

Greg Pang: One thing that perhaps freelancers can get tripped up on is that the scope of the work is not very well defined, and what do I have to deliver and when? And can the person contracting me, can they just keep piling on work that, well, this is not part of the deal, but it's super vague, right? And for both parties, there should be clarity on what is the scope of the work, what are deliverables, and when am I getting paid? And what triggers that payment, and how am I getting paid, and so on, so forth.

Sarah Taylor: Hello and welcome to The Editor's Cut. I'm your host, Sarah Taylor.

We would like to point out that the lands on which we have created this podcast and that many of you may be listening to us from are part of ancestral territory. It is important for all of us to deeply acknowledge that we are on ancestral territory that has long served as a place where indigenous peoples have lived, met, and interacted. We honor, respect, and recognize these nations that have never relinquished their rights or sovereign authority over the lands and waters on which we stand today. We encourage you to reflect on the history of the land, the rich culture, the many contributions, and the concerns that impact indigenous individuals and communities. Land acknowledgements are the start to a deeper action.

Today, I bring to you Greg Pang. Greg is a lawyer, registered trademark agent, a notary public who has been practicing since 2009 in areas of business and intellectual property law. In 2013, he started his company, RedFrame Law. Before his law career, Greg worked in film and television for five years in various roles, and now counts film and television production companies among his clientele. He also co-hosts the podcast Legal Cut Pro. Greg and I talk all things contracts, deal memos, stock licensing protocol, and what to do when you don't get paid. Enjoy.

Speaker 3: And action. This is The Editor's Cut.

Speaker 4: A CCE podcast.

Speaker 3: Exploring the art of-

Speaker 4: Picture editing.

Sarah Taylor: Welcome Greg Pang to The Editor's Cut. Thank you for joining us today.

Greg Pang: Glad to be here, Sarah.

Sarah Taylor: So, first, I want to know a little bit about you, so you can tell us a little about yourself. I know that you are a co-host of a podcast, Legal Cut Pro. But, yeah, tell us how... why you decided being a lawyer was your outcome in life, and, yeah, why entertainment?

Greg Pang: I worked in entertainment and I worked in film and TV before going to law school.

Sarah Taylor: Oh, I didn't know that.

Greg Pang: Yeah. Yeah. I [00:02:30] started out... as a locations PA actually.

Sarah Taylor: Oh, cool.

Greg Pang: So I started out as a locations PA, so I started as a locations PA and then got a CFTPA internship at a small production house here in Edmonton, and I started to just work around the province after that, and did a stint as a work study at the Banff Center.

Sarah Taylor: Oh, nice.

Greg Pang: Eventually then moved, Ah...chased a girl to Montreal. And it worked out because we're married now.

Sarah Taylor: Oh, good. Excellent.

Greg Pang: I worked at a marketing distribution company. I worked for them in Montreal for a while as well. And then shortly after that, I decided I'm not making enough money, and I'm not quite happy with what I'm doing, so that's when the ... went on a whim to apply to law school. And then the rest is history, as they say.

Sarah Taylor: And when you went into law school knowing that you had the background in film and television, when you first went, you were like, "I'm going to do entertainment law because I know the industry?"

Greg Pang: That's a really good question because that was the thought process, but then it that quickly evaporated knowing that, at least in maybe at Simon Fraser University... but at most law schools in Canada at least, there's no specialized stream per se in law school to say "I want to do entertainment law." Everyone does the same courses in first year, right? So your contracts, your torts, and criminal and whatever ones there are, and then you have a bunch of other courses you have to do. And then you can pick and choose other courses that are not mandatory, like intellectual property law.

So.. I always kept it in mind in thinking that, one day, I'd like to work again in the film industry. And it just so happened that I... still made some good friends during my time working in the industry, and they, in those years, had graduated from being a peon, like I was, and are producers, and eventually I started working for them and came full circle, came back to Alberta. And here I am now. And I'm building the practice in that area, and I'd say it's probably my favorite practice area at this point.

Sarah Taylor: Oh, that's fantastic. And I actually have never met Greg, but I have seen his name in the end credits I've created because Greg has been a lawyer on many of the shows that I've worked on here in Edmonton. And so it's nice to put a face to the name that I have seen on my end credits.

Greg Pang: Likewise.

Sarah Taylor: And the contracts that I've signed in the past. And I'm going to guess that maybe Eric Rebalkin was somebody that you worked with as a locations person, and then you became a lawyer.

