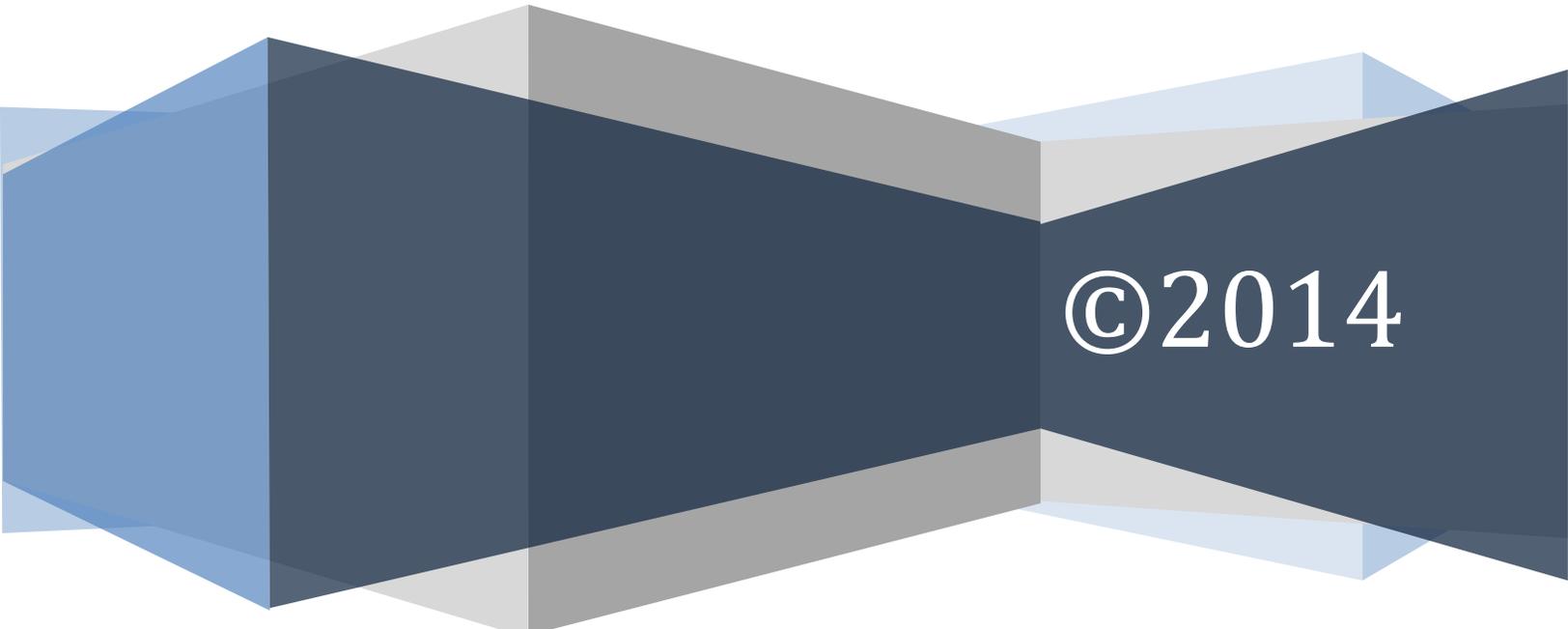


6 THINGS YOU MUST DO BEFORE SPENDING YOUR MONEY ON A MUSIC VIDEO

BY BARRY CHASE



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About the Author:

Barry Chase, the author of this ebook, is the Senior Partner at ChaseLawyers, an entertainment, sports and media law firm with offices in Miami and New York City.

Mr. Chase is an honors graduate of **Yale College** and **Harvard Law School**. While at Yale, he was elected to Phi Beta Kappa, the pre-eminent collegiate Honor Society, and was listed as a Ranking Scholar during the majority of his eight semesters before graduating magna cum laude. At Harvard, Mr. Chase graduated with honors, earning his JD degree cum laude.

Mr. Chase began his legal career with a large Washington, D.C. law firm, focusing his practice on Communications and First Amendment law. During this time, Mr. Chase represented such media giants as CBS, the Times-Mirror Company, Capital Cities Communications and Time, Inc., regarding Federal Communications Commission (FCC) matters. In connection with his First Amendment work, Mr. Chase represented journalists who came under fire during the famous Watergate litigation before Judge John Sirica. He also represented journalists in the course of the criminal proceedings leading to the historic resignation from office of Vice President Spiro Agnew.

