

Blow up your FILM, —not your— BUDGET.

Whether it be a Feature, Documentary, or a Short, a 35MM print can add that professional touch to your presentation. Made directly from your 16MM or Super 16 A/B Rolls. We'll work with you and give your film the care and attention the larger labs can't offer. You'll love our service and be amazed by our prices.

Recent Films Include:

*DADE TOWN

*COUSIN HOWARD

*RECEPTION TO FOLLOW

*CARMEN MIRANDA:
"BANANAS IS MY BUSINESS"

*FLOUNDERING

*SLINGS AND ARROWS

A GUN FOR JENNIFER

*THROWING DOWN

*NOWHERE FAST

*CHINESE CHOCOLATE

*TOAST WITH THE GODS

*Super 16



300 Phillips Park Road
Mamaroneck, NY 10543
914-381-0893
Fax: 914-381-0616

Legal Advice by Mark Litwak

Tactics in the Distribution Deal

Distribution executives know better than to mess with a moviemaker represented by Mark Litwak. Or they should.

When a distributor negotiates with a filmmaker to acquire film rights, the distributor has considerable clout and the filmmaker may be desperate to make a deal. This is a perilous situation for the filmmaker. A filmmaker who makes a bad distribution deal will not be able to repay investors, and this often means the filmmaker will find it very difficult, if not impossible, to make another independent film. Filmmakers must know how to orchestrate the release of their film into the marketplace so that the filmmaker is at his/her competitive best when it comes time to negotiate the distribution deal.

Unfortunately, making the film is only half the battle. To secure favorable terms for distribution, a filmmaker needs to have a strategy designed to attract distributors. This often entails generating good word of mouth within the industry. This "buzz" or "heat" can be encouraged by filmmakers who are willing to work the festival circuit and mount a campaign on behalf of the film.

Festivals are a cost-effective way to get films in front of potential distributors. Acquisition executives tend to favor some festivals more than others. They prefer to attend festivals that premiere films with distribution rights still available. Festivals compete with each other in order to premiere such films. They each want to be first to discover a great film. Filmmakers need to understand that you only get one premiere per territory or region, and participation in one festival may make the film ineligible for others. For instance, the Sundance Festival has a policy of only accepting films that have been in one festival before Sundance. Note that Sundance does not count markets, such as AFM and IFFM, as a festival.

The festivals most important for filmmakers seeking distribution are those that are well-attended by acquisition executives. 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 films are best to enter. Generally speaking, for independent

filmmakers with feature-length films, the best festivals are: The Independent Feature Film Market (IFFM), Sundance, Seattle, Hamptons International Film Festival, New York and Telluride. The most important international festivals and markets are: Berlin, Cannes, Toronto and Venice. Slamdance, which is held at the same time and place as Sundance, has become an established venue for independent films. Although only one year old, the Los Angeles Independent Film Festival is a rising star among festivals. When you attend a festival, come early and be sure to bring along a healthy supply of marketing materials. Some filmmakers show up the day of their screening and don't understand why only a handful of acquisition executives have attended their screening and the distribution offers are not pouring in. Other, wiser filmmakers spend a considerable amount of time laying the groundwork for a successful festival. They prepare professional one-sheets (8.5 x 11" handouts that look like little film posters), posters, T-shirts and giveaway items. Sometimes they



Litwak: Desperation is your worst enemy when talking to a distributor.

arrange publicity stunts to call attention to their films. In most cases it is useful to have the stars themselves attend the festival.

