

Inside Hollywood:
The Reel Path to Success in
the Motion Picture Industry

Richard Warren Rappaport

Partner

The Law Firm, Richard Warren Rappaport, Esq.

Dr. Kenneth Atchity

Chief Executive Officer

Atchity Entertainment International Inc.

Emily Patricia Graham

Attorney

The Law Offices of Emily Patricia Graham

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On making it in Hollywood:

“Every storyteller dreams of seeing the characters in the story come alive each week on television or on the silver screen.

There’s nothing more exciting.”

— Ken Atchity, *Writing Treatments That Sell*

On attempting to “hitch” your way to Hollywood without a literary manager and producer:

“Don’t expect a ride. It’s a long, long walk. As I like to quote, ‘Bless your feet, they’ll take you places, when your thumb runs outta gas...’”

— Richard Warren Rappaport

Lyrics to “Louisiana Way” from the CBS television movie

“The Madam’s Family: The Truth about the Canal Street Brothel”

Hollywood: The Land of Dreams

Hollywood is more than just a geographical place where people work and play. Centered within metropolitan Los Angeles, it symbolizes the heart of the global motion picture industry, where dreams can come true, and where extraordinary talent can rise to the top. In this regard, it has been said that great stories belong to the world to read, hear, and see. And many would argue that there is nothing more artistically fulfilling than to have a story come alive on the big screen as a theatrical release.

This article deals with the beginning of that process and the initial legal and business aspects of representing a client who is a creative writer and who wishes to develop a screenplay, also referred to as the “script,” “property,” or “project” for formal presentation to insiders within the motion picture industry. For our purposes, we shall focus on a general overview of the presentation of a screenplay to the major film studios, such as Universal, Paramount, or Fox, as opposed to the independent financing, production, and distribution of a film, also referred to as an “indie.”

The goal of securing a motion picture deal is attainable for a new screenwriter, even if the path toward that goal is complicated. Of course, if making movies were that easy, everyone would be doing it. In an industry that attracts writers, actors, directors, and producers from all over the

world, there are many who will not succeed. However, the chances of such success are greatly enhanced by supportive and knowledgeable counsel and the team that will be assembled for the project.

Within the world of film, clients who wish to achieve the dream of writing a successful screenplay must have a clear vision in planning to bring a superb story and professionally crafted script to the right individuals throughout the industry. To achieve the client's goals, the best advice entertainment counsel can give should be based upon a combination of law, industry protocol, ethics, and policy, as well as a clear understanding of the business of motion pictures.

The Initial Consultation

During the initial consultation, it is imperative for entertainment counsel to discuss the scope of legal services to be rendered. This conference should include a comprehensive review of the legal, creative, ethical, and business issues involved in the evolution of a story and its commercial development as a logline, overview, treatment, and screenplay for professional presentation and consideration.

At the conference, counsel should also cover all pertinent issues of intellectual property law, such as the copyright rights that relate to the underlying story and subsequent screenplay, any trademark issues relating to various aspects of the property, any relevant proprietary rights, any specific rights of privacy, potential issues as to defamation regarding the content of the property, and the question of clear chain of title and ownership in the project. Moreover, discussions should include relevant corporate and business law issues, including the type of legal entity to utilize for the project, discussed below, and collaboration agreements if authorship is multiple. Although the nature of this chapter precludes us from an in-depth discussion of these topics, we suggest that counsel may wish to consider periodically securing the opinion of an intellectual property attorney skilled in the film industry on such issues.

Entertainment counsel should clearly establish that the successful placement of the screenplay within the industry cannot be guaranteed, primarily because of the creative nature of the industry, the genre and style

of the screenplay, and the level of commercial interest in that particular genre on the part of the studios. Regardless, counsel should inform the client that best efforts will be made on the client's behalf in this endeavor.

During the conference, it's important to plan the strategic direction for the project to ensure the greatest degree of potential success. In this regard, a discussion should include the manner in which the screenplay will be presented to a studio or major production company for funding, completion, and distribution.

