

Writer BEWARE



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BY JOAL RYAN

New Year's Resolutions

Follow these litigation-inspired resolutions to start 2008 off right.

LOSE FIVE POUNDS. Quit smoking. Take up salsa dancing.

There, now that we've gotten that out of the way, let's move on to the New Year's resolutions you should be pondering even as you baste briskets or go wassailing. (And if you do happen to go wassailing, drop us a line — we'd love to know what that entails exactly.)

Holiday pleasantries aside, the following resolutions are inspired by the past year's worth of screenwriter-related litigation. Some are heads-ups. Some are red flags. All are things that savvy writers should keep in mind to stay savvy — and safeguard themselves and their work.

1. Don't write a screenplay about Jennifer Lopez.

Note, we didn't say, "Don't write a screenplay *for* Jennifer Lopez." Considering Lopez's bankability, the latter's a pretty good idea. The former, not so much. Especially, if like her first husband, Ojani Noa, you agreed to a deal that precluded you from dishing. Noa got into trouble when, after agreeing to a confidentiality clause in a 2005 settlement with his famed former spouse, he began to shop a book about — wait for it — his famed former spouse. Lopez balked, she sued and a court agreed with her, ordering the mere-mortal Noa to pay the top-earning Lopez \$545,000, which should scare the bejesus out of all other mere mortals out there.

Resolved: When writing about a real person, especially one whom you fear or suspect might sue, lock up the life rights. While Lopez's probably would cost you more than the judg-

ment against Noa, others' won't, assuming you've got the charm, if not the "in," to score free or low-cost options. To get started, check out the website Absolute Write (www.absolutewrite.com) for a sample life-rights agreement. And don't say we didn't warn you about that *J. Lee: The Untold Story* spec.

2. Don't write a screenplay about anybody.

Forgive the blanket warning, but Jennifer Lopez isn't the only person with an attorney hook-up. Remember last year's *Running with Scissors*, the dysfunctional-family comedy-drama based on Augusten Burroughs' best-selling memoir? The family portrayed in it and in the book sued Burroughs and his publisher for defamation, even though the family's last name was changed in both the book and the movie in an apparent bid to prevent, well, a defamation lawsuit. Mind you, the family members weren't strangers to Burroughs. These were people who had a hand in raising the future author as a teenager. Burroughs and St. Martin's Press settled the suit, agreeing, in future editions, to refer to the memoir as a "book" in the author's note, although it will still be billed as a memoir on the cover, as Burroughs stands by his memory.

Resolved: Your story is your story — and you hereby accept that everyone else's is negotiable. Or not. Just like Jennifer Lopez's.

3. Keep your eyes on your Xbox.

Since the dawn of *Variety*, writers have been scanning the trades for TV and movie

projects that sound an awful lot like ones they've already pitched to studios. But who knew you also had to monitor the likes of *PC Gamer*? In March, William L. Crawford III sued Midway Games, alleging its shoot-'em-up, *Psi-Ops: The Mindgate Conspiracy*, cribbed its plot and characters from his unproduced screenplay, *Psi-Ops*. As originally reported by *GameSpot*, Crawford, who once helped pen a *Star Trek: Deep Space Nine* episode, claimed that Midway could have found his screenplay through a variety of sources, including his website, and articles that spotlighted his project. Midway has declined comment; at press time, the suit was winding its way through the courts.

Resolved: Regardless of the lawsuit's outcome, the general point is: keep your eyes peeled. Story ideas aren't just for the small screen or big screen anymore; they're for any screen.

4. Don't be like Clive Cussler.

At first glance, there doesn't seem to be much that your average, unproduced screenwriter can learn from the epic, clash-of-the-titans battle engaged in by Clive Cussler and Philip Anschutz over the 2005 Matthew McConaughey misfire, *Sahara*. Unlike your average, unproduced screenwriter, Cussler is a best-selling action-adventure author, and Anschutz is a billionaire media-sports-communications mogul.

