

Producing in Minnesota

Legal Issues for Independent Filmmakers, Production Incentives for Minnesota Productions and Resources guide for legal services, equipment, education, production directory and more!

Key Legal Considerations for Indie Filmmakers

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Literary/Life Story Rights.

If your film is based on a book, magazine article or other literary work that is protected by copyright, you will need to obtain permission from the author or publisher of the underlying work. A film based on a literary work is considered a “derivative” work under copyright law. A copyright owner has the right to control the creation of derivative works. Failing to obtain literary rights could give rise to a copyright infringement claim, which could derail your production.

If you are depicting someone’s life – either as part of a documentary or in a fictional film – you should consider the feasibility of securing life story rights from that person or their estate. As long as your depiction is factual and based on publicly available information, it is unlikely that the subject or their heirs will be able to prevent your portrayal. However privacy and publicity rights laws are varied and changing. Locking up life story rights will help to protect your production from threats and nuisance suits. A well-drafted life story rights agreement will give you exclusive access to the person and to pre-existing materials related to their story, which can be valuable in pitching investors and ensuring the success of your film.

Independent Contractor/Work-for-Hire Agreements.

Copyrights arise on creation and are owned by the author of the work. Copyrights can only be transferred by a written assignment. For this reason, if you hire independent contractors to perform any work that might add creative elements to your film – whether as a director, camera person, set-designer, make-up artist, editor, graphic artist, etc. – it is essential to have them sign an independent contractor agreement that includes a valid work-for-hire and assignment provision. A recent court ruling emphasized the importance of using specific “work-for-hire” language in your independent contractor agreements. An experienced entertainment attorney can provide you with a template to use with all independent contractors providing services to your production.

Production Releases.

There are three essential release forms that you will need for your film or documentary production. To avoid violating a person’s privacy and publicity rights, you need permission to include any readily identifiable person in your film. An **appearance release** gives you permission to use that person’s name and image in connection with your production and for promotional purposes. Anyone who might appear in the completed film, or in production stills or other promotional materials – including crew members and anyone else on set – should sign an appearance release. You will also need permission to enter and film on private property. A **location release** allows you to do this. The location release must be signed by the actual owner of the property – be sure that the person signing your location release has the authority to do so. If you use any pre-existing material that is subject to copyright – photographs, film footage, etc. – you will need a **materials release** from the copyright owner. Set-dressing such as posters, artwork, etc. may also be protected by copyright. You will need to get a materials release from the copyright owner for any materials intentionally placed on the set and identifiable in the completed film. An experienced entertainment law attorney should be able to provide you with a set of release forms customized to meet the specific needs of your production.

Using Pre-Existing Material.

If your film is a documentary, you will likely be using lots of pre-existing material including old photographs, film footage, and the like, to tell your story. Whenever possible you should determine whether the material is under copyright – unless the work was created and published before 1924, you should start with the assumption it is still under copyright. If a work you need to use in your documentary is still under copyright but you cannot figure out who the copyright owner is, or cannot get permission from the copyright owner, it is possible you may be able to rely on an exception to copyright called “fair use”. Whether you can rely on “fair use” depends on how the work is used in your film. If you cannot obtain permission from the copyright owner, you should consult an attorney experienced in applying fair use. In some cases, you may need to obtain a formal “fair use” opinion from an experienced entertainment attorney in order to obtain errors and omissions (E&O) insurance coverage.

(cont.) Key Legal Considerations

Music Rights.

If you are creating original music for your film, you will need a written composer's agreement. The composer's agreement may be structured as a "work-for-hire" agreement (see above) in which case you will own copyright in the music. More often, however, the composer will insist on retaining copyright in the musical compositions and will only license to you the right to use the compositions in connection with the film. In this case, and in situations where you are licensing pre-recorded musical compositions for use in your film, you will need both a **master use license** and a **synchronization license** from the copyright owner. The synchronization license gives you permission to use the music in connection with the film. An experienced entertainment attorney can help you to draft and negotiate the appropriate agreements.

