Tips for Navigating Digital Distribution

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**1.  CARVE OUT DIY DIGITAL:**

Distributors and Foreign Sales companies alike often want ALL RIGHTS and including ALL DIGITAL DISTRIBUTION RIGHTS.

No matter what, at least CARVE OUT the ability to do DIY Digital Distribution yourself with services such as: [EggUp](http://www.eggup.com/), [Distrify](http://www.distrify.com/), [Dynamo Player](http://site.dynamoplayer.com/), and/or [TopSpin](http://www.topspinmedia.com/), off your own site, off your Facebook page, and also directly to platforms.  Platforms and services can almost always Geo-Filter thereby eliminating conflict with any territories where the film has been sold to a traditional distributor and often times a distributor will not mind that a filmmaker sells directly to his/her fans as well in any case.

**2.   PLATFORMS ≠ AGGREGATORS ≠ DISTRIBUTORS:**

Platforms are places people go to watch or buy films. Aggregators are conduits between filmmakers/distributors and platforms. Aggregators usually focus more on converting files for and supplying metadata to platforms and that's about it.  Marketing is rarely a strong suit or focus for them but it should be for a distributor, otherwise what's the point? Aggregators usually don't need rights for a long term and only take limited rights they need to do the job.  Distributors usually take more rights for longer terms.  Sometimes distributors are DIRECT to PLATFORMS and sometimes they go through AGGREGATORS.  It makes a difference because FEES are taken out every time there is a middleman.  Filmmakers should want to know the FEE that the PLATFORM is taking (because it's not always the same for all content providers though usually it is other than for Cable VOD, for example) and know if a distributor is direct with platforms or goes through an aggregator.  Also, filmmakers should have an understanding what each middleman is doing to justify the fee.  On the aggregator/distributor side, we think 15% is a better fee than 50%, so have an understanding of what services are included in the fee. If a distributor is not devoting any time or money to marketing and simply dumping films onto platforms, then one should be aware of that. Ask for a description in writing of what activities will be performed. Companies such as #SAS partner New Video (worked on our case studies Bass Ackwards and Note by Note) function well as both a distributor and an aggregator.

**3. THINK OF DIGITAL PLATFORMS AS STORES AND CUSTOMIZE A PLAN THAT IS RIGHT FOR *YOUR* FILM:**

A film should try to be available everywhere however sometimes that is too costly or not possible and when that is the case one should prioritize according to where the film’s audience consumes media. Think of digital platforms as retail stores. Back in the DVD days (which are almost gone), one would want a DVD of an indie film in big US chains such as Blockbuster and Hollywood Video but especially a cool, award winning indie would do well in a 20/20 or Kim's Video store because those outlets were targeting a core audience. With digital, it's the same. While many filmmakers want to see their films on Cable VOD, some films just don’t work well there and delivery is expensive. Some films make most of their money via Netflix these days and won't do a lick of business on Comcast.  Other films do well on iTunes and some die there whereas they might actually bring in some business via Hulu or SNAG. Docs are different from narrative and niches vary. Know your film, its audience's habits and resolve a digital strategy that makes sense. If money or access is an issue, then be strategic in picking your “stores” and make your film available where it's most likely to perform. It may not be in Walmart's digital store or Best Buy's. Above all, if you dear filmmaker have a community around you (followers, a brand), your site(s) and networks may be your best platform stores of all.  Though there is something to be said for viewing habits so I do recommend always picking at least a couple other key digital storefronts that are known and trusted by your audience.

**4. TIP FOR CABLE VOD LISTINGS:**

By now many of you may have heard that it's hard to get films marketed well on Cable VOD platforms. Often the metadata either isn’t entered or entered incorrectly and it's nearly impossible to fix after it goes live. Hence, oversee the metatags submitted for your film and check immediately upon release. Also, since genre/category folders and trailer promotion are not always an option for every film, it is the case that films with names starting in early letters of the alphabet (A-G) or numbers can perform better. Then again, there's a glut of folks trying that now so the cable operators are getting wise to this and not falling for it. All the more reason to focus on marketing, marketing, marketing your title, so audiences are looking for it and not just stumbling upon your film in the VOD menu. There are only going to be more films to choose from in the future, not fewer.

