

## CROWDFUNDING

### Introduction

Crowdfunding has emerged as a viable source of funding for creative projects. Creators can use fan fund/crowdfunding websites to access an international pool of potential supporters of the project. The crowdfunding organization hosting the website which brings the promotor of the project and contributors of funding together, usually deducts an amount from the contributions in payment for its services.

[The Tunnel](#) is an Australian produced horror film that was crowd-funded by asking members of the public to contribute \$1 in return for a single frame from the movie. The film was directed by Carlo Ledesma and co-written, co-produced and co-edited by Julian Harvey and Enzo Tedeschi. They offered a single frame of the film for a \$1 contribution. This crowdfunding method raised about \$36,000 of the \$135,000 crowdfunding target.

The movie's distribution method was equally unorthodox. It was released simultaneously through BitTorrent, VODO.net (peer-to-peer platform), TV, DVD, and limited theatre screenings. BitTorrent also distributed the movie through its App Studio. See the interviews by SBS with producer [Enzo Tedeschi](#) and director [Carlo Ledesma and Enzo Tedeschi](#).

The 'crowd' of people linked through the crowdfunding website who give financial support to the project (called 'pledgers' or 'contributors') are usually enticed to contribute by offering them a copy of the finished project or some other 'reward'. The contributor is effectively making a donation of their money with no expectation of receiving a financial benefit from their contribution. In Australia, and in other countries, offering the contributors share in the project's success turns the donation or pledge of money into an investment scheme. The Australian Securities and Investment Commission (ASIC) has provided guidance as to how donating money to [crowdfunded projects](#) is regulated by ASIC under the *Corporations Act 2001* ([12-196MR ASIC guidance on crowdfunding](#)).

The guides to successful crowdfunding draw attention to the advantages of offering 'rewards' or 'perks' linked to the project as a way of enhancing the attraction of a request for crowdfunding. Indeed crowdfunding websites encourage users to be creative in finding different ways to reward supporters of the project. A major advantage in addition to generating funds is that crowdfunding can also build an audience and produce a promotional buzz for the finished project.

ArtistShare was the first fan funding ("crowdfunding") platform, launched in October 2003, which focuses on music. ArtistShare fan-funded recordings include Maria Schneider's "[Winter Morning Walks](#)", on which the Australian Chamber Orchestra perform. This recording had success at the 2014 Grammy Awards, it was awarded: best contemporary classical composition; best classical vocal solo for Dawn Upshaw; and best engineered album.

Using crowdfunding necessarily involves posting a short description or treatment of the project requiring financing. Giving publicity to your ideas or creative concepts creates the risk that other people may use your ideas for which copyright law will not provide any protection. (See Arts Law's information sheet: [Copyright](#)). As you are disclosing your ideas or creative concepts to the public you cannot rely on the law of confidentiality to stop people using the information you disclose. (See Arts Law's information sheet: [Protecting your ideas](#)). For more information on the risks in putting up a teaser video, see Arts Law's information sheet [Putting your film or photo online](#).

## USING NEW MEDIA TO FINANCE CREATIVE PROJECTS – CROWDFUNDING

### What is crowdfunding?

It really is as simple as it sounds – you raise money to create your project from 'the crowd' of people with whom you can connect to through the online environment. It is a system of soliciting small contributions of money to finance a particular project by promoting that project online. The money is usually only paid if the project reaches its target and enables the project to go forward. In the arts sector, crowdfunding could be used to raise funds for a film project, a concert tour, an art exhibition or almost any other creative activity needing funds.

Amanda Palmer (former living statue, now recording artist and author of the book "The Art of Asking") and [The Grand Theft Orchestra](#) launched a Kickstarter campaign in 2012 that achieved US\$1,192,793 in funding for an album, art book & gallery tour (her goal was \$100,000).

This information sheet considers crowdfunding solely in the context of artistic projects but it has also been used for projects like new playground equipment in a kindergarten. There are crowdfunding sites that focus on funding social innovators, social entrepreneurs, change makers and non-profit organisations.

### How is it done?

Crowdfunding is usually done through specialised crowdfunding websites. Anyone can register and then seek support for their particular project. The crowdfunding website is the digital platform from which the artist promotes the creative project. Social media will often provide the digital communication channels through which the artist promotes the project and directs traffic to the crowdfunding website.

Crowdfunding works particularly well for artistic endeavours as the medium of communication (i.e. the crowdfunding website) is able to showcase the talents of the creator.

