

## **FORMING A NONPROFIT VIDEO COMPANY**

by Mark Freeman

Not every audio-visual producer is employed by a corporation.

Many work independently. And some have intentionally chosen to create a nonprofit company. This is not a common strategy, but it is one offering particular (tax) advantages. Most independent producers understand that foundations and government agencies usually only make grants to nonprofit organizations. For a single grant, or a single production, it's easier to be sponsored by an existing nonprofit, than it is to create a new organization.

Sponsorship usually involves paying a small percentage of all funds raised to the sponsoring organization. With this arrangement you receive many of the benefits of being a nonprofit, and avoid most of the headaches.

A corporation is legal fiction: a "legal person" capable of entering into contracts, incurring debts and paying taxes. A nonprofit differs

from a profit-making corporation in that it pays no taxes, and that people who contribute to it may be entitled to certain tax benefits.

There are other advantages to forming a nonprofit. Limited liability is a significant plus. Corporate directors, officers and employees are not personally liable for corporate debts. Employees of a corporation are often eligible for group life, accident and health insurance at much lower rates than are available to free-lance or self-employed producers. And don't overlook the nonprofit bulk mailing rate -- a great help for marketing, promotion and fundraising. The disadvantages of forming a nonprofit are mainly the paperwork involved. Cost need not be a determining factor. Although attorneys often charge \$1,000-2,000, if you prepare the applications yourself, the filing fee is only about \$50.

There are no great mysteries or difficulties in the process of creating a nonprofit. All that is required is that you:

- 1.) Choose a name.
- 2.) Determine a legally acceptable public purpose for the corporation.
- 3.) Prepare your articles of incorporation.
- 4.) Choose a Board of Directors.
- 5.) Apply for State tax exemption.
- 6.) File the articles with the Secretary of State in your state.
- 7.) File a Federal Exemption Application with the IRS.
- 8.) File a copy of the IRS Letter of Determination with your state's Tax Board.

Of all of these, perhaps the greatest difficulty has been in drafting articles of incorporation that state a legally acceptable public purpose, and that allow for the necessary flexibility in your operations. Most nonprofit producers will probably find it useful to describe their activities so that they are included in the IRS definition of "educational." It is important to distinguish between education and the "mere presentation of unsupported opinion." You

will want to stress the "instruction of the public in subjects useful to individuals and beneficial to the community." This is easily broad enough to encompass a great deal of video production and/or

exhibition. (In fact video may be only one part of your nonprofit business.) It is no longer considered necessary to give a lengthy explanation of your educational purpose. One or two sentences will do. If everything is in order the IRS will make a determination that you are a 501(c)(3)-- a nonprofit-- organization.

Once your nonprofit company is established, it is essential that you operate in a legal and business-like fashion. This responsibility falls to the officers and board of directors. Choose your board carefully. 51% of the board must be unpaid and unrelated to anyone who is paid by the nonprofit. There are many horror stories of

founders who unable to work with the their boards, have found themselves dismissed from "their organizations." This is a critical matter which deserves careful consideration.

Once established the company is responsible for:

Board Meetings and Minutes

Federal Corporate Tax Returns

Stae Corporate Tax Return

In some states a report to the Attorney General

Federal and State Corporate Employment Taxes

Sales Tax Forms and Exemptions

Obviously incorporating is a serious step. The process of deciding if it is right for you, will itself have benefits. Clarifying your goals-- both long and short term-- will enable you to focus your energies in the most productive way possible.

Finally let me add a few caveats. This is a very brief introduction to to an important topic. I am a producer, not a lawyer. And although I have made every effort to insure that the information in this article is accurate, it is no way a substitute for professional legal and accounting advice. Although regulations do vary state by state, I highly recommend consulting Nolo Press' "The California Non-Profit Corporation Handbook" by Anthony Mancuso. This do-it-yourself

guide comes complete with detailed information, and the necessary forms and addresses. It is available in most bookstores or by mail order.