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What is a Distributor and what do they do?

Well, you know the old adage, "if a tree falls in the forest does anybody hear it?" Well if no one sees your film, what's the point right? Somebody's got to get the film out to the consumers and that is the distributor.

Over the years of film history there's been the studios, they produce and distribute movies. And you know, various independents functioned as distributors as well. In today's digital age, it is possible for less remunerative distribution models to be created by the producer directly. In other words for the producer to self distribute.

To self distribute?

Well, what I'm saying is... that in today's world it's easier than ever to

cut out the middleman. If you don't get a great opportunity (or deal with a distributor) rather than the film just sit and go nowhere, there are alternative distribution models where the producer can deal directly with retail.

You know, I teach a class on film distribution/acquisitions and film finance at UCLA, and one of the things I tell the class is this business is just like any other business. In any business there's manufacturing, there's wholesale and there's retail. This business is no different. Manufacturing is production, wholesale is distribution, and retail is exhibition.

You (the filmmaker) would want to seek the widest possible distribution and also the most profitable distribution and that's classically done through a wholesaler, studio or significant independents.

Another thing a distributor can do for you is help your film get financed. It's fairly hard but based on the script and your elements (cast, crew etc.) you can get a presale for a certain amount of money. You can take that contract to a bank and sometimes the bank will loan against it... giving you funds to finance your film and then the distributor pays on delivery of the elements. That's called a "negative pickup".

Do US distributors typically do international distribution as well?

Well, every company is different... it's what your business plan is. My business plan is North America, at the moment I'm not involved in international distribution. So a good way to finance a film is to presell the US (if you can) or leave it open and replace that with private equity and then have a foreign sales agent who either literally buys foreign or more likely does what's called "foreign presales" and lines up enough foreign presales that you can take those contracts to the bank and combine it with whatever equity is in the picture and whatever subsidies are in the picture. And by subsidies I mean government incentives, tax shelters... things like that where you're getting basically free money or money that doesn't have to be paid back for a very long time. That's very important in today's film finance model.

I call it P.E.S. – Presales, Equity and Subsidies. All films are made up of only those three things... now a subset of presales is bank financing. Another thing a bank can do for you is what's called GAP financing but I put it all in the same category. GAP financing is, they can look at your open territories and they could say Hey, you've got

all these territories open, we'll loan you 10%, 15% or 20% of the budget based on the fact that you have maybe 40% of your territories open. But they have to be ahead (get paid back first) of your equity player (private investor/s), The bank always comes out in first position. So that's an important note to your readers.

And I'm going to give you another important note... for first-time producers, its very hard to do this process I'm describing. The best thing a first-time producer could do is hook up with a more experienced producer and let them do it for you or with you. Then once you've been through it... you may be able to go to that bank the second time. Getting to the bank as a first-time producer is a little tough sometimes.

How likely is a independent film with a first-time producer/director going to generate presales?

Well, I guess it's all about how strong your elements are. I mean, I remember going around with a script myself when I was in my 20's that was based on a semi famous novel by a famous author... but I had elements. I had the author, I had somewhat of a known director and I had pretty good named talent attached to it. So you know if you have the correct stars, director and a decent script you may be able to get away with it, but more than likely as a first-time producer you're going to have to hook up with somebody else. By the way, that film almost got made... but didn't.

Where's a good place to find distributors? Where should one start looking?

I taught myself the business by reading Variety and the Hollywood Reporter. I think if one is in the business one must have a subscription to those newspapers. Or at least one of them. Now, I can tell you that they both, the week before the Toronto Film Festival had independent film issues. Particularly the Variety one had some new information I've never seen them list before that I thought was very useful. Really, learning the business though Variety and the Reporter is crucial. You can really teach yourself a lot. And in the Variety and the Reporter independent issues they give you a list of almost all the distributors.

There's really only about 15 distributors in the country right now who are very very financially sound... who can really do something big for you. And then there's a group of what they call 'micro distributors'. I would put my company as one of the larger micro distributors. We've been known to spend more money than most of the people on that

list. On both the cost of the film and also distributing. But these lists do exist and the best place to get them is in the Hollywood Reporter and in Variety. I'm sure in the online world it exists as well.

You know my company's relatively new we're only two years old. I was an Artisan executive and a October executive before this and... I've never seen this before... Variety had a list of like 10 companies that had done between a half a million and 5 million at the box office last year (in the 12 month period leading up to that) and there were only about 10 companies in that category.

That's a good secondary list, it's kind of like after the big 15 (distributors), I would go to that next list (secondary). That is a good list.

I can tell you who the big 15 are if you want... You have the six studios: Sony Pictures, Twentieth Century Fox, Warner, Disney, Paramount and Universal. Then there is, even though their owned by Time Warner and Warner Bros. there's New Line and then Lions Gate and the Weinstein Company are the next biggest.

