



Making a Movie but not a Living

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INTRODUCTION

Popular culture is full of stories of idealistic young filmmakers pursuing their dreams of making movies and maybe even striking it rich. *Paranormal Activity*, *Beasts of the Southern Wild*, and *Once* are all examples of this phenomenon. But these successes are only a small part of a story driven by new technology, a rapidly restructuring film and television industry, and a media-saturated culture.

This case study on independent film was motivated by mounting anecdotal evidence that young filmmakers and film craft workers are facing a number of new challenges in their efforts to create their films and sustain themselves as working artists. Concern is rising among labor advocates and academics about how to protect industry standards, largely set by the history of unionization and collective bargaining in the industry, and how to defend the rights of these early-career workers. We built this case study around the experiences of two young artists who, in addition to working in performance, also create their own films. In the course of researching this case study, we also interviewed a number of workers in both creative and technical sectors of the industry. We wanted to explore how changes in technology, the shifting profit structure of the industry, and the changing work environment for these artists were creating new challenges to maintaining industry standards.

Development of the modern independent film movement of the 1990's and 2000's was driven by the introduction of affordable digital cameras that could rival 35mm film quality, along with easy-to-use computer editing software.¹ In the years after that initial flowering, more and more 'independent films' received the financial backing of the nominally 'independent' arms of the major Hollywood production entities, which were created to foster smaller films, such as Fox Searchlight and SONY Classics. One indication of the explosive growth of independent film is that by 2015, festivals hosting independent films had grown in number to over 525 in North America alone.²

Film and television have traditionally been highly unionized industries, especially due to the skilled craft nature of the jobs there, and the hold over the work that workers established early on in their respective sectors of the industry. As film and television developed as industries, they did so alongside very powerful craft unions that protected standards of compensation, safety, and working conditions for workers in the industry. Even in the few areas of the industry where workers were not protected by union contracts, standards have been higher because of the pressure on employers to retain skilled workers.

There is growing evidence that while there is now more work than ever in entertainment, especially in film and television, this stability in labor relations may be changing. There are growing areas of the industry where, due to a number of technological and cultural changes, work is being done, new

¹ <https://www.apertus.org/independent-filmmaking-history-article> - Alban, April 4, 2013

² NY Film Academy - <https://www.nyfa.edu/student-resources/film-festivals>

projects are emerging, and creativity is bubbling to the surface, where it is met with enthusiasm and encouragement. This work often doesn't generate a lot of money for the people who create it, but it makes a lot of product that is increasingly finding an audience, rapidly becoming a primary source of the content for the proliferating platforms enabled by the Internet and digital technology.

Independent film, video game development, and reality television are three examples of where these powerful creative and entrepreneurial impulses are challenging the ability of the major entertainment unions to keep a firm enough grip on the new work, so that they can uphold and maintain decent standards and conditions, much less retain their dominant position as bargaining partners with media conglomerates.³

In this case study, we focus on two filmmakers who have no major studio financing, only what they can raise themselves, and who work on indie films created with "micro-budgets," usually significantly under \$100,000. We will cover the factors contributing to the challenges in protecting the livelihoods and conditions of workers in independent film. One key factor or finding here is that independent film is increasingly produced under such low budgets that the leverage of arts & entertainments unions to require compensation and protections that members above and below the line have come to expect, disappear. There are no easy solutions here, and these tensions are not going away. If anything, they will become more difficult to manage. Creative solutions may exist, but finding them requires that all stakeholders understand the issues and think flexibly about whether current practices are adequate.

MEET JACK AND MATTHEW

The two performer-filmmakers whose words and experiences we have used for this case study are Jack and Matthew. Their real names have not been used, and while their experiences and their quotes are absolutely authentic, we have sometimes edited them for brevity or clarity. We have omitted some details that might identify either speaker.

Jack began his career in performance as a teenager, and at the time of this writing, was 30. When he became responsible for his own rent:

I started to create things on my own, both out of fear and necessity, and then out of joy. And then I was at the right age when the Internet was becoming a viable way to show these things. I had some early success and recognized its power as a distribution platform. As I've gotten

³ Case studies were also conducted on reality TV and video game developers by the Cornell Worker Institute. Available at <http://www.ilr.cornell.edu/worker-institute/new-york-state-projects>

older, I became 'a hyphenate'⁴. I'm auditioning and performing all day long. I own several businesses – from dealing with a feature film I just shot, I did a podcast, and work on product ideas. I have my hands in a lot of money jars.

