

How an award-winning documentary was allegedly blacklisted by Netflix

Description

Posted by Larry Gleeson

By Jason Guerrasio

In just four years, Netflix has become by far the most watched destination for documentaries, beaming titles to 190 countries and an astounding 83 million global subscribes.

That has given Netflix a lot of power in a relatively small corner of Hollywood to make or break titles â?? and for one director, that meant a dramatic setback in his movieâ??s release.

Netflixâ??s decision to come in early on documentaries like â??The Square,â?• â??Virunga,â?• â??What Happened, Miss Simone?â?• and â??Winter on Fireâ?• led to Oscar nominations, while recent titles like â??Making a Murdererâ?• and â??Amanda Knoxâ?• have fed subscribersâ?? addiction for true-crime stories.

As Netflixâ??s chief content officer, Ted Sarandos, boasted in 2015, â??People who have never watched a documentary in their life are watching them on Netflix.â?• And the Netflix Original branding has become an instant stamp of legitimacy for filmmakers.

But whatâ??s less talked about, beyond the mountains of cash Netflix dishes out for premium content, is when a filmmaker inevitably decides he or she doesnâ??t want to make a deal with Netflix.

It may not happen often, but in one case, turning down a Netflix Original deal seemingly led a filmmakerâ??s movie to be blacklisted from ever being shown on the streaming giant.

A Netflix deal gone bad

Much of what you hear about Netflixâ??s nonfiction (as opposed to the TV series division) is that it gives immense freedom to artists. Werner Herzog told Business Insider of making â??Into the Infernoâ?• for Netflix: â??They saw the film and liked it and that was that. They trusted me in a way that

was very, very pleasant.â?• The â??Amanda Knoxâ?• codirectors told Business Insider that the leeway Netflix gave them was a â??giant luxury.â?•

So when Craig Atkinson got the attention of Netflix, he thought he had made it to the big time.

Best known for working as a cinematographer with Oscar-nominated filmmakers Heidi Ewing and Rachel Grady, Atkinson in 2013 decided to embark on his directorial debut, â??Do Not Resist,â?• in which he examines the militarization of the police in the US. Atkinson spent three years shooting around the country, gaining the trust of law enforcement so he could tell a vÃ©ritÃ© story.

But the protests in Ferguson, Missouri, following the shooting of Michael Brown by the police changed everything. Atkinson, 34, and his producer Laura Hartrick, 28, visited and captured footage of the tactics used by riot-gear-dressed officers that was more raw and unfiltered than what the evening news had been showing.

â??Do Not Resistâ?• was suddenly covering a topical story. And as Atkinson was in postproduction before the movieâ??s world premiere at the Tribeca Film Festival in April, Netflix came calling.

â??The Saturday before the premiere I got a call from one of the executives at Netflix,â?• Atkinson told



ymous for this story.) â??We spoke y timely film, and they were Director Craig Atkinson. Tiffany Frances

The next day, Atkinson got a call from the same executive saying that Netflix wanted to make an offer to buy the film and brand it as a Netflix Original title, but the person asked whether Atkinson would be open to making changes to his film.

â??I was still unsure about the film,â?• Atkinson said. â??I didnâ??t think we made a perfect film, so I was open to collaboration, but the person told me the deal couldnâ??t be made until I said I was open to this, so I said OK because I wanted to see what the deal was going to be.â?•

On Monday, Atkinson received the offer from Netflix. He and his team were going to premiere at Tribeca on Thursday, and if they were to accept the deal, the offer stated they would have to agree by noon on the day of the filmâ??s premiere or the offer would be null and void.

The deal for worldwide rights to the film was in the mid-six figures, and the agreement stated that Netflix would retain all creative approvals over the final cut and the filmâ??s title. It also had a budget line of $70,000 for â??finishingâ?• (money for additional editing or other changes Netflix saw fit).

These are general terms most first-time filmmakers will encounter at any company looking to buy their film. Numerous filmmakers told Business Insider, however, that thereâ??s often an open dialogue between the filmmaker and the buyer about suggested changes before signing an agreement. Negotiations can, of course, vary from filmmaker to filmmaker, especially based on someoneâ??s experience and profile.

â??So Iâ??m reading the deal and it doesnâ??t specify changes,â?• Atkinson said. â??It says that they have full control and they can change the title. The deal is time-stamped for high noon on the day of our premiere, so now the clock is ticking. In my mind Iâ??m thinking maybe they are catering to a certain audience and they want to change the film. I was so overwhelmed and unprepared to be in this position.â?•

â??Trust usâ??

