

Writing Film

A Good Practice Guide

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Here I am paying big money to you writers and what for? All you do is change the words.

SAMUEL GOLDWYN

1. INTRODUCTION

These guidelines are for screenwriters and anyone who works with writers in film.

Film-making can be a roller-coaster, with thrilling creative highs and corresponding lows. We hope that, by explaining the various stages and contracts involved and outlining suggestions of best practice, your particular ride will be easier, happier and more productive for all concerned.

This is a document written by working screenwriters from their own experience, with the benefit of expert advice.

However we must emphasise how important it is to have professional advice from an agent or media lawyer before signing a contract. If this is not available to you, the Writers' Guild can offer further advice to members.

2. AIMS

To encourage co-operation and good working relationships between writers and other film-makers

To enhance the rights and status of writers in the development and production process and, in particular, to safeguard original work

To offer practical guidance as to what writers should expect, seek or accept in negotiating contracts and working on scripts

To help writers on very low budget films to work creatively and fairly, through use of a Joint Venture Agreement

3. BRITISH FILM INDUSTRY – A WRITER’S VIEW

British film lurches from triumph to disaster and back in a familiar but unpredictable cycle nudged on by tax regimes, government subsidy and the rise and fall of the wider economic climate.

Blessed and cursed by the common language, the UK film industry has something of a poor-but-gifted cousin relationship with Hollywood, neatly reflected in the difference between the closed shop muscle of the Writers Guild of America and the effective but smaller scale lobbying position of the Writers’ Guild of Great Britain (WGGB).

The WGGB has been punching above its weight in recent years, especially in television and, by strengthening links with the other entertainment unions and producers’, directors’ and agents’ organisations, progress is being made in film.

There are few film production companies in this country with the resources and infra-structure to nurture and develop projects long-term and the result is a situation in which most producers, even well-established ones, survive and re-finance from project to project.

The inherent uncertainty of the industry tends to favour the development of films based on known quantities, i.e. adaptation, over original scripts.

It also means that many writers for film in the UK also write for television, both to see their work in production and to make a living.

There is a gulf between pay and working conditions on the few larger budget films, often made with US involvement, and the more plentiful lower budget films.

At the micro-budget end fees for writer, producer and director may be deferred, often indefinitely, and in some cases no one on the film gets anywhere near their normal rate. The principal reward for participation in such a film is the product itself, especially for first-time film makers: the “calling card” effect.

4. KEY RELATIONSHIPS

To be a successful screenwriter it is necessary but not sufficient to be good at writing scripts. Film-making is an intensely collaborative process: a screenwriter must be able to work effectively as part of a team.

Three professional relationships are central to a screenwriter's career: with producer, director and agent. Some film-makers combine writing with directing or producing. All are subject to the demands of the market as expressed by film financiers.

AGENT

CAN'T GET WORK WITHOUT AN AGENT, CAN'T GET AN AGENT WITHOUT WORK ...

The start of most writers' experience of agents is the struggle to get one. The difficulty of climbing that cliff can give rise to unrealistic expectations of what an agent can do.

Do not try to get an agent before you are ready: write scripts, build relationships, get some work before you look for the right agent. Do not send unsolicited scripts to agents. Do look at their client list and their areas of expertise.

Do not assume that an agent will get work for you.

S/he will represent you; that is, put your writing before producers s/he thinks might be interested in it and suggest you for suitable commissions. It is up to you to sell yourself by your wonderful scripts and your ability to convince in meetings.

IS AN AGENT REALLY NECESSARY?

Almost all professional screenwriters have agents. The best way to get your script read is through an agent: most film companies and producers will not read unsolicited work. An agent has contacts, industry experience, and an overview. S/he can advise you on how to place your work, who to work for or avoid. The right agent is not an uncritical cheerleader – s/he admires and understands your work, will tell you when you have done something well, but will not shirk from pointing out when you have taken the wrong direction and need to revise your script – or start again.

An agent will negotiate contracts on your behalf, get the best deal for you, send invoices and chase up payments. S/he can save you from expensive mistakes. Your agent may also offer advice, hand-holding and emotional support.

Whether you are represented by a large or small agency the success of the agent/writer relationship depends on the ability of the agent to focus on you, the individual. Larger agencies do have the advantage of sharing information and resources.

DIRECTOR

The director is responsible for what goes up on the screen. His/her work generally begins with an intent reading of the script and/or underlying material and the writer will usually produce a director's draft based on meetings or notes.

