

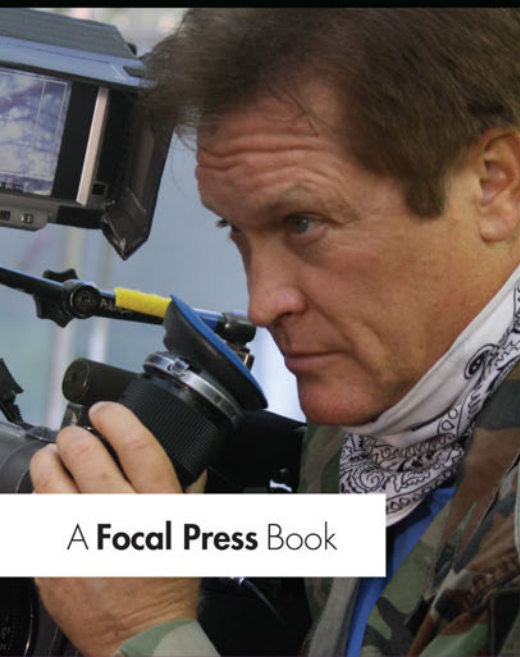
AMERICAN FILM MARKET®
PRESENTS

PRODUCING FOR PROFIT

A Practical Guide to Making Independent
and Studio Films.

by **Andrew Stevens**

"One of Hollywood's most prolific producers"
- The Hollywood Reporter



A Focal Press Book

ROUTLEDGE

Producing for Profit

In *Producing for Profit: A Practical Guide to Making Independent and Studio Films*, Andrew Stevens provides real-world examples and his own proven techniques for success that can turn passion into profit. Far more than just theory, the book outlines practical applications that filmmakers of all levels can use to succeed in today's ever-changing marketplace. Readers will learn how to develop screenplays that are commercial, and how to negotiate, finance, cast, produce, sell, distribute, and market a film that will make a *profit*. The book contains numerous examples from the author's own films, including sample budgets, schedules, and a variety of industry-standard contracts. This is the definitive book that every producer must have!

Andrew Stevens has mastered almost every aspect of the entertainment business, from creative filmmaker, writer, director, and producer, to corporate executive, leader in trade and union negotiations and collective bargaining, the creative development and physical production of motion pictures, as well as film sales, distribution, finance, publicity, and marketing. He has produced and financed over 175 motion pictures, including the hit comedy *The Whole Nine Yards* and the cult classic *Boondock Saints*. His films have generated over \$1 billion in worldwide revenues. He is a former award-winning and Golden Globe-nominated actor and continues to be active in the motion picture business in addition to being an author, educator, motivational speaker, and industry consultant. He served for a decade on the board of directors of the International Film and Television Alliance (formerly the American Film Marketing Association) and also served as chairman of the Independent Producers Association (IPA).



Producing for Profit

A Practical Guide to Making
Independent and Studio Films

Andrew Stevens

First published 2016
by Routledge
711 Third Avenue, New York, NY 10017

and by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2016 Taylor & Francis

The right of Andrew Stevens to be identified as author of this work has been asserted by him in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilized in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

Library of Congress Cataloging in Publication Data
A catalog record for this book has been requested

ISBN: 978-1-138-12105-8 (hbk)
ISBN: 978-1-138-12104-1 (pbk)
ISBN: 978-1-315-65129-3 (ebk)

Typeset in Garamond
by Keystroke, Station Road, Codsall, Wolverhampton

Contents

<i>Foreword by Roger Corman</i>	x1
<i>Prologue</i>	xiii
1 What Is a Producer?	1
<i>Essential Responsibilities</i>	1
<i>Explaining the Producer's Role to Laymen</i>	3
<i>Inexperience and the Three Rs</i>	4
<i>Employees</i>	5
<i>The Independent Entrepreneur Producers</i>	6
<i>Producer Credits: What Do They Mean in Film?</i>	7
2 Changes to the Independent Marketplace	10
<i>Historical Context</i>	11
<i>Monopolies versus Independent Free Trade</i>	12
<i>Home Entertainment Consolidation</i>	15
<i>Keeping Abreast of the Changing World</i>	17
3 The Global Marketplace	20
<i>The Evolution of the Independent Market</i>	21
<i>Foreign Sales</i>	21
<i>Definition of Film Sales</i>	23
<i>Definition of Term</i>	23
<i>Foreign Sales Contracts</i>	24
<i>What is Your Film Worth?</i>	24
<i>The Fallacy of the Going Rate</i>	25
<i>Domestic Sales</i>	26
<i>Art House and Specialty Films</i>	27
<i>P&A</i>	28

	<i>Television Premieres</i>	28
	<i>Domestic Media and the Internet</i>	29
4	How to TAP into the Marketplace	30
	<i>Due Diligence for New Trends</i>	31
	<i>Sales Agents</i>	34
	<i>Sales Agent Alternatives</i>	40
	<i>How to Work the AFM</i>	41
5	The Domestic Market, Festivals, and Market Value	46
	<i>The Realities of the Market</i>	46
	<i>Film Festivals</i>	47
	<i>Listen to the Market</i>	49
	<i>Enhance Perceptual Value</i>	50
	<i>Market and Currency Fluctuations</i>	51
6	Identifying and Developing a Film Based on Trend and Analysis	52
	<i>Read</i>	52
	<i>Network to Gain Access to Material</i>	55
	<i>Make the System Work for You</i>	56
	<i>Write</i>	57
	<i>Develop</i>	57
	<i>Non-union Independent Films: The Backbone of the Film Industry</i>	60
	<i>Tricks to Write for Cost-effective Production</i>	61
	<i>Screenplay Titles and Perception</i>	63
7	Now That I Have My Script, What Do I Do?	64
	<i>Pitch to a Studio or Network</i>	64
	<i>Equity Investor</i>	66
	<i>Limited Partnership</i>	67
	<i>Self-finance</i>	68
	<i>Grants</i>	69
	<i>Subsidies</i>	70
	<i>The Great Subsidy Myth</i>	71
	<i>The Hidden Costs</i>	74
	<i>Foreign Pre-sales</i>	75
	<i>Bank Financing</i>	75
	<i>Domestic Pre-sales</i>	76

	<i>Combination Financing</i>	76
	<i>Crowdfunding</i>	77
	<i>Do Whatever it Takes to Make the Deal</i>	78
8	Investors, Actors, Attorneys, Agents, Managers, Business Managers	79
	<i>Entertainment Attorneys</i>	80
	<i>Agents</i>	80
	<i>Protect Your Investor</i>	81
	<i>Producers and Filmmakers Need to Understand Actors</i>	81
	<i>Actors' Quotes</i>	82
	<i>Actors' Language</i>	82
	<i>CASTING</i>	83
	<i>Choosing a Representative and the Rates You Pay</i>	84
	<i>Business Managers</i>	84
	<i>Managers</i>	84
	<i>Insecurities and Common Sense</i>	85
	<i>Save Yourself</i>	85
9	Film Production Basics	87
	<i>Budget</i>	87
	<i>Union versus Non-union</i>	87
	<i>Non-union: Smaller Crews</i>	91
	<i>Payroll Companies</i>	93
	<i>Beware of Making Large Prepayments</i>	94
	<i>Places Never to Cut Corners</i>	95
	<i>Insurance and Murphy's Law</i>	95
	<i>Production Legal Counsel</i>	98
10	How to Manage Production Costs	100
	<i>Learn Smaller to Get Bigger</i>	100
	<i>Unions and Guilds</i>	100
	<i>IATSE and Teamsters: Negotiate</i>	102
	<i>Reduce the Number of Locations</i>	104
	<i>Reduce or Eliminate Distant Locations and Save Money</i>	104
	<i>Reduce the Number of Speaking Roles</i>	104
	<i>Reduce Night Exteriors</i>	105
	<i>Reduce Company Moves</i>	105
	<i>Reduce Days or Weeks of Equipment Rental</i>	105
	<i>Reduce the Number of Shooting Days</i>	105