A retainer agreement is essential to avoid any misunderstandings or unrealistic expectations. While a discussion of the specific nature of such agreements is beyond the scope of this chapter, it's advisable to utilize an agreement that clearly explains to the client the process entertainment counsel will follow to present the screenplay within the industry. The agreement must also meet the standards of counsel's law firm as well as the rules, regulations, and professional ethics requirements of the particular state bar.

On another note, it's also possible that if entertainment counsel makes introductions for prospective funding of the project and such funding is acquired, or if counsel secures talent for the project, he or she may be entitled to an on-screen credit and fee as a producer, executive producer, or co-executive producer. The appropriate title may be determined on a case-by-case basis, and will depend upon negotiations with the lead producer and studio as well as the standards set by the Producers Guild of America. The producer's fee is separate from the fee established with the client in the retainer agreement. We suggest that counsel also consult the state bar for guidance on relevant ethical issues concerning such producer titles and fees.

In sum, the initial conference should provide the client with a clear and thorough understanding of the process of creating and submitting the project for consideration as a film within the motion picture industry or as a made-for-television movie within the television industry.

Creating the Appropriate Legal Entity

To briefly touch upon the choice of a legal entity, it's important to realize that the client, in most cases, should create a legal entity with which to pursue the project. When the client executes any document as an authorized representative of a legal entity instead of signing the document personally as an individual, the possibility of prospective personal liability is reduced. Many clients will utilize either a corporation or limited liability company (LLC). If, as in this case, the client is the creator and screenwriter, the client's services may be "loaned out" as an artist within the corporation or LLC under a management agreement or development deal for the project. Regardless, entertainment counsel should advise the client to also consult with his or her corporate counsel, tax attorney, and accountant in the client's particular state to determine the best entity to use.

The Client as Hollywood's Next Screenwriter

One element of successful representation deals with the client's skills as a creative writer. Such skills are an integral part of the basics of storytelling and creative writing. Counsel must determine whether the client's skills are equal to his or her vision and ambition.

Often, the client will arrive at counsel's office with a script that may contain a superb story but one that has not been professionally written or edited. In that case, counsel should explain to the client that the script must be properly edited to conform to current industry standards and practices for submission to a studio. Specifically, the story should be presented in such a fashion, from professional format to compelling concept, that a producer or studio executive would consider it worthwhile to pursue. To make that determination, the practitioner should be consulting with individuals within the industry, such as literary managers, agents, or producers who have the requisite knowledge to render opinions about the project's readiness for presentation. In this manner, the client will look to entertainment counsel to provide the proper guidance and legal representation and make appropriate efforts to ensure the path to success.

Although there are various approaches to success for a given project, the model we follow in this chapter, based on our observation of its effectiveness, will commence with representation by entertainment counsel, and then respectively involve the literary manager, the agent, the producer,

and, if necessary, a financier. Once the literary manager is involved, he or she will become a key person to continue forming the client's team and will coordinate the plan for presentation of the property within the industry.

The Story and Screenplay

As entertainment counsel reviews the property, it's essential that the client understand that every successful screenplay or manuscript has a superb front story and, equally as important, a great back story. In essence, the characters must be properly and clearly presented and exhibit the kind of texture that defines them as relatable dramatic protagonists or antagonists. The scenes must be correctly structured so the excitement of progressive conflict builds with the turning of each page.

Once an initial storyline is established, the property should be carefully reviewed prior to its submission to the literary manager to ensure that it's properly prepared for presentation. Physical formatting along standards acceptable to the industry is essential. Like producers, literary managers measure their working days in minutes, and the project must be crisply and concisely presented for consideration so the manager may have a professional opinion as to its strength, marketability, and direction without being distracted by amateur presentation. Prior to such a submission, counsel should provide advice to the client in locating and retaining an editor experienced in commercial storytelling to assist in preparing the property for the literary manager. In fact, practically all successful writers have editors, regardless of their level of achievement.

At this point, the client should have completed the property for prospective presentation, including, among other things, the logline, overview, treatment, and screenplay. The logline provides a one-line pitch of the story, while the overview provides a one- or two-paragraph pitch of the story. The treatment is a detailed written pitch of the story, and the screenplay is the fully executed story.