Subject to commercial constraints, the director casts the film, makes the key decisions about Heads of Department and explains to them his/her vision of the script. It is that vision that everyone works to make. This doesn't make it a film by one individual – only in a few cases is the possessory credit “A Film By ...” justified.

On set, the director makes all the major decisions – and hundreds of minor ones – about what is shot every day. S/he directs the actors and the camera.

In post-production the director works with the editor to cut the best possible version of the shot material. This may involve significant cuts, structural changes and unexpected discoveries. Unfortunately the writer is often not consulted at this stage.

PRODUCER

The producer makes the film happen. S/he may do this primarily by raising money or attracting talent; s/he may be closely or distantly involved with the scripting; s/he may be a one-man-band or the representative of a large company.

The producer is ultimately responsible for the financial enterprise that is a film production. S/he devises, finances and manages the budget

in development, shooting and post-production and is responsible for delivering the film to the financiers.

Often the producer is the first person on the project and the last person to leave. Somewhere along the line the producer is likely to be involved – perhaps closely – with the script.

Just as producers try to find the writer best suited to a project, the writer should consider the producer's work and working methods to decide if they will be good partners. Making a film can be a long, frustrating and nerve-racking process and the better the relationship the writer and producer maintain, the more enjoyable the experience will be.

5. WORKING TOGETHER

Writers should accept the responsibilities as well as the rights and privileges which are their due as co-creators of the film. Communication and mutual respect are what matter.

IN DEVELOPMENT

Once you have agreed the terms of your contract, stick to them. Respect delivery dates, deliver the work you have been asked for (over-enthusiasm can be as awkward as slackness: a thirty page treatment when you were asked for a two page outline is not necessarily helpful).

Go to meetings with the director, producer, or their agreed representative, in a positive spirit. Do not feel that criticism of your script is personal. If competent script readers say there is a problem, there is a problem, though they may not have correctly identified the solution. Listen carefully to what is said and do not rush blindly to defend your work. Explain what your intentions were and how you feel the material is or could be achieving them. Make notes of the meeting.

After meetings read any notes you have been sent and address them in your rewrite. If there is any conflict with your notes call the producer so that there is no ambiguity as to the work you are undertaking.

If you have trouble fulfilling your brief, whether writing the script or addressing notes, do not run or hide! Not answering the phone or returning emails are at best temporary solutions.

One common difficulty is deciding when enough is enough. Should you really be writing yet another version of the treatment or another polish of the draft? A writer cannot be expected to go on and on working (unless they are getting paid accordingly). Equally it may be time to face up to the lack of interest from the market in the project, the writer, or both. These are tough but essential decisions.

PRODUCTION AND POST-PRODUCTION

Unless the writer is also the director s/he may not be much involved in production. It can be a shock, after months of intensive script development, to be left behind in the rush to shoot. On some films the writer is a welcome collaborator and on others definitely not. This may depend on how helpful a presence s/he is, but it depends much more on the working practice of the director and producer.

There are no hard and fast rules. Some directors like to involve their writers throughout: in rehearsals with the actors, re-writing or advising during the shoot and again in the editing room. Some don't. Some writers hate hanging around on set but are keen to be involved in the edit, where the writer can be a pair of fresh eyes, with the story's best interest at heart.

It is usual for the writer to visit the set during the shoot but this can vary between being there all day every day to a polite handshake on a single day trip. While set visits can be written into a contract they are best decided by consultation with the director. On set a writer must act appropriately. It is not acceptable, for instance, for a writer to give notes directly to the actors. That is the director's job.

A screening of the rough cut may be included in the contract. Beyond this the writer's involvement in post-production is again very variable. S/he may be asked to write additional dialogue or voice over. This may be separately contracted or taken as being part of the scripting process.

The writer may be asked to do publicity for the film, although the director and cast are usually the public face of the film. There is generally a clause in the writer's contract which forbids comment on the film or the process of filming except as agreed with the producers. You are not at liberty to go round telling everyone it is a travesty of your script. This also applies to those whose work is adapted.

PART TWO: CONTRACTS

Good behaviour goes a long way but a good contract is essential. Contracts are there to deal with all eventualities, good and bad, and to reassure everyone involved with certainties in what can often seem a nebulous business.

In this section we will take you through the traditional form of a film writer's contract, explaining the principles and terminology and relating them to the processes of scriptwriting and film-making.

