DISTRIBUTION CONTRACTS

By Daniel M. Satorius, Esq.

Introduction

There are many new distribution options for the independent producer. The old media includes theatrical, broadcast/cable, home video; and new media’s alphabet soup including TVOD, SVOD, AVOD, EST, PPV, streaming, and non-traditional theatrical. As new distribution channels develop, new distribution companies emerge. But not all distributors are effective in all mediums and markets and many have specialized. Just as you would not expect Netflix or Vimeo to release your work theatrically (Netflix’s recent self-originated productions to the contrary), you would not expect Gathr and Tugg to broadcast or cablecast your work. As a consequence of all these new distribution channels and the splitting up of rights in the works among multiple distributors, distribution contracts have changed and evolved.

This article looks at the most important clauses in distribution contracts and points out where you may want to negotiate improvements to your contract including changes related to new media.

Preliminary Considerations

Before diving into specific provisions of a distribution contract, let's consider a few preliminary matters that may impact the negotiations of a distribution contract.

Due diligence: In the best of circumstances you will receive multiple offers from distributors. In other circumstances one is lucky to have any offer. In all cases you should extensively research potential distributors. Familiarize yourself with the distributor’s track record, its strengths and weaknesses. Speak with other producers who have distributed their works through the distributor(s) in question. Attorneys experienced in this field can help you evaluate distributors, recommend distributors and, in some cases, introduce you work to distributors.
Split-Rights Deals: No distributor is effective in all markets. Most distributors specialize. Your work may benefit from having multiple distributors covering various markets, mediums and/or territories. You may even want to reserve some rights to exploit yourself (more on that in Section A below.) To accomplish the splitting up of rights among distributors, you must coordinate the language of all of your distribution contracts and narrow the scope of the rights granted in each contract. Properly crafting the definitions of terms in the grant of rights provisions is critical. For example, cable networks will want to acquire VOD (video on demand) rights and have a broad definition of that term. Home video and online distributors will also want to acquire VOD rights particularly TVOD (transactional video on demand) and SVOD (subscription video on demand) and will want broad definitions in their contracts. It is easy to run into problems here and an experienced attorney can navigate these waters.

Three sections of the distribution contract come into play when dealing with multiple distributors in a split-rights situation: rights in media and markets, territory, and duration. (These are discussed in Sections A, C and D.) Another factor you must consider when contemplating splitting rights up among multiple distributors is your own ability to find and lock up those distributors. If you don’t believe you can secure another distributor for a certain set of rights, you must balance the benefit (small as it might be) of granting rights to a distributor who is unlikely to do a good job with those rights against the risk that you may never find a distributor for those rights. But keep in mind that over time, the performance of your work in the marketplace, interest in the subject or the actors in your work, or newly emerging technologies, may create new opportunities for rights those rights you held on to.

Most distributors and almost all independent distributors are middlemen to some extent. They acquire distribution rights in a work from the producer and then license or sub-distribute the work to other distributors. In this regard they are agents or sales-people. For example, an independent domestic distributor may not directly distribute in international territories; they may not be broadcasters or cable casters; they may not directly sell DVDs to consumers. Instead, they license those rights to a third party. Most notably, they may not make the work available online but rather license the work to iTunes, Netflix, Amazon, or others, and in that way they act as aggregators. You with your single work or even with a small catalog of titles need a middleman distributor to get your work distributed in international territories, to broadcasters and cable networks, and to large online distributors such as iTunes, Netflix, and Amazon. These companies deal with aggregators and studios and do not deal directly with independent producers. A discussion of the impact of sub-distribution is found in Section H below.
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*Bargaining power.* Your ability to modify the distribution contract depends on your negotiating strength compared to the distributor. So for example, you want to negotiate a large advance payment, limit the scope of markets or duration of the contract, and improve the financial terms. These improvements to the contract all depend on your bargaining power. That power can be based on any number of factors including whether there are multiple offers, the size of those offers, the projected commercial success of your work, the perceived value of the elements in your work, including most notably the star-power of the actors.

*Picking your battles:* This article describes a variety of common issues you may want to consider when negotiating the terms of the distribution contract. It is tempting to change or negotiate every provision in the contract that is unfavorable. Usually it is not to your advantage to argue all possible changes. The best policy is to set goals, prioritize the provisions you want to change, and avoid the temptation to change provisions that are unlikely to matter.

