

## Insider Checklist: How to Cut Risks When Renting to Movie or TV Studio

As more and more movies, shows, or commercials are made on location, don't be surprised if a movie or television studio (or film production company) asks to use space in your office building or shopping center for a shoot. This can be a lucrative way for you to use vacant space for a short time—typically, a few days or weeks. But it's also risky. For example, the studio could damage your space or disrupt the other tenants in your building.

You may not be adequately protected against the risks if the studio gives you its form of license agreement or short-form lease and you sign it as is. Many provisions in the studio's form may favor the studio. Also, the form may omit many crucial and otherwise standard protections. But since the license or lease covers so little time, like most owners, you may not give the form much thought or consult with your attorney. And unless you're familiar with the movie or TV industry, you may not know what kinds of changes the form needs.

*CLLI*, with the help of Santa Monica attorney Susan Fowler McNally, has put together a list of the special risks and demands to consider before negotiating a license agreement or lease with a studio. Plus, there's a nine-point checklist of important safeguards and Model Language that you can use during your negotiations.

### Is a Studio Right for You?

Before you negotiate with a studio, consider the following:

**Disruption for your tenants.** The crew and equipment might make a lot of noise in your space, warns McNally. For instance, they might film a fight scene in which actors yell at each other and fire prop guns. The noise level may disrupt your other tenants.

**Need for extended services.** The studio may want to use the space after hours or on weekends when your building may normally be closed. So you'll have to offer extended services, such as freight elevator service and security, says McNally. While you can charge extra for the services, offering them may be too big a hassle for you.

**Damage to space.** It's not uncommon for a space or its contents to be damaged during filming, says McNally. When large equipment is moved around, which is likely in this situation, things could get knocked over, ripped up, or ruined. If you have expensive fixtures or other objects in your space, you may not want to take the chance that they'll be damaged.

### NINE-POINT CHECKLIST OF SAFEGUARDS

If you decide to sign a license agreement or lease with a studio, use the following checklist of safeguards to help you negotiate. The checklist and the Model Language with it assume that you'll sign a license agreement, so they refer to the studio as "licensee" and to you as "licensor." But you can easily adapt the Model Language to a lease. And see the box at right to help you decide whether you're better off signing a license agreement or a lease.

#### Make License 'Personal'

Make the license agreement "personal" to the studio that's named in it as the licensee and that signs it. You don't want the studio to transfer its rights, by assignment or sublease, to anyone, says McNally. But the studio will demand the ability to assign the rights to use the film, photography, and sound recordings made in the space (called the "License Area") to the distributor of the movie, television show, or commercial that's filmed at the space, she says. That's not unreasonable, as long as the distributor follows the terms of the license agreement, she adds. To do this, use the following language:

#### **Model Language**

Licensee hereby agrees that the License to use the License Area is personal to Licensee and is not transferable; provided, however, that Licensee may assign the rights to the use of the film, photography, and sound recordings made in the License Area to the distributor of the still photography, television show, film/motion picture, or commercial shot at the License Area in accordance with the terms of this Agreement, provided that such distributor assumes

all of the obligations set forth in Clauses [insert # of each clause that discusses obligations that will survive the end of filming in the License Area].

**PRACTICAL POINTER:** You may also want to restrict the studio's use of the space to a specific project—for example, to one TV commercial or certain preapproved movie scenes, says McNally.

### Require Licensee to Get Permits and Approvals

Since the studio will be using and installing equipment in the space, you'll want to ensure that it gets all the necessary permits, variances, or approvals, says McNally. Make the studio responsible for getting them, she advises. Require it to give you copies of all of its permits. To do this, use the following language:

#### Model Language

- a. Licensee shall install all equipment at the sole cost, expense, and risk of Licensee, and shall do so in a good, workmanlike manner and in compliance with all federal, state, and local building, zoning, electric, and safety codes, ordinances, standards, regulations, laws, and requirements.
- b. Licensee, at its sole cost and expense, shall obtain all necessary governmental permits, licenses, or approvals for use of the License Area or the installation or operation of any equipment in or about the License Area prior to the Commencement Date.
- c. Licensee shall deliver true and complete copies thereof to Licensors prior to commencing any installations.