Rethink Expensive Sequences 106
Reduce Vehicles, Drivers, Fuels, and Transportation 106
Lay Low and Publicize Later 107
Budgeting Software 108
Creating a Schedule for the Picture 108
Low-budget Shooting Schedules 109
Stagger Actors' Call Times 109

11 Mounting a Production 111

Tricks of the Trade 111
Production Staff and Pre-production 111
Protect Yourself from Personal Liability 112
Hire Motivated Multitaskers 112
Payroll 113
Production Office 113
SAG, the Thirty Mile Zone (TMZ), and Locations 114
Overtime 115
Local Rules 115
Buy and Return 115
Hair and Makeup 116
Grip and Electric 116
Shooting with Multiple Cameras 118
Print and Pickup 119
Loss and Damage 119
Vehicles and Transportation 120
Security 121
Shooting out of Sequence 121
Meals 122
Seek Local Hires 123
The Editor and the Director 124
Music and the Composer 125
Extras 126
Producers Set the Tone 127
Real Producers Are Filmmakers 128
After Wrap 128

12 Navigating the Actors' Union 130

SAG-AFTRA 130
Residuals 132
Production Bonds 134

	<i>SAG Unintentionally Accelerated the Digital Revolution</i>	135
	<i>Financial Core</i>	136
13	Respect for the Dollar	138
	<i>Profit Participations</i>	138
	<i>Residuals Assumption Agreements</i>	139
	<i>Philosophical Differences</i>	140
	<i>Runaway Production</i>	141
14	The Internet and New Media	143
	<i>Loss of Privacy</i>	143
	<i>Wikipedia</i>	143
	<i>IMDb</i>	144
	<i>Google Maintenance</i>	145
	<i>New Media</i>	145
	<i>Piracy in Music and Film</i>	145
15	Marketing and Publicity	147
	<i>Studio Campaigns</i>	147
	<i>Key Art in the Independent Film World</i>	149
	<i>Study Current Film Campaigns</i>	150
	<i>Still Photography</i>	150
	<i>Log Lines</i>	151
	<i>Stars</i>	151
	<i>Second Level of Sell</i>	151
	<i>Trailers</i>	151
	<i>MPAA Rating</i>	153
	<i>Title Search</i>	154
	<i>EPK</i>	155
16	Recap	156
	Appendix A: Major Entertainment Conglomerates and their Holdings as of 2013	157
	Appendix B: IFTA Model Sales Agency Agreement Completed Picture: Basic Form	161
	Appendix C: IFTA Model Sales Agency Agreement Completed Picture: With Advance	190

Appendix D: Sales Projections and Participation Statement	230
Appendix E: Sample Collection Agreement	233
Appendix F: Sample Writer Option Purchase Agreement	235
Appendix G: Sample Writer Work for Hire Agreement	245
Appendix H: Sample Writer Step Deal Agreement	252
Appendix I: Sample Post-production Schedule	262
Appendix J: Sample Delivery Schedule	272
Appendix K: Full Non-union Budget	282
Appendix L: Non-union Top Sheet	305
Appendix M: Union Comparison Top Sheet	307
Appendix N: Standard Terms	309
Appendix O: SAG Studio Zone Map	312
Appendix P: Sample Shooting Schedule	313
Appendix Q: Sample Call Sheet	326
Appendix R: Sample Production Report	338
Appendix S: Sample Composer Agreement	344

Foreword

Roger Corman

For more than fifty years, I have nurtured new talent and young filmmakers in the independent film business. As a producer of more than three hundred independent movies, I have had the good fortune of working with such up-and-coming actors as Jack Nicholson and Sandra Bullock, and filmmakers who have gone on to be among the premier filmmakers in the mainstream studio industry, such as James Cameron, Martin Scorsese, Francis Ford Coppola, Jonathan Demme, and Ron Howard. In 2009, at the annual Governors Awards, I was honored by the Academy of Motion Picture Arts and Sciences (AMPAS) with an honorary Oscar, where I cited film as the only true modern art form and saluted and challenged independent filmmakers to keep gambling and to keep taking chances.

Of all the people who have done work for me and for whom I have been credited as mentoring over the years, Andrew Stevens is unique in that he started as an actor of note, moved on to be quite a proficient writer and director, and subsequently became an enormously prolific motion picture producer. As if that weren't enough, he then entered the foreign sales and distribution realm and over the years built several foreign sales and distribution companies that were as competitive as any in the independent film business.

Andrew was quite a quick study on the business side and served with me for many years on the board of directors of the Independent Film and Television Alliance (IFTA) (formerly the American Film Marketing Association). He is that unique multi-hyphenate hybrid of a creative filmmaker and an astute businessman who has embodied the independent spirit and fought to keep that spirit alive.

When I first met Andrew in 1988, I hired him to act in a film called *The Terror Within*, starring opposite George Kennedy. When I wanted to make a sequel and realized that Andrew had been moving towards writing, directing, and producing, I made a deal with him to write, direct, and star in the sequel. Both films were very successful for me. Andrew recently called to my attention that, over the years, we have collaborated on twenty-six independent movies, in which Andrew has served in multiple capacities. On three films, he was solely an actor; on some he was an actor/producer;

on others he was an actor/director; and on some we made co-production deals in which Andrew produced the films independently, and my company was the domestic distributor while Andrew's retained and distributed foreign rights.

On a personal note, I remember a week in the mid-1990s when Andrew was directing a family film for me called *The Skateboard Kid 2*. My thirteen-year-old daughter Mary wanted to be in the movie, so I called Andrew and asked him if there might be a role for her. Andrew assured me that an appropriate role would be waiting for my daughter when she arrived on set that Saturday. I dropped Mary off on set and she spent the day with Andrew as her director in her film debut. Since we weren't clear what time the filming would finish that day, Andrew then drove Mary from the set to a restaurant at the top of Mulholland Drive and delivered her to my wife and me, having had the time of her life that day in Andrew's capable hands.

I'm proud to see that Andrew has continued my tradition of hiring upcoming aspiring filmmakers and that he is also responsible for the careers of many new writers, producers, and directors. In reading Andrew's book, I was quite impressed by his knowledge and perspective on the business, and particularly the independent film production business. His ability to impart information to the reader or student in a way that offers new insights as well as a wealth of marvelous anecdotes from his real-life experiences make this book a worthwhile and enjoyable read.

My only regret is that Andrew and I didn't meet ten or fifteen years earlier, because most certainly we would have made exponentially more than twenty-six films together if we had.

Prologue

I've been a professional in the entertainment industry for more than four decades. I served on the board of directors of the Independent Film and Television Alliance (IFTA) from 2001 through 2009. I also served for several years as vice chairman, and then chairman, of the Independent Producers Association (IPA), which from time to time has been active in collective bargaining for independent producers and production companies. I have been involved in many guild negotiations with both the Screen Actors Guild (SAG) and the Directors Guild of America (DGA) on behalf of the constituency of the IPA, and I was one of the architects of the current DGA/IPA multi-tiered low-budget agreement (available on the DGA website).

I have been a member of the Academy of Motion Picture Arts and Sciences since 1979, the Screen Actors Guild since 1973, the Directors Guild of America from 1991 to 2008, SAG–AFTRA since 1973, and the American Society of Composers and Publishers (ASCAP) and Broadcast Music, Inc. (BMI).

Through a series of fluke events, during my senior year of high school in Memphis, Tennessee, I fell in love with the theater. I moved to Los Angeles as soon as I graduated and began studying and working as an actor.

