Tactics and Strategy in Negotiating the Independent Distribution Agreement: Part 1

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The growth in independent cinema has given moviegoers an alternative to Hollywood's mainstream movies. As the majors have homogenized their product in an attempt to create blockbusters, independent filmmakers have become the source for most quirky, offbeat and controversial films.

The increase in independent films has created a buyer's market. There are an estimated 800 to 1,000 independent features produced in the United States each year. Many independent films are made on minuscule budgets, often less than $500,000. They are frequently funded by the filmmaker, his friends and family, and other equity investors.

Most filmmakers do not appreciate the difficulty of securing distribution. Many believe that if they make a good film, distribution will naturally follow. Unfortunately, this is not the case. Veteran filmmakers know that the greatest obstacle to success is not making the film, but obtaining distribution.

This article explores the tactics and strategy used to negotiate a distribution agreement for a low-budget independent film. It is written from the point of view of the attorney representing the interests of an independent filmmaker.

The article is presented in two installments. In this issue, the author discusses ways to attract distributors' attention to independent films, provide information about qualities independent filmmakers should seek in distributors, and begin to outline the principal terms that a distribution contract should embody. In the next issue, the author will return to the discussion of distribution agreement terms, focusing on the financial side of distribution agreements, but also including an analysis of contractual terms regarding arbitration, governing law and delivery clauses.

Balancing Risks and Rewards

In negotiating the distribution deal, the relative bargaining power of the parties is determined by the perceived desirability of the film and how much risk each party has taken. With major studio films, the studio has often borne most, if not all, the financial risk. Typically, the studio pays for development, production and distribution. The director/producer will receive a fee and a share of net profits. "Net profits" will be defined in a such a manner that there is little chance this "back-end" compensation will ever be realized.

When a film has been developed and produced by an independent filmmaker, the filmmaker bears the risk of failure. A distributor viewing a finished film is in a better position to judge its worth than a distributor evaluating a script. Consequently, if the film turns out well, the filmmaker may be able to negotiate a deal superior to that which could have been obtained from a distributor who is asked to finance production. Under the terms of a film acquisition agreement, the distributor may agree to share revenue according to a formula that will actually generate monies on the back end, assuming the distributor accounts fairly. Of course, if the film turns out poorly, no distributor may want it, and the loss will be borne entirely by the filmmaker and his investors.

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Increasing Your Leverage

When a distributor negotiates to acquire film rights, the distributor often has more clout than the filmmaker. This is a vulnerable position for the filmmaker. The filmmaker, or his representative, must know how to orchestrate the release of the film into the marketplace to achieve maximum leverage. This may entail generating competition through positive word of mouth within the industry. This "buzz" or "heat" can be encouraged by filmmakers who work the festival circuit and mount a campaign on behalf of their film.

Film Festivals

Festivals are a cost-effective way to introduce films to potential distributors. Since acquisition executives have time to attend only a dozen or so of the hundreds of festivals staged each year, they prefer festivals that premiere films which are available for distribution. Festivals want to attract distribution executives because they know this will attract filmmakers. Festivals compete with each other to premiere films.

A film can only have one premiere per territory or region, and participation in a festival may make the film ineligible for selection in other festivals. For instance, the Sundance Festival has a policy of only accepting films into competition that have been in no more than one festival before Sundance.

The best festivals for independent filmmakers with feature-length films seeking distribution include: Telluride, Sundance, Hamptons, SXSW, New York, Mill Valley and Seattle. Up and coming festivals include Slamdance, the Los Angeles Independent Film Festival (LAIFF), the Hollywood Film Festival, the AFI Film Festival, and the Santa Barbara, Ft. Lauderdale and Palm Springs festivals. The most important European festivals are: Berlin, Cannes and Venice. The top Canadian film festival is Toronto, although Vancouver and Montreal are important as well. Although not a festival, the Independent Feature Film Market (IFFM), held each September in New York, has become a good launching pad for independent films.