Greg Pang: Yes.

Sarah Taylor: That's fantastic. Yeah.

Greg Pang: Absolutely, yeah. He was the LM on those first shows that I worked as a PA.

Sarah Taylor: That's so fun. Oh.

You started a podcast with another lawyer, who's actually also an actress, and who's somebody that I, again, have worked on shows with but I've never met. And so you want to tell us a little bit about Legal Cut Pro?

Greg Pang: The Legal Cut Pro is a podcast about entertainment law. You can find it on most major podcast catchers. And we talk about legal issues that are relevant to independent film producers mainly. One of the series that we put a lot of work in and we actually kind of have a followup on is about music licensing, because there's so many issues that come in music licensing. Just to give a bit of a flavor for it. Is that we're doing a little bit of a deep dive into some of those terms that might look a little bit alien in a stock work license agreement, like the Pond5s, the Gettys, [00:06:00] and stuff like that, right?

Sarah Taylor: Things we use all the time.

Greg Pang: Yeah, exactly. And through working on projects together, Michelle and I, because she's a producer as well, we've run into a lot of these issues, and have had to do corrections, and ask other questions, or issues have come up because this wasn't right or that wasn't right. And so we had already reviewed a bunch of different stock licenses and thought, hey, we might as well do a podcast episode about this because there's just so much to talk about here.

And a lot of times, people don't even read these license agreements.

Sarah Taylor: Guilty.

Greg Pang: Not knowing that there are actually differences between some of them, right? And sometimes, is kinda of you get what you pay for. Some of the cheaper ones, like, oh, okay, this is why it's so much cheaper is because of this, right?

Another example is, okay, so what is marked as editorial use only? And that has tripped up people before as well. It's like, oh, no, no, no. You can't use that because your project is a narrative project and it's not something appropriate for using an "editorial use only" marked stock work.

Sarah Taylor: Yeah. Oh, okay. Well, we'll have to listen to that episode, everybody. Go download Legal Cut.

Greg Pang: Yes, and we hope to get that out soon.

Sarah Taylor: Okay, well, I want to get into some questions that I think pertain to freelance editors. But I'm sure most creatives in the industry would benefit from learning this information. We, as editors, do we need to talk to entertainment lawyers, and can you explain maybe what the difference is between an entertainment lawyer or somebody that deals with entertainment law versus just a corporate lawyer?

Greg Pang: And that's a really good question because lawyers, and it's hard to sometimes say that I even have the same job as someone who specializes in, say, criminal law, right? We're both lawyers, but I have no idea what ... I have a friend in Calgary who is in criminal defense and then another friend who is a crown prosecutor, and I have no idea what they do. Other than taking my one criminal law course and evidence back [00:08:00] in law school, I have no idea what they do, and I would not have a single clue.

Like, you see on TV a lot that you have a lawyer who's drafting a patent, and then next day, they are walking into court defending someone for murder, right? So that's completely ridiculous because I would have no freaking clue, on how to deal with something like that in court, you know? So I'd be facing down a claim from my insurance pretty quickly if I tried to do that, right? Because I'd probably mess up pretty badly.

SARAH: Yeah!

GREG So there are big differences between ... Especially with entertainment law, and entertainment law is not so much an area of law but rather it's an industry in which you apply several different areas of law. And corporate is one of those. Strictly corporate lawyer and have not done anything in entertainment could still work for, perhaps, together incorporating a company, a single purpose production company, and helping with certain transactions in a corporation, but they may not know the specifics, the peculiarities, of the entertainment industry.

And even the term "entertainment industry" is extremely broad, right? So let's narrow it down even further. In our world, it's the film and television industry, right? So it is..You have to really know the peculiarities of the industry to practice competently in this area. And as I mentioned, there's several different types, areas of law that apply in the entertainment field. One of them is corporate. Commercial, contracts, labor, employment, intellectual property. So it's a mixture of a number of different areas of law, and you apply that in servicing the client.

Sarah Taylor:

Yeah. Of course that would encompass all sorts of different areas.

Well, speaking about contracts, we should be, I'm assuming, signing deal memos or getting contracts when we start projects. Can we go over what are the basic elements, what we should look for? Like there's a start date, an end date. The scope of the work we're doing. The amount, the type. The payment, whether it's flat, daily, hourly, I don't know. And then maybe what kind of options we can add to a deal memo when we receive it. I know that's a lot of questions all in one, but tell us all about deal memos.