Mr. Chase was then appointed Associate General Counsel of the Public Broadcasting Service (PBS) Television Network. In that capacity, he dealt with national and international television program and music rights, on-air legal issues relating to the Fairness Doctrine, Equal Time and defamation, and program funding. After two years in the PBS Counsel's Office, he became Director of PBS's News and Public Affairs Programming and later became the top national PBS programming executive (Vice President for Programming). During this period, he was PBS's point-man in charge of such projects as EYES ON THE PRIZE, NATIONAL GEOGRAPHIC, FRONTLINE, THE NEWSHOUR, Carl Sagan's COSMOS series, NOVA, and the CIVIL WAR series. He later re-located to South Florida, becoming the Senior Vice-President of National Production for South Florida's PBS affiliate.

After his high-level hands-on experience in the world of television and film production, Mr. Chase returned to the practice of entertainment law in Miami and New York. He represents Spanish- and English-language musical artists; television stars; composers; record companies; filmmakers; actors; models; authors; screenwriters; live performers; visual artists; and Internet and New Media entrepreneurs. He lectures regularly on the representation of media personalities and the legal "do's and don'ts" of music, television and film production.

Introduction:

For artists seeking to make a name for themselves in the music business, the production and posting of a music video has become more important than ever. Through distribution of your music video online – on YouTube and other social media sites – you maximize your chances of increasing your (1) page views, (2) fan-base and (3) record sales. And these three measures will determine if your DIY (“Do It Yourself”) efforts and your appeal to record companies will succeed. If you don’t “score” on at least two of these three metrics, you will have a difficult time lifting yourself out of the sad category of “unsigned artists” seeking fame and fortune.

But making a quality music video is complicated and expensive; and there are large numbers of *poseurs* (French word for “phonies”) out there who will take your money but fail to deliver a video that will help your career. So how do you maximize your chances of finding the right producer and protecting yourself against wasting 4-figure money (at least) on something you can’t use?

There are six things you need to do.

1. Develop Your Own Concept About What Your Video Should Say About You

While you are not a video producer yourself, you are (or should be) the World's Greatest Expert on how you want to be perceived by your present and future fan-base. Do you want a tough-guy persona? Are you a pretty little thing who wants to come off as a baby-doll pop princess? Are you folksy? Do you want to play to your Latin roots? Whatever your answers may be, you need to start off with a concept that feels comfortable to you. To do this, it's useful to have a friend or two who loves you enough to steer you in the right direction about who you really are. If you're a gentle, smallish person, it's probably a mistake (unless you're Joe Pesci) to play the role of a roughhouse trying to make an intimidating video impression. If your songs are tough, it's okay to play tough even if you're female (like Lady Gaga). If your music is in-your-face, your video should be, and you should probably be thinking in terms of rough-looking urban locations rather than genteel hotel lobbies as backdrops for your video.

The important things are (1) get an honest handle on how you come across; and (2) decide on what kind of style you're looking for – is it going to be quick-cut close-up video or wide-angle, ethereal cornfield-type scenery? The more you can tie this down – and write it down – on your own, the less likely you are to be led astray by the video producer (who, after all, has never met you and may only have a few minutes to consider how best to present you and your music). And you should be serious about writing this down, so that you can present it to the producer as something you have already decided on unless she can give you a good reason to change your going-in concept.

2. Research Local Audiovisual Production

Companies

When you watch something on television or at the movies, what you see may look easy to make. But just like making music, there is a difference between producing just any old video and producing one that will make you look and sound good. If you don't believe me, just take a look at the last "video" you shot with your smartphone and compare that with anything that you'd pay to see. With the proliferation of easy-to-use audiovisual equipment, there has been, naturally enough, an expansion in the number of people who call themselves "music-video producers." I just googled "Music video producers Miami" (where one of our ChaseLawyersSM offices is located), and came up, of course, with over a million listings. Even if 99.9% of these are repeats or not directly on-point, that still leaves 1000 listings. While you can't meaningfully research every one of these, you can see right off the bat that there are LOTS of people out there who want to produce your video and are saying that they can do so professionally. Your challenge will be to visit as many producer websites as you can and start a file of prospects, based on the professionalism of the website, the kind of music-related production they claim to have done and any samples of their work included on the site. If their website looks good, their production samples look good, and they have some track-record in your musical genre, then you want to select them for your "Short List" of, say, forty prospects – these 40 are still "in the running."

