M+E JOURNAL

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SKATING TO WHERE THE PUCK IS GOING TO BE

The effects of the pandemic on the M&E landscape and what it means for the future of entertainment contracts

ABSTRACT: The COVID-19 pandemic has accelerated a move to immediate release to VOD in the entertainment industry. This distribution model shift, in addition to some high-profile lawsuits, has given a glimpse into where talent compensation is headed, and insight into the methods that will be required to manage it.

By Jason Kassin, CEO, FilmTrack

2020 was one of those rare times in history that seemed to divide our experience into “life before” and “life after.” The pandemic has not only altered the way we interact, the way we work, the way we learn, and the way we shop, but also the way we access entertainment and consume media. Although some of these changes were completely unexpected, others had been set in motion long before most of us had ever even heard the term “coronavirus,” but were significantly accelerated by the pandemic.

Hockey legend Wayne Gretzky famously said: “I skate to where the puck is going to be, not to where it has been.” In the media and entertainment world, we all know where the puck has been, and prior to 2020, it was no secret where the puck was headed. On-demand and streaming content had been steadily growing in popularity for quite some time and were clearly the next evolutionary step in entertainment consumption, but what none of us could have anticipated was just how fast the puck would get there. The pandemic provided all the force and acceleration of a famous Gretzky slap shot, sending the puck to the other end of the rink in the blink of an eye. Where we were once on pace to meet the puck there, we were now left chasing, even racing to catch up.

According to a study by Conviva, time spent streaming jumped 44 percent between Q4 2019 and Q4 2020, with smart TVs seeing a whopping 157 percent increase. During that same time, Netflix added 36 million new subscribers while new kid on the block Disney+ came sprinting out of the gate to amass 116 million subscribers in its first year during the pandemic. Consumers were turning to the "big screen" in the living room over the "silver screen" of the movie theater at breakneck pace, and VOD services began stomping the gas pedal to ramp up and push out original content, often favoring episodic content over feature films. A-list talent across the board from actors, directors, and producers to writers, production crews, and editors began migrating in droves to episodic projects created for subscription-based services. And just like that, the distribution model was completely turned on its head.

Not only did we see new content being released immediately to VOD, but we also saw feature films originally slated for theatrical release make sharp U-turns and go straight to VOD. This unprecedented move was catalyzed by rapidly shifting consumer behavior brought on by social distancing protocols during the pandemic. But as we've seen through a number of high-profile lawsuits that have emerged in the wake of this shift, talent contracts that were signed pre-pandemic were not constructed for the unexpected landscape that was about to emerge practically overnight. Talent compensation under those deals was largely tied to box office numbers, so what happens when the box office gets booted for a VOD service? Well, there we have the rub.

Can a deal that was made under one set of circumstances but applied under a completely new set of circumstances be upheld in good faith? Should talent take a pay cut simply because the audience is sitting on a couch rather than in a theater seat? This is the war being fought on the fresh dirt of the newest entertainment battlefield, one that will no doubt shape talent contracts from now on.

WHERE'S THE PUCK GOING FROM HERE?

One thing we know for sure is that typical contracts are going to become exponentially more complex simply by the nature of what they will need to encompass. As revenue streams become more sprawling and multifaceted in nature, all talent from actors and directors to writers and producers will need to be compensated in a

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variety of ways. This will necessitate a fundamental need for transparency in contracts, which have historically been quite opaque when it comes to how the numbers are being calculated.

We now live in a time when the industry has been able to gather and leverage massive amounts of data to understand consumers better, and that data can just as easily be leveraged to ensure that contributors are being paid their fair share. This will require contract and royalty management systems that can handle complex calculations and are flexible in nature, because as we now well know, everything can change in an instant. The way talent gets paid will also be revolutionized as we've seen parallel acceleration in the world of FinTech. Not only do we now consume differently, but we also spend differently. We expect the ability to pay and be paid instantly with the click of a button, and the combination of modern contract systems with modern financial systems will allow all parties involved in a contract to do just that--safely and accurately.

While we may not know what the future holds when it comes to the pandemic still in our midst, we do know that in the world of media and entertainment, the puck is not going back to where it has been. Nor will the puck stand still. Wayne Gretzky is known as "The Great One," not because he was the fastest or strongest player on the ice, but because he always seemed to be in the right place at the right time, ready to capitalize on every opportunity. Similarly, those who will rise to the top as the great ones of the post-pandemic entertainment industry, just like Gretzky, will be the ones who skate to where the puck is going to be, not to where it has been. ⊞

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