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of
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Dictionary
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FILM FINANCE
and
DISTRIBUTION

**A Guide for
Independent
Filmmakers**

JOHN W. CONES

**MARQUETTE BOOKS LLC
SPOKANE, WASHINGTON**

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Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Cones, John W.

Dictionary of film finance and distribution : a guide for independent film makers / John W. Cones.
p. cm.

Includes bibliographical references.

ISBN 978-0-922993-93-2 (hardcover : alk. paper) -- ISBN 978-0-922993-94-9 (pbk. : alk. paper)

1. Motion picture industry--Finance--Dictionaries. 2. Motion pictures--Distribution--Dictionaries.

I. Title.

PN1993.5.A1C642 2008

384'.8303--dc22

2007036685

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Spokane, Washington 99223
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www.MarquetteBooks.com

To my son,
J. Christopher Cones

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ACKNOWLEDGMENTS

Many of the entries in this book contain information drawn from as many as six or seven sources, lecture notes, books on the industry, conversations with people who work in the industry, trade press articles, magazine articles, etc. Thus, I gratefully acknowledge the many sources listed in the bibliography.

I also wish to express my special thanks to Los Angeles copyright attorney Greg Victoroff, screenwriter Gail McNamara, film/law school graduate Jeff Foy, feature film technical consultant James Kelly Durgin, director of photography Levie Isaacks, producer Tony Anselmo, New York entertainment attorney Wilder Knight and writer/attorney Thomas M. Sipos for their assistance in editing the first edition of this book.

It is also appropriate for me to acknowledge here—without suggesting that such persons are in anyway directly responsible for the information or opinions expressed in this book—all of the lecturers and panelists presenting film finance and distribution related topics that I have listened to and learned from during the past several years:

At IFP/West-sponsored events: Zanne Devine (Director of Acquisitions, Universal Pictures), George Jackson (Producer “New Jack City”), Neal Jimenez (Screenwriter “River’s Edge”), Bobby Newmyer (Producer “sex, lies and videotape”), John Singleton (Director and Screenwriter “Boyz n The Hood”), Courtenay Valenti (Production Executive, Warner Bros. Studios), Tom Garvin (Producer’s Representative and Partner, Ervin,

Cohen & Jessup), Christopher Murray (Partner in the Entertainment Department of the law firm of O’Melveny & Myers), Barbara Boyle (President of Sovereign Pictures), Douglas T. McHenry (Partner and Producer/Director with the Jackson McHenry Company at Warner Bros.), Irene Romero (Executive Vice President, Mercantile National Bank), Charles Kolstad (West Coast Entertainment Industry Tax Partner for Coopers & Lybrand), Robert Manning (Head of the Entertainment/Leisure Time Group at Oppenheimer & Co.) and Stephen Bannon (Partner at Bannon & Co., a Beverly Hills-based merchant bank).

At the 1992 UCLA Law Symposium: Peter Dekom (Partner, Bloom, Dekom & Hergott), Carrie J. Menkel-Meadow (Professor, UCLA School of Law), Ellen Peck (Judge of the State Bar of California Disciplinary Court), Dennis Perluss (Partner, Hufstedler, Miller, Kaus & Beardsley), Martin Singer (Partner, Lavelly & Singer), Kenneth Ziffren (Partner, Ziffren, Brittenham & Branca), Leigh Brecheen (Partner, Bloom, Dekom & Hergott), Thomas Hansen (Partner, Hansen, Jacobson & Teller), Edward Masket (Executive Vice President-Administration, MCA Television Group), Sanford Wernick (Vice President, The Brillstein Company), Laurie Younger (Senior Vice President-Business Affairs, Walt Disney Television), Harold Vogel (First Vice President, Merrill Lynch & Co.), Stuart Glickman (Vice Chairman and Chief Executive Officer, The Carsey-Werner Company), Leonard Hill

(Chairman of the Board, Allied Communications), Robert Jacquemin (President, Buena Vista Television), Art Stolz (Executive Vice President-Business Affairs & Finance, Lorimar Television), Ron Sunderland (Executive Vice President-Business Affairs & Contracts, Capital Cities/ABC), Valerie Cavanaugh (Executive Vice President, Gracie Films), Gary Barber (President, Morgan Creek), John Ptak (Agent, Creative Artists Agency), Strauss Zelnick (President, Chief Operating Officer, 20th Century Fox), Keith Fleer (Of Counsel, Sindair Tenenbaum & Co.), Martin Bauer (President, United Talent Agency), Leon Brachman (Business Executive), Bertram Fields (Partner, Greenberg, Glusker, Fields, Claman & Machtinger), Barry Hirsch (Partner, Armstrong & Hirsch), Peter Hoffman (President & Chief Executive Officer, Carolco Pictures) and E. Barry Haldeman (Partner, Greenberg, Glusker, Fields, Claman & Machtinger).

At the 1992 Third Decade Council Annual Conference (not already mentioned): Peter Benedek (United Talent Agency), Preston Beckman (Vice President, Program Planning & Scheduling at NBC Entertainment), James L. Brooks (Writer/Director/Co-Producer of "Terms of Endearment"), Stephen J. Cannell (Writer/Producer), Mark Canton (Chairman of Columbia Pictures), Caldecot Chubb (Producer "Cherry 2000"), Carlton Cuse (Boam/Cuse Productions), Sean Daniel (President of Sean Daniel Company), Diane English (Creator/Writer/Executive Producer of "Murphy Brown"), Marc Ezralow (Producer of "Memorial Day Massacre"), Neil Alan Friedman (Executive Vice President of the Edward R. Pressman Film Corporation), Robert G. Friedman (President of Warner Bros. Worldwide Theatrical Advertising & Publicity), Tom Hansen (Hansen, Jacobson & Teller), Ted Harbert (Executive Vice President, Prime Time, ABC Entertainment), Peter Hoffman (Carolco Pictures), Jerry Katzman (President William Morris

Agency), Jamie Kellner (President and CEO of Fox Broadcasting Company), Kerry McCluggage (President of Universal Television), Michael Nathanson (President, Worldwide Production at Columbia Pictures), David Nicksay (President and Head of Production of Morgan Creek Productions), John Ptak (Creative Artists Agency), Steven Roffer (The Steven Roffer Company), Tom Schulman (Writer "Dead Poet's Society"), Tom Sherak (Executive Vice President of Twentieth Century Fox), Joel Silver (Producer the "Lethal Weapon" series), Nigel Sindair (Managing Partner Sindair Tenenbaum & Co.), Gary Ross (Co-Author for "BIG"), Robert Stein (United Talent Agency), Rosalie Swedlin (Longview Entertainment), Jonathan Taplin (Producer "Mean Streets"), Strauss Zelnick (President and COO of 20th Century Fox) and Laura Ziskin (Producer "Pretty Woman").

At the 1991 and 1992 UCLA Extension Class "Contractual Aspects of Producing, Financing and Distributing Film" and other UCLA Extension sponsored seminars of the author: profit participation auditor Stephen Sills (Partner, Sills and Adelman), Deborah Dubelman (Director of Legal and Business Affairs, Republic Pictures Corporation), Mark Resnick (Senior Vice President, Legal Affairs, Columbia Pictures), Greg Victoroff (copyright attorney), Teri Williams (Entertainment Attorney), Gary Watson (formerly a Legal Affairs Attorney at Universal, now with the law firm of Greenberg, Glusker, Fields, Claman & Machtinger), Irene Speiser (Vice President, Entertainment Industries Division, Mercantile National Bank), Lionel Sobel (Professor, Loyola Law School), Steve Cardone (International Film Guarantors), Glenn Harvey (DAIWA Bank), Anna Bagdasarian (Bank of California), Susan Schaefer (Entertainment Attorney), Madelyn Adams (20th Century Fox Marketing), Doc Littlefield (Profit Participation Auditing Section at Deloitte-Touche) and Jonathan Dana (Triton Pictures).

At the 1991 Paul Kagan Seminar on Motion Picture Finance: Don Harris (AMC Film Marketing), Anna Bagdasarian (Bank of California), Michael Mendelsohn (Banque Paribas), Mitchell Julis (Canyon Partners), John Davis (Davis Entertainment), David Friendly (Imagine Films Entertainment), Joseph Cohen (Largo Entertainment & InterMedia Group), Lynda Obst (Lynda Obst Productions), Ken Badish (Moviestore Entertainment), Robert Shaye (New Line Cinema), Brandon Tartikoff (Paramount Pictures), William Shields (TransAtlantic Pictures), Barry Reardon (Warner Bros. Distribution), Brian Maki (Yasuda Trust & Banking), Ken Ziffren (Ziffren, Brittenham & Branca) and Paul Kagan (Kagan Seminars).

At the AFI Producers on Producing Series (1991): Renny Harlin ("Rambling Rose"), Debra Hill & Lynda Obst ("The Fisher King"), Don Phillips ("The Indian Runner") and Ron Ronholtz ("Homicide").

At other AFI seminars: Gary Prebula (Moderator, Writer/Director), and fellow panel members Irene Speiser (Mercantile National Bank), Bill Nestel (Rastar Productions), J. David Williams (Willsfield Productions), Robert Vince (President of Motion Picture Bond Co.), Lewis Horwitz (The Lewis Horwitz Organization), Tekla Morgan (President, International Film Guarantors), Leroy Bobbitt (Partner, Loeb & Loeb, Entertainment Division), Sam Grogg (Chief Executive Officer and Executive Producer of Apogee Productions and its subsidiary, Magic Pictures), Jerry Leider (Chairman of the Caucus for Producers, Writers and Director and Producer of "The Jazz Singer"), Jason Zelin (Vice President, New Business Development Liaison for The Completion Bond Company), Mitchell Cannold (Principal Lilly Anna Productions and Co-Executive Producer for "Dirty Dancing"), Steve

Monas (Senior Vice President for Business Affairs at Vision International), Harold Messing (Entertainment Attorney, Los Angeles and New York) and Michael Wiese (Moderator, Producer/Director).

At Cinetex '90 my fellow panel members: Michael Sherman (Jeffer, Mangels, Butler & Marmaro), John Sansone (President, Entertainment Business Services International) and Joel Koenig (Partner in Charge, Century City office of Deloitte & Touche).

At the American Academy of Independent Film Producers seminar in 1986 (with titles as of that year): Lawrence Garret (Director of Sales and Acquisitions for Arista Films), Dov S-S Simens (The Film Doctor), Lance Hool (Producer "Missing In Action"), Hank McCann (Casting Director for "Pennies From Heaven"), Dom Spinosa (Head of MGM's Payroll Department), Susan Strasberg (Actress), Eric Epstein (Attorney), Ezra Doner (Vice President, Business Affairs, Cinema Group), Randy Gaiber (Bank of California), Wilbur Hobbs (Wells Fargo Bank), Mary Savarese (Cohen Insurance), David Rudich (Music Rights Attorney) and Roger Corman (Producer). I also thank the members of the 1992 Winter Quarter UCLA Extension class "Contractual Aspects of Producing, Financing and Distributing Film," who saw earlier drafts of this book.

Although I have learned a great deal from my brief exposure to the above named persons, none of these individuals or entities is responsible for the definitions, usage examples or commentary contained in this book. I alone take full responsibility for whatever deficiencies are contained herein.

*John Cones, Entertainment and Film Attorney
Los Angeles, Fall 2007*

INTRODUCTION

Like many industries, the U.S. film industry has developed its own unique vocabulary to describe its activities and operations. Many books, articles and agreements include a small glossary to help people understand this lexicon. Several major film dictionaries also are available (see Bibliography). These books do a good job in defining concepts associated with the technical, production or marketing aspects of the film business. However, they typically have very little content about the financing and distribution aspects of film making — i.e., the business side of the movie-making business.

I wrote this dictionary to help fill this void. More specifically, my goal was to help level the playing field a bit when it comes to negotiating financing and distribution of films. The large film studios and theater chains employ attorneys and others who are experts in negotiating film contracts. In contrast, most independent filmmakers and producers have limited knowledge of the law, in part because the schools and universities that educated them stress the technical, creative or production side of film making, not the business side. One consequence of this disparity is that independent filmmakers and producers are usually at a disadvantage when it comes to negotiating the financing and distribution of a film.

The information in this book should prove valuable to a wide range of people seeking to

independently produce a film, including attorneys, distributors, executive producers, producers, associate producers, studio executives, screen writers, directors, exhibitors, broker/dealers, money finders, accountants, auditors, investors, profit participants, federal and state government officials and film students.

The terms and phrases defined and discussed in this dictionary are those of feature film finance and distribution, which includes film production, marketing, accounting, insurance, securities, legal structures (e.g., corporate, limited partnership and limited liability company financing vehicles), and general financial arenas. All of the principal forms of feature film finance are covered, including studio/distributors, production companies, lending institutions, co-financing, pre-sales, grants, foreign and passive investor financing. Some additional terms and phrases are included, not because they commonly appear in film finance or movie distribution agreements but because they are essential to a well-rounded understanding of the industry and environment in which such film finance and distribution agreements are negotiated (see “Contract of Adhesion”). Still other terms were selected and included because they may help readers understand some of the terms in this dictionary. In many instances, the definitions also show how the term or phrase is specifically used in the film industry.

PERSPECTIVE OF THIS BOOK

As mentioned above, this book was written to help independent filmmakers and producers negotiate successfully with big studios and film distributors. For some terms and concepts, this book provides more than a descriptive definition—it seeks to more fully explore the film industry by analyzing some of the reasons why this business is dominated by the major studio/distributors and why independent feature film producers as a group have so little clout in the industry (see “Inferior Bargaining Position”).

Many of the ideas expressed in this book came from experts who spoke at industry seminars listed in the “Acknowledgments” section, or from the books and articles listed in the bibliography and the conversations I have had with several hundred independent producers during the past five years. Many attended one or more of the several hundred seminar lectures on film finance and distribution that I have given in Los Angeles, New York, San Francisco, Las Vegas, Dallas, Houston, and elsewhere. I am a practicing film attorney. I also have worked as an association executive, a lobbyist and a radio/television news reporter. All of these roles have helped shape the content of this book.

WHY FOCUS ON DISTRIBUTION?

Some readers may be wondering why a book on film finance would also discuss distribution. The reason is that film finance cannot be adequately explained if no provision is made for how invested money may or may not return to financiers and/or investors (i.e., the financial side of distribution). The feature film industry has a history of anti-competitive practices, and distribution is often at

the center of these problems. My hope is that the emphasis on antitrust issues may help aspiring filmmakers to recognize that there are certain significant barriers to entry (see the entries on “Barriers to Entry,” “Insider’s Game” and “Relationship Driven Business”)—so significant that many will find it impossible for them to get a fair hearing for their talents or ideas. The editorial emphasis on antitrust law issues also may help aspiring filmmakers avoid violating the law (see “Business Practices,” “Conduct Restrictions” and “Predatory Practices”). Finally, for readers who have little knowledge of the legal proscriptions against such conduct, this book may help keep them out of trouble as well as uncover and report abuses to the U.S. Justice Department and/or their own friendly antitrust law litigator in the event a civil remedy is appropriate (see “Remedy” and “RICO”).

HOW TO USE THIS BOOK

Like other dictionaries, this book may be used as a reference source to determine the meaning of a specific term as used in a given context. But because all of the terms included herein relate to the rather broad field of film finance and distribution, it can also be used as a textbook to gain a fairly comprehensive understanding of the business.

For classroom use or independent study, readers may also take certain broad subject areas, such as those listed on the so-called “Motion Picture Production Chart” (i.e., Acquisition, Development, Packaging, Production Financing, Pre-Production, Principal Photography, Post-Production and Delivery—see next section for details), and use the extensive cross-referencing of terms in that chart or within the definitions of the terms themselves. My updated list of “337

Business Practices of the Major Studio/Distributors” (see page 7) also can also be used in this way. An entire reading assignment for a class can be organized around these groupings of terms.

