

MOVIE MAKER

THE ART AND BUSINESS OF MAKING MOVIES

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DISTRIBUTION

Distribution in the Year 2012

by David Albert Pierce, Esq. | Published January 26, 2012



Distribution is the sole source by which film revenue is earned, but recent years have seen some radical changes in how films are distributed. Here are some of the most recent changes to affect the world of distribution:



Tower Heist director Brett Ratner

The Advent of Digital Theatrical Distribution

In conjunction with theater chains, major U.S. studios have spent \$660 million to retrofit theaters so that films can be shown via digital distribution, rather than with traditional film projectors. Once this conversion process is complete nation-wide, the result will be that traditional Prints & Advertising (P&A) costs will become a thing of the past. The "prints" part refers to the 35mm film prints, stored in heavy canisters, which require secure transport to every theater at which a film is shown. The costs associated with creating prints and delivering them to each individual theater can be staggering. But with the advent of digital theatrical distribution, distributor costs for prints are reduced from hundreds of thousands for even the smallest independent film run (larger runs cost millions) to a mere fixed \$850 "Virtual Print Fee," to be paid by the theater for each print it shows.

Traditional theatrical distribution has always been both a blessing and a curse for independent moviemakers, because while everyone enjoys the prestige and glory of a theatrical distribution, the associated P&A costs all too often place films in the red. Digital theatrical distribution, on the other hand, will substantially eliminate those traditional print costs, meaning that theaters may become more willing to take a chance on independent films. If the film in question turns out to be a bomb, they can just switch a button and replace it with something else. But if the film becomes a surprise hit, with one flick of a switch it can show on multiple screens. Furthermore, theaters will have greater flexibility: They can screen a major motion picture at 5:00, 7:00 and 9:00, followed by an indie film at 11:00. Pessimists worry that the rise of digital theaters could mean death for mom and pop theaters unable to afford the digital upgrades, but only time will tell how things play out. Replacement of traditional 35mm prints may have as great an effect on the profitability of independent films as did the replacement of traditional negative cutting with digital, non-linear editing.

DVDs: A Dying Form Of Distribution

The domestic DVD market has declined by 20% every year since 2006. Due to widespread piracy, foreign DVD markets no longer exist, and the rise of streaming services like Netflix and Amazon Instant Video have caused domestic markets to dwindle. The popularity of Blu-ray discs has grown, particularly among those viewers who want to be able to own collectible editions of films, but that one rise in sales cannot counteract the constant downward slide of the DVD market. Of course, for those independent moviemakers who desire to distribute their films via DVD, this means that it has never been cheaper or easier to arrange for replications and sales to occur either at in-person venues or via online marketplaces like Amazon.com.

Netflix: A New Paradigm For Delivery

The original Netflix delivery system—shipping DVDs through the mail—costs Netflix eighty cents per disc shipped. The company's streaming video service, on the other hand, costs them a mere five cents in overhead per film streamed. Whether Netflix's increased profits will result in more money being paid out to independent moviemakers is yet to be seen.

Another interesting development in regards to Netflix is its recent announcement that it will air exclusive original programming, beginning with new episodes of "Arrested Development." This may be a sign of things yet to come, with Netflix becoming more like HBO or Showtime. Netflix is a prime example of the current trend of delivery formats becoming more blurred. The company that took down Blockbuster by eliminating the need to drive to the video store may now rival HBO, with their streaming videos and original television programming able to be viewed on consumer's televisions and computers.

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Video On Demand Takes Command

Video On Demand ("VOD") encompasses a wide array of formats and media. Hulu, Netflix, YouTube, iTunes, game consoles like Xbox and PlayStation and your local cable providers all offer different methods for viewers to watch what they want, when they want.

When Netflix looks like HBO and PlayStation looks like Pay-Per-View, the orderly system that revolves around "exhibition windows" is destroyed. Today, 85% of domestic theatrical revenue comes from the first 28 days. In other words, most people who see a film in a theater will do so within the first four weekends of its release.

In October, Universal announced its plan to release *Tower Heist* simultaneously in theaters and on Pay-Per-View, with the latter viewing experience costing \$60. The plan was cancelled when theater chains threatened to boycott the film in an effort to protect their cherished 28-day exclusivity window.

IFTA VOD: A Revolution From an FCC Mandate

Traditionally, the producer stands at the bottom of the long line of middlemen that exists between the moviemaker and the viewing consumer. The viewer purchases a film via VOD and pays his cable operator, who in turn takes a percentage of the money and pays the remainder to the company that runs the VOD service. That service takes a percentage and pays the remainder to the film's distributor, which in turn pays an ever-dwindling remainder to a sales agent, who then passes on a portion of the money to the producer.

However, at the most recent American Film Market, the Independent Film and Television Alliance (IFTA) announced its plans for a radical new mode of distribution that will eliminate many of the middlemen standing between producer and viewer. Their new system resulted from an FCC mandate IFTA managed to bring into effect with its lobbying against the Comcast/Universal merger. IFTA objected to the merger because of the vertical integration that would result from the joining of a large content provider and a large cable operator, which in turn would result in fewer outlets for independent film to be shown. The FCC sought to remedy this problem by requiring that Comcast/Universal establish dedicated channel for IFTA films to be shown via VOD.

Under this new system, set to take effect later in the year, moviemakers will be able to arrange directly with IFTA to have their films distributed on IFTA's Comcast VOD channels.

As Technology Evolves, So Too Will Distribution

In terms of creating content and getting it exhibited at relatively low cost, moviemaking has never been easier than it is today. YouTube, Funny or Die and other Websites create opportunities for moviemakers to have their work seen by millions.

With technology changing as it is, producers need to understand what's available to them in terms of distribution; what "exclusivity widows" may be set forth in distribution deals for different formats; and what rights should be retained, not thoughtlessly contracted away. Producers should make sure they don't inadvertently give away the same rights to multiple distributors. Producers also need to educate themselves on how revenue is generated and calculated with these new technological formats. Are outdated cost calculations being adopted for a system that no longer has such costs? These are just some of the questions that should be asked before entering a distribution deal. Independent moviemakers have always been on the cutting edge; it only makes sense that they race to exploit the cutting-edge distribution methods that now readily exist.

David Albert Pierce is managing member of Pierce Law Group LLP, a boutique entertainment law firm with an emphasis on providing employment law counseling for independent film and television production companies. Pierce has served as counsel for "Amazing Race," "Oprah's Big Give" and numerous projects for View Films (producers of the long-running "Taxicab Confessions" and the new CBS drama "The Defenders"). Pierce has also provided entertainment-related employment law advice to Morgan Creek Productions, Starz/Encore, Cartoon Network, Film Roman, Lions Gate Films and Lions Gate Television, including such critically acclaimed shows as "Weeds" "Mad Men" and "Nurse Jackie".

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