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# biting into the big apple

If your film is in the can and you've begun to worry about distribution, this article is not for you. The only way to insure good distribution – if indeed, one can ever insure such a thing – is before the shoot: by asking the right questions, and doing some careful planning. *Construct your film with the audience in mind.* Or so says Phil Jackson after a stint of research and reflection.



Phil Jackson lending support to Dave Lorriman

by Philip Jackson

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At this time a year ago, New York City hosted a 16 mm film distribution conference aimed at the independent filmmaker. Being a partner in an embryonic film production firm (Jackson-Lorriman Films) I attended that conference at a time when establishing a solid distribution base – for our own future security – was the primary problem on my mind. The topics included finding a distributor, understanding a contract, starting self-distribution, and promoting yourself and your films.

Since then, I have had both successful and unpleasant experiences in seeking gainful non-theatrical distribution for our “educational” films as well as peddling our wares to Canadian television.

In addition, we carried out a “trends” survey of 109 Canadian and American non-theatrical distributors, hoping to understand what “kind” of film (content and form) would elicit substantial commercial distribution.

The following conclusions seem to hold true in all three instances.

## Defining a market

The non-theatrical film market, primarily an educational-instructional market, is relatively new and changing, which means that it is not fully developed and therefore difficult to predict. It demands that the producer and distributor *create* markets as well as simply tapping existing ones.

Whatever the situation, responding to or creating a market entails making a film that fills a need, and is of a format useful to the potential buyer. Simply accommodating those two considerations in your film is as creatively demanding and important as any other aspect of filmmaking. It should be obvious that the marketing of a film should be considered before and not after the film is made, but we're always doing it the other way around. Right?

In identifying potential markets, consider the following points:

Be aware of trends, but never take them too seriously. The important thing is to talk to people. Talk to those who will use your film(s): the educational buyers, librarians, A.V. personnel, government institutions, etc. Find out what films are booked often, or ignored. Where is there an un-filled demand? Screen existing films on the subject you want to deal with. Where do they fall flat? What are the users' complaints?

Understand the customers' concerns. They *don't care* about your costs, only the value of your film to them.

Talk to distributors about their needs – not just one distributor, but several. Many educational distributors are involved in “seminar sessions”, in which the educators are educated on the use of films and visual aids – here a distributor concentrates on adapting films to one or more curricula. If you show interest in discussing these things, a distributor will be more than prepared to give you advice on making a marketable film.

Educational and entertainment films are no longer considered mutually exclusive. You may be surprised at the range of situations in which a specific film can be made useful. Generally distributors will want a film that has more than one marketable application.

Non-theatrical shorts tend to depend almost exclusively on sales as opposed to rentals for income. (This may change somewhat as both Canada and the U.S. are adapting to cut-backs in educational spending.) When an educational film goes into distribution, it normally takes about two and a half years to peak in sales over a five to seven-year period. To sell 75 prints of a film in Canada and 500 in the U.S. over five years is considered fairly good. This also indicates the overbearing importance of the U.S. market.

One major source of frustration for the non-theatrical film producer is the remoteness of the groups who put up the money for production and those who handle distribution. From the lack of communication between initial capital and film income stems much of the general disunity in this sector of the industry.

It is argued that domestic consumption is insufficient to support serious non-theatrical production in Canada. Hence, the tendency of the free-lance filmmaker to fall upon government-supported institutions, ranging from arts councils, ministries of education, health and welfare, etc., to the CBC. This means that they are producing films for people whose criteria for investment are other than commercial criteria.

That this is good, bad, necessary or not is another matter – the point is that this is the context in which non-theatrical films are made. The result being that the filmmaker often doesn't care about commercial eventualities as long as he or she gets production money.

## Production contract liens on distribution

However, should you find yourself making film(s) for such an institution, you should carefully consider what bearing the production contract will have on your freedom to distribute the finished film.

For instance, many new independents get their first break when one or another department in the CBC puts up money for a short film, possibly as a special subject, or a filler film. Some departments will hand you a standard contract that is solely concerned with Canadian television rights, leaving you international non-theatrical rights. Others will hand you a contract that is so cluttered with stipulations about distribution rights that it effectively blocks any possibility of substantial distribution beyond its intended use at the CBC, the result being that neither party will see further income from a potentially commercial film.