*Choosing an attorney:* An experienced film, TV and media attorney brings more to the representation of a producer than just knowledge of the law. They have knowledge of the business aspects of the industry, as well as the value of the distribution rights of their clients’ works. They have relationships with people in the industry that may impact the negotiations, and they know the standards, customs and special terms of distribution contracts including for example which provisions of the contract need to be changed and which do not.

**Distribution Contract Provisions**

A. **Rights granted to the distributor.** The provisions specifying the markets and mediums granted to the distributor impact most other provisions of the contract – especially the provisions governing the amounts paid to you. As discussed above, the contract may grant the distributor a broad range of rights to mediums and markets (perhaps all of them) or it may limit the markets and mediums to just one or only a few. In this Section A, we examine those markets and mediums.

**Theatrical Distribution Rights:** The right to exhibit the work in theaters open to the general public on a regularly scheduled basis where admission fees are charged to view films.

**Pay Television:** Distribution via pay/cable, over-the-air pay TV, master antenna, community antenna, closed circuit, multi-point distribution services and similar means where viewers pay for the right to review the work. This
category includes hotel, motel, hospital and the like, but excludes free television distribution.

**Free Television:** Distribution via television broadcast methods. It includes, for example, network and syndication television broadcasts, transmissions by over-the-air satellite, and similar methods where the consumer is not charged a recurring access fee.

**Video-On-Demand:** VOD allows the viewer to request, for home or other non-theatrical viewing, a program on a television or viewing screen that is sent via some signal directly to the consumer and not to the general public for viewing at a time and place selected by the consumer. Thus, it is distinguished from pay-for-view where the consumer does not request a particular signal at a particular time.

**Transactional-Video-On-Demand:** TVOD allows the consumer/purchaser to screen the work for a distinct fee at a time and place determined by the consumer and which is distributed by a platform charging the fee. TVOD includes Electronic-Sell-Through (EST) which allows the consumer to permanently retain a copy of the work. TVOD may also include Pay-Per-View (PPV) in which the consumer purchases a specific work from a pay-per-view platform for viewing at variable times and where the transmission creates temporary copies of the work. Examples of TVOD and EST include iTunes, and Amazon.

**Subscription-Video-On-Demand:** In SVOD the consumer pays a fee to subscribe to a service that gives the consumer access to a library of works for a period of time for viewing at a time and place selected by the subscriber; Netflix, Amazon, and Hulu are examples.

**Ad-Sponsored-Video-On-Demand:** In AVOD a platform gives the consumer access to a library of works for a period of time for viewing at a time and place selected by the consumer but the platform inserts advertising into the works. On platforms like Hulu, the consumer is given the choice between viewing with inserted ads or subscribing to the service for access to its library.

**Home Video.** Home video involves the rental or sale of tangible/physical copies (videograms) of the work to consumers. Formats may include DVD, Blu-Ray, or other electronic storage devices. The consumer purchases or rents videogram copies for use on home television sets, that is, playback devices directly connected to or forming an integral part of a television receiver or device.

**Semi Theatrical, Non-Theatrical, Non-traditional Theatrical.** This involves the exhibition of the work to audiences by organizations who are not primarily engaged in the business of exhibiting films to the public and whose purpose is
generally educational, cultural, religious, charitable and the like. This includes educational institutions, film societies, film festivals, museums, hospitals, government agencies, and religious institutions. Commonly, the purchase price or rental fee for copies of works sold or rented to the non-theatrical market are higher than home video (discussed above) because the fee includes the right to show the work to groups of people in classrooms, auditoriums, etc. Gravitas, Gathr and Tugg are examples of distributors in this market.

Educational A/V. This includes the sale, lease and rental of works on film or videograms to universities, schools, libraries, museums or similar institutions for exhibition directly to audiences or close-circuit exhibition.

Transportation. This category includes in-flight exhibition, ships at sea, oil rigs, military and the like.

Reserved Rights. Previously, we touched on situations in which you may want to limit the distribution rights granted to your distributor. If you are not granting all rights to your distributor in a given distribution contract (for example where you are, or hope to, enter into multiple distribution contacts in a split-rights arrangement) then the distribution contract must describe the rights held back, that is, the reserved rights.

Where you are reserving rights, the distributor may want to put limitations on the rights you reserve. Let’s say for example the distributor is acquiring only theatrical rights. That distributor may insist that you not release the work in other markets (i.e. broadcast/cable, home video, and online markets) until a specified number of months after the theatrical release. Consider another example where the distributor is a cable network who is acquiring broadcast, cablecast and equivalent rights. The cable network may demand that you hold back home video distribution until after a period following the first broadcast/cablecast.

