

THE PACKAGE: THE KEY TO SUCCESSFUL FILM FINANCE

by
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You have written or optioned a script that you want to produce. You just know it has blockbuster potential. Lack of financing for your film is the only obstacle in the way of your box office success. So, what are you waiting for -- get the film financed!

One of the most, if not the most, daunting tasks any producer faces is the actual financing of the film, but as difficult as it is, it is not impossible. So, what's the key to making the almost impossible a reality -- the package. The word gets thrown around a lot, but for those of you unfamiliar with the vernacular, the package is that part of the film which comprises the talent -- it is your cast.

The independent market is flooded with product today. A recent trip down the halls of the Loews Hotel during the **American Film Market**¹ confirmed the film glut that producers, sales agents and distributors are all griping about. This glut has forced sales agents and distributors to determine the value of by a potential film project by assessing the value of the cast attached. In other words, it is the package that drives the market today.

This is not to say that the script is completely unimportant, but the reality is that the most brilliant script is unlikely to secure distribution if it is packaged with what distributors or sales agents perceive to be unbankable talent.² Yet, a mediocre, and, dare I say an inferior script, is more likely to secure a distributor or sales agent if the package has bankable talent.

The package is crucial because it affects your ability to secure a distributor or sales agent, and, consequently, your ability to secure financing: banks use distribution contracts and sales agent estimates to determine whether to lend production financing, and private equity investors are more apt to invest when they recognize the cast members. The filmmaker not only needs a distributor or sales agent, but he/she needs one with a good reputation. Securing a credible distributor/sales agent is key since, among other things, bank financing hinges on the strength of the sales agent or distributor, its payment history, and the sales agents' track record for accuracy. Lesser quality distributors and sales agents rarely fulfill the banking industries strict requirements. You have to do a little due diligence before committing to any one distributor/sales agent -- verify with the bank(s) that the distributor/sales agent in which you have an interest is acceptable to them.

Hopefully, it has become apparent to you by now that producing a movie is an artistic, as well as, business endeavor, and that you have to approach casting in that manner. So, make a list of all the actors you want to cast and then research their bankability domestically and internationally.³ You will find that the definition of bankability varies from distributor to distributor and sales agent to sales agent as I discovered during my recent meetings with aforementioned during the **American Film Market**. The difference of opinion between the sales agents and distributors makes it difficult for a producer to know whose opinion to trust, but it is advisable to trust the opinion of the distributors and

¹The American Film Market ("AFM") is the largest film market in the United States. In February, on an annual basis, distributors, sales agents and buyers from around the world converge for the purpose of selling or acquiring the films.

² Talent is bankable when it is capable of guaranteeing an audience. It used to mean a theater audience but, today the definition also probably includes video and foreign television.

³The Hollywood Reporter releases the Star Power list annually. This is the Hollywood Reporters list of bankable stars.

sales agents that have a credibility with the banks. The hard work commences once you have completed your casting list since, this is when you start contacting actors and their agents and/or managers. Convincing an actor to commit to a film before the financing is in place is no easy task -- it is not for the faint at heart or easily dissuaded. It takes perseverance, chutzpah and, most importantly, contacts.

Your likeliest path to success is one which lets you initially sidestep the gatekeepers. Agents like the immediate gratification of the pay-or-play offer⁴ and, as such, are unlikely to assist you unless they are a personal contact. The manager, although more of a visionary and long term planner, may be reticent to commit the talent for fear that a better film might come along. Therefore, make list of everyone you know who may know the actor, or everyone you know who knows someone who may know the actor. Believe it or not, the six degrees of separation approach has been known to work. If it turns out that you are indeed "contactless," then you have no choice but to venture into the world of the gatekeepers. Find a unique way to appeal to the agent or manager: be passionate; befriend the assistant since he or she can be your best friend, or enemy; be respectful; and, be persistent without being a pest.

You are going to need what is commonly known as a letter intent⁵ from the talent once the talent agrees to be attached to your film. Anyone can say that they have talent attachments film and, as such, distributors, sales agents, banks, and private equity investors require the letter as proof of those attachments. The best letter of intent is one which states in incontrovertible terms that the talent is performing in your film. Talent and their representatives will be reluctant to commit to such terms without a pay-or-play offer since, they do not want to be attached to a film which may never get made. Furthermore, actors have been sued over oral contracts to perform in films and letters of intent and the actor and his agent and manager are aware of this. Do not get discouraged if the actor initially declines your request for a letter. A letter which states that the talent is interested in performing in your film pending his or her availability is noncommittal, but at the same time provides proof to the distributors/sales agents. Many actors are willing and do provide such a letter.

You can start shopping your film to potential distributors, sales agents and banks once you have letters of intent from your talent. You will be surprised how much more smoothly the process flows once talent is attached. It gives the film credibility and a certain level of cache, and you are on your way to making the almost impossible a reality.

This article is not a complete review of the subject matter and, as such, the reader should not make decisions on the basis of the above without consulting with an attorney.

⁴Pay-or-play offers legally commit the filmmaker to paying for the talent's services whether or not the film is made, and whether or not the actor is used.

⁵The letter essentially states that the actor intends to participate in the film pending her availability and successful negotiations.