Jack is quick to point out that he has had substantial success as a performer in commercials and promos. When asked if his union (SAG-AFTRA) had been important to the trajectory of his career, he responded:

One hundred percent, but that's only because I've had success in commercials.⁵ I had 30 W-2's this year [2015]. Commercials are one of the few places people know they made a lot of money because of the union contract. Indies...not so much. I'm producing a feature... and I'm doing a [fast food] commercial to pay my bills. I'm getting money from more than one source...the union normally negotiates for better rates than you could ever get on your own. For a long time, the greatest benefit was healthcare, but Obamacare has changed that dynamic.⁶

Matthew is a writer-producer-voiceover artist, and is also a SAG-AFTRA member. He's in his mid-30's, and when he's not auditioning for or recording VO through his high-profile NY agent, Matt is focusing on his own projects. He said he tried to do a micro-budget film but found:

There was too much paperwork involved... I was given a 10-page 'preamble' to a contract the size of a telephone book. I recently completed a [non-union] feature with a budget of \$100,000, spending most of it on food and lodging, that I shot with friends out of the country and they all have a piece of it... it's like we were all on vacation. I will do a non-union movie with my friends, but I will NOT do non-union work."

He has health insurance through his union, but says all non-union people have Obamacare. He goes on:

...everyone who is my age, and vaguely intelligent... none of us believe the pension will be there when they need it, and that Social Security will be there in a modified form. It's a generational thing.

⁴ "Hyphenate" describes a person who does more than one thing in the entertainment world. For example, writer-director, performer-filmmaker, or singer-songwriter.

⁵ The commercial field is also undergoing seismic changes with the popularity of "low-production value" look, proliferation of small-budget internet ads, leading increasingly to the use of non-professional and often non-union talent.

⁶ These interviews were conducted before the current administration began moving to repeal Obamacare, so its availability may be very different now. New York is one state where the effects may be somewhat mitigated as the state steps in to prevent the most negative impacts on workers who have depended on it.

Matthew says he has a SEP IRA⁷, and believes that there is a cultural trend away from collective interests. He goes on to say:

Collective consciousness is slipping away in the ME generation. That's the society we're in now, eroded by an I/Me mentality. Self-interest is powerful. A billion selfie sticks can't be wrong.

These sentiments do seem to be as he said, "a generational thing." A millennial research study from 2015 by the Insured Retirement Institute and the Center for Generational Kinetics asked: Will Millennials Ever Be Able to Retire?

The study found that 68% of Millennials are saving or investing for retirement. However, this is a different approach from that of previous generations that commonly expected and relied upon some form of a pension to prepare for and provide income in retirement. Instead of a pension, nearly half (48%) of all Millennials in the United States have a 401(k). (p. 6)

While we are not sure whether millennials have been auto-enrolled into their 401(k) or have actively made the choice themselves, what is clear is that they do not see traditional pensions in their future.⁸

In 2014, the Pew Research Center conducted a survey, Millennials in Adulthood, whose findings corroborate Matthew's skepticism about what millennials expect from Social Security:

Fully half of Millennials (51%) say they do not believe there will be any money for them in the Social Security system by the time they are ready to retire, and an additional 39% say the system will only be able to provide them with retirement benefits at reduced levels. Just 6% expect to receive Social Security benefits at levels enjoyed by current retirees.⁹

FACTORS OF CHANGE

Cataclysmic changes are undermining the traditional standards and conditions of an industry where workers have built middle-class lives based on the strength of organized labor. Changes in technology and shifts in the culture, an emerging profit-model for independent film, and the uncertain

⁷ A Simplified Employee Pension Individual Retirement Account (SEP IRA) is a variation of the Individual Retirement Account used in the United States. SEP IRAs are adopted by business owners to provide retirement benefits for themselves and their employees.