Greg Pang:

Well, I think you mostly got it right there, Sarah. Like.. Let's set something aside first. There's the standard deal memos that, as an editor yourself, and maybe most relevant to your audience is the DGC, I think, schedule [eight, the standard form]. So all your basics to form a contract under the DGCIP8 is in that, right? And you may have seen it as well, and I may have actually prepared them for you to sign, is a rider to that containing many more actual particulars, right? Because it's fairly skimpy. It just gives the basics basics and say that this is contracted under the DGCIP8, but then it's missing anything [00:11:00] concerning rights and any other additional details of the actual deal between yourself as an editor, contractor, and the producer or production company.

So like some of those, I'd say beyond those basics, those very basis, one thing that perhaps freelancers can get tripped up on is that the scope of the work is not very well defined, and what do I have to deliver and when. And can the person contracting me, can they just keep on piling on work that, well, this is not part of the deal, but it's super vague, right? I think, and for both parties, there should be clarity on what is the scope of the work, what are deliverables, and when am I getting paid. And what triggers that payment, and how am I getting paid, and so on, so forth.

So those things should be not written in, quote on quote, legal language, but they should be written in standard English so that all parties agree, or it's clearly agreed upon, and we know exactly what our obligations are and what triggers what, when without having to go to a lawyer and be paying \$300, \$500 an hour to interpret something that is drafted very legalese-y.

Sarah Taylor: Yeah, yeah. I've seen deal memos come through my office where it's just like, "Here's your flat rate. This is what you're going to get for the doc." But then there is nothing else, so it's like as an editor, can I go back and be like, "Hey, let's put in some ahh..delivery dates or some sort of payment schedule," and to go back to them and do that back and forth. Is that something that is recommended?

Greg Pang: Yeah. Oh, I forgot to say I can't give legal advice per se during this interview, but I can give information and tips, of course, and which I've been doing. So I'd say the general answer is yes. Like in any contract negotiation, if the terms are too vague ... Like in that example you mentioned, then absolutely, you're entitled to go back and say, "Hey, I don't think this is good enough. I think we need a little bit more detail on what I'm actually doing for you and what are my deliverables and when do I deliver them so that you're not pissed off if I'm delivering this part, this cut of the project at this date, which I think is reasonable," right?

So absolutely, yeah, you're entitled to do that. And these kind of things can be either you're presented that deal memo, and it doesn't have any particulars, but you can always request that, "Hey, let's hammer out the particulars in detail in a schedule perhaps, and let's attach it to here, and then we'll agree that this is the schedule to the contract." It's a good idea to consider when you look at a contract and say, "Hey, there's just not enough detail here for me to know when I'm performing the contract, and also on the other side so that... the expectations are clear between us so that there's less chance of friction between us with this project."

Sarah Taylor: Yeah. And I think often we have those conversations, but they're not in that format of this is the, quote on quote, legal document. And so you might have that verbal conversation on the phone, but if it's not written down, if something does go wrong, it is probably always safer to have that in a document that we can be like, "Actually, this is what we decided."

Greg Pang: Exactly. It's all about clarity, right? And I think this goes to your question earlier, do you have to engage a lawyer to help? I think in some certain times, [00:14:30] especially if there's a lot of money involved, and if there's a lawyer on the other side, it's generally a good idea. I know it's like, okay, how much am I going to have to pay this lawyer, \$500 to review ... Let's say if it's a tiny project, \$1000 contract? Well, that doesn't seem like it's worth it, but it's like, okay, no, actually this project is \$20,000, and so..and it's massive, it's going to take up hundreds of hours of my time. And the contract that they're presenting me is very vague, or it's just very dense. I don't quite understand. Or I need some clarification, make sure my interests are protected. Maybe it's a good idea to go consult a lawyer about that.

Sarah Taylor: Yeah, and I think that's something I know for myself.. I haven't done that, but I've signed some really giant projects, and because I think often we're like, well,

we're just our own person. We're freelancing. Where's the money coming from? But in the long run, we could really maybe get more out of it, maybe there's something that we're not thinking about, like charging for our kit or something, right? Things that maybe a lawyer could be like, "Hey, have you thought about this or thought about that?" If somebody is... So if a freelancer is looking for a person that can review smaller deal memos or contracts, and smaller as in smaller because we're not going to be getting million dollar contracts or something like that, what should they look for in finding somebody to do that?