In the latter case, when one or a few short films are the subject of such a contract, it is likely that CBC never had any serious intention of distributing these films. It is also likely that the rights they are blocking will in no manner compete with their own employment of these materials. Generally most distribution clauses will not be protecting any of the producer's (CBC's) interests. They'll be there, rather, because the contract you signed for financing the production of a short film is the same contract that would be given the producer of a major half-hour series. Many of the clauses therein are redundant for you and the CBC in your production context.

There are two things to realize. First, just because you are handed a contract form doesn't mean you must sign "as is" or go back to driving a cab. With a bit of patience and a couple of extra visits with the contractors (the CBC), you will find that they are generally quite prepared to write up a contract that will accommodate the reality of your particular situation. But it's up to you to make that move.

The second point is that when you produce a film for the CBC or any of the other institutions mentioned earlier and are in a position to keep certain distribution rights, consider how to keep your film attractive to the outside markets while making it within the context of your contractor's particular needs. It may sound like obvious advice yet it is true that, when money is put up front for production, many independents are incapable of seeing past the face of that first money, and thereby lose potential income, exposure and financial credibility in non-theatrical distribution.

## The Ideal Film

A number of months ago, a magazine compiled the results of a readers' survey, the object being to determine the Ca-

nadian vision of the ideal man and woman. The results turned out to be moderately functional Ken and Barbie dolls. The article dominated coffee break and bus stop debates for weeks, with the apparent consensus being that nobody was particularly fond of Ken or Barbie, although they probably correctly reflected an average of preferences.

By the same token, an attempt to assimilate data on the ideal commercial non-theatrical film will probably accurately reflect the average, giving you a moderately commercial film that no one in particular will be tremendously fond of. Try asking 10 distributors what the ideal commercial film is; you will walk away being sure of very much less than when you started.

Nonetheless, I have tried to compile such a model film. Between the information given at the New York seminar and our own company's survey of American and Canadian non-theatrical distributors, here is the theoretical prototype for the ideally commercial educational film.

**Content:** The majority of distributors have recently been tending towards curriculum-oriented material, where the subject matter and film purpose are clearly defined and understood. The 3 Rs syndrome has hit educational film buyers badly. As one major distributor wrote me: "Purchasers of A.V. materials have grown conservative these past few years, and any film of doubtful curriculum use is not likely to be used by them."

This was a common sentiment among distributors contacted.

The first need is for a clearly defined subject matter and purpose, a film either documentary or instructional that is oriented towards the curricula that are common to the largest number of educational situations.

For maximum usage, the film would probably be aimed at an upper high school-early university level. An educational buyer will generally give first priority to a film with cross-curricular possibilities. For instance, a film intended as a historical study of a city or region may be structured so as to include or exclude its possible use as an item on urban geography. It is simply a question of the buyers getting maximum mileage out of their dollar.

There's always some unfilled demand; seek it out. There's no use doing what's already been covered by every other independent. "If I get handed one more film showing an artist at work, I'll kill someone!" shouted one educational buyer for a brief but refreshing break in an otherwise monotonous lecture on an educator's needs.

**Form:** The average class period dictates the length of the viable film. The teacher or professor will require time to speak on the subject as well as to figure out how to run the projector. Distributors were fairly consistent regarding the duration of a class-oriented film. Preferably no shorter than ten minutes and not in excess of 25 minutes. (One distributor really had it figured out: "The film, ideally, would be between 11 and 14 minutes long.") A film of longer duration is clumsy for the user; a film of shorter duration is not only clumsy (a four-minute film will take as long to set up and rewind as it will to show), but its dollar return to the distributor is low as it costs him or her almost as much to promote and sell a four-minute film as it will to sell a 15-minute film. Price, unfortunately, is often calculated on a "per minute" basis. Therefore the profit motive to the distributor is low, and you start with two handicaps.

A distributor will generally give prominent treatment to a film series as there is a considerable economy of scale in selling a film package. If the component parts of the series have a multi-curricular application, you're rolling.

