

## 5 Things Your Small Arts Business Should Totally Know About the Law



- 1. Business Organization.** Your arts organization has to be a 501(c)(3) nonprofit to collect tax-deductible donations. That doesn't mean you can't fundraise (Kickstarter, etc.) but you can't claim gifts or investments as tax-deductible donations.<sup>1</sup>
- 2. Artist Taxes.** One of the best ways to avoid being classified as a hobbyist for tax deductions is to keep good books. Not necessarily QuickBooks, but perhaps an Excel spreadsheet to track your business expenses.<sup>2</sup>
- 3. Copyright.** Copyright law only protects content fixed in a tangible medium of expression. In other words, make sure you put things on paper or use a recording device to archive your work.<sup>3</sup>
- 4. Trademark.** Using<sup>4</sup> a logo or brand in commerce automatically entitles you to common law trademark protection, but this protection is limited to your close geographical area.<sup>5</sup>
- 5. Employee Classification.** If an employer improperly classifies an employee as an independent contractor, the position can be reclassified by the Department of Employment and Economic Development, which may include fines. Typically, five factors are considered, including: (1) the right to control the means and manner of performance; (2) the mode of payment; (3) the furnishing of material or tools; (4) the control of the premises where the work is done; and (5) the right to discharge employees.<sup>6</sup>



<sup>1</sup> I.R.C. § 170.

<sup>2</sup> See Treas. Reg. § 1.183-2(b)(1).

<sup>3</sup> 17 U.S.C. § 102(a) (2012).

<sup>4</sup> *Trademarks FAQs*, UNITED STATES PATENT AND TRADEMARK OFFICE, [http://www.uspto.gov/faq/trademarks.jsp#\\_Toc275426712](http://www.uspto.gov/faq/trademarks.jsp#_Toc275426712) (last visited Jan. 9 2015) ("Federal registration is not required to establish rights in a trademark. Common law rights arise from actual use of a mark and may allow the common law user to successfully challenge a registration or application").

<sup>5</sup> MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 26:2 (4th Ed. 2004) ("The territorial scope of an unregistered mark is limited to the territory in which the mark is known and recognized by those in the defined group of potential customers").

<sup>6</sup> *St. Croix Sensory Inc. v. Dep't of Emp't and Econ. Dev.*, 785 N.W.2d 796, 800 (Minn. Ct. App. 2010).