I was fortunate enough to become an established and successful actor, starring in four network television series, five television miniseries, dozens of television movies and episodes, and more than fifty feature films. As a young actor, I also gained the invaluable experience of working with a galaxy of top industry stars and professionals. I received a Golden Globe nomination for my performance in the Vietnam War drama *The Boys in Company C* and was named “Star of Tomorrow” by the National Association of Theatre Owners in 1981 for my performance in *The Seduction*. I also won the Los Angeles Drama Critics Circle Award for my stage performance in the U.S. premiere of John Godber’s *Bouncers* in Los Angeles.

I was also part of the last generation of actors who were signed to term studio contracts, and was, for a few years, a contract player at Universal Studios. By 1979, I had starred in a number of feature films and was invited to join the Academy of Motion Picture Arts and Sciences (whose members,

among other things, nominate, vote for, and determine the Academy Awards). My sponsors were Rock Hudson and James Stewart.

Although I continued acting as my predominant profession through 1992, by the late 1980s I had turned my aspirations to writing, producing, and directing.

In 1988, during a union strike when very few entertainment industry people were working, I was offered the lead role in a B-movie for the legendary Roger Corman called *The Terror Within*—a horror movie whose main special effect was a man in a rubber monster suit. I accepted the job, and apparently the film did quite well, because a year later Roger called and asked me to meet with him regarding making a sequel, offering me the same deal he had made Ron Howard. (Ron had appeared as an actor in Corman's *Grand Theft Auto*, and Roger, knowing Ron's directorial aspirations, contracted him to write, star in, and direct the sequel, *Eat My Dust*, and he offered me the same deal to write, direct, and star in the sequel to *The Terror Within*). When I agreed to make *The Terror Within II*, I requested a second-picture deal along the lines of other deals I knew Corman had made with certain other independent producers. The second picture was to be a co-production between him and me, whereby he would finance \$300,000 in exchange for all domestic rights and I would finance \$250,000 in exchange for all foreign rights. Roger agreed.

As a first-time director, my number-one objective was to find a director of photography (DP) who could light and shoot the rubber-suited monsters in the film in a creative way, so the audience wouldn't see how truly bad the suits were. I scoured numerous DP reels at Corman Studios and finally a second-unit reel shot by a young Polish kid drew my attention. The sequence featured an actress dancing in a night club, but the set was lit with very dramatic backlight, cross-light, and diffusion, so that you couldn't make out any of the actress's distinct body parts. I immediately thought, *This is the guy I have to have to shoot my movie and disguise these horrible rubber monster suits*. I called the kid in for a meeting and hired him on the spot. His name was Janusz Kaminski. He won an Oscar for *Schindler's List* four years later, then won another for *Saving Private Ryan*, having become Steven Spielberg's favored DP.

As insightful as I was to recognize Janusz's talent, I made a faux pas of equal import on the same film. During the casting process, I auditioned many actors and actresses. A young actress who was very green and had not yet had a professional break came in to read for one of the roles. I felt that another actress gave a stronger audition and didn't hire the young neophyte, whose name happened to be Halle Berry.

Once I got this first film under my belt as a director, I used it to get other directing gigs, in both independent feature films and episodic television. Concurrently, having now written a script that was produced, I used my new-found credibility and my writing skills to create a series of very successful independent films. Once I had created my own film

company I began directing features solely for myself and ceased working for hire.

At the same time that I was branching out as a writer, director, and producer, I started studying the independent film model in the international marketplace and realized that approximately 65 percent of the revenues for independent films came from sales to foreign territories (those outside of North America). I traveled to the Cannes and Milan film markets, as well as the American Film Market (AFM) in Santa Monica, California, on a regular basis, performing due diligence and studying the global marketplace (more on this later).

A year or so later, after learning the foreign sales ropes, I went back to Roger Corman and told him I was ready to exercise the clause in our contract to make our second film, the co-production. I made the movie, and I owned the foreign rights to the film free and clear.

The picture was so successful for Roger that he agreed to do three more pictures under the same terms. Suddenly I owned and controlled the foreign rights for four films, and, along with two partners, I entered the foreign sales and production business virtually overnight. We created a company called Sunset Films International for the purpose of marketing and selling not only our own film productions but films that we would acquire as sales agents from outside producers and charge them a sales/distribution fee and market expenses. Foreign pre-sales also served as collateral for a component of financing pictures. At this time, in early 1993, I formally quit acting as my main profession, although I've since done the occasional cameo appearance.

I committed all my time and resources to foreign sales, financing, developing, producing, writing, and directing projects for my own company. I began traveling to the major international foreign sales film markets, selling all rights in all territories and all media worldwide, and cultivated relationships with buyers all over the world. During approximately one year at Sunset Films International, I produced seven in-house films and acquired twelve others for foreign distribution.

Since my partners at Sunset Films were nonexclusive and had other outside film ventures, I also pursued ventures with another producing partner. Based on my now very savvy, empirical knowledge of the independent marketplace, I convinced him that we should personally finance our own pictures, because I now firmly believed in what I could produce and sell in the global marketplace and for what price. We each put up personal money and made a picture, which we sold for double our investment before we had even finished post-production. We put our personal money back in our pockets and made a second film on the profits from the first. We sold that film for double and suddenly had not only profit but a production fund derived from profits generated by the two films. We made a third film in the same manner; on the fourth, we decided to step up to a bigger budget and a star cast, which enabled us to triple our return. Our little "mom and

pop” business was so successful that we decided to pool our resources exclusively and form a new full-service production, finance, and foreign sales company. At that time, I sold my shares in Sunset Films International to my former partners and started a new company—Royal Oaks Entertainment.

At Royal Oaks, our mandate was to get as many domestic pre-sales for straight-to-home-entertainment films as possible and fill them as quickly as possible, since we realized that the domestic market, as it existed at the time, was soon going to change, to the detriment of the independent producer. Under the Royal Oaks auspices, I made multiple domestic (United States and Canada) pre-sales for films that had not yet been produced. Pre-sales were very important to me, since bank financing was essential for a production slate of more than fifty-six films in three years, and I needed both foreign and domestic pre-sale contracts as collateral for bank loans. I then set about quickly filling those pre-sale purchase orders, actually making the films I had pre-sold and collecting on the contracts before the business changed and the various home entertainment companies went out of business.

For the remainder of the collateral for the financing of the movies, I would create a concept that was commercial on a worldwide basis, based on the type of product that my most lucrative international buyers were looking for. I had three distinct lines of film product: thrillers, family films, and action films. For the better part of eight years, I conceived, marketed, pre-sold, financed, and produced on average almost twenty films a year. Under the Royal Oaks’ auspices, we also acquired another fourteen titles for foreign distribution, amassing seventy films over just three years. I also found myself running and administering a company with over twenty employees. I had no formal business training, having worked on the creative side of the business my entire adult life, so I had to learn on the job. However, with the crazy cast of characters I was now dealing with, my bachelor’s degree in psychology was probably more useful than I ever imagined it would be.

The Cannes Film Market (Marché du Film) is a large trade show coinciding yearly with the Cannes Film Festival, where movies are sold prior to and overlapping with the glitz and glamor of the festival screenings. In mid-1997, after returning from the market, I noticed a distinct change in trends in the independent foreign sales marketplace. Suddenly, a couple of competitor companies that had previously made films similar to those I was making debuted independent films for sale in the international marketplace with big-star names in low-budget productions. At the time, it was irrelevant that most of these big stars were appearing in films that were either pet projects or art house, non-commercial films, because the star value transcended the generally noncommercial nature of the pictures. I suggested to my partner that we should change our business plan and bring in someone who had talent relations with movie stars, which we did. By the fall of 1997, we had collectively

formed Franchise Pictures, and shortly thereafter its sister company, Phoenician Entertainment.

Within the course of the next year and a half, Franchise and Phoenician consolidated under one roof, one of the partners was bought out of the collective companies, I ceased operations of Royal Oaks and began functioning as president and chief operating officer of both Franchise and Phoenician. Again, I created three distinct brands and product lines of movies.

