



# NEGOTIATING SOCIAL IMPACT RIGHTS IN DOCUMENTARY FILM

**A Best Practices Guide**

**Fall 2023**

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## ABOUT THE CENTER FOR MEDIA & SOCIAL IMPACT (CMSI)

The Center for Media & Social Impact (CMSI), based at American University's School of Communication in Washington, D.C., is an innovation lab and research center that creates, studies, and showcases media for social impact. Focusing on independent, documentary and public media, the Center bridges boundaries between scholars, producers and communication practitioners across media production, media impact, social justice, public policy, and audience engagement. The Center produces resources for the field and academic research; convenes conferences and events; and works collaboratively to understand and design media that matter.

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# BACKGROUND

## WITH KEY LEARNINGS

**The documentary landscape has changed. At this point, that's old news. But ways of doing business, particularly when it comes to social impact work, continue to evolve.**

Over the past decade, new commercial distributors—and the licensing rules, norms, and distribution practices they bring—have introduced challenges and opportunities for documentary filmmakers and impact producer teams that aim to facilitate social impact campaigns and engagement. To help documentary filmmakers navigate this ever-shifting territory, this guide provides a set of recommendations and key learnings produced through a series of in-depth interviews with filmmakers, impact producers, festival executives, and distributors. These findings address the timely question:

**What do current trends in documentary and distributor relations mean for documentary teams with social impact engagement goals?**

Social impact campaigns often aim to bring documentaries to communities that have a stake in, and/or are represented by, the stories depicted on screen, and they attempt to accomplish a host of objectives, including: meaningfully engage targeted audiences (both physically and online) in building public awareness, fostering community solidarity, and leveraging films as visual witnesses in order to embolden publics and civil society toward social equity and justice. “Social impact” work can mean hosting special screenings with grassroots communities or closed-door sessions with decision makers, along with social media engagement. Social impact activities tend to orient around reaching the “right people” through community-based events and conversations, screenings that take place outside entertainment distribution platforms (theaters, TV, streaming outlets); partnerships with civil society organizations;



educational content and achievable calls to action; and collaborating with the audiences represented by the films. Entertainment that achieves broad audience reach, and social impact that connects meaningfully with impacted communities, can work together.

Based on in-depth interviews with filmmakers, impact producers, and distributors, our research shows that when streamers and other commercial distributors are supportive of social impact work, the filmmakers, partner organizations and communities that are depicted on screen benefit significantly from the distributors' resources and reach. At the same time, however, several filmmaker and producer experiences reveal that an increasing number of licensing deals are being designed without giving much room for social impact, sometimes incorporating a take-all-rights approach for documentary films, which in turn can limit filmmakers' ability to screen and discuss their films in community-oriented spaces or for social impact-driven purposes. In response, this filmmaker guide provides a set of recommended actions for the field and individual filmmakers who hope to make social impact with their documentaries.

**Who shaped this work?** A small working group of leading impact producers and filmmakers known as the Impact Rights Working Group, a project of the Global Impact Producers Alliance. The group emerged first at the 2020 Sundance Film Festival and has since continued through virtual meetings. Soon after its inception, the group decided that the field was in immediate need of more research – with filmmakers, distributors, and impact producers – to better understand the state of the field given the sudden rise in streamer interest and influence in the field of documentary storytelling in recent years. This research idea was then taken-up by the Center for Media & Social Impact (CMSI) at American University, which has a long history of producing research to advance the interests of the documentary field in the U.S. and around the world, with a particular focus on independent documentary, social impact and justice, and equity. The CMSI research team conducted **44 in-depth, anonymous interviews** with directors, producers, impact workers, distributors, in-house executives at major streamers, consultants, festival representatives, and funders in an attempt to better understand the nitty gritty details and experiences behind recent social impact campaigns (with a special focus on negotiation experiences and outcomes). This impact rights guide is one of several outcomes from this study, and it has been created as an early step toward providing much needed tangible guidance to assist filmmakers working in social impact today. It is based on the collective insights of the 44 interviews and further consultations with the working group members and recommended consulting organizations.

This guide is aimed at helping filmmakers, especially independent and relatively new filmmakers, navigate the social impact work in the multi-platform, streaming age of documentary. Most of the filmmakers in our study, both well-known and newcomers, expressed dissatisfaction with the status quo when it comes to negotiating impact rights with new commercial networks. The solution to the current problem is to use collective action to change streamers' approach, mindset, and practices—not individuals working on their own to persuade distributors to do so or to circumvent existing processes.



