

# THE OTHER SIDE OF THE NEW WALL

***American Bar Association  
From Hollywood to South Beach  
The World of Film, Music & Television***

*April 23, 2010*

*Fontainebleau Hotel, Miami Beach, Florida*

## **A GROUND-UP RE-EXAMINATION OF THE MOTION PICTURE INDUSTRY (AND A WINK AT TELEVISION)**

**Is “New Media” *New* anymore?**

### *The Big Reach*

***The New Playing Field: Engaging Marketing, Communication  
&  
Entertainment***

#### **I. CHANGING THE WAY WE PROCESS INFORMATION & HOW NEW AND OLD WORLD MEDIA COMPANIES ARE RESPONDING**

**A. We live in exceptionally rapidly changing times:** Singularity Theory.  
"What's Next Generation" - Impact on Values. 20,000 year units of change over  
the next century. Sept. 15, 2008! The day the world changed.

**B. Brain Rewiring.** Moments versus long, lingering, lyrical lushness.  
Processing speed. Video-games as life-preparing mind exercises! Putting it  
together in a flash of puzzle parts - Memento, Hangover, 500 Days of Summer  
vs. Lawrence of Arabia

**C. Over saturation and complete fractionalization.** Too many choices - less  
money for each fractional share: more runs, cross-platform content, even multiple  
channels in the same medium.

**D. Empowerment of the consumer.** The death of creative control and top-down  
determination of when, how, and where.

## **E. The United States as a Mature Economy; Growth in the Emerging Markets – China, India, Russia and Brazil.**

### **F. Consumer Expectations:**

**Cable/Satellite/Mobile Platforms vs. Internet.** Why do we pay for site-specific delivery?

**What are television networks?** Relevance? Disintermediation.

"Amy (Poehler) and I are honored to be presenting on the last official year of network broadcast television," presenter Julia Louis-Dreyfus said. Aging demographics. MSOs and retransmission payments for old world broadcast networks (Fox vs. Time Warner Cable) – cable versus broadcast values.

The notion of **aggregation** as the meaningful analytical tool: content aggregation, ad sales aggregation and eyeball aggregation. Each has its own value proposition, but each can be defeated with the "next new" universe. Think MySpace losing to Facebook. Think all the Web-content aggregators who simply died even as eyeballs were beginning to attach.

Cell phone minutes as the new model? More later.

Were 4 pre-release million "illegal" downloads of Wolverine piracy or a marketing event?! How many of those who downloaded would have paid full price if the download were not available. How do consumers feel about "piracy"? How do you tell teenagers "not to be bad"? Is copyright an impossible dream in today's world?

### **G. The incredible impact of YouTube:**

One billion streams a day to over 400 million discrete users, approximately 2/3 outside of North America. Democratic participation, the costs of streaming versus the genuine ad-values received. 2nd largest search engine.

Devaluation of "I can make that myself" ubiquitous video capabilities on the acceptability of lower budget movies ("not special enough"); pressure on Hollywood to provide audio-visual levels to counter the ordinary on YouTube. The barriers on legacy studios and networks: collective bargaining agreements, contracts with content providers (creative controls, exclusivity - more below), overhead and slow reactivity, too many cooks.

Can they survive? Is YouTube the replacement/killer!

**H. What is "word of mouth"?** This is so obvious so as to suggest a simple reference. Bruno - strong Friday, serious slippage Saturday, disappointing Sunday. Twittered and texted away. Inglorious Twittering.

*The Indiana Jones* review. Who really "reviews" films?

## II. THE PSYCHOGRAPHIC/DEMOGRAPHIC GRID ANALYSIS

A. **There are No Secrets!** Under 25 have no expectation of privacy; over 30 think it matters. The level of consumer behavioral tracking is monumental. From the easy stuff, like your grocery point card, your credit history, etc. to transactions you started on line but did not finish, sites you visited, cell phone records (with the GPS kicker), plus all the voluntary stuff you agree to when you check those little online boxes. Cookies are not edible!

B. **As Rapid Change Narrows the Relevant Cohorts, Psychographic Segmentation becomes Necessary.** Define psychographics. Note the content-specific nature of psychographics. Abortion crosses Catholics and fundamental Protestants the same way, but change the subject to global warming and environmental issues, and the graphic changes.

C. **Layering in Demographic Media and Platform Preferences.** Complexity abounds. Need to know sophistication of specific consumers. Language issues. Picture a kid playing a video game today. Picture a kid playing a video game tomorrow. Adding media appropriate for relevant *demographic cohorts*.

