

# MINOR Contracts, MAJOR Headaches

**"I like children...  
if they're properly  
cooked."**

**—W.C. Fields**

(who, not coincidentally,  
also first uttered the widely  
repeated caveat "Never work  
with children or animals.")

## THE HEADACHE SYMPTOMS

**Y**OU'VE JUST COMPLETED a film starring several young high school-aged actors and one adorable five-year-old girl who steals every scene she's in. Festival audiences love it and now major distributors are in a bidding war to obtain it for a wide theatrical release. There is even some talk that the 16-year-old star of your film is being considered to play opposite Tom Hanks for a future summer blockbuster. Life is good—but then you receive the call...

The attorney for the 16-year-old star is on the line. After some small pleasantries about how much he enjoyed the film and compliments about the hors d'oeuvres at the Sundance after-party, he states, "It's time to renegotiate our young star's contract." You think he's joking and ask, 'What are you talking about? He signed his contract on the very first day of shooting.' The lawyer explains, "It is the young star's right to renegotiate because he's a minor and the law in all 50 states provides that any minor under 18 years of age has the right to elect to disaffirm any contract the minor has previously entered into with complete legal impunity."

You are stunned. But with the assurance of that one pre-law course you took as an undergrad, you reply, 'Look, I've got a fully executed contract. Not only did the kid sign it, but both of his parents as well!' The lawyer simply laughs and says, "He needs an



extra \$50,000 from the first dollar paid by any distributor and 20 percent of the profits on top of that or we go into court for an injunction against distribution."

"You can't do this," you scream. "His contract says we have the right to use his likeness and if a dispute arises injunctive relief is *not* available. It's in the contract!" The lawyer replies, "You mean the contract that we just disaffirmed and rendered void? None of those terms matter anymore. The contract can't be enforced, it's worthless!"

"If we do a new contract what's to stop you from disaffirming that deal, too?" you ask.

"Why don't you get yourself a lawyer who knows about these things, and in the meantime start getting this client's money together," the lawyer replies.

As you hang up the phone, your assistant tells you there are messages from the attorneys and agents for the adorable five-year-old actress and a number of the other teenaged supporting actors in your movie. Your head begins to pulsate. Before heading to the nearest drug store and then for a massage at the Peninsula Hotel, you make an appointment with an entertainment attorney well schooled in child labor issues.

## DIAGNOSING THE HEADACHE

**U**PON OBTAINING COUNSEL from such an attorney, you unfortunately learn that *everything the child actor's attorney said is true!* You also learn some legal lessons about employing children in the entertainment industry.

Under general common law principles, a minor (anyone under the age of 18) has the right at his or her election to disaffirm (i.e., void or disavow) any contract into which he or she has entered. This rule is a one-way street: Only the child can void the contract. If the child likes the contract, he or she is free to adhere to it and the opposing party is bound and cannot void it (unless, of course, the opposing party is also a child).

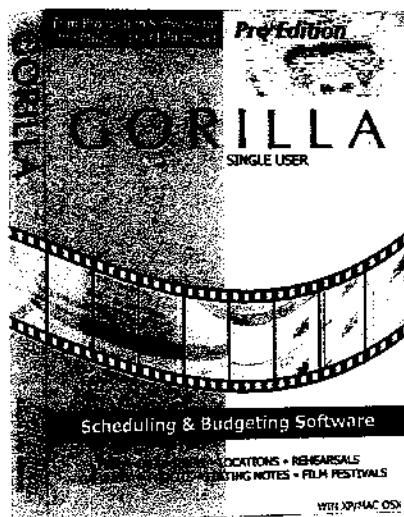
In certain situations, a parent or guardian executing an agreement on his or her child's behalf, wherein he or she assumes the obligations of the child, can avoid the adverse effects of a minor disaffirming his contract, as in the case of a car being purchased in the child's name with a parent serving as a guarantor and co-owner. However, this approach for avoiding a disaffirmation

cannot work for all types of contracts. It cannot work where the child is to be bound in such a unique way that the parent could not step in and equally perform hereunder. No producer would consider the father of a 12-year-old boy standing in for his son a satisfactory alternative to the boy walking off the set, for example.

In addition, even if a parent or guardian *could* contract on behalf of a child, the entertainment industry has long recognized that "stage parents" cannot be trusted, so their signature on a child actor's contract should be considered meaningless. Over the years, the entertainment industry has witnessed countless abuses by stage parents who have not always acted in the best interest of their children. Thus, certain states such as California, New York and Florida have developed laws (commonly known as "Coogan Law") designed to protect child actors. These states have placed incentives for producers to assist in enforcing these protections, lest the producer run the risk of the child declaring his or her contract void.

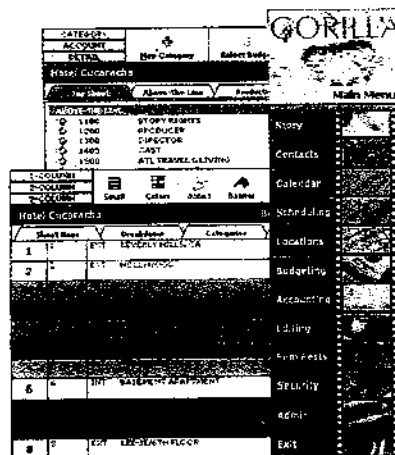
Most moviemakers have heard of the Coogan Law, named after child actor Jackie Coogan (who later went on to play Uncle

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Fester on "The Addams Family"), who saw his child star fortune squandered by his parents. Enacted in 1939 to ensure that child actors receive at least a portion of their earnings when they reach the age of 18, Coogan Laws require a child actor's earnings to be paid directly into a special trust, or a Coogan Trust Account. However, most moviemakers do not realize that, aside from helping the child by setting up a segregated trust account, Coogan Laws provide a mechanism by which producers can achieve court ratification of the

voided by the child.

