

Financing Independent Films

By Mark Litwak

Independent films can be financed in a variety of ways. In addition to a filmmaker using his own funds to make a movie, the most common methods are loans, investor financing, borrowing against pre-sales (a loan against distribution contracts), and distributor-supplied financing.

LOANS

Loans can be secured or unsecured. A secured loan is supported or backed by security or collateral. When one takes out a car or home loan, the loan is secured by that property. If the person who borrows money fails to repay the loan, the creditor may take legal action to have the collateral sold and the proceeds applied to pay off the debt.

An unsecured loan, such as credit card debt or money given by family, has no particular property backing it. If a debtor defaults on an unsecured loan, the creditor can sue for repayment, however, the sale of his property may not be sufficient to satisfy all creditors.

A secured creditor is in a stronger position to receive repayment. In the event of a default, the secured property will be sold and all the proceeds will first be applied to repay the secured creditor's debt. Unsecured creditors will share in whatever is left, if anything.

From a legal point of view, the advantage of a loan is that the transaction can often be structured in a fairly simple and inexpensive manner. A short promissory note can be used and the transaction often is not subject to the complex security laws that govern many investments. Keep in mind that if the agreement between the parties is labeled a "loan," but gives a creditor a "piece of the backend" or some other equity in the project, the courts will likely view the transaction as an investment. And if the filmmaker has not followed securities laws, the courts could hold the filmmaker liable for violating the law.

EQUITY INVESTMENTS (INVESTOR FINANCING)

An equity investment can be structured in a number of ways. For example, an investor could be a stockholder in a corporation, a non-managing member of a Limited Liability Company (LLC), or a limited partner in a partnership.

An investor shares in potential rewards as well as the risks of failure. If a movie is a hit, the investor is entitled to receive his investment back and share in the proceeds as well. Of course, if the movie is a flop, the investor may lose his entire investment because the producer is not obligated to repay an investor his loss.

When individuals or companies that invest in an enterprise that they do not manage, their interest is considered a security. These investors are often called silent partners, limited partners, passive investors and stockholders. They are putting money into a business that they are not running. State and federal securities laws are designed to protect such investors by ensuring that the people running the business do not defraud investors by giving them false or misleading information, or by failing to disclose information that a reasonably prudent investor would want to know.

In a limited partnership agreement, investors (limited partners) put up the money needed to produce a film, but they don't want to be financially responsible for any cost overruns or liability that might arise if, for instance, a stunt person is injured.

Because limited partnership interests are considered securities, they are subject to state and federal securities laws. These laws are complex and have strict requirements. A single technical violation can subject general partners to liability. Therefore, it is important that filmmakers retain an attorney with experience in securities work and familiarity with the entertainment industry. This is one area where filmmakers should not attempt to do it themselves.

PRE-SALE AGREEMENTS

In a pre-sale agreement, a buyer licenses or pre-buys movie distribution rights for a territory before the film has been produced. The deal works something like this: Filmmaker Henry approaches Distributor

Juan to sign a contract to buy the right to distribute Henry's next film in Spanish-speaking countries outside North America.

Henry now takes this contract and similar pre-sale contracts to a bank and asks for a loan, using the distribution contracts as collateral. Henry uses this money to produce his film. When the movie is completed, he delivers it to the companies that have licensed the right to distribute it in their territory. They in turn pay their license fees to Henry's bank to retire Henry's loan. The bank receives repayment of its loan plus interest. The buyers receive the right to distribute the film in their territory. Henry can now license the film in unsold territories. From these revenues Henry makes his profit.

Because there are a lot of hoops to jump through, first-time filmmakers may find it difficult to finance their films through pre-sales. With no track record of successful films to their credit, they may not be able to persuade a distributor to pre-buy their work. But if there's a big name cast and an acclaimed scriptwriter, the distributor may be persuaded to take that risk.

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MOVIE MERCHANDISING

By Mark Litwak

With summer onslaught of tent pole pictures about to begin, the importance of product placement and merchandising has never been more important to the studios. With the 1995 release of Toy Story, the incestuous relationship between products and movies has come full circle. Here is story about toys -- some new and some old favorites -- which serves as a vehicle to promote its toy characters whose sale, in turn, promotes the film they star in. Rarely has such synergy between movies and products been so fully realized.

Whether you view Toy Story as nothing more than a thinly disguised commercial hawking toys to youngsters, or you see the movie as a creative masterpiece that smartly capitalizes on spin-off opportunities, there is no doubt that movie merchandising has become big business. Licensed products generate more than \$73 billion dollars a year, of which \$16 billion is derived from entertainment such as movies.