The first comprised studio theatrical pictures, branded as Franchise Pictures through an output deal with Warner Bros. These movies—which require large print, advertising, and media (P&A) expenditures—are the longest payback to the banks for production loans, plus the additional loan from the studios for the P&A funds. In some cases, a film might cost \$25 million to produce, and the P&A expenditure might be \$35 million or more.

The second product line comprised art house, or specialty, films, which I branded as Franchise Classics Pictures. These were predominantly smaller, noncommercial films with star names that had festival and/or art house appeal.

Franchise Classics came about in an interesting way. Having produced four pictures in three years that screened or competed in the Sundance Film Festival, as well as many other festivals around the world, I began to believe that there was collusion among domestic buyers, judging from the identical deal terms they would, with only rare exceptions, offer independents. We have all heard or read about the bidding wars that have taken place on certain films discovered at film festivals, but, in my experience, the usual players at the time (Fox Searchlight, Sony Classics, Paramount Classics, Lionsgate, and others) all had a standard offer that they would make for most art house/specialty films: \$250,000 plus a \$500,000 P&A commitment, which would buy a very small vanity theatrical release. The distributor would then have the option to build on—or “platform”—from the initial small release and expand the number of theaters and release dates. This would happen only if the picture were performing successfully and warranted the advertising and media expenditure that it would take to expand the number of screens.

After a \$250,000 advance and a “royalty” participation thereafter, the reality is that, with only rare exceptions, no producer would ever see another dime beyond the initial advance. The response was uniform: “We’re not Sony, we’re Sony Classics,” or “We’re not Fox, we’re Fox Searchlight,” or “Universal Focus,” or “Paramount Classics” (at that time). “We don’t have that kind of money, we’re a specialty division.” A lightbulb lit up above my head and I immediately created “Franchise Classics.” Thereafter, when I negotiated with agents, attorneys, and managers, I would stick to the mantra: “I can’t pay your talent any substantial money. This isn’t a Franchise Pictures film, it’s a Franchise *Classics* film.” In almost all cases, it worked. We then created talent pools and profit participations for actors, writers,

and directors, without paying big upfront salaries for talent. The trade-off for getting star talent to work cheaply, so that the films could be made cost-effectively, was making pet projects—art house and specialty films that were not mainstream commercial undertakings, such as *The Big Kabuna*, starring Kevin Spacey and Danny DeVito, which was made for a net \$1.8 million, and *Things You Can Tell Just by Looking at Her*, starring Glenn Close, Holly Hunter, Cameron Diaz, and Calista Flockhart, which was made for under \$2.5 million.

The third product line comprised non-theatrical, straight-to-home-entertainment films, under the Phoenician Entertainment brand. The straight-to-DVD line provided instant cash flow. If international buyers wanted *The Whole Nine Yards*, with Bruce Willis and Matthew Perry, they would need to buy a number of straight-to-DVD titles along with it. Films like *Storm Catcher*, starring Dolph Lundgren, *Gale Force*, starring Treat Williams, and *Air Rage*, starring Ice-T, were instantly profitable and often had no bank loan, which provided a much faster return on investment and unencumbered cash flow to the company.

During my five and a half years at the Franchise Pictures companies, I produced, executive produced, and/or financed and handled the foreign sales on approximately seventy-five pictures of all genres and sizes, with budgets ranging from \$60,000 to \$70 million. We made close to twenty mainstream theatrical features, including: *The Whole Nine Yards* and *The Whole Ten Yards*, *The Pledge*, starring Jack Nicholson and directed by Sean Penn, and *City by the Sea*, starring Robert De Niro, all through Warner Bros.; *Half Past Dead*, starring Steven Seagal, through Sony Screen Gems; and *Caveman's Valentine*, starring Samuel L. Jackson, through Universal; as well as numerous Franchise Classics films and a steady stream of straight-to-DVD pictures.

I left Franchise Pictures in December 2002, and the following year embarked on financing and producing films through my personal auspices, initially through foreign and/or domestic pre-sales coupled with subsidies and often with an equity component. I have produced or financed over thirty-five films since 2003. I finance a film only when:

- I know there is a specific market desire for it;
- there are specific buyers for it;
- I know what I can sell it for, within a very small variance; and
- I can produce it for a profit margin (I will go into detail about this in subsequent chapters).

In my experience, the key to successful survival in the entertainment business is doing ongoing due diligence and updating one's knowledge of the current marketplace, as well as anticipating new trends. An independent producer must be able to shift strategies constantly and fluidly, and reinvent as the business changes on a continuum. In the span of my

entertainment career, I have functioned in almost every imaginable capacity of filmmaking, from conceiving an idea to writing a story or screenplay, to creating advertising and publicity campaigns for the marketing and sales of pictures, as well as pre-selling films before they were made, financing pictures in many forms, brokering subsidies and rebates from various states and foreign countries, producing, directing, acting, editing, art directing, post-producing, composing songs and music, delivering elements to buyers worldwide, collecting payments on contracts, distributing films, and grooming and selling libraries. I have interfaced with the lowest level of guerrilla independent filmmaking as well as the highest level of studio theatrical releases.

My goal in writing this book is to use my knowledge and experience to inspire and teach aspiring filmmakers by explaining the *reality* rather than the *theory* of making independent movies. In 2008, I wrote a two-year, fully accredited college degree program offering an associate of applied arts degree in motion picture production. I have incorporated much of that material into this book, based on my experience of actually making films over the course of four decades. I hope you find it insightful and can use it as a guide to understanding filmmaking in a way that enables you to have a focused and linear plan from the beginning and safeguards you from making naive or uneducated mistakes.

This page intentionally left blank

What Is a Producer?

If you ask twenty different people in the entertainment industry, you might get twenty different answers. In feature films, the producer, in the mainstream, traditional sense, is a creative and business-minded general who interfaces with agents, attorneys, managers, financiers, and distributors on the administrative side, and then with writers, directors, actors, and technical crew on the creative and physical production side.

Essential Responsibilities

Below is a list of everything a producer should do, though only a handful possesses the knowledge and applicable skill sets.

Unless an employee for hire, the producer is commonly involved in procuring the financing and distribution of the motion picture. Generally, he or she hires the director and the writer, oversees the casting and reports to the studio or distributor. The producer is the “last man standing” when wrap is called at the end of production and all other itinerant employees go on to their next job. The director then works with an editor and edits his or her *director’s cut*, but unless that director is a very prominent, established, *star* director, he or she will not be granted final cut. The producer then performs the final cut in accordance with the expectations of the distributors, buyers, or financiers, usually in accordance with their notes and requested changes. Sometimes the producer and director present a unified front and collaborate through the final cut, and sometimes the director may have an agenda that is in conflict with the producer’s delivery obligations, in which case the producer steps in to recut the film accordingly.

A true producer should be a good communicator, charismatic leader, and confident decision-maker on all fronts. A producer should understand story and structure and be able to give astute and insightful creative notes on a story, treatment, or screenplay. A producer must also suggest or dictate and implement script changes and revisions, in order to solve not only creative issues but the limitations of the budget and physical production of the picture as well. A producer should understand camera, shots, angles, coverage, special effects, actors’ performances, and all facets of post-production

and music. A producer should be well versed in the vernacular of the director, so that he or she can effectively communicate with the director and his or her crew. In cases where the producer must make an overriding decision, he or she must understand what shots or scenes are absolutely necessary to complete or tell the story cinematically, and what shots and/or scenes might be eliminated in order to meet the exigencies of production and the constraints of time, budget, and schedule. In post-production, a producer must understand and speak the technical language of labs, editors, digital and emerging media, music, special visual effects, and sound processes.

