LEGAL EYE

by Michael Bergman

Borrowing Big Money

The problem with borrowing money is paying it back. A trite and obvious observation. It is also incorrect.

The key to raising money through what the business world calls debt financing is the organization of the loan itself. This single element will determine the size of the loan, the security to be given and the terms of payments. And it is these criteria which will, in turn, influence the ability to repay.

Most feature films are produced in whole or in part through borrowed money. In the 1970s it was common to hear of such apparent agricultural or engineering activities as "seed" or "bridge" financing – terms used for research and development or interim loans which were high-risk and at exorbitant interest rates. While producers still try to avail themselves of these loans, more contemporary and typical, even institutionalized, are loans from Telefilm Canada or other film-funding agencies.

The decision to go to debt financing as opposed to equity or treasury financing is crucial. While the latter involves investors whose money is at risk, the former puts the producer at risk. Borrowing money for production limits the field for equity financing. It does this through the usual lenders' insistence on the granting of security and priority of payment, factors which may restrict investment advantages.

The first trick is the integrating of loans to equity investment in a business plan. This will entice the investor to the package he must consider and encourage the lender by demonstrating a sound business outlook. The arbitrary soliciting of loans will rarely be a success without a sound and well-thought-out proposal. Part of this business plan will take into account the concerns of the lender. In particular most Canadian financial institutions have adopted quite conservative positions on loans to feature film producers. This a result of both natural inclination, the high risk nature of the business and the absence of any structured business planning. Lenders want to see how their money can work for the producer. This is how the loan will be to the profit of the lender through prompt repayment of capital and interest.

The cost of the loan is the amount of interest payable. It is an expense which, of course, increases operating or budget costs and which will have to be supported through other forms of financing or by diverting revenue to cover it. Since for an important initial period film revenue is either nonexistent or speculative, the cost of the loan will be borne by the investors. Effectively the added expense to the investor reduces production values on the screen for their money.

The cost of debt financing is of singular importance when loans are incurred on individual projects. Ultimately each project has a limited budget and a limited amount of funds to pay for it. The ability to refinance the loan with other loans is unlikely. If interest costs become excessive due to the term for repayment or the interest charges exacted, in most cases it is certain that only an injection of equity capital, usually at the expense of the producer's share in revenue, will fill the breach. Alternatively debt financing on a general operations basis, financing the producer's business as opposed to film budgets, will give greater flexibility in debt financing and longer term consideration. Debt financing of a total business operation presupposes a general strategy of ongoing commercial filmmaking where operations are not necessarily tied to any one film.

All debt financing presupposes a granting of security or collateral to guarantee the risk. The greater the risk or the smaller the business track record the more security. Security may take several or even an all-embracing, form. It may include an assignment of rights

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in the project, an assignment of revenue, personal guarantees and even the mortgaging of real estate. Established film companies financing on a general operations basis may want to give debentures or bonds which are securities on their general assets. Approaching the lender with his security concerns in mind helps to establish the cooperative link between borrower and lender which makes the loan work. At the same time the granting of security is another of those factors which limits investment potential. It is a good example of the need for debt and equity financing to intermesh.

Ultimately, the lender is concerned with the income generating potential of the producer. Film is subject to a variety of subjective factors which make the assessment of the possibility of success of any one project extremely difficult. In the absence of an extensive business track-record, which tends to establish a history of business proficiency, the producer must demonstrate to the lender some considerable skill and knowledge of how revenue is derived in film. He will have to show that he can access these sources of revenue sufficiently and regardless of audience appeal. Many producers try to demonstrate savvy by obtaining so-called bankable pre-sales. These are contracts for the advance sale of a project which, owing to the reliability of the purchaser and guarantees of revenue, is assignable as security to the lender. Demonstrative revenue potential reveals much more than this: a convincing knowledge of market forces, levers and their use, the exposition of which is not often properly presented.

Borrowing money for business – and for film projects in particular – is a very serious and complex undertaking. Why else do lenders who accost you on the street corner insisting to lend you money to buy that third car, turn awfully shy when it comes to loans for your finely crafted, professionally-made feature film?

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ACTRA plans '86 awards in April MAP program

TORONTO – Three new awards for outstanding live reporting in radio or television, for best original musical score for a television program, and for best direction of a television program will be up for grabs for the 15th annual ACTRA Awards Apr. 2, 1986 at the Sheraton Centre.

The three new "Nelfies" (respectively the Norman DePoe, Ben McPeek, and Best Director Awards) will, by broadening the awards for dramatic writing in radio and television to recognize distinctions between original scripts and adaptations, bring the number of ACTRA Awards to 27.

The greater scope of the Awards, which will be carried live by CBC-TV and again with Texaco Canada's sponsorship, is an attempt by ACTRA to honor the previously unacknowledged contributions and talents of those in Canadian broadcasting. Initial nominations for the Awards will be announced Feb. 11, with the selected finalists announced March 18