Then you've got about a half a dozen others roughly. I'll tell you who those half a dozen others are that have decent amount of funding and clout in the marketplace. Those companies would be: IFC, Roadside Attractions, Goldwyn, Magnolia, ThinkFilm... and that's about it honestly, for the big guys. Oh there's one more company I left off, there's another one called 'Picturehouse' which is a joint venture between HBO and New Line.

Now let me go back to the 6 majors. Each of the six majors has an art house division: Sony has 'Sony Classics', Fox has 'Fox Searchlight', Warner has 'Warner Independent', 'The New Miramax' is the art house division of Disney, 'Paramount Classics' which is about to be rebranded, Universal has 'Focus'... that's it.

And then there's this next 10 that I was telling you about (the secondary list from Variety). I'd throw myself in there as well, I think we'll be on the list next year. And that's it... A couple of them only did Indian films so they really don't even count as mainstream distributors. Also don't count anybody that does IMAX distribution: that's really a separate business.

What kinds of things do I look for in a Distributor?

I think you're looking at it all wrong. I think it's the other way around. This is the classic mistake that all young filmmakers make, they fall in love with their own ideas and their own material and they just go

make it... and they don't do any market research. I always tell the students in my UCLA class "Make friends with distributors and exhibitors". Because they are the ones that know, what actors are worthwhile, what genres are selling... you know? I mean if the script is that good... it doesn't matter, but let me tell you something, everybody thinks their script is that good but the reality is that only a few scripts every year in the business are that good... Most material is driven by the talent of the director and the stars that attach themselves to it.

I always tell people: make friends with distributors and ask them who's selling, what's a good name... "I just got Christian Bale, is he good right now or is he not good?" Well he *is* good now because he played Batman.

I also tell my students this: You know the three rules of real estate are? Location, location, location. I would say that the three rules of filmmaking, on a business level are cast, cast, cast. If you're lucky your film will turn out brilliantly but unless it turns out brilliantly you have to have an insurance policy, a fall back, and the fallback has to be stars... and it's got to be the right stars. Cause if you put the wrong people in there, your dead.

Would you look at the types of films that they've distributed to see if it fits yours?

Yeah... that's what I was saying before: design something that fits them. You got to say who's my buyer? You know, if you have a Mexican film you won't take it to an Indian distributor. You've got to look at the market and say who is interested in this material. Who would be good for this material? Who would respond to this? It's sales.

So when is a good time to approach a Distributor?

Well, if you're making the film yourself, you have to make a choice. The first thing you've got to do is get a script. If not, source material. But if you have source material how are you going to get a script? So you either have to pay somebody to write it... you have to partner up with somebody and let them write it for free... make some kind of deal with them or you have to play the studio game... not the independent game and just go through the development game.... but you've got to get a script.

So if you're playing the independent game then the script is not good enough unless it's fantastic... but I mean *fantastic*. So what you want

to do then is you want to start playing the system, you want to start getting a director attached and or cast attached but good cast usually want to know who's directing. So the smart move is to try and attach an interesting director first. If you don't lock yourself in... that's the best... because if you make the wrong decision it may keep you from getting the person (actor) you want.

So let's say you get married to a director and everybody hates him. That's it, your project will never go anywhere. You don't want to get locked in... you want to sort of informally attach someone so you'll be able to unattach them if necessary.

So you would take those pieces to a distributor and try to generate pre-sales?

Yes... so you have to get these things attached but that's easier said than done, you know. How do you do that? Well, that's why I say sometimes being in bed with a more experienced producer is the way to go. But if you're a really good networker and you've got a lot of confidence in yourself, come to LA or NY and you can schmooze and meet these people. If you can't (do it that way), going through their agents is a route but it's very, very tough. The better way to go is maybe through their manager or lawyer... if you can find out who that is. But get to them somehow and get them attached.

Cast is hard because they want to know what they're going to be paid, when they're going to be paid. There's a little bit of a game you play. Sometimes they ask you to make an offer and you don't have the money to make an offer, so you have to be very careful about that. Sometimes though, if the material is good enough the agent will see an opportunity for the actor and they'll cooperate with you.

Can you talk a little bit about trying to find Distributors at film festivals?

Well, I think it's very important for first-time filmmakers to try to learn the market. So I do recommend a trip to Sundance, a trip to Toronto, a trip to AFM which is a real market as opposed to a festival, possibly to Cannes although that's very expensive, Berlin is becoming a market and is also a festival...

At markets (like AFM) there's schmoozing but there's also the distributors and they're really working... So they're harder to talk to because they're very busy. That's one of their big weeks of the year... but maybe wait until later and maybe they'll talk to you later in the market. But I think introductions are always good as opposed to walking in cold...

What kind of package would you send to a potential Distributor to showcase your project?

