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Entertainment Licensing

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Licensing in a New Era

There is the choice of doing business the right or wrong way. Each carries with it a consequence.

Some months ago a friend sent around an article by Thomas Friedman of the *New York Times* that I thought was particularly poignant. Its subject was the economic state of America and, can we fix it? Reading it caused me to think about the licensing industry, particularly whether (and, if so, how) it correlates with the current economic crisis facing the nation.

With the rise of a new political and social era for this country, the question we are all facing is how do we fix what is obviously a broken economy? It is certainly the number one issue that is impacting all of us, and will continue to do so until or unless we understand that as an industry we are not just bystanders who are helplessly affected by forces that remain outside of our control, but that our own collective economic behavior has played a part in the financial mess in which we currently all are stewing.

Before you start screaming about Bush's decision to lead us into Iraq, the greed of Wall

Street, or every other mistake, bad decision or greedy move by all the other business sectors, how about we look inward at our own industry and examine how we might have contributed to this current economic debacle—after all if we are a 100 plus billion dollar industry then *some* of our collective decisions certainly had some effect on the economy.

This will not go down easy, but the biggest problem facing this industry is old-fashioned *greed*. Perhaps I could find a less offensive word, but then I would be sugar coating the point. In my opinion there are three issues involved: (1) royalty levels, (2) advances/guarantees, and (2) non-exclusivity. These are the three factors that currently destabilize the underpinnings of the licensing industry, and thus to some extent the economy.

Fact: *Royalties are paid by the consumer as the price will be reflected in the cost of the product.* If you insist on charging a royalty that is above a reasonable level, your licensed product will have to cost more. As a licensor, putting a higher royalty on a deal may seem like a way to generate more money, but in reality it may have the opposite effect. Consequences may likely include reducing the sales appeal of the product, and/or

jeopardizing the licensee's ability to meet a retailer's price point.

Fact: *Over priced advances and/or guarantees are disincentives for companies to continue to seek new licensing opportunities.* There is no question that companies stung by the result of having had to pay out significant high advances and/or guarantees that have not been earned out will be less likely to again reenter the licensing market.

Conjecture on my part, but I am sure it also is true that those companies that have had to pay out high advances, and sweat out the recoupment of their money, may also be a little shy about reentering the licensing arena. What I think we need to remember is that there is not an infinite pool of licensees out there. Thus terms must reflect a reasonable level of expected sales if we want to keep as many companies actively engaged in the continuing practice of licensing as possible.

Fact: *Licensing is predicated on the concept of exclusivity.* All other factors aside, exclusivity is and remains perhaps the most important and/or dominant factor in the decision process that encourages companies to engage in licensing. To be the "only" is still the best argument why licensing is a powerful marketing tool, and why it has a significant value to both the licensee and licensor.

I am certain some will accuse me of licensing heresy, however, the very notions of a licensor arguing for restraint of royalty levels, limitations on the magnitude of advances and guarantees, or the broader reinstatement of exclusivity—each represents a development that will not be heartily embraced by all. My

conviction regarding the licensing doctrine I have espoused here is real; it is how I chose to do business. What I hope is that some of you indeed are listening, and

realize that change is needed now. Such change will be of benefit to all of us, and our industry as a whole.

As Always, Happy Licensing!

Danny Simon, president and CEO of The Licensing Group, Ltd., is one of the industry's premiere innovators and foreign licensing experts.

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