For readers who are relatively new to the field of film finance and distribution, I have also included a section called “Overview of the Motion Picture Industry,” which helps place the terms defined in this dictionary into a general context.

All entries in this book are alphabetized by

letter rather than by word (i.e., multiple words are treated as single words). Also, certain abbreviations or acronyms appear as entries in the main text but generally refer to the corresponding full term as it would appear elsewhere in the text. Terms and phrases mentioned within other defined terms and phrases are not capitalized or italicized because that can be distracting. Instead, terms are cross-referenced at the end of each defined term.

TERMS ASSOCIATED WITH MOTION PICTURE PRODUCTION

The development and production of a motion picture can be broken down into stages or steps, beginning with “Acquisition” and ending with “Delivery.” These stages are also known as the “Producer’s Task List.” Here are some of the key terms associated with each stage that are defined in this dictionary.

1. ACQUISITION

Acquisition Agreement	Fixed Work	Play
Book	License	Public Domain
Certificate of Authorship	Literary Work	Submission Release
Chain of Title	Magazine Article	Underlying Property
Copyright	Option Agreement	Work Made for Hire
Fair Use	Original Screenplay	
	Plagiarism	

2. DEVELOPMENT

Basic Story Outline	Idea/Concept	Screenplay
Copyright Registration	One-Line Description	Synopsis
Development Financing	Polish	Treatment
Final Screenplay	Rewrite	WGA Registration
First Draft		

3. PACKAGING

1 st Draft Script Breakdown	Packaging Attorney	Production Budget
Casting	Packaging Service	Production Board
Completion Bond	Packaging Agent	Script and Breakdown
Director Commitment	Partial Financing	Star Commitments
Director Deferments	Pre-Sales, if any	Star Deferments
Distribution Agreements	Producer Deferments	Tentative Budget
Lab Deferments	Producer/Director Undertakings	Tentative Shooting Schedule

4. PRODUCTION FINANCING

Blocked Funds	Grants	P-F/D
Co-Productions	Joint Venture	Pre-Sales Agreements
Corporate Financing	Limited Partnership	Studio
Currency Deals	Limited Liability Company	Subsidies
Debt Capitalization	Loans	Tax Shelters
Facilities Deals	Negative Pickup Agreement	

5. PRE-PRODUCTION

Annotated Script	Equipment Rental Agreements	Producer's Agreement
Chain of Title Documents	Film/Sound Lab Agreements	Script Clearance
Crew/Performer Agreements	Location & Stage Agreements	Shooting Script
Deal Memos	Music Agreements	Written Releases
Director Agreement	Producer's Liability Insurance	

6. PHOTOGRAPHY

Cast/Extras	Film Stock/Sound Stock	Second Units
Dailies (Rushes)	Insurance	Set Design
Director	Lab Film Processing Letter	Staff
Director's Cast List	Location List	Studio Rental
Editing	Post-Production Schedule	Transportation
Equipment Rentals	Producer	
Fees and Taxes	Publicity	

7. POST PRODUCTION

Dialogue Replacement	Music	Pre-Mix Session
Dirty Dupes	Negative	Sound Effects
Editing	Optical Effects	Special Effects
Foley Stage Recording	Pick-up Photography	Titles

8. DELIVERY

Action Continuity	Final Screenplay	Photographs
Certificate of Insurance	Inter-Positive	Publicity Material
Composite Optical Soundtrack	Internegatives	Residual Information
Credit Statement	Laboratory Letter	Screen Credits
Delivery Schedule	Laboratory Access Letter	Shooting Script
Dialogue	Main and End Titles	Sound Album Materials
Dialogue and Sound Items	MPAA Certificate	Television Cover Shots
Film Credits	Original Picture Negative	Title and Copyright Reports
Film and Soundtrack Materials	Out-takes (Cutouts)	Work Print
Final Answer Print		

337 BUSINESS PRACTICES OF THE MAJOR STUDIO/DISTRIBUTORS

The following terms are associated with the business practices of the major studio/distributors and were collected from reports in trade papers, books about the industry, magazine articles, lawsuits and law journal articles. These terms and others are defined in this dictionary.

Account Number	Bargaining Power	Concentrated Ownership
Actual Breakeven	Barriers to Entry	Conduct Provisions
Adhesion Contract/Contract of Adhesion	Below-the-Line Fringes	Confidence Game
Adjusted Gross	Best Efforts Clause	Conflicting Dates
Adjustment	Bidding War	Conflicts of Interest
Admission Price Discrimination	Blacklisting	Conscious Parallelism
Advertising Overhead	Blind Bidding	Conspiracy
Advertising Costs	Block Booking	Consultation
Allocations	Blocked Currencies	Continuous Supply of Product
Allowances	Blurbs	Contractual Overhead
Ancillary Rights	Boilerplate	Contractual Breakeven
Anti-Competitive Practices	Breach of Contract	Contractually Defined Profits
Anticipated Expenses	Breakeven	Controlled Availability
Antitrust Law Violations	Buchwald Case	Controlled Theatre
Apportioned Expense	Buying A Gross	Cooperative Advertising
Approved Elements	Cartel	Corporate Opportunity
Arbitration	Cash Breakeven	Covenant of Good Faith and Fair Dealing
Article Twenty	Censorable Material	Creative Accounting
Artificial Breakeven	Checking and Collection Costs	Creative Control
Artificial Pickup	Closed Bidding	Cross-Collateralization
Assignment	Co-Feature	Customarily Kept by the Distributor
Association Antitrust Policies	Collective Bargaining Agreements	Customary
Attendance Checking	Combination in Restraint of Trade	Day and Date
Audit	Combination Ad	De Facto Cross-Collateralization
Average Negative Cost	Commercial Bribery	Deal Memo
Bad Debt	Commingling of Funds	Deem
Bad Faith Denial of Contract	Commonly Understood	Default Disaster
Bankruptcy	Completion Bonds	Deferrals or Deferrals

Delivery Date Acceleration	Grant of Rights	Model Agreement
Delivery Requirements	Graylisting	Money Laundering
Delivery	Greed	Monopoly
Development Hell	Gross Floor	Most Favored Nations Clause
Development Deal	Gross Participants	Motion Picture Association of America
Direct Distribution Expense	Gross Points	Movies With A Message
Discounts	Gross Receipts	MPAA Cartel
Discretion	Hard to Audit Expenses	MPAA Rating and Certificate
Discretionary Cross-Collateralization	Hidden Agendas	Multi-Cultural Society
Discrimination	Holdback Periods	Name-Dropping
Distribution Commitment	Home Video Royalty	NC-17
Distributor Credit	Homogenous Films	Negative Costs
Distributor Commercials	Horizontal Price Fixing	Negotiated Contractual Definitions
Dividend	House Nut	Negotiated Deal
Dominant Media Conglomerates	Idea	Nepotism
Double Add-Back	Illegal Trade Practice	Net Profit Participation
Double Distribution Fees	Illegal Combination	Number of Screens
Double Feature	Illusory Promise	Objective Delivery Requirements
Dues and Assessments	Improperly Claimed Expenses	Off-the-Bottom Expenses
Duress	Incestuous Share Dealing	Off-the-Top Expenses
Economic Abuses	Independent Audit Rights	Offset Rights
Economic Reprisal	Independent Checking Company	Oligopoly
Entire Agreement Clause	Independent Feature Project (IFP)	Ongoing Costs
Errors and Omissions Insurance	Industry Assessments	Oral Representations
Exclusions	Inferior Bargaining Position	Ordinary Interest
Exploitation Film	Initial Actual Breakeven	Ordinary Course of Business
Extortion	Insider's Game	Outright Sales
Facilities Allocations	Interest	Outstandings
Feature Film Limited Partnership	Laziness	Over-Budget Penalty
Fiduciary	Level Playing Field	Over-Reported Travel
Film Rentals	Leverage	Overhead or Overhead Costs
Film Schools	Liability Limitation	Overreaching
Final Judgment	Licensing Process	Package Sales
Final Marketing Outlet	Lie, Cheat and Steal Syndrome	Parallel Business Behavior
Final Cut	Limits on Dividends	Paramount Consent Decree of 1948
Financial Management	Litigation Disclaimer	Per Se Violations
First Position Gross	Litigation Budget	Perpetuity
First-Run Zoning	Loan Sharking	Polarization
Five O'Clock Look	Lobbying	Political Influence
Floor	Long Form Agreement	Power
Foreign Receipts	Mafia	Predatory Practices
Foreign Tax Credits	Major Exhibition Chains	Prejudice
Formula Deal	Management	Price Fixing
Franchise Agreements	Manipulation	Price Discrimination
Fraud	Market Power	Print Costs
Free Enterprise System	Market Share	Problem Producer
Frequency of Payments	Marketplace of Ideas	Producer's Share
Front End Load	Merger Guidelines	Producers Guild of America (PGA)
Generally Accepted Accounting Principles	Minimum Admission Prices	Production Overhead
Glamour Industry	Minimum Rating	Production Costs
Good Faith	Mod-Controlled Distribution Company	Profit Participations

Prompt Payment	Settlement Transactions	Transnational Cartelization
Propaganda	Settlement	TriStar Case
Puffed Numbers	Shared Employee Salaries	Trust Me
Racketeering	Shell Corporation	Trust
Ratings	Significant Barriers	Turnaround Provision
Reasonable Efforts Clause	Skimming	Twenty Percent Rule
Reasonable and Customary	Slate Cross-Collateralization	Tying Arrangements
Rebate	Squeeze-Out	Ultra Vires Activities
Reciprocal Preferences	Standard Contract	Unauthorized Distribution
Relationship-Driven Business	Standard Terms and Conditions	Unauthorized Cross-Collateralization
Release Slots	Standards and Practices	Uncollectible Indebtedness
Release Commitment	Stock Fraud	Unconscionable Contract
Remitted or Remittable	Stockholder	Under-Reported Rentals
Reserve for Returns	Stonewall Defense	Unethical Business Practices
Residuals and Royalties Provision	Studio Accounting Practices	Unfair Negotiating Tactics
Restraint of Trade	Sub-Distribution	Unfair Competition
Restricted Currencies	Subjective Terms	Unfavorable Portrayal
Retroactive Increase	Submission Release	Unrecouped Expenses
Retroactive Basis	Substitution Clause	Usurious Contract
Revolving Door	Sue-Us	Usury
RICO	Sufficient Detail	Vertical Integration
Rising Production Costs	Syndicated Films	Vertical Merger
Role of Government	Takeover	Vertical Price Fixing
Rolling Break-Even	Talent Participations	Videocassette Revenue Reporting
Royalty Basis	Television Cover Shots	Waiver of Droit Moral
Rules	Theatre-by-Theatre Basis	Warranty of Quiet Enjoyment
Running Time	Theatrical	Warranty
Same Percentage as Film Rental Earned	There Are No Rules	Watered Stock
Scam	Threat	We're Different
Scrapping Prints	Three Sets of Books	White-Collar Crime
Script Changes	Track System	Withholding
Second Breakeven	Trade Association Dues and Fees	Year End Adjustments
Self-Dealing	Trailer Revenues	

OVERVIEW OF THE MOTION PICTURE INDUSTRY

The theatrical motion picture industry in the United States has changed substantially over the last three decades and continues to evolve rapidly. Historically, the “major studios” financed, produced and distributed the vast majority of American-made motion pictures seen by most U.S. moviegoers. However, during the most recent decade, many of the motion pictures released have been produced by so-called independent producers, even though some of the production financing for such pictures and distribution funds have been provided by the major studio/distributors. Other independent films are distributed by independent distributors who are not affiliated with the major studios.

What follows is a simplified overview of the complex process of producing and distributing motion pictures and is intended to help investors understand the motion picture business. This overview does not describe what will necessarily occur in the case of any particular motion picture.

PRODUCTION OF MOTION PICTURES

During the film-making process, which generally takes 12 to 24 months, a film normally progresses

through several stages. The four general stages of motion picture production are development, pre-production, principal photography and post-production. A brief summary of each of the four stages follows.

Development

In the development stage, literary material for a motion picture project is acquired, either outright, through an option to acquire such rights, or by hiring a writer to create original literary material. If the literary material is not in script form, a writer must create a script. The script must be sufficiently detailed to provide the production company and others participating in the financing of a motion picture enough information to estimate the cost of producing the motion picture. Projects in development often do not become completed motion pictures.

Pre-Production

During the pre-production stage, the production company usually selects a director, actors and actresses, prepares a budget and secures the necessary financing. In cases involving unique or desired talent, commitments must be made to

keep performers available for the picture. Some pre-production activities may occur during development.

Principal Photography

Principal photography is the process of filming a motion picture and is the most costly stage of the production of a motion picture. Principal photography may take 12 weeks or more to complete. Bad weather at locations, the illness of a cast or crew member, disputes with local authorities or labor unions, a director's or producer's decision to re-shoot scenes for artistic reasons and other often unpredictable events can seriously delay the scheduled completion of principal photography and substantially increase its costs. Once a motion picture reaches the principal photography stage, it usually will be completed.

Post-Production

During the post-production stage, the editing of the raw footage and the scoring and mixing of dialogue, music and sound effects tracks take place, and master printing elements are prepared.

Distribution of Films

Motion picture revenue is derived from the worldwide licensing of a motion picture in some or all of the following media: (a) theatrical exhibition; (b) non-theatrical exhibition (viewing in airplanes, hotels, military bases and other facilities); (c) pay television systems for delivery to television receivers by means of cable, over-the-air and satellite delivery systems; (d) commercial television networks; (e) local commercial television stations,

(f) reproduction on video cassettes, DVDs (and video discs) for home video use, and (g) the Internet and other new technologies such as Video on Demand (VOD) and Near Video On Demand (NVOD). Revenue may also be derived from licensing "ancillary rights" to a motion picture for the creation of books, published music, soundtrack albums and merchandise. A picture is not always sold in all of these markets or media.

The timing of revenues received from the various sources varies from film to film (see release sequence chart below). Typically, 90 percent of theatrical receipts from distribution in the United States are received in the first 12 months after a film is first exhibited. In the rest of the world, 40 percent is typically received in the first year, 50 percent in the second year and 10 percent in the third and remaining years.

Most home video royalties also come during the first year (80%). Pay and cable license fees are typically received 65 percent in the third year, 25 percent in the fourth year and 10 percent in the fifth year following theatrical release.

The majority of syndicated domestic television receipts are typically received in the fourth, fifth and sixth years after theatrical release if there are no network television licenses and the sixth, seventh and eighth years if there are network licenses.

The markets for film products have been undergoing rapid changes because of technological and other innovations. As a consequence, the sources of revenues available have been changing rapidly and the relative importance of the various markets as well as the timing of such revenues has also changed and can be expected to continue to change.

SAMPLE FEATURE FILM RELEASE SEQUENCE

	Years of Movie Release						
	1	2	3	4	5	6	7
Domestic Theatrical	==						
Pay Per View	==						
Foreign Theatrical	=====						
Home Video/DVD	=====						
Pay Television		+++		+++++			
Foreign Television		+++++					
Network TV			+++++				
TV Syndication				+++++			

== Windows with open-ended time periods

++ Windows with exclusive runs

Sources: LINK Resources, *Off-Hollywood & Entertainment Industry Economics*, 2nd ed.

SOURCES OF REVENUE

Movie release sequences are a function of the marketplace and to some extent the prerogative of individual distributors. Thus, release sequences change from time to time, as new delivery technology is introduced and may vary with specific films. As a result of the different time periods during which movies are exhibited and/or viewed in various markets and media, the revenue stream generated by a given movie may typically continue for seven years or more.

