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HOLLYWOOD AND BOLLYWOOD – A CLOSER LOOK

By Deeksha Singhal, Senior Associate, MPTPS

There is a great amount of potential between the Hollywood and Indian film industry, also known as Bollywood. Firmly established in Mumbai, formerly known as Bombay (hence the Bollywood nickname), the Indian film industry has registered explosive growth in last two decades, making it one of the fastest emerging industries in India. As the second fastest growing global economy, with an English speaking workforce, creative and entrepreneurial spirit, and the fourth-largest economy in terms of purchasing power parity, India's increasing per capita income and growing working population are generating huge demands in the entertainment world. At present, the Indian film industry supersedes Hollywood in terms of movie production quantity, producing close to a thousand movies in a year, in various Indian regional languages. With steady growth in the disposable income, Indians are likely to spend more on entertainment in the coming years. With this is mind, Bollywood has seen many changes to help bring growth and development in this area. The Government of India has taken several initiatives to liberalize the Foreign Policy regulations relating to films. Bollywood has also entered into co-production treaties with several countries and is in the process of entering into more bilateral pacts (e.g., with Australia, China, Canada, etc.). Other fast growing sectors in entertainment include music, radio and digital media.

INDIA'S ROLE IN HOLLYWOOD - THE BIG DEAL(S)

Today we see Hollywood experiencing full blown integration at all levels - horizontal, vertical and holistic. An example of this is the Lions Gate Summit deal in 2012, which laid the foundation for an integrated studio. Other deals such as Comcast and Time Warner, Disney acquiring Maker Studio and the proposed takeover of Time Warner by the Murdoch Empire also came into prominence. In the coming years, these types of deals also look to be more prevalent in Bollywood.

Initially, when Hollywood studios entered India, they experienced many challenges. Even with significant growth prospects, India was still bound with various regulations and infrastructure issues. In addition, foreign studios did not have relationships with key local players, and thus were often solely used as banks. However, in the last few years, the Indian film industry has become more receptive toward foreign investments and production companies. This has paved way for many international production companies to make their debut in Bollywood along with opening offices in India. Hollywood movies and companies continue to gain local market share by finding the right local partners, and successfully building their internal capabilities. One recent example is the acquisition of UTV by Disney, which started with a small investment several years ago. Disney gradually increased its stake to take full ownership of the company. Outside of the U.S., India is one of the largest markets Disney has

The Walt Disney Company

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Featuring people, news and business issues for the entertainment and media industry.

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invested in for local production. Another example is the long standing joint venture between Viacom and TV18- Viacom 18. With its global partner, Viacom 18 has interests in cable television (TV18), Internet, films, e-commerce, magazines, mobile content and allied business. Viacom's first major step toward entering India's television market was the launching of Colors television channel. The success of Colors made Viacom 18 a leading player in the Indian TV market and allowed Viacom to build a distribution business.

Currently, the world's largest film industry, in terms of production volume, is undergoing a massive influx of international presence. Reliance ADA Group (a domestic production company) has signed a production pact with DreamWorks Studios, to produce movies with the preliminary investment of $825 million. Another local production company, Yash Raj Films, has signed joint partnerships with Walt Disney, to produce animated movies. Other such stories include Sippy's film projects being sponsored by Warner Group and Sanjay Leela Bansali Films' collaboration with Sony Pictures Entertainment. Adlabs has emerged as the leading company producing movies in 3D and 6D formats and PVR (Village Roadshow) is all set to infuse around $52.2 million to grow its film production and bowling trade in India. Recently, Relativity Media and leading Bollywood film and television network, B4U have struck a joint venture to produce entertainment and sports content to be distributed across myriad platforms. The deal includes a production fund of $100 million.