⁸ <https://www.myirionline.org/docs/default-source/research/iri-cgk-study---millennial-retirement-research---digital.pdf?sfvrsn=2>

⁹ <http://www.pewsocialtrends.org/2014/03/07/millennials-in-adulthood/>

legal/regulatory environment are four areas worth examining, and where the experiences of Jack and Matthew are instructive.

Technology makes things faster, cheaper, easier

There is no denying that technology in both production and distribution has transformed the world of the filmmaker. Films are being made by self-taught filmmakers on consumer-grade equipment. Entry-level barriers are now so low, the work has become democratized, blurring the traditional distinctions between professional and non-professional. One longtime actor-producer said, "ALL the friends of my 9-year old son are making videos and uploading them to YouTube."

Matt describes a small, high-resolution 4K 'prosumer' digital camera that is readily available for under \$1,200. Digital multi-track audio field recording equipment is available under \$500. Final Cut Pro X is a sufficiently robust tool for modest projects without a lot of special effects. It's \$300. Free social media is available for publicity. The Cloud is available for file storage and data transfer, and Skype enables virtual collaboration. He said:

It's Roger Corman-style filming... that looks like Netflix.

As an example of where this is leading, the award-winning film *Tangerine* (directed by Sean Baker), a breakout hit at the Sundance Film Festival in 2015, used a \$35 painting pole as a mic boom and it was shot on an iPhone 5s. According to *Tangerine*'s co-director of photography, Radium Cheung, HKCS:

This film, like most movies, could have been shot on any number of cameras that could have fulfilled a similar purpose, but the filmmakers chose a format that allowed them to not only put the cameras anywhere they wanted, but also let them blend into busy city sidewalks and easily shoot inside vehicles.¹⁰

A leader among professional cinematographers offered quite a different perspective, saying:

So, there are hyphenates....who make down and dirty pieces for the Internet, but.... Someone can get trained to use a Sony 5K camera fairly quickly, and yes, it is a camera that mimics film quality, but that technology has a very different result in the hands of an experienced camera operator working with an experienced film crew.

¹⁰ <http://nofilmschool.com/2015/07/tangerine-sundance-iphone-5s-sean-baker-radium-cheung-interview> - Joe Marine, July 23, 2015

Micro-budget projects can reduce the size of the crew, e.g., eliminating or reducing the size of the lighting crew because shooting on some of these 5K cameras offers the flexibility to shoot with much lower, ambient light. He continued:

The size of crews [on larger-budget projects] has actually increased. In many cases the technology has created new classifications, e.g., Digital Imaging Technician (DIT)¹¹.

Another example of a new classification is visual effects editors (VFX editors). This work is rarely an element that is affordable with micro-budgets, and in larger projects, has created issues of organizing and conflicting jurisdiction for the applicable unions.

In a remarkable example of the convergence of technology, financial realities, and aesthetics for independent filmmakers, Matthew Jacobs, who covers film and pop-culture topics, wrote in the Huffington Post about Tangerine:

The project had secured a micro-budget through Mark and Jay Duplass' production company, which supports inexpensively made films. Baker [the director] couldn't find additional financing elsewhere, so he was left with less than half the budget of his previous feature, *Starlet*, which cost a paltry \$235,000. Knowing he wanted to pay the actors properly, he decided to substitute professional cameras [with] three iPhone 5s's. Instead of dollies, Baker rode his bike around to capture sweeping shots of the neighborhood. And to avoid costume changes, the story had to take place over one day.¹²

The transformative distribution phenomenon is streaming, enabling "TV Everywhere," or "One Screen."¹³ Content from a streaming service or a streamed TV channel can be accessed across multiple platforms, and are thus un-harnessed from the advertiser-supported structures that have underpinned the mature union contracts and stable labor relations for the arts and entertainment industry unions and workers for decades. Access to this streamed content is through a subscription (sometimes bundled with one's internet subscription), and often outside traditional cable or satellite TV contracts.

Approximately 15% of Americans are cord cutters and 9% are cord-nevers, or adults that have never subscribed to a cable or satellite program. These numbers are expected to

¹¹ <https://www.premiumbeat.com/blog/the-evolving-role-of-a-digital-imaging-technician>

(Footnote #11 continued) A Digital Imaging Technician (or DIT) works directly with the cinematographer. They are responsible for image quality control, on-set color correction, and managing a production's workflow. With the digital camera revolution, the job has seen a huge shift from on-set engineering to computer workflows.

