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Artsy Nonprofit or Nonprofit Art - Transcript

[Speaker 1]

Welcome to Charity Therapy, a podcast from Birken Law about building better nonprofits. I'm your host, Jess Birken. Hello and welcome to this episode of Charity Therapy.

Today I am joined by Andy Sturdevant. Andy is a writer, artist, designer, performer, and beard aficionado living here in Minneapolis where I'm at. Andy also works as the artist resources director at Springboard for the Arts, and he's a coordinator for Minnesota Lawyers for the Arts.

Welcome Andy.

[Speaker 2]

Thank you. It's great to be here.

[Speaker 1]

I wanted to have you on the podcast, Andy, because, well, you're an artist and you work with artists inside and around the nonprofit sector.

[Speaker 2]

All true.

[Speaker 1]

In my experience, arts organizations can be a little unique among nonprofits because some are not nonprofits, some are nonprofits, and there's a lot of mushy gray there, right?

[Speaker 2]

There is.

[Speaker 1]

So, I've got a couple of arts-related questions. Are you ready to just, like, jump right in?

[Speaker 2]

I'm ready. Let's do it. This is what I do all day, so it's in some sense not much different than what I would be doing anyway.

[Speaker 1]

Well, hopefully this is more fun than regular work.

[Speaker 2]

Well, no, I mean, I think it speaks well for my regular work that I enjoy it a great deal. Oh, I like that version. No, this is not.

Yeah.

[Speaker 1]

There you go.

[Speaker 2]

It's really fun either way.

[Speaker 1]

Right on. Here we go. Okay.

Our first question. I'm a filmmaker and I've been working on a huge project. I lived in a homeless camp on the edges of my city for a few years as a teenager.

Now I'd like to return to the camp and tell the stories of the folks who live there. I think a project like this could have a huge impact on my community, but I just don't have the money to fund this on my own. What's the best way to get funding for this project?

[Speaker 2]

Great. Very, very good question. Well, I should say, in my role as coordinator of Minnesota Lawyers for the Arts, it is one of my key principles to defer to attorneys on some of these matters and to also preface anything I say by saying I am not an attorney, this is not legal advice, and we will, if there is anything we can't figure out, we will get you on the phone with an attorney, which is what I would say.

But I have an attorney on the phone now, so that's great. A lot of the questions that I get from folks and a lot of the artists I'm working with are individual artists. They're self-affiliated, maybe they're an LLC, most likely they're a sole proprietor, and most likely they are going out there and making the work themselves in a way that's kind of directed by their own artistic vision, their own interests, for whatever reason people make art.

It's directed by those things. This is a big question. I have a project.

I need to pay for it. What is the best way to do that?

[Speaker 1]

The perpetual question.

[Speaker 2]

The perpetual question. Yeah. And I don't know that there's a best way to do these things.

I think there's good ways to do them. It's just a matter of figuring out, I think, initially, how the person conceives of the project. There's two interesting phrases in this question, as they have phrased it.

One is they're a filmmaker, so they identify as a filmmaker. That tells me right there the person is like, that's principally what they do. That's their job.

That's their vocation. That's their avocation. That's their hobby.

But principally, they're making films, I would presume, and I would ask them, do you identify principally as a filmmaker? They would either say, yeah, I'm a filmmaker. I have a couple shorts I've been working on, working on a feature length.

Or they would say, well, my background is actually as a writer. I've been involved in advocacy work for unhoused populations. And I think that making films is a good way to continue that work.

So that right there, that's an interesting distinction right there. And I think it drives the way that they're going to want to approach the funding part of it. Because the other thing they say is, this could have a huge impact on my community.

And I think that's an interesting part, too. Because that tells me that, obviously, you know nonprofits. People listening to this know nonprofits.

Nonprofits have to have a couple different things, right? They have to have a nonprofit mission. There's always the mission focus.