But look again, and you'll see that the court sent a message to all would-be Hollywood players last summer when it sorted

Don't fudge. You may think everybody does it, but everybody doesn't. That's why Cussler gets dinged by a jury, and it's also why Riley Weston got dinged by Hollywood.



SCREEN IMAGE FROM THE THEATRICAL TRAILER FOR SAHARA

out the two sides' dueling lawsuits. In siding with Anschutz and his Crusader Entertainment, the jury agreed that Cussler had overstated his book sales, thereby causing Crusader to pay Cussler an inflated fee for the rights to *Sahara*.

Resolved: Don't fudge. You may think everybody does it, but everybody doesn't. That's why Cussler gets dinged by a jury, and it's also why Riley Weston got dinged by Hollywood. Weston, you might recall, was the 30-something *Felicity* scribe-actress who passed herself off as a teenager scribe-actress. When Weston was found out, she lost a couple of high-profile deals before rebuilding her writing career as her real, grown-up self. So, whether it's fudging book sales, a birthday or a little line on a resume about a film festival award, if the question is "should you do it?" the answer is "no." Cussler could give you five million reasons why not — one for every dollar he was ordered to pay Anschutz.

5. OK, go ahead: Be like Clive Cussler.

Did we mention the Cussler-Anschutz battle was a split decision? While Cussler was told to pay up to the tune of \$5 million, Anschutz was told to pay up to the tune of \$8.5 million — in order to cover the option rights to a second book that Crusader had agreed to buy from the author.

Resolved: Get everything in writing. Promises of paydays are nice, and, for the starving writer, encouraging, but the real money is in promises that come in handy, black-and-white contract form.

6. If Kelly O'Donnell is the only agent who'll have you, don't be had.

Lucky for you, Kelly O'Donnell is probably too busy to take on new clients these days on account of other pressing matters — such as her guilty plea to federal charges involving hundreds of defrauded writers.

Per an account of the case by the U.S. attorney's office in New York, the agent pulled every crooked-agent trick in the book: She charged upfront fees for representation, editing and more, and then, for bad measure, delivered squat.

The scheme worked like this: Kelly O'Donnell sold her clients on Martha Ivery, a publisher who didn't publish, and who then sought to hold off angry, frustrated authors by filing for bankruptcy.

The twist: Kelly O'Donnell was Martha Ivery.

The bottom line: O'Donnell's clients never had a chance — until the feds stepped in, indicted Ivery (the New York woman's real name) and won a conviction.

In November 2006, Ivery was sentenced to 65 months in prison and ordered to pay \$728,248 in restitution to 231 victims.

Resolved: Thou shalt never, ever hook up with an agent who requests, demands or otherwise seeks for fees for *anything*. Thou shalt spurn such an agent no matter how eager, no matter how desperate, no matter how wickedly tired of rejection thou becomest. Thou knowest we're right because thou has hearest this writerly commandment over

and over and over again. But as the Kelly O'Donnell/Martha Ivery matter proves, it's a commandment that cannot be restated enough.

Where's Moses when you need stuff set in stone tablets?

7. Bookmark Writer Beware.

No, not this Writer Beware, although thank you for thinking of us, and we'll let you know when there's something to bookmark on the *Creative Screenwriting* site. Instead, we speak of the up-and-running Science Fiction and Fantasy Writers' Writer Beware (www.sfwaw.org/beware).

Established as a section on the group's website in 1998, Writer Beware is a volunteer coalition of self-described "intrepid fraud-hunters." On it, you can find lists of agents and publishers against whom complaints have been lodged (or sometimes charges have been filed); case studies of infamous bad agents, including Kelly O'Donnell/Martha Ivery; and sage advice about contests, copyright registration and editorial consultants.

As an added bonus, each page bears the stamp of a cartoon-rendered koi fish. And really, isn't it about time that the dreary subject of rip-offs and frauds was brightened by a colorful marine creature?

Resolved: You will beware — and you will be aware. That's the way to start the New Year right.

After all, those salsa-dancing classes can only do so much for your writing career. ☐