The home video market, once the cash cow of the industry, is now much diminished. But independent producers are often in a unique position to sell DVDs themselves directly to the customers, from the producer’s website, in connection with personal appearances or non-traditional theatrical releases. For this reason, you may want to reserve these rights in the contract. If the distributor has home video rights you may want to carve out a non-exclusive right to self-distribute directly to consumers yourself and in this situation where the distributor manufactures copies of the work (e.g. DVDs), you may want to have the right to purchase copies from the distributor at a favorable discount.

Finally, in all of your distribution contracts you should include a standard clause specifying that any rights not expressly granted to the distributor are expressly reserved to you.
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B. Exclusivity. If a market, medium, or specific territory is granted to a distributor, the distributor usually gets exclusive rights in that market, medium or territory. As can be seen from the above discussion, exclusivity is not necessarily exclusivity as to all markets, mediums and territories, but just to those rights granted to the distributor. Not only is this exclusivity required by the distributor, in most cases it is advisable because it allows the distributor to develop those markets and territories without fear of running into other distributors working the same title in those same areas and incentivizes the distributor to fully invest in its effort.

C. Territory. Many contracts describe the scope of the territory as “worldwide” or “the universe”. But it is increasingly common for distribution contracts to limit the distributors rights in terms of the geographic scope (the territory) of the contract. For reasons similar to those discussed above in Section A, you should consider the appropriate territory to be granted to the distributor.

If the contract gives the distributor online digital distribution rights (e.g. VOD, TVOD, SVOD, AVOD) and the distributor’s territory is less than worldwide, you should consider requiring the distributor to use geofiltering technology to determine which customers are entitled to purchase, stream, view or otherwise consume the work.

D. Term. The length of the distribution contract is usually between 5 and 10 years. The contract may give the distributor the option to extend the term for an even longer period. But extension of the term should be made on a mutual basis.

Distributor Performance. What happens if the distributor fails to adequately perform on the distribution of your work? What recourse do you have? One option is to negotiate a performance requirement in the contract. This provision requires the distributor to generate specified sales levels within specified periods of time and gives you the right to terminate the contract if the distributor fails to do so. If you are getting paid an advance, the distributor may want to limit your right to terminate until the distributor has recouped its advance. Getting your rights back from a distributor who failed to perform adequately is not an ideal situation. Often the work is time sensitive. In most cases, interest in a title fades quickly after the release and initial marketing effort. You may find at the time of reversion the useful life of your work has expired. But the performance clause may still be useful because it holds the distributor’s feet to the fire plus it gives you a second chance to get the work into the marketplace.

E. Consideration. There are a number of customary ways distributors pay producers for the right to distribute their work. For example, the distributor may
pay an advance, a royalty, a share of revenues, or, in limited cases, a flat buy-out fee. Broadcasters, cablecasters, and Netflix, for example, use the flat fee model. Home video distributors customarily use a royalty model. Theatrical distributors and online TVOD distributors often take a distribution fee and expenses and pay the producer the remainder of the revenues.

**Advances.** Advances (sometimes called minimum guarantees or “MGs”) are the prepayment of royalties or other revenue sharing payments. The concept is that you get some money upfront (usually upon the signing of the contract or the completion of delivery of materials relating to the distribution of the work). Where an advance is given, you do not receive another payment until the distributor has paid itself back (“recouped”) the amount of the advance out of your share of revenues collected from distribution. A simple version of a situation in which an advance is paid might be the following scenario:

The distributor agrees to pay an MG of $100. The distributor’s distribution fee is 20% and initial expenses are $15. In the first period your work earns reported revenues of $50. Here’s the accounting:

<table>
<thead>
<tr>
<th>Receipts</th>
<th>$50</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Less:</strong></td>
<td></td>
</tr>
<tr>
<td>Distributor’s fee</td>
<td>$10</td>
</tr>
<tr>
<td>Expenses</td>
<td>$15</td>
</tr>
<tr>
<td>Advance balance</td>
<td>$100</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$125</td>
</tr>
<tr>
<td><strong>Balance</strong></td>
<td>($75)</td>
</tr>
</tbody>
</table>

This means you are $75 unrecouped. In other words, you do not receive a payment even though your work earned $50.