That's the main part. And so, if there's an aspect of the impact on the community being, notice they're not saying like, this could be a huge artistic triumph, which is equally valid. It's not an either or situation.

But the fact that there's an idea of an impact on the community tells me, okay, maybe there is a way to approach this that looks a little more non-profit-y.

[Speaker 1]

Yeah. I wish we had this person here so we could ask them, right? These are, I love that you're drawing this out of this question, because that's like so insightful, right?

Who are you at base when you're doing this? Are you advocating, or are you like, this could win me an award as a part of my filmmaking career? And both of those can be true, and neither is bad.

But it probably matters how you're going to get it funded, and who's interested in funding this?

[Speaker 2]

Exactly. I mean, the reason why the nonprofit model looks attractive to artists is because, for better or for worse, for right or for wrong, it does unlock a lot of funding opportunities that are not available to individuals. And so, you can kind of see people doing a mental calculus, like, hmm, if there's these funding opportunities that are available to me as a nonprofit, should I be thinking in this way?

And should I be trying to put artistic projects into that box? And I don't encourage people to think that way, because you can figure out ways to get things paid for. You don't have to go through the whole rigmarole of becoming a nonprofit just in order to – For real, people.

[Speaker 1]

It's so much harder than a regular business. There's this idea that if it's for charity, it's easy and free, and oh my goodness, that couldn't be less true.

[Speaker 2]

Right, right. And I guess the question that I would ask this person here is, okay, let's say you make this film, and let's even think about it programmatically. Let's say the function is to raise

awareness, to create a wonderful artistic project, but also to raise awareness, to give voice to these individuals.

So, we think about it programmatically. If we were to say, okay, so what I'm going to do is I'm going to start a nonprofit, whether that's fiscally sponsored, whether they work with somebody to set up a 501c3, it's going to be called Voices on the Margins or something like that. And it's a series.

[Speaker 1]

See Andy for your movie titling needs. Right, exactly.

[Speaker 2]

Well, that's the name of the production company, maybe. That's the name, maybe, of the organization that is making these films. So, let's say to this individual person, if you were to be kicked out of this project and you were to lose control of it, would that be okay?

[Speaker 1]

I love where you're going with this. Yes.

[Speaker 2]

Because if the answer is, oh, absolutely not. This is my personal vision. This is something that I'm born to do, and other people can do this, and I want to help people, but I would like to be the person directing this.

And that's great. That is why we're artists.

[Speaker 1]

We can direct things. Or like, what if this made no money? Would you be cool with it just going into the world and being seen by lots of people, but you never saw a dollar from this?

[Speaker 2]

Yeah. And I think, you know, some artists are okay with that. But it almost seems like the control thing.

Because if they say, no, this is a project for everybody, like if I have a board of directors, and they've determined for whatever reason that I am not the person to lead this, I can step away and work on my own stuff, but this work, Voices from the Margins, or whatever we call it, will continue without me. And I think that's a really good, like, that's a way to say, okay, this is definitely not a non-profit project if, you know, you want to retain control.

[Speaker 1]

Yeah. That's a huge deal for me in almost any formation that I'm working with, is like, how do you feel about, you know, losing control and giving up control, because it's not just you that's going to be making decisions. Absolutely.

[Speaker 2]

Exactly. And I feel like with filmmakers in particular, I think that's why this question is really well chosen. Because for whatever reason, I think with filmmaking as a discipline, because there is such an advocacy and justice-oriented aspect to it, or there can be, those lines do get a little blurry.

Right. For this person, I would say, if you want to make a film by yourself as an individual filmmaker, apply for an individual artist grant through like, you know, the Metro Regional Arts Council or the Minnesota State Arts Board. And that's going to get you the funds to do the stuff that you need to do to make this happen.

You know, to pay for your own time, to hire the editor, to hire the director of photography, or you know, you can crowdfund it. Like in a lot of ways, crowdfunding is a much quicker way to raise, you know, a fairly large amount of money without being beholden to the timeline for an individual grant, which is a lot longer, usually.