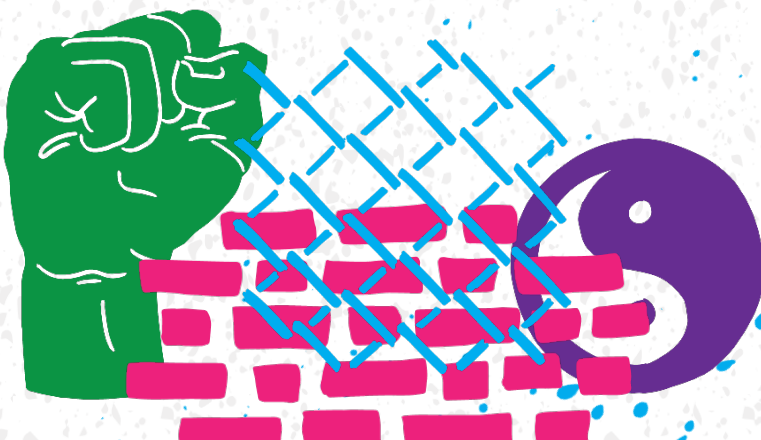


# KEY LEARNINGS

## (CONDITIONS FOR NEGOTIATING SOCIAL IMPACT ENGAGEMENT RIGHTS)

The best practices recommended in this document are based on the following key learnings about best conditions for a successful impact campaign. Distributors are more supportive of social impact engagement campaign efforts when they see and/or perceive:

- \* **that a film has a chance to win a major award**
- \* **filmmakers who are well-known in the field and/or have a good relationship with the streaming platforms**
- \* **the impact campaign funding is already in place, or the fundraising is ongoing with specific impact plans**
- \* **a film's philanthropic funder (foundations and other) is supportive of the social impact work as part of its funding**



# SECURING SOCIAL IMPACT RIGHTS IN DISTRIBUTION

## BEST PRACTICES FOR FILMMAKERS



### **Emphasize the value of social impact engagement to distributors.**

Documentary film teams should clearly articulate the value-added proposition of social impact engagement work, which includes delineating this work from pure “public relations” and “marketing,” and should instead be complementary to a distributor’s marketing practices. As social issue documentaries are burgeoning and impact work is going through a process of professionalization, some distributors are increasingly starting to see impact as something that could set them apart in the documentary market.



### **Come to the negotiating table with funding and/or detailed impact and fundraising plans.**

When they come to the rights negotiating table, filmmakers should have detailed impact plans with ongoing fundraising; they should be clear from the beginning about their impact plans during negotiations. Both distributors and filmmakers emphasized the importance of being transparent about their detailed impact plans and having their funders ready when negotiating with distributors. Filmmakers should be “very upfront” about their goals, budgets, and plans with “a real sense of what’s possible, what’s actionable, what’s realistic.” Distributors prefer working with experienced, professional impact campaigners who have a clear plan for their films. In other words, film teams shouldn’t wait for a distribution partner to come on board to start thinking about and planning impact work.





### **Negotiate for more detailed social-impact-specific clauses.**

Filmmakers should negotiate for broader, more detailed clauses—especially related to educational rights. Often, approved outreach and educational screenings mean that the filmmakers can hold non-commercial, private, or nonprofit screenings at educational institutions; these institutions are defined very broadly. In addition to schools and universities, it includes museums, nonprofit organizations, religious venues, venues of service organizations, and even private clubs. The broader, more detailed version also establishes mutual control over derivative, allied, and ancillary rights.



### **Leverage “educational rights.”**

Educational rights are a widely utilized aspect of contracting and filmmakers can use them to serve educational purposes writ large—including community engagement—that directly intersect with their impact goals. Netflix also recognizes educational rights and provides free access. This type of educational clause can provide much flexibility to the filmmaker and their social impact goals.



### **Fundraise through post-screening activities, not through the admission.**

Streamers often oppose using their films for fundraising purposes, while filmmakers and impact producers must often raise their own impact budgets, which presents a quandary. As a result, in addition to securing adequate “educational licensing rights” for grassroots public screenings and engagement for the film, filmmakers and impact producers who want to fundraise can also make use of the free screening/paid post-screening panel model, which involves collecting funds for events (like panel discussions) that are separate from the film screening itself. Filmmakers and impact producers (and sometimes their national or local partners) can thus explore ways to subsidize their impact campaigns through ticket sales and other fundraising activities outside of the screening itself.



### **Keep distributors’ language in mind.**

Using language oriented toward the distributors’ publicity and/or acquisitions logic and departments can be effective during negotiations. Distributors understand what “impact campaign,” “community engagement” and “grassroots engagement” mean, but experienced impact producers and filmmakers agreed that they should have more standardized language with the streamers’ logic in mind. Some of the terms that industry platforms, streamers, and producers use for impact campaign include: audience engagement/outreach, outreach campaign, community engagement, and grassroots engagement. Filmmakers would do well to develop and adhere to consistent language.