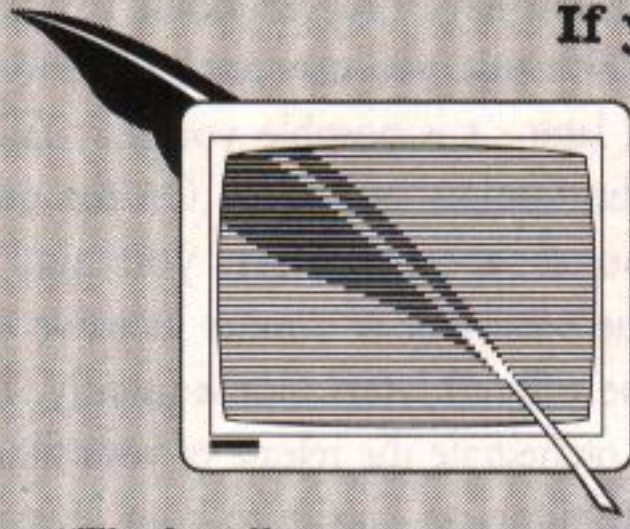
In 1994 I attended the IFFM representing the film *Unconditional Love*. I met with the filmmaker and his collaborators beforehand and together we plotted a strategy. The film is a classy, artistic autobiographical account of a young painter searching for his artistic vision amid his various romantic entanglements. We devised a professional full-color glossy one-sheet with still photos from the film, a beautiful poster and press kit with photos, a synopsis, bios and other information about the film. We also decided to produce a give-away: a small artist's sketch pad with the film's artwork and screening times on the cover. This give-away turned out to be very effective because it was thematically related to the film, it was unique (not the usual button, hat or T-shirt) and it was useful. Indeed, acquisition executives used the pad during the festival to take notes about the films they were viewing. And every time they picked up their pad, they were reminded about our film.

The filmmaker was on excellent terms with his cast and crew. Unlike some productions, everyone was still talking to one another. Ten of the filmmaker's collaborators attended the market at their own expense. The editor, composer, co-producers, and several of the stars of the film arrived in New York beforehand. They all pitched in and passed out leaflets, asked nearby store owners to display the film's poster and approached buyers inviting them to attend our screenings. The effort resembled a political campaign, and as a result of this work, 57 buyers attended our first screening and strong positive word of mouth was generated. The film was subsequently invited to exhibit at the Hampton's Film Festival, where it won the top prize which came with a \$110,000 grant of services toward the filmmaker's next film.

Once you are able to interest distributors in your film, you must be careful not to compromise your bargaining position. It is important not to brag about how little money you spent to make your film before you conclude your distribution deal. You may feel justly proud of having made a great-looking picture for a mere \$200,000. 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. What you have spent is between you, your investors and the I.R.S.

From the filmmaker's point of view, you will get the best distribution deal if you have more than one distributor interested in your movie. That way you can play one off the other to get the best terms. But what if one distributor makes a pre-emptive bid for the film, offering you a \$500,000

If you write scripts, you need...



Scriptware

Professional scriptwriting software for the PC

Get the script that's in your head onto a perfectly formatted page easier and faster than ever before. Just type and Scriptware does the rest for you. With proper margins, spacing, capitalization and page breaks, your script is always ready to print, submit and sell!

Now available for Windows!

Call today, toll-free, for **Special Prices! 800-788-7090**

"The best."
Syd Field, *Screenplay*

"A dream come true."
Richard Blum, UCF-Orlando

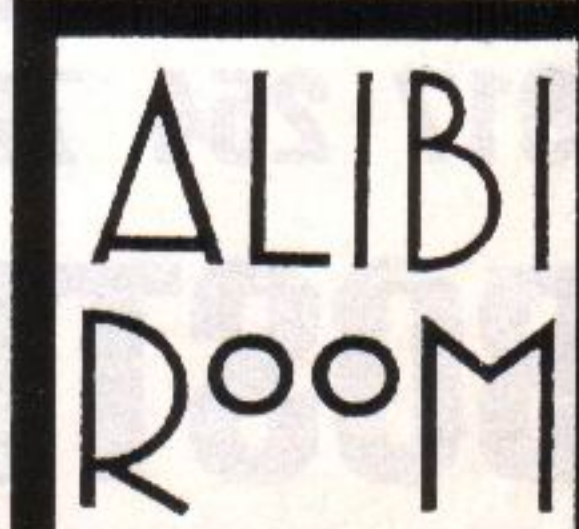
INSURANCE FOR THE ARTS

GREAT NORTHERN / REIFF & ASSOCIATES

World-Wide Entertainment Insurance Specialists
320 West 57 St., New York, NY 10019
212-603-0231 Fax 212-247-0739

premise #1:

not really white bread,
more like whole wheat.