[Speaker 1]

Well, and if they were, let's just say this is very mission-driven, and they were wanting to partner with a non-profit, I can definitely see a Model C fiscal sponsorship being a thing, but that the Model C fiscal sponsorship is very specific, right?

[Speaker 2]

Yeah.

[Speaker 1]

So, like, you have to find a non-profit whose exempt mission is achieved by what you're doing, and then they have to be willing to take the risk and deal with the headache of managing your project from a non-profit perspective. And then, you know, you can direct fundraising efforts to have them help you raise donations to fund the project. But I think that everybody thinks, oh, fiscal sponsorship, that's so easy, and we'll get free money because it's a charity, and you know, you and I both know that fundraising is almost way harder than seeking an individual artist grant or crowdfunding, because it's just a whole other ballgame that you're not necessarily even trained in.

[Speaker 2]

Yeah, and it's one of those things you can teach yourself, but yeah, I mean, the amount of, you know, one of the things they do at Springboard is run the job board, right? And there's a reason why there's development jobs all the time, because there's a need for it, and it's difficult, you know, it's something you can learn, for sure, but it's difficult work, and you can really burn out on it.

[Speaker 1]

Well, and it's not easy to get people to part with tens of thousands of dollars.

[Speaker 2]

Well, yeah.

[Speaker 1]

You know, everyone thinks they're gonna get five \$50,000 donations and be done with it, and it's like, no, that's probably not how that's gonna go.

[Speaker 2]

Yeah. So what would you think, if this person asked you, would it be a viable way to go if they were to find a non-profit that had the mission, you know, like, let's say a service organization that works with unhoused populations, is it the sort of thing where you could suggest to them that they might pitch it to the non-profit as a programmatic aspect of their mission, and raise the money for it through their development people, through their development infrastructure, and then hire the filmmaker as a contractor to execute the project?

[Speaker 1]

Well, that's definitely a creative and viable solution. I think the risk to the filmmaker is that control piece, right? Because now you're not really, you're not making your movie, now you're making a commercial for their fundraising program.

[Speaker 2]

That's, yeah.

[Speaker 1]

And what was the story you wanted to tell versus what does their upper management or their board approve of, you know, because now we've really lost the artistic element, and every artist, I mean, my ex is a musician, and that is like a nightmare to have somebody sort of standing over your shoulder and telling you, well, if you just made this part a little longer, if you just cut out that one, you know, scene we don't like, or, you know, I think that could go poorly.

[Speaker 2]

Yeah, no, you're right. It did say nothing, and actually, as I ask that, I'm realizing there's the work-for-hire aspect, which means you don't even really retain creative control over the finished...

[Speaker 1]

Even with the Model C fiscal sponsorship, too, right? A lot of those times, you are either giving a permanent license, or the nonprofit is actually going to own or be co-owner of the thing. So, if there is some sort of return on investment, you're going to be splitting that with the nonprofit a lot of the time.

[Speaker 2]

Yeah. And this is all goes clearly to say, this is why I think more foundations and more arts boards should just be offering grants to individuals. So, there's not this temptation to kind of force some kind of artistic project into a nonprofit box just for accessing \$20,000, you know?

[Speaker 1]

We need to go back to the truly being a patron of the arts, you know? Who are the people in Florence that paid for, like, Michelangelo or whatever?

[Speaker 2]

Yeah, the Medici's.

[Speaker 1]

Yeah, I'm sure they were, like, some terrible mafiosos or something. I think they murdered a bunch of popes, right?

[Speaker 2]

It's anything. A pope murder gets involved, there's some real problems with the model.

[Speaker 1]

Alright, let's move on to question number two. I'm a member of a small artists collective in my community. We're really just an informal group of eight artists who have been supporting each other for a few years now, pooling together resources to buy supplies, rent studio space to share and occasionally put on an event to show our pieces.