Other such strategic deals are also taking place in television and digital media. The continued growth in India's telecommunication sector is expected to drive Internet penetration. With the introduction of digital distribution platforms like video-on demand (VOD), direct-to-home (DTH) and Mobile TV, the Indian TV and Film industry has undergone a revolutionary change. The growth in DTH market has been triggered by the increase in the marketing budget of DTH offering domestic companies such as Bharti Airtel, Big TV and Sun Direct. The government owned national television broadcaster, Doordarshan, is expected to be fully digitalized by 2017 and international television channels such as MTV, Cartoon Network, Disney, Star Plus and Pogo are all set to grow their service market to cover India's promising licensing market. New government reform policies have also triggered growth in the entertainment industry, starting with authorizing a 49 percent foreign stake in the DTH and cable TV market.

There has also been an increase in attempts to create more opportunities by tapping local talent for global opportunities. Slumdog Millionaire, The Exotic Marigold Hotel and Life of Pi are some recent examples of such collaborations. The common link between these films is not just that they are distributed by Fox/Fox Searchlight, but also that these films are based on Indian themes and have used predominantly Indian cast and crew. Films like Slumdog Millionaire and Life of Pi won international accolades, with Life of Pi winning four Oscars while Slumdog Millionaire bagging eight, including one for A R Rahman, Indian music composer, for Best Original Score.

The digital market has also been growing very strongly in India lately. Mobile content consumption has been growing. Building a robust best-in-class global entertainment and sports digital franchise for Indian content is the next big agenda. Soon India is set to become the world's youngest country, and its citizens are adopting new technology platforms - from smartphones to smart TVs - at a dramatic rate.

Since the late 1990s, India has remained a highly credible outsourcing hub for animation. Animation in film and television in India has grown at a steady pace. Major studios like

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VIDEO GAME AUDITS: WHAT YOU NEED TO KNOW

Free Video from International Game Developers' Association (IGDA) Webinar

L-R: Cedar Boschan, Green Hasson Janks, Tom Buscaglia, Esq., "The Game Attorney"

In November, **Tom "The Game Attorney" Buscaglia, Esq.** and Green Hasson Janks' **Cedar Boschan** presented a webinar about royalty audits in the interactive game industry.

Buscaglia, who counsels game developers, questioned Boschan and shared his own seasoned perspective on the following topics:

- What is a royalty audit?
- Why Developers Are Underpaid
- How to Audit
- Audit Timing

Click here to watch the webinar on YouTube. &

Walt Disney, Warner Bros and Sony have been consistently outsourcing animation work and special effects to companies based in India. Due to reduced costs, (approximately 75 percent less than what they would be otherwise), companies in the UK, France, Italy and Spain are also customers for the Indian animation industry. However, even with such huge business prospects, India is generally not looked upon as a content creator when it comes to animation.

A mistake that a lot of people and global media companies have made in India in the past, is to bring an existing business model and simply start working with it in India. This has rarely been successful. India has so much diversity - social, economic and more, that companies have to become an insider when trying to build a media business in India. In order to succeed in India, it is necessary for companies to understand and adapt to economic and cultural nuances and invest in content and services tailored for the local Indian market. Global companies need to thoroughly assess the market and distribution channels to price content appropriately and adopt to markets that exist in the country. Also, entertainment companies operating in India continue to be exposed to risks ranging from local competition, fraud, corruption and piracy. However, in recent years, we have seen such risks being mitigated with the help of the ongoing structural and regulatory reforms and the development of corporate governance norms. &

U.S. HOME ENTERTAINMENT MARKET OVERVIEW

By Peter Klass, Manager – Motion Picture and Television Participation Services

Five Key Findings in 2013

1. Home entertainment spending in the United States rose by 1 percent to $18.2 billion; however, it is still below 2004 when it surpassed $21.8 billion
2. Consumer spending on discs (DVD and Blu-ray) declined by 9 percent
3. Digital spending jumped 24 percent for the year
4. Digital platforms account for more than 35 percent of overall consumption
5. Electronic sell-through (EST) is the fastest growing digital video segment

Disc-based video market continues to slide while digital video shows steady growth

A total of $18.2 billion was spent on buying and renting physical discs, DVD's and Blu-ray's and digital video in 2013. Physical discs still accounted for a majority of overall paid video consumption, 65 percent of total. Blu-ray unit sales comprise approximately 27 percent of all disc sales; the growing base of the high definition format has demonstrated only modest growth over the past several years. It has been 10 years since the DVD format peaked and it has been in steady decline in recent years at more than 8 percent per year. Meanwhile digital video consumption has been expanding throughout all platforms. Subscription models are the largest generator of digital spending and show strong growth. In this segment, consumers pay a fixed monthly rate to access digital video content with Netflix and Amazon being the two major players. Transactional models also show growth especially in "download-to-own" or EST which increased by 47 percent in 2013 while "pay-per-use" or video-on-demand (VOD) increased by 5 percent.