**Create national and local partnerships with non-profit organizations, and facilitate high-visibility events.**

Distributors prefer impact campaigns cooperating with partner organizations. Streaming platforms also avoid appearing partisan, so non-profit partners are crucial to organize grassroots engagement even if the content of the film or the event itself appears highly political. When nonprofit organizations are involved, even if the film or the event may look political, streamers are more willing to permit the screenings without using their logos, platform, or any promotional material they created. National partners can boost the conversation and also help to organize bigger events.



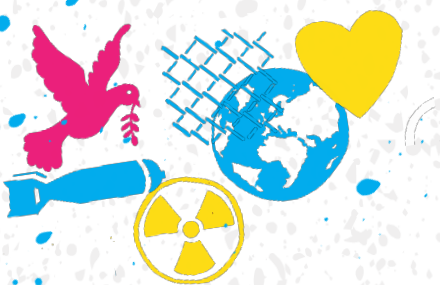
**Utilize the “case-by-case” approach of the streamers and/or clause in their contracts.**

Filmmakers say that working with distributors on a case-by-case basis about impact activities in an otherwise restrictive contract can be beneficial. For example, according to a “Marketing, Publicity, Outreach Plan Consultation” clause, the distributor will consult in good faith with filmmakers and impact producers about the initial press release, marketing campaign, and outreach campaign. The same clause also says that the filmmakers have the right to propose social action campaign projects, with which the distributor agrees to consider in good faith.



**Involve the film’s foundation funders in the rights negotiations when social impact campaigns are on the table.**

Philanthropic funders can be very effective partners at the negotiating table in an environment where filmmakers and impact producers are not organized as a collective and have to negotiate individually with media giants. For instance, one filmmaker said that the company was very restrictive until she decided to pause the negotiations and inform their funders and include them in the process. It was only after more negotiations they were able to include the language “company-approved impact campaign screenings” in the contract. As one interviewee mentioned, funders have power and the right to say, “You’re benefiting from a film, yeah, maybe you paid a million dollars for it, great. But this film wouldn’t exist without our million dollars as philanthropic funders, and you are not allowing our filmmaker to do the impact campaign that they want.”







## **Study and invest in your project's social media presence.**

For streamers and other big distributors, social media metrics are crucial. Social media metrics are one of the areas that filmmakers and impact producers observe and, more importantly, invest in as they can control their films' social media accounts. Filmmakers and impact teams cannot prove whether their impact work can also positively affect audience metrics if they are unable to access audience data, but if the filmmakers can demonstrate that the film and/or their impact work can generate social media conversations, streamers are willing to support impact work. Moreover, by using social media effectively, filmmakers and impact producers can demonstrate that their films can spark a conversation on social media and that there is an active audience for the film.



## **Establish/Join collective organizing efforts and networks to share knowledge and strategic insights.**

Knowledge sharing builds collective power. Impact producers and filmmakers find strength in building their networks, which also creates space for well-known filmmakers to share information and experiences with relatively new filmmakers about successful impact contract provisions. Negotiating individually is difficult for filmmakers, as is the lack of information about closed-door contracts and deal-making. While often discouraged by distributors, transparency and knowledge sharing about contractual ways to encourage exhibition for social impact is vital to improving the landscape. Distributors currently hold a disproportionate amount of power when sitting at the table with filmmakers, and our interview participants emphasized the need for the makers and producers of the film (the filmmakers, impact producers, and the funders) to participate in their own collective organizing to meet this power—with, of course, lawyers also present at the table. The Global Impact Producers Alliance, Distribution Advocates and the Documentary Producers Alliance are three existing collectives that have started to address the challenges named in this document.



# PREPARING YOUR SALES AGENT TO ADVOCATE FOR SOCIAL IMPACT “RIGHTS”

When it comes time to sell a film to a distributor, one of the most influential actors at the table of negotiating impact rights – the rules for what types of public screenings and engagements are permissible – is the sales agent. However, among industry reports and discussions of social impact, these central players are frequently overlooked. As one step toward addressing this gap in guidance, this section provides **five recommendations** for how filmmakers should prepare, compensate and guide their sales agents ahead of distributor negotiations. The fight for impact rights is ultimately a fight over who, how, and when someone can engage with and/or see your film after it’s made, and the sales agent is often the one representing you on the frontlines of this battle. If they don’t know what they are fighting for, then you run the risk of sacrificing your post-screening impact strategy before you’ve even begun. And that’s not good.