In the sample release sequence provided above, all but home video, network television, the presentation of classic pictures on pay television

and television syndication are completed by the end of year two; thus, the great percentage of the revenue generated by movies comes during and immediately after the earlier windows, assuming payments are made promptly. Also, the percentages of revenue generated by each market vary from year to year (e.g., foreign has been growing in recent years relative to domestic theatrical). The release sequence chart does not consider the potential revenue from a movie sound track album, merchandising possibilities or its value as part of a film library.

The following is a brief summary of each of the sources of revenue of motion pictures and the distribution/licensing process associated with such sources.

U.S. Theatrical Distribution

In recent years, United States theatrical exhibition has generated a declining percentage of the total income earned by most pictures, largely because of the increasing importance of cable and pay television, home video and other ancillary markets. Nevertheless, the total revenues generated in the U.S. theatrical market are still substantial and are still likely to account for a large percentage of revenues for a particular film. In addition, performance in the U.S. theatrical market generally also has a profound effect on the value of the picture in other media and markets.

Motion pictures may be distributed to theatrical markets through branch offices. Theatrical distribution requires the commitment of substantial funds in addition to a motion picture's negative cost. The distributor must arrange financing and personnel to (a) create the motion picture's advertising campaign and distribution plan, (b) disseminate advertising, publicity and promotional material by means of magazines, newspapers, trailers ("coming attractions") and television, (c) duplicate and distribute prints of the motion picture, (d) "book" the motion picture in theaters and (e) collect from exhibitors the distributor's share of the box office receipts from the motion picture. A distributor must carefully monitor the theaters to which it licenses its picture to ensure that the exhibitor keeps only the amounts to which it is entitled by contract and promptly pays all amounts due to the distributor. Distributors will sometimes reach negotiated settlements with exhibitors as to the amounts to be paid, and such settlements may relate to amounts due for several pictures.

For a picture's initial theatrical release, a U.S. exhibitor will usually pay to a distributor a percentage of box office receipts which is negotiated based on the expected appeal of the

motion picture and the stature of the distributor. The negotiated percentage of box office receipts remitted to the distributor is generally known as "film rentals" and is typically characterized in distribution agreements as a portion of the distributor's "gross receipts." Such rentals customarily diminish during the course of a picture's theatrical run. Typically, the distributor's share of total box office receipts over the entire initial theatrical release period will average between 25 to 60 percent depending on numerous factors; the exhibitor will retain the remaining 75 to 40 percent (See John W. Cones, *The Feature Film Distribution Deal* [Carbondale, IL: Southern Illinois University Press, 1997]). The exhibitor will also retain all receipts from the sale of food and drinks at the theater (concessions). Occasionally, an exhibitor will pay to the distributor a flat fee or percentage of box office receipts against a guaranteed amount. Pay television and new home entertainment equipment (such as video games, computers and video cassette players) offer a more general competitive alternative to motion picture theatrical exhibition of feature films.

Major film distributors are often granted the right to license exhibition of a film in perpetuity, and normally have the responsibility for advertising and supplying prints and other materials to the exhibitors. Under some arrangements, the distributor retains a distribution fee from the gross receipts, which averages about 33 percent of the film's gross receipts (see *The Feature Film Distribution Deal*) and recoups the costs incurred in distributing the film. The principal costs incurred are the cost of duplicating the digital master into prints for actual exhibition and advertising of the motion picture. The distribution deal usually stipulates that the parties providing the financing are entitled to recover the cost of producing the film. However, bank-financed productions will

typically require that the bank be paid back its principal, interest and fees before the film is actually released (i.e., upon delivery to the distributor).

Expenses incurred in distributing a motion picture are substantial and vary depending on many factors. These factors include the initial response by the public to the motion picture, the nature of its advertising campaign, the pattern of its release (e.g., the number of theaters booked and the length of time that a motion picture is in release). The amount film distributors spend on prints and advertising is generally left to the discretion of the distributor. In some instances, however, the producer may negotiate a minimum expenditures or ceilings on such items.

Foreign Theatrical Distribution

While the value of the foreign theatrical market varies due to currency exchange rate fluctuations and the political conditions in the world or specific territories, it continues to provide a significant source of revenue for theatrical distribution. In recent years foreign theatrical revenues have often been accountable for more than 50 percent of a domestically produced U.S. film's gross theatrical revenue. Because this market is comprised of a multiplicity of countries and, in some cases, requires the making of foreign language versions, the distribution pattern stretches over a longer period of time than does exploitation of a film in the United States theatrical market. Major studio/distributors usually distribute motion pictures in foreign countries through local entities. These local entities generally will be either wholly owned by the distributor (a joint venture between the distributor and another motion picture company) or an independent agent (or sub-distributor). Such local entities may also distribute

motion pictures of other producers, including other major studios.

Film rental agreements with foreign exhibitors take a number of different forms, but they typically provide for payment to a distributor of a fixed percentage of box office receipts or a flat amount. Risks associated with foreign distribution include fluctuations in currency values and government restrictions or quotas on the percentage of receipts that may be paid to the distributor, the remittance of funds to the United States and the importation of motion pictures into a foreign country.

New Technologies

High-tech movie megaplexes are changing the very landscape of the domestic and foreign distribution marketplace, especially in France, Italy, Eastern Europe and Russia. In the U.S. market, which started the trend, giant cineplexes or megaplexes with 10 to 12 screens per complex, have replaced single- or three-screen theaters. The 35mm negative is not dead, but its days may be numbered. A report by SRI Consulting recently stated that "movies encoded as digital files, either recorded on optical disc and physically shipped or broadcast via satellite or land line, will increasingly replace film prints as the preferred method for distributing movies to theaters"

Home Video Rights

Since its inception, the home video market in the United States has experienced substantial growth in the last decade. Certain foreign territories, particularly Europe, have seen an increased utilization of home video units because of the relative lack of diversified television programming, although those circumstances have been changing also. Consequently, sales of video

cassettes have increased in such markets in recent years. Although growth in this area may be reduced because of an increase in television programming in such foreign territories, receipts from home video or DVD in these markets can be expected to continue to be significant.

Films are generally released on home video six to nine months after initial domestic theatrical release of the picture, but before the exhibition of the picture on cable/pay or network television.

Domestic TV Distribution

Television rights in the United States are generally licensed first to pay television for an exhibition period following home video release, thereafter to network television for an exhibition period, then to pay television again, and finally syndicated to independent stations. Therefore, the owner of a film may receive payments resulting from television licenses over a period of six years or more.

Domestic Cable and Pay TV

Pay television rights include rights granted to cable, direct broadcast satellite, microwave, pay per view and other services paid for by subscribers. Cable and pay television networks usually license pictures for initial exhibition commencing six to 12 months after initial domestic theatrical release, as well as for subsequent showings. Pay television services such as Home Box Office, Inc. ("HBO") and Showtime/The Movie Channel, Inc. ("Showtime") have entered into output contracts with one or more major production companies on an exclusive or non-exclusive basis to assure themselves a continuous supply of motion picture programming. Some pay television services have required exclusivity as a precondition to such contracts.

The pay television market is characterized by a large number of sellers and few buyers. However, the number of motion pictures utilized by these buyers is significantly large and a great majority of motion pictures that receive theatrical exhibition in the United States are, in fact, shown on pay television.

Domestic Network TV

In the United States, broadcast network rights are granted to ABC, CBS, NBC or other entities formed to distribute programming to a large group of stations. The commercial television networks in the United States license motion pictures for a limited number of exhibitions during a period that usually commences two to three years after a motion picture's initial theatrical release. During recent years, only a small percentage of motion pictures have been licensed to network television, and the fees paid for such motion pictures have declined. This decline is generally attributed to the growth of the pay television and home video markets, and the ability of commercial television networks to produce and acquire made-for-television motion pictures at a lower cost than license fees previously paid for theatrical motion pictures.

Domestic TV Syndication

Distributors also license the right to broadcast a motion picture on local, commercial television stations in the United States, usually for a period of five years after initial theatrical release of the motion picture, but earlier if the producer has not entered into a commercial television network license. This activity, known as "syndication," has become an important source of revenues as the number of, and competition for, programming among local television stations has increased.

Foreign TV Syndication

Motion pictures are now being licensed in the foreign television market in a manner similar to that in the United States. The number of foreign television stations as well as the modes of transmission (i.e., pay, cable, network, satellite, etc.), have been expanding rapidly, and the value of such markets has been increasing and should continue to expand.

Producers may license motion pictures to foreign television stations during the same period they license such motion pictures to television stations in the United States; however, governmental restrictions and the timing of the initial foreign theatrical release of the motion pictures in the territory may delay the exhibition of such motion pictures in such territory.

Non-Theatrical Distribution

In addition to the markets and media discussed above, the owner of a film may also be able to license the rights for non-theatrical uses to specialized distributors who, in turn, make the film available to airlines, hotels, schools, off-shore oil rigs, public libraries, prisons, community groups, the armed forces and ships at sea.

Internet and Broadband

Recent technological advances, such as digital satellite transmission, cable modems and DSL, all geared to high-speed broadband Internet access, provide another potential revenue source for feature films. In the near future, there may be several "Net-casters" with the ability to release and distribute a theatrical quality, full-length motion picture over the Internet on a global basis,

essentially by-passing the high costs and fee structure of traditional distributors.

Relicensing

The collective retained rights in a group of previously produced motion pictures is often a key asset, because such pictures may be relicensed in the pay and commercial television, home video and non-theatrical markets, and occasionally may be re-released for theatrical exhibition.

Although no one can be certain of the value of these rights, certain older films retain considerable popularity, and may be relicensed for theatrical or television exhibition. New technologies brought about by the continuing improvements in electronics may also give rise to new forms of exhibition which will develop value in the future.

Other Ancillary Markets

A distributor may earn revenues from other ancillary sources, unless the necessary exploitation rights in the underlying literary property have been retained by writers, talent, composers or other third parties. The right to use the images of characters in a motion picture may be licensed for merchandising items such as toys, T-shirts and posters.

Motion picture rights may also be licensed for novelizations of the screenplay, comic book versions of the screenplay and books about the making of the motion picture. The soundtrack of a motion picture may be separately licensed for soundtrack records and may generate revenue in the form of mechanical performance royalties, public performance royalties and sheet music publication royalties.

DICTIONARY OF TERMS

A	21	M	274
B	55	N	299
C	77	O	316
D	127	P	332
E	159	Q	386
F	174	R	387
G	206	S	419
H	218	T	462
I	226	U	483
J	251	V	492
K	253	W	497
L	255	X-Z	504



abandonment provision — A clause in a production-financing distribution agreement that sets out under what circumstances the studio financier may be permitted to stop production and further financing of a motion picture (see “production-financing distribution agreement”).

abbreviated force majeure clause — A provision in contracts that is intended to excuse a party from performance of its obligations in the event that such performance is prevented by forces outside the control of such party and that does not specify the events or acts that excuse performance (see “force majeure clause”).

above-the-line — The portion of a film’s budget that covers major creative elements and personnel (i.e., those creatively unique and individually identifiable elements). These are primarily story acquisition, screenplay rights, script development, writer, executive producer, producer, director and principal members of the cast. The phrase “above-the-line” refers to the location on the film budget of the specific expense item/person (see “acquisition agreement,” “below-the-line,” “development” and “principal players”).

above-the-line costs — Film production-period costs relating to acquiring the story rights,

property rights associated with the screenplay, script development and signing the producer, director and principal members of the cast (see “above-the-line” and “below-the-line costs”).

above-the-line deferrals — The postponement of payment for some or all of the salary or other remuneration due to be paid to above-the-line personnel. Such deferrals are often negotiated in low-budget motion picture projects and sometimes are required in lender financed pictures (see “deferrals” and “negative pickups”).

above-the-line employment agreements — Employment contracts for persons whose line-item film budget entries appear “above-the-line” in the film’s budget (i.e., above the line that separates those persons whose services are considered creatively unique and individually identifiable from those that are not). Above-the-line employment agreements are individually negotiated (see “below-the-line” and “employment agreements”).

above the regular title — (same as “above the title”).

above the title — A reference to the position of front credits that appear before the main title on

the motion picture screen. Occasionally, the position of front credits may be a negotiating issue for certain participants in a film (see “director,” “producer,” “star” and “studio”).

absorption — (see “absorption arrangement”).

absorption arrangement — With respect to feature film sub-distribution arrangements, either when an independent distributor uses a major studio/distributor for actual distribution or where the independent distributor uses other independent sub-distributors, a situation in which the independent distributor absorbs the fee of the actual distributor within its own distribution fee in order to avoid double charging the revenue stream of the film for distribution fees (“double distribution fees,” “pass through,” “override” and “sub-distribution”).

absorption formula — (see “absorption arrangement”).

abridgement — A shortened form of a literary work retaining the general sense and unity of the original (see “underlying property”).

abusive tax shelter — An investment transaction, often structured as a limited partnership or other flow-through vehicle, that is devoid of any economic purpose other than the generation of tax benefits or whose claimed tax benefits are questionable (see “tax shelter”).

Academy Awards — Film industry honors (along with statuettes called Oscars) presented each Spring since the late 1920’s by the Academy of Motion Picture Arts and Sciences for excellence in a variety of categories. In recent years, the fact that a motion picture wins an Academy Award has added as much as 10 million dollars to the

film’s gross box office receipts during the film’s continuing or subsequent runs. Thus, the ability of a distributor to influence the votes of the Academy members on such issues is extremely valuable and to that end, many distributors have conducted expensive promotional campaigns to Academy members in search of those votes (see “Academy of Motion Pictures Arts & Sciences,” “distribution expenses” and “Oscar”).

Academy of Motion Picture Arts & Sciences (AMPAS) — A professional honorary organization created in 1927 and now composed of more than 4,000 motion picture crafts-persons. The Academy was formed for the general purpose of providing incentives for higher levels of technical and professional achievement among all branches of film making.