Greg Pang: I'd say... The main thing is, especially in this industry, is that they have the lawyer has at least some experience in this industry in dealing with those kinds of contracts. Yeah, I think that's the main thing that, if I were in your place, that I would look for. It's like, do you have experience in this? Maybe not this exact picture editor services contract, but you have experience in negotiating or preparing or reviewing contracts for film and television for service providers in this field. Because there are a lot of little peculiarities of the industry that someone who perhaps works in construction, like construction law, might not be familiar with on the entertainment side. Or is likely not familiar, unless they've otherwise studied it or something like that.

Sarah Taylor: Yeah. Is it common? I know in Edmonton there's two I can think of, lawyers that everybody uses.

Greg Pang: I think I know three or four actually, yeah.

Sarah Taylor: So I'm sure in major cities like Toronto and Vancouver, it's probably more common to find a lawyer that specializes in entertainment. But, yeah, in the smaller jurisdictions, is it common to find somebody that can do that? Or, on top of that, if, say, somebody in a smaller place doesn't know anybody, can they reach out to anybody in Canada to do that kind of work?

Greg Pang: I've heard... I don't know I can say it as a blanket statement, but I've heard it is harder to find an entertainment lawyer in Alberta who practices in Alberta, but we're there. I know at least two in Calgary, and three more here in Edmonton. So we're around. Actually, I think I might have the best SEO of all of them when someone searches "entertainment lawyer Alberta," so I actually pop up pretty high.

Sarah Taylor: You win! So everybody can search Greg.

Greg Pang: Yeah. So we are around. First place you're going to look is on the internet. Do that Google search or whatever, right? And if nothing pops up, I've heard before is that then they had to go to Toronto or Vancouver, which is fine. Which is fine! Absolutely fine, right? It's possible that you could be paying higher rates, but it's also possible that you can find a lawyer who will work for a much more reasonable rate rather than one of those what's called the big sister firms in

Toronto. So not that using them is bad at all, but just generally they're more expensive, right?

So I'd say the only downside to that, and it doesn't really matter a whole lot in our world of COVID right now because none of us are meeting personally anyway, right? So... before, it'd be like, oh, yeah, you have a lawyer in the area, and you can go in and sign documents and stuff like that. It's like, well, most of that is done virtually now. Not all of it, but most of it is done virtually now. And it's not that if you have an affidavit to execute or other document that needs wet signatures, then you can always go another way. It does not have to be an entertainment lawyer, right?

And just one more thing is that ... And it doesn't so much apply to freelancers, but for producers, if you're applying for the Alberta film and television tax credits, or AMF funding, then having a local lawyer in Alberta, that can be counted towards your Alberta labor, right?

Sarah Taylor: Right, yes.

Greg Pang: Yeah. So depending on the program, right?

Sarah Taylor: Which that can come into play, too, because there's post production grants in Alberta as well, so and there could be ones in other places in Canada. So if I, for a certain project, had to hire a lawyer, I could potentially get some of that money back. So, yeah, that's a really good tip to put out there. Look at getting money from the government.

Greg Pang: Exactly.

Sarah Taylor: So back to contracts. There are different types of employee versus self-employed versus corporate. I've heard the phrase "loan out," and I don't really understand all of it. If you were a freelancer, but then they hired you on as, say, an employee, what can they expect from you legally, if they've brought you on as an employee versus a self-employed person?

Greg Pang: I don't think the expectations would be necessarily different, but sometimes they might even ask you, "Hey, do you want to be an employee employed or do you want to be an independent contractor?" And I've been asked that question way, way long ago before. And there are some consequences if you choose independent contractor whereas, the facts don't lend itself to being an independent contractor, and the CRE will deem you as employed. But, anyway, we won't get into that part.

But the actual expectations don't have to be different, and there's no line between, oh, I'm an employee so I'm expected to do this and that. But there are legal differences. An employee, you are under protections, you have the protections as an employee under the employment standards code as they call it



here in Alberta, and in different provinces, they have similar types of legislation. The difference there is that you are under the code, and that the employer, they have a bunch of other obligations that kick in as an employer proper. Withholdings and stuff like that. So it's really a tax and legal difference, but in terms of your... their expectations of you, how you do your job doesn't need to be different whether you choose one or the other.