**5. ART for SMALL:**

Filmmakers, if there is one thing I must impart to you once and for all it's this:  TAKE GOOD PHOTOGRAPHY!!!  Take it when making your film. Remember, most marketing imagery if not all for digital distribution (which will be all of "home entertainment") must work SMALL so create key art and publicity images that also work well small and in concert with the rest of your campaign. Look at your key art as a thumbnail image and make sure it is still clearly identifiable.

**6. KNOW YOUR DIGITAL DISTRO GOALS AND PLAN AHEAD:**

I have seen distribution plans wasted because a vision for the film's path was not resolved in time to actualize it properly. If your film is ripe for NGO or corporate sponsorship and you want to try that, you will need loads of lead time (6 months at least!) and a clear distribution plan to present to potential sponsors (who will always need to know that before agreeing).  If making money is a top concern, then know how YOUR FILM’s release is mostly likely to do that and plan accordingly. It may be by collapsing windows or it may be by expanding them. All films are different and that's why it’s best to look at case studies of films with similar appeal to yours. And if showing the industry that your film is on iTunes matters to you for professional reasons more than financial then know that is your motivator but know that getting a film onto iTunes does not automatically lead to transactions, marketing does.

**7. TIMING IS EVERYTHING | WINDOW WATCHING:**

Digital distribution often has to be done in a certain order if accessing Cable VOD is part of your plan. That is not the only reason to consider an order and an order is not always needed, but it can be a consideration.  Sometimes Cable VOD is not an option for a film (films often need a strong theatrical run before they can access Cable VOD) and, in this case, the order of digital is more flexible and one can be creative or experiment with timing and different types of digital. However, Cable VOD's percentage share of digital distribution revenues is still around 70% (it used to be nearer to 80%) so if it's an option for your film, it's worth doing, at least for now.

It is very often the case that if your film is in the digital distribution window before Cable VOD (on Netflix for example), that will eliminate or at least dramatically diminish the potential that Cable MSO's (Multi System Operators) will take the film or even that an intermediate aggregator will accept it.  There is more flexibility with transactional EST (electronic sell through) / DTO (download to own) / DTR (download to rent) services such as iTunes but much less flexibility with YouTube (even a rental channel) or subscription or ad-supported services such as Netflix (subscription) or Hulu (which is both). Films that opted to be part of the YouTube/Sundance rental channel initiative (such as *Children of Invention*) could not get onto Cable VOD after. The Film Collaborative has to hold off on putting films in its YouTube Rental Channel if cable VOD is part of the plan.  Of course, there are exceptions to every rule due to relationships or a film proving itself in the marketplace, but better to plan ahead than be disappointed.

Companies such as Gravitas are also programmers for some of the MSOs so they have greater access to VOD, but they too discourage YouTube rental channel distribution before the Cable VOD window and they do Netflix SVOD (Subscription Video on Demand), distribution after. In general, people often do transactional platforms first and ad-supported last with Netflix being in the middle unless it's delayed because of a TV deal for example. This is not always the case and some distributors have experienced that one platform can drive sales on another but in my opinion it depends on the film and habits of its audience.  You should know that Broadcasters such as Showtime will pay more if you do your Netflix SVOD after their window rather than before.

WINDOW WATCHING: If you for example stream or distribute digitally before Cable VOD for example you will often lose that opportunity so timing is key.  And of course festivals will often not program a film if it’s available digital or at all commercially.  For documentaries one has to be mindful about the EDUCATIONAL window (though this usually most relates to DVD).  Broadcast and SVOD are competitive with each other so compare options in terms of fees and timing for best distribution results and maximum benefits.  Sometimes VOD is best BEFORE theatrical (it’s called Reverse Windowing and Magnolia does that for example, sometimes).  Sometimes Ad Supported VOD (AVOD or FOD (free VOD)) (e.g. regular HULU) or Broadcast airings are seen as useful for maximum awareness, relatively significantly revenue generating, and/or good for driving transactional VOD.  Whereas sometimes AVOD or FOD is seen as cannibalizing business and is delayed.  So again, know your strategy based on both your audience / consumer and your goals.

**8. THE DEVIL IS IN THE DEFINITIONS**

DEVIL IS IN THE DEFINITION: Remember that the term VOD means or includes different things to different users.  The terms in the space are becoming more customary but they are not fully standardized so be sure to have ALL terms related to digital rights DEFINED.  And the space keeps changing so be sure to stay current.