Assembling the Team: The Screenwriter, the Attorney, and the Literary Manager as a Producer

Hollywood motion picture and television producer and writing career consultant Ken Atchity coined the phrase “story merchant” to describe his role in presenting stories and the role of a manager. This reflects the overall process by which the project is discovered, acquired for representation, and presented within the industry, as well as what makes it readable, understandable, and compelling so it may become a great script for a motion picture.

Once the literary manager reviews the project, entertainment counsel will receive an opinion as to its viability within the industry. If the literary manager feels the project has merit, it is likely that it will be placed in development by the manager for the purpose of creating or perfecting the script. At that point, the manager will present the client with a literary management agreement detailing the respective roles, rights, and responsibilities of the manager and the client. Such an agreement will be subject to review, negotiation, and approval by entertainment counsel.

It should be noted that a literary manager, unlike an agent, discussed below, is often a producer as well. This is significant in that the literary manager as a producer is motivated to get the movie produced, since the primary compensation derives from producing fees, not from sales commissions. Managers who produce will receive compensation as producers, so will normally not charge a commission on the writer’s actual sale price.

When the literary manager is onboard, the script will continue to be developed and edited for optimal presentation within the industry. If the script is “close” to being ready, development notes will be provided directly to the client by the literary manager. If the script is “far” from being ready, the manager may suggest that the client utilize other editors for the script and return it to the manager when the other editors deem it “ready for representation.” This will require patience on the part of the client as the script goes through several drafts. In fact, it may take months for the script to be completed and professionally presentable. In this regard, the client most likely to succeed is one who says, “What else can I do to make it work?” The most successful writers in the industry typically go through a dozen or so drafts before presentation. Once that’s done, the project is ready for the next step.

The Presentation and the All-Important Pitch

While the client may understand the story better than anyone else does, he or she will rarely be the one to make the critical presentation or “pitch” to the studios or networks. This responsibility primarily belongs to the literary manager, whose success derives from pitching day in and day out.

When the project is complete as a professionally written script, the literary manager will work closely with entertainment counsel to present it industry-wide as a filmable project. In this regard, the importance of the literary manager is paramount, since the manager’s involvement may prove critical for the possibility of success.

In Hollywood, the door of a particular studio will generally only open once for a submitted project. That’s the door through which the manager will walk. The appointment to present the project, as a lunch or pitch meeting, is typically made with a studio or development executive for a financier. At this juncture, the manager is practically ready to make the all-important presentation of the project.

The Agent

Prior to making the pitch to the studio for prospective development of the project as a film, the literary manager may also wish to secure a literary agent. Agents may be independent or affiliated with one of the major agencies, such as William Morris Endeavor Entertainment, Creative Artists Agency or International Creative Management. Or the agent may be affiliated with one of the boutique agencies such as Paradigm, APA, Gersh, or Innovative Artists. Managers prefer to have clients un-agented when they sign management agreements, because helping the client decide on the right agent and getting the agents to work effectively for the client are major contributions the manager can make to a client’s success in Hollywood.

The agent will attempt to work closely with the manager to attach talent, such as a director and actors. Concurrently, the manager may also be looking for outside sources of funding, regardless of whether the project is for a major studio or produced as an independent film. Accordingly, entertainment counsel’s responsibility is to act as a facilitator and be made

aware of the progress of the activities of these individuals. Continued conferences are in order so the client is kept apprised of the situation and understands the process along the way.

Welcome to Hollywood: The Studio Development Deal

With the team fully in place, the literary manager will make the presentation to the studio, also sometimes referred to as the “buyer.” While a buyer may also be a production company or independent financier, our discussion will continue to focus on the studio as the buyer. Should the studio determine that it wishes to place the project in development for production, it will then negotiate with the literary manager, entertainment counsel, and, if necessary, an agent to offer the client a development deal that will detail the obligations and responsibilities of the studio as well as the client as creator and writer.

As discussed above, the literary manager may very likely become either a producer or executive producer on the project. The client may also have that opportunity, depending on whether he or she contributes either “talent,” such as an acceptable director or actor, or funding for the film. At the very least, the client should remain as the creator of the story for the film and, depending on the client’s goals and the project’s needs, may remain as the screenwriter or co-screenwriter.

