

ADVISING THE BEGINNING INDEPENDENT FILMMAKER

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- I. PERSONAL ASSESSMENT – The seasoned know the importance of this assessment.
 - A. Available time commitment – ability to see project through to completion.
 - B. Personal inventory – discipline, perseverance, resourcefulness, stability, adaptability, equanimity, comportment.
 - C. Sales prowess – ability to enchant.
 - D. Credibility of experience and extent of knowledge.
 - E. Credibility of venture
 - F. Willingness to ask favors (and more) of family and friends.
 - G. Ability of family and friends to provide favors (and more).
- II. PUTTING RIGHTS IN ORDER
 - A. Secure rights in story or script.
 - B. Secure rights in other necessary film elements, i.e., life story, book adaptation, music, other footage, etc.
 - C. Don't give up rights prematurely – meaning, don't give outright grants of rights in one's project but instead provide options based upon critical conditions.
 - D. Issues to explore:

1. If personal story rights are critical, what is level of cooperation of key person? Any health issues? Will want to have person available not only for purposes of production, but for promotional purposes as well when film is launched.
2. Any archival material or documents or artifacts required? If so, any access complications?
3. Any story verification issues – how will story be backed up if challenged?
4. Any special location access complications?
5. Any secrecy, non-disclosure, or non-competition issues with respect to any member of the production team or key subject?
6. What pre-existing material will be incorporated in the film – footage, photos, music – and what terms will be available for their use?
7. Any time constraints on the availability of any person or material, or the timeliness of the film subject?
8. Any competing projects that the producers are aware of?
9. Any adverse claims made with respect to the production of the film?
10. Any aspect of the film developed within the scope of any contributor's employment, or developed with the assets of another?
11. Who have been contributors to the script, and what have been their contributions? What has been the intention of the contributors with respect to the ownership of their contributions – rights retained separately, or has there been a merger of rights?
12. Has the script been circulated for comments, what comments have been received, and in what form, and what has been done with the comments?
13. Any copyright registrations undertaken? If so, who is claimant and what other information is disclosed, such as pre-existing works?
14. Any title searches undertaken? Any title registrations done?

15. Any intent-to-use trademark applications undertaken for ancillary products?
16. Any URLs obtained?
17. Any social media accounts set up?
18. Any personal issue with respect to any potential claimant to the film or production entity that might impact rights in the film or production entity?
 - a. Grant of general security interest to collateralize an obligation.
 - b. Marital separation or divorce proceeding.
 - c. Bankruptcy
 - d. Health or disability

III. ASSEMBLING (OR DISASSEMBLING) THE PRODUCING TEAM

- A. Identify the members of the producing team.
- B. Determine respective rights and responsibilities.
- C. Distinguish producing functions from other roles, such as directing, writing, etc.
- D. Distinguish co-ownership of project from percentage income interest in project, such as percentage of profits.
- E. Attaching others to (or detaching others from) the project
- F. Resisting the urge to be egalitarian or too inclusive.

IV. DEVELOPMENT OF PRODUCING ENTITY

- A. Identify the entity from which the project originated – individual, general partnership (perhaps undeclared), within scope of employment, etc.
- B. Identify the entity that will undertake pre-production activities as producing team emerges – a new general partnership, LLC, or corporation, or certain producing team members may be merged into existing entities, or existing entities may employ other members of the producing team.

- C. The actual entity that obtains production funds and produces the film may be the same entity that originated and developed the project or a new entity that obtains rights developed by the originating entity and in which the originating entity becomes a partner, unit interest holder, or shareholder.

V. REALISTIC POTENTIAL FINANCING SOURCES

A. Unlikely sources and why:

1. Commercial finance companies – the producing entity generally does not have business assets to loan against or sell.
2. Venture capital firms – few fund individual projects, and they generally can't investigate and control the project as they might other investments.
3. Debt instruments – producing entity generally does not have forecastable revenue.
4. Unsecured bank financing – new venture, and high risk.
5. Government funding – not there, unless operate as a not-for-profit.