Errors and Omissions Insurance.

Once your film is completed, and before you screen it in public, you should obtain **errors and omissions (E&O) insurance**. E&O insurance protects you in case someone sues you for copyright infringement, defamation or invasion of privacy or publicity rights. While you don't need to have the coverage in place until you are distributing your film publicly, it is a good idea to discuss your project with an E&O insurance broker and familiarize yourself with the application process so you can be sure you get the clearances you will need to qualify for coverage. If you are relying on "fair use" (see above) or have other chain of title or rights clearance issues, you should discuss these with an attorney experienced in film and television production. In some cases, you may need to obtain a formal legal opinion and submit that to the E&O insurer before you can get coverage. But if you have followed the recommendations about securing rights and releases explained in this pamphlet, you should be good to go.

-Walt Lehmann, Managing Partner at Lehmann PLC

How to Legally Use Music in Film, Television and Advertising

Sources of Music:

There are four categories of music in media: the main title or end title (this may be instrumental or a song which could be pre-existing or specially commissioned for the film), underscore (instrumental background music that supports the narrative), source music (either instrumental music or songs which are part of the scene and audible to the characters; a musical would be an expansion of this category where the characters are performing the music as part of the story), and the jingle (either instrumental or with lyrics where the music was created for promotional purposes or the music was altered for advertising, such as changing the lyrics of a popular song). For each type of music in your project, you can either use existing music or commission new music. Sources for existing music (here meaning music that is already recorded) include music publishers, record labels, music libraries (AKA production libraries) and in many cases, you can go directly to a composer or songwriter/recording artist if they are independent.

What permission you need:

For purposes of copyright law and ownership of copyrights, musical works and sound recordings are different, and the rights are often owned by different parties. At minimum for a film project, you need a **synchronization license** from the owner of the musical work or "underlying composition" (what would be written on the sheet music, whether or not sheet music actually exists is irrelevant) and you need a **master use license** from the owner of the sound recording. Often these rights are owned and controlled by different parties. For example, a music publisher may own the copyrights to the underlying composition and a record label owns the sound recording. (The recording artist doesn't own or control any of the copyrights because they signed a record deal that transferred all their rights to these companies.) A filmmaker hoping to use the artist's recording in their project must get permission from both the music publisher and the record label. In the case of a music library, you can typically get both permissions from one source because these entities own or control both the musical work and the sound recording.

How to get permission:

Typically, it makes sense to contact the music publisher first. This is because there may be some choices available as far as which recording you can use (for example, the original artist version and a cover version by a different artist), but you need permission for use of the musical work regardless. Figuring out who the publisher is and how to contact them for permission requires research and can be a bit tricky, which is why many productions work with clearance specialists and music supervisors who have experience making licensing requests. A good place to start is by looking at information accompanying the song itself, either meta-data or "liner notes" which may contain licensing contact information. It's also possible to search the US Copyright Office database and the performing rights organizations (ASCAP, BMI, SESAC) in order to determine who owns the copyrights to the musical work. If you are able to get permission from the music publisher, the next step is to contact the owner of the particular recording you want to use. This information is also sometimes found in the meta-data on a digital file of the song, at the Copyright Office or may be obtained from Harry Fox Agency (which is an entity that clears a different type of right for recordings, so they are a good resource to uncover who owns the copyrights to a particular recording). If you are sourcing music from a library (AKA production library), it's much simpler, and you need only contact the one entity to get permission to use the music they have available. An independent composer or songwriter/recording artist can also usually give you both permissions in a "one-stop" fashion. It is a good idea to get a written agreement concerning all music licensing, because it helps the copyright holder keep track of where their music is being properly used and it helps you show you have all the proper rights when you approach a distributor for your project. The music business has many peculiarities and is constantly changing due to rapid developments in technology, so it's a good idea to work with an experienced entertainment attorney to ensure you have the proper licenses and agreements.