1. EXISTING AGREEMENTS

COLLECTIVE AGREEMENTS AND GUIDELINES

In TV, radio and the theatre, most writers' contracts are based on collective agreements negotiated by the Writers' Guild with the BBC, ITV, independent producers, theatre managers' organisations and so on. These agreements set down minimum terms for fees, advances, royalties and residuals, credits, pension contributions and various other details. While star writers and their agents can secure richer deals, the collective agreements provide an essential safety net for inexperienced and less exalted writers.

The same system used to apply to film writers under the 1992 agreement between the Writers' Guild and PACT (the Producers' Alliance for Cinema and Television) – which remains the only extant collective agreement for film writer contracts in this country. (The sections of the agreement that relate to television have been superseded by a newer agreement with PACT.)

However the PACT film agreement is now little used and shows its age by not covering digital exploitation or modern merchandising methods. Because of the age of the agreement the WGGB recommends an increase in minimum rates in line with inflation.

However a much older agreement, the Screenwriting Credits Agreement (1974), negotiated by the Guild and a predecessor body to PACT, has

stood the test of time and is often incorporated into writers' contracts. Objective credit criteria are essential, and under the Screenwriting Credits Agreement disputed credits may be arbitrated by the Writers' Guild.

The WGGB has issued Guidelines for writers in animation (mainly aimed at television work).

All these agreements and guidelines can be found on the Guild's website.

2. FROM IDEA TO SHOOTING SCRIPT

A good idea is an excellent starting point for a film but it is no more than that.

Anyone can have an idea; a screenwriter can write a script based on the idea; the screenwriter who succeeds will rewrite the script until it makes a great film.

Under English law, there is no **copyright** in an idea (although your pitch should be protected by the duty of confidentiality on the hearer). Copyright only exists when the idea becomes fixed which, for a film, usually means written down. If you have a good idea you are advised to develop it yourself at least to an **outline** stage and to date it. From then on you have a piece of paper as evidence that this good idea is yours, although it may be difficult to sell at this stage unless you are a writer with a significant track record.

In addition to giving legal protection, the more completely you develop your idea before selling it the higher the price you may command for it: a **spec script** is potentially worth much more than a one-page outline. However this work is at your own risk – if no one likes your spec script, you will have spent months or years working for nothing (hence the term speculative script).

In the UK there is no legal necessity to **register** your work – copyright is automatic.

Registration is more important if you intend to offer your work to overseas producers. The Writers Guild of America in New York and Los

Angeles offer a cheap and easy-to-use internet-based script registration system that involves uploading a digital copy.

If you are offering your work in the USA you should also register it with the US Copyright Office – if you don't, your right to legal damages for copyright infringement may be much reduced.

3. RIGHTS

When you write an **original script** you (and your heirs) own **the copyright** in the script throughout the universe for the full period of copyright.

Copyright is a property right. As such, it is transmissible by **assignment** (whereby the writer relinquishes all rights of ownership of the written material) or by **licence** (whereby s/he retains ownership of the licensed rights, subject to the terms of the licence granted). It can be extremely valuable or worth nothing at all. Be very careful that you do not give away potentially valuable rights unnecessarily.

For a film to be produced from a script, the producer or production company that wants to make the film will require the writer's permission, either through a **licence** to make one film from the script (a "one picture licence") or through an **assignment** of the **film rights**. These **rights** will include **rental** and **lending rights**. A producer might expect to allocate roughly 2–5% of the budget to rights – including any underlying material.

Any financier must be assured that the producer has the rights to make and exploit the film s/he invests in. This is commonly referred to as a clear and unencumbered **chain of title**.

Depending on circumstances (for instance, if the script is original, how much the producer wants the script, or on the writer's experience and clout) the writer may be able to retain certain rights (often called **reserved rights**). The most common reserved rights are print publication rights (the right to publish and sell the script as a literary work) stage rights and radio rights. Other rights which may sometimes be negotiated include merchandising, games and new media or multi-platform (see pages 22–26). If the writer reserves rights, the producer may well ask for a

holdback period during which the writer will not be permitted to exploit those rights.

Sequel, prequel and remake rights may be sought by the producer. If so, the writer should ensure that s/he is properly remunerated and credited for any such film, whether or not s/he is involved in writing it.

WHY IS THERE AN OPTION AGREEMENT AS WELL AS AN ASSIGNMENT OF RIGHTS?