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There are many festivals and they each have their own selection criteria and point of view. Some are very specialized; others exhibit a broad range of motion pictures including animation, shorts, and documentaries. The nature of a film will determine which festivals are best to enter. A list of festivals can be found online at my website: http://www.marklitwak.com. A good guide to festivals is published by the Association of Independent Video and Filmmakers (AIVF) in New York at 212/807-1400.

Inciting Competition

From the filmmaker's point of view, one will obtain a better deal if there is more than one distributor competing for the film. It is not difficult to alert acquisition executives to the existence of a film. Once a start date has been announced, filmmakers begin receiving calls. Acquisition executives track the progress of each film so that they can try to view it as soon as it is completed, and before their competitors see it.

To ensure that acquisition executives are aware of a film, one can send a press release announcing the project to the trade papers and magazines—Hollywood Reporter: 213/525-2000; Daily Variety: 213/ 857-6600; Filmmaker: 213/932-6060; MovieMaker: 310/234-9234; and The Independent: 212/807-1400. They will include you in their listings of films in development, preproduction, and production. Likewise, one should alert Film Finders at 310/657-6397, a company that tracks films for many distributors.

Here are some guidelines to create competition and maximize your leverage:

No Sneak Previews

Do not show your film to distributors until it is complete. Executives may ask to view a rough cut. They will assure the filmmaker, "Do not worry. We are professionals, we can extrapolate and envision what the film will look like with sound and titles." Do not believe them. Most people cannot extrapolate. They will view an unfinished film and think it amateurish. First impressions last. The community of acquisition executives is small, and they frequently mingle at screenings and festivals where they compare notes. One acquisition executive bad-mouthing your film can cause a lot of damage.

The only reason to show an unfinished film is if one is desperate to raise funds to complete it. The terms one can secure under these circumstances will be less advantageous than what one could obtain for a finished film. If you must show a work-in-progress, exhibit it on a Moviola or flatbed editing table. People have lower expectations watching a film on an editing console than when it is projected in a theater. If you must send out cassettes of an unfinished film, prominently label it so that your viewers are reminded that they are seeing a work-in-progress.

Screen It Before a Crowd

It is usually better to invite executives to a screening than to send them a videocassette. If you send a tape to a busy executive, he will pop it in his VCR. Ten minutes later the phone rings and he hits the pause button. Then he watches another ten minutes until his secretary interrupts. After ten distractions, he passes on the film because it is "too choppy."

You want the executive to view the film in a dark room, away from distractions, surrounded by a live audience enjoying the film. You can rent a screening room at Paramount, invite all the acquisition executives you can, and pack the rest of the theater with friends and relatives.

Perhaps the best venue to exhibit a picture is at a film festival. If the film is warmly received, your bargaining position will be enhanced. Another benefit of a festival showing is that it may generate positive reviews. Most publications have a policy of only reviewing films about to be released theatrically. So, films which have not yet secured a theatrical distributor are not reviewed. But trade papers and selected publications review films exhibited at major festivals. A strong review can influence distributors.

Do not invite an art house distributor to view a beach blanket bingo movie.

When you prepare an invitation list, include only those distributors appropriate for the film. If foreign rights are taken, there is no reason to invite foreign sales companies. You are wasting their time and being inconsiderate. Likewise, do not invite an art house distributor to view a beach blanket bingo movie. As soon as the acquisition executive realizes that your film is not for him, he will depart. Do you think a stream of people leaving might adversely affect the perceptions of the remaining audience?

Make the Buyers Compete Against Each Other

Screen the film simultaneously for all distributors. Some executives will attempt to get an early look—that is their job. Your job is to keep them intrigued until it is complete. You can promise to let them see it "as soon as it is finished." They may be annoyed to arrive at the screening and find their competitors present, but this will get their competitive juices flowing.

Some diplomacy is required to orchestrate a bidding war and not alienate the bidders. You want to push firmly each potential buyer to offer its best terms while maintaining cordial relations with all. Remember, the filmmaker may want to produce his next project with one of the losers.

