

L E G A L E Y E

by Michael Bergman

Contract advice to avoid trouble

Many members of the film community often rely on simple form-contracts when dealing with producers. After all, the contract seems to be only an intervening nuisance towards participation in a project.

Most rely on short hastily-put-together forms or the sometimes cryptic "deal memos" put out by some of the guilds and unions. The following pointers may help those quick to sign on the dotted line to appreciate what might be missing:

- **An agreement which is not indefinite should stipulate a term.** As most film projects are limited as to time, the contract should state a start-date and a definite end-date. This will be the period during which the parties are committed to each other. Where the start-date is subject to change, provision

should be made for adequate notice of commencement and the corresponding effect of any undertaking to be exclusively available. A wholly undetermined start-date may mean refusing other work.

Since a project may last longer than expected, provision must be made for the extension of the terminal date. This will require considering whether in such circumstances the entitlement to exclusive services continues, who may compel the extension of the term, and for what price. Fundamentally these concerns affect the possibility of accepting other roles or assignments, the possibility of which cannot be known unless there is reasonable certainty of when a previous job will end.

- **Directly related to the terms of the agreement is**

their method and perhaps the amount of payment. The agreement should stipulate the means to calculate the total exigible fee for the entire project, even if the fees are paid in weekly instalments. This helps to clarify that the agreement is for a single total fee for the entire project paid by instalments during its life. It should serve to avoid disputes as to any amounts owing, should the agreement be cut short.

- **An accurate and complete naming of the parties is imperative.** This not only identifies, but limits the legal obligations and duties to specified individuals. Despite appearances or oral comments, the legal obligations and rights in a contract fall only on the named parties. When the parties are corporations, the real-life people behind them will not be contractually involved. If there ever are problems, the named parties are the only ones that count.

- **Some outline of the job-function must be foreseen.** This defines the scope of responsibilities and the limits of expect-

tations as to what will be done in the job. Even if the job is described as the meaning of the function as ordinarily understood in the trade, this at least serves as a guideline. This is particularly important where an individual is required in the ordinary course of the job to perform some activity on behalf of the producer, such as hiring and the like. In such cases, the agreement should state that the individual has the exact authority to act for the producer and to legally obligate him without incurring a personal responsibility. Where a party may act on behalf of the producer, he is effectively an agent and provision should be made as such.

- **Although many projects are produced by a corporation especially incorporated for that purpose, this is not always the case.** Furthermore, many projects may go through several titles and revisions. For this purpose, the agreement should stipulate that it is made to apply for a project tentatively entitled by a certain name or, where there are several projects covered by the agreement, a description of those projects if the titles are unknown.

- **Where the non-producing party will be required to supply certain items or equipment, these items should be specified.** Provision should be made as to the use of these items and who is responsible for any damage to them or caused by them. Every province has special laws governing the rights of the producer's creditors to avail themselves of the producer's property or certain items found on or about the area of the producer's activities. These creditor rights may extend to cover even the equipment of the non-producing individual. It is for this reason that adequate provision must be inserted governing this possibility and to assure that the equipment does not fall prey to these other creditors. In particular, an individual should take care that his equipment is physically identified by labels or other devices as belonging solely to himself.

The owner of equipment may become vicariously liable for any damage caused by the equipment while it is used by the producer's other employees or team members. Producer-use of such equipment should be subject to a clause providing for adequate insurance protection to the supplier of such equipment against all risks.

- **Talking about insurance, it should never be assumed that the producer has adequate insurance protection for his cast and crew.** There should always be a special stipulation in any agreement. Several kinds of insurance are necessary, from life insurance and disability

to liability insurance. The set or location of any film production is a dangerous site, not only may harm and injury come to the participants, but accidents may happen involving the general public. Where anyone is injured or any property damaged attributable to some action or omission on the part of a member of the production team of any category, that individual may be sued alone or together with the producer. Needless to say, these suits may cripple the responsible parties financially. Insurance protection is the best defence. A properly worded agreement would assure that the producer has and maintains constantly adequate insurance in place for the benefit of the non-producing individual.

- It is widely assumed that it is only natural that credit be given according to a participant's category. To make this assumption without any contractual stipulation is to rely on the customs and trade usages of the film industry, traditions which are not always precise or easy to define. **Provision should always be made for some definition of what credit is to be given and its scope.** Even if written reference is made only to trade usages, at least this gives some parameters for understood guidelines.

- **Unfortunately, some film projects come to a rather quick demise while in others the individual's participation is cut short. Specific provision should be made for the premature termination of the agreement.** Some thought should be given to the eventuality that it is the non-producing individual that terminates the agreement for whatever reason and if so, what kinds of notices or penalties, if any, may be suffered? On the producer's end of it, provision should be made for adequate notice and the amount of severance pay. While it is often assumed that severance pay equals two weeks of fees, this is an assumption that need not be the case. Especially in matters of severance without cause, it is unfair to receive only two weeks' pay as compensation. Furthermore, the use of the two-week pay as a basis for severance harks back to the position of an employer-employee, a relationship which is not always the case between the producer and a non-producing individual.

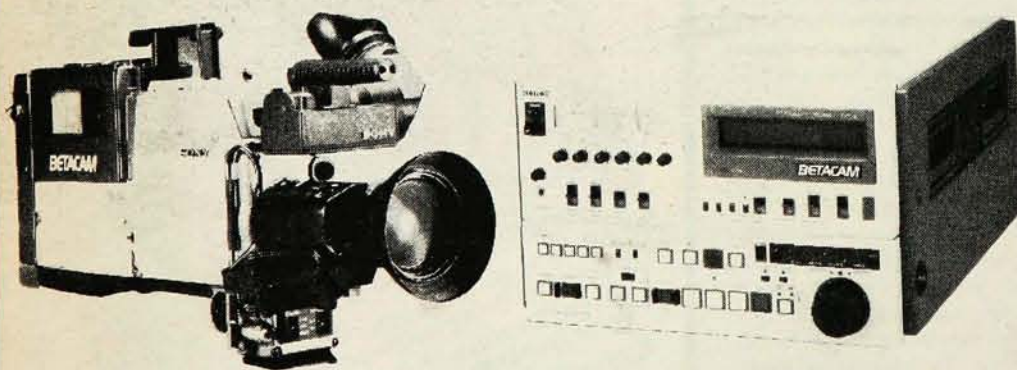
These few pointers are just the tip of the iceberg but some thought of them and the like will avoid serious problems.

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