Look at it this way: each film has a finite box (i.e., the budget and schedule) within which it must operate in order to be successfully completed and profitable. A producer must be able to multi-task and make immediate, spontaneous decisions when necessary and stick to them, based on his or her global knowledge of what will ultimately best serve the film, while at the same time staying within the *box* he or she has created or been given. A producer must be versatile and innovative when dealing with crises as they arise. A producer must possess tremendous financial knowledge in terms of budgeting and finance, negotiating skills (to save money), and the malleability to borrow from one category in order to have additional money to spend in another, without compromising the ultimate quality of the picture. An independent producer should have knowledge of non-union crews and talent, as well as all applicable union and guild contracts and collective bargaining agreements and levels or tiers for each. (In Chapter 10, I will go into more detail on lower-budget union tiers, which allow union pictures to be produced more cost-effectively.)

A good producer should have a strong editorial sense and knowledge. Unless a director has final cut, the producer follows the director into the editing room to execute the producer's cut, or the cut desired by the production company, distributor, or studio. The producer should be skilled and able to communicate concisely, using the language and terminology of film editing, and have a working knowledge of how to cut a motion picture dynamically. A producer should understand creative editorial techniques, such as transposing the order of scenes, using flashbacks or flash-forwards, intercutting, creating moments by double-cuts, changing frame rate, and myriad other effective editorial devices. A producer should have a strong knowledge of music, as well as special effects. A musical score is critical to almost every film. Music underscores, supports, and enhances emotion and adds subliminal depth to an audience's perceptions, as well as to actors' performances. Often the internal pace or sustained tension of a picture is created, dictated, or greatly enhanced by music. Judiciously knowing when a scene might play better or more effectively "dry"—without music—is valuable as well.

Special effects and new media and technology have evolved quickly over the last ten years and are continuing to evolve. A producer should stay abreast of current technologies and computer-generated imagery (CGI)

techniques, as well as all new and emerging technologies and forms of new media. On the technical side, a producer should also be knowledgeable in all technical elements of filmmaking, and the constantly emerging digital formats and new resolutions from 4K and future successor formats. A producer should also be knowledgeable about all current and new, emerging sound formats as well as new and emerging post-production and digital delivery formats. (The foregoing knowledge is essential for every picture that is produced.)

A producer should have good relationships with at least one insurance company that provides production, negative, and errors and omissions (E&O) insurance for films, and must stay aware of the best prevailing rates. A producer should have at least a cursory legal knowledge and must be able to read and understand contracts, as well as nuances to which a producer, production company, distributor, or studio might ultimately be legally bound. A good producer must be able to hold firm in such knowledge when negotiating with agents, managers, or attorneys who may represent talent, as well as during negotiations with crew, vendors, and unions.

Explaining the Producer's Role to Laymen

How does one explain job descriptions in moviemaking to people not in the film business? I have often likened making a film to building a house. The architectural plans are the screenplay. The builder is the producer. The foreman overseeing the job and instructing the subcontractors is the director (admittedly not the best analogy for a director, but one that a non-entertainment person understands). The budget for building a home is very similar to a motion picture budget. Both contain bids, estimates, and prices from vendors, crews, and subcontractors on material, equipment, and other components, which all appear as line items in a budget. Both builders and producers move money around within their respective budgets—that is, costs that might be less than originally estimated in certain categories might be used to cover costs that may be higher than originally estimated in others. Ideally, global costs will balance out in the end, and the film (or house) will be finished on budget, on time, and on schedule.

For the producer and home builder, there are always occurrences beyond their control that affect time, schedule, and budget. This is why all industry-standard film budgets and most home construction budgets include a contingency, which in the case of film is usually 10 percent. Both film projects and real estate projects should have insurance policies for protection in the event of accident or disaster; and in the case of a motion picture, there is often reinsurance, in the form of a completion bond, which guarantees completion of the film if the producer or director should fail. Building a film, like building a house, requires a strong, definitive leader with a vision and the ability to get it done on time and on budget. A good producer must be adept at maintaining the vision and aesthetics of the

director and screenwriter, just as a good builder adheres to the aesthetics and materials required to carry out an architect's plans and vision.

My goals are to demystify the movie business and how it really works; to teach the reader how to do cursory due diligence or market research; and to offer guidance on how to tap into the marketplace in order to get your film made and distributed and make a profit.

Inexperience and the Three Rs

Just as there are countless men and women of all ages running around Hollywood and New York (and anywhere else that has an entertainment hub) claiming to be writers, directors, actors, and actresses, there are proportionate numbers of those who run around claiming to be producers. A person might try their entire life to get a script made into a movie and never succeed. As with any business opportunity, often one must adhere to what I call the "three Rs": being at the Right place at the Right time, and being Ready. If you happen to be at the right place at the right time but you are not ready to assume all the responsibilities required of a producer, and you do not possess the underlying knowledge to do so, an opportunity may be squandered and never come again.

I once read a quote from someone who advised people who aspire to be in the movie business to tell others, "I am a producer." Further, if asked what they have produced, they were advised to say, "I have many projects in development at this time." An inexperienced and naive aspiring producer may be associated with or attached to any number of scripts but possess no knowledge or expertise of how to get a movie made, what constitutes a commercial and saleable film in the foreign and domestic marketplaces, and generally is unaware of current market values. These people have likely never produced a film yet put together voluminous lists of attachments, such as directors, line producers, co-producers, directors of photography, art directors, composers, and others, which I usually consider to be *encumbrances*, not *value added*. I don't want any attachments. Why? Because I want to hire my own people with whom I have relationships and whom I trust. With only rare exception, in the independent film world, I personally don't trust anyone's taste or experience other than my own. Most often, inexperienced people's salary expectations are also out of line and unrealistic. Anyone who comes to me with a "packaged" picture, with predetermined department heads (other than possibly a director), is an immediate turnoff. I generally won't even look at the material. If a director is attached, I make sure that his or her expectations and capabilities are realistic and sound, and that we share the same vision. Otherwise, I want my own production people, whom I trust.

Budgets created by inexperienced "producers" are almost uniformly unrealistic. Those with no experience or expertise have no clue as to what can actually be done and for what price. They have usually paid someone equally

uninformed to create a budget for them based on very little, if any, realistic knowledge, and they almost always err vastly, on either the high or the low side. Also, in many cases, essential line items have been omitted and essential elements necessary to complete delivery of a film are nowhere to be found. I trust only *my* budgets, *my* expertise, and *my* knowledge of vendor deals, rates, and prices, based on *my* experience and knowledge. My advice is never trust someone else's "budget." Create your own.

The same can be said for schedules, which are almost always pie-in-the-sky, with an unrealistic number of shooting days (usually far too many). There is an art to creating a schedule, based on consolidating and possibly "cheating" certain locations in order to group blocks of scenes together and reduce company moves, as well as shortening actors' and stunt players' schedules and manipulating their days worked wherever possible, in what is called a *day out of days*, into a more cost-effective shooting plan.

Most people with a "great script" who claim to be producers have probably been turned down by almost everyone, and there is generally a good reason for it. (Note, however, that there are exceptions to every rule. So, no matter what anyone's past experience dictates, and no matter what holds true 99 percent of the time, something that goes against all conventional knowledge, wisdom, and experience may occur.)

Employees

A generally misunderstood fact is that *the majority of producers are employees*. Almost all studio pictures (with the exception of negative pickups, meaning payment on delivery of a completed picture by a distributor or production company for a specific sum of money in return for specific rights) are produced by employees of the studios or their various affiliated or subsidiary entities that are formed for the purpose of the production of their movies. This is true for the majority of the network producers as well. Likewise, the Producers Guild of America (PGA) comprises, almost entirely, "employee producers" who rely on studios, networks, and production companies to pay them salaries and make pension, health, and welfare contributions to the PGA, which affords them a medical plan as well as disability and retirement benefits. These producers are dependent upon "pitching" (orally presenting) their projects, scripts, or story ideas to studio or network executives or financiers, in the hope that the studio or network will pay for the development of a screenplay and, if they're lucky, the subsequent production of the film or television show, thereby by creating employment for the producer. Often, producers are also simply hired by the majors and networks for green-lit projects (those that have already received approval of production finance, thereby allowing them to move forward from the development phase to pre-production and ultimately into production). However, studio or television employee producers are at the mercy and whim of corporate executives, and vulnerable to the frequent regime

changes at most networks and studios. New executives often toss out projects developed by their predecessors.

