



Media Notes

Lights, Camera...Lawsuit !?!

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In the 1960's, "Candid Camera" became famous for such good-natured pranks as telling unsuspecting airline patrons that their luggage had been lost and offering to replace it with a free toaster. Today, audiences are shown harsher, more personal jokes - like airing unsuspecting women falling in love for someone they believe to be a multi-millionaire when in fact he is a construction worker making \$19,000 a year. Although this type of programming makes for great entertainment, it also makes for great lawsuits.

Creators, producers, and broadcasters of media content must be aware of the types of situations that give rise to media claims. Some of the common pitfalls include the following:

- Improper handling of unsolicited scripts.
- Failure to obtain proper releases and consents from individuals appearing in the production.
- Use of hidden cameras.
- Improper use of celebrity's name or likeness and failure to exercise caution when dealing with overprotective and litigious estates of deceased celebrities.
- Failure to obtain appropriate rights for music and film clips.

Obviously, the path from conception of an idea for a television program or movie to its ultimate broadcast is fraught with potential legal pitfalls. Your clients, however, can avoid these pitfalls.

If one of your clients frequently finds itself on the receiving end of unsolicited scripts, television program ideas, or other types of works, make sure they have proper procedures governing the handling of these items. Some companies send unsolicited items back to the sender without opening them, or destroy them immediately. Also, companies who develop original programming should always retain origination materials, such as first drafts, revisions, development and production notes. By retaining these origination materials, the company can provide evidence that they independently created the show and did not use the plaintiff's idea.

With respect to hidden cameras, your clients should always investigate the law governing hidden recordings in the state where the recording is taking place. Some states only require one person to consent to the recording. Other states, however, require two-party consent and make it a crime if the statute is violated.

To ensure proper consent, the producers must have the individuals appearing in the program sign a release. Your clients, however, should ensure that the person is not coerced into signing the release. Further, the release is invalid if the person is not competent to provide an informed consent. For example, persons who are drunk or minors are not considered competent and their signature on a release would be invalid.

Sometimes such a release is not needed when the subject of the program is deceased. Beware, however, of certain celebrities' estates that are notorious for vigorously pursuing claims of misappropriation even for posthumous use of the celebrity's image.

Finally, one of the most important measures a media company can employ to protect itself from media liability claims is to involve legal counsel early in the production process. By seeking advice from a media attorney, a company can obtain the appropriate releases and rights to content, including film and music clips, and, ultimately, limit their exposure to many of the costly lawsuits filed every day against media companies.

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