Typically, the biggest part of the remuneration is the **purchase price**; the amount of money the producer must pay to secure the rights, but it is usually only paid if and when the production funding flows and the film actually gets made.

In order that the producer can be sure s/he can acquire the rights if the film gets made, without committing to the full purchase price before finance is in place, s/he will first want an **option** on the rights. For this reason the **assignment of rights** is almost always preceded by an **option agreement**.

An **option**, in this context, is the **exclusive right** to develop the script and to be able to **acquire the specified rights**. An option does not grant the producer any interest in the copyright or other rights in the work, but only the option to acquire those rights on pre-agreed terms. This will last for a certain period of time (the **option period**) and be for a negotiated fee or consideration (the **option fee**).

Unless the producer exercises the option by the end of the option period, the option will lapse and the writer is free to do as s/he wills with the script. Typically option periods run for 12 to 18 months, often renewable for a similar term on payment of a further fee. The initial option fee is usually paid “on account of” (i.e. is deductible from) the purchase price but the renewal is generally an additional payment.

HOW MUCH SHOULD AN OPTION COST?

Each situation is different. If the property is ‘hot’ then the option fee will be correspondingly high. But many options in the UK are low price speculative gambles for both parties. The Guild opposes so-called £1

options: a producer with serious intentions should offer a serious payment not a token amount. Beware of the producer who options material only to suppress it in favour of a rival project.

If the producer gives notice and pays the purchase price within the term specified in the **option agreement**, the rights are automatically licensed or assigned to the producer. This is called **exercising the option**. The agreed *rights* pass to the producer, the compensation passes to the writer and the production process, hopefully leading to the writer's credit on the finished film, can get under way.

After the writer **licenses/assigns** the rights in a script s/he may provide services as a writer as if to any other project, under the terms of a **writer's services** or **writer for hire agreement**.

The writer may be involved in re-writing up to and during shooting and post-production. This may be on an informal basis but may also be contracted at the time, as an additional clause to the writer contract.

If you wish to **adapt** a story, novel or other source material that is still in copyright, you (or your producer) will first need to secure an **option** on the rights for that original work. (Copyright in a literary work in the UK expires 70 years from the end of the year of the author's death.)

Particularly if you are working from a **true story** you should be aware of other potential legal issues including, for example, defamatory statements, breach of confidence and rights of privacy.

4. WRITER AGREEMENTS

The Writers' Guild advises strongly that whenever a screenwriter and producer or director decide to work together, no matter how close their relationship, a **writer services agreement** or **writer for hire agreement** should be used.

The majority of scripts that get made into films in the UK are commissioned by producers. If a producer or director comes to a writer with an idea, outline or adaptation, the writer is likely to have significantly less control over the material. S/he will expect to control the

project and, in return for payment, to own and control the copyright and all other rights in the work – a so-called “buy-out”: the writer gets paid up front, on delivery and on production.

Any writer services agreement, whether for original or commissioned work, should cover these areas:

Parties to the agreement: a list of all those involved in the contract e.g. the writer and producer/production company. (There is generally a clause elsewhere in the contract outlining what rights the producer has to pass on or assign the agreement to a **third party**.)

Definitions: laying out the terms used in the agreement (see pages 18–20). It is essential that both parties are clear about what work is being asked for and what the intention is.

Writer Services: what the writer is going to do, when the work will be delivered, what **cut-offs** there are in the process (after first or second draft revisions for example). It should also detail how long the producer has to respond to the work at each stage (often called **reading periods**). Usually specific dates or periods are given for the early stages with later stages to be mutually agreed.

Remuneration: when and how much the writer will get paid.

The contract should clearly set out the different stages for payment – on signature or commencement, on delivery of treatment, first draft, principal photography etc.

The overall fee may be tied as a percentage to the budget (typically 1.5–2%), or directly to the producer and/or director fees. It is important for the agreement to be clear what your fee is tied to as, for example, “net budget” may exclude many significant costs (see pages 18–19).

There may be a floor and ceiling for percentage-linked payments – no lower than x or higher than y.

There may be a bonus if the project is set up with one of the major studios.

There should also be provision for any travel, research or other expense the writer has to undertake in the course of writing the script.

Rights: (see also pages 11–13) copyright law is set out in the **Copyright, Designs and Patents Act 1988** (often cited in contracts as the 1988 Act or simply the Act).