Typically, crowdfunding requires some careful planning including:

- A clear description of the project's goals (e.g. to make a film about...), what the funding will be used for (e.g. developing a screenplay.... or shooting the film);
- A crowdfunding target which must be small enough to be achievable but large enough so that it is sufficient to realise the goal (e.g. \$5,000);
- A timeframe and deadline for reaching the target (e.g. 13 December 2015). Crowdfunding is designed like a promotional campaign – if you don't reach your goal in a certain time, the project goes stale and, depending on the particular crowdfunding terms, the money is either returned or not payable;
- Most crowdfunding involves offering incentives or rewards - usually non-monetary (e.g. a signed t-shirt, a part as an extra in the crowd scenes, credit as associate producer, invitation to the launch party, dinner with the stars etc.) The money promised is not a tax-deductible donation or a loan – rather it's an 'investment' and the 'return' is the pleasure of contributing and any incentives offered by the project owner. While such incentives are not mandatory they are usually a critical element of a successful campaign and can contribute significantly to the amount raised. In deciding what incentives or rewards will be offered, it's important that they must not themselves be so expensive that they cause the project to founder.

Melbourne-based filmmaker Matt Weston of [Syndicate Films](#) crowd-funded his documentary film "Cosmic Psychos: Blokes You Can Trust" on [Pozible.com](#), awarding goodies that increased with the donated amount (from t-shirts to private concerts). Weston raised almost twice his targeted amount.

There are several key stages in the course of crowdfunding a project:

- Choosing the right crowdfunding website and presenting the project in the most appealing way;
- Using social media and other marketing and promotional tools to direct as much traffic to the fundraising page as possible during the period of the crowdfunding campaign;
- If successful, delivering on all your promises and rewards.

## Pros and Cons of using Crowdfunding

### *Pros*

1. With the advent of social media, people usually have access to a ready-made network of people and potential 'followers'. These networks have the potential to exponentially compound and expand (by users 'sharing' and 'liking'). In effect, you may be able to access all of the

communities that all of your networks belong to without you needing to be connected directly to them.

2. Crowdfunding is the monetisation of the ability to click a 'Like' button on Facebook.
3. The supporters that the crowdfunding reaches can be converted into relationships that will continue to support the artist throughout their career. If managed well, the artist may find themselves with a ready-made fan base. For example, the online audience that funded the film are likely to be the audience that watches and talks about the film when it's released.
4. By accessing a wider audience, there is the potential for arts support that has never before been available through traditional methods of fundraising.
5. Individual artists who may be ineligible for more traditional funding sources and grants can access funding.

### **Cons**

1. The crowdfunding models that appear to work best are those that provide an award or incentive to the donor. This may come in the form of a discount to apply or a free product. It's important to allow for the cost of providing these incentives in determining how much money needs to be raised. One project discovered that the cost of postage to send out the reward t-shirts meant that the amount raised was much less than expected.
2. You can't rely on the crowdfunding website to get the attention of contributors. A successful campaign involves a lot of effort promoting it.

### **Crowdfunding models**

The participants involved in crowdfunding can be described as: the 'promotor' (the person or legal entity seeking funds for a specific project) the 'intermediary' (the crowdfunding platform) and the 'funder' (the pledgor or contributor of funding).

The crowdfunding models that have emerged include:

- **donation-based funding** (contributor provides funding without receiving anything in return)
- **reward-based funding** (the promotor provides some goods, services or something of value in return for the payments of the funder; e.g. a copy of the work that will be created by the promotor)
- **equity-based funding** (the funder makes a payment in return for an interest in the promotor's company or some other equity interest such as an interest in the copyright in the work that will be created by the promotor). **NOTE:** the equity-based funding model would involve offering a 'financial product', fundraising through 'securities', or a 'managed investment scheme' all of which are regulated by Australian Securities and Investment Commission (ASIC) and non-compliance with the *Corporation Law 2001* (Cth) can involve substantial penalties.
- **debt-based funding** (the funder provides a loan to the promotor who agrees to repay the loan with interest). **NOTE:** the debt-based funding model would involve offering a 'financial product' or fundraising through 'securities', which are regulated by the ASIC.

The most common crowdfunding models that are adopted by the crowdfunding models are donation-based funding and reward-based funding, as these funding models are not subject to the regulatory controls imposed on equity-based funding or debt based funding models, which are discussed below. **NOTE:** Projects that seek equity-based funding or debt-based funding on crowdfunding platforms operating in the United States or Europe may be subject to the securities and fundraising laws of the jurisdiction in which the crowdfunding platform has its business office – however the impact of the securities and fundraising laws of the United States or Europe is outside the scope of this information sheet.