### Set Fees Studio Must Pay for Space

Set the amount of the license fee that the studio will pay you for the use of your space, says McNally. She recommends determining this fee on a per diem basis. You may want to charge a higher per diem fee for filming days than for preparation days, she suggests. Be sure to include the daily cost of all your expenses—such as a site coordinator or property manager, freight elevators, security, cleaning service, parking, a Dumpster fee, and any extended services that you've agreed to provide. You'll spell all this out on an exhibit to the license agreement.

**PRACTICAL POINTER:** Designate a site coordinator or property manager to help supervise the activities in the space and get an adequate security deposit. These precautions should reduce the risk of damage to your space, McNally explains.

### Set Self-Insurance Requirements

A studio often demands the right to self-insure. This is common in the industry, says McNally. So get its financial information—for example, the amount of its net worth and self-insurance program's reserve amount—so that you

can see if enough money has been set aside to pay claims, she advises. You'll also want to see what its current "liability exposure" is—that is, how much of its potential liability under its existing contracts is covered by its self-insurance program's reserve amount, she says.

Then, to protect yourself, set a minimum net worth in the license agreement for the studio to self-insure. McNally suggests that the studio's net worth be higher than \$50 million, otherwise it might have difficulty paying claims. If you're not satisfied with the studio's numbers, she says, you may want to pass on the deal or make it get insurance from a third party.

Also, make sure that the studio's self-insurance program doesn't reduce the rights that you would have had if the studio had bought outside insurance—such as your rights as an additional insured—or your rights under any other provision of the license agreement, says McNally. And you don't want the studio's self-insurance program to limit your insurer's rights or to invalidate the waiver of subrogation clause in the license agreement, which prevents the studio from suing you to get reimbursed for an incident that's covered by the self-insurance. (For additional information on self-insurance, see "Plugging Loopholes: Faulty Self-Insurance Program Can Lead to Trouble," *CLLI*, June 1999, p. 7.)

#### Model Language

Provided that Licensee has, and continues to have, a net worth in excess of \$[insert #, e.g., 100,000,000] as evidenced by audited financial statements, Licensee shall have the right to satisfy its insurance requirements as set forth in Clause [insert # of insurance clause] of this Agreement in the form of a "self-insurance" program acceptable to Licensors. This Clause shall in no way limit or diminish the rights that Licensors would have had as an additional insured under any insurance policy, or the rights it has under any other provision of this Agreement to receive

### License Agreement or Lease?

You'll have to decide if you want to sign a license agreement or a lease for the space. Which is better?

If the studio wants to use your space for one month or less, consider using a license agreement, rather than a lease, says Santa Monica attorney Susan Fowler McNally. With a license agreement, you're called the "licensor" and the studio is referred to as the "licensee," not the "tenant." Because a licensee, in theory at least, doesn't have the interest in the property that a tenant would have, you can terminate the agreement almost immediately. With a lease, you would have to go through a lengthy and expensive eviction process.

But if a license agreement looks too much like a lease and the studio argues that it is a lease, a court may interpret it as a lease, and you'll lose your quick termination right. Also, McNally notes that if the shoot will last much longer than one month, the studio will likely want the protection of a lease and require that you sign one.

from Licensee an amount equal to all or any portion of any insurance policy proceeds that would have been payable to Licensor or Licensee under any required policy of insurance that was not maintained by Licensee as a result of such self-insurance program. Furthermore, this Clause shall in no way limit or diminish the waiver of subrogation rights and obligations as provided for in Clause [insert # of waiver of subrogation clause] of this Agreement, or the rights that Licensor's insurance carriers would have had under "other insurance" or similar clauses in Licensor's insurance policies if Licensee had not satisfied its insurance requirements with said self-insurance program.

### □ Say Who's Responsible for Utility Services

The studio's form license agreement won't say how it will get or pay for electricity and telephone service. That could mean it expects you to handle these responsibilities. Make sure that you spell out in the license agreement who's responsible for obtaining/providing utility services and, if you are providing them, how you'll be reimbursed.