Entertainment counsel should advise the client that it is customary within the industry that many development deals with production companies or studios will include the hiring of an “A-list” writer. Such an individual will have demonstrated award-winning success in writing screenplays in the past and will be attractive to the studio, the investment world, and a prospective “A-list” director, in ensuring the likelihood of success of the project.

The literary manager and entertainment counsel should attempt to maintain at least co-writer status for the client or “story by” credit, even if the studio commissions a new writer to completely rewrite the screenplay. Maintaining the client’s co-writer or “story by” status is important so the client may receive on-screen credit for the screenplay as well as develop a reputation in Hollywood as a screenwriter. It’s important to note that the Writers Guild of America is the arbiter of such credits.

Development and Turnaround within the Studio System

When a script is optioned by a studio, the tasks ahead are rather daunting. Let's begin with the development deal. The literary manager is usually presented with an option agreement whereby the studio, production company, or independent financier plans to option the property for development for a period of time before beginning its production. As stated above, we will confine our discussion to the case in which a studio is optioning the property.

Within the realm of the studio system, a deal is usually made for an "option" against a "purchase price" of the project. In this case, the payment accompanying the option is deductible from the purchase price and payable upon execution of the option/purchase agreement. The purchase price may be payable whenever the option is exercised, which is generally prior to any plans for development and commencement of principal photography of the picture. In the option/purchase agreement, one must pay particular attention to reversion issues to protect the client from finding his or her story in perpetual limbo if a studio chooses, whether formally or virtually, to abandon the project.

Once the option is signed, the property is assigned to a development executive and the process of evaluating the script and rewriting it begins. This can take from three months to three or four years or more. Typically, the studio prefers a rewrite to conform to its standards and, as mentioned above, will often assign a solid "A-list" writer for the project. But before that happens, the goal for the original writer's representatives should be an agreement that retains his or her client for a "rewrite and polish," according to Writers Guild of America standards.

During the time the script goes through all the rewrites required by the studio, that studio begins to look for attachments to be involved in the project, such as a director and acting talent. As discussed earlier, these individuals may already have been attached by the literary manager and agent. If so, the development process moves forward much more expeditiously. Many studios openly admit that development is not their strongest attribute. Thus, if a major star or director is attached by the literary manager or agent when the deal is made for a script, this may protect the storyteller from the scenario, mentioned above, where a script

sits indefinitely with no forward progress within the studio's development department.

It's also possible that if the financial and political winds shift at a studio, the script may not receive the type of attention it needs and may be subject to "turnaround" where it and the project are placed for sale outside the studio for at least the cost of the project to that studio. Included in the "turnaround cost" are the costs paid for the option itself and other internal costs, plus interest. However, with the right opportunities and careful oversight, the motion picture project will remain on schedule with the original buyer and move toward a date when principal photography of the film is to begin.

A Note on Creative Control

Entertainment counsel should advise the client that once the studio option/purchase deal is complete, the creative control of the project, including the story and character rights, will rest with the producer and studio. The client should be made aware of the likelihood, as mentioned above, that the screenplay will undergo numerous subsequent drafting changes and receive the creative input of many other industry screenwriters and editors, and perhaps even the director. Thus, the final product may be significantly different from the screenplay the client envisioned. Working with a literary manager/producer who represents the client throughout the development process will ensure continuing input for the client.

There are issues beyond the scope of this chapter that relate to the intellectual property aspects of ownership of the project. These issues also include copyright and control of the screenplay from its inception to the completion and distribution of the film, as well as sequels, prequels, and other derivatives. Thus, entertainment counsel should advise the client that issues as to copyright and control will become significant throughout the process and during the point when the property is placed in consideration for a development deal within the studio system. As mentioned earlier, for the client's benefit, counsel may wish to periodically utilize the services of an attorney specializing in intellectual property law as it pertains to the film industry.

Patience in the Development Process

During the entire development period, the client must realize that the path to taking a screenplay to the big screen is a process that may take several years. In the case of movies for television, the period is generally much shorter, and it is possible that the time from signing the option/purchase agreement to the actual broadcast may be as short as one year. However, for a film to make it to theatrical release, the period can be much longer. Patience and understanding along the way and hard work on another project are truly virtuous qualities our writer should possess.