At the very least the producer will need a licence of the right to make a film from the script but often the producer will insist on owning the copyright in the work.

If the writer is commissioned to write on a subject provided, this is the norm. The producer pays for and owns the work. However, the writer may still sometimes secure a turnaround provision in their screenplay.

If the writer is the originator of the project whether as a script, novel, play or in another form, s/he should consider carefully what rights s/he needs to surrender and what s/he may reasonably retain or reserve.

There should also be provision in the agreement for remakes, prequels and sequels, including credit, a first right to write and payments, including “passive payments” if the writer is not involved in the subsequent films.

Moral rights or “droit moral” is a concept from European law, which includes the right to be identified as the author of the work and to object to derogatory treatment of the work. Since “derogatory treatment” may include any addition to, deletion from, alteration to or adaptation of the work, it is customary for screenwriters in the UK to waive their moral rights “irrevocably and unconditionally.” This also applies to writers working on commissioned projects. Credit provisions (see below) are sometimes seen as an alternative to the moral right to be identified.

The Guild argues that moral rights should be inalienable, as required by the Berne Convention, but recognises that this is not achievable in the short term.

The contract may also cover the right of the producer or other party to use the writer’s name, biography and image for publicity purposes.

Warranties: the writer will be asked to warrant or guarantee certain matters, such as that s/he is the author of the work s/he is undertaking and that there are no conflicting claims on it.

There are usually clauses to say that the writer agrees not to make any defamatory remarks about the film or anyone connected with it.

In every case, writers must carefully check that warranties they give are true. If the writer is undertaking a work based on real people and events, s/he should take careful note of any warranties s/he may be asked to sign regarding libel, defamation or errors and omissions.

The Guild recommends that the producer be asked to similarly warrant any material provided by them to the writer.

Reversion or Turnaround: the contract should set out what happens if the script is not made into a film. For an original script it is usual for the rights in the work to be available to revert to the writer after an agreed period i.e. “go into turnaround”. For commissioned work, such turnaround is less common and will need negotiation. The turnaround provision should set out any reimbursement of the producer, for development costs plus interest or a premium, commonly payable on first day of principal photography of the film’s subsequent production. If this happens, the new producer usually takes responsibility for the reimbursement.

Credit: the agreement should set out what credit the writer will get on the film and in all publicity. It should also set out what credit the writer will get if other writers contribute to the project. Credits should be covered by the **Screenwriting Credits Agreement**.

The Guild recommends a clause to provide that disputed credits are submitted to the Writers’ Guild for binding arbitration (pages 20–21).

Consultation/Approval: the Guild recommends that writers ask for meaningful consultation in connection with the choice of key personnel in production, and in casting and editing.

Screenings and DVDs: the contract should give the writer the opportunity to see the rough cut of the film and give notes. The writer should also be sent tickets for the premiere of the film and 2 DVDs when available.

5. GETTING FIRED

If you are hired you can also be fired, even from a project you originated. This may happen because the writer has failed to deliver a filmable script but it may also be for reasons only indirectly connected to the script: for instance, a director always works with a particular writer, or a producer needs to be seen to be taking action on a stalled project.

Especially when you are starting out, you must expect paid work to be judged and (it is to be hoped) approved, in stages. A contracted writer should be given the best possible chance to take the project from start to finish but if a contractual cut-off point has been reached, the writer can legally be replaced.

The writer should be informed of the full reasons for the decision before a second writer has been contracted. S/he should be given the option of a face-to-face meeting. Credits, as agreed in the contract, must be respected.

In the case of further developing an original screenplay, the writer should consider the possibility that s/he could be replaced before entering into a contract and be clear what s/he may potentially be giving up.

These are the Guild's suggestions for cut-offs:

1. The terms and conditions for cut-offs should reflect the writer's original contribution to the project.
2. A draft and a full set of revisions should be the minimum allowed any writer before cut-off. This gives the writer a chance to act on notes received.
3. Furthermore, in the case of an original work being funded or part-funded by government-subsidised bodies such as the UK Film Council, BBC Films, or Film Four, the Guild recommends that the original writer should be given at least the guarantee of a second draft and polish.

6. DEFINITIONS

One of the crucial parts of any agreement is the section in which all the terms are defined. Many of these are uncontroversial, e.g. the work, the film, the writer, but others such as final approved budget and net profits can prove more awkward.