I would hold off on sending anything until the package is somewhat far along. Because you only get one shot... well you'll get more shots but you're only fresh once. If you have a strong script that's going to help a lot. If you have legitimate interest from important talent, that's going to help a lot. I would be very cautious of calling people until you have these things. As a first-timer I would hold off and try to get that package in as good of shape as possible.

What does a package consist of? A good script, a good cast...

... a director, a producer and most importantly, a financing plan. How are you going to finance the film and are you bringing any money in? What [do] you need from that distributor? It's unlikely that the Distributor is going to finance the whole film, so how are you piecing it together? Also a producer should develop equity contacts and subsidy contacts. So what equity fund are you tied into? What local subsidy have you talk to? Are they behind you?

You don't have to have Tom Cruise signed you know... you've made contact and there's some legitimate interest there or at least the potential for legitimate interest. Just an intelligent plan is sometimes enough.

What are the typical components of a distribution deal?

Something I also teach in my class is 'PPARTTSS'.

Payment terms: of the 'A' which is the advance, if there is one at all.

Producer Share: also known as Back End.

Advance: Your advance is a first payment against your share of the proceeds. If there isn't an advance, how are they paying you? How are you getting your money?

Rights: The basic rights of the film are the distribution rights and then there's some ancillary rights. The basic distribution rights are theatrical, video, television and non-theatrical. So what rights are included? It's usually all rights in a certain territory but sometimes they exclude something. You know sometimes television is excluded. That's how 'Supersize Me' was sold after the fact. They did a separate TV deal with Showtime and then Roadside Attractions

bought everything else. That's just in the US that I'm talking about.

Territory: Is it the US, US and Canada, or the world or some combination thereof.

Term: How long of a term? Is it perpetuity (indefinitely)? Is it 15 years, 20 years, 25 years?

Sequel/Remake Issues: TV series, spin-offs things like that.

Soundtrack and Music Publishing: Sometimes producers trade the soundtracks rights to get better music in the film.

Those are the key business points of any distribution deal.

What are common errors people make when trying to get distribution?

Good question... Well, I think they probably don't understand how the back-end works. They just go for as much money upfront as possible and take a bad back-end. Now back-ends are hard to collect on anyway and studios/distributors usually try to design the back-end so you won't see anymore money after your advance... But let's say they film really takes off. If you've made a mistake on your back-end you've got a problem! You may have left them with a ridiculous amount of money, you know?

The idea is it's supposed to be shared at some point. People don't understand that there's a lot of risk in distribution, there's even a lot more risk in production. But the assumption is... 'tough!' You want to be a producer? You take on the largest share of the risk. That's the way it goes. And if you want to be a distributor? Well you have to take on some real risk too, but maybe not as much as production.

So the idea is, in a distribution deal, that the distributor makes back its money (and then some) and then starts to share it. That's what people don't seem to understand. The distributor is taking a huge risk and they are entitled to make some money. And then after a while they start to share it. The question is, where does the 'while' fall? You know? That's where it pays to have good representation to help you not make a mistake on the back-end.

What can I expect to make with my distribution deal?

Well hopefully an advance, either before as a presale or after the fact. If not an advance, one can do what's called a straight distribution deal. But if one is not getting an advance then the

distributor should take lower fee. They should be on a lower than normal fee basis if they're not paying you an advance. That way you have a chance... since you're not getting any advance, to see some real money out of it. Try and cap your expenses.

And that's why it's important to find the most honest distributor you can right?

Yeah... We're all tough because we're all in tough positions but try to find the best one you can. The best reputation for paying.

What are some of the warning signs of a dishonest distributor?

That's one of them... They can really drag things out sometimes for months and months. You want to try and find someone who's ready to pay you. One who needs the film or wants the film and is ready to pay you. Not playing games because they're in financial straights or has too much product or whatever. Or if you take a straight distribution deal then [make sure] they're going to pay you on a timely basis the money you're owed.

Gary Rubin has over twenty years of experience in the motion picture and television businesses. He's worked in distribution, acquisitions/production and management.

Rubin has worked as Executive Vice President, Sales and Acquisitions for Artisan Entertainment. During his time there he oversaw the TV sales for "The Blair Witch Project" and worked on such projects as "Ticker", "Good Advice", "In Enemy Hands", "Devils Pond" and "My Five Wives".

Before Artisan, Rubin worked at October Films. As VP of Ancillary Distribution and Library Acquisitions as well as Senior VP for Millennium Films, his projects included "Traveller", "The Breakup" and developing their library building representation business.

*In February of 2004, Rubin formed **First Independent Pictures**, a boutique domestic distribution company designed to release 4 to 6 films a year, some to the theatrical marketplace and others to be given premiere treatment in the ancillary world. FIP is releasing "The Great New Wonderful" and "Edmond" theatrically in '06.*

Check out <http://www.firstindependentpictures.com/> for more info.