Best Laid Plans

Thursday August 15, 2002

By: Reed Martin

Shoud independent filmmakers write business plans? Is independent film even a business? Reed Martin finds out.

Potential investors used to ask if there were any speaking parts in the script for their favorite niece or nephew. Today some are demanding something with far more dire impact on principal photography: well-crafted business plans that explain how and when investors will make money.

During recessionary times, when cash is hard to come by, it's no longer enough to present a killer script and a terrific pitch. In the real new economy, the people who still have money want to see recoupment horizons, marketing plans, internal rates of return and multiple revenue streams.

And that's just on the executive summary page.

"Anyone looking for financing for anything should have a business plan, period," says talent manager Glenn Rigberg, of the Beverly Hills firm of Rigberg, Roberts, Rugalo. "An independent film business plan [without money and a hard offer to go with it] won't get actors attached. But a solid, compelling plan can give a filmmaker a certain degree of credibility in the fundraising arena. That's where it counts."

Call it the legacy of the dot-com bust or too many late nights watching CNBC, but investors are increasingly cautious about parting with capital. Before wallets and purse strings will open, many filmmakers will have to present their projects as real businesses, even if the end result is a lowbrow gorefest in the spirit of *Basket Case* or *C.H.U.D.* "Making any film is like starting a company from the ground up that is designed to make that one movie," says Jason Blum, a former Miramax acquisitions executive who now runs Blum Israel Productions with fellow Miramax alum Amy Israel. "Anytime you make a film, you're creating a brand and you're running a business. Each movie is its own little start-up."

Still, for every first-time investor asking for a business plan, there are a dozen industry veterans who caution against putting too much faith - or time - in such a document. Says producer Adam Fields (*Money Train, Donnie Darko*), "Why would a first-time filmmaker write a business plan? I don't know if it makes sense to put together a business plan on a one-off film until you have all your stars and your [distribution] guarantees in place. And at that point, I'm not sure what the point of a business plan is."

Filmmakers, then, shouldn't run out and get their MBAs. But would-be auteurs could use a degree of business savvy beyond the ability to negotiate heartbreak deals with equipment houses. Writer/director Debra Eisenstadt, whose $25,000 DV feature *Daydream Believer* won the Grand Jury Prize for Best Dramatic Feature at Slamdance 2001, admits that she is not looking forward to the idea of writing a business plan for her next project.

"I'm the first to admit I have a very uneven talent when it comes to business affairs," she says. "I may have to ask for help from someone who has done it before or learn how to [write one]. It's inevitable so I'm going to have to get used to it" adding that she would rather stick to the creative side of filmmaking.

However director Greg Harrison, who wrote a business plan with producer Danielle Renfrew to finance the $500,000 Sundance film *Groove,* says it's something that all filmmakers should know how to do. "The business side is really what supports the creative side," he asserts. "As much as you can learn to love the business side, the legal side and the logistics of the industry, the better off you are.

Renfrew and Harrison formed a limited liability company (LLC), called Groove LLC, in 2000 and courted Internet professionals in the Bay Area who were flush with cash. (An LLC is a form of incorporation that protects its partners from personal liability should the venture go south.) "As a filmmaker you need to speak the language of your potential investors, and we wanted to show them we were for real," Renfrew says. "The approach we took was that we were a start-up company looking for venture capital."

The pair raised their production budget in 100 $5,000 increments and ultimately sold the finished film (shot in 16mm) to Sony Pictures Classics for $1.5 million. But long before *Groove* entered preproduction, Harrison and Renfrew had to think about issues such as marketing, distribution and Securities and Exchange Commission rules related to fundraising.

"As much as it's a pain in the neck, there are times when writing a business plan is really the only option," says Ira Deutchman, former president of Fine Line Features and current president of StudioNEXT, a New York—based DV film production company. "If you can't tap into a small number of deep pockets or find money sources from [industry] connections, you may not have much of a choice." Raising money with a business plan is also one way for filmmakers to retain creative control. "Instead of going with traditional sources of funding like studios or established production companies who would've required wholesale changes to the script," Harrison says, "we decided to go for private funding in which investors were 'limited partners' - that is, investors without creative input. This resulted in our production team having complete creative control over the story."

Filmmakers can entertain suggestions from investors - everyone who puts in money is buying into the thrill of being a "producer" - but contractually, a business plan should spell out that the production team retains final say over what goes in the picture. The last thing any filmmaker needs is 100 (or more) chefs ultimately spoiling the soup.

"When looking for investors, you don't want to be in business with anyone who is dishonest or troublesome," says Wilder Knight, of counsel at the New York law firm of Pryor Cashman Sherman & Flynn. "If you find out that a potential investor has sued 23 people in the past 24 months, you can expect that he or she will sue you should your investment fail. You may end up writing a check for $50,000 just to get rid of this person because the cost of a court battle will be $100,000. You don't have to put together a detailed description of the project, but it's useful to put any and all unusual details in a budget or project description."

