

GYMS. RESTAURANTS. ADULT FILMS. LITIGATION?



Crowdfunding – A Background

Crowdfunding. It's everywhere, at all levels of the community for all sorts of projects. There are crowd funded restaurants, boxing gyms and yoga labs. It's even set to be in space – yes, the most high profile program at present is almost definitely Porn Hub's new program to crowdfund \$3.4million dollars for [a sex in space tape](#) (though they are struggling to get to their target it seems).

Essentially, a crowdfunding program is a persuasive communications program. It is about selling a story to attract investment from a targeted public, and is most typically driven by an online fundraising system.

The Crowdfunding Communications Toolkit

A typical crowdfunding program often includes the communication basics: a strategy consisting of objectives, defining the story and defining the target audiences, and then an execution.

The execution can include a launch, social media campaign, media relations, video and sometimes database-driven email marketing – all of these have been deployed on the "Space Sex" mission.

Each feature is a call to action, typically to click through to the platform hosting the fundraising program with the emphasis being to financially pledge support. In other words, something akin to many investor or causal communications programs.

Litigation – Now being crowdfunded near you

There is a new player on the crowdfunding block. Something very much focused on returns, and now competing for investment monies: "crowdfunded litigation".

Financially supporting a lawsuit for a share of the spoils of victory was a crime (called 'Champerty'). In recent times, however, an industry of "litigation funding" has grown, with institutional financiers growing in prevalence, essentially treating litigation as a financial instrument.

The very latest trend in litigation funding is crowdfunding, which in the US includes relatively new platforms “[LexShares](#)”, and “[Invest4Justice](#)” which touts itself as being “opened in 2014 as the world’s first litigation crowdfunding platform”. Both strongly promote themselves as high return investment options. In the UK, “[CrowdJustice](#)” is a very recent system, based on “donors” rather than investors and has a more casual tone.

Litigation crowdfunding is still in its infancy in Australia. However there is at least one active site, “[Lawfunder](#)”, recently launched targeting Community Legal Centres as a way to create fundraising campaigns for their cases. In other words, it is a system with a more casual or charitable intent which aims to fill the void left by dwindling government funding, although the founder has hinted at moving more into the [investment space](#).

I put it to Nick Stagg, a litigation partner at Perth law firm Lavan Legal, that at first glance it would seem the Australian prohibition on success fees as a remunerative model for litigation would make Australia a ripe market for litigation crowdfunding.

“Australia was one of the pioneering jurisdictions in the litigation funding space – some would argue even well ahead of the curve in the area in the USA – so using history as a guide, it would seem to follow as a logical extension that the path to assisting access to justice will be crowdfunding,” Mr Stagg says.

When asked as to whether he felt increased regulation in this area was likely, Mr Stagg said that in broad terms litigation funding was not overly regulated in Australia, though there is noise from some quarters that the practice should be reviewed to determine whether greater regulation might be desirable. “If crowdfunding gathered momentum and some real traction in the domestic litigation arena, that development may well trigger government and regulators to run the ruler over all forms of litigation funding as part of an overall ‘health’ check”, he said.

Mr Stagg also indicated that funders really should obtain legal advice before participating in crowdfunding, and outlined potential pitfalls such as adverse cost findings and privilege complications as areas litigants and lay-people needed to be careful of.

Litigation Crowdfunding and PR

As it presently sits, it appears that from a PR sense “litigation crowdfunding” hasn’t extended past the support pitch provided with each listing on the host platform.

I believe there is a big opportunity here to take this pitch more broadly to the market, as with other crowdfunding programs or indeed orthodox investor relations or causal communication campaigns. In either of these fields you need a strategy inclusive of an objective, a core narrative and a target audience. In terms of the toolkit you can deploy, again, it’s typical of any such communications program and of what is being used in all other forms of crowdfunding at present.

Some techniques could include “PR-ing” the legal team and building their professional profile; traditional litigation PR and matter profiling in the media featuring calls for support, database marketing, “launches” and matter updates, the integrated use of social media, video and even direct briefings and pitching to potential investors or investment gatekeepers. For “causal” pitches, perhaps there is scope for a “Public Champion” in the media and on social media, beating the war-drum and asking for support.

There is grand scope for innovation, including the use of the latest technologies. Imagine updates from the legal team, via Periscope. Or Skype hook-ups where the client bringing the action and raising the money personally pitches, and tells their story. Personable and experiential investor communications campaigns have become more frequent in many sectors, and there is no reason why that could not apply with litigation investments. For example, visits to the law firm offices or chambers for a meet and greet between the legal team and substantial investors.

Of course, all communication initiatives need to work within legal constraints, and as with orthodox litigation PR, communications practitioners need to work hand-in-glove with lawyers and remain vigilant and attentive to appropriate boundaries.

Litigation crowd funding - it’s a brave new world, and one with potentially enormous communications opportunities.

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