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LEGALLY INDEPENDENT: THE EXHIBITION OF INDEPENDENT ART FILMS

Todd Berliner

Scholars have defined 'independent art cinema' seemingly from every vantage but not from the perspective of film exhibitors. Exhibitors, in fact, have the most practical stake in a valid definition because of financial and legal implications of the term. Scholars will likely never produce an acceptable philosophical definition; the relevant criteria are too complex and contested. However, exhibitors work under fairly homogeneous business pressures, making a strong, valid, widely accepted and legally sufficient definition comparatively uncontroversial within that domain. This article argues that, within film exhibition, an independent art film: (1) is distributed by an independent distributor or specialty division of a major studio; (2) has a platform (as opposed to a wide) release; (3) plays at art houses or film festivals; and (4) eschews the narrative, stylistic or thematic practices of contemporary mainstream films. Reviewing distribution and exhibition practices established in the 1980s and 1990s, as well as relevant court cases and interviews with legal and film industry professionals, the article explains the meaning of 'independent art cinema' within the domain of film exhibition.

Film scholars have attempted to define independent art cinema seemingly from every vantage – financial, industrial, institutional, cultural, artistic and historical. Libraries devote full shelves to the meaning of the term 'independent film' and its cognate, 'indie'. However, no one has defined independent art cinema from the point of view of the film exhibitor, who has, as I shall demonstrate, the most practical and consequential stake in a valid definition of the term.

Correspondence to: Todd Berliner, Department of Film Studies, University of North Carolina Wilmington, 601 S. College Rd., Wilmington, NC 28403-5950, USA. E-mail: berlinert@uncw.edu

Note: In this article, the company listed in parentheses, after the director, refers to the original US distributor, not, as is customary in this journal, the production company.

Exhibitors conceive of independent art cinema, broadly construed, in the same way that most scholars do – as a mode of film practice alternative to Hollywood cinema. For exhibitors, independent art films remain economically viable because they occupy the large territory between highly profitable mainstream cinema and unprofitable experimental cinema.¹ Scholars, however, will probably never succeed in offering a strong, commonly accepted philosophical definition of today's independent art cinema; the relevant criteria are too complex and contested. Consequently, film scholars have debated whether *Juno* (Jason Reitman, Fox Searchlight; US, 2007), for instance, is in fact an independent film, because it was widely popular and released by a subsidiary of a major studio.² Some scholars would regard *The English Patient* (Anthony Minghella, Miramax; US, 1996), *Amélie* (Jean-Pierre Jeunet, Miramax; France, 2001) and *Man on Wire* (James Marsh, Magnolia; US, 2008) as independent art films (as would most exhibitors), whereas others would not, because the first was a commercial blockbuster success, the second a mainstream foreign film and the third a documentary.

Exhibitors, for obvious reasons, do not trouble with philosophical distinctions; they have pragmatic concerns. But the definition of 'independent art cinema' has had practical business and legal ramifications for exhibitors that film scholars have yet to consider. The meaning of the term has been questioned in the exhibition world, occasionally resulting in contractual disagreements and legal challenges. Although film scholarship will likely never define the term in a way that would satisfy most scholars, film scholarship can, given the particular concerns of exhibitors, articulate a strong, widely accepted and legally sufficient definition of independent art cinema, valid within the domain of film exhibition. Reviewing distribution and exhibition practices established in the 1980s and 1990s, as well as relevant court cases that hinged on the term – including a case in which I participated as an expert witness – this article explains the meaning of 'independent art cinema' for the people and corporations that book and operate movie theatres.

An exhibitor's definition of independent art cinema

Strictly speaking, every film since the breakup of the studio system is an independent production. After the Supreme Court determined in 1948 that the major motion picture studios monopolized the industry, studios grew less involved in film production.³ These days, they engage primarily in finance and distribution. Independent production companies typically handle day-to-day filmmaking operations on even big-budget studio films. And most actors, directors, screenwriters and other filmmakers today work from film to film as independent contractors, not employees of studios. However, the motion picture industry and entertainment media still maintain a distinction between studio films and independent art films, or what today are called 'indies'. But what exactly is an indie?

In 2008, a first-run commercial theatre operator hired me as an expert witness for a lawsuit involving independent art film exhibition. An art house had contracted the commercial operator as its managing agent to book 'independent art films' for exhibition at the art house. A contract dispute between the two parties hinged on the question, 'What is an independent art film?' The theatre hired me to provide an answer.

I first grew concerned that I could not define the term easily or, perhaps, at all. The film industry and entertainment media use it loosely, a fact that would pose troubles for courts of law, which rely on clear definitions. The fact that film scholars disagree about the definition of independent art cinema further complicated the task. Moreover, in addition to defining the term, the commercial theatre also asked me to develop a mechanism for determining whether an individual film was an 'independent art film', a mechanism that would stand up in court. Given the ambiguities surrounding independent art cinema, could anyone legally define the term?

A precise definition would have legal and financial ramifications in the case at hand and perhaps beyond it. Antitrust cases and territorial disputes between film exhibitors sometimes depend on whether an exhibitor screens 'commercial films' or 'art films', a common distinction in court documents relating to film exhibition. Indeed, the distinction between the two types of cinema has impacted several cases concerning alleged anti-competitive practices, including *Dahl v. Roy Cooper Co* (1971), *Movie 1 & 2 v. United Artists Communications* (1990), and *Orson v. Miramax* (1994).⁴ In *Movie 1 & 2 v. United Artists*, for instance, the courts investigated a potentially illegal 'split agreement' between UA and Nickelodeon to divide a normally competitive market between 'commercial films' and 'art films'. The section on 'Motion Pictures and Theaters' of the US Code on monopolies also distinguishes between 'commercial films' and 'art films' in determining film exhibition monopolies, although it defines neither term.⁵ The terms have also impacted at least one trademark case, *Century Theatres. v. Landmark Theatre Corp* (2000); an obscenity case, *Saul Landau v. Addison Fording* (1966); and even a tax case, *Dan and Miriam Ailloni-Charas v. Commissioner of Internal Revenue* (1988).⁶ Yet, in my research, no legal case or statute positively defines an independent art film. The only definition appears in *Orson v. Miramax*, which defined 'art film' negatively, and not very helpfully, as a film that cannot be categorized as 'commercial' or 'mainstream'.

