

This is the property of the Daily Journal Corporation and fully protected by copyright. It is made available only to Daily Journal subscribers for personal or collaborative purposes and may not be distributed, reproduced, modified, stored or transferred without written permission. Please click "Reprint" to order presentation-ready copies to distribute to clients or use in commercial marketing materials or for permission to post on a website.

International film distribution 101

Mark Litwak is a veteran entertainment attorney and producer's rep based in Beverly Hills. He is the author of six books and the CD-Rom program Movie Magic Contracts, and the creator of the Entertainment Law Resources website:www.marklitwak.com. He can be reached at law2@marklitwak.com.



Filmmakers fortunate enough to receive distribution offers for their films are often confronted with complex deals to distribute their films. These can bewilder those unfamiliar with the customs and practices of the industry. Let's begin with a discussion of international film sales.

International sales agents are distributors, although they usually do not own a single theater, home video label or television outlet. They are essentially distributors that license films to territory distributors ("buyers"). Territory distributors acquire rights to exhibit a film within their country although sometimes they may license rights for several different countries. They often find out about films from sales agents whom they meet at various markets held throughout the year. Sales agents and buyers typically attend the three major film markets, which are at Cannes, Berlin and Santa Monica (AFM) as well as TV markets such as Mip and MipCom. This film markets are critical: last year's Cannes Market alone boasted more than 1,100 sales agents and 10,000 participants from almost 100 different countries.

Sales agents not only license films, but also service buyers by providing them with various materials and elements, including film and video masters, key art, photos and trailers. Most filmmakers have no clue how to go about licensing their film, for instance, to a Turkish buyer, and what terms would be acceptable. Moreover, they don't even know who the buyers are in most territories.

Two-thirds of all film revenue now comes from abroad. International sales grew 35 percent from 2007 to 2011, while revenue in North America increased a mere 6 percent. Over the past four years, the number of screens in China has doubled to more than 6,200, a number that's expected to double again by 2015. Chinese box-office receipts hit a record \$1.5 billion last year. With China and other rapidly developing countries building thousands of new theaters, this trend is expected to continue. Indeed, the North American market is by far the toughest market to crack for a low budget independent film without stars.

Reputable sales agents should be willing to accept terms in their contract with filmmakers that protect their interests. Many such provisions do not cost the sales agent anything, as long as the sales agent lives up to the terms of its contract. A requirement for interest on late payments, for example, costs the sales agent nothing as long as payments are made on time. Such a clause is important because it will encourage a sales agent to live up to its commitments, and provide the filmmaker with a viable remedy in case the sales agent defaults. While a competent sales agent provides valuable services, one should always remember the importance of what the filmmaker brings to the table. Without a good film, the sales agent has nothing to sell. Most sales agents produce few if any movies themselves.

Indeed, the North American market is by far the toughest market to crack for a low budget independent film without stars. International sales grew 35 percent from 2007 to 2011, while revenue in North America increased a mere 6

Thursday, September 6, 2012

Law Practice

Stradling Yocca says second time's the charm for its Santa Monica office

Stradling Yocca, which made its name as a mid-market powerhouse in Orange County, opened an office in Santa Monica in November and has proceeded to hire briskly. So far, it's doing much better than its first foray in L.A.

Large Firms

Law firm failures: drilling for questions, and answers that lead to better questions

The speed with which many large law firm failures appear to take place has been noted in several recent large law firm collapses, but we are learning that law firm failures actually don't happen all that quickly. By **Edwin Reeser**

California Supreme Court

Research shows the California Supreme Court is more in sync than most courts

The cases that wind up before the state Supreme Court have the power to divide. Yet that divisiveness can all but disappear when the state high court issues its opinions.

Government

AOC interim director, chief deputy director to stay on in new roles at the agency

The incoming director of the state courts agency has chosen two interim executives to stay on as two of its three top managers in a reorganized structure recommended as part of reform efforts.

Intellectual Property **CONTROL COSTS WITH JAMS MANAGED ARBITRATION** Judge drops inquiry into Oracle Google paid commenters

U.S. District Judge William Alsup has announced he is satisfied with Google Inc. and Oracle Corp.'s disclosures of any paid commentators and journalists who opined on their patent and copyright case.

Real Estate

Real Estate Deals

Allen Matkins Leck Gamble Mallory & Natsis LLP represented Boston Properties, a self-managed and self-administered real estate investment trust, in purchasing two office buildings totaling 521,000 square feet.

