

HOW NOT TO NEGOTIATE A DISTRIBUTION DEAL

You've finally finished your film and have just received your first distribution offer. Now what?

Negotiation is an essential but little understood part of dealmaking. To make fair deals with good distributors, there are mistakes you must avoid and steps you need to take.

I recently gave a presentation on the secrets of negotiating distribution deals to a full house of Film Independent members. My subsequent interview for the Film Independent newsletter evolved into this Bulletin. It supplements my [Special Report on festival and dealmaking strategies](#). It is not a comprehensive guide to negotiating distribution deals but does highlight key dos and don'ts.

AVENUES OF DISTRIBUTION	
Domestic	Foreign
Festivals	Festivals
Theatrical	Theatrical
Semi-Theatrical	
Cable VOD	
Television	Television
Direct DVD	Direct DVD
Retail DVD	Retail DVD
Direct Digital	Direct Digital
Retail Digital	Retail Digital
Education	

8 MISTAKES TO AVOID

1. Don't submit to festivals too early. Most filmmakers do and end up regretting it. If your movie is not as good as it's going to get but you submit anyway, you increase the already high odds of being rejected. You should resist the siren calls of festival deadlines until you're confident you've made the strongest film you can make. You need to put your best foot forward with festivals, press, and distributors. Utilize test screenings with strangers (rather than family and friends) to determine if your film is ready to premiere. These screenings will help you determine what changes need to be made. Then you can test screen a new cut for another audience.
2. Don't submit your film to distributors or producer's reps without internally having a customized distribution strategy. This strategy should include your plans for each avenue of distribution. Too many filmmakers follow the old playbook and take a formulaic approach to submitting their movies to the usual suspects without having a clear vision of how they want their films to come into the world.
3. Don't begin negotiating with distributors until you have done due diligence. You should first speak with filmmakers who are currently or have recently been in business with any companies you are seriously considering. You need to go beyond the references that distributors provide. Find out what the real experiences of other filmmakers have been – what is it like to work with the company, what have been the concrete results, and have they been paid accurately and on time. Where there is smoke, there is usually fire.
4. Do not attempt to go it alone. Too many filmmakers try to handle by themselves complicated distribution issues, which they know little or nothing about. Many suffer from the rampant "I have to do it all myself" disease. Some don't know where to turn for help and worry it will be unaffordable.
5. Don't automatically seek an all-rights deal without first having a clear understanding of the full spectrum of distribution opportunities. Magical solutions are usually too good to be true. Many filmmakers who give complete control of their distribution to one company end up regretting it.
6. Don't negotiate distribution deals yourself. DIY filmmaking can be okay and DIY distribution may work in certain circumstances, but DIY dealmaking is not recommended. Assume the person you would be negotiating with has much more experience, knowledge, and skill than you.
7. Don't be a victim of the bird-in-the-hand syndrome. If you only get a single offer, don't be afraid to negotiate it because you are worried you will lose the deal and end up with no distribution. There's a way to negotiate a single offer that will increase your chances of improving the deal. The key is to have an internal bottom line. The company you're negotiating with needs to understand that if they don't meet your bottom line (which you

haven't disclosed to them), you're not going to sign the deal. If they believe you will sign their boilerplate contract without any changes, you will have no leverage. Never forget that no deal is better than a bad deal.

8. Don't ever negotiate by email. When you are negotiating on the phone, on Skype, or in person, you have access to valuable information, whether it is tone of voice, body language, or a pregnant pause. This additional information will give you a better sense of where the other side is flexible and what their bottom line is, and make it easier to achieve a win-win deal.

KEY STEPS TO TAKE

Identify the main distribution avenues in North America and overseas. In the United States there are ten:

- • film festivals
- • theatrical
- • semi-theatrical (single special event screenings on a campus, in a museum, or at a theater)
- • cable VOD
- • television
- • educational
- • retail DVD
- • direct DVD (from the filmmaker's website)
- • retail digital (iTunes, Amazon, Hulu, Netflix, etc.)
- • direct digital (downloads and streams from the filmmaker's website)

Overseas, the main avenues are television and digital, with limited potential for theatrical and DVD distribution.

Design a customized distribution strategy that will include plans for each of these avenues and an overall timetable. Planning your windows is very important when you are splitting rights. Although the windows for studio films have been eroding, independents need to carefully determine the ideal sequence and lengths of each stage of their distribution. Splitting rights among several companies and retaining overall distribution control is often the best way to maximize distribution.

Build a distribution team that will include partners with expertise and experience to complement yours. Possible teammates include: foreign sales agents, producer's reps, attorneys, theatrical bookers, publicists, outreach coordinators, web designers, social media mavens, and dvd and digital fulfillment companies (which can facilitate direct sales from their websites). Select someone to negotiate deals for you. You need a talented and experienced

negotiator who understands film distribution. Make absolutely sure that he or she is up-to-date about the latest deals, how they're structured, and what's most important. You don't want to use someone who is behind the curve and can only negotiate a deal that would have been good in 2009. You need to do due diligence on your negotiator. When you find someone with the right mix of experience and skill and are satisfied with their work on your behalf, you will want to use him or her again and add them to your distribution team.

6 CRITERIA FOR DISTRIBUTION PARTNERS

1. Find distributors who are effective and honest. They should have track records that demonstrate this as well as raves from other filmmakers who have worked with them.
2. Find distributors who are flexible and will help you to implement your customized distribution strategy rather than requiring you to fit into a one-size-fits-all approach to distribution
3. Find distributors who are willing and able to be partners. Some companies are only interested in being masters.
4. Find distributors whose goals and strategy are aligned with yours. If your primary goal is maximizing career, then you should be sure that the company will do a proper release with a quality press and marketing effort. On the other hand, if you've mortgaged your house and sold your car to make the movie, then maximizing revenue will probably be your most important goal. If so, then you need to be confident that the company can generate substantial financial returns.
5. Find distributors that will agree to let you keep your direct sales rights. It's very important that you retain the ability to sell directly from your website—DVDs, downloads, and streams—because that's the way you are going to generate more revenue and be able to build your mailing list and your fan base. Building an audience that you can reach directly is a fundamental part of building your career.
6. Find distributors who will make fair deals, including splitting rights and revenue shares. Give them the rights they are good at exploiting and keep those they are not good at, like educational distribution. If the company is a digital aggregator (that will pitch your film to iTunes, Amazon and other places), make sure that the split is fair. Some aggregators take 50% or more of revenues, while others take 15%, 20%, or 25%. Make sure that the aggregator is "direct" with iTunes and other distributors (rather than going through a middleman). If not, a middleman will take a percentage reducing your revenues.

Almost every deal can be improved through negotiation. Approached constructively, it is an opportunity to build a partnership that will benefit both parties for years to come.