¹² https://www.huffingtonpost.com/entry/tangerine-movie-transgender_us_559bc990e4b05d7587e22881

¹³ https://en.wikipedia.org/wiki/TV_Everywhere

increase as Gen Z begins to choose and purchase video subscriptions. Furthermore, 10% of US subscribers are 'extremely likely' to cancel within the year, up from 2% six years ago.¹⁴

'Streaming video on demand' (SVOD) has created a significant beachhead in the distribution of news and entertainment product by players from like HBO, Amazon, VICE and Netflix, as well as content produced by just about anyone, and uploaded to the likes of Vimeo, iTunes, and YouTube for individual viewing, sale, or rental. The demand for content has exploded, so the opportunities for creative product are huge. Hungry creatives hope to seize those opportunities.

The new streaming services have changed the landscape, as at once they create content and are the purveyors of content. SVOD has created an enormous shift/reduction in the payment of residuals to creative workers. The effect of this shift on A&E workers has been referred to as earning 'analog dollars vs. digital dimes.' Their incomes now come mostly from working on the original production, with little back-end compensation from traditional network re-runs.

These streaming services like Netflix, Hulu and Amazon also pose a significant challenge to the traditional studios during award season, since *Transparent*, which was created by Amazon Studios, won its first Golden Globe Award for Best TV Series, musical or comedy in 2015.¹⁵

Matthew was asked if he thought next-generation 5G technology (that is scheduled to have initial rollouts in 2019¹⁶) was going to have an impact on these trends, and he responded:

Anything that increases speed will send us faster down the slope.

A new profit model shifts risks downward onto creative workers

When technology changes how things are produced, it de-stabilizes the structures for how profit is made, and how money incentivizes certain outcomes and methods. Now small films can be made without major investment. One result has been increased market pressure on the mid-size films, which most participants in, and observers of, indie film note have all but gone away. Major studios still produce action blockbusters with major stars because these largely franchise films guarantee recouping costs and generating profits in the US and overseas markets.

Matt comments on this reality by pointing out that major studios only make a quarter of what they sell. When asked why this has happened, he replied:

¹⁴ <http://mediakix.com/2017/07/cord-cutting-statistics-video-streaming-future/#gs.ztZbld0>

¹⁵ <http://variety.com/2015/tv/awards/amazon-transparent-make-history-at-golden-globes-1201400485/>

¹⁶ <https://www.nbcnews.com/mach/tech/what-5g-next-wireless-revolution-explained-ncna855816>

What's changed? The Internet!!! Comcast, one of the biggest Internet companies in America, last quarter announced that over 50% of their customers are Internet only. Meaning they have cut the cord; they watch no cable TV or video, and they get all of their entertainment over the Internet. It's so easy to buy video content now. Also, viewership in theaters has dropped big time.

To illustrate the trend of internet distribution, Matt pointed to the movie Hits, made by actor/director David Cross (Arrested Development) which premiered at Sundance in 2014. The movie side-stepped all major distribution for the first two weeks, selling on BitTorrent Bundle file-sharing system for 'pay what you want'.¹⁷ Its costs of \$1M have reportedly been recouped. Matt says, "because it's not a structured residual deal, they [the actors] aren't getting paid, really, because that's not how he's distributing it. He's [Cross] getting all the dough." Matt goes on:

This isn't TV from cable or radio; the internet is a decimating change. This is the hand of God flooding the earth.

According to both Jack and Matt, the true small indie film has gone micro. The result of this is a risk-shifting and cost-shifting down onto the workers, as these projects can no longer support a union scale, or even a reasonable non-union scale. Both want to do the right thing by the actors and crews on their films, and they were really grappling with this conundrum. Jack reflects on how this dilemma affects his willingness to spend time and energy raising money and take a risk on a higher budget, instead of actually making the film:

At least on the film side, like music, the whole middle of the industry has fallen out. This is now so speculative, you may never make [your investment] back. It's not worth the risk. I can get the same chances on a \$16K movie... why would I make it for \$200K? I raise money for this... I take people's money.