The educational buyer has come to expect craftsmanship; the film should be "clean" (uncluttered). Despite the conservative tendencies in film content, its form should be ex-

pressive, capable of demanding your audience's interest. If all this is true the commercially ideal non-theatrical film project would be:

- (1) A series of
- (2) 15-minute,
- (3) curriculum-oriented
- (4) films with multiple curricular possibilities that
- (5) make clear points or have a tangible purpose
- (6) in an interesting manner that is aimed at
- (7) the American market.

Now that you've seen it, ignore it.

## Distribution, the first decision

Once you have a film to sell, you will have to decide between taking on distribution yourself, or having a professional distributor handle your film. Depending on your circumstances, good arguments can be made for both courses – although, more often than not, the independent with one or two films will find that self-distribution is self-defeating.

The most obvious advantage of using professional distributors is that they already have the existing mechanisms to handle your film, and the marketing knowledge that goes with them. They represent a great liberation of your time; trying to make films and distribute them at the same time is a hassle most filmmakers would rather do without.

## The Distributor

When a distributor has decided that he or she is interested in handling your film, assure yourself of two things: One, make sure the distributor's interest in your film extends beyond simply sticking another title in their catalog. Two, get a reasonable contract.

Most inexperienced independents are solely concerned with royalties and advances, not (as they should be) with what the distributor will actually do with their film. Include in your contract some clause relating to the distributor's efforts to promote your film. Otherwise, you may find you are the victim of "grapeshot mentality". This sometimes happens with larger companies where your film is lost among a myriad of titles that are sent out in a Sears-Roebuck type of catalogue. Somewhere, some films are going to hit their mark, but there's no reason one of them should be yours.

Ask what a distributor will do in the way of pushing your film – for instance, with pamphlets, mailings, tying it into an educational curriculum, making it available at screenings, festivals, etc. Look at the other films they handle and ask how your film will fit into their collection.

Find a distributor whose "style" matches your film.

## Contracts With Distributors

A good contract must, first, anticipate difficulties, and then be a basis for their resolution. A contract should be direct and straightforward. If it isn't, you're asking for trouble.

The payment schedule should be specific. It should be very clear in defining what qualifies as distributor's expenses. That, more than anything else, is where people find they are getting hurt.

Who pays for the interneg? Maintain the right to check the distributor's books in regard to your film. Peg the dollar values mentioned in the contract to a specific exchange rate. Set minimum rental and sales fees, or a fixed return coming to you per print sold.

Generally the royalties you will receive for print sales are 20% to 25%, occasionally stretching to a hefty 30 or 35%. On a TV sale, you may receive 40% and occasionally 50% of rental price.

Make sure that rights in all other media and formats are covered. This includes TV rentals, video cassette sales, super-8 reduction prints, etc. Also have a clause inserted that insures reasonable-quality release prints.

It is possible that a distributor may try to throw in a clause giving him/her first choice to contract for distribution of all your future productions. The danger inherent to this kind of situation should be obvious and very few distributors will insist on maintaining such a clause.

Don't be so desperate for exposure that you overlook these considerations. Many distributors are quite prepared to negotiate, and there is an increasing tendency towards flexibility in contract situations with non-theatrical distributors.

No audience owes it to you to love your film, but if it will sell, it's worth fighting for your fair share.

## Doing It Yourself

Self-distribution is a viable alternative to outside professional distribution under certain circumstances. For my own purposes, I have found that TV sales have a large enough return to justify the time spent seeking them, whereas non-theatrical distribution requires setting up a mechanism that is not commercially viable for our relatively low volume of marketable material.

Trying to distribute your own film will require a massive amount of time, some money, and, most of all, the psychological preparedness to make the kind of commitment required.

Putting your own film into distribution requires establishing a distribution mechanism that takes time to gain momentum. You have to be able to eat during this time lag.

Self-distribution is only recommended when you have a number of films to market, as it will cost you about as much to set up a mechanism to distribute one film as it will to distribute several. It is unlikely that the returns on one or two films (even if you are quite successful), will justify the time and money you put into distribution. There is one exception to this: the case of a film that is aimed at a highly specialized market, which is more easy to locate and predict.

In either case, here are a few points about self-distribution that should be useful if you are starting from ground zero.

