

The "Right of Accounting" Provision In A Film Distribution Contract

When a party signs a distribution agreement, he or she is giving another party the right to take a film to the market and exploit it. A "right of accounting" provision in a distribution contract allows the owner of the film to audit the distributor's books to ensure the owner is receiving the full amount that is owed from the exploitation of the film. It is an important right that is among the tools a producer can utilize to ensure proper accounting and receipt of money due from the distributor.

This provision, similar to other provisions in a contract, is negotiable. Distributors are not eager to have individuals consuming time and money reviewing their company's accounting work, so distributors are not eager to allow the producer to have this right in the contract. To avoid the provision becoming a "deal-breaker," distributors often concede the right and then make it subject to restrictions that effectively undercut the power of the right.

Some issues regarding the "right of accounting" that will affect its power include: 1) the time and place of the audit; 2) which party may choose the auditor; 3) how often an audit can occur; 4) how long a party has to bring an audit claim (an attempt to shorten the statute of limitations); 5) who must pay for the cost of the audit, including any penalties regarding "substantial" amounts of underreporting discovered during the audit; 6) whether the auditor has access to the general books and ledgers of the company or access to only specific ones; 7) whether the books of any parent and/or subsidiary companies of the distributor are available to the auditor; and 8) access to the contracts and books regarding any third party distribution agreements entered by the distributor regarding the film.