In the second accounting period your work earns reported revenues of $150 and expenses are $5. Here’s the accounting:

<table>
<thead>
<tr>
<th>Receipts</th>
<th>$150</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Less:</strong></td>
<td></td>
</tr>
<tr>
<td>Distributor’s fee</td>
<td>$25</td>
</tr>
<tr>
<td>Expenses</td>
<td>$5</td>
</tr>
<tr>
<td>Advance balance</td>
<td>$75</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$105</td>
</tr>
<tr>
<td><strong>Balance</strong></td>
<td>$45</td>
</tr>
</tbody>
</table>

The result is that you get a check for $45 and you are no longer unrecouped.
You may need an advance for any number of reasons. For example, you may owe debts to third parties for the production of the work, or you may need funds to meet the delivery requirements of the distribution contract, or you may have music in the work that needs to be “cleared” (licensed) for the markets granted to the distributor. The advance also invests the distributor in the work and demonstrates its commitment. Of course needing an advance and being in a position to negotiate an advance are two different things.

Another thing to keep in mind is that by custom advances are not repayable to the distributor if the royalties prove insufficient to pay back the advance. This fact and considering that some distributors are slow to send out accountings and get very aggressive in recouping expenses may lead you to get as big of an advance as possible. In many cases this is the wisest course. But it comes at a cost which is higher distribution fees. If the distributor is taking a greater risk by paying a large advance, it will compensate by increasing its fees. And so going after the largest advance must be thought through carefully.

Royalties and other ways of revenue sharing. There are a number of ways to divvy up the revenues from the work between you and your distributor. One method gives you a royalty as a percentage of sales of the work. Another method gives the distributor a percentage of revenues as a distribution fee plus the right to recoup expenses prior to paying the balance to you. The royalty formula is used frequently in non-theatrical and home video distribution contracts where revenues are based on copies sold. The distributor fee formula is commonly used in television broadcast, cablecast, foreign distribution and in theatrical distribution.

Formulas for the calculation of royalties or distribution formulas can be complex. This is especially true in determining what can be deducted from gross revenue before calculations are made on a net formulation. For example, definitions of distributor’s costs can be extensive and must be scrutinized to make certain the formulation is fair and customary.

Customary ranges for producer’s royalties/distribution fees are:

**Independent Distributors of Multiple Markets/Mediums:** Where the distributor is handling multiple markets, mediums and sometimes territories, it is common for the distributor to take a fee of 20% to 50% of its gross revenues from all sources.

**Home Video:** Home video distributors pay a royalty of 15 to 30% but flat fee payments are also employed. A home video royalty of 20% is common – based on wholesale or distributor’s receipts. A producer with negotiating power might
negotiate a 25% royalty or a sliding scale up to 25% with escalators based on quantity sales. Royalty calculations based on retail price run from 10 to 15%.

Television: The common practice among distributors who sub-distribute to broadcasters and cable networks is to charge a distribution fee of 20% to 40% of the license fees received by the distributor. Fees vary based on the territory and the difficulty in exploiting the markets and territories. Where the producer contracts directly with the broadcaster or cable network the producer receives a guaranteed fixed license fee payable upon delivery or over time.

Theatrical: Distribution fees range from 15% to 40% (or more) of net receipts although other formulations based on adjusted gross may also be employed.

Factors that go into determining the level of the consideration include:

Market. Some markets are harder to exploit than others. If the perceived distribution efforts required in certain markets, such as, for example, theatrical and foreign markets, are high, then a higher distribution fee to the distributor may be warranted.

The amount of the advance. If you are receiving a large advance, then the distributor is at greater risk and, therefore, can justify demanding a larger distribution fee (or a lower royalty.) Also, if you are paid an advance during the production period prior to the distributor seeing and approving the work (which is uncommon these days), the distributor is taking a greater risk and that would also justify its argument to take a larger distribution fee or lower your royalty.

Competition for the work. Your bargaining power is strengthened if there several distributors vying for the right to distribute your work. Competition can sometimes be created in festivals and markets where the work is exposed at roughly the same time to many potential buyers.

The work itself. Advances and fees increase (or distribution fees decrease) for works with more episodes, higher production values, well-known talent, good performances, large audiences in other markets, successful sequels or popular works such as best-selling novels, and works on topics that are timely.

Precedent. The advances paid by distributors for works similar to yours may influence advances you can negotiate. Distributors anticipate that works with certain characteristics (played certain festivals, documentaries vs. narratives, feature certain talent) have a given value. If you have bargaining power and you or your attorney know the recent financial terms given to other similar works, you may be able to influence the distributor’s offer in your favor.
In recent years, advances for independent features sold during festivals such as Sundance have trended upward but these things are cyclical.

