# File No. JOBS Act Title III
# Crowdfunding - Title III Provisions of the Jumpstart Our Business Startups Act

---

## Security and Exchange Commission

---

**Comments**

---

Dorian Scott Cole

Owner, President

Movie Stream Productions

St. Peters, MO 63385

[redacted]

---

Dear Ladies and Gentlemen;

**This Comment contains:**

- How this legislation implementation may affect Movie Stream Productions and FlixStreamer™ distribution, as well as other filmmakers
- The specific areas of concern about implementation of the CrowdFunding Startup Act
- Low financial entrance requirements through five things
- Suggested requirements, and suggestions
- Summary

My comments are related to startup movie companies. This bill is much appreciated for its potential assistance to independent filmmakers. I am an experienced business manager in Fortune 10, small business, and startups. I have been working full time for over a year to develop a movie business that has good market potential, is sustainable, and can be scaled up.

**How this legislation implementation may affect Movie Stream Productions and FlixStreamer™ distribution, as well as other filmmakers**

Our business is a type I hope you will consider in your implementation of the CrowdFunding Startup Act. For background, our plan is to produce movie franchises (series) that make up to four movies a year, and we have several franchises planned. They are a cross between movies and TV, in a new venue, but minimally competitive with Hollywood and television productions. Each movie may require an investment. This year we are making a movie that will prove the production and distribution concepts.

These movies will be launched first on the Internet, on FlixStreamer™, and then go to other distribution venues. This arrangement is known in the industry as New Media, and commonly begins with Ultra-low Budgets under $200,000.00, but we expect to eventually be in the Low Budget category of up to $2,000,000.00 per movie, and we expect to use crowd investing as soon as it is available, to get us over financial hurdles.

Movie Stream Productions is primarily about creating good and sustainable jobs. Making four movies a year in a franchise gives the series actors and crew some hope of recurring employment. In the St. Louis, Missouri area, where movie opportunities are few and talent usually leaves for larger markets, yet a lot of talent is developed here, this will help the employment picture, and this enterprise can be used as an example for other areas that want to create a sustainable New Media industry. Independent filmmakers need all of the help they can get to create sustainable business models.

If the legislation is favorable to us, we can create sustainable jobs. It has to be fair to investors and filmmakers alike, and provide some marketplace protection from financial fraud and abuse through service licensing and certification. If it has expensive rules, it may prevent us from using any type of stock share investing.

**The specific areas of concern about implementation of the CrowdFunding Startup Act**

It helps to understand the realities of the movie production business. With few exceptions, it takes careful planning to produce and launch a movie that makes money. Like any business, assured success depends on several things: the quality of the product (story and production), getting production funds, getting distribution, and marketing. Without these key ingredients, the movie will not make money.

Another difficult business factor is that, like with most small business startups, the filmmaker has a limited skill set and limited time, experience, and finances for evaluating services. Unscrupulous companies and individuals can easily take available investment funds and give nothing in return. Many of the companies and individuals who currently offer services, such as distribution, are considered by filmmakers to not give deals that help create a sustainable business. Movie making for small independent producers is largely a break even business in which they sell rights to their movie to a distributor for no real profit.

Safeguards need to be built into any new financial system to prevent frivolous investment opportunities, frivolous or fraudulent services, and poor investments.

Investment, distribution, production, and marketability are the areas that need to have financial safeguards established by the SEC, either directly, or indirectly, to assure the success of this legislation and small movie businesses.

Assuring legislation and business success can be done indirectly by requiring certain players such as experienced investors, crowd investment platforms, and SEC certified accounting agencies to be involved, who do (or can) assure that movies meet the necessary criteria for market successes.

Experienced investors realize that not all movies will make money, and plan their investment risks to limit their losses. They have requirements that must be met for the filmmaker to get funded. Investors know movies must have a market to make a profit, and investment by an experienced investor is a go or no go vote of confidence based on their experienced requirements. Their investment also encourages more investment.

Requiring the involvement of experienced investors, accounting agencies, and funding platforms, is an indirect way of ensuring that financially sound business requirements are met, without creating unnecessary regulation, paperwork, and expenses.

Safeguards need to be carefully balanced against filmmaker financial resources. Independent filmmakers have very limited resources. For this bill to be effective, it must focus on three things: keep the financial entrance requirements as low as possible, help secure investment, and build sustainable businesses. It can do this by clearly defining the players in this sub-service and the requirements.

**Low financial entrance requirements through five things**

1) Filmmakers must have inexpensive access to those who are qualified to recruit investors. To avoid fraud, those investor recruiters must be vetted by the SEC or vetted by an SEC certified accounting firm. Most filmmakers don't have the time or skill to evaluate this necessary service. Fraud through inflated fees and poor service, will financially handicap independent filmmakers. Fees should be low and contingent on delivery.