Do Not Give Away Your Festival Premiere Lightly

Carefully plan a festival strategy. I have seen filmmakers give away their premiere to minor festivals and thereby disqualify themselves from participating in major ones. You can participate in lesser festivals later. If you are turned down by an important festival, the worse that happens is that your distribution is delayed. No one will know which festivals turned down your film unless you tell them.

Sell Your Film When Buyers Are Hungry for Product

Distributors that acquire films for foreign distribution plan their activities around a market calendar. The major film markets are AFM in late February in Santa Monica, Cannes in May in Cannes, France, and MIFED in late October in Milan, Italy. Some distributors sell at the Berlin market, which has a reputation for showing many art films. In addition, there are a number of important television markets including NATPE in the United States, and MIP and MIP-COM in France.

Distributors are hungriest for product before a rapidly approaching market when they do not have enough new inventory. A distributor may spend $90,000 or more to attend Cannes, and if it appears the company will have nothing new to sell, the executives panic. This is the best time to approach them. Do not wait until a week before a market, however, because you need to give distributors at least one month to promote the film. They need to prepare a trailer, one-sheet, poster, screeners and advertising. The bumper editions of the trade papers have an ad deadline that is three to four weeks before a market. These expanded editions contain product listings by distributor, as well as extensive advertising. The best time to approach distributors is 60 to 90 days before a market. Assuming a distributor wants to acquire your film, it may take a month or more to negotiate the deal.

Protecting Your Interests

Investigate the Distributor

Always check the track record and experience of potential distributors. Those who regularly work in the film business know the reputations of distributors. Representatives need to do their due diligence. The only positive thing I can say about movie industry predators is that they are consistent. They take

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advantage of everyone. That is why it is not terribly difficult to unmask their true identity.

Ask prospective distributors to send you their press kit. It will likely contain one-sheets from the films they have distributed. Examine the credits. Track down the filmmakers. If you cannot find them, simply ask the distributors for a list of all the filmmakers they have done business with over the past two years. Call the filmmakers. Ask them specific questions: Did they receive timely producer reports? Have they been paid on time? Did the distributor spend the promotional dollars promised?

I recently established the Filmmaker's Clearinghouse, a Web site devoted to disseminating information about distributors. This source will provide filmmakers with information about distributors similar to what the Better Business Bureau reports on merchants. The survey form, and the responses, can be viewed at: Entertainment Law Resources: http://www.marklitwak.com.

> Buyers in certain countries are notoriously finicky and often reject films on the grounds of poor technical quality.

Retain Your Masters

Filmmakers should retain possession of their master elements. They should not give the distributor any original film negatives, video masters or sound masters. Instead, distributors should be supplied with a lab access letter which enables them to order copies of the motion picture. Likewise, the filmmaker should retain possession of all original artwork, photos and chain of title documents. The distributor receives copies.

There are a number of good reasons for filmmakers to retain possession of their masters:

• Masters may be irreplaceable. If lost or damaged, the filmmaker will incur a substantial expense to replace these materials, if they can be replaced.

• In the event of a dispute, it is best for the filmmaker to control his materials. If the distributor has defaulted, the filmmaker may want to terminate the agreement and arrange for alternative distribution. The filmmaker will need access to his materials, however, in order to make delivery to the new distributor.

• If the initial distributor goes bankrupt, one does not want to have to go to court to extricate the materials from bankruptcy proceedings.

• Several distributors may need access to the materials. Typically, independent filmmakers enter into multiple distribution deals. Often, one deal is concluded with an international distributor (a.k.a. foreign sales agent) to distribute the film outside North America, and one or more deals may be made with a domestic distributor for distribution in the United States and Canada. The best solution, when dealing with multiple distributors, is to place the materials in a professional laboratory. Each distributor is then granted a lab access letter.

