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## Doron F. Eghbali Entertainment Law

### [What Are Gross Participation and Net Profits in Motion Pictures?](#)

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Some of the salient provisions in any contract including entertainment-related agreements concern money. In fact, the way various participants might or might not be paid based on their reasonable expectations is at the core of negotiations. "Gross Participation" and "Net Profits" are the two terms people involved in creation of a motion picture most often hear about with respect to their compensation. These two terms and their definitions are as fluid and versatile as you can imagine. Hence, it behooves entertainment participants of any stripes to understand the concepts to protect their contractual rights in negotiations.

#### **1. NET PROFITS PROVENANCE AND ITS METAMORPHOSIS IN MOTION PICTURE INDUSTRY**

Net profits came into being in the early 1950s as a way to decrease risk of production for producers or studios whereby stars would agree to receive less "up front" fees in consideration of more lucrative proceeds from back end.

Nonetheless, this accounting arrangement first promulgated by producers and studios lost its glamor pretty soon as star performers, directors and other key participants demanded and received FULL "up front" fees and profit participations.

This caused studios to come up with innumerable definitions of "Net Profits" to keep their share of the proceeds at the highest possible level. In fact, the definition of Net Profits became so blurred that in a case *Buchwald v. Paramount*, the film which had grossed over \$125 million worldwide was reported to post a NET DEFICIT of \$18 million according to the definition of NET PROFITS in Buchwald's contract.

## **2. EMERGENCE AND SALIENCE OF GROSS PARTICIPATION**

Star performers, directors and other key participants - with some leverage over the budget - ascertained due to definitional changes of NET PROFITS, it was very hard to get properly compensated. Consequently, such participants started asking for gross participation.

### **A. SIMPLIFIED YET UNREALISTIC DEFINITION OF GROSS PARTICIPATION**

in MOST GENERAL TERMS, gross participation means ALL REVENUES received by a distributor. This definition should not be confused with RETAIL revenues received at the "box office" or DVD sales to consumers or video rental outlets. Receiving this type of participation is UNREALISTIC.

### **B. ADJUSTED GROSS PARTICIPATION**

Adjusted gross participation is calculated based on GROSS REVENUES LESS negotiated distribution fees i.e. a percentage of gross varying based on media and territory, distribution expenses i.e. the costs of releasing the picture including without limitation film prints and advertising (P&A), dubbing foreign versions, shipping, etc. PLUS recoupment of funds advanced by the distributor towards the film's production PLUS interest charge.

### **NOTE**

This is just a very simplified definitional and to some extent historical analysis of Net Profits and Gross Participation. Usually, there are multitude of variations of each term. In fact, the definitions of GROSS and NET are hotly debated and negotiated by parties' representatives.

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