Guidance notes to the Live & Digital business model
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Purpose of this document

The purpose of this document is to assist those making decisions or recommendations on the financing and financing structures and potential return and risks of filmed media performance products.

By structures we mean a combination of the corporate structures used, the different elements of finance that go to make up the whole and the different ways of recouping investment and making a return.

Intended audience

The business model template is intended to be read and used by:

- Chief Executives/Executive Directors, General Managers, Commercial/Finance Directors and other senior management/board making investment decisions into digital/media/innovation projects/products in arts and cultural organisations – in other words, people in the role Executive Producer with respect to the 'film'
- Executives in commercial financing, production and/or distribution partners who can or could form collaborations with arts and cultural organisations to finance, produce or distribute films of performance
- Policymakers and funders making decisions about how public funds are deployed as grants, loans or equity within such projects/products either on the basis of cultural or economic development outcomes
- Advisors (lawyers, accountants, IP) working with the above.

Using these documents

The business model template is made up of:

- An accounting template
- An example business model canvas
- These guidance notes

These are intended to be living documents which evolve over time through use by the arts and cultural community and their commercial partners, funders and advisors.

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Background

This model was developed by the innovation agency Golant Media Ventures with Miracle Theatre under the Live & Digital project supported by the Digital R&D Fund for the Arts - Nesta, Arts & Humanities Research Council and public funding by the National Lottery through Arts Council England.

Project aims and objectives

The objective of the Live & Digital project was to examine various aspects of the exploitation of filmed performance – live and recorded – by Miracle Theatre. The aim was to maximise the learnings and opportunities for other performing arts organisations throughout the UK.

One of the deliverables from the project is a 'business model' which is reusable by other such organisations. So, the model has been tested with specific products and figures from Miracle, but has been written in a way that is more generic and therefore – we hope – more widely applicable.

Market and policy context

Arts and cultural organisations are facing unprecedented cuts to their funding, at a national, regional and local level. The economy in many parts of the UK continues to provide a challenging environment in which for them to trade to generate earned revenues. And yet it is essential for the sustainability and resilience of these organisations for them to create new offerings that generate new revenues.

Arts and culture are competing for the attention and disposable income of audience with a plethora of cultural, social, information and entertainment content, services and experiences. These interrelated sectors are all in revolution because of digital and societal changes affecting the way such offerings are made, distributed, monetised, enjoyed and shared.

Yet, the markets for so called 'alternative content' – by which is meant filmed media other than feature films screened in cinemas – and 'event screenings' – by which is meant one-off or short runs of screenings in cinemas and a range of other venues – are in stellar growth in the UK, and internationally.

Moreover, opportunities for unique content to reach its niche fan audience using internet platforms such as YouTube and on-demand services via set-top boxes, smart TVs and games consoles are expanding – with new intermediaries such a MCNs (multi-channel networks) and other content aggregator/optimisers replacing traditional broadcasters and film, TV and video sales agents distributors.

Filmed media products are just examples of a particular kind of 'capital' investment – instead of into buildings and tangible equipment, the investment is being made into a 'film' which is an intangible asset. By borrowing from the structures of film finance, we can help arts and cultural organisations extend the range of financing options that they can access – whether the asset is film, digital or more cross-media experiences.

Ventures rather than projects

We are not presenting here a step-by-step guide or 'recipe'.

What we are describing is the kind of mentality that needs to be applied the whole process of planning of financing, mixing public and private finance, how to structure the investment going in and to structure the return coming back to various different classes of investor (including talent and creatives participating in the financial performance of the product).

As a part of this, it is important to view filming and distributing filmed performance as a venturing activity. An investment is made, at risk, in creating the 'master' of a piece of filmed media. Then, the rightsholders (the people or organisations that own rights in that 'master') attempt to recoup this investment and, ideally, make a profit.

There is no guarantee that the initial investment will be recouped. Therefore in return for taking such a risk, most investors will want to see a business model which plans to make a profit.

It is usual to have a number of rightsholders – and the model reflects this.

Even well funded arts and cultural organisations will need other sources of capital to undertake such projects. Directors/trustees of an arts or cultural organisation will be constrained by not only available resources and what they deem prudent for the organisation to invest but also what they feel may be permissible under charitable law, even if the investment is made through a wholly owned 'enterprises' for-profit subsidiary. It is not for us to advise here on what is permissible just to make the point that these constraints will make the involvement of other producers – who will be rightsholders in the filmed media products – more likely.

Even a non-profit organisation such as a normally constituted funded arts or cultural organisation which is the – or a – principal rightsholder should expect to reap a return on their investment resulting from trading profits on the venture. This is because across a portfolio of investments in such products some will make money and others will lose money.