Other definitions that are of huge importance to writers and producers are sometimes not contained in the main body of an agreement but may be set out in a **schedule** to the agreement. If, for instance, a writer is hired to write a treatment with a cut-off before script stage it is essential that both parties understand what they mean by a treatment – is it a few pages outlining the story or a detailed scene by scene account of what the script will be? How much research or other work will be required to produce the treatment? Payments and expectations should be appropriate and clear for the benefit of both sides.

The following definitions are examples of those in common use at present but there are few fixed definitions and adjustments should be made to suit the project in hand. It cannot be emphasised enough how important it is for this area of a contract to be unambiguous.

BUSINESS TERMS

FINAL APPROVED BUDGET: the final estimated cash cost of production of the film approved by the principal financiers of the film, less certain exclusions. This is relevant where a writer's fee is equal to a percentage of the final approved budget. Be aware that exclusions may be substantial, including: any overhead charged by a third party financier, completion guarantee fees, deferred payments, legal fees, audit fees, finance costs (being interest, commitment and finders' fees etc), contingency and all payments to the writer. Seek advice as to what to accept and what to fight.

NET PROFITS: notoriously difficult to define and sometimes considered to be a mirage of creative accounting, the principle of a share of net profits is that contributors will benefit from any success of the film. At the very least the Guild recommends that the definition accorded to the writer

should be no less favourable than that accorded to any other net profit participant (sometimes known as a favoured nations provision).

PRODUCER'S NET PROFITS: those net profits payable to and actually received and retained by the producer. It is common on independent films that 100% of net profits is shared 50/50 between financiers and producer. If you are entitled to a share of the producer's net profits this would mean that you are entitled to a share of the 50% only.

WRITING TERMS

These are definitions in common use in the UK but there are variations in use from one company to another and certainly from one country to another. However defined, it is essential that both parties understand the same thing from these terms.

LOGLINE: The story distilled to 1-4 lines. Used by production companies.

The **OUTLINE** is a presentational document, which briefly describes and defines the parameters of the script – genre, plot, setting, main characters and potential audience. It is normally 2-5 pages long and serves to evoke interest in developing the script.

An internal outline is similar but its purpose is to succinctly explore and/or explain the story.

SYNOPSIS: One to two pages, the synopsis is about plot; it is a “dry” document, not a selling document – whereas an outline is about story and theme.

The **TREATMENT** is a complete prose plan of the script, anything from about 6 to 30 pages in length. The treatment gives a clear sense of how the story would be treated cinematically. It is written in the present tense, includes all action but little, if any, dialogue.

The **FIRST DRAFT** is the writer's first attempt at writing the screenplay, incorporating all dialogue, essential description, transitions and scene changes, and forms the basis of subsequent revisions and drafts.

FIRST DRAFT REVISIONS are any additions or deletions and revised scenes that have been singled out for modification by responses to the first draft.

These revisions will incorporate any agreed changes but may also reflect the writer's own second thoughts.

A SECOND DRAFT is a fully rounded and substantially revised version of the script incorporating all changes smoothly into the overall story.

A POLISH is a slightly modified (or polished) version of a draft undertaken after feedback received from the producers etc but not amounting to as much work as a completely new draft.

A STEP OUTLINE (also known as a beat sheet) is a breakdown of the script or story into a succession of scenes, each summed up in a few lines. It is often used by script editors to view scene juxtaposition, the development of story and character, pacing and the location of turning points and climaxes.

TAGLINE The one-line poster version of the story: for instance, "In space, no one can hear you scream."

7. SCREEN CREDIT ARBITRATION

If there are successive writers on a film the producer will prepare **draft credits**, reflecting what s/he believes is the balance of work represented in the final shooting script. According to the terms of the **Screenwriting Credits Agreement**, the draft credits should be sent to all the contracted writers or their representatives and they have two weeks to raise any objections.

If one or more writers object to the credits and the parties cannot agree then the producer may request binding arbitration, administered by the Guild of the territory where the writers were contracted. Arbitration can also be triggered if a director, producer or executive producer, who is not the sole writer, claims a writing credit.

If a writer is not a Guild member and wishes to utilise the Guild arbitration process s/he must join the Guild or its affiliates. The producer contributes to the cost of the arbitration.

The Guild appoints three experienced screenwriter members as arbitrators, who remain anonymous throughout. The producer supplies

three sets of all the relevant papers (draft scripts, covering statements, etc). Writers may submit statements.

