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TELEVISION

'Frasier' back as legal drama

■ A lawsuit over profit participation may shed light on accounting practices that studios prefer to keep secret.

By Robert W. Welkos, Times Staff Writer

How can a hit television series like "Frasier" gross \$1.5 billion and yet be \$200 million in the red?

That's the issue at the center of a recent lawsuit filed against Paramount Pictures by two talent agencies seeking answers to how "Frasier" — the Emmy-winning NBC sitcom starring Kelsey Grammer that ran for 11 seasons — can claim that it never turned a net profit even though it was one of the most successful shows in television history.

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For its part, Paramount Pictures said it believes the case is "without merit" and promised to vigorously defend its position. But regardless of who's right, the suit filed Sept. 29 in Los Angeles County Superior Court could offer that rare window onto one of Hollywood's juiciest disputes: profit participation.

Complaints about the way studios divvy up the profits are rampant within the industry. And it's not just the little guys doing the complaining. Director Peter Jackson is suing over DVD

profits from the "Lord of the Rings" trilogy. But perhaps the most famous case also involved Paramount Pictures. The studio found itself embroiled in controversy over claims that the hit 1988 Eddie Murphy film, "Coming to America," had grossed \$350 million, yet never turned a profit.

Such cases usually end in an out-of-court agreement, said attorney Pierce O'Donnell, who represented humorist Art Buchwald in the "Coming to America" case and went on to co-write a 1992 book titled "Fatal Subtraction: How Hollywood Really Does Business."

"The studios typically do not want to air their dirty-accounting laundry," he said. "Many a settlement of these kinds of suits occurs on the courthouse steps."

But if the "Frasier" case goes forward, it's sure to be followed by those who have long suspected that the industry's odds are stacked in favor of the studio.

People are fascinated by such disputes because of the names involved or the sums. But such contractual disagreements aren't all that unusual and certainly aren't limited to Hollywood, said Jason E. Squire, instructor of cinema practice at the USC School of Cinema-Television and editor of "The Movie Business Book." "But just because Hollywood is Hollywood, it gets more attention."

The "Frasier" breach-of-contract suit was filed by the Jim Preminger Agency of Los Angeles and the Kaplan Stahler Gumer Braun Agency of Beverly Hills. The agencies represented Peter Casey and David Lee, and the late David Angell, the creative team behind "Frasier," which ran 11 seasons on NBC from 1993 to 2004. (Angell died in the Sept. 11, 2001, terrorist attacks.)

Grammer's character, the pontificating Boston psychiatrist Frasier Crane, was first introduced to audiences during the third season of the hit NBC series "Cheers" and became a regular, bantering with the likes of bartender Sam Malone (Ted Danson) and blue-collar barflies Norm (George Wendt) and Cliff (John Ratzenberger) and romancing waitress Diane Chambers (Shelley Long).



Wrapping up
 (Ken Hively / LAT)

'Frasier' facts

Here are some of the landmarks of "Frasier's" success. Sources include the *Hollywood Reporter*, *Philadelphia Inquirer* and Nielsen rating service

Grossed \$1.5 billion

Ran 11 seasons

Won 31 Emmys, more than any other show

Kelsey Grammer's salary per episode in the final season: \$1.6 million

His estimated income for that season: \$35 million

Won the Emmy for best comedy series five consecutive years

License fees paid by NBC exceeded \$4 million per show

Grammer's Frasier Crane character, which debuted on "Cheers," ran 20 seasons, tying "Gunsmoke's" Matt Dillon (James Arness) for longevity

"Frasier" ranked third at its peak in the Nielsen ratings and had 24.030 million viewers in 1998-99.

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When "Cheers" came to an end, though, the writers weren't quite finished with the fussy Frasier. Casey, Lee and Angell, who had been writers on "Cheers," dreamed up a spinoff.

In "Frasier," Crane leaves Boston for his hometown of Seattle, where he works as a radio psychiatrist and moves into an expensive apartment with his dad, ex-policeman Martin Crane (John Mahoney). Jane Leeves portrayed Martin's English-born physical-care assistant, Daphne, while David Hyde Pierce costarred as Frasier's psychiatrist brother, Niles, and Peri Gilpin was Frasier's producer, Roz Doyle.