*-Alexandria Mueller, Chair of Art and Entertainment Law Section,
Minnesota State Bar Association, Entertainment Attorney at
Hellmuth and Johnson, PLLC*

Minnesota Production Incentives

Production incentives offered by states were introduced in the 1990s as a way to stem the loss of production to Canada and other countries. Since then, the entertainment industry has greatly expanded its domestic production volume as state incentives have encouraged the industry to invest in American labor and suppliers. Currently there are 31 U.S. states and multiple cities and regions that offer incentives for film and television production.

Incentives generally come in two forms: **rebates** or **tax credits**. Rebate incentives are programs that offer productions cash back on qualified expenditures in the jurisdiction. Tax credit incentive programs do not offer cash rebates to production companies. A tax credit program allows a production company to reduce its year-end tax liability using a fixed percentage of its overall in-state expenditure as the basis for calculating the amount of credit to be generated. The in-state expenditures, such as qualified labor, vendor services and purchases re pre-defined with specific program guidelines to which production companies must adhere to remain eligible for the incentive.

The MN Production Rebate reimburses up to 25% of eligible Minnesota production expenditures. The incentive is available to qualified Feature Film, Documentary, Music Video, National Television Program or Series, Television Pilot, Television Commercial, Internet and Post Production Only projects.

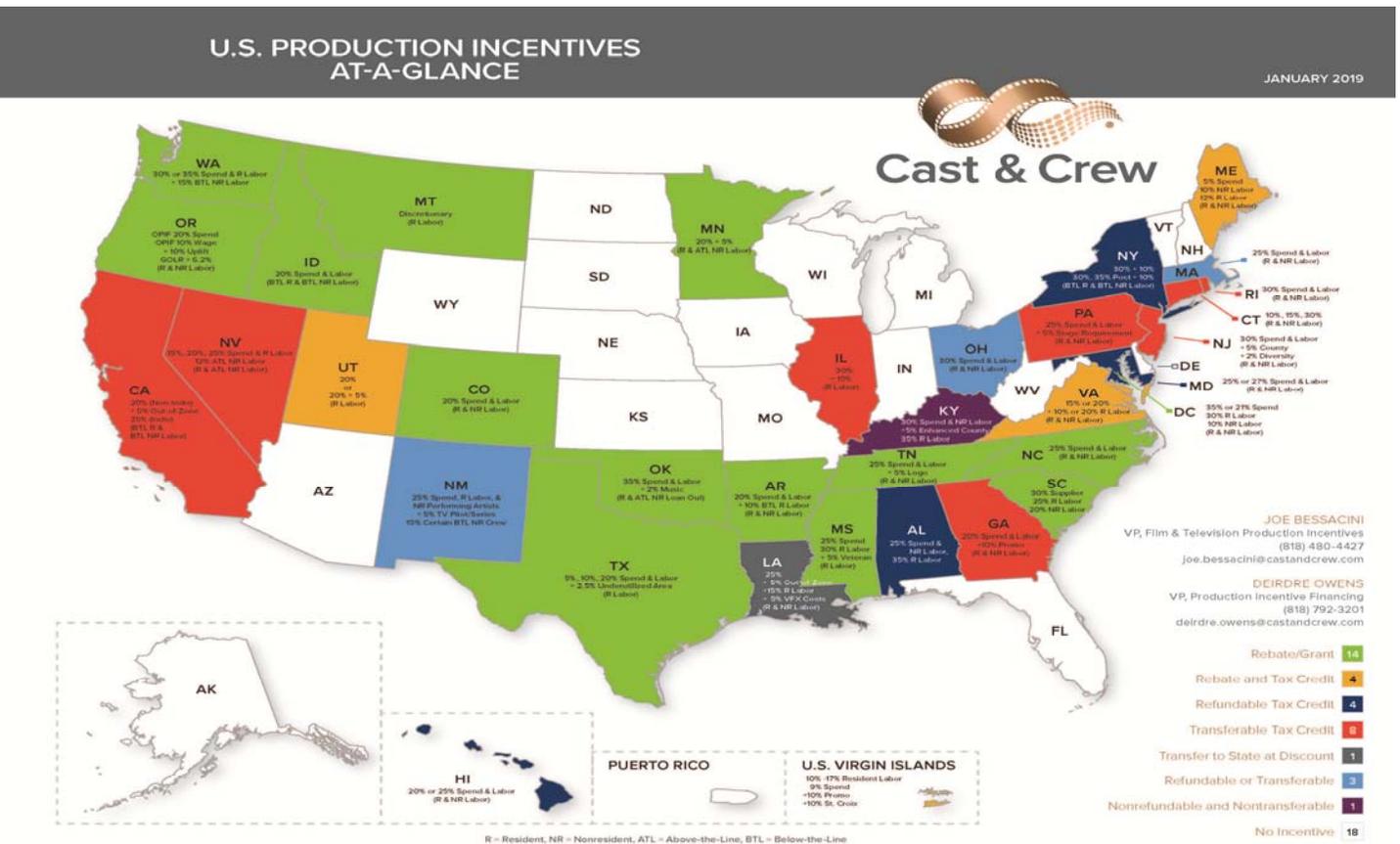
Download the guidelines: https://mfilmtv.org/files/4215/6617/0155/1_Guidelines.8.2019.pdf