Your next step should be to "ask around." Even new artists usually have a collection of people that they've networked with and maybe even worked with – people like your demo producer, your manager, the owner of the club where you've performed, your voice coach, your backup musicians and your current or past band-mates. What you're looking to do here is NOT to run out and hire the first name that one of these sources tells you is "great," but rather to note when a particular name starts to show up multiple times. For example, if your producer and the club owner both (without prompting from you) mention XYZ Productions, you want to see whether XYZ Productions was also included on the Short List you developed from your google search. If so, XYZ should go onto your Very Short List of

prospects you want to investigate and evaluate very closely. This may sound like a lot of trouble, but the total elapsed time of your google search and your personal inquiries will probably be less than one day. Remember – the selection of a video producer can be a make-or-break moment in your career. It's worth spending a day to start off doing it right.

3. In-depth Research on Your Very Short List

Let's assume there are 14 names of production companies that make it onto your Very Short List.

Fourteen is the kind of manageable number that will let you

- (1) make longer and more thorough visits to their websites;
- (2) make phone calls to each to see how professionally they do simple things like answer the phone, make timely call-backs, answer your questions about how they work and how much they cost, and provide URLs for their previous music-videos so that you can see their work. You should also ask them for a sample of their form contract. If they don't have one or, even worse, if they ridicule the whole idea of a written contract, you should run the other way and cross them off your Very Short List. If they do have a form contract, you should evaluate what they send you and see if it looks to you as if it is professionally done (including whether it's a well-organized document – if they can't deliver a decent-looking document, will they deliver a decent-looking video?), whether the contract is full of spelling and grammatical errors, whether the name they use on the contract is actually registered as a company in your state (go to your state's "Secretary of State" website and do a "business search"). If all that looks good to you, save their sample contract for possible review by your attorney. If not, cross them off your Very Short List;
- (3) actually contact the performers whose videos they say they have produced and ask about what it was like to work with them – were they punctual? Did they provide a director who made the artist feel comfortable in front of the camera and help the artist look and move as if they've done a hundred previous videos rather than behave like a first-timer? Did they have the

production day organized so that it moved smoothly from one location to another? Did they provide on-camera backup performers who seemed professional and were good to work with? You need to do this for each of the 14 prospects on your Very Short List (patience!). Again, you may spend a week doing this, but you will help avoid months or years of a stalled-out career if you do this right. At the end of this process, you may have five or six producers on your Final List.

NOW is the time for you to inquire about pricing and what you'll get for the price you'll pay. So you need to ask for comparable productions. For example, a video that moves through five different locations will be more expensive (and usually more interesting) than one that is fully shot in a studio or one club. What you're looking for here is some guidance on what the range of costs should be for roughly equal "production values" -- things like the number and variety of locations, special effects, number of backup dancers/performers, etc. After all, you're not an expert on the pricing of audiovisual production, and the stories and urban legends you hear should never be trusted.

So let's say that, among the five producers on your Final List, you have a range of \$3,000 - \$8,000 for them to produce your video. Unless you have a good reason not to do so, you are usually well advised to eliminate both the highest and lowest proposal. On the one hand, you probably do not want the "cheapest shop in town," because there is usually some truth to the old saying "You get what you pay for." On the other hand, your funds are limited. So if, let's say, three of the five prices cluster around the \$5,000 mark, that is likely to be a reasonable price. And you have now boiled the original thousand candidates down to three.

4. Commit the Producer to Producing YOUR

Concept

Recall that you started this process by defining how you want to come across as a musical artist. In doing so, you will have created a unique concept that best fits you. So you want to be certain that the producers you now have on your Final List understand your concept and are able to envision it creatively in a production. Recall also that you're well advised to write your concept down, even though it is subject to change as your own attitudes change and you receive input from others, including the producers on your Final List. It may be tricky to reach a sense of comfort about each producer's ability to work with your concept, but here's what you should be looking for as you discuss it with each of your Final List names:

- (1) Are they listening, or are they just humoring you with a sort of "Sure, yes, we'll do all that" approach? Are you getting the idea that, once they have your money, they won't even be pretending to be listening? Are they treating you like a dumb blonde?
- (2) Are they understanding your concept well enough so that, as you talk to them, they begin ADDING to it and improving upon what you came up with?
- (3) Do they sincerely like your music? Your look?
- (4) Do they have professional pride in what they're doing, or are they just making a sale?