For the parties to the lawsuit in which I participated, a definition would prove consequential. Their contract stipulated not only that the commercial operator must book 'independent art films' for the art house but that the operator would not screen independent art films at its own first-run commercial theatre in the same area. This non-competitive system is known in the film distribution business as 'clearance'. Clearance is the practice whereby a distributor gives an exhibitor exclusive rights to show a film for a particular time within a territory (or 'film zone'). The clearance system, which the courts regard as a reasonable restraint of trade, helps distributors and exhibitors control the market for a film, giving the film a broader exhibition area and preventing exhibitors from competing too heavily for the same audiences. Hence, in the case under dispute, if the commercial operator had booked an independent art film for the art house, it could not exhibit that film at its own theatre in the area. According to the attorney who enlisted my services, the art house had requested films, such as *The Dark Knight* (Christopher Nolan, Warner Bros.; US, 2008), that the commercial operator did not regard as 'independent art films'. The commercial operator had refused to book such films for the art house and instead screened them in its own area multiplex. Now, the art house was seeking damages.

So is *The Dark Knight* an independent art film? Intuition would say it is not, but can the courts determine that for certain? Four separate companies produced the film – Warner Bros. Pictures, Legendary Pictures, Syncopy and DC Comics – only one of which, Warner Bros., is a major studio. Warner Bros. also distributed the film, although the film had independent distribution in some countries. So does the involvement of Warner Bros. mean that *The Dark Knight* is not an indie? Not necessarily. Major studios regularly engage in the financing and distribution of films that the industry and entertainment media regard as indies, such as 2008's *Rachel Getting Married* (Jonathan Demme, US) and *Choke* (Clark Gregg, US). *Rachel Getting Married* was distributed primarily by Sony Pictures Classics, a division of Sony, an entertainment conglomerate that also owns Columbia Pictures. Fox Searchlight, among other companies, produced *Choke*, and 20th Century Fox, a major studio, distributed it. Indeed, the major studios, unable to distribute enough films to satisfy market demand, regularly finance and distribute independently produced films in order to round out their distribution lineup, create further revenue sources, and hedge against the risks of making big budget films exclusively. By the same token, almost all major studio productions now involve independent production companies and distributors, since major studios regularly team with independents in financing, production and distribution. Given that studio and independent production have so thoroughly intertwined – forming a film-making territory sometimes called ‘Indiewood’⁷ – by what mechanism could anyone determine, in a legally reliable way, whether *Rachel Getting Married*, *Choke*, or *The Dark Knight* is an independent art film?

Ultimately, I determined that an ‘independent art film’ must be both an ‘independent film’ and an ‘art film’. The two terms often overlap, and scholars and the entertainment media sometimes use them interchangeably, but I proposed to the attorneys that we define them individually.⁸ For an exhibitor, the term ‘independent film’ today refers primarily to a film’s distribution company, whereas ‘art film’ refers primarily to the size of the film’s target audience, its exhibition venues, and its narrative, stylistic and thematic practices. These criteria, which I elaborate below, provide a positive means of distinguishing between types of films that film exhibitors and the courts commonly differentiate in only a loose and ad hoc manner.

Because of the need for clear distinctions and readily identifiable traits, the criteria are necessarily simple, and I can imagine other film scholars balking at the facility and straightforwardness of my definition. Although reductive from a philosophical standpoint, from an exhibitor’s perspective my definition conforms to, and adapts to, contemporary distribution and exhibition practices. Indeed, the approach I take here to defining independent art cinema recognizes that the meanings of the terms ‘independent film’ and ‘art film’ depend largely on the context in which the terms appear, the purposes to which the terms are put, and the industry practices of the period in question. Newman argues that the term ‘indie’ ‘cannot be understood without considering the people who use it and their habits of textual engagement’.⁹ That is, different people will employ the term differently according to their interests and domain of operation. Newman seeks to define the term as employed by ‘film culture’, so his definition must reflect the complex interests and knowledge of filmmakers, audiences and tastemakers. However, since American

exhibitors today work under fairly homogeneous business and legal constraints (ones far more straightforward than the constraints that define a culture), we can define the terms 'independent film' and 'art film', as exhibitors and booking agents use them, with relative confidence, despite the occasional controversy. By strictly defining these terms in the remaining pages, I hope to have created a valid definition of independent art cinema, as the term is commonly understood within the domain of film exhibition.

What is an independent film?

Scholars have bemoaned the difficulty of defining independent film. Hiller considers American independent cinema 'a loose, slippery label'.¹⁰ Wasser places independence 'in the eye of the beholder'.¹¹ Tzioumakis calls American independent cinema a 'discourse that expands and contracts' as institutions redefine the term.¹² Pribram agrees. She calls independent film 'a shifting, malleable discursive field' and argues that scholars cannot offer a firm definition: 'There are no fixed criteria for what constitutes an independent film, its outlines shifting as dominant standards evolve, as long as it remains in some accountable (usually marketable) measure alternative to Hollywood practice'.¹³ This hesitant reaction is natural, even inevitable, given varying industrial, journalistic, and scholarly uses of the term 'independent film'. Several film scholars have nonetheless attempted a definition, and we should examine some of their attempts in order to see whether they can help us understand the meaning of the term for distributors, booking agents and exhibitors.

During the studio era (roughly the 1910s through the 1950s), independent production companies had a clearer industrial relationship with the studios, making a definition of independent cinema relatively straightforward. According to Janet Staiger, an 'independent production firm was a small company with no corporate relationship to a distribution firm'.¹⁴ That purely corporate definition, however, does not fit today's film industry in which studios typically 'farm out' film production to independent companies, and independent productions often seek financing and distribution from major studios.

According to a broad industrial definition, an independent film today is produced, financed, or distributed outside of the major Hollywood studios. That definition, however, is too broad, and complex arrangements between studios and independents – co-productions, joint-financing, and joint-distribution deals – make it difficult to tease out the relative involvement of the various production, financing and distribution companies. These days, Geoff King has noted, 'Hollywood and independent film merge or overlap'.¹⁵ Hence, King, Malloy and Tzioumakis argue that a broad definition is 'so inclusive as to be of little value as a specific analytical category'.¹⁶

Pribram and others identify independent cinema more narrowly through its financing and distribution practices. Despite her reticence to offer a positive definition, Pribram nonetheless regards a film as independent 'if it has received no studio financing, is distributed by a non-major, and has no prominent stars'.¹⁷ But that definition would prove too narrow for an exhibitor, excluding films, such as

Jacknife (David Hugh Jones, Cineplex-Odeon; US 1989) and *The Apostle* (Robert Duvall, October Films; US, 1997), that were independently financed and distributed but that have prominent stars, or *Love is Strange* (Ira Sachs; US, 2014), which was independently financed but distributed by Sony Pictures Classics. In fact, few theatrically distributed films today meet Pribram's narrow criteria. If independent art houses were to follow her definition, they could hardly survive.