Its stated specific purposes are to advance the arts and sciences of motion pictures; foster cooperation among creative leaders for cultural, educational and technological progress; recognize outstanding achievements; cooperate on technical research and improvement of methods and equipment; provide a common forum and meeting ground for various branches and crafts; represent the viewpoint of actual creators of the motion picture; and foster educational activities between the professional community and the public-at-large. The Academy states that it does not get involved in economic, labor or political issues. The Academy awards the Oscars, maintains a film library and sponsors student film awards and speaker programs. Membership is by invitation of the Board of Governors and is limited to those who have achieved distinction in the arts and sciences of motion pictures. Some of the criteria for admittance are: film credits of a caliber that reflect the high standards of the Academy, nomination for an Academy Award, achievement of unique distinction, earning

- special merit or making an outstanding contribution to film (see “insider’s game,” “members of the dub” and “Oscars”).
- Academy Players Directory** — A multiple volume publication of the Academy of Motion Picture Arts and Sciences that contains a photographic listing of actors and actresses (see “Academy of Motion Picture Arts and Sciences”).
- accelerated cost recovery** — IRS approved methods used in depreciating (i.e., recovering the cost through tax deductions) of fixed (qualifying) assets within a shorter period than the expected useful (economic) lives of the assets (i.e., a faster recovery of such cost). Such methods of depreciation thus provide earlier tax benefits than traditional straight-line depreciation. The income forecast method of depreciation sometimes used for film is a form of accelerated cost recovery (see “depreciation,” “income forecast method” and “straight-line depreciation”).
- accelerated rate** — Occurring more often during the same period or at an increased frequency (e.g., a gross participation may be paid at an accelerated rate depending on how certain the distributor is of its ability to obtain revenues that make up the distributor gross receipts out of which such participations are to be paid; see “gross participations,” “gross profit participant,” “gross receipts” and “participant”).
- acceleration** — The declaration by the federal Securities and Exchange Commission (SEC) that a registration statement for a public offering of securities is effective, which in turn means that the registered securities can be sold. Acceleration usually occurs the day the underwriting agreement (in an underwritten offering) is signed or after the SEC comments are complied with, and the registration statement is filed in final form. Securities are sometimes sold to raise money from investors for film projects (see “effective” and “waiting period”).
- accountable gross** — A contractually defined term used in some film distribution agreements to mean something akin to distributor’s gross receipts minus specified off-the-top deductions (see “adjusted gross,” “exclusions,” “film rentals,” “off-the-top” and “producer’s share”).
- accountant** — One who is trained and skilled in the system of recording and summarizing business and financial transactions and analyzing, verifying and reporting the results, but who is not necessarily certified by a state accountancy certification agency (see “certified public accountant” and “public accountant”).
- accountant’s opinion** — Statement signed by an independent public accountant describing the scope of the examination of the books and records or an individual or organization. Since financial reporting involves considerable discretion, the accountant’s opinion may be an important consideration for a lender or investor (also called “certificate of accounts,” “auditor’s certificate,” “limited review” and “qualified opinion”).
- account executive** — A brokerage firm employee with the legal powers of an agent who advises and executes orders for investor clients of the firm (see “broker/dealer” and “registered representative”).
- accounting method** — The method by which a business (corporation, partnership or sole proprietorship) keeps its books and records for

purposes of computing income and deductions and determining taxable income. Generally, the method of accounting affects the timing of an item of income or deduction. The two major methods of accounting are accrual and cash (see “accrual method of accounting,” “cash method of accounting,” “FASB” and “GAAP”).

accounting period — A chronological division for recording and summarizing business and financial transactions; typically, either monthly, quarterly, semi-annually or annually (see “accounting method”).

accounting principles and practices — The rules, regulations and guides relating to a specific industry. With respect to the film industry, such principles and practices generally fall into three broad categories: cost capitalization, cost amortization and revenue recognition and reporting (see “amortization,” “capitalization,” “FASB Statement No. 53,” “GAAP,” “revenue recognition and reporting” and “videocassette revenue reporting”).

accounting records — Written or otherwise recorded information relating to the business and financial transactions of an entity (see “accounting principles and practices”).

accounting release date — The date on which amortization of a film begins. For television, it is the date on which the film is first telecast (see “release date”).

account number — A studio accounting number assigned to a given film production at the studio and that is generally all that is required of someone to charge expenses for goods or services to the film’s account at the studio. In a studio financing context, producers must carefully monitor and review studio charges to

make certain they are all authorized (see “audit,” “creative accounting,” “over-budget” and “over-budget penalty”).

accounts receivable — Money owed to a business for merchandise or services sold on open account (“bad debt”).

accredited investor — A wealthy investor as specifically defined by the SEC’s Regulation D [i.e., any person or entity who comes within any of eight categories of persons or entities described in Rule 501 of the SEC’s Regulation D that are excluded from the Regulation D limitation on the number of investors that may purchase a security exempted pursuant to Regulation D. Accredited investors include: (1) a bank, insurance company, registered investment company, business development company, or small business investment company; (2) an employee benefit plan, within the meaning of the Employee Retirement Income Security Act, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5 million; (3) a charitable organization, corporation or partnership with assets exceeding \$5 million; (4) a director, executive officer, or general partner of the company selling these securities; (5) a business in which all the equity owners are accredited investors; (6) a natural person with a net worth of at least \$1 million; (7) a natural person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year; or (8) a trust with assets of at least \$5 million, not formed to acquire the securities offered, and whose purchases are directed by a sophisticated person.] (see “investor numerical limitation,” “investor

sophistication requirements,” “investor suitability,” “private placement” and “Regulation D”).

accredited investor exemption — A federal statutory exemption from the securities registration requirements provided by Section 4(6) of the 1933 Securities Act that specifically exempts from registration offers and sales of securities to accredited investors when the total offering price is less than \$5 million. The definition of accredited investors is the same as that used in Regulation D. Like the exemptions in Rule 505 and 506, this exemption does not permit any form of advertising or public solicitation. There are no document delivery requirements, however, all transactions are subject to the anti-fraud provisions of the securities laws (see “accredited investor,” “anti-fraud rule” and “Regulation D”).

accrual method of accounting — An accounting method under which (1) income is subject to tax after all events fixing the right to receive such income have occurred, and (2) deductions are allowed when the obligation to pay similarly becomes fixed, regardless of when the income is actually received or when the obligation is actually paid or met. The accrual method must be utilized by any business taxpayer that has inventory (see “accounting method” and “cash method of accounting”).

accruals — The periodic accumulation of payments that are due (see “accounts receivable” and “settlement transaction”).

accrue or accrued — To accumulate, to happen, to come into fact or existence; payments are said to have accrued when they have become a legally enforceable claim (see “uncollectible indebtedness”).

A.C.E. — (see “American Cinema Editors”).

ACE-NET (Angel Capital Electronic Network) — An Internet site established by the Office of Advocacy of the Small Business Administration (“SBA”) where small companies may list their Regulation A and Regulation D 504/SCOR stock offerings for sale to high net worth investors (accredited investors). In addition, ACE-Net anticipates providing mentoring and educational services for small companies needing business planning and securities information. Additional information on the ACE-Net Internet site can be found at <http://www.sba.gov/ADVO/> or <http://www.ace-net.org>. ACE-Net is a cooperative effort between the SBA and nine universities, state-based entities and other non-profit organizations (see “accredited investor,” “Regulation A” and “SCOR”).

acknowledge — To admit knowledge of; recognize the rights, authority or status of; take notice of; state that a document has been received; or recognize a document as genuine or valid (see “certify”).

acknowledgment — A declaration or avowal of one’s act or of a fact to give it legal validity; the thing done or given in recognition of something received. For example, an acknowledgment is used with a production/financing distribution agreement to ensure that the financier/distributor will obtain the services of a particular individual producer (see “production-financing/distribution agreement”).

A.C. Nielsen Company — (see “Nielsen Media Research”).

“A” Counties — The Nielsen Media Research designation for counties that are in the twenty-

five largest metropolitan areas in the U.S. in terms of population. The largest cities and consolidated urban areas are found in these counties. Such designations are used by movie distributors in marketing their films (see “ADI Market,” “B-County,” “C-County,” “D-County,” “Key” and “Nielsen Media Research”).

ACPB — (see “Audited Cash Production Budget”).

acquisition agreement — The film industry agreement through which a producer or production company acquires the right to use another’s literary work or other property in producing a motion picture. This term may also be used to describe the agreement used by a film distributor to acquire the rights to distribute a film (see “development,” “option” or “option contract,” “option purchase agreement” and “property”).

acquisition deal — An agreement between a film distributor and a producer or production company in which the distributor agrees to acquire the rights to distribute a completed film in specified markets or media for a stated sum, possibly including an advance and an ongoing profit participation (see “advance,” “production-financing/distribution agreement” and “rent-a-distributor”).

acquisition/distribution agreement — The written contract between a film’s producer and the distribution company that sets out the terms and conditions under which the distributor will distribute the film. The acquisition/distribution agreement differs from the production-financing/distribution agreement in that no production financing is provided by the distributor in the former. The primary difference between the acquisition/distribution agreement

and the negative pickup distribution agreement is that the negative pickup commitment is negotiated and made prior to completion of the motion picture (see “in-house production,” “production-financing/distribution agreement,” “negative pickup distribution agreement,” “rent-a-distributor” and “theatrical distribution contract”).

acquisition of story rights — The first major stage in the production of a movie and with respect to the categorization of production costs. Acquisition activities (and their corresponding costs) include acquiring the rights to a concept or a license to a copyrighted literary property, such as a book and/or original screenplay (see “acquisition agreement” and “production costs”).

acquisitions — Films that have been independently financed and produced by independent producers for which distributors have contractually acquired the right to distribute. Technically, the term should be applied to films acquired through the acquisition distribution agreement, but it is sometimes mistakenly used in a broader sense to include the negative pickup arrangement (see “acquisition distribution agreement,” “in-house product,” “negative pickup” and “pickups”).

act — One of the principal divisions of a screenplay. Generally, screenplays have three acts with some thirty to sixty scenes in each act (see “screenplay”).

action — In a film sense, the term action refers to movement in front of the camera. On the set of a motion picture during principal photography, the word “action” is called out by the director after the cameras have started rolling to signify the start of movement and dialogue for the

scene being shot. In a legal sense, the term “action” refers to a lawsuit or other judicial proceeding whereby one party pursues a remedy against another for a wrong done, for protection of a right or for prevention of a wrong (see “action-at-law,” “equitable remedy,” “injunction,” “remedy” or “remedies” and “suit”).

action-adventure — A film genre in which the story revolves around or emphasizes danger and unknown risks and in which physical activity predominates. As a genre, such films appear to have broad international appeal (i.e., seem to travel better than other genre such as character shows; also the casting of a name star may not be as critical to its success; see “genre”).

action-at-law — A judicial proceeding that may only be brought before a court at law as opposed to a court of equity (contrast with “equitable remedy” and “injunction”).

action continuity — (see “continuity”).

action product — (same as “action-adventure”; see “product”).

action still — A photograph of an actual scene in a movie enlarged from a single frame of the motion picture film (see “production still”).

action track — The exposed film depicting scenes for a movie, but without any dialogue or effects tracks (see “sound tracks”).

active investors — Persons who invest in trade or business activities in which the investors materially participate on a regular basis. Not only must active investors help in making the business’ important decisions on a regular basis, but such investors must be capable of

participating in such a meaningful way (i.e., have the necessary training, background and experience). Investors in general partnerships, joint ventures and member-managed LLCs are typically active investors, although too many investors coming together in such investment vehicles may preclude all of them from being truly active (see “passive investors,” “investor financing,” “investor financing agreement” and “securities”).

act of God — The result of the direct, immediate and exclusive operation of the forces of nature, uncontrolled and uninfluenced by human force or power, which is of such character that it could not have been prevented or avoided by foresight or prudence. Examples of so-called “acts of God” include natural floods, earthquakes, lightning, etc. (see “force majeure clause”).

actor — Specifically in film, a male performing a role in any dramatic production, but more generally, any person, animal or product appearing in front of the camera as the subject, or one of the subjects, of the scene or shot. The term, in the generic sense, may also include the female actress (see “actress” and “player”).

actor controls — Provisions in film production and employment agreements with actors or actresses that enable such persons to exercise authority over certain specified decisions (e.g., script approval, going into production without signing the long form agreement and in rare instances final cut authority; see “approvals,” “final cut” and “long form agreement”).

actress — The traditional term applied to female actors (see “actor”).

- actual breakeven** — The point at which revenue generated by exploitation of a motion picture equals the costs incurred in the production and/or distribution of such motion picture for the applicable entity (e.g., the film’s distributor; see “artificial breakeven,” “breakeven,” “cash breakeven” and “first breakeven”).
- actual competitors** — Genuine or real rivals in an economic context. The concept is important for antitrust analysis purposes and forms one of the six tests making up the U.S. Department of Justice’s 1984 Merger Guidelines for analyzing the competitive effects of a vertical merger (see “antitrust laws,” “merger guidelines,” “Paramount Consent Decree of 1948,” “TriStar Case” and “vertical merger”).
- actual interest rate** — The real interest percentage charged for the use of funds (e.g., a film production loan, as opposed to the prime interest rate; see “interest” and “prime rate”).
- actual production costs** — The amount of money actually expended in the production of a feature film as opposed to the amount projected by the film’s budget (see “audited cash production budget” and “negative costs”).
- ad agency** — A business engaged in the creation of paid promotional messages and the purchase of media exposure. In some situations involving negotiations with a distributor, independent producers may want to seek certain controls or approvals over the selection of the ad agency in addition to controls and approvals relating to the creation of the film’s ad campaign (see “advertising” and “rent-a-distributor”).
- adaptation** — A movie script that modifies a story that first appeared in another medium. Screenplays are sometimes adapted from novels, short stories and magazine articles (see “novel” and “screenplay”).
- ad art** — The original creative art used in a film’s print advertising. Ad art is combined and reproduced with title art, credits, copy and other items to create an ad to be used in the print media, typically newspapers or magazines (see “advertising campaign”).
- ad campaign** — (see “advertising campaign”).
- added scene** — A scene that is inserted into a script that has already been assigned scene numbers. Such scene insertions may have significant financial implications, depending on the length and complexity of the added scene (see “budget,” “continuity” and “production costs”).
- addendum** — Something added (see “rider”).
- additional compensation** — A contractual category of remuneration paid to actors, directors and sometimes writers, over and above their basic salaries. Thus, the term would include profit participations (see “contingent compensation” and “deferrals”).
- additional credit** — A listing on the motion picture screen in recognition of the contribution of the party listed, in the development, production or distribution of a film, aside from another credit provided to the same person (e.g., a writer who is actively involved with the production of a film may also receive an associate producer credit as an additional credit; see “credits” and “Producers Guild of America”).
- additional insureds** — Persons or entities other than the primary person or entity whose interests are protected by an insurance policy

(see “insurance” and “errors and omissions insurance”).

a deal — The transaction and documentation associated with a major motion picture (i.e., involving the highest levels of talent and major studio/distributors; see “a title”).

adhesion contract — A contract so heavily restrictive of one party, while so non-restrictive of another, that doubts arise as to its validity as a voluntary and uncoerced agreement; implies a grave inequality of bargaining power. The concept often arises in the context of so-called “standard form” printed contracts prepared by one party and submitted to the other on a “take it or leave it” basis. Courts have recognized there is often no true equality of bargaining power in such contracts and have accommodated that reality in interpreting such contracts (see “contract,” “distribution agreement,” “negotiate,” “overreaching,” “standard contract,” “submissions release” and “unconscionable contract”).

ADI market — Area of dominant influence. An Arbitron audience-market classification designating a certain market area in which local television stations have partial or complete signal dominance over stations from other market areas. Commonly referred to as a television broadcast area. Similar to Nielsen DMA (designated market area). Some independent distributors use the ADI market for sub-distribution purposes as opposed to the more traditional sub-distribution areas designated by the exchanges (see “Arbitron Ratings Company,” “exchanges” and “sub-distribution”).

adjudicate — To hear a case, lawsuit or issue and determine such matter judicially (see “arbitration” and “litigation”).

adjusted basis — Tax terminology referring to the base price from which to judge capital gains or losses upon the sale of an asset. During the time that a taxpayer holds an asset, such as a motion picture, certain events require that the taxpayer adjust (either up or down) his, her or its original basis to reflect the effects of such events. The original basis adjusted by such events constitutes the adjusted basis (see “basis”).

adjusted capital account balance — A technical accounting term used with limited partnerships and manager-managed LLCs meaning the balance in any investor’s capital account increased by an amount equal to the investor’s post-payout sharing ratio multiplied by the minimum gain (see “post-payout sharing ratio” and “minimum gain”).

adjusted gross — A negotiated and defined term in a movie distribution deal, typically gross receipts minus certain specified deductions, that may be the basis of negotiated percentage participations in that fund (i.e., that pool of money referred to as “adjusted gross”). Such deductions from gross receipts may include prints and advertising costs, taxes, residuals, advances and other specified items from first position gross. If deductions for enough different items are demanded by the distributor and accepted by the prospective adjusted gross participant, the resulting adjusted gross participation may not have any greater value than a net profit participation. Sometimes, the cost of prints and advertising alone may diminish the value of adjusted gross participation to the point that no money will ever be paid to persons or entities with rights to receive such funds (see “accountable gross,” “first position gross,” “exclusions,” “net profits,” “off-the-top deductions” and “talent participations”).

adjusted gross income — The income on which a business or individual calculates his, her or its federal income tax. For a business, adjusted gross income is determined by subtracting from gross income any unreimbursed business expenses and other deductions (see “income tax”).

adjusted rate of return (ARR) — A method of calculating the anticipated rate of return on an investment that is useful in evaluating all of the economic benefits of an investment and in comparing investments. ARR is the rate that equates the total future value of the economic benefits to the present value of the investment (see “after-tax real rate of return,” “discounted cash flow,” “internal rate of return” and “opportunity cost”).

adjustment — The reduction of film rentals owed by an exhibitor to a distributor pursuant to a license agreement, that occurs following a poorer than expected performance at the box office. Such adjustments may be allowed by a distributor in contravention of its obligations to maximize the exploitation of a given film on behalf of net profit participants (see “selling subject to review” and “settlement transactions”).

administrative overhead charge — (see “overhead”).

admission date — In the context of a limited partnership, limited liability company or other securities offering, the date an investor (unit holder) is admitted as an investor in the investment vehicle (see “limited partners,” “limited liability company” and “unit holder” or “unit purchaser”).

admission price — The amount charged at a theater’s box office for admission to see a movie (see “house nut”).

admission price discrimination — An exhibitor business practice in which an exhibitor would charge a different amount at the box office for theater admissions depending on which distributor provided the movie being shown. Such price differentials have at times been contractually or otherwise imposed on the exhibitors by the major studio/distributors (see “antitrust laws,” “price fixing” and “Paramount Consent Decree of 1948”).

admissions — From the perspective of motion picture analysts, either the number of ticket buying patrons or the gross box office for a given film, group of films or during a specific period of time (see “box office gross” and “concession sales”).