There is no standard yet for definitions of digital rights. IFTA (formerly known as AFMA) has its rights definitions and for that organization’s signatories there is therefore a standard. But many distributors use their own contracts with a range of definitions that are not uniform. When analyzing distribution options, be aware that terms such as VOD can mean different things to different people and include more or fewer distribution rights and govern more or fewer platforms.

Consider the term “VOD”. In some contracts, it’s not explicitly defined and hence can mean anything and everything. IFTA is clear to categorize it as a PayPerView Right (Demand View Right) and limit it to: “transmission by means of encoded signal for television reception in homes and similar living spaces where a charge is made to the viewer for the rights to use a decoding device to view the Motion Picture at a time selected by the viewer for each viewing”.

However in some contracts, it’s defined as “Video-on-Demand Rights,” meaning a function or service distributed and/or made available to a viewer by any and all means of transmission, telecommunication, and/or network system(s) whether now known or hereafter devised (including, without limitation, television, cable, satellite, wire, fiber, radio communication signal, internet, intranet, or other means of electronic delivery and whether employing analogue and/or digital technologies and whether encrypted or encoded) whereby the viewer is using information storage, retrieval and management techniques capable of accessing, selecting, downloading (whether temporarily or permanently) and viewing programming whether on a per program/movie basis or as a package of programs/movies) at a time selected by the viewer, in his/her discretion whether or not the transmission is scheduled by the operator(s)/provider(s), and whether or not a fee is paid by the viewer for such function/service to view on the screen of a television receiver, computer, handheld device or other receiving device (fixed or mobile) of any type whether now known or hereafter devised. Video-on-Demand includes without limitation Near VOD (“NVOD”,) Subscription Video-on-Demand (“SVOD”,) “Download to burn”, “Download to Own”, “Electronic Sell Through” and “Electronic Rental,” for example.  This example includes everything and your kitchen sink.

One has to ask if a definition of VOD or another type of digital right includes “SVOD” (Subscription Video on Demand) and includes subscription services such as Netflix and Hulu Plus. Why does this matter? Well if the fee to the distributor and/or to you is the same either way then it may not matter. If there’s a difference in fees depending on the nature of distribution, then it will.  Recently an issue in a deal came up with respect to distinguishing ad-supported specifically from general “free-streaming”.  Is ad-supported governed by a “free-streaming” rights reference?  Why wonder, Just spell it all out; better to be safe than \_\_\_\_\_.

Another example, if a contract notes a distributor has purchased “VOD Rights” but does not define them, or defines them broadly, then do they have mobile device distribution rights as well? The words “Video-on-Demand” sometimes are used only to refer to Cable Video on Demand and other times much more generally. In a “TV Everywhere” (and hence film everywhere) multi-platform all-device playable universe, the content creator needs to know.

The devil is in the definition which you must read carefully BEFORE you sign on the dotted line.  Know what you want for and can do for your film in terms of distribution and carve it up and spell it out.

**9. PLAN FOR FUTURE:** Digital distribution in Europe is not as mature as it is in the US but it’s growing.  The key platforms and categories of VOD now may not be key down the road.  Again, do deals wisely and plan for the future.  One way may be to set revenue thresholds for contract terms to continue.  Or allow for terms to be reviewable and adjustable into the Term.

**10. IF YOU CANNOT MAKE PIRACY YOUR FRIEND** by lets say monetizing it or using it to drive awareness… then think about shortening the time between your release windows and when you first start handing out DVDs and getting a lot of buzz for your film. Many folks would happy consume your film legitimately if given the opportunity in time.  Some piracy cannot be helped and can either be monetized or just enjoyed.  There are anti-piracy services one can employ as well.  In my experience, DVD is a bigger source of piracy than digital.

**11. KNOW YOUR RIGHTS / OTHER WAYS TO PROTECT YOURSELF IN A DEAL:** Before giving rights away for longer periods of time think about the future.  For example, the category of DTR (download-to-rent) is growing as is SVOD (Subscription VOD).  So you will want to make sure your splits are strong in your favor, especially for growing categories, and Cable VOD and transactional DTO (download-to-own) or EST (electronic sell through) are strong too and btw, some of these terms include each other.  Instead of merely focusing on rights classes even within the category of VOD one may also want to address gross revenues so that one can get an appropriate share of revenues at certain gross revenue thresholds.  You may want to have terms of a deal be reviewable for contracts with a longer Term.