• One can discourage cheating by keeping masters in a laboratory and having the lab report how many copies have been duplicated. Suppose that at the end of one year, the lab reports that ten film prints have been made. You review the producer reports and notice only eight sales reported. This is a red flag alerting you that sales have not been reported. Most filmmakers would be unaware if their film was being shown in Malaysia. Remember that distributors do not order copies of films unless they have an order in hand. Typically, they receive full payment for the film before they manufacture a duplicate and ship it.

Another means that can be used to discover which countries have licensed the film is to place the music on the soundtrack with a music publisher (which could be a publishing company established by the filmmaker), and have the publisher enter into an agreement with ASCAP, BMI, or one of the other music collection agencies. These agencies collect public performance royalties when the film is exhibited on television in the United States, and in theaters and television abroad. If the music was registered with such an agency, and royalties from Thailand, for example, are remitted, this alerts you that a sale was made to this country.

In selecting a laboratory for deposit of materials, choose one that charges competitive rates and has experience duplicating films for international distribution. Buyers in certain countries, such as Germany, are notoriously finicky and often reject films on the grounds of poor technical quality. It is also a good idea to select a lab that is not the lab normally used by the distributor. A lab in the habit of fulfilling orders for a distributor who is a regular client may not bother checking to see if the distributor has authority to order copies. Moreover, such a lab might inadvertently release the master to the distributor. The filmmaker should always deliver the master directly to the laboratory, after the laboratory and distributor have signed a lab access letter. If the filmmaker delivers materials to the distributor, and the distributor in turn deposits the materials with the lab, the laboratory may treat the distributor as the owner of the film.

The lab access letter should include language permitting the filmmaker to receive copies of orders or obtain a lab report disclosing the nature and amount of duplication performed. Some filmmakers insist that the laboratory ship all copies directly to the territory buyers. The distributor will likely insist that the lab access letter be irrevocable for the term of the distribution deal.

Obtain and Register a Security Interest

Filmmakers may want to secure their right to revenues from their film by having the distributor grant them a security interest. The collateral here is often the proceeds derived from exploitation of the film. The distribution agreement should have a clause granting the filmmaker a security interest. Typically, a separate long and short form security agreement is signed by the parties, and a UCC-1 form is signed and recorded with the secretary of state where the collateral or distributor is located. The security interest should also be recorded with the Copyright Office at the Library of Congress in Washington, D.C.

Distributors that provide production financing, or pay advances to producers, may want to protect their interests by securing and recording their own security interests. Likewise, a bank that has made a production loan will often insist on securing its interest, and unions such as SAG and the DGA desire a security interest to ensure that their members receive any residuals due them. In fashioning security interests, care must be taken to ensure that they do not conflict. Financiers often insist on a first priority security interest. Unions may be willing to subordinate their interests to the financier.

Principal Terms of a Distribution Agreement

Territory

The territory is the country or region where the distributor may exploit the film. Worldwide rights mean that the distributor has the right to distribute the film in any country in the world. Some distributors go further and seek rights throughout the "Universe." To my knowledge, no sales have been made to moviegoers on other planets. I once kidded a distribution executive that he was being silly asking for such extensive rights. He conceded that it was unlikely his company would ever need rights beyond Earth. Several weeks later, however, he showed me a fax he had received from NASA asking for permission to exhibit one of his films on the Space Shuttle.

Independent filmmakers frequently enter into more than one distribution deal. Rights are typically divided into two territories: domestic and foreign. Domestic is the United States and English-speaking Canada. It may include all of Canada. It may include U.S. territories, possessions and military bases. Foreign rights are usually defined as the rest of the world.

As a general rule, filmmakers should only grant a distributor rights to territories they directly service. Few distributors, other than major studios, serve both the foreign and domestic market. Even the majors use subdistributors in smaller territories. Nevertheless, distributors often try to acquire as much territory and media as they can. They will lay off rights to subdistributors, and take a fee for being a middle man.

One needs to know up front the nature of the distributor and how it will go about exploiting the film.