ADR — (see “automatic dialogue replacement” and “dialogue replacement”).

advance or advances — Money obtained up front in anticipation of profits (e.g., monies paid by a distributor to a producer prior to release of the producer’s film). Such advances may be paid upon signing of the distribution agreement and/or upon delivery of the picture. Advances are generally recoupable and distributor advances are generally recouped by the distributor out of the distributor’s gross receipts. Advances may be paid in relation to pre-sales, production-financing/distribution agreements, negative pickups, network production agreements, payments to talent, the sale of profit interests or an amount the exhibitor will pay the distributor prior to the film’s release. Producers are paid advances on signing of the production agreement or more commonly upon delivery of

materials. Arrangements for advances are negotiated and theoretically controlled by the agreements between such parties, although it is not uncommon for parties to film industry agreements to ignore some provisions. Unfortunately, advance payments are generally taxable upon receipt (see “deferral structures,” “distribution guarantee,” “guarantees,” “non-returnable advance,” “release commitment,” “recoupment,” “remedy” and “sue us”).

advance licensing — (same as “blind bidding”).

advance payments — (see “advance” or “advances” above).

advance teaser campaign — An advertising campaign directed to the movie-going public, consisting of a series of ads and/or commercials, begun well in advance of a film’s opening and intended to stimulate the interest and curiosity of potential audiences regarding the upcoming film (see “advertising campaign”).

advantage — A benefit resulting from a specific course of action. Contrary to what some in the industry often suggest, there is no across the board “best way to finance a feature film,” each form of film finance is associated with certain advantages and disadvantages. In each case, the most appropriate choice may depend not only on the nature of the proposed movie, its anticipated budget level and the attached elements, but also on the special abilities and resources the producer brings to the table (see “availability analysis,” “disadvantage” and “pro and con analysis”).

advertisement — Any form of selling or promotional communication regarding a motion picture. Such ads may be placed in any of the various media and are generally paid for by

either the film’s distributor, although sometimes in combination with the exhibitor, or even by the producer, depending on how the film is being distributed (see “co-operative advertising,” “four-wall,” “publicity” and “self-distribution”).

advertising — All forms of paid media exposure (i.e., the creation and dissemination of promotional materials and the conduct of promotional activities including co-operative advertising, institutional advertising, national advertising and trade advertising in whatever form or media). The IRS defines advertising as the announcement or description of property or services in some mass communication medium (such as radio, television, newspaper, trade journals, direct mail or bill-boards) and directed at all or part of the general population of actual or potential customers to induce them to buy or rent the property or service. Advertising need not be directed to the general public, but may be focused toward any group of actual or potential customers. In film, advertising is responsible for the creative ad-look in the paid television and radio spots, the theater trailers, the movie posters and other promotional materials (see “credit,” “marketing,” “national ad campaign,” “positive print,” “promotional activities” and “publicity”).

advertising appropriation — An allocation of funds from a film’s total marketing budget that is used to pay for a film’s advertising campaign for a stated time period. Such allocations may be made by the film’s producer or distributor depending on how the film is being distributed (see “direct distribution expenses,” “four-wall” or “four walling” and “four wall advertising”).

advertising campaign — A planned and related series of promotional activities designed to bring about a particular result (i.e., awareness

regarding a movie or motivation to go to a movie; see “blurbs” and “primary advertising”).

Advertising Code Administration — An industry organization to which all advertising for rated motion pictures must be submitted for approval prior to release of the film to the public. Such advertising includes but is not limited to print ads, radio and tv spots, press-books and theatrical trailers (see “Classification and Ratings Administration,” “MPAA” and “Ratings Board”).

advertising copy — The text of an ad (see “advertising”).

advertising costs — The direct expenses incurred in preparing and producing advertising for motion pictures. Advertising costs for opening an “A-level” motion picture in the current marketplace may be in the \$30 to \$40 million dollar range at a minimum (see “direct distribution expenses”).

advertising materials — All of the physical items utilized in the promotion of a film (see “advertising”).

advertising overhead — A charge imposed by all of the major studio/distributors and some independents to cover a share of the costs of operating their internal advertising, publicity and other departments. Generally, the charge equals 10 percent of the negative cost of the movie. Net profit participants may have a reasonable basis to question this charge on the grounds that the 10 percent percentage has no relation to actual costs since certain pictures bear a disproportionate share of such expenses and in many instances this overhead charge will exceed the actual costs of the services provided for a given motion picture. In lieu of eliminating or

limiting the amount of the advertising overhead charge, net profit participants may choose to seek to impose a ceiling on the amount that can be charged by the studio or distributor for this item (see “Buchwald Case” and “media buys”).

advertising tie-ins — (see “promotional tie-ins” and “product placement”).

advocacy — The act or process of advocating or supporting a cause or proposal (see “advocacy group,” “advocate,” “advocate auditing,” “industry groups,” “lobbying” and “Net Profit Participant Association”).

advocacy group — A professional or trade association that, among other things, speaks for and/or represents the interests of its members in various forums including federal and state legislatures, governmental administrative agencies, government executives, court and the general public (see “industry groups,” “lobbying” and “professional association”).

advocacy journalism — The act of going beyond the traditional activities of journalism (i.e., the collecting and editing of news for presentation to the public through the media) and presenting a point of view in support of a cause or proposal.

advocate — One who expresses support for a cause or proposal (see “advocacy group,” “advocate auditing,” “association projects,” “IFP,” “industry groups,” “lobbying” and “lobbyists”).

advocate auditing — In the context of the motion picture business, a net profit participation auditor who not only studies a film distributor’s accounting practices with respect to a given motion picture and reports to his or her

net profit participation clients, but also actively negotiates with the distributor on behalf of those clients (see “auditor” and “net profit participant association”).

affiliate — A person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another specified person or entity; a company that owns less than a majority of the voting interests of another company. Also, two companies that are both subsidiaries of a third company (see “parent corporation” and “subsidiaries”).

affiliated person — An individual who is in a position to exert direct influence on the actions of a business entity, including owners of 10 percent or more of its equity securities, corporate directors, senior elected officers and any person in a position to exert influence through them, such as members of their immediate family and other close associates; sometimes called a control person (see “affiliate”).

affiliate of an issuer — A person controlling, controlled by or under common control with the issuer of securities. An individual who controls an issuer is also an affiliate of such issuer (see “control person” and “issuer”).

affirmative obligation — A duty or responsibility to do a certain thing (e.g., a contractually negotiated duty on the part of a distributor to use its best efforts to maximize the distribution of a motion picture). Producers may want to include such an affirmative obligation in their distribution agreements (see “allocation issues,” “conflicts of interest” and “settlement transaction”).

AFI — (see “American Film Institute”).

AFM — (see “American Film Market”).

AFMA — (see “American Film Marketing Association”).

after-market — In the film industry, another term for ancillary markets (i.e., the markets in which a film may be exploited following its primary market, that is usually theatrical exhibition; see “ancillary markets”).

after-tax real rate of return — The amount of money expressed as a percentage of the investment that an investor can keep out of the income and capital gains earned from investments and adjusted for inflation (see “adjusted rate of return” and “internal rate of return”).

agency — The fiduciary relationship created when one person, the agent, acts on behalf of another with the authority of the latter, the principal. The authority of an agent may take various forms (i.e., real, apparent, express, implied, limited, unlimited, etc., depending on the particular facts and circumstances). Individuals utilizing the services of agents should clearly set out in writing the authority of their agents. The term is also used to refer to a firm of talent agents (see “adhesion contract,” “fiduciary” and “power of attorney”).

agency packaging — (see “packaging”).

agent — Generally, one who, by mutual consent, acts for the benefit of another or represents the interests of another (e.g., in negotiating contracts on their behalf). In the film business, talent agents are licensed and their activities regulated by the state. Actors commonly utilize the services of agents in procuring work and screen writers often utilize the services of agents in

selling their scripts to studios, producers or production companies. In film distribution, sales agents may represent producers or distributors in selling or licensing a film in certain markets (see “conflicts of interest” and “packaging”).

agent fees — The monetary compensation paid to agents for their services, usually calculated as a percentage of some level of revenue generated by the activities of the agent’s principal. The standard talent agent fee is 10 percent (see “sales agent fees”).

agent for service of process — An individual named on behalf of a corporation or other entity (e.g., limited partnership or limited liability company) who, as a condition of such entity’s doing business or selling securities in a given state, is designated to receive notices of lawsuits or court summons filed in such state against the entity represented (see “consent to service of process”).

aggregate advances — The total amount of all advances paid in conjunction with the distribution of a motion picture (i.e., both domestic and foreign advances). Ideally, the aggregate of such advances will equal or exceed the negative cost of the picture involved (see “advance” and “pre-sales”).

aggregate offering price — The sum of all cash, services, property, notes, cancellation of debt, or other consideration received by an issuer for issuance of its securities (see “consideration and securities”).

agreement — A manifestation of mutual assent between two or more legally competent persons that ordinarily leads to a contract. In common usage, the word “agreement” is a broader term than contract, bargain or promise, since it

includes executed sales, gifts and other transfers of property, as well as promises without legal obligation (see “contract”).

agreement among underwriters (AAU) — Contract between participating members of an investment banking syndicate (i.e., an agreement signed by members of the underwriting syndicate empowering them anaging underwriter to sign the underwriting agreement with the issuer and dividing the compensation and responsibilities among the syndicate members; contrast with “underwriting agreement”).

agreement for acquisition of literary material — (see “acquisition agreement”).

agreement for below-the-line personnel — (see “below-the-line employment agreements”).

AICPA — Acronym for American Institute of Certified Public Accountants.

album — One or more phonograph records, tape recordings or compact discs carrying a major musical work or a group of related selections (see “sound track rights”).

album cover — The container with envelopes for phonograph records, tape recordings and compact discs (see “jacket”).

“A” level motion picture — (see “‘A’ title”).

alien corporation — Corporation organized under the laws of a foreign country (contrast with “domestic corporation” and “foreign corporation”).

allied rights — The power and authority to exploit products associated with a specific motion picture (e.g., merchandising,

novelization, sound track recording and music publishing; see “ancillary markets” and “non-theatrical”).

Alliance of Motion Picture and Television Producers (AMPTP) — A film industry trade organization that provides services to its member companies relating to all aspects of employment within the television and theatrical motion picture industry and other issues that affect the industry as a whole. The AMPTP acts as the bargaining agent for its member companies in industry-wide bargaining with the industry’s unions and guilds and provides its members with advice regarding the administration of their industry-wide agreements. In other words, its most important issues relate to employee/employer relations and this association represents the interests of the major studio/production company employers along with a limited number of other independent production companies. This association is also a sister-association to the MPAA (see “MPAA”).

all-media distribution agreement — A contract between a film’s producer and a distributor in which the producer grants the distributor the exclusive right to distribute the film in all media and in all languages and versions, usually in the entire world (see “world-wide rights”).

allocation — In a film distribution context, the assignment to particular accounts or apportionment among films or entities of the revenues generated by the exploitation of a film or the costs associated with its distribution (e.g., the costs of advertising several films may be allocated by the distributor among such films). Allocation issues also arise in the licensing of films in a package for television, whether for network or syndication. In foreign distribution,

such issues sometimes arise with respect to the allocation of a portion of film rentals to shorts and trailers. In a limited partnership or limited liability company context, the term allocation refers to distributions of partner or member shares of entity income or loss in a manner other than in accordance with such investor’s actual percentage ownership interest (see “creative accounting,” “special allocations” and “syndicated films”).

allocation issues — Concerns, questions or problems relating to the apportionment of a film’s gross receipts or other stage of the film’s revenue stream. Numerous allocation issues arise in the context of film distribution accounting, partly because distributors have traditionally relied on their superior bargaining strength to permit themselves considerable discretionary authority to make such apportionment decisions (see “adhesion contract,” “allocation” and “percentage allocated”).

all or none — One of three arrangements under which investment banking and brokerage firms, called underwriters may undertake to sell a stock or securities issue. In an all or none offering the entire issue must be sold or the money is returned to investors and the deal canceled (i.e., the issuer has the right to cancel the whole issue if the underwriting is not fully subscribed; see “best efforts offering,” “firm commitment” and “underwriter”).

allowances — A share or portion allotted or granted or asum granted as a reimbursement for expenses. Often a film’s distributor will grant certain allowances to the exhibitor for advertising and exploitation of the film. Profit participants must be sure that such allowances are not excessive in what amounts to a disguised

attempt to cross-collateralize one movie's revenue with others the distributor is distributing or will distribute (see "cross collateralization" and "de facto cross collateralization").

all territories — Throughout the universe (see "territory" and "world-wide rights").

alter ego doctrine — Legal doctrine under which the law disregards the limited personal liability one enjoys when he or she acts in a corporate capacity and attributes personal liability to such persons for their acts. To invoke the doctrine, it must be shown that the corporation is a mere conduit for the transaction of private business and that no separate identities of the individual and the corporation really exist (see "corporation" and "piercing the corporate veil").

alternate campaign — A film advertising and promotional program that differs from the primary campaign and is used to create new interest and a fresh look for the film. The alternate campaign will often be designed to appeal to a different audience than that of the primary campaign (see "advertising campaign" and "primary campaign").

alternate distributor — A film distribution company selected by a film's producer to take the place of the original distributor pursuant to a specific provision in the distribution agreement that may permit such substitution (see "substitution clause or agreement").

alternative minimum tax (AMT) — A federal tax aimed at ensuring that wealthy individuals and corporations pay at least some income tax (see "income tax").

alternative production financing — The funding of the costs associated with producing

a movie through means other than studio financing (see "financing").

alternative scenes — (same as "cover shot").

American Academy of Independent Film Producers (AAIFP) — An organization that was briefly active in the late 1980's and that sponsored a seminar for independent producers covering such topics as distribution, literary rights, payroll accounting, producing, casting, financing and ultra-low budget production, but that has since not been very active. Requests for information on the organization go unanswered (see "FIND," "IFP" and "Producers Guild of America").

American Cinema Editors (A.C.E.) — The honorary professional society of film editors whose professional designation is A.C.E. Membership in the society is by invitation only (see "editor").

American Film Institute (AFI) — An independent, non-profit organization founded in 1967 by the National Endowment for the Arts primarily for the purpose of increasing recognition of the moving image as an art form, to assure the preservation of the art form and to develop and encourage new talent (see "industry groups").