food/beer/wine/butter 623-3180

THE CAMERA DEPARTMENT

BOSTON

Arriflex
Moviecam
Aaton
and a whole
lot of other
cool stuff for
rent

Super 16 Specialists
617

562 0320

278 habcock st boston ma 02215

THE LAB

FULL
SERVICE
NO

NONSENSE

16 & 35MM

MOTION PICTURE

LABORATORY

617 254 7882

BOSTON

278 habcock st boston ma 02215

advance, and you have only 24 hours to accept their 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 later. Consequently, it is important to orchestrate the release of your film to potential distributors to maximize your leverage. Here are some guidelines:

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 things like "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 cannot 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 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 in his VCR. Ten minutes later the phone rings and he pushes the pause button. Then he watches another 10 minutes until he is interrupted by his secretary. After being distracted 10 times, he passes on your film because it is "too choppy."

You want to get the executive in a dark room, away from diversions, to view your film with a live audience — hopefully one that will respond positively. So if the film is not currently available for viewing at a festival, rent a screening room at Universal and invite all the acquisition executives you can, and pack the rest of the theater with your friends and relatives, especially Uncle Herb with his infectious laugh.

3) **MAKE THE BUYERS COMPETE AGAINST EACH OTHER.** Screen the film for all distributors simultaneously. 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 see their competitors. But this will get their competitive juices flowing. They will know that they better make a decent offer quickly if they hope to get the film.

4) **OBTAIN AN EXPERIENCED ADVISOR.** Retain an experienced producer's rep or entertainment attorney to negotiate your deal.

Filmmakers know about film, distributors know about distribution. Don't kid yourself and believe you can play in their arena and win. There are many pitfalls to avoid. Get yourself an experienced guide to protect your interests. Any decent negotiator can improve a distributor's offer enough to outweigh the cost of his services.

5) **INVESTIGATE THE DISTRIBUTOR.** Always check the track record and experience of potential distributors. As an entertainment attorney who represents many independent filmmakers, I often find myself in the position of trying to get unscrupulous distributors to live up to their contracts. I am amazed at how many distributors refuse to abide by the clear terms of their own distribution agreements. The savvy filmmaker will carefully investigate potential distributors by calling other filmmakers who have contracted with them. One can also check the Superior Court docket in Los Angeles to see if a company has been sued.

CHECKLIST FOR SELECTING A DISTRIBUTOR

1. Amount of advance.
2. Extent of rights conveyed. Domestic and/or foreign. Ancillary rights? Are any markets cross-collateralized?
3. Is there a guaranteed marketing commitment?
4. Does the producer have any input or veto power over artwork and theater selection in the top markets?
5. Track record and financial health of distributor.
6. Are monthly or quarterly accounting statements required?
7. To what extent does the distributor plan to involve the filmmaker in promotion?
8. Marketing demographics of intended market, grassroots promotion efforts, film festival, etc.
9. Split of revenues and accounting of profits: Is there a distribution fee? Overhead fees?
10. Distributor leverage with exhibitors. Can the distributor collect monies owed?
11. Any competing films handled by distributor? Conflicts of interest?
12. Does the producer have the right to regain distribution rights if the distributor pulls the plug early on distribution?
13. Personal chemistry between producer and distribution executives.

Mark Litwak is an entertainment and multimedia attorney with the Beverly Hills law firm of Berton and Donaldson. He has acted as a producer's rep for numerous independent features. He is the author of *Reel Power*, *The Struggle for Influence and Success in the New Hollywood*, *Dealmaking in the Motion Picture and Television Industry*, and *Contracts in the Motion Picture and Television Industry*. Mr. Litwak can be reached by phone at (310) 859-9595; Fax: (310) 859-0806, E-mail: Litwak@aol.com. Web site: Entertainment Legal Resources <http://www.laig.com/law/entlaw/>