The arbitrators decide which writers (up to 3 writers or teams of writers) have contributed most to the final shooting script. There is no consideration of the quality of the work or of any work undertaken but not represented in the final script.

The arbitrators come to independent written conclusions within an agreed time frame, which are submitted to the Guild. If there is a difference of opinion they may meet to discuss their verdict. The Guild passes the result on to the production company.

Credit arbitration is one of the most important services offered by the Guild. In the first place, it relieves producers of the embarrassment of deciding who, among several writers they have worked with, deserves what credit. In the second place, it is a most difficult and complex task and the judgement may have significant consequences for a writer's career. It is therefore a function that only experienced writers are properly qualified to perform.

8. OTHER DISPUTES

Marriages based on true love can still end in divorce. One of the many reasons why a contract is advisable even between good friends and partners is to minimise the pain if it goes wrong: the film-maker's pre-nup.

If, in spite of clear contractual terms you and your former collaborator cannot agree a settlement: if for instance the writer has not been paid or the producer has paid for a script which has not materialised, then there are some possible courses of redress.

You can, if you are a Guild member, **appeal to the Guild** for help, including **legal advice**.

Not all forms of legal action require expensive lawyers. You could bring proceedings for a small claim at the county court (limited to claims below £5,000).

There is also **Money Claim Online** which allows an individual to claim up to £100,000 through a Government web-based system. As with the small claims procedure, the court will not deal with complicated issues of rights or interpretation of contracts, but this system is useful in cases of straightforward non-payment of money due. The Guild can help members navigate this procedure.

Disputes over intellectual property rights are heard in the High Court. A High Court claim is almost always extremely expensive to run. If you are unsuccessful in any litigation, you are likely to be ordered to pay a significant portion of the winning party's legal costs. So unsuccessful – and sometimes even successful – parties can be left with substantial legal bills to pay.

Try to settle disagreements out of court if possible. A comprehensive contract dealing with as many eventualities as can be foreseen is your greatest ally here.

9. NEW MEDIA

Writers should be aware of the growing importance of the internet, mobile phone downloads and video-on-demand when it comes to exploitation of their work. Although these new technologies and markets offer tremendous opportunities they also come with their own unique problems. Potential revenue streams from new media should be addressed in any contract.

Cinema distribution currently acts as a loss leader with the revenue for films coming from DVD sales and rentals, pay TV and network TV sales. With the huge growth of new media (internet and mobile phones) and a dramatic increase in film piracy, the traditional models of production and distribution are now under threat. Content is moving more and more quickly along the chain and is also now being written specifically for internet or mobile download, bypassing traditional outlets and potentially falling outside the terms of standard contracts and existing collective bargaining agreements.

There is cause for serious concern in the implications of a generation raised to expect free content. In film the fastest growing but least regulated area of distribution is via the internet. Although the Guild and some of the television companies have started to regulate payments for internet downloads for television (see below), the situation for film is less clear. Short films or on-line dramas produced specifically for screening on the internet don't fit neatly into the film or TV models that agents, producers and distributors are familiar with.

There are two common scenarios when it comes to the internet and your film script: one concerns a film that has a cinema release and is then later made available via the internet; the second is a film that is made specifically for launch and distribution via the internet.

Films with a cinema release. Royalties for internet or video-on-demand (VOD) for distribution for a film with a cinema or DVD release should be covered in a writer's contract. VOD rights are almost always assigned to the producer, along with DVD and TV rights. Even if the film is made available for free the internet company will be required to pay a fee for the rights. (At the time of writing YouTube has agreed terms with a major US studio to show full-length feature films from the studio's back catalogue. The movies will be free to watch with advertisements running alongside.) All these potential revenues could or should be included in any profit participation.

Original commissioning for the internet is more problematic. Common problems include: low fees; reluctance to agree that any rights will be reserved to the writer; buy-outs without a share of future income from exploitation rights. There is also the issue of trying to negotiate a price for the possible future transfer of material for TV broadcast after its successful launch on the internet.

The Writers' Guild **Guidelines for Online Drama**, available on the website, state: "If an online drama transfers from the internet to television, radio or any other medium then payment should be made according to the Guild's minimum terms agreements. If the content is commercially released then the writer should receive a royalty based on sales unless

a bespoke and non-precedental arrangement has been agreed to the contrary”.