**Expenses.** Distributors often wish to deduct their expenses out of the first proceeds from the sale of the work to other distributors. You should consider specifying a cap on marketing expenses and the right to approve large expenses.

**F. Producer’s obligations to pay third parties based on usage.** You may have obligations to pay third parties based on exploitation of your work. This can happen where you have negotiated licenses pay licensors based on sales of your work. This is a common arrangement when music rights are acquired for videogram sales. You may also be obligated to make payments based on sales/exploitation if you hired union members under collective bargaining contracts with unions such as AF of M, AFTRA, SAG, and WGA. When your work is subject to such payments based on exploitation, you may want to negotiate payment of those royalties and residuals by the distributor; but at a minimum you want to make sure your share of revenues is sufficient to make those payments.

**G. Accounting.** Issues regarding the accounting clause are similar to other contracts in the entertainment industry. However, it is worth noting that, in recent years, distributors, especially independent distributors, are notorious for failing to pay on time. Also, it is common for independent distributors to go out of business. Because of this situation, it behooves you to negotiate terms in your contract giving you the right to terminate the contract if the distributor fails to make timely payments to you, and a provision assigning all third party sub-licenses to you automatically and immediately.

**H. Sub-distribution.** As discussed above, it is common for the contract to allow distributors to license the work to sub-distributors. Ideally, the distributor has developed favorable financial deals with the companies handling the sub-distribution rights. But as discussed already, you should look into the distributor’s sub-distribution relationships and consider you own ability to license directly with those other distributors.

Several issues to consider with respect to sub-distributors:

The first is the stacking of fees. It is likely the distributor’s proposed contract will give it the right to take a full distribution fee on the amount received from the sub-distributor. What’s wrong with this? Let’s look at an example: The sub-distributor collects $100 and takes out its 20% distribution fee and send $80 to your distributor. Your distributor takes its 30% fee and sends you $56. The fees are stacked. Whereas if the sub-distributor’s fee is inclusive within the distributor’s fee, you receive $70 ($100 less 30% = $70.) Agents and their fees present the same concern.
Second, the license period (duration) of sub-distributor contracts. Commonly, the distribution contract allows the distributor to enter into sub-distribution contracts for your work, for example, in international territories. If the license period of the sub-distribution contract is longer than the duration of distribution contract, you may find that when you get your work back from the distributor it is saddled with the sub-distribution contract. This is not necessarily a bad deal for you. But it is bad if your old distributor continues to collect fees from the sub-distributor after the term of your contract with the distributor --- which should not happen, even if the distributor continues to account to you. In any event, you should be aware of the situation. You may wish to limit the license periods of sub-distribution contracts, or make sure the sub-distribution contracts are assigned to you after the distribution contract expires, or limit the distributor’s right to receive a fee on those sub-distribution contracts after the expiration of the distribution contract.

Last, direct accounting. If you have bargaining power, you may want to negotiate a provision giving you the right to receive accounting statements and payments directly from the sub-distributor. This allows you to get payments faster and avoids the risk that the payments will be taken by the distributor’s creditors.

Another option is CAMAs (collection account management agreements). The complexity of various revenue streams and the many players who potentially share in those revenues makes it important to consider the use of an agent to collect, hold and distribute those revenues. Financiers and production partners may require the use of a CAMA. A CAMA can be useful a producer. In fact, more and more actors and other revenue participants request CAMAs.

I. Cross-collateralization/packaging. Cross-collateralization can occur when the distributor is licensing the producer’s work in a package along with a number of other works. In these situations, the costs and advances for all the works in the package are off-set against the revenues from any of the works including the producer’s work. To avoid this situation, the producer will want to include language that specifies that the revenues attributed to the producer’s work will not be subject to the costs and obligations of other titles in the package (i.e., the producer’s will not be cross-collateralized with other works in a package.) Cross-collateralization is a concern where the producer’s work may be sold in a package to support the sale of weaker titles. The second way in which cross-collateralization can be applied is crossing the expenses from one market in which the producer’s work is distributed against revenues attributed to other markets. If the producer has the bargaining power, the producer may be able to get each market and territory separately accounted to avoid cross-collateralization among markets and territories.
J. **Delivery.** The distribution contract usually includes a long list of materials ("deliverables") you must deliver to the distributor. Deliverables include the physical elements of the work the distributor needs to manufacture and distribute your work, for example, DCPs and Blu-Ray versions. Deliverables also include E&O insurance, chain of title documents, copyright registration, promotional photography, music cue sheets, artwork and trailers if you have them. You should scrutinize this a part of the contract very carefully to make sure the deliverables can be reasonably and affordably delivered. Often items listed in the delivery schedule are negotiable.