Sarah Taylor:

Okay.

Greg Pang:

Usually, as you've probably experienced, like just from project to project where you're just switching from company to company, a lot of times it might not make sense, especially if it's pretty short term, to be an employee.

Sarah Taylor:

Another thing, in a contract, can somebody ask you that you work exclusively for them, or dictate how many hours you work, or where you work?

Greg Pang:

Yeah. It's possible, and that's wording that you need to look out for. And sometimes those kinds of contracts are presented just because they believe it's boilerplate language. But it might not apply, so you have to really watch that kind of wording. Let's say if you're, for example, hired as a picture editor for this great big feature film project where you have to dump hundreds of hours in a very short amount of time to meet very demanding timelines, well, I think as the producer, I would be justified in asking Sarah or through your loan out company is that you work exclusively for me during this time. Because I'm going to demand 100% of your time, and I don't want you to be distracted by other projects, right?

Sarah Taylor:

Right.

But that is not always the case. Perhaps the majority of times you should be able to be pursuing or working on something else on the side because it's not going to take up 14 hours a day every day for the next two months for you to work on this project solely.

Sarah Taylor:

Yeah, for sure. I just ran into this on the rider part of a deal memo, and I was like, no, I can't do that. I have other things that I'm doing, and this project won't take all the time. And so I said, "Hey, can we change this?" And they were fine. They took it out. It was no big deal. But that was the first time where I almost felt like have I been not reading things properly for awhile? It felt like the first time I'd seen that in a rider scenario, but definitely something that was a reminder, we really need to make sure that we read what is in these documents. And if something doesn't make sense, to ask the question.

Greg Pang:

Yeah, exactly. And for most of the time when I would prepare contracts, and usually on the producer side, for independent contractors, then the wording would go something like that you can work non-exclusively, meaning that you can take on other contracts, at the same time so long as none of that other stuff

... And this is not exact wording, of course ... Doesn't materially interfere with your obligations under this contract. And I think that's fair for most independent contractor situations.

Sarah Taylor: This brings up the idea of if I'm engaged in a deal memo or a contract, that's Sarah Taylor the freelancer, what are the rules if I decided I wanted to subcontract some of that work to somebody else?

Greg Pang: That depends on what your contract states, right? So, sometimes, let's say, if I am contracting Sarah Taylor or through your loan out company, saying that I'm contracting with you, I'm hiring you, Sarah, or engaging you because I know your work and I want you to work on this. I don't want anyone else to work on this, right? So you will personally deliver these services, and that would be the general phrase if you're contracting through your loan out company.

Sarah Taylor: Right. So it would be like... So in the contract, it should say the person. Now, if it didn't say the person, then you legally could do ... Like, you wouldn't get in trouble, quote on quote.

Greg Pang: Well, yeah, you'd have to look at the rest of the contract. So, generally, in that loan out situation, and if the listeners aren't familiar, loan out, it's just like if you have a corporation that you're running your services through, right? And I'm not sure if you have one, Sarah, but let's just say, for example, Sarah Taylor Services Corporation or something like that. And that could be done for tax purposes or whatever, right?

Sarah Taylor: That's actually one of my questions coming up.

Greg Pang: Okay. Yeah, and a lot of times in those loan out deal memos or contracts, it will say that the corporation shall loan out Sarah Taylor, in this example, to personally render these services on behalf of the corporation. So words to that effect. And if that's the case, then if you subcontract, then it could be theoretically a breach of the contract, right? But if it doesn't specify, and this is sometimes the case where, let's say, in another scenario you have Taylor Editing Enterprises Inc. or something like that, and you have three or four different staff, and a couple of different picture editors, and other people working for your post production services, well, in that kind of case, then they would be contracting with the company, and I think that would be a different scenario because they might not be saying that, yeah, Sarah Taylor has to do this all personally by herself, but we're contracting this company because the company has the resources and staff to give us this full suite of post production services.

And so in that case, one of the questions I ask when I'm asked to prepare or review these things is I say, "Okay, so producer, is there someone in particular at this post production house that you want working on this?" And a lot of times, a post production house might be like, "We need the flexibility to assign different people to this because we can say that this person works on this aspect of

editing and this one works another aspect. We have to be free to swap people in and out because we have a ton of projects going on the go, and we are promising a standard of product at the end, but we have to have that flexibility to be able to assign different staff to your project."