Although less prevalent today than in days past, certain high-level studio producers have overall deals that pay for their overheads, recoupable against producer fees when pictures are actually made. There is nothing wrong with being an employee producer, but you must understand that your fate rests in the hands of other people, and their decisions directly affect your livelihood. It is important to note that, unlike independent entrepreneur producers, employee producers rarely, if ever, risk their own money or their own personal livelihood on the production of a film, and they are almost entirely reliant on the creative and financial decision-making of the major studios, production companies, networks, or risk-taking independent companies that hire them.

In the past decade or so, as the entertainment business has consolidated, many former high-level studio producers who formerly had overhead deals that have expired, are now freelance independent producers. This has been a rude awakening for many big-name producers who once relied on studio dollars to fund their overheads, including cushy offices and staffs.

I have done many negative pickup deals with studios, and their business-affairs executives and attorneys have often used my expertise to produce films far more cost-effectively than they ever could have under a studio's auspices. An independent producer can find ways to produce a film non-union, whereas a studio cannot, as all studios are signatories to the major unions' collective bargaining agreements. From 2005 to 2009, I produced fifteen films independently and sold them as negative pickups to Sony Home Entertainment. Sometimes negative pickups are structured prior to, or even during, production, and sometimes they occur after a studio or distributor has viewed the finished film.

The Independent Entrepreneur Producers

A true independent producer is, by my definition, an entrepreneur who is not reliant on a studio and/or network for the financing of a picture. Independent producers are innovative go-getters who explore every possible avenue for the development and financing of independent motion pictures. Those avenues include both foreign and domestic sales and pre-sales, subsidies and/or tax rebates, private equity, limited partnerships, co-productions, venture capital, deferments, and usually a combination of the above. Occasionally, as I have often done, an independent producer will take a personal financial risk and invest personal funds in the financing or co-financing of a film. The independent entrepreneur producer must have knowledge of the current foreign and domestic marketplace, as well as available subsidies and how to secure them. The independent entrepreneur producer is a tenacious street fighter who continually bucks the system and exists in spite of the odds. Independent entrepreneur producers are most often the *employer*,

not the *employee*, as well as the final decision-maker, and quite often (sometimes with partners) the owner of the completed film, the copyright, and the distribution rights. Decide who you are and which you are content with being. The independent entrepreneur producer is the victor over, not the victim of, the whims and decisions of others. They retain control over their own fate, and create their own destiny, fortune, and livelihood.

Producer Credits: What Do They Mean in Film?

Producer

I have given a fairly extensive overview of what I believe are the definition, scope, and duties of the producer as well as the knowledge that I believe is essential for a producer to be viable and successful. As evidenced by the proliferation of producer credits over the past two decades, the entertainment industry has gone “producer credit crazy”—on some projects, I have seen as many as twenty credited “producers” of various types. Both the PGA and the Academy of Motion Picture Arts and Sciences have, in recent years, tried to limit excessive numbers of credited “producers.” While I agree with limiting the number of gratuitous credits in order to protect the integrity of my profession, unfortunately this has become a double-edged sword, with some bona fide producers suffering unfairly. For instance, in 2004, the Academy declared that Bob Yari, although a credited producer on the film *Crash*, was deemed ineligible to receive an Oscar along with the other producers. Had Yari not read the screenplay, understood and shared the vision of the film with other filmmakers, and personally financed and arranged for the distribution of the picture, there would have been no *Crash*, no fees or salaries paid to the other producers, and certainly no Oscar for anyone. That his vital contribution was slighted and negated by mainstream “employees” (i.e., the film’s other producers, whom Yari hired and paid) clearly illustrates that most producers for hire do not understand the independent world and the essential role played by independent entrepreneur producers.

Executive Producer

In years past, an executive producer was traditionally the money person, or the person responsible for bringing the financing and/or distribution to the picture. More recently, executive producer credits have lost their meaning, and they are frequently used like trading cards. Often established line producers who are trying to “move up” in their perception within the industry ask for an executive producer credit, rather than a line producer credit. Often an actor may be accorded a gratuitous executive producer credit as an inducement to sign up to a project. Occasionally a writer or director may be accorded an executive producer credit for a number of reasons. In film,

there is no longer a clear definition of the function of an executive producer. Again, in film, the *producer* is the “go to” person. However, there have been times when I have been the go-to person on films that already had producer credits promised to other people who were attached to the project, and consequently I accepted an executive producer credit as a compromise. Also, some foreign subsidy regulations allow executive producer credits to be accorded only to non-nationals, as is the case with Canadian content pictures. In series television, however, “executive producer” usually denotes creative writers/producers.

My executive producer credits have usually been the result of situations in which: I have been a key creative producer, but the producer credits were overloaded or simply unavailable; I’ve provided a key component of financing for the pictures; or I have been integrally involved in film setup, post-production sales, or distribution.

In television, however, executive producer credits are the most important and prestigious credits, as they often denote the writers and/or writer/showrunner who are the creative driving forces behind the series or miniseries. In most TV shows or miniseries you will see numerous executive producer credits, usually accorded to writers.

Co-executive Producer, Associate Producer, Co-producer

The co-executive producer, associate producer, and co-producer have no clear, delineated functions. Credits are free and are often given in lieu of financial compensation, or to throw a bone to someone who may have found the script, brought in an actor or other component of a deal, or is on staff at a particular company involved in the film.

I have seen these credits given to everyone from assistants, personal trainers, and personal chefs to boyfriends, girlfriends, husbands, wives, lovers, and various others who serve no real or specific producer function. They are also often given to people who have tried and failed to get a project made, yet somehow remain contractually “attached” to it, and so receive a gratuitous credit despite playing no role in the actual production process.

Credits also often serve as barter to save money in a variety of ways. For instance, I have frequently given an actor an executive producer credit as an inducement to get him or her to work for less money, or as a way to bifurcate his or her salary, thus reducing the pension, health, and welfare contribution that must be paid on the acting portion of the salary. For example, as of 2015, if an actor’s deal calls for payment of \$100,000, 17.3 percent—or \$17,300—would be due to the Screen Actors Guild as the pension, health, and welfare contribution. However, by paying the same person \$50,000 as an actor and \$50,000 as an executive producer, the pension, health, and welfare contribution is payable on only \$50,000, saving the company \$8650.

Line Producer

Traditionally a line producer is the “nuts and bolts” guy or girl with the real physical production knowledge. Along with the producer, the line producer drafts the budget, collaborates with the first assistant director to create the shooting schedule, negotiates with the below-the-line crew and vendors, and oversees set operations, paperwork, and the wrap-out of the picture. He or she is a glorification of what a unit production manager used to be.

Generally, in my smaller independent films, I use a line producer whom I’ve worked with many times in the past, and between us we perform almost every production role. A good, solid, knowledgeable line producer who can multi-task is a valuable asset. Under the producer’s supervision, a line producer also holds the purse strings and is the key person for keeping the picture on track, on time, and, most importantly, on budget. Along with the producer, he or she must be able to anticipate overages before they occur and to come up with spur-of-the-moment, innovative ideas to curtail potential financial overruns. A good line producer should also be able to hold back a “secondary contingency” in each line item of the budget and possess the ability to move things around within the budget when necessary without increasing the bottom-line cost. (This secondary contingency is derived by negotiating less than what is budgeted in every category whenever possible.) On films that have completion bonds, a line producer, in addition to the producer and director, is often required to sign an inducement letter with the bond company (which I will discuss in a later chapter). Inducement letters attest that the signers have read the script, reviewed the schedule and budget of the picture, and believe, in their professional knowledge and expertise, that the picture, as scripted, can be produced within the bonded shooting schedule and budget, and that they will do everything in their professional capacity to see that the picture conforms substantially not only to the screenplay but to the budget and schedule.

