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Reel Deals

By Mark Litwak

Film investments have a bad reputation, and deservedly so. There are instances where financiers have been cheated and lost their entire investment. Consequently, some investors simply refuse to consider film-related investments. This is unfortunate because an intelligent investment in a motion picture can earn substantial returns. While film investments are risky, the potential return from a hit can be enormous. No only can the film earn revenue from box office receipts, but there are many ancillary sources of income. These sources include revenue from television, home video, merchandising, music publishing, soundtrack albums, sequels and remakes.

There are ways to reduce the risk of film investments. Here is a checklist to guide investors.

Thoroughly investigate the reputation and track record of any producer or distributor you contemplate doing business with. No contract can adequately protect you against a scoundrel. Speak to filmmakers and investors who have done business with a candidate. Check court records to see if the company has been sued.

Federal and state security laws are designed to protect investors. Offerings to the public generally require prior registration with the Securities and Exchange Commission or a state agency. Usually private placements are limited to people with whom the offeror has a pre-existing relationship. Even if registration is not required, the anti-fraud provisions of the security laws require that the offeror make full disclosure of all facts that a reasonably prudent investor would need to know in deciding whether to invest. The information disclosed should include a detailed recitation of all the risks involved in developing, producing and marketing a movie. Avoid any offering that appears to violate this requirement by making less than full and truthful disclosure. Carefully read the prospectus, and consult your own financial and legal advisers before making a decision to invest.

Do not back a filmmaker or production team that does not possess the proven skill needed to make a professional-looking movie. Avoid first-time filmmakers. You are safer backing filmmakers who have completed at least one short or a feature-length work. Partner with people of integrity who bring the skills, expertise and resources to the endeavor that you lack. For instance, if you don't have the knowledge necessary to evaluate a script, bring aboard someone who has that expertise, or hire a script doctor.

There is a very limited market, and modest potential revenue, to be earned from short films, documentaries, black-and-white films and foreign language pictures. Distributors and exhibitors are prejudiced against motion pictures shot on videotape. They prefer films shot on 35-millimeter stock, although quality films shot on 16-millimeter or Super 16-millimeter stock can obtain distribution. The top festivals do not exhibit motion pictures on videotape.

Certain themes, topics and genres can be difficult to sell. Religiously themed pictures can easily offend audiences. Cerebral comedies can be difficult to export because their humor may not translate well. Films with a great deal of violence may be shunned by European television, which is a prime market for independents. Films with explicit sex may not pass censorship boards in certain countries.

Independent films without name actors are difficult to sell. Of course, name recognition varies around the world. The star of an American television series may be a big name in the United States but unknown abroad. On the other hand, some actors have large followings abroad, yet are relatively unknown in the United States. There are several publications that can be consulted to determine the commercial appeal of actors. The



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Ulmer Guide surveys financiers, sales agents and other industry insiders. Also, the Hollywood Reporter publishes its "Star Power" guide.

The director of the film is the key person who will determine whether the final product is marketable. If a filmmaker shows no concern about making a movie with audience appeal, you can expect a film whose exhibition will be limited to the family and friends of the filmmaker. This is not to say that the only films you should invest in are low-brow fare like "Dumb and Dumber." A well-made "art" film like "Elizabeth" can win awards and make a handsome return on investment. Filmmakers should give some thought beforehand as to the nature of the film's intended audience. I once watched a wonderful "Lassie"-type film spiced with four-letter words uttered by one character. I explained to the filmmaker that his film would never sell in the family market because of the vulgar language, and it was too soft a story to appeal to teens and adults.

It is best to invest in an endeavor where everyone shares the same risks and rewards. A filmmaker who takes a large fee from the production budget may financially prosper from a picture that returns nothing to the investors. It is better to back a filmmaker willing to work for a modest wage and share in the success of the endeavor through deferments or profit participation. An investor can take some comfort investing in a motion picture on the same terms as a producer or distributor where all parties recoup at the same time. Beware of investing in a project where other parties benefit when you lose.

Usually, investors are entitled to recoup all of their investment from first revenues before payment of deferments or profits. Many times investors are allowed to recoup 110 percent or more of their investment in order to compensate them for loss of interest and inflation. Profits are declared after payment of debts, investor recoupment and payment of deferments. Profits are generally split 50/50 between the producer(s) and the investors. Thus, investors who provide 100 percent of the financing are entitled to 50 percent of the profits. From the producer's half of net profits are paid any third-party profit participants (e.g. the writer, director and stars).

Don't ever accept oral assurances from a producer or distributor. If they promise to spend \$50,000 on advertising, get it in writing. If there is not enough time to draft a long-form contract, ask for a letter reiterating the promises. Retain copies of all correspondence, contracts and any promotional literature. If a filmmaker makes fraudulent statements in order to induce you to invest, you will have a much stronger case if his statements are in writing.

Avoid filmmakers who make handshake deals. Such individuals may neglect to obtain the necessary contracts needed to fully secure ownership to their motion picture. In order to have a complete chain of title to a film, one needs to secure written contracts with many parties including actors, writers and music rights owners. Filmmakers who fail to pay attention to such legal niceties lack the professionalism needed to succeed.

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