Sarah Taylor: Yeah. So that totally makes sense, yeah.

Now, you touched on incorporation, and I'm a sole proprietor. So I know the difference and I know the benefits of being incorporated for tax purposes and stuff like that, but when should a freelance editor think about incorporating? And is it necessary as a one person show?

Greg Pang: I don't think it's necessary but like as a general rule, but it could be a good idea. One of the big considerations is what you already mentioned is for tax purposes, right? If your income is above a certain amount, then your accountant will say, "Even though incorporating has costs and maintaining incorporation, accounting fees and legally maintaining it adds to your costs year to year, but the tax efficiencies, the tax benefits ... How I'm going to set this up and how you're going to pay yourself through dividends or whatever, maybe issue shares to your spouse or whatever, then it could outweigh by far depending on your income amount, income level, the cost of incorporating and maintaining a corporation." So that's the main for this kind of scenario, I think that should be the main consideration.

The other one is also ... It could be liability, right? But a lot of that could be mitigated through insurance. So if you have insurance, you're insured anyway. And I don't think this kind of ... At least just off the top of my head, it's not one of those high risk, personal services type of areas where you'd be like, "Oh, god, I have to really protect my assets and incorporate to have that separation from the limited liability setup that a corporation provides." So that could be a consideration anyway, and I'd have to evaluate it on a case by case basis with the client and say, "Okay, so what are your concerns here," right? It's like, "Oh, you're editing this one project where the subject matter is super risky, and I am super paranoid about this. Yes, I'm insured, and the contract provides for indemnifications to protect me, but I'm still concerned because I have a lot of personal assets, and I'm concerned about liability because this is a super taboo, risky, or whatever subject matter that I don't want to get sued for just for participating."

And that would be really weird to actually sue the picture editor for editing, so that would be really strange, but stranger things have happened.

Sarah Taylor: You never know, I guess. It leads me to the next question is liability. We do do a lot of sourcing of stock footage, music library stuff. If I purchase something through my business account for a project that's for a producer that a producer has commissioned me to do the editing for ... A series, say. And ultimately I am being reimbursed for what I paid for, would I still be the person held liable if

something was to go wrong or that stock footage was used incorrectly from the license? And how can we protect ourselves if that is the case?

Greg Pang: Oh. That's a really good question because that brings up a lot of issues. And a couple of those issues we discussed on our last recording for our podcast.

Sarah Taylor: So we should listen to the episode. But who knows...

Greg Pang: But one of them is that... you have to make sure that whatever license you have allows you to assign or transfer those works in the first place to your.. to the producer or to your employer. And some stock licensor EULAs, end user license agreements, or standard license terms do allow that to happen. But some, they don't. Some, it's like outright, no transfers. But some of them say, "So long as they're your employer or your client," I think that's the wording, I forget, it might've been in Getty or maybe Pond5 that you can transfer this to that other entity or person.

So you have to be very careful on that front there. Yeah, if you are the one who licensed it, and then to your second question about liability, I think it's possible that you could be liable if you're the one who licensed it and then flipped it over to the producer and they used it improperly or something like that, right? Yeah, or something like that, or they didn't follow the rules of the licensing terms for attribution and perhaps other terms of the license. So it's possible. It's definitely possible.

I'd say, that.. the best course of action, and this might raise some questions from the producer, is that, okay, I found all through my subscription with Getty, but, just for example, to be safe, I'll provide you with all the codes, but you have to license it yourself and then I will use all these," right? I know that sounds very cumbersome because it's like, okay, then they have to download it, and they have to-

Sarah Taylor: And then often people will have a login. The producers can login to their account provided to you. I've done that before, too, but sometimes there is this ease. I subscribe to a certain music library, so I just download the things, but it's through me and not through the person that I'm making something for.

Another thing I thought about ... So say we're licensing some footage from Pond5, as an example, and there's different licensing. Maybe we'll have to listen to your podcast, but there's different licensing levels where it's like, oh, if it's a company of five people, then that's fine. But if you're creating something, say, for a major network, is it still the company that's creating it as the five employees, or would that be considered the major corporation that is broadcasting the thing you're creating?

Greg Pang: Yeah, I think so. I think you really have to go back to who is the end user and about the transferability, again, right? So if that level of license only allows for a..

certain use but not transferring to that entity, it doesn't matter if a corporation or whatnot, right? So look to the transferability. If it's under my subscription, can my employer or the production company that engaged me, can I flip this over to them legally under the terms of license for my license level under my subscription? And, unfortunately, it'll take a little bit of reading into this. Like, okay, can I do this?