So how are these projects being funded? As students graduate from film school with enormous student debt, they often seek out crowd-funding like Kickstarter, launched in 2009. That said, as of 2017, a filmmaker opined that 'Crowdfunding is getting over-crowded.'

Other examples of the shifting profit models for independent film appear in an article on www.thedissolve.com called The Cheapening of Independent Film. The author maintains that these practices undermine the potential financial value of indie films, using the \$12M film, One Chance, to illustrate. The release date of the 2013 film, produced and distributed by The Weinstein Company was bumped numerous times before they gave it to (the now defunct)¹⁸ Yahoo Screen for free

¹⁷ <http://www.tubefilter.com/2015/01/07/david-cross-hit-bittorrent-bundle-kickstarter>

¹⁸ <http://variety.com/2016/digital/news/yahoo-shutters-video-service-yahoo-screen-exclusive-1201671374>

streaming for 10 days. Then they moved it to theaters, where it failed to make back its investment, having been available for free, after which it went back to Yahoo Screen for undetermined sums. According to Scott Tobias at www.thedissolve.com:

The One Chance deal is just the latest, most extreme example of the ongoing migration of audiences from movie theaters to home video... indies are actively encouraging viewers to stay home, where it's cheaper (or streaming in the not-too-distant future, for free).¹⁹

Another practice that contributes to the devaluation of independent film is known as 'four-walling', a name which comes from the four walls of the movie house. Tobias goes on to explain how a film's producer will pay for theatrical exhibition for a few days, garnering its NY Times review. He argues that this practice floods the system with product that hasn't been "properly vetted, represented, and distributed." This undermines the independent theaters and the system of determining what a product is worth.

From flavorwire.com, How the Death of Mid-Budget Cinema Left a Generation of Iconic Filmmakers MIA²⁰, tells the truly sad tale of talented filmmakers such as Steven Soderburgh, David Lynch, Spike Lee and John Waters, who aren't making many films anymore. The article quotes John Waters:

I explain that I had a development deal to make Fruitcake, but the [2008] recession happened, the independent film business as I knew it fell apart, and now all the distributors and film financiers want the budgets to be under \$2 million, which I can't do anymore.

The emerging methods of monetizing this work have created a reality that falls far outside the traditional labor relations structures and practices that have evolved to represent the people doing it. Jack was acutely aware of, but negatively impressed by, the opportunities created by YouTube for indie filmmakers. He said:

It's completely non-union. Only a few people are making high-end product and getting monetized sustainably. YouTube gets 50% of anything monetized. [If you have sufficient followers on your channel-ed.], you can click a box that says, 'Enable this video to be monetized.' And YouTube places ads on your channel. Some of the bigger YT networks have been able to negotiate for their own ads. This is why so many people are leaving YouTube in droves. People don't really like it.

¹⁹ <https://thedissolve.com/features/exposition/807-the-cheapening-of-independent-film> - Scott Tobias, Nov. 3, 2014

²⁰ <http://flavorwire.com/492985/how-the-death-of-mid-budget-cinema-left-a-generation-of-iconic-filmmakers-mia> - Jason Bailey, Dec. 9, 2014

Jack explained that it's all about the 'perceived audience' that advertisers believe you can bring to them.

The threat of non-union is equally problematic for below the line workers. A cameraperson told us:

...with technology, people who had been working five, ten years... we can get undercut so quick. I'll keep repeating this because this is my main issue... you work a number of years to get your rate up to a certain level... if enough people keep saying -- oh no I'll do that for \$50 less, \$100 less -- then it starts going back down, and that has to do with unions, but it also has to do with people that aren't responsible.

In an effort to accommodate these new budget levels, almost all arts & entertainment unions covering recorded media have developed promulgated agreements, though the budget thresholds vary widely: DGA, WGAE, IATSE and SAG-AFTRA.

