



Harbottle & Lewis

Lawyers for the business of media and entertainment

Arrangements between Commercial and Subsidised Producers

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Current West End productions which started life in the subsidised sector

- ▶ The 39 Steps
- ▶ Love Story
- ▶ Ghost Stories
- ▶ The Umbrellas Of Cherbourg
- ▶ The Rivals
- ▶ War Horse
- ▶ Les Miserables
- ▶ End Of The Rainbow
- ▶ Clybourne Park

Types of deals

- ▶ Commercial producer acquiring a production from a subsidised producer
- ▶ Commercial producer taking rights to a subsidised producer
- ▶ Commercial producer enhancing a production by a subsidised producer
- ▶ Commercial producer starting a production at a subsidised venue
- ▶ Commercial producer co-producing with a subsidised producer

Why bother?

- ▶ So why do subsidised producers and commercial producers want to work together?

What value does the subsidised producer add?

- ▶ Ability to attract cast and creatives
- ▶ Low risk opportunity to try the production out
- ▶ Reduced costs of production
- ▶ Brand and reputation

What does the commercial producer have to offer?

- ▶ Access to rights, cast, creatives
- ▶ Ability to attract cast and creatives – Future life for a show
- ▶ Money – Now or in the future
- ▶ Ongoing life for a production
- ▶ Greater exposure for the subsidised producer's brand

What is each party bringing to the table?

- ▶ Rights
- ▶ Money
- ▶ Creative team
- ▶ Casting
- ▶ Physical production elements
- ▶ Time and resources

- ▶ Rights acquired by the subsidised producer
 - ▶ Inclusion of commercial options
 - ▶ TMA / TNC Commissioning Agreements – Commercial options
 - ▶ Improved subsidiary rights receipts resulting from commercial exploitation
- ▶ Rights acquired by the commercial producer

Money

- ▶ Box office at the subsidised venue
- ▶ Enhancement funding - What is it buying?
 - ▶ An exclusive option to transfer the show?
 - ▶ Enhanced production values?

Creative team / Casting

- ▶ Who contracts?
 - ▶ For the subsidised sector run
 - ▶ For the commercial run
- ▶ Who decides on their identity?
- ▶ Whose show is it?.....
- ▶ Protecting the subsidised producer's brand and reputation
- ▶ But what controls and input does the commercial producer get to reward them for their money?

Physical production elements

- ▶ Who makes the physical production?
- ▶ Who owns the physical production?
- ▶ Stock items and hires

Time and resources

- ▶ Rehearsal room
- ▶ Management time
- ▶ Marketing campaign
 - ▶ How will the show be positioned?
- ▶ Press
 - ▶ Will the National critics be invited?

What does the subsidised producer get from the future life of the production?

- ▶ Payment for production
 - ▶ Investment in kind
 - ▶ Fees
 - ▶ Royalty
 - ▶ Net profits
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- ▶ But how far does this extend? When is it no longer the same production?
 - ▶ What controls does the subsidised producer get? How do they protect the value of their brand and reputation?

Easy value adds for the subsidised producer

- ▶ Programme credits
- ▶ Free use of a programme page
- ▶ Free or discounted preview seats
- ▶ Free or discounted seats at other times

- ▶ Originating theatre royalties – typically between 0.5% and 2%
- ▶ Usually paid from a royalty pool
- ▶ Royalty pool
 - ▶ Weekly Operating Profit – Net Weekly Box Office Receipts less Weekly Running Costs
 - ▶ Around 30-40% paid into royalty pool
 - ▶ Royalty pool allocated amongst royalty participants
 - ▶ Weekly minimum guaranteed payment per point in the royalty pool

Net Profits

- ▶ Originating theatre Net Profits – typically between 0% and 10%
- ▶ Net profits
 - ▶ Post recoupment (i.e. all investment repaid)
 - ▶ Recoupment - Net Weekly Box Office Receipts sufficient to cover pre-opening Production Cost and all Weekly Running Costs and royalties
 - ▶ Net Profits are then the ongoing surplus of Net Weekly Box Office Receipts over Weekly Running Costs and royalties

Typical commercial production investment terms

- ▶ Producer raises funds from investors to cover the pre-opening Production Cost, reserves and contingencies – the Capitalisation
- ▶ Net Weekly Box Office Receipts used to cover the Weekly Running Costs and royalties
- ▶ Surplus goes to repay investment
- ▶ Once investment fully repaid – Recoupment
- ▶ Post-Recoupment - Net Profits are then the ongoing surplus of Net Weekly Box Office Receipts over Weekly Running Costs and royalties
 - ▶ Investors – 60% of Net Profits pro rata to investment
 - ▶ Producer – 40% of Net Profits
- ▶ Adjusted Net Profits – Net Profits less originating theatre Net Profits entitlement

Subsidised producer raising investment for commercial production

- ▶ In addition to any investment in kind
- ▶ Investing reserves
- ▶ Raising investment

- ▶ Why do it?
 - ▶ Additional share of producer net profit – depending on investment terms agreed
 - ▶ Greater involvement in production
- ▶ Where will the money come from?
- ▶ Legal issues
 - ▶ Financial Services and Markets Act
 - ▶ Use of trading subsidiaries

Subsidised producer producing or co-producing commercial production

- ▶ Risk vs reward
- ▶ Benefits
 - ▶ Greater share of revenues
 - ▶ Greater ongoing control
- ▶ Risks
 - ▶ Can you raise the money?
 - ▶ Can you accept the risk of loss or liability?
 - ▶ Do you have the skills and resources?
 - ▶ Distraction from your core objectives