Rather than define 'independent cinema' according to the industrial distinction between independent and studio films, scholars sometimes prefer to see it as a cluster of films that share certain formal or thematic properties. Newman emphasizes character-centred narratives, social engagement, pastiche, and what he calls 'games of narrative form'.¹⁸ The editors of *Filmmaker* magazine stress 'alternative points of view'.¹⁹ Janet Staiger offers a set of four formal conventions characteristic of indie cinema, which she summarizes as follows: '(1) dialogue for purposes other than advancement of the plot, (2) 'quirky' or odd characters ... (3) emphasis on certain methods of creating verisimilitude, and (4) ambiguity and intertextuality in narrative and narration'.²⁰ MacDowell describes the 'quirky sensibility' of films by Wes Anderson, Michel Gondry, Spike Jonze, Charlie Kaufman, Miranda July, and other indie filmmakers.²¹ Their films, he says, share four common features: (1) varied comic styles, such as deadpan, comedy-of-embarrassment, and slapstick; (2) a self-conscious visual style, demonstrating artificiality or fastidiousness, (3) a preoccupation with childhood and (4) a tension between ironic distance and sincere engagement with the protagonist.²² Each of these scholars looks at independent cinema as a set of artistic practices that coalesce to form a tone or a type of address to the audience.

Because many indie films seem to assume a common set of beliefs and values in their audiences, scholars have also identified indie cinema as its own culture. Indie audiences do not simply *enjoy* indie films; audiences *identify* with them. MacDowell argues that indie films present a 'way of looking at the world'.²³ Pribram calls independent film a 'discursive formation', a set of 'cultural practices and institutions that cohere into an identifiable body'.²⁴ Newman argues that indie films address a 'hip' audience. The films, he says, court a smart, fashionable, ironic, self-conscious viewer 'through appeals such as indie rock soundtrack songs and quirky characters and style'.²⁵ Elsewhere, Newman defines indie culture through the viewing practices of film-makers, audiences and tastemakers.²⁶ Indie cinema coheres as a 'cultural category', Newman says, not so much because it is 'a set of industrial criteria or formal or stylistic conventions' but rather because it is a 'cluster of interpretive strategies and expectations'.²⁷ Here, the term 'indie' comes across as more of a trademark than a specific set of formal or thematic practices. Indeed, Polish, Polish and Sheldon describe independent cinema as a form of branding.²⁸

James Schamus offers a strictly financial definition of independent cinema, which cuts through the tangle of industrial, formal/thematic and cultural definitions. An independent film, he says, is 'financed by capital that is not provided by or guaranteed by the distribution companies that will eventually exploit the film'.²⁹ For Schamus – himself a screenwriter, independent producer, director, and CEO of Focus Features – that financial independence gives the production creative independence, free from studio interference.

Although Schamus's financial definition shows the virtue of simplicity, exhibitors do not care who financed a film. They deal with distributors (or with booking agents who deal with distributors), the liaisons between film productions and film exhibitors. The identity of a film's distributor – whether it is a studio or independent distributor – offers exhibitors a reliable sign of whether the film is a studio or independent production. Hence, given their particular concerns and domain of operation, exhibitors seeking to determine whether a film is independent should follow Frederick Wasser's definition: independent film denotes a film distributed by an independent distributor.³⁰

Unfortunately for anyone looking for a firm distinction between studio and independent distribution, distributors fall not into two types but three: major studios, independent distributors, and specialty divisions of major studios. The first two are straightforward, but the third raises some tricky issues. Let's examine the three types of distributors so that we can see what the distribution company can tell us about a film's status as either a studio or independent film.

The major studios

Known currently as the 'Big Six', the major studios are all multinational corporations owned by media conglomerates. They have been in business, in some form, since Hollywood's studio era, when they engaged deeply in film production. Now, however, they concentrate on distributing commercial mainstream films. The Big Six today are Warner Bros. Pictures (owned by Time Warner), Paramount Pictures (Viacom), Walt Disney Pictures (Walt Disney Company), Columbia Pictures (Sony), Universal Pictures (General Electric Vivendi), and Twentieth Century Fox (News Corporation). These companies distribute films with budgets generally in the \$50 million range or higher, targeted at the global entertainment marketplace.³¹ The Big Six, in short, distribute studio films.

Independent distributors

There exist hundreds of independent distributors. Some of the prominent ones include Strand Releasing, Roadside Attractions, IFC Films, Samuel Goldwyn Films, Magnolia, Lionsgate, Oscilloscope Laboratories, A24 and the Weinstein Company. Many have grown into very large companies and some belong to media conglomerates, but they work independently of the Big Six. Independent companies distribute most of the theatrically screened films in the United States today, their budgets usually under \$10 million.³² Films distributed by independent distributors are, by Wasser's definition, independent films.

Specialty divisions of the major studios

All of the major studios have (or have had since the 1990s) specialty divisions, sometimes called 'indie', 'speciality' or 'art house' divisions (or units, affiliates or subsidiaries). These divisions tend to distribute art films and independently produced films, usually budgeted in the \$30–50 million range. Some of the specialty divisions of the major studios of the past and present include Warner Independent Picturehouse, New Line Cinema and Fine Line Features (divisions of Warner

Bros./Time Warner); Paramount Vantage and Paramount Classics (Paramount Pictures/Viacom); Miramax (Disney); Sony Pictures Classics and Sony Screen Gems (Columbia Pictures/Sony); Gramercy, October Films, and Focus Features (Universal Pictures/General Electric Vivendi); and Fox Searchlight (20th Century Fox/News Corporation). These divisions generally handle domestic theatrical distribution of their 'indie' films, whereas their major studio affiliates usually handle international distribution, and their parent companies typically distribute videos for home entertainment.³³ Most relevant to my legal case, they work semi-independently of the studios. According to Thomas Schatz,

the conglomerate-owned subsidiaries have provided a safe haven for Hollywood's indie auteurs ... a privileged class that includes Joel and Ethan Coen, Paul Thomas Anderson, Pedro Almodóvar, Alexander Payne, Ang Lee, Wes Anderson, David O. Russell, Gus Van Sant, and Todd Haynes. ... [who] have managed to make films on their own terms thanks to their own distinctive talents, the support of indie-division executives and independent producers like Scott Rudin and Steven Soderbergh, and a conglomerate-era industrial machine that effectively ensures these filmmakers creative freedom.³⁴

Although the major studios and their specialty divisions sometimes fight each other for control, the divisions have a deal of autonomy. Moreover, they often purchase the distribution rights to completed independently produced films (a practice known as a 'negative pickup'), rather than financing the films before or during production. Paramount, for instance, 'picked up' *Waiting for 'Superman'* (Davis Guggenheim, US, 2010) at the Sundance Film Festival and released it under its Paramount Vantage subsidiary label.