Even to break even across the portfolio, the business model for each product needs to plan to make a profit. Aiming for break even, as many other funded arts projects are managed to do, will result in the some breaking even and others making losses. This will result in the average across the portfolio being a loss which will be unattractive to outside investors – and the total across the portfolio being a loss which will result in a shortfall which the arts or cultural organisation may struggle to fund from reserves and which a public funder may well be unwilling to subsidise.

Finally, investors and other rightsholders will receive a share of profits. The way that profit is defined in the model will significantly affect who receives what. A film may be produced within a 'special purpose vehicle' (SPV, a company set up just for the purpose of producing the film). Even if it is not, the accounting of the product – from initial investment through launch to 'long tail' exploitation – needs to represent both the trading revenues, costs and profit (in a profit and loss) and investments in the product, how this is financed and costs of this capital (in a balance sheet).

Accounting for intellectual property and other intangible assets

The finally edited 'master' of a film that is then copied and distributed is an asset in which the producers have rights. It is these rights – principally copyright – which are exploited through licensing to intermediaries and ultimately through audiences paying to enjoy an entertainment experience of which the film forms a part.

According to international accounting standards[1], the master and the rights held in it are – as a result of their having a value separate the organisation on whose balance sheet they appear – eligible to be accounted for as an intangible asset. The film master should therefore appear as an asset on the balance sheet of the 'venture'.

Accounting template

The accounting template is divided into 3 parts (worksheets – other than the terms and conditions):

- The balance sheet of the live performance original production
- The balance sheet of the filmed performance
- The profit and loss (P&L) of the filmed performance

We do not concern ourselves here with the P&L of the original production of the live performance.

These are templates for portions of sets of accounts which will depend on the corporate or contractual structures which have been chosen to invest in, develop and exploit filmed media products. We give some examples below.

The cultural organisation may be the sole producer of the live performance original production. However, there may in many cases be other 'producers' who contribute money, intellectual property or other resources in creating the original production and who have an interest in revenues or profits made from its exploitation.

The cultural organisation may choose to locate a particular (more commercial) production within a generic 'enterprises' wholly owned subsidiary limited company. It may choose to set up a 'special purpose vehicle' (SPV) to own all the rights in and be the body which receives all exploitation revenues from the original production of the live performance. Because of the participation of other producers, there may be other shareholders in this SPV.

The cultural organisation may itself – or via an 'enterprises' subsidiary – grant the rights to develop and exploit filmed media products to a third party. This may create a joint venture by contract – often structured so that the third party commercial producer has the right to exploit in all rights worldwide, paying royalties back to the cultural organisation once the initial investment has been recouped.

[1] http://www.ifrs.org/IFRSs/IFRS-technical-summaries/Documents/IAS38-English.pdf

So the portions we provide here could appear (suitably adapted) within the accounts of:

1. The cultural institution
2. Its wholly owned enterprises subsidiary
3. A special purpose vehicle company in which 1 or 2 own some shares
4. A third party producer/exploitation partner
5. A project located within one of the above.

We do not take a view here on the relative merits of the different structures. There is little research publicly available evaluating them in this young alternative content market.

Performance as an asset – the original production

The filmed performance is made from an underlying creative work – the performance. This is the play, the dance, the concert, the piece of performance art etc that is produced in the normal way and enjoyed by audiences live in person.

The performance is an asset which can be exploited traditionally in its first run, on tour and in further revivals and adaptations. Filming it is just another way to make money from this initial investment used to create the original production.

The performance asset is typically made up of a bundle of rights (copyright and related rights) in:

- Script (and associated director's/production notes)
- Design (prop, set, costume, lighting)
- Audiovisual (effects, music) – and possibly video
- Brand – in its widest sense: visual/aural identity and other graphics; concepts, messaging and tone of voice; photographs and other collateral.

The associated costs in creating this asset are:

- People – writers, director, on-screen talent and creatives
- Non-people production costs
- Strategy, research and design work on the brand
- Professional fees – lawyers, accountants and specialist commercial/IP advisors
- Producing – the management to make it all happen.

All of these costs will typically be financed through a combination of:

- Own resources (from the lead producing cultural organisation)
- Loan finance
- Investment from co-producers
- Grant aid.

The mounting of the original production of the live performance may have attracted grant aid. This may have been on a project-specific basis. It may have been from a more general organisation-wide grant. The extent to which grant aid (versus own resources generated by other means) has been used to finance a production may be opaque –

not least because the total production cost may not be completely accounted for, especially where the majority of the costs are internal.

Depending on your organisation's accounting conventions, for some calculations the grant aid may be treated as a negative cost – for example, in determining the value of the live performance original production intangible asset on your balance sheet, or certain tax reliefs such as for touring.