Atkinson was unable to land a sales rep, which at this point in a movieâ??s life is an essential ingredient (though he was able to get an entertainment lawyer).

Sales reps have an understanding of the marketplace and use their connections within the industry to get the film theyâ??re representing the best deal both domestically and internationally. A rep would have told Atkinson that the figure he was offered was substantially higher than what he would get from any of the independent film distributors that would be tracking his film at the Tribeca Film Festival, or from a documentary-heavy network like HBO or A&E.

Atkinson told Business Insider that colleagues in the industry who have either worked with Netflix or know people who have worked with the company told him that Netflix was giving him a low offer.

Business Insider spoke with documentary insiders and sales agents who agreed that it was a low offer by Netflix standards but respectable for a first-time filmmaker (some filmmakers Business Insider spoke with said they would have taken the deal in a heartbeat).

With the deadline for the deal quickly approaching, Atkinsonâ??s lawyer, Jody Simon, a partner at the firm Fox Rothschild, was able to negotiate the price of the movie up $100,000 more, but the lawyer also relayed to Atkinson a sobering fact about how Netflix negotiates.

â??During the course of the conversation our lawyer had with the Netflix lawyer, he got a lecture, as he described it, from the Netflix lawyer about the fee because he was pushing back about how it seemed

incredibly low for an all-rights deal,â?• Atkinson said. â??The Netflix lawyer lectured him on how it was their algorithm that determined the price of the film and that thereâ??s really no discussion to be had because this algorithm determined how much the film should be worth and that basically was the end of discussion.â?•

Simon confirmed the content of the conversation with Netflixâ??s lawyer to Business Insider, adding that it was the first time heâ??d encountered a deal figure put together by an algorithm. Still, he said, heâ??s not surprised by it.

â??I find it as a culture clash between the tech people and the creative people,â?• Simon said. â??They really just do things differently â?? Hulu and Amazon and Netflix. They draft differently. A lot of it is inside baseball and pretty subtle, but itâ??s a different approach and a different way of thinking.â?•

When asked for a comment about Atkinsonâ??s recounting of events, a Netflix representative told Business Insider: â??Every deal at Netflix is unique â?? we have no comment about the specifics of our deal negotiations.â?•

The negotiation with Netflix was a sobering reality for Atkinson, who was getting his first taste of the way the company uses its analytics to make decisions that at traditional distributors often come through gut instinct and decades of trial and error. (Numerous sources in the acquisitions field told Business Insider they did have data they refer to when choosing movies to acquire but did not rely on it heavily.)

It wasnâ??t just the money that concerned Atkinson, however. He could never get the Netflix executive to give him specifics on what the company wanted to change in his film.



Atkinson filming â??Do Not Resistâ?• in Ferguson, Missouri. Vanish Films

â??I have student loans to pay off, so the money would have been great,â?• Atkinson said. â??But the bottom line was if we couldnâ??t put in some kind of provision where we mutually agree on changes, itâ??s a deal-breaker.â?•

Atkinsonâ??s inability to relinquish control of his film had to do greatly with the way he got access to make â??Do Not Resist.â?• Atkinson, the son of a police officer, and Hartrick promised the multiple law-enforcement agencies featured in the movie that the film would be an authentic portrayal of their job and that only the two filmmakers would edit the movie.

