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Domestic film distribution 101

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When it comes to film distribution, "Domestic" is usually defined as the U.S. and Canada, as well as their possessions, territories, commonwealths, protectorates and trusteeships. For the U.S., these include the U.S. Virgin Islands, Saipan American Samoa, Guam, Wake Island and Puerto Rico.

However, many domestic deals also encompass the Bahamas, Bermuda, Saba Island, St. Eustatius Island, St. Kitts Island and St. Maarten Island. These are not affiliated with either the U.S. or Canada. So why are they considered part of the Domestic territory? Simply because certain television channels have satellite footprints that cover these areas, and buyers demand these rights be included.

Producers need to be careful in defining the scope of territories granted to distributors. It is customary for independent producers to enter into separate foreign and domestic deals. If the filmmaker assigns Bermuda to an international distributor, that could prevent their domestic distributor from making a lucrative deal with HBO. Indeed, it may deter a domestic distributor from acquiring the title. Thus, to maximize revenues a producer has to make sure they don't sacrifice a beneficial deal because they thoughtlessly assigned away rights to a small territory.

The term "distributor" is so broad that it encompasses many different types of companies. The major studios such as Paramount and Sony typically distribute pictures directly to theaters, license them to television channels like Showtime, and manufacture their own packaged media (i.e., DVDs) for sale to mass merchants and video rental outlets. Major studios may also distribute their pictures in selected foreign territories and contract with local distributors elsewhere.

Smaller independent distributors exploit movies in a variety of different ways. Some book films into theaters and then assign television and home video rights to third parties. Others are basically home video labels that manufacture and market DVDs. Some of these companies license directly to television while others use intermediaries. However, a home video label may decide to build awareness by releasing a film in theaters, which may require the assistance of a third party. Filmmakers pursuing this type of release may have difficulty determining what kind of distributor they are dealing with.

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Theatrical releases help the distributor persuade filmmakers to make a deal even if it is unprofitable by itself. If a smaller distributor attempts to theatrically release an indie film, they face stiff competition from the majors. Major distributors can demand the best theaters and dates because they have a steady flow of desirable movies; independents are left to choose from the leftovers.

Some home video companies even deal directly with mass merchants like Wal-Mart,

SPECIAL REPORT

Top 100



Wednesday, September 12, 2012

Intellectual Property In 9th Circuit, Microsoft and Google fight for advantage in patent wars

New chess moves in the high technology patent wars played out Tuesday at an oral argument session before a 9th U.S. Circuit Court of Appeals panel as Microsoft Corp. and Google Inc. vied for advantage in a case being fought in Germany.

Real Estate State Bar to buy new Los Angeles headquarters building

The State Bar intends to buy a small office building near the downtown Los Angeles Staples Center as its new headquarters in the city, officials announced late Tuesday.

Product Liability Plaintiffs' hair-trimmer blaze trial fizzles out with defense verdict

Two parents' effort to hold the maker of a mustache trimmer responsible for their son's death recently fell short after the company successfully challenged the link between the trimmer and a deadly fire.

Environmental Brown signs bill limiting govt ability to collect wildfire damages

CONTROL COSTS WITH

Gov. Jerry Brown signed timber industry reform legislation Tuesday that includes a limit on government's ability to collect damages from logging companies and others it accuses of negligently starting wildfires in California.

Civil Rights Court clears officers and stun gun company of liability

The 9th U.S. Circuit Court of Appeals affirmed a trial court ruling clearing two police officers and a stun gun manufacturer of liability in the death of an Arizona man.

Corporate
Leap Motion adds first general counsel
Leap Motion Inc., a motion-control software and hardware company based in San Francisco, has appointed its first chief legal officer, the company

while the others have to go through intermediaries like Anderson Merchandisers, that ship and pack product from numerous companies for delivery to mass merchants.

The point is that distributors operate differently and filmmakers need to do their homework before making commitments. If multiple companies in the chain of distribution deduct significant fees and expenses, the revenue stream that goes to the filmmaker/investors can slow to a trickle. So when a distributor says they distribute to theatrical, home video and television media, you should ask: "O.K. Exactly how do you do that? What intermediary companies do you use, and what kind of fees and expenses do they deduct?"

One type of home video deal is known as a sub-label deal. Here two companies split the responsibilities for acquiring, marketing and distributing titles. Typically one company, such as Lionsgate, handles the physical distribution of titles and collection of revenue. The other company, the sub-label, is responsible for acquiring titles and creating the key art and marketing materials. The two share revenue.

There is nothing inherently wrong with a sub-label deal if the filmmaker understands how distribution fees are collected, expenses are recouped, and the amounts are reasonable. However, in many of these deals the filmmaker thinks they are sharing in the wholesale price remitted by buyers like Blockbuster or Wal-Mart. The filmmaker is unaware that he or she is really receiving just a share of what is remitted to the sub-label from the parent company.

In these deals, "Gross Receipts" has been defined and calculated on the revenue received by the sub-label after the parent company has deducted its fees and expenses. The cumulative effect may be that little or no revenue flows down to the filmmaker. The filmmaker thinks he or she is receiving 25 percent of the wholesale price of each DVD sold, when actually he or she is receiving 25 percent of the funds remitted to the sub-label. A well-drawn contract will carefully define "Gross Receipts" as the wholesale price which is the amount remitted from the home video buyers, and not the amount remitted to the sub-label. Filmmakers need to ask specific questions when selecting a distributor in order to avoid unpleasant surprises.

These days, almost all distributors try to acquire so-called ancillary and new media rights so they can license movies to such companies as iTunes, Netflix, Hulu and Amazon. Many of these new media buyers don't like to acquire individual titles and prefer to deal with aggregators who can license them bunches of films at a time.

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announced Tuesday.

Judges and Judiciary Temporary judges: critical asset during budget crisis

Did you know the number of calendars handled by temporary judges equates to the full time annual employment of 16 superior court judges? By **Ralph Barat Saltsman and Stephen Warren Solomon** of Solomon, Saltsman & Jamieson

Family Termination of transfers and divorce What happens to the ability to terminate copyright transfers during divorce? By **Ivan Hoffman**

Government Businesses need a functioning court system to thrive The business community shares the strong objections to court budget cuts that have been raised across the spectrum. By **Kim Stone** of the Civil Justice Association of California

Entertainment & Sports Domestic film distribution 101 Producers need to be careful in defining the scope of territories granted to distributors, as well as knowing what kind of "distributor" they're dealing with. By **Mark Litwak**

Judicial Profile Gilbert M. Lopez Superior Court Judge Los Angeles County (El Monte)

Family For LA family courts, less is more The family law division at the Los Angeles County Superior Court has taken a lot of budget cuts in the past year, but lawyers say the system is actually working more efficiently than ever.

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Judge Ware served as a U.S. District Judge from 1990-2012 and was Chief Judge of the Northern District during the past year and a half. He sat on the Santa Clara County Superior Court from 1988-1990 and, prior to that, spent 16 years as a civil litigator. He has a wealth of experience drawn from his management and resolution of thousands of cases. At JAMS, he will resolve business/commercial, civil rights, class action/mass tort, employment, insurance, intellectual property and securities matters.

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