American Film Market (AFM) — A motion picture marketplace devoted exclusively to the international licensing of independently produced movies in the English language. The AFM is sponsored by the International Film and Television Association (formerly the American Film Marketing Association). The market was traditionally held in Santa Monica, in February on an annual basis but in recent years the dates for the event have been changed to late October

and early November (see “Cannes Film Festival” and “MIFED”).

American Film Marketing Association (AFMA) — (see “International Film and Television Association”).

American Motion Picture Labor Cooperative (AMPLC) — A North Hollywood-based organization formed during the 1988 Writers Guild strike for the purpose of representing non-union workers and trying to gain benefits, such as a health plan and access to a credit union (i.e., benefits not available to freelancers) for those workers (see “guild”).

American product — Motion pictures produced by U.S. based producers and/or production companies and distributed by U.S. distributors (see “product”).

American Society of Association Executives (ASAE) — A national association of association executives based in Washington, D.C. that provides a wide variety of knowledge resources, learning experiences and other tools and resources to help its member association executives grow and maximize their performance. The ASAE also serves as the voice of the association profession and advocates on its behalf. The ASAE also publishes numerous books on association management including the *Association Law Handbook* a useful guide for all professional and trade association executives (see “industry groups”).

American Stock Exchange — The second largest United States market maintained for the purpose of buying and selling securities (i.e., second after the New York Stock Exchange; see “stock exchange”).

amortization — The liquidation on an installment basis of a financial obligation relating to an intangible asset. Also, recovery of cost or value over a period of time (i.e., the IRS defines amortization as the ratablededuction allowed for loss in value of intangible property due to the passage of time). It is a method of allocating the cost of an intangible asset over time for purposes of offsetting (deducting) such cost from revenues the asset helps to produce. Amortization as permitted by the IRS code illustrates the concept of capital recovery which provides that income does not result until revenues exceed the capital expended to produce such revenues. If property is entitled only to amortization, the recovery of the cost or basis of the item may be limited to a proportionate (i.e., straight-line) deduction over the amortization period (same as “cost amortization”; contrast with “depreciation”; see “capitalization” and “FASB Statement No. 53”).

amortization of negative cost — The accounting procedure by which a film’s negative cost is charged against the film’s revenue (see “amortization,” “cost recovery,” “income forecast method” and “negative costs”).

amortization schedule — A written presentation in tabular form showing the amounts of principal and interest due on a loan at regular intervals and the unpaid balance of the loan after each payment is made (see “amortization”).

amortize overhead — The practice of gradually reducing or recovering the cost of an entity’s indirect expenses incurred in the production and/or distribution of a film. Major studio/distributors sometimes offer their distribution facilities on a rent-a-distributor basis in order to amortize their overhead without incurring any additional financial risk on such

motion pictures (see “rent-a-distributor” and “release slots”).

“A” movie — (see “A’ title”).

AMPAS — (see “Academy of Motion Picture Arts and Sciences”).

AMPLC — (see “American Motion Picture Labor Cooperative”).

analyst — In the securities field, a person in a brokerage house who studies a number of companies and makes buy or sell recommendations on the securities of particular companies and industry groups. Most of such analysts specialize in a particular industry (e.g., the entertainment industry, and focus on corporate entities with publicly traded stock; see “communications industry” and “entertainment industry”).

ancillaries — (see “ancillary markets”).

ancillary agreements — Agreements that are subordinate, subsidiary, supplementary or auxiliary to a primary, preceding or original agreement. If the issue of subsequently negotiated gross participations is not negotiated and provided for in the original agreements relating to the services of a film’s creative team, such ancillary agreements may alter their deal with a producer who gives away too many gross participations (see “gross floor” and “gross participants”).

ancillary end users — Those entities that exploit films in the ancillary markets (e.g., video companies; see “ancillary markets”).

ancillary market rights — (see “ancillary rights”).

ancillary markets — Geographical or technological areas of demand for film product that are auxiliary or supplemental to the theatrical market. The ancillary markets include foreign, network and syndicated television, pay cable and home video (see “markets,” “non-theatrical” and “theatrical market”).

ancillary rights — The additional powers or privileges that a film’s producer or distributor or other person or entity is justly entitled to exercise with respect to the original literary property and the feature film that the producer may own (i.e., additional to theatrical exhibition). Such rights may include the right to produce a remake, sequel, television series, stage play and/or soundtrack recording. The issue of whether such sources of revenue are included in the distributor’s gross receipts (or treated as a separate revenue stream) may be negotiated in some instances. If the distributor does not include ancillary revenue in gross receipts, it may use an approach similar to that used with regard to videocassette revenues, in which the rights will be exploited by a third party, that is sometimes affiliated with the studio and only a royalty is paid to the distributor, thus significantly reducing the amounts paid to subsequent profit participants. In that situation, net profit participants may want to negotiate for a separate participation in such ancillary revenues (see “ancillary rights,” “ancillary markets,” “isolated ancillary rights,” “outside the pot,” “retroactive basis” and “videocassette revenue reporting”).

Angel Capital Electronic Network (ACE-NET) — (see “ACE-NET”).

angel investor — A financial backer who provides early support for a business venture. The initial incorporation stage for a company

and startups of other varieties (e.g., LLCs) creates an opportunity to seek out so-called “angels” to provide “angel financing.” The term “angel financing” is typically associated with early stage financing provided by individual wealthy investors, as opposed to that provided by the groups of individuals or companies organized as venture capital firms (see “Venture Capital”). Further, it is not necessary to form a corporation to bring in angel capital, the term may also apply to any form of active investor financing using any of the active investor financing options. As a practical matter, however, the term is most often associated with early stage corporate finance (see “ACE-NET,” “corporate financing,” “limited liability company” and “venture capital”).

“A” negative — The parts of a film negative that are used to print the film that is ultimately employed in the edited and completed motion picture (see “B’ negative”).

animal mortality insurance — Insurance against the death or destruction of any animal specifically covered, when used in a film production. A veterinarian’s certificate is usually required for this type of coverage (see “insurance”).

animation — A film making process in which drawings or three-dimensional objects (e.g., models) are photographed frame by frame so that when the assembled film is projected at normal speeds, the drawings or objects appear to move (see “genre” and “markets”).

annotated script — A screenplay, sometimes requested by the errors and omissions insurance carrier, with notes included thereon, indicating which of the various component parts of the script are based on some existing underlying

work (e.g., books, stageplays, newspaper articles and/or magazine articles) and citing such works. These notes will help the E&O carrier’s attorney evaluate the risk of possible lawsuits based on the screenplay (see “clearance” and “errors and omissions insurance”).

announcements in the trades — Ads run in *Variety*, *The Hollywood Reporter*, *Village Voice* or other industry publication announcing some event relating to a film, such as the completion of principal photography. Such ads are considered useful in creating presumed value in a film (see “*Variety*,” “*The Hollywood Reporter*” and “trades”).

annual basis — An accounting technique in which figures relating to a period of less than one year are extended to cover a twelve month period. The procedure is called annualizing and it must take into account seasonal fluctuations, if any, in order to be accurate (see “accounting method”).

annual meeting — The once-a-year meeting at which the officers and managers of a corporation report to its stockholders on the year’s results and some or all of the members of the board of directors are elected for a subsequent term (see “corporation”).

annual percentage rate (APR) — The cost of credit that consumers pay, expressed as a simple annual percentage (see “interest”).

annual report — A formal corporate financial statement issued yearly. The annual report of publicly owned corporations must comply with SEC reporting requirements which include balance sheet, income statement and cash flow reports audited by an independent certified public accountant. These annual reports are filed

with the SEC on Form 10K (see “certified public accountant,” “Form 10K” and “SEC”).

answer print—The first positive composite print (made from the original negative) from the lab with sound, music, color (if in color), title and fades, dissolves and optical effects (i.e., color- and sound-balanced). It “answers” the question affirmatively that a viable working negative exists from which prints can be made for commercial presentation. In brief, a print potentially ready for release to its target audience. However, there are nearly always visual corrections to be made and sometimes changes in sound so that the first answer print is generally a guide to fine-tuning the prints to follow. The answer print, thus usually precedes the first release print (see “release print”).

anticipated expenses—A concept often found in film distribution agreements that permits the distributor to deduct from gross receipts an amount adequate to cover future estimated distribution expenses. Such provisions often stipulate that the distributor may in good faith retain sums necessary to pay for costs reasonably anticipated to arise in connection with the picture being distributed (see “creative accounting,” “discretion” and “good faith”).

anticipated rating—The producer’s advance judgment as to what MPAA rating will be assigned to his or her film (see “MPAA rating” and “publicity”).

anticipatory breach of contract—In contract law, a breach committed before the arrival of the actual time of required performance. It occurs when one party by declaration repudiates his or her contractual obligation before it is due. The repudiation required is a positive statement indicating that the promisor will not or cannot

substantially perform the promised contractual duties (see “breach of contract” and “contract”).

anti-blind bidding statutes—State statutes that prohibit the film distribution practice of requiring competing exhibitors to bid on films without an opportunity to first see the film (blind bidding). Generally speaking, the industry organizations that favor blind bidding are the major studio/distributors as represented by the MPAA. Ordinarily, it might be expected that the exhibitor trade group, NATO would be opposed to the practice of blind bidding, but the existence or vigor of that opposition may depend on how many of the NATO members are owned or controlled by the major studio/distributors (see “blind bidding,” “lobbying,” “MPAA,” “NATO,” “non-regulatory state,” “product splitting,” “state legislatures” and “vertical integration”).

anti-competitive—Acting in opposition to a free market (i.e., opposed to the effort of two or more parties acting independently to secure the business of a third by offering the most favorable terms, products and/or services; see “anti-competitive business practices”).

anti-competitive business practices—A broad term referring to all sorts of activities that tend to reduce free competition in the marketplace. This term would include some business practices that are not actionable under antitrust laws (e.g., even though the MPAA ratings system might not be actionable pursuant to a given federal antitrust regulation, independent producers or distributors whose films are rated in a discriminatory manner by this MPAA sponsored organization may well view this MPAA activity as anti-competitive; see “antitrust laws,” “block booking,” “blind bidding,”

“conduct restrictions,” “predatory practices” and “reciprocal preferences”).

anti-fraud rule — State and federal securities law provisions that require the written disclosure of all material aspects of certain securities transactions in advance to prospective investors, prohibit the omission of any material information and prohibit any untrue or misleading representations. Non-compliance may result in a charge of securities fraud (see “disclosure document” and “fraud”).

anti-Semitic sword — The use of a false accusation of anti-Semitism in a debate or discussion as a means of distracting the attention of listeners, readers or viewers from the truth of the statements actually being made. In the alternative, even if the accusation of anti-Semitism may be true, the accusation made and/or repeated without supportive and convincing evidence is no more than an irresponsible whispering campaign. Throughout the history of Hollywood, the anti-Semitic sword has been an effective tactic used by Hollywood insiders to squelch criticism (see “anti-Semitism,” “discrimination,” “reverse discrimination,” “prejudice” and “whispering campaign”).

anti-Semitism — Open hostility or hatred directed toward Jews generally or toward one or more Jews solely because they are Jewish. Criticism of unfair, unethical, unconscionable, anti-competitive, predatory and/or illegal business practices of business persons who happen to be Jewish does not rise to the level of anti-Semitism, rather is merely criticism of alleged wrongful behavior (see “anti-Semitic sword”).

antitrust laws — Federal and state statutes aimed at promoting free competition in the marketplace (i.e., to prevent monopolies and restraint of trade). Any agreement or cooperative effort or intent by two or more entities that affects or restrains, or is likely to affect or restrain their competitors is illegal under these statutes. The two major federal antitrust laws are the Sherman Act and the Clayton Act. The Sherman Act protects the right of individuals to be free to compete and makes illegal any contract, combination or conspiracy in restraint of trade or commerce. The Sherman Act also makes illegal monopolies and attempts, combinations or conspiracies to monopolize. The Clayton Act regulates price discrimination, tying and exclusive-dealing contracts, stock acquisitions which tend to monopolize and certain interlocking directorates (see “blind bidding,” “block booking,” “Clayton Act,” “industry pool,” “marketplace of ideas,” “monopoly,” “price discrimination,” “pooling arrangements,” “price fixing,” “reciprocal preferences,” “Sherman Antitrust Act,” “tracks” and “tying arrangement”).

antitrust law violations — Violations of federal and state statutes aimed at promoting free competition in the marketplace (i.e., to prevent monopolies and restraint of trade). Any agreement or cooperative effort or intent by two or more entities that affects or restrains, or is likely to affect or restrain their competitors, is illegal under these statutes. The relaxation of the federal enforcement of antitrust laws in the years during and since the Reagan presidency may have resulted in numerous film industry activities or business practices that may otherwise be actionable under the antitrust laws, if such laws were being more vigorously enforced. Movie profit participants and even exhibitors must be more aware of such activities and be willing to

lobby or litigate when appropriate in order to stem any potential trend toward more anti-competitive business practices (see “antitrust laws,” “marketplace of ideas,” “Paramount Consent Decree of 1948,” “political influence,” “remedy,” “sue us” and “TriStar Case”).

appeal — The primary theme underlying a motion picture advertisement in its effort to elicit a favorable response from a movie’s prospective audience (i.e., motivate them to see the picture; see “demand” and “primary audience”).

Application for Registration of a Tax Shelter — IRS Form 8264 which is to be used by the organizers of certain tax shelters in registering the tax shelter with the IRS (see “tax shelter registration”).

apportion — To divide fairly or according to the parties’ respective interests; proportionately, but not necessarily equally (see “allocation,” “discretion” and “good faith”).

apportioned expense — Costs that are divided according to the parties’ interests (i.e., proportionately). Many distribution agreements allow the distributor to have the discretion to apportion numerous distribution expenses relating to advertising, facilities, employees, etc. among films which are marketed in a package. A profit participant cannot make an informed judgment as to whether such apportionments are fair without having access to the information upon which such apportionments are based. Such participants should make sure the audit rights of the producer and/or profit participants include access to such documentation (i.e., try to prevent the distributor from limiting access to documents that relate to the amount of money to be received; see “audit,” “contract of adhesion” and “discretion”).

appraise — To estimate the value; to put in writing the worth of property (see “catalog”).

appraisal — An estimate or opinion of value; a conclusion resulting from the analysis of relevant facts (see “catalog”).

approval of the limited partners — In a limited partnership context, most state limited partnership acts authorize the limited partners to vote on certain specified partnership decisions without losing their limited liability. The partnership agreement may also establish the percentage of limited partner votes required for such approval (see “limited partnership agreement”).

approvals — The power to review certain feature film elements and exclude such elements from being part of a particular film project. For example, depending on the stature of a production company which is receiving the benefit of a production-financing/distribution agreement from a studio/distributor or a negative pickup distribution deal, the studio/distributor will typically insist on approving such elements as the budget, screenplay, director and principal cast and such approval rights will be set out in the distribution agreement (see “creative control” and “controls”).

approved elements — Significant aspects of a film that have been reviewed and approved by the production financing source or distributor that has committed to distribute the film once it is produced (e.g., script, budget, director and lead actors). In a negative pickup arrangement, if the film as produced does not contain the elements approved in advance of production by the distributor or significantly departs from some of those elements, the distributor may be able to

avoid its obligation to distribute the film. Producers and directors must not forget about those approvals as the film is produced, because if the distributor does not like the film, the distributor is not likely to forget about its approval rights. The question of what is significant provides an opportunity to disagree. Some effort ought to be made in negotiating the distribution agreement to further define what departures will be allowed and to provide for some mechanism to obtain distributor approvals on changes along the way, if any (see “approved negative cost,” “approved script” and “basic elements”).

approved negative cost — A film budget that has been reviewed and approved by a film distributor that has committed to distribute the film and provide production financing (see “approved elements” and “approved script”).

approved production budget — The amount of money itemized by spending category anticipated to be required to produce a film and that has been approved by the film’s financier or financiers (e.g., a studio/distributor; see “production budget” and “production-financing/distribution agreement”).

approved production schedule — A timetable and plan for conducting the principal photography of a motion picture that has been approved by the financier (e.g., the studio/distributor pursuant to a production-financing/distribution agreement). Costs resulting from changes to the approved production schedule requested in writing by the distributor may be excluded from any over-budget penalty or other provisions (see “over-budget penalty”).

approved screenplay — (same as “approved script”).

approved script — A film screenplay approved by a distributor that has committed to distribute the film with such commitment being provided prior to production of the film. If the film as produced significantly departs from the approved script, the distributor may avoid its obligation to distribute the film (see “approved elements”).