The DGA has an Indy Film wage schedule for budget tiers ranging from \$0 - \$11M. The lowest, \$0-\$500,000, lists rates as Negotiable. In an introductory letter to the online DGA Indie Brochure, DGA President Paris Barclay wrote in 2014:

For nearly 80 years, the DGA has stood behind those ideals and built a reputation for fighting on behalf of all of our members. This includes our independent film director members for whom the DGA pioneered contracts designed specifically for low-budget pictures. These contracts are continually being revised to meet new needs as they emerge – making it possible for every director to make his or her film a DGA film, regardless of the budget.²¹

The WGA-East has a lower money break for a budget \$200,000 or less, of 25% of \$11,966 as a minimum, with the possibility of deferred salaries. From their website:

The WGA Low Budget Agreement was designed to fit the needs and realities of independent feature and documentary filmmakers. No budget is so low that screenwriters should sacrifice Writers Guild protections [such as guaranteed creative rights], and benefits. The following link²² provides a summary of our low budget feature and documentary contracts.

There are also provisions covering New Media. Former organizer for WGAE, Ursula Lawrence, wrote in 2014 for Indiewire.com, an opinion piece entitled, Here's Why Indie Filmmakers Need Guilds If They Want to Get Paid:

Starting in January of this year [2014] we implemented new, lower budget breaks on WGAE

²¹ <http://www.dga.org/~media/Files/TheGuild/Committees/IndieBrochure2014.ashx>

²² <https://www.wgaeast.org/organize/independent-features-docs/>

feature contracts that allow writers working on even micro-budget projects to receive some immediate compensation for their work. Additionally, writers on these films can now receive contributions towards health and pension on this compensation – something that wasn't possible before. Finally, producers should find that the new budget levels and options for payment provide more flexibility and are affordable so that hiring a Guild writer for a low budget film is financially feasible... Making an independent film is a labor of love, but filmmakers still need to eat and sleep.²³

IATSE has the highest of the low-budget money breaks as of their contract for 2014-16. From the website of the International:

TIER ONE Production costs budgeted at no more than 5.5 million dollars (\$5,500,000)²⁴

SAG-AFTRA had one of the first Low-Budget Film Agreements going back to the mid-nineties. The union now has a wide range of similarly-promulgated Indie Film and New Media agreements under which members can work on indie films with a range of budgets tiers, student and short films, and projects intended to go straight to internet exhibition.²⁵ Like DGA and WGAE, they can provide for coverage with salaries reduced and/or deferred, as well as protections for the most micro-budget-of-all - zero. Our filmmakers Jack and Matthew have both used the Ultra-Low Budget Agreement and the New Media Agreement.

Cultural changes have created new expectations

Culture cannot be underestimated as a contributing factor to the challenges—as well as opportunities -- faced by independent filmmakers. Millennials (anyone born in 1980 or later) are called 'digital natives' because they grew up with computers and the Internet²⁶ which grew into their complete comfort with, and expectation of, interactivity. This would determine the type of entertainment they wanted to see and the type of entertainment they would want to create.

The last fifteen years have seen a considerable rise in the number of students pursuing film, television and theater in higher education (theater degree earners alone grew 33%).²⁷ Before they graduate

²³ <http://www.indiewire.com/2014/06/opinion-heres-why-indie-filmmakers-need-guilds-if-they-want-to-get-paid-25847>

²⁴ <http://www.iatse411.ca/wp-content/uploads/2014/06/2014-2016-Low-Budget-Agreement.pdf>

²⁵ <https://www.sagaftra.org/prod-center/contract/361/agreement/document>

²⁶ <http://www.marcprensky.com/writing/Prensky%20-%20Digital%20Natives,%20Digital%20Immigrants%20-%20Part1.pdf>

²⁷ Source: Integrated Post-Secondary Education Data System (IPEDS), National Center for Education Statistics, U.S. Dept. of Education

from high school, many if not most students have made video projects for classes across their curriculum.

As we heard in our focus groups and interviews, young creatives coming to New York now are trained in many disciplines to become hyphenates. They come to NYC to be creative in any way possible. They are accustomed to producing their own work and don't aspire to be cogs in a big production company wheel. A young writer-producer we interviewed said:

Most of my experience has been with creating my own work. Never in someone else's hands. It was exciting because it was new -- the first project and the first thing I ever produced or wrote. Challenges were welcome... I didn't have any expectations because I hadn't produced anything before. My first project is still going, entering its third season and my second project just got picked up. Two for two so far! I think that if I had been in the industry prior to the first project and known the obstacles, I may not have done it... I may have talked myself out of it. I think I was lucky to be that naïve.