There are also different practices in relation to how the crowdfunding platform operates in relation to the fundraising goals and when the contributor can receive a refund if the fund raising goal is not met:

- **Keep it All (KiA):** The promotor can keep all funds raised whether or not the fundraising goal selected by the promotor is met during the fund-raising period. The promotor will decide whether to refund contributions if the amount raised is not enough to carry out the project.
- **All or Nothing (AoN):** Money is only collected from the contributors when the fundraising goal selected by the promotor is met during the fund-raising period.
- **Tipping Point (TP):** Combines AoN with KiA - the promotor sets a minimum funding and can receive the funds collected for the contributors when the minimum funding target is reached and will also receive addition contributions pledged before the expiry of the funding-raising period.
- **Subscription:** Allows for daily/weekly/monthly/annual financial backing for projects. The subscription continues until the contributor chooses to stop.

The All or Nothing (AoN) practice is a common practice adopted by crowdfunding platforms. This practice provides incentive to the promotor to identify a realistic fund raising goal, to offer meaningful rewards to contributors and to promote and publicise the project to reach a wide audience of potential contributors. See the later discussion of using new media and digital platforms to drive crowd sourcing.

## List of crowd sourcing platforms

Arts Law recommends that you read the terms of service (TOS) or terms of use (TOU) of each crowdfunding website carefully in order to understand which platform is the best for your particular project. There can be significant differences in the services provided by crowdfunding platforms and differences in relation to the fees charged.

There are crowdfunding platforms that focus just on music projects, while others cover a range of creative projects, and some focus on social projects.

It is important to understand that some types of crowdfunding could involve offering a 'financial product', fundraising through 'securities' or a 'managed investment scheme' all of which are regulated by ASIC and non-compliance can involve substantial penalties. Australian based crowdfunding platforms can provide equity-based funding or debt based funding services if they comply with the [ASIC Class Order 02/273](#) (Business Introduction or Matching Services) and section 708 of the *Corporations Act 2001* (Cth).

There are a growing number of crowdfunding platforms based in [Australia and New Zealand](#). The following list includes both crowdfunding sites that are donation-based or reward-based (which are not regulated by the ASIC) and also some 'equity-based funding sites' that will require the fundraising activities to comply with the *Corporations Act 2001* (Cth).

The list describes the funding practice it operates: All or Nothing (AoN), Keep it All (KiA), Tipping Point (TP) or Subscription).

Crowdfunding site	Locations	Focus
ArtistShare	<a href="#">United States</a>	(KiA) Focused on linking composers and musicians with fans in order to fund the creation of new musical works and sound recordings. Funding on ArtistShare is by invitation only.
IndieGoGo	<a href="#">United States</a>	(KiA or AoN) Categories include: art, comics, dance, design, fashion, film, games, music, photography, technology, theater, transmedia, video/web & writing.
Kickstarter	<a href="#">Australia</a> , NZ, UK, US, Canada	(AoN) Categories include: art, comics, dance, design, fashion, film & video, games, journalism, music, photography, technology & theater.
Pozible	<a href="#">Australia</a> , Singapore, Malaysia	(AoN or Subscription) Categories include: art, comics, dance, design, fashion, film, games, music, performance, photography, technology, video & writing. Composers that are members of <a href="#">APRAJAMCOS</a> receive a discounted service fee.
Pledge Music	<a href="#">United States</a> , UK, Sweden, Germany	(AoN) Focused on linking composers and musicians with fans in order to fund the creation of new musical works and sound recordings.
Publishizer	<a href="#">Australia</a>	(AoN) A book launching platform for independent authors, which can seek pre-orders of their books.
ignitiondeck	<a href="#">United States</a>	(KiA) Pre-selling or crowdsourcing funds for video games.
RocketHub	<a href="#">United States</a>	(KiA) Funding for artists, entrepreneurs and social leaders.
OzCrowd	<a href="#">Australia</a>	(KiA or AoN) Personal, business or charity funding including entertainment related projects.
Chuffed	<a href="#">Australia</a>	(KiA or AoN) Focused on social innovators, social entrepreneurs, change makers and non-profit organisations.
StartSomeGood	<a href="#">United States</a>	(TP) Focused on social innovators, social entrepreneurs, change makers and non-profit organisations.
Angel Investment Network	<a href="#">Australia</a> , America, Africa, Asia, Europe	Equity-based funding site directed to linking start-ups/projects and angel investors where the promotor of the project will offer a return on the investment or provide equity in the business.
Equitise	<a href="#">Australia</a>	Equity-based funding site directed to linking start-ups/projects and angel investors.
VentureCrowd	<a href="#">Australia</a>	Equity-based funding site directed to linking start-ups/projects and angel investors.

