

Let's Make a Deal

Getting ready to sign your first distribution deal? Don't do it until you read these tips!

Q: We completed our low-budget film this summer and are now seeking distribution. Any general tips? Once we find a deal, what should we watch out for?

A: Congratulations on completing your film. As you know, you've accomplished quite a feat. Now it's time to attempt to cash in. Many true independent producers like yourself produce films without distribution in place beforehand. Such "spec films" (films made in speculation of ultimate distribution) must be shopped to distributors, sales agents and various acquisitions executives in the quest for distribution and the almighty payment generated from distribution. Below are some basic tips on how to find a deal and maximize it. Often, the best advice for protecting your film and assuring that you get the best deal possible is to retain the help of professionals who solicit and negotiate these deals on a regular basis.

TIP 1: The Difference Between Producer's Reps, Sales Agencies & Distributors

REPEAT PLAYERS WHO understand the lay of the distribution land are commonly known as "producer's reps." These folks might be agents at entertainment talent agencies specializing in independent film, attorneys specializing in film deals or former acquisition executives-turned-moviemaker's friends. The producer's reps attempt to secure deals with domestic distributors and foreign sales agencies. Domestic distributors might cover only U.S. & Canadian theaters or they might just specialize in home video or a certain form of television. Or they might cover everything—including international distribution. If international territories are not taken by the domestic distributor, then a foreign sales agency is needed to broker individual deals with the theatrical, television and home video distributors located in each foreign country. It's the producer's rep's job to find the best distributor and foreign sales agency for your picture and acquire the best possible deal terms from them.

TIP 2: Create A Buzz

THE CONVENTIONAL WISDOM FOR GETTING the most possible offers for your film requires selectively screening the film for as many potential acquisitions executives at the same time. If your film is lucky enough to gain submission into a prestigious film festival, your first selective screening date should be that festival. It is generally recommended that you do not give sneak previews to distributors in a piecemeal fashion; every attempt should be made to have acquisitions people watch the film in a theater together. (This will help foster competitive bidding.) If the film is well received, and several distributors are seeing it at the same time, they will all fear that their competitors will obtain the rights to the film before they do, which can result in a mad rush by all to close a deal immediately.

DVD screeners are the least desirable way to market a film to distributors



if the film was intended to be enjoyed in a theatrical environment. However, if you don't have a festival lined up, can't afford a screening room, have a film that may be best served by TV distribution or simply have a film that lacks big names or a story that has buzz enough to get acquisitions people to race to your screening, DVD screeners are your best alternative.

TIP 3: Research the Potential Buyers

IT'S IMPORTANT TO INVESTIGATE a distributor, sales agency or other buyer before entering into any deal. Make sure that the individual or company is reputable and solvent. The best way to do that is to talk to producers who have done business with the company before. Ask around. Ask questions. If the potential buyer is not willing to disclose information about who they have done business with in the past, you might want to avoid them altogether. In addition to the producers whose names the distributor or sales agent might provide you with, search out some of those producers whose names were *not* given to you freely. Most distributors and sales agents have Websites listing their film titles; the film's producers can be easily ascertained through a quick Internet search. Track them down and ask them to tell you their impressions of the company with which you are about to do business.

TIP 4: Keep Budget Information Confidential

NO ACQUISITIONS PERSON WHO is contemplating picking up a completed film needs to know the budget of your film. By keeping the budget of the film confidential, the producer makes sure that the offer being made for the rights to a film is based solely on the quality of the film, the market for it and—hopefully—some healthy competitive bidding. If the acquisitions people know the budget of the film, they may find that the budget is less than the production value of the film would reveal and is less than the amount that they may be willing to offer had they not known the true budget. Offers should be made based on the marketability of a film, not the budget.

TIP 5: Get Everything In Writing—and Don't Act In Haste

ALWAYS GET THE DISTRIBUTOR'S commitment in writing and, likewise, don't make any commitment of yourself except in writing. A common acquisition trick is for the distributor to pressure the producer into releasing the elements of a film without taking the time to fully negotiate a contract. You will be told that it is essential that you provide the distributor with access to the film materials immediately so that the distributor can meet some upcoming deadline, such as a film market like Cannes or AFM. A different film market occurs about every three months, so the distributor can always justify the need to rush to make the next market. If you succumb to these types of pressure tactics, you will regret it. Once the distributor has the film, your negotiating power is severely hindered. Remember, another market is always just around the corner. Take the time to fully negotiate the deal with the help of an experienced entertainment attorney who understands distribution contracts. The additional money and time you spend carefully negotiating the entire deal in writing without haste will pay off immensely.

TIP 6: Protect Your Copyright & Ancillary Rights

IN FUTURE ISSUES, WE WILL discuss the different deal points that can be negotiated, such as the distributor's fee; whether any advance is paid; how expenses are calculated and capped; the duration of the deal; the domestic and international territories subject to the deal; the marketing plan and type of commitments the distributor is willing to make to marketing; your continuing involvement in marketing and future edits of the picture; how proceeds are paid and the extent of your right to audit the books. While each of these clauses is very important to ensuring that you receive the full value of the deal that you initially anticipated when you made the deal, perhaps no contract clause is more important than the clause which dictates who owns the picture's copyright and the numerous rights that extend from that.

For example, is the deal only for theatrical distribution or does it also include rental and sales of DVDs, videocassettes (are they still around?), Video On Demand, Pay-Per-View, satellite, pay cable, free television, airlines, multimedia, Internet distribution, etc.? What about the emerging distribution delivered directly to mobile phones? More importantly, who owns the right to exploit future media that has yet to be discovered? In addition, ancillary rights such as soundtrack rights, prequel/sequel/remake rights, television spin-offs and merchandising may or may not be conveyed in the distribution deal. The distributors may attempt to claim all these rights. It's your job to try to pair them down and preserve as many rights as you can for yourself.

CLOSING THOUGHTS: Remember, no matter how eager you are to sign a deal, once it's signed there are no do-overs. Understand what you are signing with regard to each and every phrase in each and every sentence in each and every clause throughout the agreement. You may get sleepy after reading seven pages of redundant legalese, but stay awake, stay alert and make sure able counsel is by your side. Then sit back and wait for that advance check to clear! **MM**

Want David Pierce to answer your legal question? E-mail counselor@moviemaker.com.

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