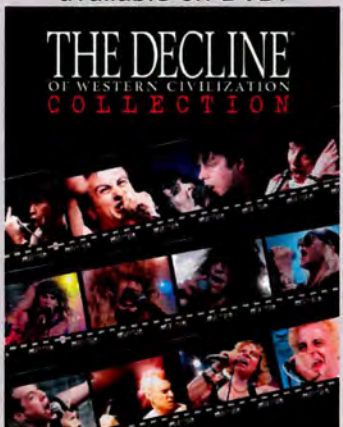
Why Equity Crowdfunding Presents More Perils Than Donor-Based Crowdfunding

Donor-based internet crowdfunding sites, like Kickstarter or Indiegogo, allow individuals to contribute toward a fundraiser's project because they

The last installment of The Hunger Games franchise "Mockingjay Part 2" premieres on Nov. 20th.



The re-release of the three part Punk Rock documentary "The Decline of Western Civilization" screens theatrically in select theaters and is available on DVD.



believe in the purpose of the fundraising and they are donating with no expectation of returns on their investments. Rather, the most a donor-based crowdfunder receives is a guaranteed item of appreciation, depending on the level of the gift -- such as a hat, a DVD, or perhaps an invitation to a film premiere.

Unlike these donor-based crowdfunding sites, the SEC now allows small businesses and startups to sell securities with the promise of a monetary return on their investment to nearly anyone who can come up with the money. So, for example, if the film is a success, presumably, the investors will profit from their investments. If the film is a failure, the investors will not see a return on their money and the investments will be lost.

Like traditional Private Placement Rules, the new Reg A+ requires that a company offering securities create a disclosure document which describes the terms of its offer, stating the nature of its business, how the proceeds from the securities will be used, information about the company's officers, directors, and owners, as well as information about the company's competition, the tax consequences of the investment, and a discussion of all risks that may affect the investment. In short, the company must provide (and must not omit) any information that a reasonable, prudent investor would deem material prior to tendering an investment. Those seeking to use Reg A+ need to understand that these protective measures from the traditional Reg D Private Placement Rules continue to exist.

In addition, unlike Reg D, in recognition of the "public" nature of these internet offerings and the unaccredited investors that may be drawn to them, Reg A+ imposes an obligation on companies to file annual reports and financial audits with the SEC, and to make these documents available to the investors. These documents come with a substantial cost and few, if any, independent film production companies will be able to bear the costs associated with producing these documents. Most independent production budgets rarely include even the needed bare minimum for ongoing yearly corporate maintenance and routine tax filings, let alone the heavy costs of annual accounting statements that

"The Death of 'Superman Lives:' What Happened?" is currently airing on Showtime.



The life-is-stranger-than-fiction documentary, "Sweet Mickey For President" is now playing in selected theaters.



Good grief! "The Peanuts Movie" is a blockbuster hit and in theaters now.

need to be prepared by a CPA following a rigorous audit.

However, some of the other enforcement mechanisms for Reg A+ are similar to those of Reg D offerings. In recognition of the public nature of Reg A+, the SEC will require offerings to be managed by either a traditional, licensed securities broker-dealer, or via a registered equity-based crowdfunding portal. Only one equity-based crowdfunding portal at a time may be utilized during the offering period. If the minimum investment goals are not reached or the project is terminated for other reasons, the company must cancel the offering and return funds to the investors.

The SEC has the power to levy massive fines in its enforcement activities, and these fines can be assessed against the company, or against the individual owners and directors of the company. In addition, the SEC can open a criminal investigation into companies that intentionally skirt the rules. The film industry is not without its share of scoundrels who created dishonest or unscrupulous investment opportunities and ended up in jail as a result.

While the SEC tends to devote its enforcement activities to cases that involve significant losses or significant matters of public policy concern, for most small independent filmmakers the real threat of not complying with SEC rules is the threat of civil action from investors. In the case of Reg A+, the nature and extent of potential civil actions will be significantly greater than from those under a traditional Reg D Private Placement regime. Recall, Reg A+ allows potentially thousands of people to contribute to a project. By contrast, the limited nature of the traditional Private Placement Offering system permits a company to (usually) know exactly who they are bringing into their business and the company can assess the investors prior to accepting their money. However, under Reg A+ the anonymous nature of the internet could see companies with good intentions falling prey to "internet trolls" waiting to file a class action asserting the ever-nebulous standard that somehow the producer failed to reveal all risks and information that a reasonable investor would consider material before clicking the "send button" to make an online investment.



Child Actress Bella Mancini stars as Mrs. Potts in the stage version of "Beauty & The Beast," now playing at Dixie Canyon Elementary Charter School For The Arts.



David Arquette renders his own whimsical spin on the classic detective in the stage production of "Sherlock Holmes," currently on tour in the U.S. & Canada.