## The regulation of fundraising

If your crowdfunding arrangement does effectively create a substantial private investment agreement between you and an investor where the investor is entitled to an equity interest, profit share or royalty stream then a number of different legal and business issues may need to be considered including:

- tax law, the application of the *Income Tax Assessment Act 1997* (Cth) by the Australian Taxation Office, and the impact of *Goods and Services Tax* (GST), as discussed below;
- the regulation of raising money by ASIC, as discussed below;
- relevant industry business models for exploiting intellectual property rights;
- copyright law (and other intellectual property rights including trade marks). For further information see the Arts Law information sheets: [Copyright](#) and [Trade Marks](#).

## WHAT ARE SOME OF THE LEGAL ISSUES?

### Contract law and obligations under the Australia Consumer Law (ACL)

The ‘deal’ you make with your crowdfunding ‘investors’ is a form of legal contract and you need to deliver on your obligations under that contract. You cannot use the funds raised for a different project. You must provide the promised incentives or potentially be in breach of that contract. Promising something and then failing to deliver may also constitute misleading or deceptive conduct in contravention of section 18 of the Australian Consumer Law ([ACL](#)) that is set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth). For more information refer to Arts Law’s information sheet - [Contracts](#).

### Crowdfunding and tax

You should be aware that any financial contributions that you receive through crowdfunding may be subject to income tax as assessable income. This will depend whether your creative activities are considered to be part of a business you are carrying on, as distinct from merely a hobby. To assist you work out if you are operating a hobby or business; see the [Australian Taxation Office website](#).

Crowdfunding activities may also be subject to the goods and services tax (GST). The Australian Tax Office ([ATO](#)) has described the [GST treatment of crowdfunding](#) in relation to the promotor, the intermediary and the funder that is contributing the money. The ATO describe the GST treatment of crowdfunding for a promotor operating in Australia as varying according to:

- the model adopted and what supplies (if any) are made to the funder
- whether the promoter is carrying on an enterprise
- whether the promoter is registered for GST, or required to be registered
- whether the promoter makes supplies that are connected with Australia
- whether the funder is in Australia

The intermediary will have a GST liability for services to the promoter if:

- the intermediary is carrying on an enterprise
- the intermediary is registered for GST, or required to be registered
- the intermediary provides the services for consideration
- the services are connected with Australia

## The Australian Securities Investment Commission (ASIC) and crowdfunding

Although the Australian Securities and Investment Commission (ASIC) provided [guidance on crowdfunding](#) stating “crowdfunding, as a discrete activity, is not prohibited in Australia, nor is it generally regulated by ASIC”;<sup>1</sup> it is clear that some types of crowdfunding could involve offering a ‘financial product’, fundraising through ‘securities’ or a ‘managed investment scheme’ all of which are regulated by ASIC. Non-compliance with the *Corporations Act 2001* (Cth) can involve substantial penalties (up to two years imprisonment for operating a managed investment scheme without a licence). It is however possible to have a crowdfunding rewards program that complies with the *Corporations Act*. Thus, a promise to deliver a specific product or service as a reward is outside the regulatory scope of the *Corporations Act*; for example, providing the contributor with a copy of the CD for a small contribution to a music project or a private concert for substantial contributors or, in respect to a computer game, including a character in a game that looks like a contributor, to receiving a copy of the finished game, or invitations to the launch party. However, the offering of shares, or direct financial rewards or profit sharing may be viewed differently to the delivery of a specific product or service as the reward.

If your crowdfunding scheme offers an ownership or equity interest in the creative project as one of the incentives or rewards, it may constitute a managed investment scheme which is governed by the *Corporations Act*. Generally speaking, the offer of shares, direct financial rewards or profit sharing - as opposed to a t-shirt, stubby holder, a copy of the completed film or an invite to the premiere - is more likely to be viewed as a managed investment scheme. If the crowdfunding arrangement is deemed a managed investment scheme then the project owner, as well as the operator of the website, would be subject to significant compliance requirements. Chapter 5C of the *Corporations Act* regulates the raising of money for investment in speculative ventures (see Pt 7.1 Div 3).

