

A Beginner's Guide to Options

www.writersguild.org.uk

If you are unsure about the terms of your contract, you are strongly advised to seek legal advice. WGGB can advise **members** on specific issues.

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You can also find lots of useful information plus guidelines on our website: www.writersguild.org.uk

Introduction

It is always a good feeling when you first have a work optioned, but as the initial euphoria ebbs away, doubts tend to creep in: "What if the option is not taken up? And what does all this verbiage mean, anyway? Am I being had?" Don't worry, many WGGB members have called our Head Office with the self-same questions you have, and although certain terms are specific to certain media, the basic mechanism of options is the same across the board. Below are the explanations to some of the most frequently asked questions:

1. What is an option?

It is a way for the producer to secure the right to obtain certain rights in your work while s/he tries to raise the finance for the project without having to worry that someone else is going to whip it away from under his or her nose.

2. So once I have given someone an option on my work, it is tied up forever?

If you do not limit the option, that is exactly what will happen. You will see, however, that most option agreements specify a so-called 'option period'. The length of the option period varies depending on the medium you write for and on the country the producer operates from.

Do not tie up your work for too long, particularly if your subject is topical or you have had interest shown in it by other producers. As a general rule, one year with one or two extensions of six months each should be plenty of time for a producer to raise finance for the project.

3. Why should I give anyone an option on my work?

Aside from that rare occasion when the producer's intention behind an option is to prevent anyone from producing the work (see point 6, below), an option does usually give you some assurance that the producer is serious about the project. To an extent, it also enhances your reputation if your work is 'optioned', and it may encourage others to take your work seriously and commission you to write other works for them.

4. So should I jump at the first option that is offered?

No, consider carefully who you are dealing with and what is on offer. If you are relatively unknown and the producer taking the option has a name in the industry, then it may well be that this is your big chance. However, s/he may be renowned for optioning works and rarely going ahead with them, or for employing dozens of writers who change 'Chekhovian' works into vehicles for Hollywood action heroes.

5. Let me get this straight: if there is no agreement attached, I can avoid giving him or her the rights?

Theoretically yes, because legally you cannot agree to agree on the terms that will be agreed after the producer exercises the option. The option is void without all the important terms of the ultimate agreement being already agreed and attached or set out in to the option agreement. Which is just as well, if you think about it, because it would be like agreeing to buy a house without first enquiring about the price and whether the house is built in a swamp on the Concorde flight path.

The odd person, be it a producer or a writer, may think it smart to omit the terms of the final agreement from the option agreement, believing that when the option is exercised, the other party will be so desperate by then, that s/he will agree to anything. Please do not try this. The producer may think it is *you* who will be desperate for an agreement and you may find that after long protracted negotiations you will not only give him or her the rights to your masterpiece, but you may do it 'for a song'. Alternatively you may lose the deal. Our advice is, insist on a draft agreement or at least the essential terms to be incorporated into the option agreement. If the producer is reluctant to do so, then alarm bells should be ringing and you would be well advised to listen to them. If your work is good, another deal will no doubt come along.

6. Can I make money out of an option deal?

Not usually very much out of the option itself, the fees for which can be very low indeed. As a rule of thumb, an option fee should be approximately 10% of what you are ultimately expected to be paid for the rights in your script. However, new writers in particular have increasingly been accepting option fees which have been low, even paltry. The higher the option fee is, the more you can be sure that the producer wants to go ahead with the project and is not just optioning your work because s/he wants to take it off the market while a potentially competing project is being produced.

On the other hand, it could be that the producer wishing to option your work cannot afford to pay you more but may have the talent, contacts and commitment to make the project happen.

If the option period you are granting includes one or several extensions, then you should receive payment each time the producer asks for an extension (otherwise you might as well grant a longer option period). Again, there is no standard payment but it should be at least as high as the initial fee, preferably higher. The thinking behind high fees for option extensions is that the producer must have a very good reason for delaying going into production; you do not, after all, want to find that s/he was, literally, just keeping his or her options open.

7. It says in my contract that the option fee is "recoupable but not returnable" – is that good?

"Recoupable" means that the amount you are being paid will be clawed back from later payments. It is usual for the initial option fee to be recoupable from the payments due to you if the option is exercised. The option fee is therefore effectively an advance which, provided your agreement states that it is "not returnable", you may keep even if the producer allows the option to lapse.

You can try and make the fees payable on any extension of the option "non-recoupable". The effect of this will not only be that this fee represents an additional payment which will not be clawed back, but will also act as a disincentive for the producer to extend the option unnecessarily.

8. "Exercise" the option? He or she takes it for a walk?

The producer "exercises" the option by doing the following three things (which should be set out in your option agreement):

- a) telling you, usually in writing, that s/he now wants the rights s/he has an option on,
- b) sending you an agreement (normally an assignment or licence of the rights optioned) incorporating all the terms agreed as part of the option agreement, and
- c) (if this was agreed in the option agreement) paying you an agreed sum.

9. More money? Tell me more!

The agreed sum can either be an advance on any royalties, the first instalment on your script fee or a one-off fee.¹ You may be asked to waive the fee and give the producer the rights in return for a promise to pay you once the project has taken off and it is starting to make money. Please remember, however, that as a WGGB member you should never undercut a Writers' Guild agreement. The moral issue of undermining union agreements aside, you would be ill-advised to agree to be paid at the appropriately named 'back end' alone unless you have a certain degree of control over the project in some other way, as a co-producer for instance.

The film/play/television programme/adaptation of your novel or other work may prove to become a major success, but statistically the odds are against it making much money for the producers, let alone the writer. It is customary in most of the above media for the writer to be paid for each stage of the writing process and for the writer to receive more at the back end in the form of residuals, royalties or licence fees, so if the product of your work is a hit, you should still benefit. However, playwrights, screenwriters and novelists granting a screen option on your work please note: only consider agreeing to a percentage of 'net' box office receipts if it is offered in *addition* to 'gross'.

10. Does an option stop me from talking to other producers?

Absolutely not, it only prevents you from *selling* your work, not from pitching it. In fact, you would do yourself a disservice if you stopped considering other offers, because all kinds of problems can arise during the option period which may prevent even the most committed of producers from exercising the option. However, please ensure that you do any pitching as discreetly as possible or you may antagonise the producer to whom you have given an option. You can go as far as negotiating an alternative deal with another producer, but it is always advisable to let that producer know from the start that there is already an option on your work. Do not under any circumstance enter into an agreement with another producer unless the option period has lapsed and the original producer has not exercised his or her option during the option period.

¹ To an extent this will depend on the industry practice and the medium you write for. For film writers, please note that under the current Pact/WGGB agreement no royalties are payable.

11. What if I have changed my mind and I want to give the rights to someone else?

You have no choice. If the producer has paid the agreed option fee then you have to wait and see if s/he exercises the option. If s/he does exercise it within the option period, then legally you have to enter into the agreement, which is usually attached to the option agreement, and give him or her the rights on those terms.

What you may be able to do, however, is try and negotiate your way out of your agreement. Expect to at least pay back the option fee and possibly give the producer a participation (ie royalties) in the project. Since you have no control over the project itself, you will not be in a position to grant participation rights. You will have to get the new producer involved, who may even buy the rights directly from the first producer.

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Writers are strongly advised to seek professional advice before signing any contract.

Credits

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