D. **Media buying as medium-specific or psychographically appropriate?** Same psychographic doesn't mean the same medium will reach each demographic component.

## III. THE BUSINESS OF MOVIES IS - DIFFERENT

*"Since opening its doors in 2005, the Weinstein Company has released about 70 films, and more than one quarter of them failed to break the \$1 million box-office mark in the United States. Thirteen of these took in less than \$100,000."* August 16, 2009 New York Times. Ok, *Inglorious Basterds* performed well.... One out of 73!

### THE FACTS

Toronto festival in the fall of 2009 was a disaster! John Sloss: *"How heartbreaking is it to see movies that cost \$20 million with no distributors?"* **2010 Sundance – 3,724 submissions, 113 accepted (11 new domestic deals from about \$1M (8 at or below) to \$4.8M – One Agent in HR 1-25-10: “There is no urgency on the part of any buyer.”)** MGM is now run by a bankruptcy restructuring specialist (and up for sale at auction), Tribune (54% station coverage in the U.S.) and Sinclair in bankruptcy, and we have lost the following "specialty" labels: Fine Line, New Line is just part of WB, Warner Independent, Picture House, Miramax, Paramount Vantage is part of Paramount, ThinkFilms,

etc. 30% contraction in number of films in meaningful theatrical release in North America.

**Costs: Narrower audience niches** means more ad buyers across more media and more platforms. Each "quadrant" costs \$8-\$20 million to market to!!! Most studios now have a new unofficial policy of refusing to read, develop or consider for distribution art films or biopics. The **Power of Women!** *Blind Side*, *New Moon*, *Julie & Julia*. **Urban Brand:** Tyler Perry has a following but no foreign. **Faith-based:** Made for DVD market & *The Passion of the Christ*, *Book of Eli*. Wide usually needs either **family** or **15-25** target audience. And we need theatrical!

**Theatrical Exhibition.** Over 30's going to movies in North America - down 46% since the fall of Lehman Bros. on September 15, 2008; 15-30 up between 15-25% during the same period - Projection for the Year: Before the summer, 16% overall domestic increase in attendance. Whole year? 8.5% domestic revenue rise from 2008 (\$10.5B), 5% admissions increase (from 1.3B to 1.4B, Variety; admissions still down from 1.6B in 2002). Bad summer... "Summer of the Lost" (Summer, May 1 - Labor Day = 40% of the year). Big ending with Twilight sequel (New Moon) and Avatar (\$77M domestic/\$242M worldwide opening weekend - way over \$1B). The tables are tilting back towards theatrical revenues (need younger audience for wide releases - only they stand in line opening weekend), 21% to studios in 2007... moving past 30% upwards in 2009 and beyond as "tail" revenues fall. If it can't open wide, most majors and minis won't consider. New indie distributors forming to fill the void. Death wish or opportunity?

**Is 3D and/or Imax – Savior or a Momentary Respite:** *Avatar* is close to \$2B worldwide, *Alice in Wonderland* near \$700M (and 25%-33 1/3% of domestic gross comes from 3D screens; Imax made \$200M on *Avatar* alone) – Not Too Many 3D Screens in the US (fewer than 2,500 in US, 5,100 worldwide, doubling maybe in next 12 months). Imax has 400 screens worldwide (280 in the U.S.). Costs more for glasses (\$50-60 and studio provides), extra \$100K for the projector (studio pays virtual print fee – up to \$1K). Average ticket price for 3D up 8.3%, and often \$2-5/ticket. 15% more in production costs, up-res is controversial. 3D TVs coming this summer! A fad or not? Will 3D be the norm?

**TV trumps film in a bad economy.** "According to Deloitte's fourth annual State of the Media Democracy report... 34% of Americans cite TV as their favorite medium, up from 27% last year. Second through fourth, respectively, were Internet, music and books, all of which are perceived by the average consumer as being less expensive than a night out at the movies....While 71% of respondents say watching TV is one of their top media choices, only 22% listed going to the movies among their top 3.[2009] results suggest that consumers are increasingly looking to stay home for their entertainment rather than open their wallets. Asked whether they are looking to scale back entertainment purchases, 72% of American consumers responded in the affirmative." The Hollywood Reporter, December 15, 2009.