Recently, the idea has come up to formalize this and turn it into a nonprofit so we can get discounts and save money on our expenses. Does this work as a nonprofit?

[Speaker 2]

This is another really common question. This, for me, feels a little bit more like a good fit. It's interesting when they use the word collective, and I think when people come to me with these kinds of questions, one of the things you want to talk through right away is, like, the word collective doesn't really mean anything legally.

You could call it a collaborative; you could call it a couple of different things. And you can find organizations that call themselves the so-and-so collective, and it can be a for-profit business, it could be a nonprofit business, it could even be a cooperative, like a legal cooperative. I think that's the one exception where you can't call yourself a cooperative if you are not legally incorporated as a cooperative.

But again, I'll leave that to the cooperative attorneys. So yeah, the question here would be, again, what is the nonprofit mission here? And just the creation of artwork for the benefit of a community can be a nonprofit motive.

That can be a reason to incorporate as a nonprofit. Because yeah, it does create some opportunities for this group of artists. Well, it's funny.

The things that they actually want to do, they say they want to get discounts and they want to save money on expenses. And I'm not 100% sure that going with a nonprofit model would do those things in the way that they're thinking.

[Speaker 1]

I agree. I think this to me sounds very much like we think everything is free when you're a nonprofit. And that's kind of on the business end of things.

I hear a lot of like, but we can get Salesforce for free. I was like, well, who cares? You need to pay a consultant to figure out how to use Salesforce.

So, who cares if you have a free account? You know what I mean?

[Speaker 2]

Yeah, exactly.

[Speaker 1]

It's like, you know, we get a discount on QuickBooks through TechSoup, which is great. And if you're doing accounting, you need QuickBooks. But if you're only doing accounting because you started a nonprofit that's now subject to FASB-116 and GAAP, when you could have just jotted all your stuff on the backs of napkins and takeout bags, like, you know, I don't know that you're helping yourself.

[Speaker 2]

Yeah, exactly. I mean, I think, you know, honestly, the reason why I think a lot of collectives or collaboratives or groups like this would start a nonprofit is, again, to access some of those funding streams. And if you look at the state arts board grants that are awarded through the community arts grants or some of the other ones or the MRAC grants that are awarded to organizations, a lot of them are collectives that fit this model pretty closely.

They're a group of artists that are doing some kind of work that maybe there's an earned income aspect to it, but most likely, yeah, I don't know, they're doing work that has some kind of a nonprofit aspect to it.

[Speaker 1]

And do you know if those are for sure nonprofit entities or are they just sort of nonprofit-y?

[Speaker 2]

Well, I mean, in order to get that funding through the state arts board or MRAC, and those would be the two that would be the big targets here, I guess. Yeah, they either have to be 501c3s or they have to be fiscally sponsored through an organization like Springboard for the Arts. I mean, because we fiscally sponsor, I think, over 200 organizations, and many of them are collectives of artists, whether they're visual artists or musicians.

So, to be eligible for those funds, you do have to be – you can't be nonprofit-y. You have to literally be a nonprofit or at least be fiscally sponsored by either Springboard or someone else.

[Speaker 1]

I've certainly had plenty of collectives of friends that were artists that were just broke.

[Speaker 2]

Yeah, right. I mean, it's – yeah, exactly.

[Speaker 1]

They might have felt like they were nonprofit.

[Speaker 2]

Yeah, isn't it fun to explain that? Like, nonprofit doesn't mean you don't make money. It doesn't mean you don't make a profit.

It means something else. But that's our job, to kind of explain that.

[Speaker 1]

If these folks came in and were talking to me, some of the things I would want to know would be, is this a closed group? What is the mission?

[Speaker 2]

Yeah, exactly.

[Speaker 1]

Because what's not really in here is, what is the mission? There's a lot of, like, we help each other pool resources, and we share studio space, and we want to save money on our expenses. But what I'm not seeing is, what is our public benefit?