In the example presented at the start of this article, the producer would be at the mercy of the child star's attorney. The producer failed to obtain court ratification of the child actor's agreement, therefore the child star is within his rights to declare the existing contract with the producer void and prevent the producer from exhibiting the film. If the producer attempts to go to court and argue, "But we got the parents to sign!" the court will tell the producer, "But we told

all child labor laws and child safety laws are strictly followed. Your responsibilities include, but are not limited to 1) special work hour restrictions; 2) obtaining work permits for the employment of minors; 3) ensuring the child is not subjected to dangers to his or her health and safety, either on- or off-camera; 4) ensuring that the child is not subjected to dangers to his or her "moral well-being," either on- and off-camera; 5) educational requirements; 6) ensuring employment of a "studio teacher" (a misnomer, because the

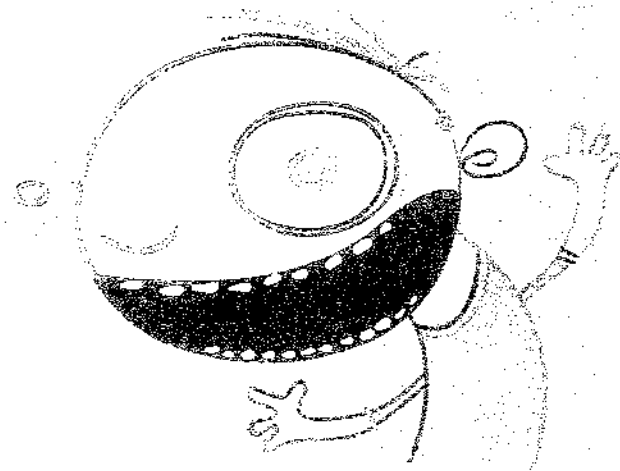
individual must be employed whether school is in session or not and has responsibilities far beyond mere teaching); 7) special payroll obligations to withhold a set sum for the child's Coogan Trust Account; and 8) court ratification of the minor's contract to prevent the threat of disaffirmation. Complying with all of these assorted laws, regulations and responsibilities will add real costs to your budget.

If you *do* use child actors, take the time to learn what each of the above special responsibilities requires of you in order to lawfully and safely employ them. As a producer, you need only know that these matters

need to be attended to in a timely fashion; you do not need to perform the actual work yourself. No one expects the producer of a film to draft or file the assorted court notices, petitions and declarations necessary for ratifying a minor's contracts. Likewise, experts can guide you in obtaining work permits, hiring a studio teacher and complying with permissible work hours and other restrictions affecting minors on film sets.

Remember, the court ratification process protects producers by assuring that a child actor cannot later disavow his or her contract. Therefore, regardless of where your film location may be, a smart moviemaker will look for a logical connection to one of the states that has an established process to obtain ratification and corresponding peace of mind (California provides the widest latitude for invoking its jurisdiction).

Budget accordingly for the assorted court costs and attorney fees associated with child actor ratifications (roughly \$1,500 to \$2,500 per kid), and make sure the ratifications are performed in a prompt manner. If not, then when the headache comes, don't blame that shark attorney seeking to better his young client's bank account. The rules are in place for everyone and avoiding them can be a dangerous gamble. **MM**



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minor's contract. Even those moviemakers who are aware of the court ratification provisions are often not aware of the actual benefits those provisions provide to producers. Rather, there is a misconception that the entire process is merely for the good of the child and that producers who follow those rules are merely helping the child actor out without any real benefit to the production company itself. The reality, however, is that the Coogan Laws are also a giant benefit to producers, as once the producer obtains court ratification, a minor's contract can never be disaffirmed and the headache described in the beginning of this article can never arise!

The court ratification process consists of filing numerous court documents, such as declarations swearing that the child has been treated respectfully. Upon meeting all of the ratification requirements, a state court judge issues an official order holding that the contract is fair and all Coogan Law safeguards designed to protect the child (such as withholding a portion of his or her payments in a trust account) have been properly adopted by the producer. The court then rewards the producer for complying with these safeguards by declaring that the child's contract is officially "ratified," and the ratified contract can thereafter *never be*

you not to trust the parents; only the court can make the child's contract binding. You failed to follow the law, so you cannot come to court *now*, cry about it and expect us to help you." Of course, the court might permit you to try to recoup the salary you paid the child under the voided contract. But that will do little to help your investors obtain a return on their investment or make up for your lost profits from being incapable of exhibiting the film.

## THE PRESCRIPTION & CURE

**A**LL TOO OFTEN, novice moviemakers fail to appreciate the additional levels of responsibility and cost associated with lawfully employing child actors. Because of these extra compliance factors, use of children in films should be viewed as a luxury, much like elaborate stunts or big-ticket special effects. If you have a very limited budget, you need to ask yourself whether you really have enough funding to incorporate children into the film while lawfully complying with all of the red tape associated with having children on your set.

As a responsible moviemaker it is your duty and legal obligation to make sure that