The system that generally gets the most response is direct mailing. This will require your printing up a few hundred descriptive brochures. These brochures will have to describe the film in a clear concise manner. It should include parts of any reviews of the film, professional endorsements of your movie and, possibly, some propaganda on yourself. Most important, you should include suggested uses of the film. Think about that carefully; use your imagination. It may be your key to a good response. You will, of course, include sale and rental costs with instructions for ordering the film.

Your next step will be to prepare the mailings. Your best bet here is to get hold of mailing lists (see Mailing Lists in the Yellow Pages). Get the addresses of film libraries, relevant special interest groups, A.V. personnel, government institutions, educational institutions, etc. These addresses can be supplied on gummed labels. Get a postage meter, and you're off.

Then one morning you might get a response! After the initial shock has worn off, use the responding addresses to compile your own mailing and follow-up lists for future reference.

You will be asked to send out preview prints (the question of when to send or fail to send previews is the subject of eternal concern). You will have to have accurate print records, purchase agreements, overdue notices, preview forms,

preview print insurance, billings, follow-up billings, accurate accounts receivable and payable, with a filing system to match.

Get professionals to set up your books and filing systems *before* you have the opportunity to make an inextricable mess of things. Have access to a lawyer and accountant.

## Self-Assertion

Whether you or a distributor are handling your films, you should be consistently pushing yourself and your work. Enter festivals for the exposure if not the awards. Try to have the newsletters of relevant organizations cover your film(s). Time this with your release; don't be premature. Talk to magazine editors; get on local TV or radio if you have a "socially relevant" film. Many film, media, and instructional periodicals review non-theatrical films. Push yourself; no one's going to give you a free ride.

The services of lawyers, accountants and other people on the business end of things are important. While they may seem beyond your immediate financial resources, not having their assistance at the time of contract negotiations could cost you more. The payoff of such professional assistance can be immediate and dramatic. Having a lawyer and accountant behind you not only makes contracts easier and safer, but adds to your business credibility - that's important. □

## References

- (1) **Motion Pictures and the Arts in Canada (The business and the law)**. Garth H. Drabinsky, McGraw Hill Ryerson Ltd. (Specifically for theatrical film, but legal and contract principles are useful.)
- (2) **Non-Theatrical Film Distributors, Sales Service Policies**. Carol A. Emmens (Ed.), Educational Film Library Association, available from Educational Film Library Association, Inc., 17 West 60th St., New York, N.Y. (\$7.00). (Lists distributors on continent; slightly outdated, but addresses are very useful.)
- (3) **Directory of U.S. Gov't Audiovisual Personnel** (5th Edition). Available from Order Section, National Audiovisual Center (GSA), Washington, D.C. 20409 (\$3.00; make cheques payable to: National Archives Trust Fund). Good for mailing lists.
- (4) **Hope Reports A.V. - USA ('73-'74) (Vol. 1), Hope Reports Education & Media ('73-'74)**. Write Hope Reports, Inc., 919 South Winton Road, Rochester, New York 14618. Extensive and intensive market reports and industry statistics. Expensive.

## Communication 140

I MEAN, it IS an interesting film. I just CAN'T think of how it could be USED in an educational situation. You must bear the Market in mind...

Yes, yes. I understand.

I WANT to make a movie for the MARKET. anything that will sell... really. Tell me, what does...

I MEAN, THE EDUCATIONAL DOLLAR IS VERY TIGHT THESE DAYS, IF YOU CAN'T GIVE THE BUYER what HE wants HE won't BUY. What you should do is make films that FILL A NEED!

I WANT TO, ANYTHING COMMERCIAL... I can say the word without choking. I LIKE the word COMMERCIAL? (see, I said it again) TELL ME, WHAT WILL sell? what do YOU NEED?

Film-MAKERS so RARELY THINK about Markets, so long as they finish their film... It doesn't Matter if no one BUYS it...

IF ONLY THE FILM-MAKER would COMMUNICATE with the distributor... there are so many films that would sell, but no one listens...

...But no. You keep on bringing in these ARTISTIC or PERSONAL films.

I Know, I Know. I will make commercial film. PLEASE... PLEASE tell me what you will buy... What is a saleable film? where is the MARKET?

I DO. JUST TELL ME where the MARKET LIES. Can't you hear? I WANT TO MAKE FILMS FOR THE MARKET! Won't you tell me..?

But I... Oh god! oh god... oh god... help...

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