[Speaker 2]

Right.

[Speaker 1]

And yes, making art for people to see is a public benefit, but it doesn't say – I wish this question had more information about what they do to serve the public, because they may not qualify.

[Speaker 2]

Yeah.

[Speaker 1]

The IRS is very stingy.

[Speaker 2]

Oh, sure.

[Speaker 1]

Especially when it comes to arts groups, where it seems like maybe there's just a bunch of private benefit, and people are just trying to use it as a tax loophole.

[Speaker 2]

Right.

[Speaker 1]

So, if I were doing an application with this person, it would be like, okay, tell me about your mission. How do you serve the public? How is that done at low or no cost?

If the answer is, well, we have shows and we sell our art.

[Speaker 2]

Yeah, that's not going to cut it.

[Speaker 1]

It's like, oh, wait. That's actually a business. That's not a charity.

[Speaker 2]

I guess if part of their mission is to bring work by emerging or underrepresented voices to a larger audience, that feels more like it. Yeah, I don't know. It's the fact that they're a collective.

It's like you said. Is it a closed group, or is it the kind of thing where they're partnering with other artists for exhibitions, they are working with schools?

[Speaker 1]

And is it anyone could join?

[Speaker 2]

Right.

[Speaker 1]

Is this a member-based organization? Or is it just like, no, me and my six friends, and that's it?

[Speaker 2]

Yeah.

[Speaker 1]

Those are some of the questions I would want to know. What does collective mean to you? Because like you said, it doesn't have any legal significance, right?

So, it's like, well, what is that? Is it an inclusive community where we try and bring as many people under the umbrella as possible? Or we're bringing in BIPOC women or something?

Or is it just like, well, really, we're all kind of in business together, and we wish there was a way to do that free?

[Speaker 2]

This is one that comes up a lot, and I'd be very interested to get your perspective on it. So yeah, clearly, maybe this is a for-profit enterprise.

[Speaker 1]

It could be.

[Speaker 2]

It could be. But maybe they have some aspects, because it's a programmatic thing, usually. They have a programmatic thing where the eight of them, they have maybe this dedicated space where they show work by, like you said, BIPOC women artists, for example.

Is it the kind of thing where they could create either a fiscally-sponsored project or a nonprofit that would be a project of this larger group but would be eligible for, for example, a community arts grant through the state arts board or something like that?

[Speaker 1]

For something specific, that's like a programmatic thing that we're doing right now. And whether or not the rest of what we do as a commercial enterprise is who cares, right?

[Speaker 2]

I think an interesting example of this is there is a studio called Font Love Studio that does letterpress in Minneapolis. And it's run by a woman named Alana Schwartzman. And she does letterpress commissions, whatever kind of work is coming to her.

And in addition to that, she also has a nonprofit called Proof Public that is specifically about bringing this technique to people that don't typically get to use letterpress as a medium for either political work or for public-facing work in some kind of way. And so, it's Alana in both cases, but it's...

[Speaker 1]

Alana and a board in one. Right, exactly.

[Speaker 2]

Yeah, exactly, right. It's Alana and it's a board, which is a very important distinction.

[Speaker 1]

I think that you're hitting on something really important there because there are things, so like, not to get political, but in the sort of like women's health, reproductive health, abortion care space, right? A lot of clinics that are in that space are not Planned Parenthood. They're not nonprofits.

But there are aspects of doing that work that's very mission focused. And there are aspects of that work that's like, it doesn't, it's not a viable part of a business. Like to take time out of your practice to train new doctors out of med school on how to do some of the procedures is just not something that pays.

But it's important. And if you believe in the right to choose, then you need people to do that. So, I think there are things like I'm hearing the letterpress thing and I'm like, oh, right.