Most companies that distribute domestically do not participate in international film markets. If you grant such a domestic distributor worldwide rights, it will make a deal with a foreign distributor to handle sales outside the United States and Canada. This foreign sales company will deduct a distribution fee for its services, and from the remaining amount, the domestic distributor will take a fee as well.

This is not to say that you should never allow a distributor to use subdistributors. But one needs to know up front the nature of the distributor and how it will go about exploiting the film. The problem of double distribution fees can be ameliorated by placing caps on the total fees the distributor and subdistributors may take. Thus, one should always determine which media and territories a distributor handles itself, and which it lays off on other companies. Labels can be confusing. Some distributors who sell films internationally call themselves "foreign sales agents;" others prefer to be known as "international distributors."

Most independent filmmakers contract with a foreign sales agent, or international distributor, to take the film to the major international markets. The filmmaker will also contract with one or more domestic companies. If the film does not have any name actors in the cast, the filmmaker may not be able to obtain a domestic theatrical release. In such a situation, the filmmaker will contract with companies that serve the television and home video markets. Care must be taken in structuring these deals so that their terms do not conflict.

Filmmakers benefit by contracting with more than one distributor. First, the filmmaker is not putting all his eggs in one basket. If he has one distributor, and it goes bankrupt, all potential revenue is affected. Second, by using different distributors, expenses in one territory will not be cross-collateralized against revenues from another.

When expenses are cross-collateralized, expenses and revenue from different territories are pooled. For example, suppose a film generates revenue of $1 million abroad. The distributor has incurred $100,000 in recoupable expenses. The distributor is entitled to retain 20% of gross revenues, or $200,000, as a distribution fee. The remaining $700,000 is the filmmaker's share of revenue.

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But suppose that in the domestic territory, this film generated $1 million in revenue, and incurred expenses and distribution fees of $1.5 million. So on the domestic side of the ledger, the distributor has a net loss. If the filmmaker has a single distributor for foreign and domestic territories, the distributor can recoup its $500,000 domestic loss from the foreign profit.

Not only can expenses from one territory be crossed against others, but expenses in one media can be crossed against revenues from another. In many instances, a distributor will lose money on a picture's theatrical release and will want to recoup those losses from revenue generated from home video and television.

Media

Media is the means of exploitation. Many motion pictures are meant for initial exhibition in theaters, the theatrical media. The time period, or "window," during which the movie will play in theaters can be short for a flop, while a blockbuster will play for months.

After the theatrical release, a picture may be distributed and exploited in the so-called allied and ancillary markets, which include home video, nontheatrical (colleges, community groups), pay television (e.g., HBO), network television (e.g., ABC) and television station syndication. The film may also generate revenue from merchandising, novelization, sound track albums and music publishing. The nomenclature may be misleading because the so-called ancillary media are now the principal generators of revenue. In the United States, home video revenues are about five times theatrical revenues.

A theatrical release is still primary in one important respect. Although the theatrical release may not generate net revenues—because of the considerable cost of print duplication, advertising and shipping—the theatrical release creates public awareness for the film. It is the engine that pulls the train. When consumers visit video stores, the cassettes they rent or buy first are the movies they learned about from the advertising and publicity accompanying their theatrical release.

Ancillary media tend to be much more profitable than theatrical media. When a distributor releases a film to television, there are minimal expenses. If you license a film to CBS, for example, the expenses incurred are the manufacturing cost of one video submaster and the expense of shipping it to CBS. The distributor does not pay for advertising, as CBS will promote the movie. Thus, most of the revenue from television licensing flows to the bottom line.

Because a theatrical release is often not profitable, and because the ancillary media frequently are profitable, most domestic distributors will decline to acquire only theatrical rights. They do not want to take the risk of a theatrical loss, without the offsetting revenue that can be obtained from the ancillaries. Consequently, filmmakers need to exercise caution. If they license home video and television rights first, they may find they cannot obtain a domestic theatrical release.