Indeed, many potential investors expect to see well-thought-out, elegantly bound documents even if they know they will never actually read them. "That's why I suggest writing a short, mini business plan that won't take too much time away from the actual endeavor," says Lawrence Sherman, professor of entrepreneurship at Columbia Business School. "Very often a person will spend months writing an extensive proposal when they would have been better off setting up face-to-face meetings to try and get the effort moving forward."

What should go into a film business plan? Generally, every plan has an "executive summary" - a topsheet that lists the credits of the producers, director and talent and describes the budget, start date and other key information in short, bite-size paragraphs. Next, there might be a one-page synopsis of the storyline followed by an "investment merits" section, which breaks down all the positive elements the project has going for it - whether it be established talent, distribution guarantees, large potential audiences for the film or simply the filmmakers' belief that his or her subject matter is timely and relevant.

There might be a "marketing" page that outlines the filmmakers' ability to reach a paying audience for the film and a "risk factor" section, which outlines the various ways the project can fail despite everyone's best intentions, and, finally, an "organization and operations" section containing bios of all key participants. In an appendix, filmmakers can add a quick primer on how revenue is generated in the film business or supplemental material, such as press clippings related to the project.

But in the film business, where parallel story generation always looms and actor availability can make or break a production start, filmmakers need to be careful not to get sucked into the business-plan event horizon. "I've been guilty of that myself," admits Sherman, who has launched several successful companies in the medical industry. "Some people spend eight to 10 months writing the perfect 'bullet-proof' business plan - one with every appendix and financial projection you could think of - only to find themselves with a bloated 40-page document nobody wants to read. That's not uncommon." To avoid this sorry fate, Sherman suggests keeping the page count between 10 and 20, including all financial projections. "Or what you can do is just draft a one-page letter that captures the appealing reason why an investor would want to meet with you in person," Sherman says. "The whole purpose of this letter will be to arrange a meeting where you can pitch your idea and see what issues they might have. Then if they ask for something more, you can provide what we call a 'back of the envelope' plan: a cursory summary that's quick-and-dirty and doesn't delve into unnecessary detail."

Filmmaker Greg Harrison followed the less-is-more page-count doctrine. "You have to be as concise as possible, because people don't want to read a 30-page manifesto," he says. "Our whole business plan for *Groove* was only 10 pages, and that included press clippings and an appendix explaining how the film industry works. The key was doing tons of research so we could distill it down to 10 pages that read really well. It's like writing a good script: it has to be a pageturner."

Of course, Harrison and his producer Danielle Renfrew took five months to get to that point, the amount of time it takes many filmmakers to complete an additional screenplay. "Originally, the business side wasn't my main focus - I wanted to make a film," Harrison remembers. "But it soon became apparent that the business side was going to be the bridge to becoming a filmmaker. At that point we had to put the script aside and begrudgingly become entrepreneurs."

Harrison and Renfrew wanted the *Groove* business plan to stand out and represent their film - a night in the life of the San Francisco rave crowd - so they added a few nontraditional flourishes. "We didn't just send out photocopies of the plan," Renfrew says. "We tried to make it fun: we had it bound at Kinko's and we sent it out in a cute little kit with a mix CD of songs we wanted to put in the movie. Doing whatever you can to make a business plan stand out is really important."

Orchid Ventures's Hakim Bangash, who co-financed well-known indies such as *You Can Count on Me, Sling Blade* and *New Jersey Drive,* advises that the "cute" approach only works with first-time film investors. He says that most established film financiers and bankers only want to receive something he refers to as "the package." This collection of preproduction documents includes the screenplay, a budget summary with projected above-the-line and below-the-line costs, a discussion of potential cast members, a one-page cover letter and a short synopsis of the script that does not reveal the ending. "You don't discuss the ending in detail because you want them to actually read the script,"

Bangash says. "Instead, you end the synopsis or the cover letter saying something like 'Our movie ends with a very interesting dance number that reunites the romantic leads, similar to the final sequence in *Dirty Dancing.*'"

The package can also include head shots of cast members who have been signed and résumés from the creative and production teams. As for business plans, Bangash suggests only sending them if the potential financier likes the package. "I've only seen four business plans out of literally hundreds of packages," says Bangash, who typically invests in films with budgets of less than $3 million. "Only one of the four was impressive: it was 12 to 15 pages long, and it wasn't filled with ridiculous projections and aggressive assumptions. The filmmaker acknowledged that it would be difficult to achieve distribution, but she said, 'If we get it, we can probably recoup X million dollars based on the fact that the film will only cost $500,000 to make.'"

This winning business plan went on to explain how the filmmakers planned to achieve cost savings and how they would market the film using both the Internet and traditional methods. The filmmaker also listed alternatives to theatrical distribution should the film be passed over by major distributors and how the filmmakers planned to create buzz without paying. Finally, the business plan included a budget breakdown and a list of freebies the production could count on.