The major studios realize that not only can the sale of movie-related products generate substantial revenue, but these products can be used to effectively promote films. Typically, 40 percent of movie merchandise is sold before a film is released. For its 1996 live action film 101 Dalmatians, Disney made deals with more than 130 companies including cross-promotional deals with McDonald's, Dr. Pepper, Frito-Lay and Alpo. Warner Bros. entered into more than 200 deals for Space Jam.

Of course, selling movie-related products is nothing new. Walt Disney built an empire marketing Mickey Mouse ears and other toys, not to mention the enormous revenue generated from theme parks. While merchandising has been around a long time, there has been a resurgence of activity since the release of E.T. in 1982. You may recall a scene in that movie in which a child shared some of her Reese's Pieces candy with a friendly alien. As a result of exhibiting that product in the film, its sales increased an incredible 65%. This bonanza delighted the makers of Reese's Pieces, but was much to the chagrin of the executives at M & M's. They had denied Steven Spielberg's request to use their candy after their marketing guru figured that having an alien eating M & M's would reflect badly on the product -- one of the greatest marketing blunders of all time.

After this incident was reported in the trade press, many manufacturers began to make more of an effort to place their products in films. They realized that insertion of their product in a successful film could boost sales, and cost less than the cost of advertising. Studios also took notice and made more of an effort to promote products in their movies as well as looking for spin-off products that could be marketed. Typically, studios enter into two basic types of agreements: 1) product placement deals where a manufacturer has its product shown in a film, or 2) merchandising deals where the studio licenses to a manufacturer the right to use names, characters and artwork for spin-off products such as toys, clothing, novelizations and soundtrack albums.

Product Placement

A new breed of agent has arisen to promote the use of products in films. The product placement agent doesn't represent people but represents products. One agent might represent several non-competing products: Mar's bars for candy, Dr. Pepper for soda, Coors for beer, Ford for cars, and so forth.

The product placement agent searches for scripts in which to place products. Of course, not every placement is desirable. Coca Cola would not want their soda to be consumed by a character who then vomits and goes into convulsions. But assuming the placement is in a neutral or positive light, manufacturers will likely be interested.

To induce filmmakers to insert products in movies, the product placement agent can offer several carrots:

1) Release forms: the producer will not have to bother writing to the manufacturer for permission to include the product in the film. Note that displaying a product in a film without permission is not necessarily a violation of a manufacturer's rights. Nevertheless, it is often easier to obtain written permission than risk a possible lawsuit.

2) Freebies: Agents will give producers cartons of candy bars, free airline tickets, a truckload of beer. These freebies can help a producer lower his production costs by eliminating the need to buy props and food. If an item is expensive, such as a car, a mink stole or fine jewelry, often the agent will lend it for the duration of the shoot.

3) Promotion: If McDonalds agrees to distribute millions of Roger Rabbit cups to its customers, and spend additional millions of dollars to advertise the promotion, the movie benefits from increased audience awareness. For distributors, promotional campaigns are often the most alluring aspect of a product placement deal.

4) Cash: Sometimes cash is part of a placement deal. Nabisco paid \$100,000 to have its Baby Ruth candy bar shown in The Goonies. The company also agreed to provide \$1.5 million dollars in network advertising and to give away movie posters with the purchase of its candy at displays in 37,000 stores.

Manufacturers will usually reserve expensive promotional deals and cash payments for major studio releases. However, they are often willing to provide freebies to low-budget filmmakers.

Merchandising

Separate and apart from product placement deals, studios license the right to sell spin-off products to manufacturers. Producers and distributors usually do not manufacture film-related products themselves. They license the right to sell these products to manufacturers. In most instances there is no risk to the producer or distributor because the manufacturer incurs all manufacturing and distribution expenses. The producer/distributor typically receives an advance payment for each product, as well as royalty payments, often between five and 10 percent of gross revenues from sales to retailers (i.e., the wholesale price). If the movie flops and the products don't sell, the manufacturer takes the loss.

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ORGANIZING YOUR COMPANY

By Mark Litwak, Attorney at Law

Filmmakers frequently establish a company to produce and own their movie. While there is no legal requirement to do so, there may be some benefit to operating under the auspices of a company rather than making your film as an individual or as a partner. For example, filmmakers and investors may be willing to accept the complete loss of their film investment, but will hesitate to risk losing their homes and other assets. By establishing a separate business entity, investors can own the company that produces and owns the film, without being personally liable for the actions of the company.