Filmmakers Should Avoid Reg A+ Like The Plague

Filmmaking is unique in that it is generally an industry of high risk and low reward. Allowing investments by investors who expect filmmaking to generate a high reward is dangerous and it will disappoint those investors. Reg A+ may be fantastic for the world of high tech and internet start-ups -- those companies produce with some regularity incredibly high rewards for their investors. Film investment is different; those high rewards can be rare. Thus, Reg A+ opens production companies to liability from unsophisticated investors who have no prior affiliation to the filmmakers and who can now invest in a very high risk, low reward endeavor.

The reality is that, in order to comply with the SEC requirements for Reg A+, production companies will need to spend every bit as much money as they would for a traditional Reg D Private Placement Offering (if not, more, because of the additional compliance requirements that necessitate the services of lawyers and accountants).

The SEC's newly established crowdfunding rules should be avoided for a number of reasons. The cost of structuring a legally compliant offering will be prohibitive. Companies will be inviting the dregs of humanity that dwell on the internet into the company's investor ranks and thereby possibly opening the company up to future liability. And let's face it, are there really thousands of people waiting to invest in independent films?

Donor-based crowdfunding is a high-tech way of "passing the hat" between friends and family members (and this includes fans of a particular project based on an existing work -- those fans are the equivalent of the film's friends and family). It is rare that a complete stranger to the film will ever donate. I believe it will be just as rare for a complete stranger to invest in the film, with the exception of those just waiting to scream that they were duped!

For that reason, Pierce Law Group LLP continues to believe that donor-based crowdfunding is an important-but-small-component in the overall jigsaw puzzle that is film finance. The remaining pieces are

Recent Events



DAP backstage with David Arquette at "Sherlock Holmes" at the Ricardo Montalban Theater.



DAP backstage with Bella Mancini ("Mrs. Potts" in Dixie Canyon Elementary Charter School For The Arts presentation of "Beauty & The Beast."

Bella's Dad, Chris Mancini, is a longtime filmmaker, author, and podcast producer client.



California Society of Entertainment Lawyers panel on *Arbitration Provisions in Entertainment Contracts* was coordinated by its CLE Chair David

composed of loans based against pre-sales, tax credits, co-production opportunities, and traditional equity financing utilizing a traditional Reg D Private Offerings.

To consult with the attorneys at Pierce Law Group LLP about financing your film project, speak with David Albert Pierce or Trea Tran-Lachowicz at (310) 274-9191, or visit us online at: piercelawgroupllp.com.

Pierce Law Group LLP sponsored the inaugural ArCLight Women in Entertainment Summit held November 4th at ArCLight Hollywood. The event was hosted by ArCLight Cinemas, Women in Film, and the Geena Davis Institute on Gender in Media.

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Pierce Law Group LLP salutes
the Women in Entertainment Summit
and our firm's women in entertainment:

Trea Tran-Lachowicz, Esq. - *Film Finance / Distribution*
Briana Hill, Esq. - *Production Counsel / Intellectual Property*
Azita Mirzaian, Esq. - *Litigation Department Chair*
Vera Golosker, Esq. - *Litigation / Labor and Employment*

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Do You "Own" Your Followers? Preventing Employees From Leaving With Your Social Media Accounts

Pierce and Program Chair
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PLG sponsors Leukemia
Society Dream Halloween
screening of Hotel
Transylvania 2



DAP and attorney Steve
Fisch presented their
annual legal seminar to
the Television Academy's
Visiting Professors Program

By Vera Golosker, Esq.

Facebook, Twitter, Instagram and Google+ collectively yield billions in advertisement revenues each year due to the pervasiveness of social media use. Every company looking to compete in today's marketplace should maintain a responsive, targeted online presence, or run the risk of losing potential business opportunities.

Regardless of the type of company, someone will have the duty of managing its social media accounts. Whether it is an employee who runs a company Twitter page, or a social media specialist who focuses on nothing but promoting the brand, at least one individual will need to have access to the login credentials for the social media accounts in order for everything to run smoothly. This access can create problems once that employee no longer works for the company.

Concerns Created by Company Social Media Accounts

More followers and views on a company's social media page may translate into increased revenue, so employees should be motivated to make their social media accounts interesting, informative, and brand-positive. When an employee controls a company's social media account, he or she will hopefully work to cultivate a large following on behalf of the employer. However, when the individual who controls the account leaves that job, the employee may attempt to take the followers that the account has amassed with him/her. Whether this tendency arises because the employee likes being an "influencer," or because the employee has plans to promote a competitor or denigrate the former employer, employers need to be aware of these potential dangers and protect themselves to prevent potential damage to their company name.