2013 U.S. HOME ENTERTAINMENT CONSUMER SPENDING

[by format, $ in millions]

Packaged Goods [DVD & Blu-ray]:	2012	2013	YOY
Sell-Thru	$8,462	$7,779	-8.1%
Rental	$3,154	$2,961	-6.1%
Subscription (physical product only)*	$1,258	$1,018	-19.1%
Total Packaged Goods	**$12,874**	**$11,758**	**-8.7%**
Digital:			
Electronic Sell-Thru (EST)	$808	$1,189	47.2%
VOD	$2,012	$2,109	4.8%
Subscription Streaming	$2,395	$3,164	32.1%
Total Digital	**$5,215**	**$6,462**	**23.9%**
Total U.S. Home Entertainment Spending	**$18,089**	**$18,220**	**0.7%**

*Per The Digital Entertainment Group // * via online interface, eg. Netflix*

Outlook for 2014

For 2014, the combined U.S. home entertainment market is projecting a slight drop in consumer spending from the previous year with digital growth compensating for the continued decline in physical video. Sales of discs will continue to freefall with another 8 percent projected decline, while the rental and subscription markets for discs face even steeper drops. Digital video spending is expected to grow by at least 16 percent; however, total year over year growth is considerably less than in 2013 (24 percent). Digital sales may not be growing at a rate sufficient enough to make up for lost revenue on DVD and Blu-ray.

Spending on digital platforms is projected to be around 44 percent to 48 percent of the overall video consumption. It appears no single dominant platform will emerge as the market continues to fragment and that several video platforms will coexist together. &

5 THINGS TO CONSIDER BEFORE FILING A MUSIC COPYRIGHT CASE

By Gerard P. Fox, Esq.

1 In my opinion the Federal District Courts have been improperly applying a quantitative and not qualitative copyright analysis in music and film cases. This means that they take the totality of your copyrighted work which you claim has been infringed, and hold it up against the totality of the infringing work and actively look for dissimilarities. This is incorrect under the law because in truth a song often includes many small, integrated and unique copyrightable works. Unfortunately, because the courts are taking this approach, it is much harder to win a copyright case in district court. I tried one of the last published wins where I represented an artist claiming a part of their song was infringed. See Three Boys Music (Ronald Isley) v. Michael Bolton. It's not common.

2 You will need to hire a musicologist up front. If you want to have any chance of negotiating an early settlement or defeating an early motion for summary judgment (see below), you will need to retain an accomplished and respected musicologist. First, you should secure their independent opinion as a consultant, then if their opinion is one you respect and one that supports your contentions you should retain them as a formal expert. Good musicologists, who are respected by defense counsel and the court, will usually ask for an upfront retainer of no less than $5,000 or $10,000. Keep in mind that this retainer is not a cap of their total billings. If the case proceeds through to depositions, summary judgment and trial, the musicologist would likely charge you upward of $25,000.

3 Another consideration is that the defendants will most assuredly make an early motion for summary judgment wherein they will argue that the infringed elements of your song are common and not unique, and that the two musical works are not substantially similar. They may also make other arguments that are common to these types of cases, but these are the two most likely arguments. In making these arguments, they will put forth cases that move away from the proper application of Copyright law to a quantitative analysis of the works. It is imperative that you retain attorneys who have a deep and up to date understanding of the case law, legislative history and this process to have any chance of defeating this type of motion. This is no area for a general practitioner. Defeating this summary judgment motion is essential, because if you do, which is rare in these cases, you will have all the leverage, as the defendants would be left to face a public jury trial.