If you fail to deliver all of the deliverables or you deliver materials that are not acceptable to the distributor, there are several possible consequences. First, the distributor may have the right to create those deliverables itself and charge the expense back to you. Second, the distributor may not pay the advance. Payment of your advance is generally dependent upon full delivery and acceptance of deliverables and the advance can be reduced to cover the costs of undelivered or unacceptable items. If there is a concern about your ability to deliver, it is best to work it out before signing the contract.

The contract should also provide for the deliverables to be returned to you after the termination or expiration of the contract at distributor's expense. If there is a lab access letter it should be checked to see if the end of the term of the contract provisions are reasonable.

K. **Bankruptcy.** Two things to keep in mind: first you will want the right to terminate the contract if the distributor becomes insolvent, files for bankruptcy or similar relief from creditors. Second, if the distributor maintains an inventory of videogams (DVDs, etc.), the contract should specify that your hold and maintain title to that inventory in distributor's possession until the units are sold.

L. **Representations and warranties.** The distribution contract requires you to represent and warrant certain things about your work so the distributor’s exploitation does not breach third parties’ rights.

It is common for audio-visual works to incorporate the works of third parties (e.g. music, book rights, life-story rights, and in documentaries, archival footage, photographs, etc.). Check the representations and warranties in the distributions contract to make sure the clauses do not put you in jeopardy of promising something about your work that is not true. Make sure the scope of the representations is reasonable. You may wish to limit some representations with “to the best of producer’s knowledge” or similar modifier.
Also, check your contracts with third parties who contribute to your work, including, for example, releases, contracts with talent, music rights contracts, and work-for-hire contracts to make sure those contracts do not conflict with the representations and warranties you make in the distribution contract. If your contracts with third parties contain restrictions, the distribution contract should contain those same restrictions.

Because it is often expensive to acquire rights in third party’s materials for use in media works, rights in those materials are often cleared for a limited period of time, limited territory and/or limited media/markets. This is especially true in music licensing. To keep license fees affordable, contracts for music rights are negotiated with an eye to acquiring only what is needed (i.e., limited time period, limited territories, and limited markets/medias). These limitations must be kept in mind when it comes time to negotiate the distribution contract. You should not grant distribution rights that exceed the scope of the rights you acquired in those third party materials.

Another area of concern is the use of third party materials in promotional materials. The distributor will want to take excerpts from your work to create trailers and other promotional materials. For example, the trailer may use a scene from the work in which music, trademarks, or people appear; and while you may have the rights to use those materials in the work (because those materials are in the public domain, because you licensed the materials, or for reasons of Fair Use) the use of those same materials in promotional materials may be prohibited if you didn’t acquire those particular rights. Music licenses may limit the use of the music to “in-context” use (use as the music appears in the released version of the work) and prohibit using the music out-of-context. If the use of the music in marketing materials is out-of-context additional payments may be due to the licensor of the music. Another example: the use of the image of a celebrity, for example, within a documentary, may be permissible under the rights of free speech (depending on the situation), but if used to promote the work, the celebrity’s right of publicity may be violated. For these reasons, you will want to include a clause in the distribution contract giving you the right to approve the use of scenes and images from the work and production photos in promotion and marketing materials.

A note on Performing Rights in Music. Distributor contracts, particularly those for broadcast rights, often require the producer to grant music performing rights to the distributor. Therefore, producers must acquire performing rights in music licenses and composer contracts. Check your distribution contract and your music contracts for this issue.

**Modification to the work.** The distribution contract should include limitations on the distributor’s rights to modify, edit, make deletions or changes to your work without your consent, including, for example, the addition,
alteration or removal of credits. Giving distributors some rights to modify the work may be ok depending on the nature of the work, for example, modification to add the distributor’s credits to the work, add subtitles and/or dubbing, shorten the work to fit broadcast time limitations, and comply with local censorship law.

Your distributor is your partner. Not in the strict legal sense but as a matter of business. As producers, we are often eager to pass our works off to distributors and get back to the business of producing new works. This creates an all too common dynamic between the producer and the distributor; one in which the producer sits passively back with great expectations about the distributor’s marketing efforts and correspondingly great revenues. Such expectations are almost always dashed. Just as you took ownership of the development and production of your work, you must involve yourself in the marketing and distribution of your work. Now, in the new media world, more than ever, independent producers must be actively involved in the distribution of their works.

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