In general, a business with a corporate social media account may argue that the company owns that account and the followers that come along with it as its trade secrets. However, the terms of use of most social media accounts expressly state otherwise. Further, under California Civil Code §3426.1, "trade secrets" are defined as information that derives independent economic value from not being generally



Producer/Director Leslee Udwin champions her film during Q&A at a screening of "India's Daughter" at Paley Center for Media which also screened at AFI Docs Fest.

Our client, philanthropist Lorna Auerbach, executive produced this film which takes a critical look at a culture that led to a barbaric crime in 2012. The documentary is a contender for Oscar consideration despite being banned in India.

Seminars, Conferences, & Events

Wednesday, November 5th - PLG attorney Vera Golosker co-chaired the Beverly Hills Bar Association's IP, Internet & New Media sections' panel on International Trademarks. The program featured David Grace, Partner & Co-Chair of the IP Protection Group at Loeb & Loeb LLP, Dan Harris, managing partner at Harris Moure, and Adriana Ipanema Moreira of the Rio de Janeiro firm Denneman, Siemsen, Bigler & Ipanema Moreira.

known to the public and is subject to efforts to maintain its secrecy. Therefore, since most corporate social media posts and the followers of that social media broadcaster are public information, they would probably not be qualified to be protected under the California Uniform Trade Secrets Act (CUTSA).

However, an argument can be made that the use of a password to a social media account that is kept strictly confidential is a trade secret, and the use of the password after employment has terminated can be a breach of contract and a breach of the duty of loyalty. However, due to the public nature of the information regarding followers, an employee who wanted to obtain a list of followers from the company site, could simply wait until he or she leaves the company to then obtain the names from the online public display in the same fashion as any non-affiliated person.

Employers need to also be aware of the distinction between a personal and business account, which may not always be obvious. Some examples include a film director who may use her own Twitter account to promote the movie she is directing and her studio employer is producing or a salesperson who utilizes LinkedIn to speak with customers and other contacts. Despite some overlap with use for the benefit of the employer, the company is unlikely to claim any ownership of that account, or to limit the employee's speech via his or her personal social media, unless that speech is somehow libelous or a genuine trade secret. Further, it is important to note that an employee is generally permitted to discuss and even complain about working conditions at the company on his or her own social media account, and is protected from retaliation for this public discourse by the employer under the National Labor Relations Act.

If an employee who maintains the official company social media accounts uses these accounts when he or she is off-duty, wage and hour employment law concerns can also arise. In such a case, even if the employee is also browsing these websites for her own personal use, he or she might bring a claim for compensation for that off-duty social media time.

In order to help prevent any issues regarding these matters, business owners should take steps to clearly

Wednesday, November 11th - David Albert Pierce and fellow attorney Steve Fisch delivered their annual Updates on Entertainment Law Issues to the Television Academy's Visiting Professors Program. Pierce & Fish have spoken for the last 15 years at this program designed to educate specially selected Film/TV professors from around the country on what their college students need to know about legal issues that may confront their productions.

Sunday, December 13th - Christopher & Dana Reeve Foundation for spinal cord research holds a Cocktail Reception & Night of Comedy at the world famous Comedy Store starring **Ray Romano** ("Everybody Loves Raymond") and **Jeff Garlin** ("The Goldbergs"). This is an invite only event. For information on purchasing tickets for this private event, contact Pierce Law Group Client Director Lindsey Henderson at 310-274-9191.

David Pierce serves on the West Coast Advisory Board of this charity which continues the mission originally created by our favorite Superman, Christopher Reeve and his wife Dana.

delineate rules for use of company accounts and personal accounts at work, and incorporate the rules set forth in their employment agreements and employee handbooks to address these issues.

Employer Best Practices for Social Media Accounts

If you own a business or company with a social media account, there are steps you should take to avoid any issues.

First, every employee who is in charge of running a social media account on behalf of a company should have a comprehensive employment agreement which unequivocally provides for policies limiting use of the social media account outside of work hours, access to the account once the employee no longer works there, and pursuit of the company followers or friends for any purpose outside of the job duties.

Second, keep login information safe from employees who need not access those accounts to help ensure secrecy of the login information. One option is to keep a master list of accounts and logins with the business owner.

Finally, before an employee is terminated or after an employee gives notice of leaving the company, always make sure that you have the login information and passwords for each account the employee handles, and change the passwords immediately upon the employee leaving the company. It is imperative for employers to plan termination events carefully; a well-planned employee exit interview can be helpful in tying up loose ends.

Pierce Law Group is a leader in Labor & Employment Issues and provides management training seminars and employee handbooks with innovative policies for a changing world.

If your need company needs advice or representation on this legal issue or any other employment law related issue, contact David Albert Pierce or Vera Golosker at (310) 274-9191.



Ray Romano & Jeff Garlin

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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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