4 The prevailing party may be awarded their attorney's fees under Copyright law. Under 17 U.S.C. § 505 "the court may also award reasonable attorney's fees to the prevailing party" in a copyright infringement case. This is a huge issue to consider for artists because if you lose, you could be ordered to pay hundreds of thousands of dollars of defense fees. Now, awarding attorney's fees and costs is discretionary with the district court judge, and many of these judges will NOT award the defendants their fees even if they win, on account of their very human concern about the financial devastation such an award would cause the artist. Nevertheless, this is a risk that should be considered.

5 Finally, when it comes to estimating your damages, you will not be awarded all of the infringing defendants' net profits from the infringing distribution and use of the song, but an apportioned amount. 17 U.S.C. § 504(b) provides that the defendants are entitled to prove that certain elements of the profits are "attributable to factors other than the copyrighted work." See Mackie v. Rieser, 296 F.3d 909, 915–16 (9th Cir.2002) (In the Ninth Circuit, on a claim to recover profits that are attributable to the copyright infringement, a plaintiff must show that the infringement itself that is, the use of the plaintiff's work, was causally linked to the gross revenue claimed.). This means that the defendants will argue that their notoriety, other songs on an album, the marketing behind them and their songs, the market that pre-exited for their music and other non-infringing parts of the song at issue were responsible for most of the profits earned, and that you should only be awarded a small apportioned amount of the net profits. Of course, most defendants are not truthful about their actual net profits and will try to hide the true amount of their profits. To combat this it is important that you hire a forensic accountant who is knowledgeable about the music industry, such as Green Hasson and Janks, to figure out the actual net profits. You can then use your musicologist and maybe another music industry expert to argue that the piece of music stolen from you drove the sales and the resulting profits of the defendant. &

*Gerard P. Fox, Esq. and **his firm** handle general business, contract and IP litigation across the entertainment industry and beyond.*

Gerard ("Gerry") Fox graduated from Georgetown Law School, magna cum laude, and earned an accounting degree from the University of Richmond. Mr. Fox acted as lead trial counsel for clients such as Vivendi, Clear Channel and Dow Chemical.

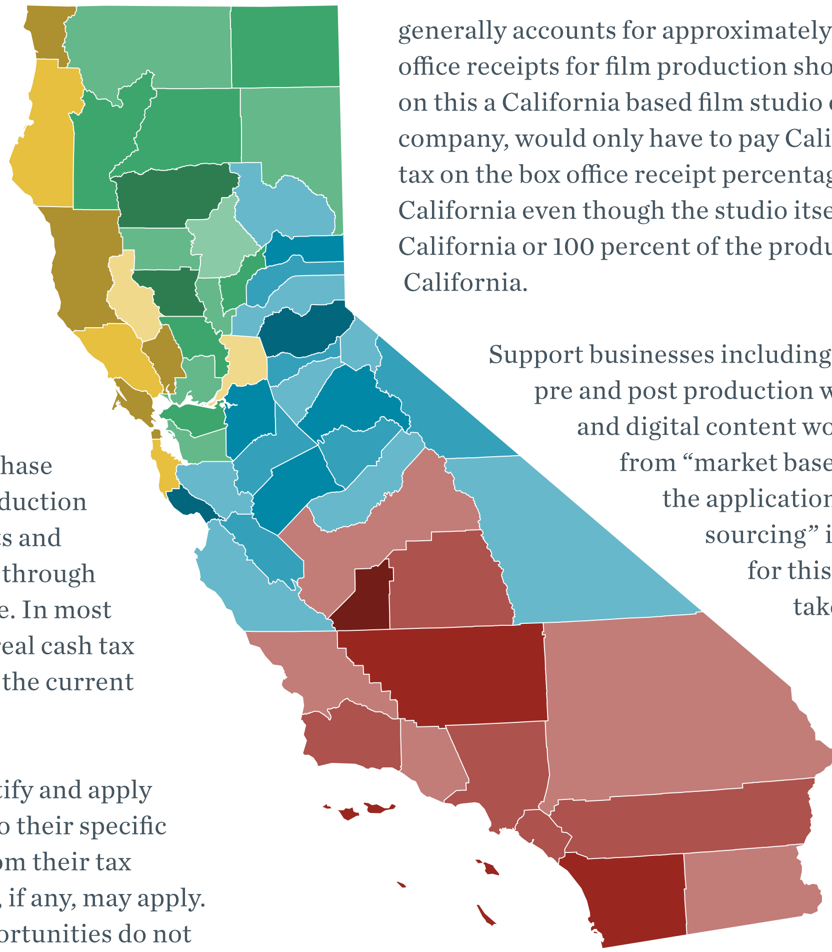
*Gerry started his career at Covington & Burling, followed by Kaye Scholer, before forming Fox & Spillane, where Mr. Fox honed his trial skills for 12 years. Four years ago, Gerry began the **Law Offices of Gerard Fox**.*