In fashioning a grant of rights clause, filmmakers will want to retain rights to media the distributor will not actively exploit. It has become fashionable for distributors to ask for multimedia and interactive rights, although few exercise these rights. Independent filmmakers should grant a distributor three media: (1) theatrical; (2) television (all forms including pay TV, cable TV, and broadcast); and (3) home video (distribution by videocassette, laser disc, and DVD). Filmmakers should expressly reserve all other rights including dramatic (play), radio, electronic publishing, merchandising, music publishing, soundtrack and print publication rights, although the distributor should be granted limited radio and print publication rights in order to advertise the film. Remake, sequel and television spin-off rights are usually reserved to the filmmaker.

Term

Distributors tend to ask for long terms, often ten years or in perpetuity. It is not in the filmmaker's interest to have an unduly long term. A distributor's enthusiasm for a film wanes as the years pass. This can be frustrating for the filmmaker, especially if he has the desire and ability to promote the film. The filmmaker may need to negotiate a reversion of rights from a distributor who has done an inept job of marketing the film.

A filmmaker is well advised to license his picture for a short term (one to three years). One can appreciate, however, that distributors who disburse large advances, or spend a great deal on marketing, will want a longer term to ensure that they can recoup these costs. A good compromise is to give the distributor a short initial term followed by a series of automatic extensions if performance milestones are met. For a low-budget film, the contract might provide an initial term of two years, and if the distributor returns X amount of dollars to the filmmaker during this first period, the term would be extended. There could be a series of such rollovers, with the total number of years capped, perhaps at ten.

There is another "term" of concern. This is the term of any license the distributor may grant to a third party. Unless the contract restricts the distributor, it may grant license rights to territory buyers for any length term. A filmmaker is wise to limit third-party licenses to 12 years, except for Germany, which often demands fifteen years.

A filmmaker wants to avoid discovering that a distributor, near the end of its term, enters into a series of long-term agreements with third parties at fire sale prices. The distributor may figure that since it will soon lose all distribution rights anyway, it might as well take whatever it can get.

Distribution Fee

Distributors generally take a distribution fee based on a percentage of gross revenues. This maximizes their fee as it will be a percentage of a larger sum than if the fee was based on revenues after deduction of expenses. In many instances, after the distributor takes a distribution fee and recoups its expenses, there may be nothing left for the filmmaker.

Distribution fees vary by territory and media. For a domestic theatrical release, a distributor may ask for a fee of 35% of gross revenues. For domestic home video, there are two basic approaches: either a 50/50 net deal, or a royalty deal. The 50/50 net deal allows the distributor to deduct distribution expenses from gross revenues, and then split the remaining balance 50/50 with the filmmaker. The royalty approach pays the filmmaker a royalty, often in the range of 20 to 25% of the wholesale price for each cassette sold. Thus, for every cassette sold to Blockbuster for $60, the filmmaker would receive $12. The distributor bears all distribution expenses. Keep in mind that the price charged retailers for some films are at a much lower, so-called sell-through price (e.g., $9 per cassette) to encourage customers to buy a cassette rather than rent it. The royalty rate may be lowered to 10 to15% for such sell-through product. At other times, tapes are sold to retailers on a revenue-sharing basis. The retailer pays a nominal amount (less than $5) for a tape and agrees to share revenue from it with the distributor. Most of the major studios, and independent operators like Rentrack, now supply video cassettes to retailers on this basis.

From the filmmaker's point of view, the royalty approach has the advantage of ensuring that the filmmaker shares in revenue even if sales are modest. Moreover, since the filmmaker's royalty is calculated on the number of units sold, less returns, there is much less room for creative accounting. If sales are robust, however, the filmmaker might receive more under a 50/50 net deal, assuming the distributor has reasonable expenses and honestly accounts to the filmmaker.