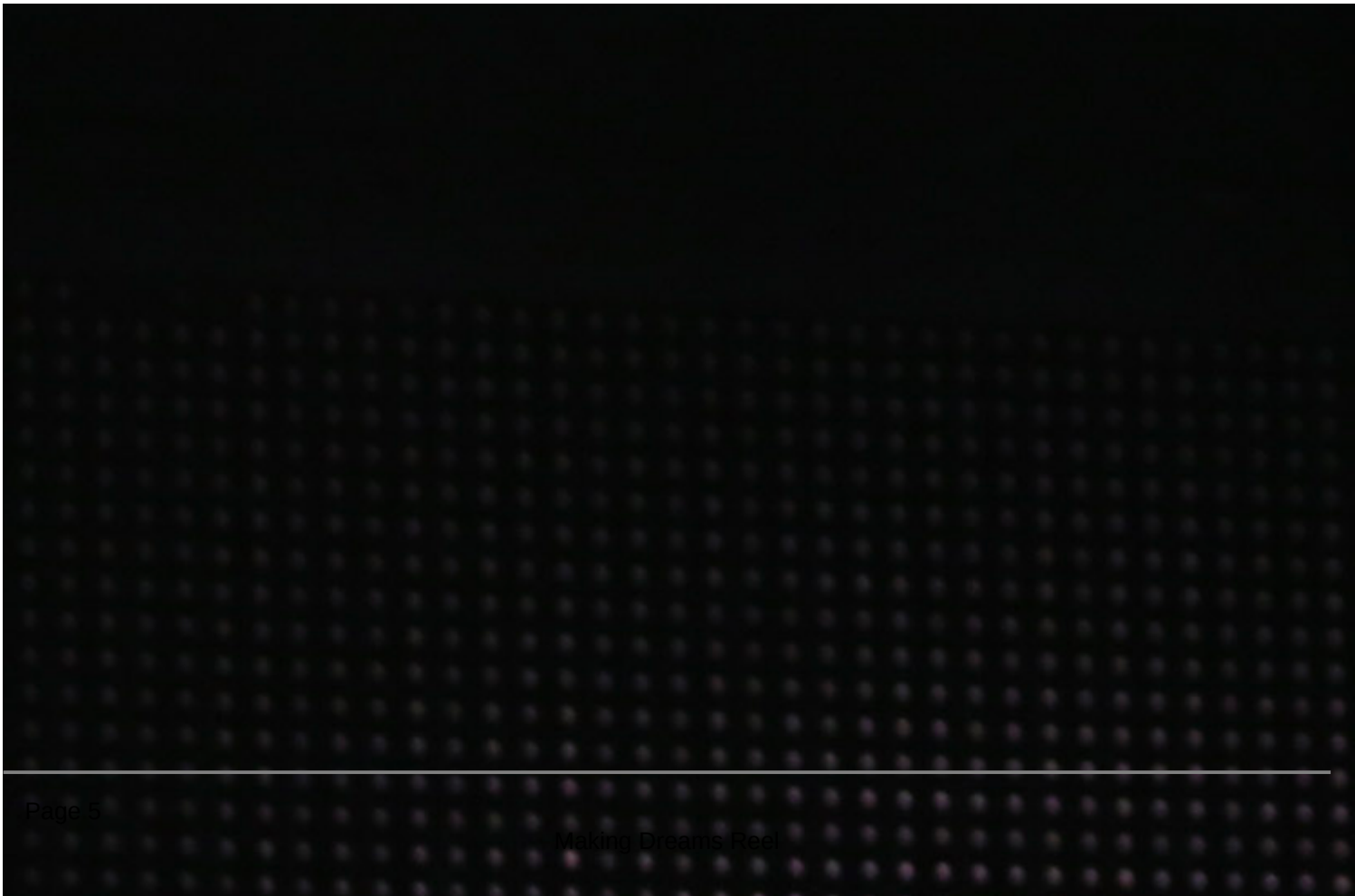
â??So here we are again looking at this contract where I have to make a decision,â?• Atkinson said. â??If Iâ??m going to compromise myself and say I donâ??t care what I told these cops, just so I can get the deal. And I thought we were going to have a sympathetic ear because of the severity of the situation and it has to do with peopleâ??s safety, and when we asked to just put in the contract specific changes you want so we can go forward, they wouldnâ??t do that.â?•

â??Their response to that was basically, â??Trust us,'â?• Simon said.

After two sleepless nights, Atkinson finally told Simon on Wednesday to tell Netflix he was declining the offer. Atkinson would see what kind of offers the film would get from playing at Tribeca.

â??Thereâ??s only one way inâ??

â??Do Not Resistâ?• had five sold-out screenings at the Tribeca Film Festival and was beginning to find interest from distributors. Atkinson still couldnâ??t find a sales agent to take it on (he later found a sales rep to handle his international sales).



Atkinson accepting the best documentary prize at the 2016 Tribeca Film Festival. Cindy Ord/Getty

During the festival, Atkinson sat down with companies like Magnolia Pictures and Samuel Goldwyn Films to discuss potentially acquiring â??Do Not Resist.â• The possibility of the movie still getting on Netflix wasnâ??t dead, as any company that acquired the movie would have service deals with Netflix to make it available to stream on the service following its theatrical and home-video release.

On top of that, the movie won the best documentary prize at the festival: a $20,000 cash prize sponsored by â?¦ Netflix.

But Atkinson came back down to earth when he learned after the festival that suddenly all the prospective buyers of the movie pulled out. He said he was told that Netflix blocks any service deals for movies on the streaming platform after they have turned down Netflix Original deals. Buyers told Atkinson that in todayâ??s market, in which being on Netflix and other streaming services is so important, his movie was no longer an attractive title because a company could no longer own all revenue streams.