Gerry handles General Business Litigation, Contract Litigation and Intellectual Property Litigation across the entertainment industry and beyond.

*Gerry is admitted to practice in Maryland, Washington, D.C., California, has served as a media commentator, and wrote the book **"Sue the Bastards."***

TOP STATE AND LOCAL TAX OPPORTUNITIES FOR THE ENTERTAINMENT INDUSTRY

*By **Akash Sehgal,** Director*



State and Local taxes are an often overlooked area for businesses, particularly those in the entertainment industry. Opportunities may exist for entertainment related businesses to significantly reduce their state income tax and sales/use tax burden, particularly those businesses located in California. Over the years, many states have implemented tax legislation designed to provide in-state businesses with tax benefits. These include full and partial sales tax exemptions on the purchase of qualified equipment used in post-production activity, film and employment tax credits and the opportunity to reduce income taxes through the sourcing of revenue outside the state. In most situations these opportunities provide real cash tax savings and are often applicable to both the current tax year as well as future years.

Many businesses find it difficult to identify and apply these state and local tax opportunities to their specific fact pattern and often need guidance from their tax advisors regarding which opportunities, if any, may apply. Many businesses believe that these opportunities do not apply to them for one reason or another. The reality is that most businesses can take advantage of some, if not all, of the tax savings opportunities that exist.

To help you identify which state and local tax incentives may apply to entertainment businesses, we have compiled a list of the top state and local tax opportunities that should be a focus for businesses looking to minimize their state and local tax burden. Savvy entertainment businesses should discuss these opportunities with their tax advisor to see whether any prior, current or future tax savings can be realized.

State Income Tax – Market Sourcing

Many states including California allow businesses that are generating revenue from sales other than the sale of tangible personal property to source revenue outside the state for state income tax purposes to the extent that the customer of the business is benefiting from the service outside the state. We refer to this as "market based sourcing." For example, revenue generated from film and television production can often times be sourced based on box office or Nielsen ratings (i.e., viewership) and not based on where the business is located or where the production activity occurred. California, for example generally accounts for approximately 5 percent of box office receipts for film production shown globally. Based on this a California based film studio or production company, would only have to pay California income tax on the box office receipt percentage generated in California even though the studio itself is located in California or 100 percent of the production occurred in California.

Support businesses including those involved in pre and post production work, advertising and digital content would also benefit from "market based sourcing." While the application of "market based sourcing" is too technical for this article, the key takeaway is that entertainment related businesses that are generating revenue from sales other

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3 TIPS ON NEGOTIATING "BACKEND" DEALS FROM FORMER STUDIO LITIGATORS

*By **John Berlinski & Mansi Shah,** Partners at **Kasowitz, Benson, Torres & Friedman LLP***

As litigators who spent more than a decade working at a major studio, and whose current practice includes consulting with auditors to help talent identify and refine accounting claims against the studios, we have analyzed countless backend agreements. Below are a few suggestions generated from our experience representing clients on both sides of the aisle.

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1. If you know the answer will be "no," don't ask the question. Most studios require talent to negotiate backend deals from pre-existing templates. These templates are famous for being overly wordy and containing terms subject to varying interpretations. In the event of a later dispute about the meaning of such an ambiguous term, judges and arbitrators typically decide the issue by reviewing "extrinsic evidence," including the parties' negotiating history. In such cases, the absence of negotiating history is preferable to a history that reveals you asked for something and the studio rejected your request.