One of the most common business entities used by filmmakers is the limited liability company (LLC). If a company that is a separate legal entity from the filmmaker produces a movie, then the filmmaker may not be liable for the debts and obligations of the company. However, for the filmmaker to avoid personal liability, he must sign all contracts in the name of the company and not give any personal guarantees.

The limited liability company (LLC) is a relatively new form of business entity that combines some of the best aspects of partnership and corporate forms of business while avoiding some of the drawbacks of each. Members of an LLC have the same limited liability protection granted to limited partners and

corporate shareholders. Unlike a corporation, however, an LLC has more flexibility as to how to pay taxes, and can largely avoid the problem of double taxation.

An LLC has two classes of members: managing members and non-managing members. Like general partners, the managing members run the business. Like limited partners, the non-managing members are investors who do not operate the business. Both managing and non-managing members have limited liability.

An LLC can elect to be treated like a partnership for federal income tax purposes, and thereby avoid federal tax at the company level. LLC members report their respective shares of LLC income or losses on their individual tax returns. Although the LLC is not a tax-paying entity, the LLC must still report its taxable income and file an informational return with the IRS.

The laws governing LLC's vary by state. In California, LLC's are subject to state income tax, but the amount of tax is modest, and no tax is assessed until there is total income of \$250,000 or more per year. However, like corporations and limited partnerships, LLC's are subject to an annual tax of \$800 for the privilege of doing business in California.

An LLC can be managed by one or more managers (a "manager-managed" LLC) or by all the members (a "member-managed" LLC). A manager-managed LLC is like a limited partnership with two classes of members: managers that actively supervise the enterprise and non-managers who do not. Similarly, a member-managed LLC is like a general partnership where all the partners are involved in running the business.

In a manager-managed LLC, a manager need not be a member, but can be an outsider hired to manage the enterprise. Managers are considered agents of the LLC and they can bind the LLC to contracts with third parties. In a manager-managed LLC, the non-managing members are not considered agents of the LLC.

The interest of a non-managing member is a security, and securities laws apply. If all the members are active in the management of the LLC (*i.e.*, all members are managers), there are no passive investors and the members' interests are not considered securities.

As with other business entities, if the LLC operates under a fictitious business name, the company will need to file a DBA (Doing Business As). Since the LLC is a separate legal entity, it will need to apply for an EIN (Federal Employer Tax Identification Number), obtain any applicable state and local business licenses, and file state and federal tax returns.

Which brings us to another reason to establish a company, to reduce taxes. LLCs may be able to deduct certain expenses that would not be deductible, or only be partially deductible, by a sole proprietor. Some fringe benefits (*e.g.*, medical insurance, pension plans) that a company provides employees may be tax-deductible for the company rather than income to the employee. Therefore, by setting up a company, paying yourself a salary, and giving yourself generous fringe benefits, you may gain certain tax advantages. On the other hand, the tax benefits may not outweigh the cost of forming the company, which includes legal fees, filing fees, and the annual cost of preparing and filing a company tax return. Moreover, some states assess a minimum annual tax on companies even if they do not earn any income.

While establishing a company may protect you from liability for your company's breach of its contracts, it does not preclude other people from suing you for your own negligence. So, for example, if you are negligent on a movie set and cause injuries to others, you may be liable even if you are operating under the auspices of a company.

When deciding what sort of business entity to form, it is always best to consult with an attorney experienced in company formation in your state, as well as a tax advisor.

PROTECTING FILM INVESTORS - Part I

By Mark Litwak

Films as investments have a bad reputation, and many times the promoters deserve to be criticized. There are instances where financiers have been cheated and lost their entire investment. Consequently, some investors simply refuse to consider film-related investments. This is unfortunate because an intelligent investment in a motion picture can earn substantial returns. While film investments are risky,

the potential return from a hit can be enormous. Not only can the film earn revenue from box office receipts, but there are many ancillary sources of income. These sources include revenue from television, home video, merchandising, music publishing, soundtrack albums, sequels and remakes.

As an attorney who represents investors as well as filmmakers, I have learned that there are ways to reduce the risk of film investments. Here is a checklist to guide investors. This article is presented in two installments.