While there may be no way to measure the results precisely, you will emerge from your detailed conversations with the Final List candidates with at least an overall idea of which companies will be able to run with your concept and maybe even improve upon it.

5. Have Your Attorney Review and Advise You About The Three Contracts

I know, I know, “Do I really have to spend some of my precious early money on a lawyer who’s already a lot richer than I am?” If you’re serious about music as a career and not just as a hobby, the answer is “yes.” Since making money on your music is all about what is called “intellectual property”, and since someone on your side needs to understand how to create, protect and make money on your intellectual property, the answer is “yes.” The only excuse for not having a lawyer at this point is that you – and everyone that you can borrow from – is flat broke, and, even then, the best approach would be to delay production of the music video until you can save up the \$1000 or so that an entertainment lawyer will charge you for reviewing and revising these three contracts.

Here are some of the reasons why:

- While the sample contracts from your three Final List candidates may look okay to you, your lawyer will be better equipped to evaluate how professional they really are. If one or more of them is a cut-and-paste job assembled from online legal forms, or is internally contradictory or one-sided, then your lawyer will tell you and you should factor that into your choice-making. Again, if a production company cannot afford – or doesn’t understand the need for -- a decent lawyer on their end, how professional will it be in making a first-class video for you? Making a film, like making music, requires a certain amount of copyright guidance from a lawyer. If one or more of your Final List producers doesn’t know that (or, worse, knows it but wants to cut corners), that’s a bad sign.
- There must be specific “Work-for-Hire” language in your contract with the video producer assuring that the copyright in the video belongs to YOU, not to the producer. Without this language, the way the copyright law works will make the producer, not you, the copyright owner. You don’t want that, because you want to control exactly how and where the video is used to boost your career. So you must own it – which means that you must own the copyright in it.

- You will want a step-by-step payment schedule from you to the producer, not an upfront payment of 50% or 100% before you have seen anything that you can evaluate. Say, five payments of \$1,000 each, triggered by specific stages of production and approval of each stage by you.
- You need an early-termination right so that if, say, you are NOT happy with the producer's attitude or the director's style early in your video experience, you can fire them without losing anything more than your \$1,000 first payment.
- You will want a confidentiality clause, so that you need not worry about the producer's people blabbing all over town about what a jerk/tyrant/lousy dancer you were during the taping.

All of these matters, and more, should be handled by your entertainment attorney in her review and revision of the contract on your behalf. "Playing attorney" by yourself is like playing doctor by yourself – you may save (or think you're saving) some money now, but you're setting up to have nightmare-level trouble for months and years down the road, maybe even in court (Ouch).

6. Prepare Yourself

One of the things about video production that is immediately apparent is that it can be hard work. You may need to be ready for many, many "takes" of one or more of the scenes you'll be producing. You'll be "waiting around" for more time than you think you should so that the lighting, sound and setup can be done properly for each shot. Because your attorney has inserted early-termination rights in your contract, you also want to be aware whether the production staff seems well-prepared and organized, or whether the atmosphere on the set is a crisis-a-minute. If you're unhappy with what you see, the earlier you pull the plug on the relationship the better. You must trust your instincts here. It's difficult to overcome inertia and start all over again with a new producer. It will also probably throw a wrench in scheduling the overall rollout of your work, since other steps may have to wait until the video is available. Besides, you've already made a first payment of \$1000, and you hate to waste that with nothing to show for it. All of these reasonable instincts work in favor of kidding yourself because you so

badly want to see everything succeed. But just remember one of our primary maxims at ChaseLawyers – “If it starts badly, it almost never gets better.” So be tough psychologically, and if you have made a mistake, be brave enough to cut your losses and start over with another producer.

There are also a few things you want to do on your own leading up to your production day. First, you want to take care of your voice and avoid abusing it so that you are in top vocal form that day. Avoid people with the flu in the days leading up to your production. Get a little more sleep than you usually do. Second, you want to look good. You want to be comfortable that your hair is the length and style you like, that your facial hair (if you’re a guy) is what you feel comfortable with, that the wardrobe you’ll be using is not just nice to look at from the outside but is actually comfortable for you. If you regularly work out to stay in shape and feel good about yourself, by all means stick to it so that you will feel as healthy and alive as possible on your production day. DON’T drink a lot of alcohol the night before. Save that for the party after the video is shot.

GOOD LUCK!

If you need help on your music video project, please feel free to contact me for a consultation.

Barry Chase, ESQ.