**Pay-TV Output Deals:** 40%-60% less on renewals since the last cycle.

**The Emphasis is Now on Theatrical Again:** Admissions up over last year by 7% in International! 3D movies boosted summer ticket revenues by 5.5%! But: Concession sales flat or down. Are we going from 550 North American theatrical releases a year down to 300? 14% fewer films from 2008/9. The "Silver Lining"? Fewer films with similar revenue level = **MORE REVENUES PER TITLE!** **1970s: Box Office (US-made): 85% Domestic; 15% Foreign. 2010: 35-65. 2015? 15-85?** Russia is growing screens @ 25%/+year. China is adding a screen almost every day? Avatar "officially" generated \$200M in PRC box office! Is the US no longer a growth market? Competition from indigenous production?

Why the shift? Adult-cost: an "evening out at the movies plus concessions" vs. teen/young adult buying a "single ticket each and holding down the concessions." Cheaper for an under 30 to go to the movies and for an adult to stay home and rent Netflix.

#### **IV. THE FUTURE AND THE PATHWAY TO ANSWERS (AGAIN-GREAT STUFF, BUT A BIT SHORTER)**

**A. It's always the economy stupid.** Adults have not left the market forever, but in cash-impaired times, going to the movies is a sacrifice easy to make. Serious themes will return, but remember that budget-appropriate films are what are required. As adults consume in the after-market or in a parallel non-theatrical exhibition market, budgets have to be geared to those venues.

**B. Can't be special by doing what everyone else is doing.** Sure a "*Little Miss Sunshine*," "*Juno*," "*Paranormal Activity*," or "*Slumdog Millionaire*" will rise and shine above the rest, but it's a very, very long shot to get there (and these films were so cheap or amateurishly made! They had real budgets.) You are competing for the same distribution shelf space that is being offered to \$100 million films. Why should distributors spend \$20-80 million marketing your movie? Why should someone leave a comfortable sofa with cheap yummy food to sit in a dark, swine flu-infested room to see your film?! Ah, the "*Paranormal Activity*" marketing phenom (\$15K film breaking all records - when it hit 160 screens, had the highest per screen revenue - \$49,359 - of any film in US film history playing on more than 100 screens). A one in twenty-thousand anomaly that will motivate filmmakers for years thinking "I'm the next *Paranormal Activity*!" Over \$107M in domestic box office alone.

**C. "Once they see my film, they'll grab it!" is a myth,** because no one even looks at films until they have been screened at lots of films festivals and won where it matters. Too many films to see. And lawyers participating in putting

together LLCs, limited partnerships, etc. may be the "deep pockets" in securities law litigation. Beware of the projections! Most numbers are hopelessly out-of-date.

**D. IT'S THE MARKETING STUPID!** Here is the key. Creating "buzz." There is no one path, but for filmmakers, learning to market what they have - to create unique campaigns and awareness - is the single biggest factor in generating the interest from both distributors and consumers. Filmmakers love telling the story, because it drives them to craft the film... but they need an even bigger need to know how to seduce audiences and distributors alike. And "I'll use the Internet" or "I'll create a viral marketing campaign" are not marketing campaigns... they're just words. And note, if you don't already have serious "buzz" about your movie, going the film festival route is no longer the path to sell domestic rights to independent movies. One Agent in HR 1-25-10: *"There is no urgency on the part of any buyer."* **PERSONAL RELEVANCE, INTERACTIVITY, UNIQUENESS... GETTING THE AUDIENCE TO PULL THE MARKETING TO THEM, PEER LEADERS. DIY distribution? Marketing your own film?** Self-releasing: got really deep pockets ready to prepare ad campaigns, pay for prints and do media buys? Alternative? Value of festivals? Sundance 2010: On demand cable day-and-date for 3 Sundance premieres via Sundance Selects/Rainbow Media (Comcast), 8 films released in art houses with filmmaker Q&A

**E. IS LIBRARY VALUE DYING?** What is the after-market? Simultaneous release? Pay-per-view? Subscription models? The barrier of copyright law. Separating content from the platform - what are consumers really buying? Keychest and Digital Entertainment Content Ecosystem initiatives? Too little, too late?

**F. Rule One: Know for whom you are making a film before you make it.** There are no films "for everybody." If you identify your targets, you have to be absolutely sure of three things: 1. that your film really does appeal to that market segment, 2. that the film is an "event film" for that market segment (a "must see film") and 3. that the target market segment is big enough to justify both the budget of the film and the cost to market into that market segment. In today's world, might be good to get a distributor on board before cameras roll.

**G. Test Your Theory.** Between YouTube (to test moments) and active audience testing (OTX - The NDA example), you have no excuses. Testing should be a part of every seriously-intended commercial film effort. Otherwise, filmmaking is just a self-indulgent hobby!