DUE DILIGENCE: Thoroughly investigate the reputation and track record of any producer or distributor you contemplate doing business with. No contract can adequately protect you against a scoundrel. Speak to filmmakers and investors who have done business with a candidate. Check court records to see if the company has been sued. To research distributors, visit the Filmmaker's Clearinghouse, which I sponsor along with Film Arts Foundation, the Association of Independent Video and Filmmakers, and MovieMaker Magazine.

The survey form, and the responses, can be found on my Web site, Entertainment Law Resources, at <http://www.marklitwak.com>.

FULL DISCLOSURE: Federal and State securities laws are designed to protect investors. Offerings to the public generally require prior registration with the SEC or a state agency. Usually private placements are limited to persons with whom the offeror has a pre-existing relationship. Even if registration is not required, the anti-fraud provisions of the securities laws require that the offeror make full disclosure of all facts that a reasonably prudent investor would need to know in deciding whether to invest. The information disclosed should include a detailed recitation of all the risks involved in developing, producing and marketing a movie. Avoid any offering that appears to violate this requirement by making less than full and truthful disclosure. Carefully read the prospectus, and consult your own financial and legal advisors before making a decision to invest.

TRACK RECORD: Do not back a filmmaker or production team that does not possess the proven skill needed to make a professional-looking movie. Avoid first-time filmmakers. You are safer backing filmmakers who have completed at least one short film or a feature-length work. Partner with people of integrity who bring the skills, expertise and resources to the endeavor that you lack. For instance, if you don't have the knowledge necessary to evaluate a script, bring aboard someone who has that expertise, or hire a script doctor.

IDENTIFY THE POTENTIAL MARKET FOR THE FILM: There is a very limited market, and modest potential revenue, to be earned from most short films, documentaries, black and white films, and foreign language pictures. "Crouching Tiger, Hidden Dragon" and "Fahrenheit 9/11" are the exceptions, not the rule. Distributors and exhibitors are also prejudiced against motion pictures shot on low-end videotape formats. They prefer films shot on 35 mm stock, although quality films shot on 16 mm or Super 16 mm film or shot using a High Def digital camera can obtain distribution.

Certain themes, topics and genres can be difficult to sell. Religion-themed pictures can easily offend audiences, although "The Passion" showed that there is a large potential market for some of these films. Cerebral comedies can be difficult to export because their humor may not translate well. Films with a great deal of violence may be shunned by European television, which is a prime market for independents. Films with explicit sex may not pass censorship boards in certain countries.

Independent films without name actors are difficult to sell. Of course, name recognition varies around the world. The star of an American television series may be a big name in the United States but unknown abroad. On the other hand, some actors have large followings abroad, yet are relatively unknown in the United States. There are several publications that can be consulted to determine the commercial appeal of actors such as the Hollywood Reporter "Star Power" guide, available by calling 888-900-3782.

DON'T BACK DIRECTORS WHO ARE ONLY CONCERNED WITH THEIR OWN VISION: The director of the film is the key person who will determine whether the final product is marketable. If a filmmaker shows no concern about making a movie with audience appeal, you can expect a film whose exhibition will be limited to the family and friends of the filmmaker. This is not to say that the only films

you should invest in are low-brow fare like “Dumb and Dumber.” A well-made “art” film like “Elizabeth,” can win awards and make a handsome return on investment. Filmmakers should give some thought beforehand as to the nature of the film’s intended audience. I once watched a wonderful “Lassie” type film spiced with four-letter words uttered by one character. I explained to the filmmaker that his film would never sell in the family market because of the vulgar language, and it was too soft a story to appeal to teens and adults.

CONGRUENCE OF INTERESTS: It is best to invest in an endeavor where everyone shares the same risks and rewards. A filmmaker who takes a large fee from the production budget may financially prosper from a picture that returns nothing to the investors. It is better to back a filmmaker willing to work for a modest wage and share in the success of the endeavor through deferments or profit participation. An investor can take some comfort investing in a motion picture on the same terms as a producer or distributor where all parties recoup at the same time. Beware of investing in a project where other parties benefit when you lose.

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PROTECTING FILM INVESTORS - Part II

By Mark Litwak

In my last column, I explained how to protect film investors through due diligence and by evaluating the market for a motion picture. Here is the remainder of my checklist for protecting investors:

UNDERSTAND THE PARAMETERS OF A FAIR DEAL: Usually, investors are entitled to recoup all of their investment from first revenues before payment of deferments or profits. Many times investors are allowed to recoup 110% or more of their investment in order to compensate them for loss of interest and inflation. Profits are declared after payment of debts, investor recoupment and payment of deferments. Profits are generally split 50/50 between the producer(s) and the investors. Thus, investors who provide 100% of the financing are entitled to 50% of the profits. From the producer=s half of net profits are paid any third-party profit participants (e.g., the writer, director and stars).