While they take for granted easy access to production technology and internet platforms, they worry that competition for an audience is an ongoing challenge in an environment so saturated with voices and product. Breaking through to a potential audience, and to a potential distributor who will pay for their product, takes great effort. Another young filmmaker said:

There's such an over-saturation of people making video content that it's hard to stand out, even if your work is worthy of standing out.

At the same time, this new environment creates tremendous opportunities for young people to gain a foothold in an industry where it was previously extremely hard to find access, much less success. At the 2015 AFI [American Film Institute] Contenders Panel, actor Olivia Wilde commented on her career trajectory through indie film and the flexibility and artistic reward it now provides:

The film that changed my career was done on a micro-budget. It made me want to do more like this. You can do great work with like-minded creative people.²⁸

Some of these cultural changes are challenging the traditional labor definitions and the relationship of employer and employee, or of producer and performer. Matt speaks about the astronomical rise of YouTube star, Grace Hellbig:

²⁸ <http://afifest.afi.com/2015/sections/T3654> Indie Contenders Roundtable Presented by the Hollywood Reporter, Panelists include writer/director Ramin Bahrani (*99 Homes*), actress Blythe Danner (*I'll See You In My Dreams*), writer/director Tom McCarthy (*Spotlight*), actress Saoirse Ronan (*Brooklyn*), actor Jason Segel (*The End of The Tour*), actress Sarah Silverman (*I Smile Back*), actress Lily Tomlin (*Grandma*) and actress Olivia Wilde (*Meadowland*).

Grace Hellbig is everywhere -- on billboards, and a millionaire. She has a new talk show and a movie. She's BOTH employer & employee and a self-created Brand Cross Platform. She's a big YouTube star who has crossed over to traditional media as a talk show host. She IS labor, she IS management. She is one and the same.

Hellbig is featured in the 2016 Lionsgate film, Dirty Thirty.²⁹ Matt speaks about how studios are reacting to this phenomenon:

For the big studios, profits are declining from their big stuff, so they're picking up the Internet, which has content creators who are doing stuff completely non-union, like YouTube which has channels with fans. What's changed is the Internet.

Corroborating Matt's comments about the studios is an article from The Hollywood Reporter (THR):³⁰

Feature-length films from the likes of Tyler Oakley and Lilly Singh are making noise (and money) with studios micro-investing up to \$1.5 million per movie³¹ and banking on millions of loyal subscribers to turn a profit.

Legal and regulatory changes and uncertainties increase the challenges

Obamacare was cited by both Jack and Matt as 'an advancement' for non-union workers and for those who don't qualify consistently for insurance from their union. At the same time, it has undermined one of the major selling points for unions. This topic has been fluid due to changes to The Affordable Care Act after the election of 2016.

Intellectual property protections are a mixed blessing for these new hyphenates. When asked if there are any concerns with intellectual property among them, Jack responded:

You're protected by copyright so it's not like there's no protection...but then you'd need to hire a lawyer. There are so many secondary platforms that someone can appear on, and you have to sign over assumption of the contract [per the SAG-AFTRA contract], so it feels like a burden of IP, rather than a help and maximizing the value of IP.

Misclassification is also an issue that affects not only the arts and entertainment workforce, but most other workers in our increasingly "gig" economy. As more indie film product is made by small producers, if the actors and crew are paid at all, it is on a 1099 (as independent contractors). True employee status is increasingly hard to enforce (or NOT enforced), and may seem increasingly

²⁹ <http://dirtythirtymovie.com>

³⁰ <http://www.hollywoodreporter.com/news/youtube-stars-invade-hollywood-how-874812> -- Natalie Jarvey, March 18, 2016

³¹ Clearly, 'micro-budget' has different parameters, depending on the point of view of the speaker.

restrictive for young hyphenates. Labor experts are now debating whether there needs to be a third category somewhere in between W-2 and 1099, where some basic benefits are ensured for both.³²

Jack is an example of someone who struggles with this, in his role as employer:

People really have to think about not being an employee, because 1099 workers don't get workers comp, or unemployment, and they pay the employer's part of FICA. I had a gaffer put his hand through a window and he had a gash in his hand. They took him to the hospital and my company paid for it, and the gaffer was shocked because no one pays for something like that. There are some films that have used non-union crews and someone filed for unemployment -- and that raised a red flag and they got in trouble.