Scholars debate whether we can legitimately call such films independent. Wassser excludes them because, although the specialty divisions have operational independence, 'ultimately allocative resources reside in the larger studios'.³⁵ Merritt calls them 'semi-indie'.³⁶ Indie purists often view the specialty divisions as a threat to authentic indie cinema, which, they argue, should remain untainted by any affiliation with the Big Six.³⁷ Although scholars contest the issue, the major studios distribute such films under a separate label largely to distinguish their 'indie' films from their studio productions. Exhibitors routinely regard specialty division films as independent, despite their Big Six affiliations. Art house booking agent Adam Birnbaum calls the specialty division films his 'bread and butter'.³⁸ Indeed, the 'Indiewood' productions have become a financial boon for art house exhibition because they sometimes cross over from the small indie market to a larger audience.³⁹ In short, within the domain of film exhibition, the specialty divisions distribute independent films.

The distributor, then, enables an exhibitor to determine whether a film is independent: Films distributed by the Big Six are not independent films, whereas films distributed by independent distributors or by specialty divisions of the major studios are, for exhibitors, independent films. However, not all independent films are art films. The action film *Terminator 2: Judgment Day* (James Cameron, US, 1991) and the crime thriller *Basic Instinct* (Paul Verhoeven, US, 1992) were produced by Carolco, distributed by TriStar Pictures, and financed outside of the Hollywood studios. Although independent, *Terminator 2* and *Basic Instinct* are not

art films. By the same token, not all art films are independent films. The major studios have occasionally produced, financed and distributed motion pictures regarded as art films, particularly in the 1960s and 1970s, when art cinema popularity in the US reached its zenith. MGM (a major studio in the 1960s) distributed *2001: A Space Odyssey* (Stanley Kubrick, US, 1968), Columbia distributed *The Last Picture Show* (Peter Bogdanovich, US, 1971) and *Taxi Driver* (Martin Scorsese, US, 1976), Warner Bros. distributed *Klute* (Alan J. Pakula, US, 1971), Universal distributed *Slaughterhouse Five* (George Roy Hill, US, 1972), 20th Century Fox distributed *3 Women* (Robert Altman, US, 1977) and Paramount distributed *Nashville* (Robert Altman, US, 1975) and *Mikey and Nicky* (Elaine May, US, 1976). More recently, Universal distributed *Brazil* (Terry Gilliam, US, 1985), *The Last Temptation of Christ* (Martin Scorsese, US, 1988) and *Mulholland Drive* (David Lynch, US, 2001), and Columbia distributed *Punch Drunk Love* (Paul Thomas Anderson, US, 2002).⁴⁰ Compared to European and Asian art cinema of the fifties and sixties, such as *Last Year at Marienbad* (Alain Resnais, Astor Pictures; France, 1961) and *Tokyo Story* (Yasujiro Ozu, New Yorker Films; Japan, 1953), these American films seem more mainstream; however, because they subvert Hollywood's formal practices, film commentators often regard them as art films.

Hence, relying solely on the identity of the distributor, although helpful in determining whether an individual film is independent, does not sufficiently determine whether it is an 'independent art film'. An art house could not legitimately assert clearance rights to *Terminator 2*. For a reliable definition, I still had to define the term 'art film'. This definition proved more complicated.

What is an art film?

Art cinema may be even harder to define than independent cinema. In the introduction to their 2010 anthology, *Global Art Cinema: New Theories and Histories*, Rosalind Galt and Karl Schoonover focus on the difficulties of defining the term. They call art cinema 'an unreliable label' that has proved 'very hard to pin down within any of the common rubrics for categorizing types of cinema'.⁴¹ Most of their essay presents contested definitions of the term that rely on such varying factors as historical and geo-political context, the nature of the film audience, aesthetic features, subject matter, political attitude, exhibition venue, or a film's relationship to authorship, realism, modernism and subjectivity. Ultimately, Galt and Schoonover define art cinema by its lack of definition. 'As a category of cinema', they say, 'it brings categories into question'.⁴² How can entertainment law define a category that undermines the very idea of categories?

Decades before Galt and Schoonover, Steve Neale had already taken a pluralistic view of art cinema in a well known 1981 article in which he defined art cinema as an 'institution', a complex system of interdependencies among filmmakers, films, governments, private companies, national and international distributors and exhibitors. In characterizing art cinema, Neale identified not just its textual features but also its 'economic infrastructure', its branding models and marketing, 'its sources of finance, its modes and circuits of production, distribution and exhibition'.⁴³ He examined art cinema's complex history in England, France, Germany,

and Italy, noting that art cinema institutions have changed over time along with changes in film styles, governments, private funding sources, international relations and financing and marketing models, as well as changes in the practices of Hollywood cinema, which art filmmakers typically try to subvert.

If we look at art cinema strictly from the point of view of today's film exhibitors, however, it is a simpler category, encompassing much of the theatrically distributed cinema not regarded as mainstream. The category includes not just the cinema that scholars regularly call 'art films' (such as *Caché*, Michael Haneke, Sony Pictures Classics; France, 2005) but also most theatrically distributed documentaries (such as *Man on Wire*), foreign-language films popular in their own domestic markets (such as *Amélie*), and American films aimed at a niche audience, rather than a mass audience (such as *The Big Lebowski*, Joel and Ethan Coen, Gramercy, US, 1998; *Donnie Darko*, Richard Kelly, Newmarket Films, US, 2001; *The Squid and the Whale*, Noah Baumbach, Samuel Goldwyn Films, US, 2005; and *Little Men*, Ira Sachs, Magnolia, US, 2016). In short, for a film exhibitor, an art film has limited commercial appeal. Indeed, the term emerged after WWI as a means of differentiating some non-traditional forms of cinema (such as German Expressionism, French Impressionism and the films of Carl Dreyer) from popular entertainment.⁴⁴ The term came into wider use in the United States in the 1950s and 1960s when modern European and Asian films challenged mainstream filmmaking trends. Films such as *Sansho the Bailiff* (Kenji Mizoguchi, Brandon Films; Japan, 1954), *Wild Strawberries* (Ingmar Bergman, Janus; Sweden, 1957), *Breathless* (Jean-Luc Godard, Films Around the World; France, 1960), and *8½* (Federico Fellini, Corinth; Italy, 1963) appealed to coteries, not the mass public.