Law Practice

Feds, attorneys dispute whether undocumented lawyer could legally work

Even if the state Supreme Court rules an undocumented immigrant can be a lawyer,

percent.

Here are just a few of the most critical ways for filmmakers to protect their interests in contracting with sales agents:

No changes. The film should not be edited or changed without the filmmaker's approval. Editing for censorship purposes, television broadcast and changes made for a foreign language release is permissible.

Minimum advertising specified. Contracts should specify the minimum amount the sales agent will spend on promoting the film. These expenses could include advertising in the trade papers, a billboard or payment for a screening room for the film.

Expenses limited. There should be a floor and a ceiling on expenses. Market expenses should be limited to the first year of release and capped per market. Promotional expenses should be limited to direct out-of-pocket costs spent to promote the film, and should specifically exclude the sales agent's general overhead and staff expenses.

Term. The term should be a reasonable length. The filmmaker should be able to regain rights to the film if the sales agent gives up on it. It is best to have a short initial term and a series of automatic rollovers that apply if certain performance milestones are met.

Indemnity. Filmmakers should be indemnified for any losses incurred as a result of the sales agent's breach of the terms of the agreement or violation of third party rights.

Possession of negative. The sales agent should simply receive a lab access letter rather than possession of the original negative; the sales agent *should not* be permitted to remove masters from the laboratory.

Errors and omissions policy. It's generally the filmmaker's responsibility to purchase such an insurance policy, though sales agents sometimes may be willing to advance the cost of this insurance. In such an event, the filmmaker should be added as an additional named insured on the policy.

Termination clause. If the sales agent defaults on contractual obligations, the filmmaker should have the right to terminate the contract, and regain rights to license the film in unsold territories as well as obtain money damages. It is only fair for the filmmaker to give the sales agent reasonable prior notice of default before exercising her right to terminate.

Limitation on action. The filmmaker should have at least three years from receipt of any financial statement, or discovery of any accounting irregularity, whichever is later, to contest accounting errors.

Assignment. It is best to prohibit assignment unless filmmaker consents.

Warranties. The filmmaker's warranties, in regard to infringement of third party rights, should be to the best of the filmmaker's knowledge and belief, not absolute.

Schedule of minimums. Foreign sales agents should agree to attach to their contract a schedule of minimum acceptable license fees per territory.

Arbitration clause. Every contract should contain an IFTA arbitration clause ensuring that all contractual disputes are subject to binding arbitration with the prevailing party entitled to reimbursement of legal fees and costs. The arbitration award should be final, binding and non-appealable.

[Previous](#) [Next](#)

whether he could legally obtain work remains a gray area.

U.S. Court of Appeals for the 9th Circuit Los Angeles cannot destroy homeless people's unattended property, court rules
Los Angeles city workers were out of line when they seized and summarily destroyed homeless persons' unattended but unabandoned property left on Skid Row sidewalks, a divided 9th U.S. Circuit Court of Appeals panel held on Wednesday.

Litigation

In span of two years, asbestos settlements double in San Francisco Superior Court

The two-year-old asbestos department in San Francisco Superior Court is yielding a lot more settlements but is not as popular with plaintiffs' attorneys as Los Angeles because fewer cases are going to trial, lawyers say.

Environmental

State environmental law faces political headwinds from developers, governor

California's landmark environmental law, CEQA, faces its stiffest challenges yet as developers and Gov. Jerry Brown seek changes to make it easier for development projects to gain approval.

Government

Courthouse construction program nears reforms amid budget constraints

As a committee of judges considers which of California's 31 planned courthouse construction projects will go forward in tight budget conditions, the overall construction program is moving closer to an action plan for reform.

Intellectual Property

Big settlements for small patent holding companies may be getting rare

Small holding company NTP Inc. scored a big settlement recently of its infringement lawsuit against technology companies, but the trend is in favor of large patent aggregators, which are muscling out smaller players.

Skepticism of big patent damage awards may make Apple's post-trial road difficult

To survive post-trial motions and an inevitable Samsung Electronics Co. Ltd. appeal, Apple Inc.'s \$1 billion verdict must survive trends in patent law that make it difficult to prove big-dollar damages.

Pilot program just in time for red-hot patent cases in California's federal trial courts

Even without Congressional funding, a pilot program designed to funnel patent lawsuits to judges with expertise already is having an impact on how California federal courts handle the litigation.

Law Practice

Established relationships crucial in