Teamwork

Teamwork plays a very significant part in developing a project for motion pictures or television, and it's crucial for entertainment counsel to have a superb working relationship with the client as well as the literary manager, agent, and studio. For this to occur, counsel must have a thorough understanding of the nature of producing.

Similarly, the experience of the literary manager, agent, and producer should be such that they will comprehend at least the basics of the legal aspects of the entertainment industry in order to proceed on a project. In essence, it will be a combination of knowledge, experience, patience, and teamwork that will constitute the elements of success within the film industry in Hollywood.

“And We Want to Thank Our Producer, Director, Literary Manager, Agent, and Entertainment Attorney...”

This discussion has presented a primary overview of the initial legal, business, and creative process within the motion picture industry as that process unfolds for an aspiring screenwriter, beginning with the creation of the story and the subsequent initial consultation at entertainment counsel's law offices and, if the process is successful, ending with the presentation and prospective placement of a project in development at a studio. It can be very exciting to be part of that creative endeavor and make the dream come true for your client in the film industry.

The entire development process within the studio system is extensive and its further analysis would be the subject of a separate discussion. However, to fast forward, if success is found in Hollywood, after months and perhaps

years of hard work, the film becomes reality when it is produced and distributed by the studio.

The film's premiere is generally held in Los Angeles or New York, and the wait has been well worth it as the paparazzi take their pictures and the press begins its interviews. The television cameras roll as the stars, director, literary manager, producers, and entertainment attorney walk the red carpet at the premiere, once again proving "there's no business like show business." Now it's up to the critics and, most importantly, the public to make or break the picture.

We should always remember that the medium of film has the incredible power to influence our lives on a cultural, political, emotional, and intellectual level. A motion picture may carry a message and theme that can define us as individuals and create new horizons for all of us, providing an exciting story that entertains us for generations to come.

Determining the success of a movie can be very different depending on the particular genre in which it fits. It may be produced and marketed as an introspective love story, a mystery, a lighthearted children's animation film, or a high-budget science fiction thriller, among many other genres. In fact, the position of the producer, screenwriter, and studio may differ on the definition of such success. A film may receive critical acclaim, garnering praise and accolades as well as domestic and international awards, and yet not meet the financial criteria set by the studio. Entertainment counsel should maintain this perspective when advising the client as the project continues to move forward.

"And the Oscar Goes to..."

To quote Mark W. Koch, producer of *Lost In Space* and *The Perfect Game*, "It's a miracle any film is made." Mr. Koch explained at length the extended and sometimes exhausting nature of the entire filmmaking process. And yet, he stated, "it's still magical."

There's a saying in Hollywood that "You're only as good as your last picture." At this point, entertainment counsel should be hard at work in providing legal advice to the client who is completing a "polish" on his or

her next great screenplay. And hopefully everyone will walk the red carpet again.

Richard Warren Rappaport is a partner in The Law Firm, Richard Warren Rappaport, Esq. He is licensed as an attorney in Florida, New York, and Washington, D.C., and practices in the areas of entertainment, arts, and sports law, international law and trade, intellectual property law and corporate law, including representation in motion pictures, television, music, the literary arts, the classical arts, and the fine arts. He can be reached at rwr@RappaportArts.com.

Dr. Kenneth Atchity is chief executive officer of Atchity Entertainment International, Inc. With more than forty years of experience in the publishing world and over twenty years in entertainment, he is a self-defined “story merchant” (www.storymerchant.com) as a writer, producer, teacher, and literary manager responsible for launching dozens of books and films. His focus is in representing storytellers who are best-selling authors and screenwriters. He can be reached at kja@aeionline.com.

Emily Patricia Graham is an attorney focusing her practice in entertainment, arts, and sports law, and business law. She is admitted to practice in Florida, Louisiana and California, and before the United States District Court for the Southern District of Florida. Her firm’s clients include production companies, directors, screenwriters, actors, musicians, and fashion designers. She can be reached at egraham505@aol.com.