“A” product — (see “A’ title”).

arbitration — The submission of a controversy, by agreement of the parties, to persons chosen by the parties for resolution. An informal, non-judicial method for resolving disputes that generally takes less time and is less expensive than litigation. Film industry agreements sometimes provide for arbitration to resolve any disputes that arise between the parties. For example, motion picture lenders often require that disputes between a film’s distributor and its producer relating to whether the film has been properly completed and delivered pursuant to the terms of the distribution agreement be submitted to arbitration to ensure a more rapid and inexpensive resolution of the dispute. In a situation where a producer signs a production-financing distribution agreement with a studio/distributor, the producer may also want to seek an arbitration clause for the same reasons, particularly since the studio will be charging interest on the production costs of the film (see “arbitration clause,” “expedited arbitration” and “litigation”).

arbitration clause — A clause in a contract providing for arbitration of disputes arising under the contract as opposed to litigating the dispute in court. Before agreeing to such a

clause, it is advisable to think through the implications of arbitration. For example, arbitration might be helpful with strictly technical issues, but law courts are generally more sophisticated at handling expert witness type evidence (see “arbitration” and “expedited arbitration”).

Arbitron Ratings Company— A national media research and ratings service that uses a quarterly audience survey period to publish audience viewing and listening habits for television, cable and radio at local and national levels, showing market share for the time period covered and statistical analysis using such characteristics as sex and age of the audience (see “ADI Market” and “Nielsen Media Research”).

Area of Dominant Influence — (see “ADI Market”).

arm’s length— The bargaining position of two parties that are unrelated to one another and whose mutual dealings are influenced only by the independent interest of each. The term is used to describe a standard of dealing that reflects no motivation other than that normally to be expected on the part of two unconnected parties transacting in good faith in the ordinary course of business (see “adhesion contract,” “conflicts of interest,” “negotiate” and “videocassette revenue reporting”).

arm’s length basis — The manner in which negotiations are objectively and fairly conducted (see “arm’s length” and “videocassette revenue reporting”).

arrangement — The development of an existing musical composition by scoring for voices or instruments, usually for those other than the voices and instruments for which the music was

originally written and including the transposition of keys and elaboration of chord structures. An arrangement must reflect substantial new matter to qualify for copyright protection, although arrangements of any work in the public domain may be freely copyrighted. Arrangements of works protected by copyright may be copyrighted, but only by the copyright owner or with such copyright owner’s consent (see “arranger” and “copyright”).

arranger — A person who prepares and adapts previously written music for presentation in some form other than its original form (see “arrangement” and “orchestrator”).

arrogance — A feeling of superiority manifested in an overbearing manner or presumptuous claims (see “Code of Professional Responsibility,” “ethics” and “market power”).

art director — The film production person who works with the production designer and is responsible for planning and executing the design of the sets, including the production of all illustrations, continuity sketches, perspectives, scenery, scale models, props, surface coloration and texture, drawings and elevations. The art director also gives approval on sets, properties, set dressing and scenery, and finds and recommends, for the approval of the director and producer, locations that are visually suitable for the production (see “production designer”).

art film — A motion picture that stresses artistic qualities as opposed to more commercial elements and thus is expected to appeal to a more narrow and specialized audience (see “art house,” “commercial,” “key art showcase cities” and “special handling”).

art house — (same as “art theater”).

articles of incorporation — The document or instrument that is required to be filed with a state's secretary of state, as part of the process of creating a corporation and pursuant to the general corporation laws of that state. The articles may set out certain basic attributes of the corporation such as the type of corporation, the amount of authorized stock and the agent for service of process. Other action needed to complete the incorporation process includes a shareholders meeting, selection of members of the board of directors, a meeting of the board of directors, preparation of minutes for both meetings, approval of bylaws and corporate seal, election of officers, issuance of shares and recording of shares in the stock transfer log (see "articles of organization," "certificate of incorporation," "charter" and "ultra vires activities").

articles of organization — The document or instrument that is required to be filed with the state's secretary of state as the first step in the creation of a limited partnership or limited liability company. To finalize the process of entity formation of a limited partnership, a partnership agreement also needs to be drafted and approved by the limited partners, and for a limited liability company, an operating agreement needs to be drafted and approved by the LLC's members (see "articles of incorporation," "limited liability company" and "limited partnership").

Article Twenty — A controversial article of the IATSE contract that allows major studios to fully finance non-union movies and television shows so long as the studios declare they have no creative control and give the union thirty days notice before production starts. Many union supporters contend Article Twenty has helped to increase non-union movie production

(see "artificial pickup," "IATSE" and "industry groups").

artificial break-even — A contractually defined multiple of a film's negative cost (e.g., when gross receipts equal three times the negative cost of the motion picture) that is sometimes treated as actual break-even (see "actual breakeven," "breakeven," "cash breakeven," "creative accounting," "first breakeven" and "rolling breakeven").

artificial pickup — A film project originally controlled and developed by a studio/distributor but that is farmed out pursuant to a negative pickup or anticipated acquisition distribution deal to an outside (but friendly) production company, partly to avoid the higher costs of the below-the-line union crews which the studio would have to pay if the project was produced as an in-house production at the studio (see "acquisition distribution agreement," "Article Twenty," "negative pickup" and "signatories").

artist — A broad term referring to any person skilled in one of the fine arts; one who professes and practices an art in which conception and execution are governed by imagination and taste. In a film, artists may include the screenwriter, actors, actresses, director, cinematographer, art director and others who contribute to the creative process (see "actor" and "artistic control").

artistic control — The power to make decisions relating to the appearance and content of the final feature film product (see "creative differences" and "final cut").

artistic differences — (see "creative differences").

- artist's advance** — Payment made to an actor, director or writer prior to the performance of their contractual duties either upon the signing of the employment agreement or at other specified times (see “advance”).
- artist's fee** — The amount of compensation provided for in the film's budget to be paid to the actor, writer or director excluding any bonus or contingent compensation (see “artist,” “contingent compensation,” “deferments” and “salary”).
- art theater** — An exhibitor that specializes in presenting art films, generally in exclusive engagements, rather than in showing the mass marketed and more commercial films typically released by the major studio/distributors (see “art film”).
- artwork** — Graphic, creative or otherwise aesthetic representations relating to a specific film that are used in advertising and promoting the film (see “advertising”).
- artwork title** — The name or credit to be attributed to an aesthetic representation. A distributor may seek in its distribution agreement to limit its obligations to provide credit for artwork (see “credit”).
- aspect ratio** — The ratio of the horizontal to the vertical dimensions (i.e., width-to-height) of a motion picture frame or television screen. Most feature films are shot with 35mm negative film, using an aspect ratio of 1.85 to 1 (also written 1.85:1 or 1.85 x 1). A 1.85 to 1 aspect ratio means that the projected image is 1.85 times wider than it is high. Other 35mm formats include 1.33 to 1, 1.66 to 1 and 2.35 to 1. A 2.35 to 1 aspect ratio produces a very wide image and is most appropriate for pictures requiring many outdoor panoramic scenes (wide-screen). Before wide-screen, the original 35mm movie screen had an aspect ratio of 1 x 1.33, a ratio reflected approximately in TV screen images. The format for a film is generally selected by the producer, director and director of photography (see “format” and “pan and scan”).
- assembly** — The first, rough arrangement of dailies in script order (see “dailies”).
- assessable security** — A security on which a charge or assessment for the obligations of the issuing company may be made (see “securities”).
- asset** — Anything owned by a business, institution or individual that has monetary or exchange value (see “liquid asset”).
- asset financing** — The funding of a business venture by converting particular assets into working cash in exchange for a security interest in those assets (e.g., loans against accounts receivable and inventory loans; see “collateral” and “secured debt”).
- asset management** — The control and direction of a particular individual or entity's investments by a brokerage house, bank, savings institution or other qualified financial advisor. If the assets under management by the asset manager are sufficiently large enough, a certain percentage of the assets may be available for high risk investments such as motion pictures (see “discretionary funds” and “scam”).
- asset value** — The worth of a company's collective assets; a term often used to describe the worth of a motion picture company's film library [see “catalog (library)"].

assign — To transfer one's interest in property, a contract or other rights to another. Although often used interchangeably with pledge and hypothecate, the term assign implies transfer of ownership (or of the right to transfer ownership at a later date). Film distribution deals often limit the rights of either or both the producer and distributor to assign their respective rights and obligations (see "distribution agreement," "grant of rights," "hypothecate," "license," "pledge" and "secured debt").

assignee — The person to whom an assignment is made (see "assign").

assignment for the benefit of creditors — The transfer of interests to those to whom money is owed by a debtor (see "assign").

assignment — A written agreement that is used to transfer some or all of an owner's right, title and interest in a specific property to a purchaser. Important provisions of such an assignment include the description of the rights being transferred and the consideration to be paid. Other terms typically include owner warranties and an indemnification provision in favor of the purchaser if one of the owner warranties is breached. Distribution agreements routinely include a form of assignment as an exhibit to the distribution agreement and provide that the producer or production company agrees to sign such assignment along with any UCC-1 financing statements and a laboratory pledgeholder agreement (see "copyright assignment," "laboratory pledgeholder agreement" and "UCC-1 financing statement").

assignor — An individual or entity that assigns or makes an assignment (see "assign").

assigns — Those who take from or under the assignor, whether by conveyance, devise, descent or operation of law (see "personal representative" and "successor").

assistant director (AD) — The film production staff person who helps the film's director. An AD may serve as the director's liaison with governmental authorities and suppliers of services, may also be responsible for insuring that actors are present at the right time and place and otherwise is expected to perform whatever other useful tasks are assigned by the director (see "director" and "Directors Guild of America").

assistant editor — A person who is directly assigned to assist a film editor and whose duties may include synchronizing dailies, taking notes at screenings, obtaining cutting room facilities, breaking down daily takes, pulling out and assembling selected takes, making trims, ordering optical and other preparatory work in film editing rooms (see "editing room assistant").

assistant producer — An aide to the film's producer (see "associate producer," "coproducer credit," "creative producer," "executive producer" and "line producer").

associate producer — A title and film credit given to a film producer's second-in-command who shares business and creative responsibilities. The associate producer is generally involved in pre-production, production and post-production as a supporting producer. The credit is sometimes given to a production manager or first assistant director for contributions that greatly exceed their routine duties. Also it is sometimes awarded to a significant financial backer or an individual who may have brought

the literary property or screenplay to the producer (see “credit issues,” “producer” and “Producers Guild of America”).

association— An organization of persons who have a common interest and have joined together for certain purposes (e.g., sponsoring educational seminars, conducting annual conferences, collecting, analyzing and disseminating industry information among the association’s members and/or representing the association’s interests before federal and/or state legislatures; see “AFMA,” “association projects,” “IFP,” “IFP/West,” “IFTA,” “industry groups,” “MPAA,” “MPEAA,” “NATO,” “professional association” and “trade association”).

association antitrust policies — The adopted practices of professional and trade associations that relate to governmental regulations and laws on competition. The U.S. antitrust laws apply to the membership policies of trade and professional associations such as the MPAA, MPEAA, AMPTP, FIND, IFTA and NATO. Restrictions on which companies may become a member have particular antitrust implications, since denial of membership, with its attendant benefits, may be held to place the applicant at an economic disadvantage. Generally speaking, trade associations must allow membership to all those in the trade if excluding them would significantly limit their opportunities to compete effectively, thereby creating a restraint on competition. Two other areas of potential concern with respect to the application of the antitrust laws to professional and trade association policy, are (1) agreements among association members that have the effect of fixing or stabilizing prices for particular services and (2) boycotting or refusing to deal with companies that take action which is opposed by the association members (see “anti-competitive

business practices,” “antitrust laws,” “blacklist,” “blind bidding,” “block booking,” “insider’s game,” “member of the dub,” “predatory practices,” “price fixing” and “reciprocal preferences”).

Association of Net Profit Participants — (see “association projects” and “Net Profit Participant Association”).

association projects— The activities a professional and/or trade association undertakes on behalf of its members. Examples of major areas of association activities may include projects of an educational nature (seminars, books, association magazines, etc.) or projects that relate to the representation of the group’s interests in a legislative forum, in a court of law or before an executive branch of governments at any level. Specific projects an association of independent feature film producers may choose to undertake might include the following: (1) develop and maintain a reference library specifically to meet the special needs of independent film producers; (2) subscribe to and maintain back issues of various trade publications of interest to independent producers; (3) set up a producer antitrust task force to study possible anti-competitive business practices (i.e., discrimination, vertical integration, block booking, blacklisting, agency packaging, film censoring, etc.), that may be occurring in the film industry and report on their impact on independents; (4) specifically work to eliminate studio or other production company or distributor ownership or control of theaters; (5) lobby on behalf of the association’s independent producer members with the U.S. Justice Department and the Federal Trade Commission relating to the vigorous enforcement of federal antitrust laws in the entertainment industry; (6) study and make

member producers aware of how antitrust laws also apply to the activities of professional associations; (7) represent the interests of independent producers with respect to matters before state legislatures, Congress and the Federal Communications Commission (e.g., financial interest and syndication rules); (8) speak on behalf of the association's membership with respect to eliminating the conflicts of interest inherent in the MPAA motion picture rating program; (9) organize and maintain film distributor research files for the use of independent producer members of the association; (10) conduct seminars on matters of importance to independent producers, including the distribution deal, the status of the independent producer, performance reports on distributors, alternative film finance methods, etc. (11) research and make available industry statistics as such statistics specifically relate to independent producers and their films; (12) maintain current referral lists of the entertainment related professionals such as entertainment attorneys, auditing firms, antitrust and entertainment litigating attorneys, and production accountants or payroll services; (13) monitor antitrust litigation relating to the entertainment industry and report on developments to independent producer members (also develop a checklist of anti-competitive business practices to monitor); (14) calculate/publicize the number of theatre screens that are available or used for the exhibition of independently produced and/or independently distributed feature films on a weekly basis; (15) calculate/publicize revenue market share of independent producers vs. MPAA companies; (16) publicize instances of and work to eliminate arbitrary and unfair "blacklisting" in the industry; (17) create a producer's investment club or some similar investment vehicle to pool independent producer investments and to selectively invest in

publicly held motion picture studios, production companies, distributors and exhibitors. Such investments would permit the producer investors to participate in the economic benefits of equity ownership in entertainment entities, if any and provide better access to information regarding the activities of such entities; (22) develop authoritative figures to substantiate and publicize among the general public and at film schools specifically, the huge disparity between the number of films that are produced each year and the films that are distributed each year, as well as the number of producers, directors, screenwriters, actors, actresses and others who are competing for positions with the limited number of films produced and the resulting bargaining disadvantage for such groups or individuals produced by such disparity; (23) create and maintain a file describing so-called "creative accounting" practices of studios and/or distributors; (24) organize an extensive "for-credit" student intern program in cooperation with various film schools to help the association meet its person-power needs and to provide unique learning opportunities for film students interested in producing; (25) research questions relating to establishing a professional certification program for independent feature film producers; (26) publish a newsletter and magazine with articles relating to some or all of the above topics and other matters of special interest to independent producers; and (27) develop and make available a model feature film distribution agreement that provides a more balanced approach to issues as between distributors and producers (see "AIVE," "AMPTP," "choosing a distributor," "FIND," "IFP," "lobbying," "MPAA," "MPEAA," "NATO," "political influence" and "professional associations").

assumption agreement— A clause or provision negotiated as between the independent producer and the distributor and inserted into the distribution agreement providing that the distributor assumes responsibility for directly paying some or all contingent compensation commitments made by the producer to talent and/or other profit participants (see “distributor’s assumption agreement,” “most favored nations clause” and “pari passu”).

assumptions— Circumstances that are assumed to be factual for purposes of projecting the hypothetical results of an investment, such as in an investor-financed film offering structured as a limited partnership or manager-managed limited liability company (see “financial projections”).

asynchronous sound— Sound on motion picture film that is not in synch or synchronous with the image on the film (see “in synch” and “synchronous sound”).