The ASIC provides information as to issues arising from donating money to [crowd funded projects](#) and provided guidance to promoters of crowdfunding projects to clarify when crowdfunding may be regulated by ASIC under the *Corporations Act 2001* ([12-196MR ASIC guidance on crowdfunding](#)).

Crowdfunding projects are generally not regulated by ASIC unless it falls within the definition of an ‘investment contract’ or ‘securities’ that the ASIC regulate as a ‘managed investment scheme’. A crowdfunding rewards program that is outside the regulatory scope of the *Corporations Act*, will include rewards that are specific, nominal non-financial products or services. If the rewards offered are not financial benefits, for example, the name and/or avatar of the donor being used in the project, deliver of copies of the completed project or invitations to the launch party for the project, then the crowd funded project will not be a managed investment scheme. A straightforward request for a donation of money (without any accompanying ‘reward’) would also fall outside the meaning of ‘investment contract’ or ‘securities’ as discussed above.

The criteria used to work out if a project is a “managed investment scheme” are complex and you should seek legal advice in relation to your specific project.

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<sup>1</sup> 12-196MR, ASIC guidance on crowdfunding, 14 August 2012.

The regulation of Crowdfunding is discussed in the Treasury Department discussion paper: [Crowd-sourced Equity Funding](#) (December 2014), so that the legislation and regulations relevant to crowdfunding may be revised in the future.

## USING NEW MEDIA AND DIGITAL PLATFORMS TO DRIVE CROWDFUNDING

### Advantages of promotion using New Media and Digital Platforms

Effective use of social media can build a substantial fan base of followers which has flow on benefits in that it demonstrates influence to potential investors and backers.<sup>2</sup> The internet is a vehicle with the potential to create and maintain a community of followers from all over the world. The internet and social media platforms provides opportunities to exercise direct control over the manner and means of communication with your fan base and audience.

Sophisticated search engines and social media mean that your target audience can readily find your content, talk about it and share it. You can engage directly with your community of fans and audience members and engage in valuable dialogue. Social media is low cost compared to traditional media such as television or print advertising.

### Building a Website

Using the internet provides instant access to a global audience and all their friends. Using your own website is one option. That involves obtaining a domain name, and building and maintaining the site. The greatest challenge may be directing enough traffic to the website to get the desired audience traction. For further information refer to Art's Law information sheet – [Website Development](#).

### Social Media

The alternative to your own website is using social media. Social media is a type of online digital platform operated and maintained by a third party which provides services on the internet that allow you to interact with others - either individually or in communities - pursuant to standardised terms and conditions of membership. They allow sharing and creation of content through those networks. The benefits of social media include that the platform is already operational and in existence and has an existing membership of user traffic. The disadvantage can be the operation of terms and conditions that don't suit you or which dilute your ownership rights in your intellectual property.

The Terms and Conditions of Facebook provide that, subject to the Privacy settings you have in place on your account, you grant Facebook a non-exclusive, transferable, sub-licensable, royalty-free, worldwide licence to use any intellectual property content that you post. You will need to read the Facebook [Data Use Policy](#) and Platform Page to fully understand the implications of this.

If you violate the letter or spirit of the agreement with Facebook, or Facebook considers that you have created any risk or possible legal exposure for it, Facebook may delete your account and all of your access. This could impact significantly on your access to your fans and your brand. It could damage your

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<sup>2</sup> Stephanie Chandler, ['The Hidden Benefits of Social Media Marketing: Why Your Strategy May Be Working Better Than You Think'](#) Forbes Magazine (12 March 2013).

relationships with your audience and negate the time and work you have put into establishing yourself in that space.

## FURTHER INFORMATION

For further information about crowdfunding and social media see:

- ‘How to work the crowd: A snapshot of barriers and motivations to crowdfunding’ (2012) available on the [Australia Council website](#).
- Crowdfunding platforms in Australia & New Zealand are listed at [Crowdfund it!](#)
- Screen Australia [‘Digital marketing guide: Building an online audience > Social media’](#) (2014).
- Australian Copyright Council information sheet [YouTube & Copyright](#).
- Arts Law’s information sheets:
  - [Film Financing](#)
  - [Business Structures for Filmmakers](#)
  - [New Media - Issues for creators working with and across multiple platforms](#)
  - [Putting your film or photo online](#)
  - [Social media for artists](#)
  - [Website development](#)

### Disclaimer

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