Like if there's like a dying art or craft or some of the folk art schools around where it's like we need to preserve or think about, you know, Lakota language and these sorts of things where it's like, well, there could be like a business aspect to some things. But there's this preservation, transfer of knowledge, getting education out there that as an artist business, like that's never going to make you money, but it's super important and people want to support it. And so sometimes there's that happy medium where you can have a viable career and not have to have a board hire and fire you and still find a charitable outlet for those things that really like aren't good business, but people want to support them because they are meaningful and important.

[Speaker 2]

Yeah, exactly. And yeah, I mean, these are the kinds of questions that we want people to have with attorneys and with people that, you know, kind of know these structures and can help

think through the pluses and minuses. If this question came to me, you know, often it's phrased as a cooperative question.

And I've had a lot of trouble with that over the years. It's because people will say, you know, could we become a cooperative, you know, like the Wedge or like the Seward Co-op or like the Tilsner. I know, I don't know if the Tilsner is a co-op anymore, but there's a few housing cooperatives for artists in Lower Town.

And that is an extremely complex area.

[Speaker 1]

Oh, yeah. I mean, I'm like, don't look at me.

[Speaker 2]

That's not what I do. No, there's a lot of people that do this. I mean, it's, yeah, I don't know.

[Speaker 1]

Well, and then there's a trade-off, right? Everything's a trade-off. So, co-op, you know, has different rules than a 501c3 public charity.

So somewhere in there, you make a choice strategically. And I think maybe that's kind of like one of the takeaways here, actually, is that, you know, you really need to understand all your options and ask people like you or like me to really weigh out the pros and cons of like the direction, the strategic direction you want to go with something when you're forming or making at this like pivot point. Because the choice you make dictates a lot of downstream stuff later.

[Speaker 2]

Yeah, exactly.

[Speaker 1]

So, I think that's a big takeaway from these questions is like you have to pick a lane and the lane you pick is going to dictate a lot of your realities going forward. So, it's really important to know what those realities are going to be and that you're okay with them.

[Speaker 2]

Exactly.

[Speaker 1]

And then I think another thing that you brought up that I love is like getting clear about who you are. Yeah. Who you serve.

Are you fundamentally a filmmaker or are you fundamentally an advocate for the unhoused? Right. That's like important self-study that people need to do when they're thinking about these things, because I think it does help you pick which lane you're going to go in.

Right. And then if you are thinking about a nonprofit, I would say like the final thing is remember, like, what is the public service? There has to be some sort of like public service and just you selling your art isn't a service to the public.

Right.

[Speaker 2]

Exactly. Yeah.

[Speaker 1]

So, we got to flesh out, you know, what that is, if it is going to be a nonprofit.

[Speaker 2]

Exactly.

[Speaker 1]

You think that's pretty much sums it up there?

[Speaker 2]

That sums it up. I mean, these are all reasons why, you know, this is something I tell people all the time. Like an attorney is not someone you call when you're in trouble.

And I mean, you do call an attorney when you're in trouble.

[Speaker 1]

Oh, yeah. No, please call way before that.

[Speaker 2]

Yeah, you want to get on the ground floor early, you know, get someone involved. And that's I mean, that's a lot of what I do is just kind of ideally breaking down that kind of perceived barrier that people have when it comes to talking to attorneys. Like you can talk to someone early on.

[Speaker 1]

Yes.

[Speaker 2]

Get the information you need, make the decisions, continue to work with that person.

[Speaker 1]

Yeah. I love that you provide that the conduit because lawyers are scary and you're not scary. Well, some of them are.

Some of them aren't. Well, you know what I mean. People are afraid of lawyers in general.

Oh, Andy, thank you so much for joining me.

[Speaker 2]

My pleasure, Jess. Thank you.

[Speaker 1]

Wonderful to have you here. We should definitely do this again.

[Speaker 2]

Be happy to. It's great. Really fun.

[Speaker 1]

Right on. Well, folks, if you enjoyed this episode, do me a huge favor. Share it with a friend, rate, review and subscribe on your podcast app.

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About the Author



Hi, I'm Jess Birken.

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

Let's connect!

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