I think the safest way again is what you mentioned before, is that just have the, use the producer's account or have the producer or the end user get it themselves even though you're the one using your subscription to pick them. But then say, "Hey, these are the ones I'm picking. You go get them for me. Or give me your login and I'll grab them."

Sarah Taylor: Okay. That's good. That's a very good tip. I will make sure I do that in the future.

Now, what do we do if we don't get paid? What is our recourse as somebody that, yeah, we had signed a deal memo, and then we didn't get paid?

Greg Pang: So in the union context, let's say DDC. If you're a DDC member, then you have recourse under the IPA, the Independent Producers Agreement or production agreement. But outside of that, then, unfortunately, it's like any commercial contract dispute. Then you're demanding them, and then maybe a lawyer letter, and if they still don't reply, then your options are you could sue them in provincial court, which is our small claims court here in Alberta, and the limit is \$50,000. So if the amount owing outstanding is under that threshold, then it's a relatively friendly court if you wanted to just try to do it yourself as a self-represented litigant. I don't normally recommend, but it's possible. It's possible, right?

Or it's one of those things that, and I don't vouch for this, but some people just sell their debt to collections because they don't want to deal with all the legal proceedings or something like that. They know that they're going to get a cut of what they collect, but then you have this collection agency hounding whoever owes you money. So that's possible, too. Again, I don't necessarily recommend that you do that, but, yeah, like I said, unfortunately, then we fall into the realm of a commercial contract dispute. And it could get ugly.

Sarah Taylor: Yeah. I never even thought about the idea of a lawyer draft a letter. Being like, "Hey, pay." Because that could scare people, I would think.

Greg Pang: It could, yeah. And especially since they know, yeah, for the reason that you've lawyered up, as they say, right? "I'm not going to dick around with this. You're talking to my lawyer now." And then they might either be, "Okay, fine. We'll pay you," or they'll lawyer up, and then maybe there could be some cooler heads. Not that your head isn't cool, but it's one of those things that ...

Sarah Taylor: Yeah. It might not be. I might be upset.

Greg Pang: Yeah, you could be extremely pissed off, right? So if you remove the emotions on both sides from it, then sometimes the lawyers could work things out. Yeah, and if not, then it could escalate to a claim and litigation.

Sarah Taylor: If somebody...If a producer has been through that where somebody has taken them to court for not being paid, is that public information? Can somebody search people's past, I don't know, sues? I don't know if that's the right term.

Greg Pang: Yeah. You can do court searches, and I order my court searches through a corporate registry. You can also search written decisions, and written decisions are fairly publicly accessible through a very good website, not-for-profit organization called canlii.org, C-A-N-L-I-I dot-org. Fantastic, searching written decisions all over Canada.

Sarah Taylor: And what's a written decision?

Greg Pang: Oh, it's a decision of a judge that they would, after hearing whatever the matter is, then they would render written decision, and then it's entered into ... Well, it's public record anyway, but it eventually makes its way to Canlii, and then you can see it.

But the problem is that a lot of times the parties settle. Most of the time, the parties settle, and then there's no written decision. So by any means, if you're looking for someone who has been sued, Canlii is by no means the all encompassing search for that. It only gives you written decisions. And a lot of decisions as well are not written, the term is "rendered from the bench." Rendered orally by the judge or master, and they're not in writing.

Sarah Taylor: Wow. That's really cool. Do you have any quick tips on types of language we should look for, or areas of a contract or deal memo that we should watch out for?

Greg Pang: Beyond what we talked about, the terms and the scope of your engagement, when you get paid, and what triggers payment, and when, when I read contracts, I read everything front to back, right? So I say concentrate on the basics, and if you need help with, say, something that looks very legalese-y, like representations and warranties, or some really convoluted force majeure provision or something like that, where they can suspend your services without paying you because of a spike in the coronavirus or something like that, right? So those are things that might take a lawyer to help you work through the language there and what the risk is to you.

So I'd say if there's something that's not clear, you don't understand, ask for clarification. And if they can't even clarify it for you, then definitely consider retaining a lawyer and saying, "Hey, I need you to have a look at this. I'm really concerned about what is my risk here under these paragraphs."