Netflix did not comment when asked by Business Insider about a policy of blacklisting titles that reject an Original deal, or whether requiring creative control over its Original documentaries was standard.

â??Around that time I saw the [Netflix] executive at a party and I said, â??What happened?â?? And the person answered, â??Yep, thereâ??s only one way in,'â• Atkinson said.

â??Is this how it goes down?â??

Two months after the Tribeca Film Festival, and still trying to forget the bad taste from the Netflix experience, Atkinson moved forward by putting together a self-distribution theatrical release for â??Do Not Resist.â• He also began a conversation with Amazon to be the filmâ??s home for a streaming release afterward.

Then suddenly Netflix contacted him again.

â??I get a text from the Netflix executive,â• Atkinson said. â??The person wanted to know if I had sold the rights to the film yet because they are still interested. The person felt bad for how everything went down and saw how great the film was doing on the festival circuit.â•

Atkinson and the executive came to an understanding, with the executive agreeing to relinquish some of the creative control, according to Atkinson.

But when Atkinson went back to Netflixâ??s lawyer to hammer out the financial side of the new agreement, the lawyer had no idea of the new conversation.

â??He said, â??We would never give up that control â?? I donâ??t know what youâ??re talking about.â?? Basically that the deal was still the original deal,â• Atkinson said. â??He thought that I was coming back to Netflix begging to make a deal.â•

When Atkinson tried to get back in touch with the Netflix executive, he said, his texts and calls were never returned. He hasnâ??t heard from the executive since.

â??As a first-time filmmaker I was like, â??Is this how it goes down?'â?• Atkinson said. â??Netflix can say they respect the artist all they want, but you can tell where their loyalties are, and itâ??s not with the artists.â?•

Atkinson moved forward with his own theatrical release. He said the $20,000 cash prize that Netflix sponsored at Tribeca helped greatly. And he signed a streaming deal with Amazon (for about a third of the amount he would have gotten from the Netflix deal). â??Do Not Resistâ?• will be available on Amazon on Wednesday.

â??We dodged a bullet not taking the dealâ??

Atkinson said he wanted to go public with his experience because he wanted filmmakers and fans of Netflix to understand that for as much good as Netflix was providing mass audiences with exceptional content, he believed himself to be living proof of some cracks in its process.

â??This will be a concern for filmmakers because Netflix are the titans,â?• a major figure in the documentary industry who asked to remain anonymous told Business Insider after hearing of Atkinsonâ??s experience. â??If the documentary community is to remain vital, it needs a multiplicity of voices and points of view, and by narrowing the pipeline Netflix is privileging a very few voices.â?•

Prominent documentary filmmaker Robert Greene (â??Kate Plays Christineâ?•), however, isnâ??t surprised at all by Atkinsonâ??s story.

â??Netflix helped the video store to go out of business, and they have now replaced it with a fairly absurd business model that seems to only value certain kinds of things, and itâ??s just depressing,â?• Greene told Business Insider. â??It has always been difficult to get films with a voice seen, and it used to be that Netflix represented something better. Another choice. Another possibility. But that seems to be going away, and I would just tell young filmmakers donâ??t make decisions based on whatâ??s going to get on Netflix, because art survives and eventually Netflix is going to get boring.â?•

Atkinson said that looking back, he had no regrets about turning down the more lucrative Netflix offer.

The film has played around the US, often in theaters filled with active police officers, who take part in Q&A sessions and interact with their communities, an experience that would have been lost if the film played only on Netflix.

â??Itâ??s fantastic business by Netflix,â?• Atkinson said. â??Tell a filmmaker itâ??s the most timely film youâ??ve ever seen, make an offer, and if you canâ??t get it, do what you can so the filmâ??s not seen by anyone.â?•

Atkinson pauses for a moment to compose himself.

â??We dodged a bullet not taking the deal,â?• he said. â??They would have destroyed three years of work.â?•

(Source: http://www.businessinsider.com)

Category

1. distribution
2. Documentary

Tags

1. Art
2. Cinema
3. Competition
4. Conversation
5. Craig Atkinson
6. Do Not Resist
7. entertainment
8. Ferguson
9. Film
10. film distribution
11. Film Festival
12. Filmmaking
13. inspiration
14. Internet
15. Larry Gleeson
16. marketing
17. Media
18. Missouri
19. Netflix
20. News
21. photography
22. platform
23. Programming
24. Technology
25. Vanish Films
26. writing

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