However, the filmed performance only exists because the original live performance original production exists. How much the filmed performance 'pays' for the use of original live performance will affect the profitability of the filmed performance. Whilst the filmed performance and live performance original production are both solely produced by a single cultural institution, this remains an almost academic point. As soon as other producers participate in the financing – and recoupment of their investment – either there needs to be clarity on this point. The same goes for when part of the remuneration of talent or creatives is on the basis of profitability of the filmed performance. Treating grant aid as negative cost may result in understating the actual investment required to make the original production. This may result in the cultural organisation not recouping as much of this original cost as they could or should.

Filmed media as an asset

The filmed performance may be produced in several versions:

- Live
- 'As live'
- Made for screen

The filmed media asset is made up of a bundle of rights in:

- Media masters suitable for live transmission or later distribution/replication
- Brand – as above, but particular to the filmed performance
- Ancillary content – editorial and audiovisual, use to engage audiences and market the product.

The associated costs in creating this asset are:

- Production costs of the filming
- Fees to cover additional time spent and additional rights granted by on screen talent and creatives
- Up-front one-off costs to secure the necessary additional rights in the original performance
- Up-front one-off costs to secure the necessary additional rights in creative works underlying the original performance (eg book, original play, music)
- Professional fees and brand and producing costs as above, but particular to the filmed performance.

The additional rights secured from talent, creatives and other rightsholders need to be sufficiently wide to permit all the exploitation routes envisaged. Omissions at the start can be too complex or expensive to reverse later on so it is important to consider securing all rights. There is a balance to be struck between buying out rights up front – which costs would contribute to and be reflected in the asset value – and – especially for exploitation routes where profitability may be uncertain – committing to pay a proportion of revenues or profits from these. Managing, reporting against and paying out such royalty payments can represent a significant effort.

Profit & loss for filmed media products

The filmed media asset – in all its versions and with all its parts – is turned in a variety of products for which people pay money. The paying customers may be end consumers – or may be distribution partners, retailers or exhibitors who sit between the producer and the end consumers.

We include here the dimensions of UK and 'international' – not the UK. This can be broken down per territory. We also include here the dimensions of direct sales – self-distributed, if you will – and indirect revenues from one or more distribution partners. Receipts from distribution partners will be net of their costs. Separate to this project P&L you may want to compare like-for-like your revenues and profit net of costs on direct sales versus their gross revenues and receipts to you net of costs.

In public exhibition, as release slots and screening availability lessons in cinemas for a crowded market of filmed performance alongside normal film, it is important to remember non-theatric (non-cinema) venues and the non-theatric/public video rights these require.

Video-on-demand is an increasingly significant proportion of 'Home Entertainment' (consumers watching at home or on personal devices) revenues. Being visible and discoverable within a crowded market is the challenge. It is not enough to be on iTunes or YouTube because despite their reach your content will not cut through without a clever strategy and expert resources applied. MCNs (Multi-Channel Networks) have this as their specialism[2].

Broadcasters will typically want to bundle near-Video-on-Demand rights – content appearing on their own on-demand and catch-up services on set-top boxes, games consoles, Smart TVs, apps and online – with normal terrestrial, satellite and cable TV rights.

For cultural content, educational licensing is an increasingly significant market – selling to educational institutions at all levels, teachers, academics and learners, often via online services and platforms.

You might choose to treat advertising and sponsorship as negative costs – or indeed they may be netted off costs before monies reach you. Similarly to the case in the live performance original production, grant aid supporting distribution and promotion may be treated as negative cost rather than income.

Even if you have distribution partners for all rights, you will probably spend money on promotion and advertising. At the least, you will be co-creating materials and campaign with them. UK audiences in particular will regard you the cultural organisation and you

[2] http://www.artscouncil.org.uk/news/arts-council-news/first-multi-channel-network-arts-be-set-18m-arts-c/

brand as the person they are doing business with – even if they are sat in a cinema run by a cinema chain and the film was released by a film distributor. The means they will tend to come to your website and other online presences (on social media, YouTube etc) to find out about the filmed media product and where they can buy it, see it etc.

Lives come with specific 'transmisson/broadcast' costs to uplink from your event and securely and reliably get this to cinemas, other screening locations and possibly television. Non-live (which may in many cases represent the majority of revenues) come with other fulfilment costs ranging from replication of DVDs to secure delivery of digital 'prints' to cinemas and other screening locations.

You may or may not be responsible for creating international versions. With all of these costs even if they do not appear in your accounts, they will (or should) appear in the accounts of your distribution partners. Your ability to scrutinise these costs is essential to controlling them – as they will probably be recouped from their receipts by them before you see any share of revenues.

Although you may have paid some fees up front to on-screen talent and creatives, it is common to give them a share either of gross or net revenues. This can be structured and administered as a percentage 'pot' against which each person shares on a point basis depending on their role.

Finally, co-producers may recoup their investment from your gross revenues or after costs. Which costs are allowed to be deducted may well be a point of negotiation.

Terms and conditions

Important Disclaimer

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Any user of this template should ensure that they take the appropriate legal, accounting, tax and commercial advice.

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Intellectual Property

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