Since art cinema today continues to appeal to niche audiences, investigating the release patterns of acknowledged art films can help us form a definition of art cinema because the release pattern indicates the size of a film's intended audience.

Art film release patterns

Art films have a 'platform' release, rather than a wide release, because they address a relatively small audience, not a mass audience. A 'platform' release entails exhibiting a film in select theatres and later expanding the release if the film gains momentum in the culture as a result of reviews, awards or word of mouth.⁴⁵ Platform releases enable the distributor to gauge the level of marketing and the number of film prints needed to receive the greatest return on investment. Consequently, art films typically play on fewer than 100 US screens simultaneously. In fact, 100 screens is a lot for an art film. In its first run, *Rachel Getting Married* played simultaneously on 69 screens across the United States, *Choke* played on 64, and *Frozen River* (Courtney Hunt, Sony Pictures Classics; US, 2008) played on 50. By contrast, commercial mainstream films typically play on 1500 or more US screens during their first run. Blockbusters generally play on 2000–4000 US screens at once.

A film that plays on 100 to 1500 US screens is difficult to categorize. It might be a mainstream film that the distributor believes will not achieve wide success or, more likely, a crossover film between the commercial and art film markets. Examples of crossover films from 2008 include *Vicky Cristina Barcelona* (Woody Allen,

MGM; US), which played on 109 screens simultaneously; *Religulous* (Larry Charles, Lionsgate; US), which played on 540 screens; and *The Duchess* (Saul Dibb; Paramount Vantage; UK), which played on 1207 screens. Such films are relatively rare, however, since most theatrically distributed films fall into the over 1500 (wide release) or under 100 (platform release) categories.

Although informative, knowing the number of exhibition locations will not positively define an art film. Some films given platform releases are not art films, such as *Cedar Rapids* (Miguel Arteta, 20th Century Fox; US, 2011). By the same token, some art films have a platform release initially but then gain wide release as they garner awards, reviews, and positive word of mouth, as was the case with *The Artist* (Michel Hazanavicius, Weinstein Company; France, 2011). If an art film gains commercial success, does it cease to be an art film? Can an art film be a blockbuster? Yes, it can. If not, then an art house could never hope to have a breakout success.

A number of movies regarded as art films, especially in the late 1960s and early 1970s, gained wide release and were, by most standards, blockbuster hits. *A Clockwork Orange* (Stanley Kubrick, Warner Bros.; US, 1971) and *Last Tango in Paris* (Bernardo Bertolucci, United Artists; France/Italy, 1972), for instance, both earned domestic rentals in the top ten of their year of release. More recently, *The English Patient* grossed almost \$79 million domestically and another \$153 million in the foreign market, and *The Artist* grossed almost \$45 million domestically and almost \$89 million in the foreign market. Hence, we must combine a film's release pattern with other information in order to determine definitively the meaning of art cinema to film exhibitors. One crucial piece of information is a film's exhibition venue.

Art houses and film festivals

Typically, art films play in 'art houses' (the courts sometimes call them 'independent art film theaters') or on the international film festival circuit. They tend not to play in 'commercial theaters'.⁴⁶ This is a pass-the-buck criterion since it defines an art film as one that other exhibitors consider an art film. However, it proves useful in controversial cases because exhibitors can (and often do) consult the rosters of recognized art house theatres and international film festivals as points of reference. Indeed, the contract between my employer and the art house explicitly stated that, when booking films, the commercial operator would seek terms and conditions similar to those at 'Comparable Art Theaters'.

The art house movement in the United States grew in the 1940s and reached full force during the 1950s and 1960s when, as Tino Balio notes, the number of American theatres that regularly played art films rose from approximately one hundred to seven hundred.⁴⁷ Since then, the prevalence of art houses has diminished. In 2012, Jack Foley, head of domestic distribution at Focus Features, estimated that the United States had approximately 250 art-house screens.⁴⁸ All major US cities still have art houses. New York, for instance, has IFC, Film Forum, The Paris, and Metrograph, and San Francisco has the Castro Theater and the Roxie. Some medium and small cities also have art houses, including the Madison Art Cinemas in Madison, Wisconsin; the Art House Cinema 502 in Ogden, Utah; and the Amherst Theatre in Buffalo, New York. Some theatres are difficult to categorize as either

‘commercial theaters’ or ‘art houses’ – such as the Angelika Film Center and Landmark Theatres, both multiplexes – because they play both commercial films and art films, but we can categorize most theatres as one or the other.

Categorizing theatres is not merely academic; it has legal implications. For example, a proposed merger of two large commercial theatres in 2008 caused the Justice Department to bring antitrust action that required the courts to categorize every theatre in one North Carolina territory.⁴⁹ The categorizations helped determine the competitive impact on consumers of the loss of competing first-run commercial theatres. In a filing for the case, the owner of one of the smaller theatres in the area contended that the Justice Department had improperly categorized his theatre as a ‘first-run commercial theater’ rather than an ‘independent art film theatre’. He argued that, as an art house, his theatre did not directly compete with commercial theatres, and therefore the proposed merger would create an excessively high concentration of commercial theatres owned by the same operator in his film zone. The court agreed that the Justice Department had improperly categorized his theatre and, to ensure continued competition, restricted the commercial theatre’s clearance rights.

Before an art film plays in any art houses, however, it likely played at a film festival, another reliable sign of a film’s status as ‘art film’. Art film-makers typically seek distribution deals by submitting their films to festivals, where distributors pick up a tiny portion of the art films on the festival circuit. Cannes, Berlin and Venice host some of the most important international film festivals for art films, but Shanghai, Tokyo, Warsaw and numerous other foreign cities also host major festivals. North America offers many notable festivals, including the Toronto International Film Festival, the Telluride Film Festival, South by Southwest, the Seattle International Film Festival, the Tribeca Film Festival and the New York Film Festival. The largest and most famous festival in North America is the Sundance Film Festival in Park City, Utah, which began as a much smaller festival for low-budget independent films but has, over the years, grown into North America’s most important festival for independent filmmakers seeking distribution. Art houses looking to book appropriate films can consult the programs of these and other international film festivals as guides.

