

# LET'S MAKE A DEAL

## The Acquisition/Distribution Agreement

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There are several ways to develop or produce a film. Beginning with an idea or the movie rights to an existing literary property, a studio can hire a writer to create a script. The studio's development staff works with the writer to craft the story. Most scripts developed by studios never get produced.

Other movies begin with a script developed outside the studio. Here a writer, working on his or her own, or hired by an independent producer, writes a screenplay. After it is finished, it may be packaged (joined) with other elements (e.g., a star or director) and presented to the studio for financing and distribution. The big three talent agencies (CAA, ICM, and William Morris) are responsible for most packaging.

Sometimes films are both developed and pro-



duced away from the studio or company that ultimately distributes them. These independently produced projects are often dependent on investors or presale distribution deals (selling off various foreign distribution rights) to finance production. The producer then enters an acquisition agreement with the distributor for release of the picture. This is called a negative pick-up deal.

Although the terms of negative pick-up deals vary, the studio/distributor typically pays for all distribution, advertising, and marketing costs. The studio/distributor and producer share profits. Because the producer has taken the risk of financing production, he or she probably can obtain a better definition of net profits than if he/she made the film with studio financing. Profits may be split 50/50 between the distributor and producer without a deduction for a distribution fee. Of course, the independent producer takes the risk that if the film turns out poorly, no distributor will want it. Then the producer can incur a substantial loss.

In a negative pick-up deal, the distributor will often agree to give the producer an advance of his/her share of the profits. The producer can use this money to repay investors. Producers will want to

obtain as large an advance as possible because they know they may never see anything on the back end of the deal (i.e., no profits).

The distributor wants to pay as small an advance as possible and usually resists giving an amount that is more than the cost of production. Its executives will propose, "We'll be partners. We will put up all the money for advertising and promotion. If the picture is successful, we will share in its success." Sound good?

Unfortunately, distributors have been known to engage in creative accounting, and profit participants rarely see any return on their share of "net profits" because of the way that term is defined. Consequently, the shrewd producer tries to get as large an advance as possible. He/she also tries to retain foreign rights and keep them from being cross-collateralized. (This means the monies earned from several markets are pooled. For example, let's say your picture made \$1 million in England and lost \$1 million in France. If those territories were cross-collateralized, and you were entitled to a percentage of the net revenue, you would get nothing. On the other hand, if the territories were not cross-collateralized, you would get your percentage of the English revenues and the distributor would absorb the loss incurred in France.)

### Negotiating the Distribution Deal

The most important advice I can offer filmmakers seeking distribution is, *Don't brag about how little money you spent to make the picture before you conclude your distribution deal.* You may feel proud of making a great-looking picture for a mere \$400,000. But if the distributor knows that is all you have spent, you will find it difficult to get an advance beyond that. It would be wiser not to reveal your investment, recognizing that production costs are not readily discernible from viewing a film. Remember, the distributor has no right to examine your books (assuming the distributor has not provided financing). What you have spent is between you, your investors, and the I.R.S.

Negative pick-up deals can be negotiated before, during, or after production. Often distributors become interested in a film after viewing it at a film festival and observing audience reaction. All the studios and independent distributors have one or more staffers in charge of acquisitions. It is the job of these acquisitions executives to find good films to acquire.

It is not difficult to get acquisition executives to view your film. Once production has been announced, don't be surprised if they begin calling you. They will track the progress of your film so they can see it as soon as it is finished—before their competitors get a shot at it.

From the filmmaker's point-of-view, you will get the best distribution deal if you have more than one distributor interested in acquiring your movie. That way you can play them off against each other to get the best terms. But what if one distributor makes a pre-emptive bid for the film, offering you a \$500,000 advance, and you have only 24 hours to accept the offer? If you pass, you may not be able to get a better deal later. It is possible you may fail to obtain any distribution deal at all. On the other hand, if you accept the offer, you may be foreclosing the possibility of a more lucrative deal that could be offered to you later. Consequently, it is important to orchestrate the release of your film to potential distributors to maximize your leverage.

### Orchestrating the Release

1) *Keep the film under wraps.* Don't show your film until it is finished. Executives may ask to see a rough cut. They will say, "Don't worry. We're professionals. We can extrapolate and envision what the film will look like with sound and titles." Don't believe them. Most people can't extrapolate. They will view your unfinished film and think it amateurish. First impressions last.

The only reason to show your film before completion is if you are desperate to raise funds to finish it. The terms you can obtain under these circumstances will usually be less than those given on completion. If you must show a work in progress, exhibit it on a Moviola or flatbed editing table. People have lower expectations viewing a film on an editing console than when it is projected in a theater.

2) *Arrange a screening.* Invite executives to a screening; don't send them a videocassette. If you send a tape to a busy executive, he will pop it into his VCR. Ten minutes later the phone will ring, and he hits the pause button. Then he watches another 10 minutes until his secretary interrupts him. After being distracted 10 times, he passes on your film because it is "too choppy." Well, of course it's choppy with all those interruptions. You want to get the executive in a dark room, away from distractions to view your film with a