Now Streaming: The Rise of the at Home Theater and the Changing Model for Content Distribution

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The talent compensation model for A-list film productions has traditionally resisted disruption in the entertainment industry. In particular, the model has long adhered to the following two-part format: the guaranteed up-front payment, and the contingent backend revenue share payment (beginning with theatrical box office and moving through home video, pay television and free television exhibition windows).

If a film does well at the box office, talent earns the guaranteed compensation, plus a cut of the revenues based on a pre-negotiated percentage. If the film is a dud and doesn't earn its money back (or simply costs too much), there's no back-end revenue share to be realized, and talent is left with the guaranteed up-front payment as primary compensation for their performance. Back-end deals align the interests of producers and talent, so that, when the movie makes more money, the talent (theoretically) makes more money. For lower budgeted productions, talent may even negotiate smaller up-front guarantee fees in exchange for larger back-end contingent revenue shares.

Yet the rise of streaming services has begun a gradual erosion of the traditional model. Subscription-based streaming services like Netflix, Hulu and Amazon Prime now regularly produce straight-to-stream original productions, featuring A-List talent that never hit the traditional box office or subsequent exhibition windows.

Enter 2020's widespread stay-at-home orders arising from the COVID-19 pandemic. With theatres being closed around the world film distributors were finally forced to consider real and lasting alternatives to the traditional mainstream in-theatre distribution channel and associated talent compensation model. Instead of pushing out distribution dates and waiting for mandatory quarantines to lift, traditional distributors partnered with streaming services to take a dual release approach, releasing major studio films in a limited number of theatres (where open) and online to streaming service subscribers simultaneously.

This fundamental shift in release strategy by major distributors upended the assumptions built into traditional back-end pay structures. When the only revenue generated from a film is the subscription revenue paid for the streaming service as a whole, calculating revenue shares becomes a Herculean task. Moreover, even when films are sold by traditional studios to streaming services, in most cases these streaming services are affiliates or subsidiaries of major media companies, like Warner Brothers/HBO Max, Disney/Disney Plus, Searchlight/Hulu and Universal/Peacock, ratcheting up concerns about self-dealing and below market pricing to new heights.

The question for talent then becomes: How should backend profits be calculated, and how should they be tracked when talent is left in the dark about such cross-affiliate related party transactions? Like the distributors, talent reps are now becoming forced to think creatively and evolve past the traditional way of doing business.

With the ever increasing number of streaming services and the vertical integration of these services into major studios, even though theatres have reopened, we'll continue to see changes in distribution strategy that outlast the pandemic, with many motion pictures distributed exclusively on, or simultaneously with, streaming channels.

What's on the Horizon

- A push for increased front-end guaranteed compensation;
- Alternative approaches to backend, including pre-negotiated automatic backend buyouts in the event there is no theatrical distribution;
- A push for transparency when it comes to performance on streaming services (e.g,, number of streams, subscription growth relative to film releases); and
- Strategies to circumvent the often losing battle over fair compensation when a studio sells a film to an affiliated streaming service.