2) Low financial entrance requirements means that filmmakers must have some protection against predatory distribution ownership and marketing deals. These deals would be rampant, as they are common now, financially ruining filmmakers. Robbing filmmakers of their movie, revenue, and capital will not develop sustainable businesses. I see this as an SEC purview, where standards can be set for this sub-service sector, and distributors vetted by independent agencies. But just as importantly, marketers and distributors need to make a reasonable profit or they won't take up the challenge of marketing and distributing an independent movie, which is notoriously not very profitable and risky.

3) Low financial entrance requirements means that such items as an "audited financial statement" should be affordable to filmmakers, or the SEC will set a bar that independent filmmakers can't reach. The SEC should established pathways for audits to be obtained at rates affordable to filmmakers. The SEC could consult with accounting firms to establish methods that would encourage small accounting firms, banks, or title agencies, to do this at low rates for filmmakers.

4) Low financial entrance requirements means that building business infrastructure is a goal. Businesses fail without infrastructure to sustain them. Sustainable business infrastructure is built on sound business planning and retention of financial revenue through capital equipment purchases and savings. This should be a goal in both the business plan and the financial oversight.

5) Low financial entrance requirements means controlling government costs, while maximizing effectiveness. Certification and licensing of service providers, as well as their using best business practices, means that the independent filmmaker will have higher costs, yet they have very limited funds. This is why I think this sub-service sector should be fully established with requirements by the SEC, and in doing so the SEC should emphasize keeping licensing and certification fees low, and keeping these service provider fees low, while still making it a financially viable business for the entire sector. To do this, the service providers in this sub-sector can be broadened. See the next section.

**Suggested requirements, and suggestions**

The LLC business structure is an excellent cost saving structure for filmmakers. It is a pass through for revenue, so does not pay up to 40% of its revenue in State and Federal taxes. The simple structure is much easier for accounting firms to audit and then potentially to supervise their funds. Financial transparency is more assured if members are entitled to see the financials and an accounting agency has their reports.

If each movie is an LLC, then financial loss has no affect on any other owned or owner business, as it would if it was part of an incorporated company. Of course, LLCs can be owned by companies or other LLCs, but the risk to them is still limited. I recommend that the SEC not limit new movie ventures to LLCs, but that it highly recommend or give incentives for them, such as enabling a path to lower auditing fees. I also highly recommend transparent financial practices.

Broaden financial accounting and monitoring to include banks, title companies, and small accounting agencies, by lowering their costs, to certify businesses at the lower end of the range. These would not be lenders, but would provide an accountant and provide or coordinate needed expanded services at lower cost to the filmmaker. Extended services could also be part of a package offered by a lawyer, accountant, or financial advisor, to include from various sources: investor search and crowd funding, audited financial statement, funds escrow, spending monitors, insurance, completion bonds, payroll, and government reporting. An investor might specify such an arrangement as a condition of investing. These services would make investment more likely – I believe much more likely.

Small and experienced investors could mitigate their risks through swaps, and this would be a very legitimate mechanism for the SEC to approve for use in this type of investing, partly because movies are risky and have a somewhat limited revenue time frame, similar to a bond. A movie peaks in revenue within a month after release, and then revenue finds a stable point with DVD and other venue sales, and then revenue steadily slides downward, unlike other stock that typically increases in value.

Investment above a certain amount should either be assessed by an independent agency (such as the crowd funding platform), or the SEC should require that a certain percentage of investors be experienced investors.

Regarding individual investment, individuals are unlikely to have the safeguards in place that experienced investors have, and can easily lose money that can seriously damage them. At the early stages, initial funding to get the project going often must come from individuals as gifts or investments. Up to a percentage of an individual's available capital, not income, and this amount should be capped, could be allowed without official review or substantial oversight.

**Summary**

As with any small business, many movie ventures fail. But companies that develop sound business models are more likely to leverage success into continued success. Establishing these companies is where the SEC can be the most helpful in creating sustainable jobs. The items I mentioned in these Comments are of value to both filmmakers and investors. They help assure the success of both.

Many independent filmmakers will make movies on speculation, with or without investment. This bill is not likely to affect these people in any way. But to encourage the establishment of sustainable small businesses that make movie after movie, and provide a significant source of jobs, the SEC can help by implementing this legislation in a way that establishes a playing field in which small investors, experienced investors, distributors, filmmakers, and others, have safeguards in place that prevent harm while supporting the revenue of all in this community.

Sincerely,

Dorian Scott Cole