OBTAIN ALL PROMISES IN WRITING. Don’t ever accept oral assurances from a producer or distributor. If there is not enough time to draft a long-form contract, ask for a letter reiterating the promises. Avoid filmmakers who make handshake deals. Such individuals may neglect to obtain the necessary contracts needed to fully secure ownership to their motion picture. In order to have a complete chain of title to a film, one needs to secure written contracts with many parties including actors, writers and music rights owners. Filmmakers who fail to pay attention to such legal niceties lack the professionalism needed to succeed.

SECURE AN ARBITRATION CLAUSE: Provide that any contractual disputes be subject to binding arbitration, rather than litigation, with the prevailing party entitled to reimbursement of legal fees and costs. Arbitration is usually a quicker, more informal, and less expensive method of resolving disputes than litigation. The filmmaker is usually financially weaker than a distributor. If the filmmaker doesn’t have a viable means of protecting his interests, he may be forced to watch from the sidelines as a distributor ignores the terms of a distribution agreement and pockets revenue from the film. An arbitration clause levels the playing field.

Binding arbitration awards are difficult to overturn. The grounds for vacating an award are limited to such instances as when an award is procured by corruption or fraud, or if the arbitrator lacked jurisdiction. A party cannot reverse an arbitration award simply because he does not like the decision.

Many entertainment industry arbitrations are conducted under the auspices of the Independent Film and Television Alliance (IFTA, formerly called AFMA), a trade organization representing the interests of international distributors. IFTA is the entity which organizes the American Film Market (AFM). IFTA arbitrations usually occur in Los Angeles, but they can be held during an international film market or in a different city. All of the IFTA arbitrators are experienced entertainment attorneys. Under IFTA rules, if a

filmmaker wins an award, and the distributor refuses to comply with its terms, the filmmaker can have that distributor barred from participation in future AFMs.

INTEREST ON LATE PAYMENTS: Generally, courts do not award pre-judgment interest to a prevailing party, unless there is a provision in the contract providing for such interest. Thus, if you become embroiled in a dispute with a distributor who is unlawfully holding onto \$100,000 owed you, and after four years of litigation you win the case, the court may only award you \$100,000 in damages without interest. During those four years the distributor could invest your money and reap the profits.

COMPLETION BOND: A completion bond is issued by a completion guarantor, which is an insurance company that insures the production against budget overruns. Before issuing the policy, the completion bond company will closely review the production personnel, script and budget and assess whether they think this team of individuals can bring in this script within the shooting schedule and budget proposed. The completion bond company usually is quite diligent in its review because if the film goes over budget, the bond company is financially responsible.

TAKE AN ACTIVE ROLE: In the past, investors who wanted limited liability had to be willing to pay the price of accepting limited control. With a limited liability company (LLC), however, an investor can be one of the managers of the enterprise yet maintain limited liability. Thus, the investor can have a vote on critical decisions such as approval of the script, cast, budget, and distribution agreements. By being actively involved in the production, an investor will be better able to monitor the performance of the filmmaker and discover problems while there is time to remedy them.

MAKE SURE FUNDS ARE SPENT ON PRODUCTION: During fundraising, it is common for the filmmaker to set up an escrow account to hold investor funds. The money stays in the escrow account until the filmmaker raises the minimum necessary to produce the film. If the filmmaker cannot raise sufficient money, the funds in escrow are returned to the investors. By depositing money in an escrow account, investors are protected because they know none of their capital will be spent unless and until all the money needed to produce the film has been raised.

After funds are disbursed for production, there should be a system of checks and balances to ensure that all monies are properly spent and accounted for. A budget and cash flow schedule should be approved beforehand. All checks withdrawing funds from the account should be signed by two individuals. Investors may want to insist that one of the signatories is a trusted person selected by the investors.

OBTAIN AN EXPERIENCED ADVISOR: Retain an entertainment attorney or experienced producer's rep to advise you and review all documents. Make sure the filmmaker has adequate representation as well. Filmmakers may be very capable in the arena of production, and yet be unsophisticated in business matters. Filmmakers can be badly taken advantage of if they attempt to negotiate a distribution deal without assistance. Since the investor generally shares in the revenue paid to the filmmaker, if the filmmaker gets taken, the investor suffers as well.