B. Likely sources:

1. Personal funds
2. Personal loans secured by personal or business assets or assets of friends or family.
3. Loans from friends or family
4. Investors
5. Presale of rights
6. Financing of tax credit
7. Co-production agreements – like a pre-sale, but not to a rights user.
8. Loans secured by pre-sold rights – guarantees under such agreements can secure a loan.
9. Contributions through fiscal sponsors. www.fracturedatlas.org; www.fiscalsponsordirectory.org.

10. Crowdfunding web sites

C. Assessing potential for pre-selling rights.

1. Suitability of project for pre-sale (ability to meet theatrical release requirements, genre, foreign values, rating, etc.)
2. Foreign rights vs. domestic rights
3. Advance funding, guarantees, or letters of support.
4. Fractionalized agreements (separate parties get rights to home video, cable, broadcast, etc.) vs. all rights to distributor.
5. Selling potential profit to finance film?
 - a. Upside reduced in exchange for certainty of funds
 - b. Possible impairment of ability to sell other rights
 - c. May trigger residual payments to talent

D. Assessing availability of bank financing secured by pre-sales.

1. Domestic vs. multiple foreign territory sales
2. Creditworthiness and production history of buyer.
3. Availability of letter of credit to fund pre-sale obligation.
4. Availability of completion bond, either to complete project or fund short fall
5. Availability of insurance coverage to fund producer breaches of warranty.

VI. UNDERSTANDING THE INVESTOR'S POINT OF VIEW

A. Investors risk present assets for the promise of future benefits. The producer must project to the investor the value of his or her proposal and instill confidence in the investor in the predictability and potential of the project's success. The producer must be prepared to give the investor full information, good and bad, to allow the investor to make an informed investment decision.

- B. The producer controls the circumstances of how his or her project is developed and marketed; the investor does not. Thus, the investor views the risks of production and financial return as greater than the producer does.
 - C. Film financing must be judged on the economic merits of a project, since there are no significant tax incentives to cause an investor to invest regardless of the likely success of the project.
 - D. Investors know film success is dependent upon public taste, which is unpredictable and subject to change without warning or explanation. Further, information about the film production industry as a whole and the experience of individual independent film productions is imprecise and anecdotal. Consequently, producers sell into a market where investor perceptions have been forged to reflect the belief that film investments are risky ventures.
 - E. Since financing is generally done on a film-by-film basis, there is little or no business history (balance sheet, income statement, management stability and performance, etc.) for an investor to investigate as part of his or her due diligence, which usually results in an investor ultimately putting his or her faith in the assessment of the personal skills and reliability of the producer to develop and produce the film.
 - F. Unless the principals of the project risk what to the investor's mind appears to be a significant loss (either financial or otherwise) if the project is not properly handled to completion, the investor may lack confidence in the principal's long term commitment to the project.
- VII. WHAT THE PRODUCER SHOULD DO BEFORE SEEKING INVESTORS.
- A. Identify the producing team.
 - B. Secure rights.
 - C. Obtain professional feedback on marketability of project.
 - D. Establish relationship with professional advisors.
 - E. Gather and gauge level of support and financing available from family and acquaintances.
 - F. Prepare business plan, including development of likely projections of income gauged to expected performance of film and source and amounts of revenue.

- G. Have budget vetted.
- H. Consider producing a trailer.

VIII. WHAT THE PRODUCER SHOULD NOT DO BEFORE SEEKING PROFESSIONAL ADVICE – CHECK TO SEE IF ANY OF THESE HAVE OCCURRED.

- A. Place advertisements looking for money
- B. Conduct an unsolicited mailing or other general quest for financing.
- C. Convey rights in script or story.
- D. Promise a position or responsibility to people beyond that which the producer can deliver.
- E. Engage a fund raiser.
- F. Accept money from an investor.
- G. Sign any written agreement.
- H. Give a written agreement to somebody to sign

IX. POTENTIAL CONSEQUENCES OF DOING IT WRONG.

- A. Return of investor funds.
- B. Cloud on title adversely affects marketability of film.
- C. Funds from rights users (distributors, licensees, etc.) may be withheld pending resolution of conflicting claims.
- D. Expense and inconvenience of defending lawsuits.
- E. Costs erode or consume entirely potential profit of project.
- F. May be required to compromise legitimate claims in exchange for other interests.
- G. Get cut out of transaction.
- H. Diminishment of professional credentials.