Weak governmental enforcement of labor standards such as overtime or health and safety standards increases the need for union protections, at the same time that a dwindling amount of this low-budget work is being performed under union contract. As the regulatory environment changes with the new Republican dominance on a federal level, this enforcement may become even weaker, and the need for the collective voice even stronger.

THE FUTURE

How will independent filmmakers protect their own interests in this new environment? Traditional unions with mature contracts will certainly survive in the high end of the industry for the foreseeable future. In order to continue being relevant, returning to the basics of how workers can be protected in this actual, rapidly-changing environment is critical. While the individualism that runs through American culture and American arts is alive and well, there is some indication that Millennials are open to ideas about collective voice and protection.

Other formations may emerge alongside traditional unions. After YouTube announced the launch of its premium channel YouTube Red, some creators said they'd be interested in some kind of collective guild formation. From FastCompany:

This month, (Hank) Green [of YouTube's CrashCourse Chemistry-ed.] will launch a nonprofit organization called the Internet Creator's Guild (ICG) that hopes to provide content creators

³² See Seth Harris and Alan Krueger, "A Proposal for Modernizing Labor Laws for 21st Century Work." http://www.hamiltonproject.org/assets/files/modernizing_labor_laws_for_twenty_first_century_work_krueger_harris.pdf

with business advice, annotated contracts, and other resources. It will also interact with the press and platforms from a creator perspective.³³

Jack suggests the Duplass brothers as an example of a new model of film financing based on the old-fashioned notion of worker cooperatives. Mark and Jay Duplass created the television series *Togetherness* on HBO, and Jay Duplass was on *Transparent* for Amazon. Jack reflects on their success:

They have started producing a ton of movies. They founded the idea of making everyone in the movie partners in the profit pool. For a budget of \$50-70K, and because the film has big stars in it, the movie recouped and paid out. And they get big stars!! The brothers talk in interviews how people want to work with them because their (projects) become these revenue streams. It's a co-op.

Sharing points on the backend and thus sharing in the profits could be in a Personal Services Contract (PSC). Traditionally, residuals are paid based on a percentage of distributor's gross receipts, which is the number before any expenses are recouped, not after they are recouped, as the Duplass model is based on.

Matthew and Jack's experiences indicate that the approach of making a union contract small enough to accommodate indie producers may be looking through the wrong end of the telescope. Matt argues that it's not helpful to just make budget ceilings lower; that doesn't reflect the reality of how hyphenates make projects.

Creators need help being protected in the ways they are working with the conglomerates. The hyphenates need a contract that covers them when they sell their funny cat video to Funny or Die [an internet comedy site]. You just POST on Funny or Die, you don't sell to them. They sell advertising and make money on the clicks, and you may make money if you get high enough clicks. But there's no contract to protect me on Funny or Die.

The Internet is creating new profit models constantly, and creatives are involved in the mix, but Matt complains that:

Creatives have nowhere to go to get their new contract from Netflix reviewed. I've seen a LOT of streaming contracts now and Vimeo has the best one. They get a percentage of every sale, minus the transaction fees. Vimeo doesn't own anything, it's just a streaming platform. You could sell it with residuals based on clicks on the project.

³³ <http://www.fastcompany.com/3060617/youtube-stars-form-new-guild-to-give-creators-a-stronger-voice>
Kessler, Sarah June 15, 2016

When asked about his own future, Jack reflects pessimism about the likelihood that young creatives can stay in New York City and raise their families unless they have some level of stability that in the past has been ensured by the dominance of union standards across the industry:

In future generations, will there be people in their 30's with kids? Because they can't make a living doing it. Two people making six figures in the city with insurance?? THEY can have kids.

Both Jack and Matt reflect that combination of creativity, energy, and grit that has powered the New York City arts and entertainment industry through its workers for more than a century. We are confident they will continue to be successful. We hope their experiences and insights can provide some useful perspective for workers and unions alike, as this young creative workforce struggles to meet the challenges posed by these rapidly changing cultural, economic, and technological realities.