## **Pay sales agents to advocate for social impact rights alongside film distribution rights.**

Sales agents often play an enormously influential role during negotiations with distributors over how and where films can be screened and used. Traditionally, the goal of sales agents has been to maximize financial earnings for a film and filmmaker, with little concern given to conversations about impact rights. Consequently, distributors are enjoying a trend of owning the screening and impact rights for films by default. However, if you help your sales agent better understand your intent and desired plans around impact ahead of time, then they will be better positioned to fight for these rights during negotiations and they can become vital allies in bridging the gap between the streamers’ marketing policies and your vision for impact and engagement. You should also strongly consider providing a financial incentive by negotiating with your funders for a specific funding item geared toward paying your sales agent to pursue desirable impact rights.





**Pitch impact campaigns as complementary to distributor marketing plans and goals.**

On behalf of filmmakers, sales agents should make the case that impact engagements, social media campaigns, and even smaller community screenings will not only bring the film to interested communities, but they can also help generate more conversations around the film and help increase audience metrics. In other words, grassroots public engagement work can complement marketing efforts and deepen engagement from impacted communities and among issue experts. Your sales agent should understand that grassroots engagement is not the same as replacing “PR” or “publicity” strategies and is not therefore in direct competition with marketing plans.



**Prepare your sales agent to overcome distributor anxieties when pitching politically relevant or perceived “controversial” films.**

Concerns about appearing political or partisan have frequently caused major distributors to take more control over public engagements and promotion around certain films. This has led to some distributors holding films for long periods of time so that they don’t air in key moments (i.e. during an election), limiting public screenings, and attempting to soften public discussion around certain key issues of contentious films. Sales agents should be prepared to explain how frequently this approach has backfired on distributors over the last decade (hurting their reputation and leading to calls of censorship), and that taking the opposite approach in these instances – of handing more control and responsibility for impact over to the filmmaker – is in the best interest of all parties.



**Ask your sales agent to include fundraising for impact in negotiations.**

During negotiations, your sales agent can argue that major distributors (especially big streamers) should strongly consider the filmmaker’s request for them to help fund impact activities and should not block filmmakers from conducting their own fundraising for specific impact campaigns. Well-funded impact strategies inherently bring more eyeballs to the films and more conversations around it.



**Sales agents should avoid ‘take all rights’ contracts where possible.**

Contract negotiations with filmmakers shouldn’t be based on a “take all” approach when it comes to impact rights. Exceptions and limits can be agreed upon, based on the filmmakers and distributors’ plans and goals. If a streamer doesn’t want the filmmaker to carve out impact rights in the contract, sales agents should be able to negotiate adding language that would allow the distributor to deal with impact activity on a case-by-case basis.

# EXAMPLE: WHEN SOCIAL IMPACT AND ENTERTAINMENT MISSIONS ALIGN

**Amazon Studios also contributed to a “48-city, 18-state bus tour” organized to host pop-up screenings and voter registration and education events.**

*All In: The Fight for Democracy* was released by Amazon Prime right before the 2020 elections. Featuring Stacey Abrams, who was also one of the producers, the film examines the history of voter suppression in the U.S. The impact team was brought in early, before the film was completed, to plan for the campaign, and Stacy Abrams, the filmmakers, and almost all the major voting organizations in the U.S. were part of the early planning process. The filmmakers had already started fundraising for the impact campaign at that point, and fundraising continued after the impact team joined the process. One of the first steps they took was to build “a voting action website.” The site was envisioned as the impact campaign hub where the team worked with partner organizations to share tools and as a resource for the public to access voting information. People could register to vote, check their registration, request an absentee ballot and learn what was on their ballot. Working with partner organizations and volunteers, the filmmakers and the impact team created voting guides and educational resources to help teachers to include the film in their curriculum; they organized screenings, including virtual screenings and drive-ins to accommodate concerns about the COVID-19 pandemic. Amazon studios also contributed to a “48-city, 18-state bus tour” organized to host pop-up screenings and voter registration and education events. On a more local level, filmmakers and the impact team identified 10 states that had higher voter restrictions and partnered with local grassroots organizations to organize screenings and voter registration and educational events. For the filmmakers, the impact campaign was a core element of the film: They pushed for the impact rights and actively fundraised for the impact campaign. The distributor, Amazon Studios, not only supported the multi-partner organizing efforts, but they also actively and financially supported the impact work.





# NEGOTIATING SOCIAL IMPACT RIGHTS IN DOCUMENTARY FILM

**For more information and to get involved:**

This guide is based on learnings from several documentary-centered research initiatives at the Center for Media & Social Impact (CMSI) at American University. For more information on related research and guidance around impact in documentary film, along with how you can join on-going conversations and working groups dedicated to these issues, please visit <https://cmsimpact.org>

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