“A” Title— A somewhat subjective term describing a major motion picture with a director, stars and/or other elements that presumably create significant box office appeal (i.e., motion pictures with significant recognizable actors/actresses and established directors that are released by major studio/distributors in the U.S. in a wide manner). Sometimes “A” title films are defined as major studio product that has been released with significant print and advertising commitments or independent product that has performed well in the marketplace or had the equivalent of a major studio release (see “B’ movie” and “commercial”).

atmosphere— The extras in a movie as a group (also see “background cast” and “extras”).

at risk— Exposed to the danger of loss. Investors in direct participation programs (such as limited partnerships or manager-managed limited liability company offerings) can claim tax deductions only if they can show that their investment was at risk (i.e., that there was a chance of never realizing any profit on the investment and a chance of losing their investment as well). The IRS may be able to disallow such claimed deductions if the investors are not exposed to economic risk (e.g., an offering where the general partner or a film distributor guaranteed the return of all capital to the investors even if the business venture lost money; see “at risk loss limits”).

at risk limitation— Tax losses of certain taxpayers are limited to the amount the taxpayer has invested and which is at risk of loss. Such amounts generally include investments of cash or other property and recourse debt (see “recourse debt”).

at risk loss limits— Special federal tax rules that apply to most activities, including the activities of a partnership, that are engaged in as a trade or business or for the production of income. These rules limit the amount of loss a partner may deduct to the amounts for which that partner is considered at risk in the activity. A partner is considered at risk to the extent of the amount of cash and the adjusted basis of property contributed to the activity, income retained by the partnership and amounts borrowed by the partnership for use in the activity. A partner is not considered at risk for amounts borrowed by the partner or the partnership unless that partner is personally liable for the repayment or the amounts borrowed are secured by the partner’s property other than property used in the activity. Also a partner is not considered at risk for amounts that are protected against loss through

guarantees, stop-loss agreements or othersimilar arrangements (see “at risk” and “basis”).

attached to the project — Committed to play a specificrole or perform certain duties in relation to a given motion picture. Such commitments may be contingent and may take the form of oral expressions of interest, letters of interest, letters of intent or contractual commitments. On the other hand, it may be unfair to claim that someone is attached to a certain movie unless a firm and fully enforceable commitment supported by consideration is involved (see “letter of intent,” “packaging,” “pay or play” and “pay and play”).

attachment — A proceeding in law by which one’s property is seized, that is, a proceeding to take a defendant’s property into legal custody to satisfy a plaintiff’s demand. A distribution deal may provide for certain specified remedies in the event the producer’s property which is the subject of the distribution agreement (i.e., the film or any portion thereof, is attached or levied upon; see “levy”).

attendance checking — Activities undertaken on behalf of a producer or distributor designed to verify the actual number of paid moviegoers in attendance at a showing or showings of a film. Such activities may include the hiring of checkers to go to the theater and count those in attendance or to purchase the first and last ticket of the day at a given theater to then compare the ticket numbers with the exhibitor’s attendance reports. There are organizations that provide such checking services for producers and distributors. However, in a rent-a-distributor situation a producer may want to hire its own checking service to conduct random checks of attendance at theaters where the producer’s film

is being exhibited (see “checker” and “rent-a-distributor”).

attorney (attorney-at-law) — A person who has been admitted by a state’s highest court or a federal court to practice law in that jurisdiction. In order to be licensed to practice, attorneys generally must pass a course of study at an accredited law school and pass an exam administered by the state bar association. Some states also now require that practicing attorneys participate in a required minimum number of hours of continuing professional education activities (see “Code of Professional Responsibility,” “conflicts of interest” and “ethics”).

attorney-in-fact — One who is an agent or representative of another and given authority to act in that person’s place and name. The document giving the attorney-in-fact authority is called a power of attorney (see “power of attorney”).

“A” type vehicle — (same as “A’ title”).

auction — The sale of a property to the highest bidder (see “bidding war” and “spec script”).

audience — The group of people who see a film or to whom a film is generally directed (see “primary audience” and “secondary audience”).

audience demographics — (see “demographics”).

audience fractionalization — The dividing up of movie goers and television viewers among numerous and various entertainment alternatives, thus theoretically decreasing the size of the potential audience for any given offering. The trend has caused problems for motion picture

production companies and network television which had previously designed movies and programming to appeal to a mass audience (see “homogenous films”).

audio cassette — (see “cassette”).

audit — An inspection of the accounting records and procedures of a business, government unit or other reporting entity by a trained accountant, for the purpose of verifying the accuracy and completeness of the records. It may be conducted by a member of the organization (internal audit) or by an outsider (independent audit). An IRS audit consists of the verification of the information on the tax return. It is not likely that an audit on behalf of motion picture profit participants will rise to the level of a complete audit which is so thoroughly executed that the auditor’s only reservations have to do with unobtainable facts. In a complete audit, the auditor examines the system of internal control and the details of the books of account, including subsidiary records and supporting documents, while reviewing legality, mathematical accuracy, accountability and the application of accepted accounting principles. This is a technical accounting term establishing audit standards (same as unqualified audit). Producers can raise the question of a complete or unqualified audit in negotiations for audit rights although such audits are not likely to be permitted by distributors. Experienced entertainment attorneys recommend that profit participants do audit any motion picture that has any likelihood of going into net profits. An audit of studio books for a domestic theatrical release may cost \$30,000 or more, but few if any of such audits, do not pay for themselves. Audits of major studios have uncovered millions of dollars in errors, most of which seem to be in the studio’s favor (see “audit rights,” “broad auditing

rights,” “limited review,” “sub-distributor” and “underreported rentals”).

audited cash production budget — An audited film budget prepared after completion of the film that excludes deferrals (see “audit”).

audit fees — The compensation paid to an auditor (e.g., a motion picture net profit participation auditor for his or her services relating to a review of the books and records of a business such as a motion picture distributor). The fees for a film distributor audit relating to a given film may be in the twenty-five to thirty-five thousand dollar range, but for a “successful film” such audits will generally recover ten times that amount for net profit participants (see “audit” and “auditor”).

audition — A trial performance to appraise an actor or actresses’ suitability for a specific role in a motion picture (see “screen test”).

auditor — An accountant (and sometimes attorneys) who are authorized to examine and report on a business’ books of account (see “advocate auditing,” “audit,” “audit rights” and “profit participation auditor”).

auditor’s certificate — (same as “accountant’s opinion”).

audit rights — The power and authority to conduct an inspection of the accounting records and procedures of an entity. Such rights present an important issue with respect to the negotiation of feature film distribution agreements, since the calculations relating to gross receipts and net profits are typically very complex and rely on so many contractually defined terms, while the provisions of such agreements also very often leave a great deal of

discretion in the hands of the distributor. Unfortunately, experienced motion picture profit participation auditors have reported that even on occasions where an audit has uncovered an inadvertent mistake or actual wrongdoing the results of which tend to financially favor the distributor as opposed to any other participants, some distributors merely shrugged their shoulders and say “oh well” which is the equivalent of saying the producer’s only remedy is to sue (see “audit,” “blacklist,” “broad audit rights,” “contract of adhesion,” “discretion,” “problem producer,” “remedy” and “sue us”).

audit trail — The step-by-step record by which accounting information can be traced to its source; the physical evidence of an entity’s expenditures which are reviewed in an audit (see “audit”).

auteur — A French concept holding that the director of a film is the true creator or author of the film, who brings together the script, actors, cinematographer and editor and molds all such contributions into a work of cinematic art with a cohesive vision (see “collaborative process” and “creative control”).

author — One who writes or composes a book or other literary work (see “certificate of authorship”).

authority — The permission or power held by or delegated to another (see “contract of adhesion,” “discretion” and “power”).

authorized shares — The maximum number of corporate shares of any class that a corporation may legally create under the terms of its articles of incorporation (see “corporation”).

automatic dialogue replacement — The

recording and synchronization of non-production, studio-recorded dialogue tracks with corresponding film images. The replacement voice may be that of an actor other than the one shown on the screen and replacement dialogue may be in a language other than that spoken during the original production (also known as “dubbing” and “looping”; see “dialogue replacement”).

availability — The date a motion picture can be shown commercially in a market in accordance with the offer by the distributor to the exhibitor (see “true availability”).

availability analysis — An objective determination as to whether a specific form of film production financing may be obtained by a producer for a given film project. As a precondition to the so-called “pro and con analysis” (i.e., the analysis relating to advantages and disadvantages of the various forms of film finance), the producer must first make a realistic appraisal of what forms of film finance are actually available to him or her for the subject film project. For example, many producers know at the outset that their proposed film is not of interest to the major/studio distributors, that it is not adequately packaged to attract a negative pickup distribution deal, that they do not want to give up creative control or that they do not have access to prospective investors. Thus, several important traditional sources of feature film financing may be eliminated right away by using this initial level of analysis and the producer does not even have to bother with the pro and con analysis for forms of film finance that are not realistically available for a specific project (see “advantage,” “disadvantage,” “financing” and “pro and con analysis”).

average gross per screen — The gross box

office receipts per movie screen for a given motion picture per week, unless another period is stated (see “gross per screen”).

average major studio margins — A statistical median representing the ratio of the gross profits to net sales for the major studio/distributors. Average major studio margins are closely watched by financial analysts and have reportedly been in decline in recent years (i.e., less than 10 percent). Such margins during most of the 1980s were greater than 10 percent, but were never higher than 17 percent, even during the so-called “product shortage” years of the late 1970s. Some analysts assume that since the major studio/distributors are consistently profitable, their management must of be competent. Alternatively, in light of the fact that studio films generate incredible sums of money, the studio margins are kept arbitrarily low by paying such high salaries and other forms of compensation to top executives, talent, attorneys and agents, most of whom are Hollywood insiders (see “Hollywood insiders,” “supply and demand” and “profitability”).

average negative cost — An industry statistic usually calculated by the MPAA for films produced by member companies and presented

as a statistical median for a given year. The average negative cost for an MPAA movie in 2005 was reportedly in the neighborhood of 60 million dollars. Studio executives and their representatives are fond of pointing to escalating advertising expenses, high labor costs and the demands of gross profit participants as the primary culprits in the escalation of negative costs while spokespersons for “A” level talent counter that if the studios would quit playing games with their books (thus making net profits virtually obsolete) there would be little need to demand gross participations. In addition, studio executive compensation, passed on to each film as part of the overhead charge, adds to the cost (see “creative accounting,” “gross participants,” “profit participants” and “videocassette revenue reporting”).

aviation insurance — Insurance protecting against the risk of loss due to the use of an airplane in the production of a movie (see “insurance”).

award advertising — Promotional materials and activities used in conjunction with events designed to honor films or certain film elements (see “advertising”).

B

back end — A film’s revenues generated from exploitation of the film in all or specified markets. Percentage participations in such revenues arenegotiable but are usually not paid untilafterdistribution and/orproduction costs have been recouped (see “back end deal,” “contingent compensation,” “gross participant,” “net profits,” “percentage participation” and “points”).

back end deal — A contractual arrangement providing for contingent compensation to be paid to a designated recipient at a defined stage of a film’s revenue stream. Such compensation may take several forms including gross participations, net profit participations, bonuses paid upon achieving gross receipts equal to specified multiples of the film’s negative costs, escalations of percentage participations triggered by similar revenue levels, retroactive payments and even reductions in such compensation if certain revenue levels are not achieved (see “back end,” “contingent compensation” and “percentage participation”).

back end negotiations — The discussions relating to who will be paid monies out of a movie’s revenue stream, at what point and at what level or percentage (see “back end deal” and “back end participations”).

back end participations — Percentage participations in a film’s revenue stream generated by the exhibition of a movie (see “percentage participation,” “points,” “revenue stream” and “up front salary”).

background cast — The people, objects, set pieces and scenery that form the setting against which the foreground players and action are placed. An extra is also referred to as a background player (see “atmosphere” and “extra”).

backlist — [same as “catalog (library)”].

back lot — That portion of a motion picture studio that is used for exterior filming (see “exterior” and “location”).

backstage.com — An online website that provides news and casting information for actors. The service started as Back Stage in New York in 1960. Back Stage West in Los Angeles was added in 1994 and then after the Internet came into existence, BackStage.com came online in 1997. The service provides a place where actors can connect with the nationwide performance community. BackStage is owned by Netherlands-based VNU Inc., whose other entertainment and media publications includes

The Hollywood Reporter, *Billboard*, *Adweek*, *Mediaweek* and *Ross Reports*. VNU also owns measurement company Nielsen Media Research (see “Nielsen Media Research”).

bad boy rules — (same as “disqualifiers”).

bad debt — An open account balance or loan receivable that has proven uncollectible and is written off; amounts earned by a specific film and owed to the distributor of the film but which the distributor will not be able to collect because the debtor is insolvent. Distributors will generally deduct such amounts before making payments to the producer. Profit participants may want to seek to limit distributor discretion to claim amounts that are uncollectible and establish some objective criteria in the distribution agreement for which “bad debts” may be written off (see “creative accounting” and “uncollectible indebtedness”).

bad faith — A willful failure to respond to plain, well-understood statutory or contractual obligations; the absence of good faith (see “covenant of good faith and fair dealing” and “good faith”).

bad faith denial of contract — A relatively new tort recovery based on a defendant’s bad faith conduct in asserting a stonewall (“see you in court”) defense to an ordinary commercial contract. Recent cases have held that the elements of the cause of action are (1) an underlying contract, (2) which is breached by the defendant, (3) who then denies liability by asserting that the contract does not exist, (4) in bad faith and (5) without probable cause (see “bad faith,” “probable cause,” “sue us” and “tort”).

bad title — Ownership rights that are legally insufficient to convey property to a purchaser (see “marketable title”).

bad weather insurance — Insurance that provides reimbursement to a film’s producer, up to the limit of insurance, for each scheduled filming day canceled due to any type of bad weather (i.e., rain, high winds, storms, clouds, etc.). This coverage can be adapted to include automatic coverage for rescheduled shooting days (see “insurance”).

balanced print — A copy of a motion picture that has been color corrected or graded (see “color corrected”).

balance sheet — A financial statement that gives an accounting picture of property owned by a company and of claims against the property on a specific date. Generally, a summation of assets is listed on one side and liabilities are listed on the other side. Both sides are always in balance (contrast with “income statement”).

balloon payment — Final debt payment that is substantially larger than the preceding payments. Loans with a balloon payment are sometimes referred to as partially amortized loans (see “moratorium”).

ballpark figure — An estimate (see “projections”).

bank — Federally or state regulated financial institutions, some of which have entertainment divisions that lend funds for film production. Usually such banks will only lend against so-called “bankable” guarantees provided by pre-sale or distribution agreements and most such banks will only lend to established producers with