2. Don't rearrange the deck chairs on the Titanic. Certain backend definitions contain terms that are so pro-studio that it is clear from the start that they will never result in profits, even if you are able to negotiate standard improvements to the definition, and even if your client's television series or film is wildly successful for the studio. When negotiating with a studio that has such a definition, focus your efforts on obtaining greater upfront compensation for your client and don't waste time tinkering with a formula that has no chance of paying out.

3. Know with whom you are getting into business. An important part of maximizing your client's backend compensation is understanding the distribution deals that generate revenue for the studio, and consequently for your clients. All dollars are not created equal. For example, certain studios structure their deals to permit a percentage of revenues to be diverted to an affiliate before receipts are reported to the studio. Consider hiring an attorney or other consultant at the time of contracting who understands how these arrangements are structured at the studio with whom you are contracting. If your client already has a backend deal in place, you should also consider conducting an audit. &

than the sale of tangible personal property should be speaking to their tax advisors regarding the application of "market based sourcing" to their specific fact pattern to determine what if any benefit may apply for state income tax purposes.

Post Production Sales/Use Tax Exemption

100%
sales/use tax exemption for California based production companies

California based production companies can benefit from a full sales/use tax exemption related to the purchase and use of equipment used primarily in post-production activities. "Primarily" means that the property is used 50 percent or more on the following activities: film or video editing, film and video transfers, transcoding, dubbing, subtitling, credits, close captioning, audio production, special effects (visual or sound), graphics or animation. This exemption does not apply to tangible personal property that is used primarily in administration, general management or marketing.

Note that qualified tangible personal property should also include all equipment or devices used or required to operate, control, regulate or maintain the machinery, including, without limitation, computers, data processing equipment and computer software including replacement parts.

Film and Employment Tax Credits

California recently increased its funding of film & television yearly tax credits over

3x

$100M to $330M

Many film and television production companies are aware of the income tax credits states and countries offer to lure production into the jurisdiction. California recently increased its funding of film and television tax credits from $100 million per year to $330 million per year over the next four fiscal years in an effort to entice California based studios and production companies to retain production in the state as opposed to filming outside of California. More than 30 states now offer some sort of film and television production credit.

While film and television production credits have been on the radar of most entertainment businesses, an often overlooked issue is to generate credits offered by states for the hiring of full time employees. A number of states, including California, provide lucrative state income tax credits for the hiring of full time employees, particularly if the business is located in certain areas of the state. These credits can range from $500 per employee up to $56,000 depending on where the business is located and the number of employees hired. California also recently implemented a tax incentive for businesses that are looking to expand or relocate into California. This incentive is referred to as the California Competes Credit. &

THE 5 TOP EMERGING LICENSING AND BRAND PROMOTION GROWTH AREAS FOR THE ENTERTAINMENT INDUSTRY

By Danny Simon and Ilan Haimoff

01 Film And Television Brand Integration And Cross Promotion Opportunities

With more and more subscribers and viewers skipping commercials on their or similar technologies, advertisers are looking for new and creative ways to get their brand recognition and message across to the consumer. Two key growing areas include promoting a brand through integrating it in the storyline or the script, which can be challenging but feasible, and allowing the company or its advertisers to use clips and/or other features from the movie or television show in their advertising campaigns throughout the market.

The revolution in technology has claimed at least one victim, the human attention span. Some reports now estimate that the human attention span has now dropped to the level of that of a goldfish – three seconds. The advertising industry, specifically the area of television commercial advertising, has been dealt a double whammy - dwindling viewer attention, and, thanks to those techno geeks, the ability to watch television without commercials. While we may dislike the disruption of our favorite programs with messages about stuff you could not care less about, it is what has been paying the production bills of those shows we love. The result is to force advertisers to find other means to hock their wares on the tube; say hello to "brand integration." Repackaged under a much classer moniker, brand integration (what we use to call product placement) has come into vogue as a way to subtly – or in some cases not so subtly – not just place their products in a production, but to "hopefully" involve the product in the storyline. Doing this not only projects the product as an item of choice (conjure up an image of that familiar red and yellow box of Tide sitting on top of the washing machine as the actors are engaged in a scene filmed in the house's laundry room), it might also become the reason Tide creates a multimillion dollar promotion offering props from the series or a walk-on role in that same show – very clever.