OBTAIN AND RECORD SECURITY INTERESTS: A security interest gives the secured party rights in designated collateral. Investors may want to make sure the filmmakers they back protect their rights by having distributors grant the filmmaker a security interest. The collateral here is the proceeds derived from exploitation of the film. By having a security interest, the filmmaker will have superior rights to unsecured creditors. If a distributor goes bankrupt, its assets will be auctioned off to pay the distributor's creditors.

DON'T INVEST MORE THAN YOU CAN AFFORD TO LOSE: Investing in a film is a highly risky endeavor. Investors should never invest more than they can afford to lose, in other words, the complete loss of your investment should not appreciably affect your standard of living.

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RETAIN YOUR MASTERS

By Mark Litwak

While filmmakers often produce their own movies, they typically contract with one or more distributors to market them. Many distributors routinely ask the filmmaker to deliver master elements directly to

them. Filmmakers should decline this request, and insist that the distribution agreement provide that the distributor be given a lab access letter instead. A lab access letter enables an authorized distributor to order copies of the motion picture to ship to theaters and to fulfill orders from its licensees.

There are many reasons why a filmmaker should retain possession of master elements:

1) Masters may be irreplaceable. If lost or damaged, the producer will incur a substantial expense to replace them, if they can be replaced. Original film negatives, video masters, sound masters, artwork, still photos and slides should always be stored in an appropriate storage facility with safety copies stored at a different location.

2) In the event of a dispute, it is best for the filmmaker to be in control of his/her materials. If the distributor has defaulted, for instance, the filmmaker may have a right to terminate the agreement and seek a new distributor. The filmmaker will need access to his materials, in order to make delivery to a new distributor.

3) If the distributor goes bankrupt, the filmmaker does not want to have to go to court to extricate materials from bankruptcy proceedings.

4) The filmmaker may need to give several distributors simultaneous access to its materials. Typically, independent filmmakers enter into multiple distribution deals. Often, one deal is made with an international distributor (a.k.a. foreign sales agent) to distribute the film outside North America, and one or more deals may be made with a domestic distributor for distribution in the United States and Canada. The best solution, when dealing with multiple distributors is to place the film materials in a professional laboratory that will store them in an ideal, temperature controlled environment. Each distributor is then granted a lab access letter enabling it to order copies.

5) Filmmakers can discourage cheating by keeping masters in a laboratory and having the lab report on how many copies have been duplicated. Suppose that at the end of one year, the lab reports to the filmmaker that ten 35 mm film prints have been made. The filmmaker reviews the producer reports and sees only eight sales reported. This is a red flag alerting the filmmaker that sales may have been made that were not reported. Most filmmakers would never know if their film had been licensed in Malaysia, for example. But distributors do not order copies of films without an order in hand. Typically, they receive full payment from the licensee before they ask the lab to manufacture a duplicate and ship it.

One way to monitor which countries have licensed a film is to place the music on the soundtrack with a music publisher (which could be a publishing company the producer establishes), and make sure the publisher has entered into an agreement with ASCAP, BMI, or one of the other music collection agencies. These agencies collect public performance royalties when the film is exhibited on television in the United States, and in theaters and television abroad by virtue of cooperative agreements with other public performance agencies. If the music is registered with such an agency, and royalties from Thailand are remitted, this can alert the filmmaker to a sale in that country.

In selecting a laboratory to deposit your materials, choose one that charges competitive rates and has experience duplicating films for international distribution. Buyers in certain countries, such as Germany, are notoriously finicky and often reject films on the grounds of poor technical quality. It is also a good idea to select a lab that is not the lab ordinarily used by the distributor. A lab in the habit of fulfilling orders for a distributor client may not bother checking to see if the distributor has authority to order copies of your film. Moreover, such a lab might inadvertently release the master to the distributor. The filmmaker should always deliver the master directly to the laboratory after the laboratory, distributor and filmmaker have signed a lab access letter. If the filmmaker delivers its materials to the distributor, and the distributor sends the materials to the lab, the laboratory may think the distributor is the owner of the film.

The lab access letter should include language permitting the filmmaker to receive copies of all invoices or report disclosing the nature and amount of duplication performed. Some filmmakers insist that the laboratory ship all copies directly to territory buyers.

The distributor will usually insist that the lab access letter be irrevocable for the term of the distribution deal. This is a reasonable request. The distributor wants to ensure that it will want to retain access to the materials in order to fulfill orders from its licenses.