In almost every case, the release pattern and the exhibition venue would together enable one to determine whether an individual film is, from an exhibitor’s perspective, an ‘art film’. And that information, combined with the distributor, would indicate whether it is an ‘independent art film’. Focusing on just one or two of those criteria may not provide an accurate determination. *Cedar Rapids*, for instance, was distributed by an art house division (Fox Searchlight) and had a platform release, but it played in first-run commercial theatres. By the same token, art houses, especially the multiplexes, do sometimes play commercial studio films. Landmark Theatres exhibited Columbia Pictures’s *The Social Network* (David Fincher, US, 2010), for example. However, exhibitors can generally regard a film as an independent art film if it: (1) is distributed by an independent company or a specialty division of the Big Six, (2) has a platform release and (3) plays in recognized art houses or film festivals.

But we still have some work left to do to create a positive definition of ‘independent art cinema’, valid within the domain of film exhibition. Because of

some needling exceptions, the three criteria above do not fully define the term. Consider *The Company Men* (John Wells, US, 2010). The independent Weinstein Company distributed the film, it had a platform release, but it played in art houses and mainstream cinemas around the United States. According to our criteria, *The Company Men* is an independent film, but is it an art film?

Probably not. The film is too normal

To positively determine whether exhibitors may regard a film as an independent art film, we require one more criterion for use when all else fails. Although subjective, this final criterion is also the most definitive in controversial cases, if the previous three criteria do not produce a clear result. Ultimately, when discussing independent art cinema, we are talking about films that contrast with mainstream cinema narratively, stylistically or thematically. Art films are not 'normal' films, assuming we regard studio films as normal; art films are somehow atypical.

Art cinema narrative, stylistic and thematic practices

If a theatrically distributed film systematically eschews the artistic norms of Hollywood cinema, then it is an art film.⁵⁰ In his article, 'The Art Cinema as a Mode of Film Practice', David Bordwell argues that art cinema 'defines itself explicitly against the classical narrative mode'.⁵¹ Art films violate classical Hollywood norms not just occasionally (even Hollywood films have subversive moments); art films are structured idiosyncratically throughout their presentation. Bordwell notes that they contain difficult, often aggressive or disruptive, forms and styles, emphasizing aesthetic innovation over convention. They present characters and story events ambiguously, with a loosely structured chain of events and obscure character motivations. Steve Neale argues that art films suppress 'action' and stress character over plot. The films highlight their 'visual style', Neale says, and the 'interiorization of dramatic conflict'.⁵² Bordwell and Neale both stress art cinema's commitment to realism and a high level of self-consciousness, flaunting their processes of narration with ostentatious displays of film-making technique. They motivate their eccentric techniques, moreover, not by film-making convention or plot patterning but by a strong 'authorial voice'.⁵³ Hence, their narrative and stylistic practices come across as fundamentally unconventional, idiosyncratic, and audacious.

Bordwell's and Neale's definitions of art cinema are too strict and historically specific for our purposes, dependent largely upon the narrative and stylistic practices of European and Asian cinemas of the period from the 1940s to the 1970s, whereas contemporary art cinema is a product of the 1980s and beyond. A handful of contemporary art films fit their definitions, such as *Caché* and *The Tree of Life* (Terrence Malick, Fox Searchlight Pictures; US, 2011). However, most art films of the past thirty years do not. Films such as *Drugstore Cowboy* (Gus Van Sant, Avenue Pictures; US, 1989), *The Crying Game* (Neil Jordan, Miramax; Ireland, 1992), *Boys Don't Cry* (Kimberly Peirce, Fox Searchlight; US, 1999), *Sideways* (Alexander Payne, Fox Searchlight; US, 2004), and *Frances Ha* (Noah Baumbach, IFC; US, 2012) do not match Neale or Bordwell's definitions of art cinema. Indeed, unlike commercial mainstream cinema, which has remained relatively stable in its narrative, stylistic, and thematic practices, art house cinema has changed significantly in the past fifty years. Hence, if we apply Neale's or Bordwell's

characterization of art cinema to current film exhibition practices, we have a discrepancy between film scholars' conception of art cinema and that of today's film exhibitors.

Neale and Bordwell, however, point us toward a resolution between the discrepant uses of the term 'art film'. For while today's art films may not strictly follow their definitions of art cinema as an historical mode of film-making, the films exhibited in art houses today continue to employ formal practices outside those of mainstream cinema. Indeed, Newman regards 'indies' as the natural successor to the art cinema of the 1940s–1970s.⁵⁴ He says that 'the value of indie cinema is generally located in difference, resistance, opposition – in the virtue of alternative representations, audiovisual and storytelling styles, and systems of cultural circulation'.⁵⁵ Today's art films continue to resist mainstream modes of storytelling.

Art film practices today sometimes amount to a low-budget aesthetic, as in *The Blair Witch Project* (Daniel Myrick and Eduardo Sánchez, Artisan Entertainment; US, 1990); unconventional themes or subject matter, as in *She's Gotta Have It* (Spike Lee, Island Pictures; US, 1986), *You Can Count on Me* (Kenneth Lonergan, Paramount Classics; US, 2000), or *Moonlight* (Barry Jenkins, A24; US, 2016); an eccentric narrational technique, as in *Timecode* (Mike Figgis, Screen Gems; US, 2000), *Me and You and Everyone We Know* (Miranda July, IFC Films; US, 2005), and *Triangle* (Christopher Smith, First Look International; UK/Australia, 2009); or a high degree of stylization, as in *Safe* (Todd Haynes, Sony Pictures Classics; US, 1995), *Mulholland Drive*, and *Enemy* (Denis Villeneuve, A24; Canada/Spain, 2013). Foreign films, according to Scott Macaulay, editor of *Filmmaker* magazine, often 'become art house films in the States just because Americans process story differently'. Even ordinary foreign films, he says, 'read as overly stylized' in the US and are 'thus arthouse'.⁵⁶ For film exhibitors today, art cinema is a much broader category than it is for most film scholars. Ultimately, film exhibitors regard an art film as any theatrically distributed film that eschews the narrative, stylistic, or thematic practices characteristic of contemporary mainstream films.