In today’s higher-budgeted films, you will find executive producers, co-executive producers, associate producers, co-producers, occasionally supervising producers, a line producer, producer(s), a unit production manager, production coordinators, production secretaries, and more production-related credits. These credits indicate far too many people and way too much baggage and overheads for a small independent film (unless they are merely gratuitous credits and none of the people receiving them actually has any authority over the production).

In 1978, I starred opposite Kirk Douglas in *The Fury*, directed by Brian De Palma. I remember thinking, in my youthful naivety, that the executive producer, Ron Preissman, was the boss, since I was impressed by the “executive” in his title. My misconception was quickly corrected by the feisty Frank Yablans (former president of Paramount Studios), who informed me that *he* was the producer, the boss, the chief, while Preissman worked for *him*. He explained: “The producer is king; everyone else is his subject.”

Changes to the Independent Marketplace

By the late 1990s, the domestic home video market had started to change dramatically. Executives at the major studios realized that films made for straight distribution to home video, a business that had largely been dominated by independent producers and distributors, were quite lucrative. They multiplied their production slates, not only to produce new direct-to-home video entertainment, but also to cannibalize their libraries and make sequels and remakes of their own “branded” content (i.e., previously successful films that already had some awareness in the marketplace).

In the early 1990s, there were independently owned home video retail and rental stores on virtually every street corner in America, until the juggernaut that Blockbuster became put almost all of the independent stores out of business and changed the course of free enterprise in the home entertainment business for ever. At that time, there were also many independent home video distributors.

When heads of the major studios figured out the cash cow that was the home entertainment business (i.e., straight-to-video productions with no theatrical release or P&A expenditures), they more than doubled their production slates, took over the market share, and then slashed the unit price of the VHS cassette (and later DVD), making it extremely difficult for any independents to compete. Almost all of the independent video distributors were put out of business by the majors, who had vast libraries from which to cull sequels and remakes of titles with which audiences were already familiar. For example, I made a small family film in the 1990s called *Invisible Mom*, starring Dee Wallace-Stone (star of *E.T.*, *The Howling*, and *The Frighteners*). The retail price for a VHS cassette at that time was \$89.95. All of a sudden, Disney began putting straight-to-video sequels, such as *Pocahontas II*, on the market at a \$19.95 price point. These sequels had brand awareness from the theatrical releases and benefited from the publicity and marketing of the original films; they had trusted “brand” logos, such as Disney; and they had hugely reduced unit prices. The majors took over the marketplace and crushed the independent producers, home video distributors, and independent retail stores, with no intervention or regulation from the federal government; before long, the entire business was virtually

monopolized. The studios first moved into the domestic home entertainment market and then into every territory worldwide. Then they cut the unit price per VHS dramatically, and the home entertainment business all over the globe became all about shelf space.

Historical Context

To understand the historical context and the devastating blows to the independents and free enterprise that the blindly naive U.S. government continues to allow, consider the following. In the 1940s, the studios indirectly controlled almost all independently owned theaters. They did this by selling “blocks” of their films (usually ten) to the theaters, which was known as “block booking.” If these theater owners didn’t accept the blocks (which could comprise several B as well as A movies), they got no films at all. That would mean no star talent to attract audiences. What resulted was the legal case *United States v. Paramount Pictures, Inc., et al.*, in which the U.S. government filed an antitrust suit against the studios and alleged that studio control over distribution *and* exhibition was, according to the Sherman Antitrust Act, an illegal restraint of trade. Basically, the government gave the studios an ultimatum: they must divest themselves of either their distribution arms or their theaters.

There was also, until recently, a federal mandate that required broadcasters to air a certain portion of independent programming. But that mandate eventually expired and nothing replaced it. At the time of writing, there was no requirement for independent programming in the United States, and just six major conglomerates owned every conceivable form of production and distribution, on a global scale. Think of this. What is more onerous and devastating to the restraint of free trade: the studios that owned a chain of movie theaters or the conglomerates that today own the studios, networks, and international distribution in most major territories worldwide, television stations, radio stations, and all of the major internet search engines and websites?

How much more devastating to small business and independent production could these behemoth monopolies be? The “conglomerates,” as they exist today, are so much greater and more powerfully glaring monopolies than any studio that owned a chain of cinemas, yet our government has turned a blind eye, at the expense of free enterprise and the protection of small businesses and individuals, as antitrust laws are violated. Washington is a corrupt place where you have to “pay to play,” which means that lobbyists are paid to bring issues to the attention of congressmen and senators, who, in turn, expect political contributions when they devote their time and energy to a concern.

The Independent Film and Television Alliance (IFTA), whose board I served on for almost a decade, is a trade organization that fights for the rights of independents. It is up against the conglomerates, which have huge

budgets for their lobbyists in Washington, but hopefully there will be governmental intervention sooner rather than later. Interestingly, in industry vernacular, the studios used to be referred to as the “majors.” Now the Hollywood trade press refers to them, more fittingly, as the “conglomerates.” The six major vertically integrated conglomerates are Viacom (which split from CBS in 2005), CBS Corporation, the Walt Disney Company, 21st Century Fox/News Corporation, Sony, and Time Warner. (A list of these major entertainment conglomerates and their holdings, as of 2013 writing, can be found in Appendix A.)

Monopolies versus Independent Free Trade

Even more frightening is a specific breakdown of what the conglomerates actually own. As an example, I offer a list of Time Warner’s assets in 2013.

- Cable channels:
 - Adult Swim
 - Boomerang
 - Cartoon Network
 - CETV
 - Cinemax
 - CNN
 - CNN Headline News
 - CNN Mobile
 - CNN Radio
 - GameTap
 - HBO
 - iN Demand
 - Metro Sports
 - New York 1 News
 - Peachtree TV
 - Pogo
 - Road Runner
 - TBS Superstation
 - Time Warner Cable
 - TNT
 - Toonami
 - TruTV (with Liberty Media)
 - Turner Classic Movies
- HBO Independent Productions
- Kids’ WB!
- New Line Cinema
- Telepictures Productions
- Turner Original Productions
- Warner Bros. Studios
- Warner Home Video
- WB Domestic Pay-TV
- WB International Cinemas
- WB Interactive
- Online services:
 - ADTECH
 - Advertising.com
 - Amazon.com (partial)
 - AOL.com Portal
 - AOL Europe
 - AOL Instant Messenger
 - AOL MovieFone
 - CompuServe Interactive Services
 - Digital City
 - GameDaily.com
 - iAmaze
 - ICQ
 - Lightgicast
 - MapQuest.com
 - NASCAR.com
 - Netscape Communications
- Film/TV production and distribution:
 - Castlerock Entertainment
 - The CW Network
 - Hanna-Barbera Cartoons

