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JOBS Act could boost filmmakers

JOBS Act and new crowdfunding rules could benefit moviemakers.

By Erica E. Phillips

A new federal law designed to provide entrepreneurs with simpler access to capital could give a boost to an unlikely business community - Hollywood filmmakers.

The Jumpstart Our Business Startups or JOBS Act, which the president signed into law last month, will ease securities regulations for startup companies looking to attract private investment. Though much of the impetus for the bill came from investment bankers and people in the high-tech sector, entertainment lawyers say the new rules could help content creators - especially independent filmmakers - get their passion projects off the ground.

Entertainment lawyer and arbitrator Mark Litwak said filmmakers and other artists should take note of two parts of the JOBS Act. One allows entrepreneurs to publicly solicit investments through print advertisements or social media campaigns. Another section calls for the creation of government regulated "crowdfunding" portals online through which investors can make small contributions to startups - such as independent film producers - and earn returns on those investments.

"The really big advantage, especially for a risky business like moviemaking, is if you can spread the risk over a large crowd of people, that makes it much easier to raise money," Litwak said.

But the new rules will present a broad departure from the way independent films are funded now, and lawyers say filmmakers should be sure they understand the law before taking advantage of it.

'The really big advantage, especially for a risky business like moviemaking, is if you can spread the risk over a large crowd of people, that makes it much easier to raise money.' -

Mark Litwak

David M. Hernand, co-chair of the media, entertainment and technology practice at Gibson, Dunn & Crutcher LLP, said current regulations limit filmmakers and other startups to soliciting investments only from personal connections like friends and family.

Filmmakers' only other option, he said, has been soliciting donations through websites that serve the creative industries, like Kickstarter.com and IndieGoGo.com - but donors couldn't reap rewards other than the satisfaction of contributing to the product.

"If you wanted to just give money to James Cameron to make his next movie, you could do that," Hernand said. "But if you actually wanted to participate in the profits, you'd have to worry about the securities laws."

That will remain the case until the JOBS Act provisions take effect, he added. If all goes according to schedule, startups would be able to legally solicit funding publicly as of July 4 - 90 days after the law was signed. Crowdfunding portals, which will be closely regulated by the Securities and Exchange Commission, won't be up and running until January.

Since Kickstarter and IndieGoGo have already developed the crowdfunding interface for donors, Hernand said he expects those sites to register with the SEC as well.

Lisa Callif, a partner at Donaldson & Callif who works with independent producers and documentarians, said the eased regulations provide her clients with a great opportunity. But she's advising that they proceed with caution.



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Dealing with investors that her clients don't have a personal connection with, she said, puts a heightened requirement on disclosures and transparency - "making sure everything's on the table regarding when and how the money will be spent, how it will be paid back and clearly stating that investing in film is a risky investment and may never be returned."

Litwak said that becomes a bigger administrative challenge with crowdfunding. Setting up a regular email blast to the investor group can cut down on the busy work, he said, but "the larger the group, the more chance you might have a crazy person among your investors who's more labor-intensive to deal with."

Aside from regular communications, Callif added that filmmakers running social media-based campaigns should make sure they remain "100 percent honest and accurate" in statements they make on the Internet.

"My fear is having a client tweet something along the lines of, 'Angelina Jolie is attached, we're moving forward,' when really the client only had a discussion with her agent who said Angelina is interested in reading a script - that is potential securities fraud if investors rely on that statement," Callif said. "So there's a balance between having this new opportunity to raise money and making sure that clients stay away from making statements about their films that aren't totally accurate. No indie filmmaker wants to be investigated by the SEC or the U.S. attorney's office."

Robert A. Darwell, head of the entertainment transactions group at Sheppard Mullin Richter & Hampton LLP, said crowdfunding seems more viable for documentary or genre films that appeal to niche audiences. But even if those films find success under the SEC's new rules, he said that doesn't necessarily mean they'll reach a theater screen.

"Unfortunately, one of the most significant issues facing indie filmmakers is not merely raising production financing," Darwell said, "but rather distribution, and this is something that the bill doesn't and can't address."

Whether a movie will sell to a distributor is tough to predict, and the choice is often subjective. Still, every film's got a chance, Litwak said, pointing to "My Big Fat Greek Wedding" and "Paranormal Activity" as examples of micro-budget projects that scored big at the box office.

"At the end of the day, most audiences don't care about a film's budget, and they'll pay the same amount for a ticket, whether it's an indie or \$100 million James Cameron sci-fi extravaganza," he said. "All they care about is the story."

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JOBS Act could boost filmmakers


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The principals and staff of
Bartko Zankel Tarrant & Miller
sadly announce that their long-time colleague

Christopher J. Hunt

passed away on April 26, 2012
after a long fight with his illness.
He will be missed by all for his wit and words.



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