The distribution fee for arranging for a domestic television license is often 25% of the license fee but can vary from 10 to 40%. Licensing a film for television may entail little more than contacting HBO and offering them the film. Delivery is accomplished by shipping a video submaster, accompanied by artwork and perhaps chain of title documents. More effort is involved in selling to the numerous pay per view, pay cable, basic cable and broadcast outlets. A distributor may be able to arrange for a series of sales to different distributors, giving each a "window" of time to exhibit the film. Care must be taken to ensure that the windows are coordinated so that there are no conflicts, and to ensure that maximum revenue is obtained. Once a film has been exhibited on basic cable, for example, it may not be desirable to pay cable buyers.

A good compromise is to give the distributor a short initial term followed by a series of automatic extensions if performance milestones are met.

The order of the windows for release of product is generally: theatrical, home video, followed by television. Within the television window, the order is pay-per-view, pay cable, network broadcast television, basic cable, and broadcast syndication. Note that most independent films are not licensed for network broadcast. The aforementioned order can be varied. Sometimes a network is willing to pay a premium to obtain an earlier window. Likewise, HBO acquires a limited number of completed films and distributes them as HBO premieres, meaning that these films premiere on HBO without a prior theatrical release.

For foreign distribution, a filmmaker will typically contract with an international distributor or foreign sales agent, who will receive a distribution fee in the range of 20 to 25% of gross revenues. The sales agent will be allowed to recoup certain distribution expenses after deducting its fee. The balance will be paid to the filmmaker.

Note that gross revenues are usually defined to be a sum less than true gross. Gross is receipts actually received less any refunds, collection costs, currency conversion, wire transfer and bank costs, withholding taxes, and any duplication or manufacturing expense incurred to deliver materials to the foreign buyer.

Some countries may not allow licensee fees to be transferred out of the country. In this event, the filmmaker's share of the frozen funds is deposited in a separate account in the foreign country in the name of the filmmaker. If these funds cannot be repatriated, the filmmaker will have to spend them in the foreign country. Sometimes these frozen funds are spent for a foreign vacation, or to produce a film. Such a film is a revenue-generating asset that can be removed from the country.

Some sales agents may mark up costs in order to earn additional revenue, a practice not disclosed to the filmmaker.

The fee paid by a territory licensee usually does not include the cost of manufacturing film prints, video submasters, key art, or other materials needed. Most of the time these expenses are paid separately. Either the foreign buyer will pay the laboratory directly, or the sales agent is paid for these items. Note that some sales agents may mark up costs in order to earn additional revenue, a practice not disclosed to the filmmaker. On the other hand, if duplication costs are included within the license fee, this will inflate gross revenues, increasing the distributor's commission.

[Part 2 of this article will appear in the Spring 1999 issue of *Entertainment and Sports Lawyer*.]

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Guest Column—Forum Annual Meeting

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The day was punctuated by an entertaining and enlightening luncheon program. This year's speaker was Jerry Reinsdorf, chairman of the Chicago White Sox and Chicago Bulls. Speaking to a group of somewhat disgruntled sports consumers, Mr. Reinsdorf held his own, as he described the trials and tribulations of owning a sports team and running a business in an industry where competitive organizations must support each other and divide industry profits in order to survive.

The topic for Saturday's plenary session was start-up money for entertainment ventures. Moderated by Lon Sobel (Editor, *Entertainment Law Reporter*) the panel explored traditional and alternative avenues for raising money. Elliott Brown (Franklin Weinrib Rudell & Vasallo) covered funding stage plays; Dan Satorius (Abdo & Abdo) spoke on financing motion pictures; Dan Levin talked about financing television programming; Joshua Wattles discussed sound recordings, Ralph Lerner (Sidney & Austin, New York) addressed the visual arts and Lon Sobel spoke on funding golfers and tennis players.

The next annual meeting will be held in Atlanta, Georgia, October 15-16, 1999. It is always great to see the ever-expanding membership of this collegial group. As liaison to the city of Chicago, I hope you all had a memorable, educational and fun time in Chicago. See you in Atlanta!

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