### □ Get Right to Bar Use of Your Name, Signs in Trailers, Ads, and Promos

Give yourself the right to refuse to allow the studio to show your name, signs, or any other objects that identify your building in any trailer, ad, or promotional spot, says McNally. If your name or building is presented in an advertisement in a negative manner and taken out of context, there's a risk that it may dissuade a potential tenant who sees it from renting space in your building. For example, if a movie trailer shows someone being attacked in a building that's identifiably yours, a potential tenant may think that your building is unsafe—even though the movie is fiction.

#### Model Language

Licensee shall not use:

- a. the name of:
  - (i) Building;
  - (ii) Licensor; or
  - (iii) any of Licensor's affiliates or subsidiaries; or
- b. any photograph, film, drawing, or other depiction or representation of the Building or any part thereof, which contains signage or distinctive architectural characteristics that cause the scene photographed, filmed, drawn, depicted, or represented to be identifiable as being the Building in any publicity, promotion, trailer, press release, advertising, printed, or display materials without Licensor's prior written consent.

**PRACTICAL POINTER:** How can you stop the studio from violating this ban on showing your name or building in ads or trailers without your consent? Unfortunately, most studios will demand that you give up your right to ask a court to block them from showing an ad or trailer, says McNally. The next best thing is to require the studio

to pay you a penalty, in the form of liquidated damages, that is high enough to deter the studio from violating the ban, she adds.

### □ Use Short Cure Period

If the studio violates the license agreement, you'll want to take action quickly. Require the studio to cure—that is, correct—a violation within a few hours, or else it will be in default of the license agreement.

#### Model Language

Prior to exercising any remedies available pursuant to this Agreement or otherwise, Licensee shall be given notice of any default hereunder (which, for the purposes of this Paragraph, may be given orally), and accorded at least [insert #, e.g., 2] hours to cure any such default.

**PRACTICAL POINTER:** The studio may demand that, if the violation can't be cured within the short cure period, it should get more time. If you agree to this, require it to start correcting the violation within the cure period, proceed diligently, and finish within, say, 24 hours, advises McNally.

### □ Control Retakes and Reentry

A studio may demand the right to reenter the space to reshoot a scene after the principal photography has ended at your space, says McNally. You'll probably have to agree to this, since refusing could be a deal-breaker. But limit when it can reenter the space. Say that it can use the space only if:

- the studio reenters within a short time, say, no more than six months, after principal photography—that is, the original shoot—in the space is completed;
- the space is available; and
- the studio pays an additional license fee, based on the fee schedule.

#### Model Language

In the event Licensee desires to photograph or film retakes or other scenes at any time within [insert #, e.g., 6] months after completion of principal photography at the License Area, Licensee may, subject to availability with respect to prior contractual commitments, reenter upon and use the License Area only for such period as may be reasonably necessary therefor, and in such event the License Fee set forth in Exhibit [insert #] hereto shall apply.

### □ Check for Missing Clauses

Make sure that the license agreement contains these basic clauses:

**Indemnity agreement.** Make the studio reimburse you for, and defend you against, any claim arising from the installation, operation, and/or removal of all equipment by the studio or the use or occupancy of the site by the studio. Also, add that it's responsible if one of its employees or guests is injured or killed while on the site.

**Compliance with all laws.** The studio's form of license agreement may make it comply with laws affecting the space that stem from its possession and use of the space. But it may not make it comply with any laws affecting the common areas that may be triggered by its installation or use of equipment. Make sure that the license agreement says that the studio should bear this responsibility also.

**Exculpatory clause.** Limit your liability to the studio to the extent of your interest in the building, not your other holdings.

**Surrender of license agreement or lease.** Require the studio to return the space in the same condition as it was when you allowed the studio use of it and double the per diem license fee for each day the studio holds over.

**No representation of adequate utilities.** Be clear that you're not promising the studio that either the utilities in

the building or the building's structural elements are adequate for its use.

**Subordination obligation.** Require the studio to subordinate—that is, accept lower priority to— any existing and future loan or ground lease. Otherwise, your agreement with the studio could cause problems with your lender or affect your ability to get a loan.

**Estoppel certificate.** If the license agreement lasts more than a few weeks, make the studio agree to sign an estoppel certificate for you or for a prospective lender or buyer. A lender or buyer may require this certificate to prevent future lawsuits by the licensor over the license and its provisions. ▲

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#### CLLI SOURCE

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