"This one plan was clearly compelling for first-time investors, because the filmmaker ended up getting the money from people who had never invested in films before," Bangash recalls. "She was able to raise $500,000 in $20,000 increments by explaining what is often a very nebulous business." 	Deutchman points out that first-time filmmakers should be well versed in the mechanics of the industry before trying to pass themselves off as experts. The most common error many of them make, he notes, is to equate box-office success with massive returns for investors.

"The big bonanza for equity-financed films is *not* necessarily because they are successful in the marketplace," Deutchman says. Return on investment "really doesn't have anything to do with a film's success or failure in theaters, but merely the fact that it was sold for more than it cost to produce. That is good news that very few filmmakers leverage." In other words, a film like *Happy, Texas* bombed at the box office, but its investors still nearly tripled their money because the advance offered by the distributor was far more than the production budget.

Yet this doesn't stop many would-be directors and producers from regaling prospects with Horatio Alger stories of how *Pulp Fiction* only cost $8 million to make and went on to earn $108 million in the U.S. and $112 million overseas. This classic insinuation is that investors will be eligible for a big chunk of the theatrical distributor's largesse.

What they fail to mention is that (a) *Pulp Fiction* was not an equity-financed film, (b) deferrals and "profit corridors" on indie films with name stars can gobble up potential investor returns, (c) theaters keep 50 percent of all reported box-office grosses, and (d) gross-point distribution deals are increasingly rare, especially after the $40 million plus Artisan may have had to pay the producers of *The Blair Witch Project.*

Chuck Googe, an attorney with the Manhattan firm Paul Weiss Rifkind Wharton & Garrison, advises business-plan writers to have a lawyer review all written materials before it ships out to investors. "If you're planning to only solicit funds from sophisticated, 'accredited' investors - people with substantial assets or substantial business backgrounds - you don't need to provide detailed disclosures," he says. "There are different disclosure requirements depending on the type of offering and the audience being courted."

But no matter what type of potential investors are on someone's hit list, "material omissions" can still get filmmakers into trouble by opening them up to unwinnable lawsuits. Omissions can include "forgetting" to mention that the director's apartment is a paid production office or that the screenwriter gets a $60,000 deferred payment if the film is sold at Sundance.

"And you can't make some kind of statement like 'We are certain we are going to make $100 million at the domestic box office,'" Googe cautions. "There are state 'blue sky' laws that protect investors from con artists promising them the sky, if not the moon." In fact, the complex laws governing the promotion of securities in the U.S. means that any filmmaker with a business plan will most likely follow it up with a private placement memorandum, prepared by a lawyer, that investors must sign. Such a document will scrupulously detail risk factors and relevant tax laws. Some producers promise the moon in a business plan only to find their investors frightened away by these later documents - an argument for being realistic and honest from the beginning.

Indeed, the fact that their own projects are weepy romantic dramas doesn't stop many filmmakers from using *Blair Witch* and its box-office performance ratio as a reference point in business plans, Bangash says. "Usually a business plan tells me that this person is trying to distinguish themselves, but more often they just make the filmmaker look like a poser," he remarks. "As soon as they mention how they plan to sell off individual windows of exhibition for huge sums, it's a big, red flag. Leading distributors today want worldwide rights, which doesn't allow for any piecemeal sales."

As a result, there is a valid argument for simply presenting the screenplay as the filmmaker's business plan. "At the end of the day, scripts are the currency we deal in," Fields comments. "Regardless of how good a business plan may look, the only thing that's going to matter to me is the script, a filmmaker's potential talent as a director and the actors who will star in the film."

Furthermore, Fields says, detailed business plans may be lost on those most likely to invest in fledgling low-budget movies. "A lot of [potential film investors] want to feel like they are part of Hollywood or just to meet girls," he says. "If that's what their incentive is, I would suggest putting together an entirely different type of 'business plan,' one that can't really be put on paper."

For filmmakers or producers looking to start multipicture companies, however, a simple business plan is pretty much a necessity. Blum continues to consult and revise his business plan, even though his company has had a first-look deal with Miramax since it was founded in 1999. "It wasn't just something for the initial financing of our company," he says. "We're still using it. Our business plan changes all the time; we think of it as a living, breathing document. It's an invaluable tool to inform what you do every second of the day and where you spend your time. It has a mission statement and a goal statement and target numbers that we have to hit. It helps in terms of negotiating any deals that we do and in terms of deciding what movies we are going to make. We know we have to reach a certain goal by a certain time. And it helps us to make decisions about outside projects that might make the business plan work."

On the other hand, independent filmmakers might just decide to skip the business plan headache altogether. "I would suggest using the five months you're going to spend writing a business plan to write another script or to get your first script read by people in the film industry," Fields says. "Get the screenplay out to established producers, established talent or people who have experience raising production funds. They're the ones who are going to get your movie made."

Source: Filmmaker Magazine