Sarah Taylor: Bringing up COVID, I have a question of what should we have in place if like... So we sign a deal memo, whatever. We're good to go, we feel great. Then something happens and we get sick. Obviously, a lot of people have health benefits and health insurance and all that kind of stuff, but as a contractor, if I am now sick and I can't finish the job, what am I liable for, I guess, in those cases? And should I be putting something in my deal memo? Having some sort of rule in place, or even just for ourselves, should we have a backup in place of, okay, if something does happen to me, this is a person that maybe can take over my services? Should we think about that stuff?

Greg Pang: Yeah. I haven't been asked that question before, so I'm just trying to play out the scenario in my head. Okay, so if we have ... It doesn't have to be an editor. Let's say whatever contractor we have in production or post production and they just get sick. Well, if the contract is with that person as an individual, we'll just exercise our right of terminating that person, right? Unless they're subject to the collective agreements obligations and stuff like that, right? And subject to employment legislation on terminating, and notice, and blah blah blah.

So! But, yeah, I'd probably advise exercising a right of terminating because they can't perform their obligations under the contract. So you can terminate them as long as you give them the proper notice, and if it's a pay or play, then you might have to essentially buy out the contract, right? Again, we have to look at, okay, is this a pay or play situation because they get sick? Probably not.

Anyway. Look at what the details are and what your entitlement is as if I'm looking at the producer's side of terminating this person. On the contractor side, I don't know. Again, I haven't been asked that question before, and what can you do to protect yourself in that situation? Maybe there could be something in the contract where ... And I'm not sure if I would advise the producer to agree to it, but you can always ask is that, okay, well, I could have to go into isolation on a runny nose or something like that, and under health authorities, health services orders, I have to go, to self-isolate because of X, Y, Z ... Let's say a part of your job is ... Most of the time, I take it you could probably do most of your job at home, but sometimes you can't, right? Sometimes you have to go in. So if you can't perform, maybe there could be something built into the contract that says that, hey, you have to build in some kind of accommodation if this happens because this is just the damn world, the corona-verse, that we're living in now, right?

Sarah Taylor: Yeah. Things that I never really thought about before this current situation, but things that we have to now, right?

Greg Pang: Yeah, exactly.

Sarah Taylor: But also the bonus for being an editor who works from home, I can pretty much do everything in self isolation anyway because that's how I operate day to day.

Greg Pang: Yes, exactly. Yeah. That's it, yeah.

Sarah Taylor: Yeah. Well, this has been really great. I've learned way more than I thought I would. This is awesome. And we could probably talk for hours and hours, because I'm sure there's so many things I could ask you. But do you have any final things that you want to share with us that you think we need to know?

Greg Pang: I don't think so. I'd just like to thank you for reaching out to me. I know you by reputation, and I know your podcast, so I'm very honored to be asked to and be a guest on your podcast. So thank you very much for doing this. And check out our podcast. We hope to be releasing more episodes coming up.

Sarah Taylor: Well, thank you, and thank you for helping all of us and providing this information to the podcast and to your Legal Cut Pro podcast. I think it's so valuable to have that information. For us as contractors to know that we have some information that we can feel comfortable asking the question or going and getting a lawyer to look at it, and it's okay to do that, and that we're protecting ourselves. And I think the more we know, the more empowered we are, and the better we'll [00:44:00] feel protected, and then we can do better work because we don't have to worry about stuff. So I think that's great.

Greg Pang: Exactly. You can be sure you're legally protected, and then just concentrate on doing what you do best in your craft.

Sarah Taylor: Exactly, yes. So thank you for providing that for us, and thank you so much. This has been awesome.

Greg Pang: My pleasure.

Sarah Taylor: Thank you so much for joining us today, and a big thanks goes to Greg for taking the time to share so much with us. And a special thanks goes to Jane MacRea. The main title sound design was created by Jane Tattersall. Additional ADR recording by Andrea Rush. Original music created by Chad Blain and Sound Stripe. This episode was mixed and mastered by Tony Bao.

The CCE has been supporting Indspire, an organization that provides funding and scholarships for indigenous post secondary students. We have a permanent portal on our website at [cceditors.ca](http://cceditors.ca) or you can donate directly to [indspire.ca](http://indspire.ca). I-N-D-S-P-I-R-E dot C-A.

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Till next time, I'm your host, Sarah Taylor.



Speaker 5:

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