HOLLYWOODGLEE, LLC
1226 N Salsipuedes Unit C 1(805)704-5994 |https://hollywoodglee.com Larry@HollywoodGlee.com



International film distribution 101

Description

Posted by Larry Gleeson

By Mark Litwak, Entertainment Lawyer

Filmmakers fortunate enough to receive distribution offers for their films are often confronted with complex deals to distribute their films. These can bewilder those unfamiliar with the customs and practices of the industry. Letâ??s begin with a discussion of international film sales.

International sales agents are distributors, although they usually do not own a single theater, home video label or television outlet. They are essentially distributors that license films to territory distributors (â??buyersâ?•). Territory distributors acquire rights to exhibit a film within their country although sometimes they may license rights for several different countries. They often find out about films from sales agents whom they meet at various markets held throughout the year. Sales agents and buyers typically attend the three major film markets, which are at Cannes, Berlin and Santa Monica (AFM) as well as TV markets such as Mip and MipCom. This film markets are critical: last yearâ??s Cannes Market alone boasted more than 1,100 sales agents and 10,000 participants from almost 100 different countries.

Sales agents not only license films, but also service buyers by providing them with various materials and elements, including film and video masters, key art, photos and trailers. Most filmmakers have no clue how to go about licensing their film, for instance, to a Turkish buyer, and what terms would be acceptable. Moreover, they donâ??t even know who the buyers are in most territories.



Two-thirds of all film revenue now comes from abroad. International sales grew 35 percent from 2007 to 2011, while revenue in North America increased a mere 6 percent. Over the past four years, the number of screens in China has doubled to more than 6,200, a number thatâ??s expected to double again by 2015. Chinese box-office receipts hit a record $1.5 billion last year. With China and other rapidly developing countries building thousands of new theaters, this trend is expected to continue. Indeed, the North American market is by far the toughest market to crack for a low budget independent film without stars.

Reputable sales agents should be willing to accept terms in their contract with filmmakers that protect their interests. Many such provisions do not cost the sales agent anything, as long as the sales agent lives up to the terms of its contract. A requirement for interest on late payments, for example, costs the sales agent nothing as long as payments are made on time. Such a clause is important because it will encourage a sales agent to live up to its commitments, and provide the filmmaker with a viable remedy in case the sales agent defaults. While a competent sales agent provides valuable services, one should always remember the importance of what the filmmaker brings to the table. Without a good film, the sales agent has nothing to sell. Most sales agents produce few if any movies themselves.



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Here are just a few of the most critical ways for filmmakers to protect their interests in contracting with sales agents:

No changes. The film should not be edited or changed without the filmmakerâ??s approval. Editing for censorship purposes, television broadcast and changes made for a foreign language release is permissible.

Minimum advertising specified. Contracts should specify the minimum amount the sales agent will spend on promoting the film. These expenses could include advertising in the trade papers, a billboard or payment for a screening room for the film.

Expenses limited. There should be a floor and a ceiling on expenses. Market expenses should be limited to the first year of release and capped per market. Promotional expenses should be limited to direct out-of-pocket costs spent to promote the film, and should specifically exclude the sales agentâ??s general overhead and staff expenses.

Term. The term should be a reasonable length. The filmmaker should be able to regain rights to the film if the sales agent gives up on it. It is best to have a short initial term and a series of automatic rollovers that apply if certain performance milestones are met.

Indemnity. Filmmakers should be indemnified for any losses incurred as a result of the sales agentâ??s breach of the terms of the agreement or violation of third party rights.

Possession of negative. The sales agent should simply receive a lab access letter rather than possession of the original negative; the sales agent should not be permitted to remove masters from the laboratory.

Errors and omissions policy. Itâ??s generally the filmmakerâ??s responsibility to purchase such an insurance policy, though sales agents sometimes may be willing to advance the cost of this insurance. In such an event, the filmmaker should be added as an additional named insured on the policy.

Termination clause. If the sales agent defaults on contractual obligations, the filmmaker should have the right to terminate the contract, and regain rights to license the film in unsold territories as well as obtain money damages. It is only fair for the filmmaker to give the sales agent reasonable prior notice of default before exercising her right to terminate.

Limitation on action. The filmmaker should have at least three years from receipt of any financial statement, or discovery of any accounting irregularity, whichever is later, to contest accounting errors.

Assignment. It is best to prohibit assignment unless filmmaker consents.

Warranties. The filmmakerâ??s warranties, in regard to infringement of third party rights, should be to the best of the filmmakerâ??s knowledge and belief, not absolute.

Schedule of minimums. Foreign sales agents should agree to attach to their contract a schedule of minimum acceptable license fees per territory.

Arbitration clause. Every contract should contain an IFTA arbitration clause ensuring that all contractual disputes are subject to binding arbitration with the prevailing party entitled to reimbursement of legal

fees and costs. The arbitration award should be final, binding and non-appealable.

(Source:www.indiewire.com)

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hollywoodglee