02 Exploring New Technologies and New Media Platforms to Reach The Consumer

Companies are also exploring new technologies to promote merchandising or other promotion materials through the use of new media platforms to reach a larger number of potential buyers. This could include a link from a site specifically created for the film or television show to another site, where merchandising could be purchased.

The personal computer, according to techno-wizards, was supposed to eliminate the use of paper in our daily lives. An excellent example of this is the airline ticket E-ticket. The "old" printed ticket form amounted to maybe a single sheet of paper. Its replacement, the E-ticket, if printed out is usually no less than three pages, of which at least two pages are legalese making you responsible for just about anything that could go wrong. In the same vein, technology is "polluting" the world of consumerism by placing in reach – via the remote control – the ability to offer instant gratification by introducing "see it, click it shopping," which allows you to instantly purchase the same item clutched in the hand of that adoring leading man staring in your favorite prime-time show. See it, like it, click on it and buy it, all without ever leaving the safety and comfort of your Lazy-Boy recliner.

03 Exploring Foreign Opportunities

As the global market grows, so will its potential licensing opportunities. With this in mind, there is a greater focus on marketing planning in the foreign market to ensure there is maximum and timely exposure for merchandising and other product associated with film or television.

In March 1976, the New Yorker Magazine ran a cover that clearly expressed the New York mindset regarding its place and importance in America. About two thirds of the cover was New York, the remainder of the cover was the rest of us. This same

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myopic geography view seems to also be applied to how we see us versus them – them being everyone else who does not live here. Guess what, not only are we running out of Third World countries, some of those in the Third World are quickly creeping up to our lifestyle. You know the country Brazil right, big country, lots of jungle space; they speak Portuguese, and are the home of Carmen Miranda (find an old person to explain the reference). Brazil had a unique way of combating inflation – periodically the government simply lopped off three zeros of the currency – really. Today, this same country has an economy that is out-pacing us. The profound change in the Brazilian market, and others like it, has caused the licensing industry to realize that efforts to market outside the U.S. can make a great deal of sense.

04 Use Of Social Media To Promote Product Sales

More and more companies are going into social media to push brand recognition and sales of merchandising and other product. After all, most of us are on social sites almost all the time!

It seems that even those born to generations prior to the Gen X'ers realize the power social media exerts on shaping and driving consumer decisions. The "why" however is a whole other story, which many of us who remember using rotary dial phones are unlikely to ever fathom. Whether you get it or you don't, social media tools are demanding the attention of just about any entity interested in marketing it wares to persons under the age of 40. In the words of Marshall McLuhan, social media is today's hot medium.

05 New Emerging Product Categories

With the evolution of the Internet and other emerging technologies, there is an opportunity for further exploitation for licensing purposes, such as online gaming, clips, virtual imaging and others.

Back in the B.C. era of licensing, which would be the early to mid-1980s, when a conspicuous property failed to materialize a consumer buying frenzy, the licensing naysayers would bemoan (including the rending of garments) the death of licensing, pontificating that it was merely a passing fad. Is $153,205,000,000 enough proof that it's not? That is the estimated number of dollars spent worldwide last year on the purchase of licensed products. With few exceptions, the licensing industry has witnessed year over year increases of the total dollars spent on the purchase of licensed goods. Why licensing has continued to gain financial ground can be attributed to two key factors: growth in consumer demand for products based on familiar (and appealing) brands over similar "plain wrapped" goods, and the growth of new product categories resulting from emerging technologies. An excellent example is the birth of the online gambling industry. In 1994 the gross online gambling winnings were zero dollars, due to the fact that online gambling did not exist. In 2013, the estimated worldwide winning from online gambling was pegged at $30 billion dollars - only 18 years after being introduced to the market. To provide a little perspective of how quickly online gambling has caught on, it took McDonald's 20 years to sell 30 billion hamburgers... &