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Traditionally, agencies are paid an upfront commission for services rendered on their clients' behalf. But sometimes, agents are in a position also to negotiate for a piece on the "back end." The agencies involved in the "Frasier" case have already earned upfront millions during the show's run, but they also negotiated deals in which they would take a percentage once the show started generating net profits, according to the lawsuit. They contend they could be owed millions more. (Their clients are paid separately and are not involved in this lawsuit.)

Few television shows have the longevity necessary to generate profits long after everyone else has taken their share. The agents, though, believed "Frasier" would do just that.

Since then, the suit states, the agents have been keeping an eye on the accounting behind "Frasier." The suit claims that Paramount has reported collecting more than \$1.5 billion in gross revenues for "Frasier." That includes almost \$830 million in network licensing fees paid by NBC.

Yet "Paramount has taken the position with the [plaintiffs] that the series has never produced 'net profits' under Paramount's definition of the term and that the series has actually lost over \$200 million according to its latest calculations," the suit says.

Paramount won't discuss the accounting for "Frasier," but the suit makes plain that there is a pecking order when it comes to spreading the \$1.5 billion around. Paramount took its own cut of \$550 million in production and distribution fees, the suit states. And, the plaintiffs' attorney says, the studio also paid out hundreds of millions more for day-to-day production and distribution expenses the show incurred during its 11-year run, as well as carving out a hefty piece of the financial pie for the sitcom's creators and others. Paramount claims that when all was said and done, the show was in the red \$200 million, according to the suit.

The dispute over the definition of "net profit" and far more arcane legal language is in the hands of the court, but the plaintiffs contend they have proof that Paramount did in fact pay net profits to another participant — whose identity is not revealed in the suit. If that participant earned net profits, the plaintiffs ask, then where's their share?

"Paramount's calculation [in regard to that profit participant] showed that the series had earned net profits in the tens of millions of dollars," said Sheldon Eisenberg of the Santa Monica law firm Bryan Cave LLP, who filed the suit. "My clients were never told about that."

The key to unlocking the mystery of Hollywood accounting often lies in the contractual definition of net profits, according to O'Donnell, the attorney in the Buchwald case. He also noted that clout plays a key role in the way a contract is structured. If you are a star like Eddie Murphy, your contract is more favorable than someone else's further down the food chain.

"I think talent agencies probably are on the same lowest rung of the Hollywood clout ladder as the writer," O'Donnell said. "Eddie Murphy, in my case, got 15% of the adjusted gross income.... So what I am saying is there is a pecking order — a ladder, if you will. The talent agencies bring the package to the network and there is a payment at the back end, but it may become illusory."

O'Donnell said many are under the false impression that "Coming to America" settled the issue of net profits once and for all. Actually, it didn't, say legal and accounting experts familiar with the case.

Buchwald and his partner, producer Alain Bernheim, sued Paramount in 1988 for breach of contract, claiming the studio had failed to give them credit for the original story behind "Coming to America." The case would last four years and capture the public's fancy.

Over the course of the case, Superior Court Judge Harvey A. Schneider not only ruled that the movie was inspired by Buchwald's treatment, but he also branded certain provisions of Paramount's net-profit formula as "unconscionable."

In March 1992, however, Schneider awarded Buchwald and Bernheim \$900,000 — far less than the \$6.2 million they sought. Both sides hailed the ruling as a partial victory. Paramount appealed the case and later settled out of court on the eve of the hearing on the appeal.

The "Coming to America" case resulted in no binding law forcing Paramount or any other studio to change its accounting practices. In the intervening years, there have been numerous lawsuits filed over vanishing net profits, experts note, but the cases are often settled out of court before they reach trial.

"Fifteen years after Buchwald vs. Paramount, it is still unresolved in Hollywood whether the standard net-profits definition, which is largely nonnegotiable, is conscionable," said O'Donnell.

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