**H. Outside the theater:** Do television, home video, Web-delivery all blend into one? The battle between "pay-per-unit" vs. "all you can eat." Ad-supported versus subscription base? The convenience of perpetual storage with upgrades, navigation simplicity/convenience. The overhead for the eyeballs,

navigation system, ad sales and subscription collection, aggregations values....  
And how do you split the rest?

Legislative support for new models? The perils of exclusivity. Be free to watch a film anytime, anywhere on any platform! If you don't let them, they will anyway!  
Cheap Internet Rentals?

I. **Hulu?** 16 minutes of ads in average hour programs, 3-4 minutes (higher value ads, generating 50% or 100% premiums above television ads because of targeting) on Hulu... still less than TV. 38 million discrete users as of July 2009.  
**Keychest, Digital Ecosystem models?**

**IN THE END, YOU HAVE TO CREATE A PATH TO YOUR FILM. YOU NEED TO EMPHASIZE MARKETING AS MUCH AS YOU DO MAKING THE FILM. FINISHING A FILM AND STEPPING INTO THE FILM FESTIVAL FRENZY IS A COP OUT... IT'S NOT REAL, YOU CAN'T TELL YOUR INVESTORS IT'S REAL, AND THE ODDS ARE WAY AGAINST YOU.**

**THE FILM HAS TO HAVE (1) THE MAGIC, (2) YOU HAVE TO BUILD THE MARKETING VERY, CAREFULLY (SPEND AS MUCH ATTENTION TO MARKETING AS YOU DID MAKING YOUR FILM), AND THEN AND ONLY THEN WILL (3) MONETIZATION HAVE A CHANCE.**

**IF YOU ARE THINKING OUTSIDE OF THE BOX, YOU LOSE. THERE IS NO BOX!**

Final tally: Sundance 2010... 11-12 Pick-ups (3,724 submissions, 113 accepted) that include at least US rights:

1. *Waiting for Superman* (examines US educational system, documentary), Produced by Participant (Jeff Skoll – eBay billionaire), Picked up by Paramount Vantage. (pre-festival pick-up, so it doesn't really count). Very limited deal.
2. *Buried* (man in a coffin thriller) 1st real festival pick-up for \$3.2M plus a significant P&A commitment by Lionsgate
3. *Contracorriente* (Undertow) (Javier Fuentes-Leon's gay-themed ghost story) North American rights picked up by Wolfe Releasing for low six-figures.
4. *Blue Valentine* (serious "chick flick" about a deteriorating marriage) picked up by The Weinstein Company for low seven figures (\$1 million plus) for US, Canadian and pan-Asian satellite rights.
5. *The Kids are All Right* (chick flick/comedy about lesbian adoption when kid finds true dad, A. Benning & Julianne Moore), Focus Features, \$4.8 million for US, UK, Germany and S. Africa
6. *Twelve* (teen chiller directed by Joel Schumacher) by Publisher Hannover House (a book publisher with a film and home video arm) for approx. \$2M for domestic rights.
7. *Hesher* (the story of "a 20-something, long-haired, tattooed metal-head") pick-up by Newmarket, approx. \$1M for US rights.
8. *The Killer Inside Me* (based on a 1952 Jim Thompson book, ultra-violent crime drama starring Casey Affleck, Jessica Alba and Kate Hudson) domestic pick-up by IFC for between \$1-\$2M.
9. *Family Affair* (small personal documentary of one family) to Oprah Winfrey's OWN television network for nominal sum.
10. *Winter's Bone* (Grand Jury Prize [Drama] - winner about teen girls searching for missing meth-maker father) picked for small price (mid-six figures) by Roadside Attractions.
11. *Restrepo* (documentary following a platoon of soldiers in Afghanistan) sold for television to National Geographic Channel.
12. *The Freebie* (stale marriage spiced up with an agreement to allow a one night stand for each) was acquired by Phase 4 Films. Price was low to mid-6-figures for North American rights. *Expected after Market*: documentary financed by A&E, *The Tillman Story*, about the tragic friendly fire death of gridiron star-turned Army ranger Pat Tillman and the dogged efforts of his family to find the truth of the cover-up, probably by The Weinstein Company. Also, *To the Rileys* (Kristen Stewart and James Gandolfini) with three buyers looking. *Splice* (thriller), probably a pick-up by Apparition (with Sony/Paramount output money), \$2.5M guarantee for domestic. Maybe a few more for very low prices.

Bottom line: only two significant (dollar value) pick-ups and no larger dollar deals.