Independent art cinema: A four-part test

A positive definition of 'independent art cinema' must rely, in part, on a subjective evaluation. An exhibitor cannot simply look up whether a film eschews Hollywood's narrative, stylistic or thematic practices. Film scholars often note that many of the films screened at art houses today – particularly the Indiewood productions – occupy the hybrid space between classical Hollywood and all-out Hollywood rejection.⁵⁷ But exhibitors rarely have trouble distinguishing independent art films from commercial mainstream films. Birnbaum, who books independent art films for several art houses, says he normally finds it very easy to identify appropriate films. From his perspective, 'few movies straddle the line'.⁵⁸ In a controversial case, however, it would take a film expert to decide whether a film eschews Hollywood practices sufficiently enough to be regarded as art cinema, given contemporary practices.

But the courts already employ subjective standards when considering the distribution and exhibition of artworks, periodically relying on art experts for a final determination. The landmark Miller test for obscenity offers the most prominent

example. In the 1973 US Supreme Court case, *Miller v. California*, a lower court had convicted the appellant of mailing unsolicited sexually explicit material.⁵⁹ The Supreme Court affirmed a three-part test to determine whether speech or expression is obscene and therefore not protected by the First Amendment of the Constitution. If a work meets all three criteria, the courts determined, then it is obscene and therefore not protected speech:

- (1) Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest.
- (2) Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law.
- (3) Whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Of the three criteria, however, only the second could in any way be described as objective, and even it contains subjective language ('in a patently offensive way'). The other criteria are, in any controversial case, a matter of opinion, and determinations might differ from person to person and change over time. The four criteria below provide something of a Miller Test for independent art cinema in the exhibition domain, although my test offers a considerably more concrete and objective standard.

My court case never went to trial. The parties settled beforehand, at least partly, one of the attorneys told me, because the criteria below had helped settle the matter. In my research, I have found no adjudicated legal precedent for defining an independent art film. I propose, therefore, that the following four-part test defines the term as it is employed within film exhibition today. An independent art film:

- (1) is distributed by an independent distributor or a specialty division of a major studio;
- (2) has a platform release, rather than a wide release;
- (3) plays at first-run art houses or film festivals; and
- (4) eschews the narrative, stylistic, or thematic practices typical of contemporary mainstream films.

I submit, ladies and gentlemen, that a film that meets all four criteria is legally an independent art film within the domain of film exhibition.

Conclusion

We can see from my definition that American exhibitors today regard 'independent art cinema' as a broad category. By contrast, the different types of film festivals reflect the finer distinctions made by scholars. The Full Frame Documentary Film Festival, the Ottawa International Animation Festival, the San Francisco International LGBT Film Festival, the Richmond French Film Festival, and the No Budget Film Festival, for example, divide the category of independent art cinema into smaller, more cohesive units. By and large, we do not have separate theatres for documentaries, animated films, LGBT films, foreign films, and low budget films. Rather, theatrical exhibition in

North America falls into just two types: mainstream commercial theatres and art houses. Because mainstream commercial cinema is by far the largest sector of the film exhibition market, art house distributors and exhibitors naturally seek to maximize the types of films that fall into the ‘independent art film’ category.

Film scholars have more or less concluded that that category is impossible to define, its boundaries continually shifting to reflect changing contexts and usages. Film exhibitors, by contrast, find independent art films relatively easy to identify. Indeed, American distributors and exhibitors rarely dispute the identity of a film, making a strong, valid, widely accepted and legally sufficient definition comparatively uncontroversial within that domain.

I would argue that this article’s piecemeal approach to defining ‘independent art cinema’ offers perhaps the only way we can understand the meaning of the concept – one domain at a time. By studying the recent history of independent art cinema distribution and exhibition, we have been able to define the term in a way that conforms to, and adapts to, distribution and exhibition practices since the 1980s. For many film scholars today, the term’s complex meanings reflect the complexity of indie film institutions, form, taste, history, politics, culture, audiences, branding, financing and distribution. But for the Justice Department, entertainment lawyers, film distributors and film exhibitors concerned with booking films, clearance rights, anticompetitive practices and contract disputes, the purpose of the term is much narrower and more straightforward: to determine a film’s appropriate exhibition venue. Consequently, within the domain of film exhibition, we can formulate a valid definition of ‘independent art cinema’ that is confined to the task, yet flexible enough to adapt to a changing industry. A different domain will no doubt offer us a different understanding of the concept.

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Notes

1. See E. Deidre Pribram, *Cinema & Culture: Independent Film in the United States, 1980–2001* (New York: Peter Lang, 2002), xiii–xiv.
2. Geoff King, for instance, notes a distrust of ‘anything that achieves wider popularity’ in ‘Thriving or in Permanent Crisis? Discourses on the State of Indie Cinema’ in *American Independent Cinema: Indie, Indiewood, and Beyond*, ed. Geoff King, Claire Malloy, and Yannis Tzioumakis (London: Routledge, 2013), 48.

- For a discussion of *Juno*'s contested status as an indie, see Michael Z. Newman, *Indie: An American Film Culture* (New York: Columbia University Press, 2011), 232–46.
3. United States v. Paramount Pictures, Inc. et al., no. 79, Supreme Court of the United States, 1948, LexisNexis Academic.
 4. Dahl, Inc. v. Roy Cooper Co., Inc., no. 23840, US Court of Appeals for the Ninth Circuit, 1971, LexisNexis Academic. Movie 1 & 2 v. United Artists, no. C 86-20390 RPA, US District Court for the Northern District of California, 1987, LexisNexis Academic. Orson, Inc. v. Miramax Film Corp. No. 95-1399, US Court of Appeals for the Third Circuit, 1996, LexisNexis Academic.
 5. 15 U.S.C.S. § 2. 2012, Commerce and Trade, Chapter 1, Monopolies and Combinations in Restraint of Trade, Section 226, Motion Pictures and Theaters, LexisNexis Academic.
 6. Century Theatres, Inc. v. Landmark Theatre Corp., no. C 00-00856 CW, US District Court for the Northern District of California, 2000, LexisNexis Academic. Saul Landau v. Addison Fording, no. 22920, Court of Appeal of California, First Appellate District, Division Two, 1966, LexisNexis Academic. Dan and Miriam Ailloni-Charas v. Commissioner Of Internal Revenue, nos. 6167-84, 39343-84, United States Tax Court, 1988, LexisNexis Academic.
 7. For descriptions of 'Indiewood', see, for example, the essays in King, Malloy and Tzioumakis, *American Independent Cinema*.
 8. Steve Neale, for instance, uses the terms interchangeably in 'Art Cinema as an Institution,' *Screen* 22 (1981), 11–39.
 9. Newman, *Indie*, 12.
 10. Jim Hiller, 'Introduction,' *American Independent Cinema: A Sight and Sound Reader* (London: BFI, 2001), ix.
 11. Frederick Wasser, *Veni, Vidi, Video: The Hollywood Empire and the VCR* (Austin: University of Texas Press, 2002), 16.
 12. Yannis Tzioumakis, *American Independent Cinema: An Introduction* (Edinburgh: Edinburgh University Press, 2006), 11.
 13. Pribram, *Cinema & Culture*, xi–xii.
 14. Janet Staiger, 'The Hollywood Mode of Production, 1930–60', in *The Classical Hollywood Cinema: Film Style and Mode of Production to 1960*, ed. David Bordwell, Janet Staiger, and Kristin Thompson (London: Routledge and Kegan Paul, 1985), 317.
 15. Geoff King, *Indiewood, USA: Where Hollywood Meets Independent Cinema* (London: I. B. Tauris, 2009), 1.
 16. King, Malloy, and Tzioumakis, *American Independent Cinema*, 2.
 17. Pribram, *Cinema & Culture*, xvi.
 18. Newman, *Indie*, 182–217.
 19. *Filmmaker Magazine*, '25 New Faces of Indie Film 2003', (summer 2013), http://filmmakermagazine.com/archives/issues/summer2003/features/25_faces.php (accessed June 5, 2015).
 20. Janet Staiger, 'Independent of What? Sorting out Differences from Hollywood', in *American Independent Cinema*, ed. King, Malloy, and Tzioumakis, 23.
 21. James MacDowell's 'Quirky: Buzzword or Sensibility' in King, Malloy, and Tzioumakis, *American Independent Cinema*, 53–64.
 22. MacDowell, 'Quirky', 54.

