2021 Western States Regional Summit of ABA YLD Affiliates

Why Hollywood Is Rethinking Contingent Compensation in the Streaming Era

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PRESENTED BY

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Summary description: Talent has a price. When dozens of productions are competing to cast the same big, famous names and faces in films, the price goes up.

For years, Hollywood lured the most in-demand stars with contractual promises of revenue-sharing contingent on box-office numbers and ancillary sales.

But what happens when Hollywood shuns the box office and ancillary revenue and focuses on subscriptions?

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- TV, radio, and film content producer for over 20 years (selected credits available at https://www.imdb.com/name/nm2040154/?ref_=nv_sr_srsg_0)
- Member New Mexico State Bar since 2009
- Entertainment law practice (in-house at ReelzChannel, then solo) 2012-2016
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OBJECTIVES:

- Become familiar with the market dynamics that drove Hollywood dealmaking before the dawn of the streaming era.
- Understand how streaming changed those dynamics.
- Identify why featured talent (actor/actress) agreements are evolving as a result of the changes above.

NEGOTIATING THE TALENT AGREEMENT

STUDIO PERSPECTIVE

- There is a limited number of "stars" and dozens of productions.
- Stars attract audiences.
- Audiences = $$$
- THUS: studios must pay more to make more. There is a race to the top.

BUT STUDIOS WILL WANT MORE BANG FOR THEIR BUCK

What does the money buy besides a big, famous face and name to put in the project?

- Exclusivity?
- Additional services? (press appearances, merchandise rights, marketing services)

NEGOTIATING THE TALENT AGREEMENT

TALENT PERSPECTIVE

- Work = money + exposure.
- Time is a limited resource and "there's only one of me".
- THUS: talent wants to make sure they get the best deal they possibly can, every single time.

WHEN TALENT IS BIG ENOUGH, IT'’S BIG ENOUGH TO NAME ITS PRICE

What else can the studio offer?

- Perks
- Bonuses (including bonuses tied to box-office milestones)
- "Contingent Compensation" (SHARE OF BOX OFFICE REVENUE/ANCILLARY REVENUE)

HOLLYWOOD "BACK END" DEALS

- Typically, every film produced today includes some form of contingent compensation (aka "back end participation") for a select group of talent "participants": writers, directors, featured actors.
- There are many different kinds of contingent compensation deals, but all of them have one thing in common: a "break-even" point.
- Compensation will be contingent on x or y happening, but even if x or y happen, nothing will be paid to the participant if the movie doesn't first "break even".
- But what "breaking even" actually is can and will be defined in different ways for different participants, even if they are working in the same movie.
- In general, break-even will occur when revenues (as defined for a given participant) equal costs and/or charges (as defined for that participant).
- (Yes, there is such a thing as 'Hollywood Accounting')

HOLLYWOOD "BACK END" DEALS

- Historically, the value of talent's basic and contingent compensations increases in relation to how much box office success can be attributed to the talent.
- Also historically, the biggest stars, directors, and producers negotiate for a % of ticket sales with an advance on that % paid upfront.

Old featured actor deals

- Guaranteed Fee
- Benchmark bonuses
- Perks
- Contingent compensation: (share of box office/ancillary receipts* after break-even)
- Advance on back end (maybe)
- Right to accounting

*But "receipts" means only what the contract says it means.

Old featured actor deals

"Typical" back end deal: X% of Adjusted Gross Receipts.

Which *likely* means ⅓ above X% of net profits under the usual studio formula.

Maybe. It all depends on the contractual provisions and definitions for *that* deal.

'Lesser' participants may get a back end deal on Modified Adjusted Gross Receipts instead (but how is that defined?)

Old featured actor deals

REPORTEDLY…Disney does not pay talent a share of ancillary revenue.

According to Scarlett Johansson's complaint, a considerable portion of her agreed compensation on *Black Widow* would come from box office benchmark bonuses.

Which perhas explains why she sued when *Black Widow* was released on Disney+ and theaters at the same time.

The reality in the streaming era...

- What happens when the box office is taken out of the formula? (or when a pandemic literally shuts down the box office?)
- What happens when there is no ancillary revenue? No DVD sales, no merchandising, no resale to TV, cable, etc.? (because of the studio's focus on streaming)
- Need to think of AGR and MAGR in new ways. Why?

The New Back End

- Big upfront payments/No back end (avowedly the Netflix way).
- New streaming-only MAGR formulas? Say, X% of profit* for every viewer who streams the whole movie, higher percentages paid to stars with more stature (which stature can be surmised from the fee they commanded on their last project...after break-even)

*But "profit" means only what the contract says it means.

Seller's market (for on-screen talent)

- Why pay more?

MOVIE NEWS, MOVIES

AFM: Indies Battle for Talent as Studios and Streamers Lock Up A-Listers

BY SCOTT ROXBOROUGH AND ALEX RITMAN READ MORE

The Hollywood Reporter, Nov. 2, 2021, on the current scene at the 2021 AFM