The program, overseen by the Department of Employment and Economic Development (DEED), is designed to encourage film and television production and post-production in Minnesota, providing economic growth and jobs. Minnesota’s Film Production Jobs Program (MN Statute 116U.26) called “Snowbate,” is funded through legislative appropriation and administered through DEED by Minnesota Film & TV. From 2013 through 2018, Minnesota Film & TV certified 260 Snowbate projects resulting in:

- \$81.9 million in new private spending in Minnesota
- \$60 million in wages for Minnesota residents
- 9,237 Minnesotans hired
- \$2.3 million in Minnesota State income tax paid

Learn more about Minnesota’s production incentives and how to apply: <https://mfilmtv.org/incentives/mnproductionrebate/>

-Melodie Bahan, Executive Director of Minnesota Film & TV



Resources for Minnesota Filmmakers



Film North

Film North's mission is to empower artists to tell their stories, launch and sustain successful careers, and advance The North as a leader in the national network of independent filmmakers. We achieve our mission by nurturing a vibrant, diverse community of film and media artists; providing education and resources at every stage of their careers; and celebrating their achievements.

<http://myfilmnorth.org/>

Minnesota Film & TV



We're a non-profit film commission that advances Minnesota's economy and enhances its robust cultural environment by promoting and supporting the state's production industry.

Our core services:

Attract production to Minnesota through the [MN Production Rebate](#) incentive program, a 20 to 25% rebate on eligible Minnesota expenditures.

Market Minnesota's talent, crew and production infrastructure in the [Minnesota Production Directory](#).

Maintain an extensive statewide digital [location photo database](#).

Develop and sustain relationships with independent producers and executives at major studios and networks nationwide.

Facilitate production with location and scouting services and crew, equipment and permitting referrals.

<https://mnfilmtv.org/>

Minnesota Find a Lawyer

Attorney referral service maintained by the Minnesota State Bar Association.

<https://www.mnbar.org/member-directory/find-a-lawyer>

Minnesota Lawyers for the Arts

Artists face a unique array of legal questions and challenges: questions related to copyright, business incorporation, contracts, employment, licensing and more. The Minnesota Lawyers for the Arts program at Springboard for the Arts is here to help, by providing educational resources and connecting artists with attorneys who specialize in arts and entertainment law. MnLA is the Minnesota chapter of the National Volunteer Lawyers for the Arts (VLA) Network. We have an active roster of dozens of attorneys across the state.

<https://springboardforthearts.org/resources-access/legal-assistance/>