-
- Netscape Netcenter Portal
 - PGA.com
 - Quack.com
 - Relegence
 - Spinner.com
 - TACODA
 - Third Screen Media
 - Truveo
 - Userplane
 - WBshop.com
 - Weblogs, Inc.
 - Winamp
 - Xdrive
 - Other entities:
 - American Family Publishers (partial)
 - Turner Home Satellite
 - WB Recreation Enterprises Theme Parks
 - Magazines:
 - *4x4*
 - *Aeroplane Monthly*
 - *Amateur Gardening*
 - *Amateur Photographer*
 - *Ambientes*
 - *Audi Magazine*
 - *Balance*
 - *Beautiful Kitchens*
 - *Bride to Be*
 - *Caravan Magazine*
 - *Chat*
 - *Chat – It's Fate*
 - *Chilango*
 - *Coastal Living*
 - *Cooking Light*
 - *Country Homes/Interiors*
 - *Country Life*
 - *Cycle Sport*
 - *Cycling Weekly*
 - *DC Comics*
 - *Decanter*
 - *Entertainment Weekly*
 - *Essence*
 - *Eventing*
 - *EXP*
 - *Expansion*
 - *Family Circle*
 - *Fortune*
 - *Golf Magazine*
 - *Guitar*
 - *Health*
 - *Hi-Fi News*
 - *Hippocrates*
 - *Home and Garden*
 - *IDC*
 - *Ideal Style*
 - *InStyle*
 - *International Boat Industry*
 - *Life and Style*
 - *Mad Magazine*
 - *Manufatura*
 - *Money*
 - *Mountain Bike Rider*
 - *MiniWorld*
 - *NME*
 - *Now*
 - *Nuts*
 - *Obras*
 - *People*
 - *Pick Me Up*
 - *Practical Parenting*
 - *Prediction*
 - *Quién*
 - *Racecar Engineering*
 - *Real Simple*
 - *Rugby World*
 - *Ships Monthly*
 - *Shoot Monthly*
 - *Soaplife*
 - *Southern Accents*
 - *Southern Living*
 - *Sports Illustrated*
 - *SI for Kids*
 - *Sporting Gun*
 - *Stamp Magazine*
 - *Sunset*
 - *SuperBike Magazine*
 - *The Railway Magazine*

- *Teen People*
- *Time*
- *TV and Satellite Week*
- *TV Easy*
- *TVTimes*
- *Vertigo*
- *Vuelo*
- *Wallpaper*
- *Web User*
- *Wedding*
- *What Digital Camera*
- *What's on TV*
- *Who Weekly*
- *Wildstorm*
- *Woman's Own*
- *Woman's Weekly*
- *Yachting World*
- *Yachts*
- *Your Yacht*

The stance of IFTA—as it fights for the rights of the independents, free trade, fair trade, and free enterprise—is paraphrased below (but most of the original language is used).

The freedom to create and distribute movies and TV shows is threatened by a handful of giant media companies that want to control both programming and all the distribution channels in order to protect their own marketplace positions.

From 1995 through 2010, the share of independent TV production on prime-time television fell from 50 percent to 18 percent. Why? Because a few giant media conglomerates—News Corp., NBC/Universal, Disney, Time Warner, Viacom—combined TV and cable networks, movie studios and distribution channels to control as much of our entertainment system as possible, leaving independents gasping for air time. The result: less quality programming for the public and fewer options for creative, talented people across the world.

While independent producers and distributors have been pushed out of the marketplace, the Federal Communications Commission (FCC) has chosen not to address the issue, despite simple solutions for relief to ensure the survival of diversity in programming.

But the prospects for independents can be improved. The FCC can require broadcast and cable stations to air a minimum amount of programming from diverse sources, which would give independents the opportunity to break through the consolidated entertainment marketplace.

This doesn't just affect television and film. Today, the history of television tells us that the future of the internet is also at risk as huge telecom and cable companies strike deals to secure program supply for the broadband networks they control. Without help, this last open frontier for independent voices may also be fenced off to protect these giant companies' investments.

Join the fight for independents! Protect the public's access to challenging films and entertaining television in theaters, on TV, and over the internet. Write to the FCC, asking them to protect the public's access to independent film and TV programs by requiring media conglomerates to air a minimum amount of independently created programming. Help preserve quality, creativity, and democracy in media!

More than just preserving quality, creativity, and democracy, divesting the conglomerates would preserve any individual's right to create his or her own film, television show, entertainment project, or entertainment company, without being an employee puppet within the studio/conglomerate system.

Here is an even bigger travesty. After the conglomerates, unchecked by the federal government, were allowed to monopolize every imaginable form of media and distribution outlet, they fired their employees in droves, while CEOs and key executives continued to make millions per year in bloated salaries and stock options. The February 15, 2009, issue of the *Hollywood Reporter* stated that "Media and entertainment firms have continued to announce job cuts since the start of the year," with the Disney/ABC TV Group cutting another 400 jobs, Warner Bros. another 800, AOL another 700, Clear Channel another 1850, Tribune another 300, Bloomberg another 100, and Warner Bros. Cable another 1250, all in the first five weeks of 2009.

Home Entertainment Consolidation

As Blockbuster monopolized the domestic video rental outlets and, concurrently, sell-through (the discount sale of videocassettes and later DVDs) evolved, it and eventually Wal-Mart became the major retail sales outlets for home video product. As all of the independent, straight-to-video distributors and retail stores were put out of business one by one, Blockbuster created an acquisitions arm called DEJ Productions. Its mandate was threefold:

- to acquire all the domestic rights for independent films that DEJ, a Blockbuster subsidiary, would own;
- to create its own library; and
- to promote and distribute these films through its massive chain and use its in-store promotional advantage to induce consumers to buy and rent its own acquired product.

In the same era, HBO acquired a certain number of independent films for "premieres," meaning those films would premiere on HBO before they were exhibited anywhere else in the domestic territory (if not the world). HBO was very discerning and specifically acquired action and thriller films that were consistently true to the genre. Incidentally, out of seventy films that my company Royal Oaks Entertainment produced or acquired, only three sold as HBO premieres: *Grid Runners*, *Crash Dive*, and *The White Raven*, each of which I happened to direct. I sold many films to HBO as a producer at Franchise Pictures, from *Mercy*, starring Ellen Barkin, and *A Murder of Crows*, starring Cuba Gooding Jr., to *The Confession*, starring Alec Baldwin.

As Blockbuster was losing many of the best independent films to HBO, it created its own strategy to compete. For a brief period, Blockbuster and DEJ acquired independent films for “premieres” as well, meaning that the films would debut exclusively in Blockbuster stores before distribution in other markets. Selling a film as a “premiere” to either Blockbuster or HBO meant substantially more money for the producer.

One of the Blockbuster domestic “premiere” acquisitions was the popular cult film *The Boondock Saints*, which I executive produced (providing the financing and foreign and domestic sales for the picture). It was never released theatrically in the United States; instead, it was acquired as a straight-to-VHS/Blockbuster world premiere for a one-year term. The film was extremely successful for Blockbuster, and when the one-year term expired, I offered the company an extension, as well as DVD rights. Blockbuster’s executives declined to extend the term, saying that they believed that everyone who would ever want to see the film had already seen it. Similarly, they declined to acquire DVD rights, stating that they were not in the DVD business. (The DVD format was in its infancy at the time. Players cost \$1200–\$1500, the image was often pixelated and erratic, and the discs would frequently freeze.) Consequently, a small, domestic home video company bought the DVD rights for a minimal sum, because there were no other offers. That company held off on the distribution of the film until DVD matured as a format, then it released it through Fox, making millions of dollars that Blockbuster could have had.

By 2001, HBO had stopped buying premiere movies from independents, focusing instead on original content and series events for its network. By 2005, after several poor management decisions, falling stock prices, and failure to meet its bank covenants, DEJ was sold. Blockbuster stopped paying to acquire independent films and began a revenue share model with studios. This approach has subsequently allowed the company to stock more copies of new releases. By 2003, fueled in no small part by the dramatic drop in the retail price of DVD players, DVD became the viable successor format to VHS, and by 2006, as announced by the Hollywood trade publications, the demise of VHS had become official.

Major television networks have rarely bought independent films for network broadcast. Over time, the cable networks increasingly curtailed their purchase of independent films in favor of studio output deals and original programming. As described above, middle-tier buyers for independent product in the domestic market, who previously were the mainstay for independent film sales domestically, have decreased substantially or ceased to exist. The few survivors have been the very smart DVD distributors, genre arms of the majors and mini-majors, and the innovative independents who have figured out new models of distribution strategy, such as the enormously successful “faith-based” films like *Facing the Giants* and *Fireproof*.