"LIFE STORY" RIGHTS: EXCLUSIVE EXCERPTS FROM DINAH PEREZ' THE LEGAL 411 FOR SCREENWRITERS

By Dinah Perez

Entertainment lawyer Dinah Perez, Esq. wrote "The Legal 411 for Screenwriters," section of the Hollywood Screenwriters Directory. In the exclusive excerpt to follow, Ms. Perez discusses the cases in which a life story option/purchase agreement may be needed to secure permission to base a screenplay on an individual's life story. Many deep insights about screenplay rights and deal making can be found in Ms. Perez' complete section of the ***Hollywood Screenwriters Directory****. You can also read Ms. Perez' Q&A on screenplay prices on the* ***Auditrix*** *blog.*

"Private Persons"

Every living person has the "right of privacy"- the right to be left alone and the right to keep private facts from the public. As a consequence thereof, you need to enter into a Life Story Agreement if the subject of your screenplay is a "private person" whose story has not been in the national news and, hence, is not known by the general public. Do not commence writing until you have entered into a Life Story Agreement. The only exception here is if you are writing about a deceased person, since the right of privacy terminates upon death.

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"Public Persons"

Celebrities, politicians, and other persons in whom the general public has great interest are all considered "public persons" because they have disclosed their private facts and live so much of their lives out in the public. As a consequence, public persons have a more limited right of privacy than the private person, and have a lesser expectation of it.

You may disclose truthful facts about politicians, e.g., that a politician is taking bribes, is an alcoholic or drug addict, has cancer, etc. Limit disclosure to facts that impact the politician's ability to do his/her job or how he/she carries out the responsibilities of office. You do not have the same berth where a living celebrity is concerned. If you want to avoid a costly judgment in favor of a celebrity, use facts that are already in the public consciousness, garnered from the likes of a trial transcript, news story, magazine article, biography, autobiography, television interviews, etc.

Notwithstanding, since the public person has a right to privacy, limited though it may be, I always recommend that you consult with an attorney and that you enter into a Life Story Agreement rather than proceed without one.

The Right of Publicity

Every person, be they private or public, also has the "right of publicity," which gives everyone the right to control the commercial exploitation of their name, likeness, voice, and any other identifying aspect of their persona. In other words, your screenplay's producer cannot advertise and distribute a picture based on your screenplay unless you acquired the subject's right of publicity. This is best done via a Life Story Agreement, which grants the buyer the right to use the subject's, name, voice and likeness to produce, advertise and distribute the picture.

Also, though the right of privacy terminates at death, the right of publicity does not always because state law determines whether the right dies or survives. For example, in New York, the right of publicity is extinguished at death for persons domiciled there and, as per California statute, the right of publicity is a descendible property right that currently survives death by 70 years (for persons who died there prior to 1985). You need to know where the subject of your screenplay died in order to ascertain whether the right of publicity ended with, or outlived, your subject's life. &

About the Author

DINAH PEREZ graduated Loyola Law School and has been in the practice of entertainment law since 1996. She practices film, television, theater, music, new media, publishing, copyright and trademark law. She enjoys practicing entertainment law because she has great respect for the arts and those who create, and relishes helping her clients attain their professional goals.

Ms. Perez has been published in Story Board Magazine, Release Print, Script Magazine, "The Screenwriters Guide to Agents and Managers," "The Hollywood Screenwriting Directory" (2014) and "The Hollywood Producers Directory" (2015). Ms. Perez has been quoted in Entertainment Weekly, Wired Magazine, Wired.com, and featured in "Alone in a Room."

Please click for more information about our services to the entertainment and media industry: motion picture and television participation services, royalty and licensing audit services, expert witness and litigation support, transaction advisory services, assurance and advisory and tax planning and compliance.

To submit future topics or provide feedback, please contact Ilan Haimoff at ihaimoff@greenhassonjanks.com

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