23. MacDowell, 'Quirky', 55.
24. Pribram, *Cinema & Culture*, xii.
25. Michael Z. Newman, 'Movies for Hipsters' in *American Independent Cinema*, ed. King, Malloy, and Tzioumakis, 71.
26. Newman, *Indie*, 1–18.
27. Newman, *Indie*, 11.
28. Mark Polish, Michael Polish, and Jonathan Sheldon, *The Declaration of Independent Filmmaking* (Orlando: Harcourt, 2005), 9.
29. James Schamus, 'To the Rear of the Back End: The Economics of Independent Cinema,' in *Contemporary Hollywood Cinema*, ed. Steve Neale and Murray Smith (London and New York: Routledge, 1998), 102.
30. Wasser, *Veni, Vidi, Video*, 16.
31. Thomas Schatz, 'New Hollywood, New Millennium' in *Film Theory and Contemporary Hollywood Movies*, ed. Warren Buckland (New York: Routledge, 2009), 25.
32. Schatz, 'New Hollywood, New Millennium', 25.
33. Schatz, 'New Hollywood, New Millennium', 28.
34. Schatz, 'New Hollywood, New Millennium', 28.
35. Wasser, *Veni, Vidi, Video*, 16.
36. Greg Merritt, *Celluloid Mavericks: A History of American Independent Film* (New York: Thunder's Mouth Press, 2000), xii.
37. See King, 'Thriving or in Permanent Crisis?' 43–4.
38. Adam Birnbaum (Director of Business Development and Film Programming, The Avon Theater), interview with author, 20 July 2015.
39. See Geoff King, *American Independent Cinema* (Bloomington: Indiana University Press, 2005), 9–10.
40. Paul Thomas Anderson referred to *Punch Drunk Love* ironically as 'an art house Adam Sandler Film', Roger Ebert, rev. of *Punch Drunk Love*, October 18, 2002, <http://rogerebert.suntimes.com/apps/pbcs.dll/article?AID=/20021018/REVIEWS/210180308/1023>.
41. Rosalind Galt and Karl Schoonover, 'Introduction', in *Global Art Cinema: New Theories and Histories*, ed. Rosalind Galt and Karl Schoonover (New York: Oxford University Press, 2010), 3 and 6.
42. Galt and Schoonover, 'Introduction', 9.
43. Neale, 'Art Cinema as an Institution', 13–5.
44. Kristin Thompson and David Bordwell, *Film History: An Introduction*, 2nd ed. (New York: McGraw Hill, 2003), 174.
45. King, *American Independent Cinema*, 26–9.
46. See Pribram, *Cinema & Culture*, xiv.
47. Tino Balio, 'The Art Film Market in the New Hollywood', in *Hollywood & Europe: Economics, Culture, National Identity 1945–95*, ed. Geoffrey Nowell-Smith and Steven Ricci (London: British Film Institute, 1998), 63. See also Barbara Wilinsky, *Sure Seaters: The Emergence of Art House Cinema* (Minneapolis: University of Minnesota Press, 2001), ix.
48. David Bordwell, 'Pandora's Digital Box: Art House, Smart House', *Observations on Film Art*, <http://www.davidbordwell.net/blog/2012/01/30/pandoras-digital-box-art-house-smart-house> (accessed January 30, 2012).

49. United States of America v. Regal Cinemas and Consolidated Theatres, no. 08-746 (RJL), United States District Court for the District of Columbia, 2008, LexisNexis Academic.
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51. David Bordwell, 'The Art Cinema as a Mode of Film Practice', in *The European Cinema Reader*, ed. Catherine Fowler (London: Routledge, 2002), 95.
52. Neale, 'Art Cinema as an Institution', 13.
53. Neale, 'Art Cinema as an Institution', 14.
54. Newman, *Indie*, 15. Annette Insdorf expresses a similar view in 'Ordinary People, European-Style: Or How to Spot an Independent Feature' in *Contemporary American Independent Film: From the Margins to the Mainstream*, ed. Chris Holmlund and Justin Wyatt (London and New York: Routledge, 2005), 27–33.
55. Newman, *Indie*, 2.
56. Scott Macaulay, email message to author, 12 June 2012.
57. See the essays in King, Malloy, and Tzioumakis, *American Independent Cinema*.
58. Birnbaum, interview with author, 20 July 2015.
59. Miller v. California, no. 70–3, Supreme Court of the United States, 1973, LexisNexis Academic.

Notes on contributor

Todd Berliner Professor of Film Studies at the University of North Carolina Wilmington, teaches American film history and aesthetics. He is the author of *Hollywood Aesthetic: Pleasure in American Cinema* (Oxford University Press, 2017) and *Hollywood Incoherent: Narration in Seventies Cinema* (University of Texas Press, 2010).