In addition to a script, writers may well be contracted to write extra material aimed at websites, download add-ons and mobile devices. The writer should get a fee for this work. Film clips, trailers, interviews and competitions are often placed with mobile network providers in order to raise awareness and interest in a feature film. This activity is usually treated as promotional and isn't revenue generating in itself. However where original content is specifically written and produced for distribution via the mobile phone network as branded programming (mobisodes) then the writer is obviously entitled to negotiate a fee and royalties. Ensure that you address all potential future revenue streams in your contract.

The future. The whole area of multi-platform commissioning is one that will soon require some form of standardisation. In the near future we will be able to download films in just a few minutes to the TV in our living room (Download To Own or DTO). Distributors will license non-exclusive rights to the various on-line sites. It is also possible that films will be self distributed on-line by producers themselves. The challenge for writers and agents will be how to charge for the use of their material, how to verify the amount of usage and how to collect any commission due.

COMPARISON OF NEW MEDIA AGREEMENTS

The WGGB has negotiated agreements in other media which may provide some basis for comparison. By the nature of this area there are new developments all the time and you should look at the Guild website for up-to-date information.

Television

The BBC pays an additional 15 per cent on top of the basic fee on all drama writing contracts. This pays for the rights to use the programme for a limited time on the online iPlayer catch-up service and for unlimited repeats on the digital channels BBC3 and BBC4 for five years. Negotiations for a new deal have made slow progress.

ITV has agreed to pay the Guild a lump sum to be distributed to writers in payment for the use of programmes on the itv.com catch-up service (now re-branded ITVplayer) from November 2007 onwards. No distribution has yet taken place.

Channel 4 has paid writers a royalty of 5.6 per cent on a notional programme price of £150 per episode for the archive and catch-up service on channel4.com and its predecessor 4oD. The programme price has recently doubled to £300. Negotiations have opened on a replacement system recognising the number of hits achieved by each programme.

Download to Own

BBC Worldwide: Writers receive a royalty of 5.6 per cent of receipts.

ITV: Same as DVD/VHS. The Guild considers this inadequate but the issue has been “parked” for renegotiation in late 2010.

iTunes (BBC and Channel 4 programmes): 5.6 per cent of producer/broadcaster receipts.

YouTube

BBC Worldwide has an area within YouTube where it offers material commissioned under Guild agreements and is supported by advertising. BBCW can measure the number of hits on each item and calculate a royalty, which means that payment is proportional to the commercial value of the material and the number of people who watch it.

BBC radio

The BBC pays an additional 10 per cent on top of the basic fee on all drama writing contracts. This pays for the rights to use the programme for a limited time on the online iPlayer catch-up service and for repeats on the digital channel BBC Radio 7.

Audio podcasts

BBC radio podcasts are free and generate no receipts, therefore the Guild has not agreed to allow scripted drama and comedy to be included, as writers would receive no extra payment. There are a few exceptions to this including *The Archers*, *Silver Street*, *Torchwood* and *Planet B*, where the BBC makes a token payment to the writer in return for the ability

to issue podcasts for a limited period after broadcast. The Guild has agreed to a trial in which radio drama would be available for purchase as Download to Own, but this has not yet happened.

PART THREE: JOINT VENTURE AGREEMENT

Apart from the traditional contractual routes described above, the Guild feels there is a pressing need for a different form of contract which encourages producers, directors and writers to work together to realise their ideas, especially, though not exclusively, when funding is tight or non-existent.

A joint venture is a contractual agreement bringing together two or more parties for the purpose of a particular project. All agree to share in the profits and risks —while some may invest money, others invest their time and their talent. A true joint venture does not have company, partnership or tax-paying status.

Joint ventures are a positive response to the relentless downward pressure on film budgets and the dearth of development finance. A joint venture agreement to develop a script would place the writer in the heart of the project as an equal rather than being a hired hand, however well respected or generously remunerated.

A joint venture agreement is likely to work best where the parties are contributing more or less equally — for example, writer and director at the same experience level; new writer with original script + experienced producer; experienced writer + producer or director with idea or property but limited resources. Shared risk and shared rewards are crucial. But this does not override the need for a binding, enforceable contract.

Below is a summary of the **terms of agreement** for a joint venture. Joint venture agreement templates for small businesses are widely available and may be adapted as the basis of your contract.

The Guild strongly advises that you take good legal advice to draft a joint venture agreement, which should not be entered into lightly.

THE OBJECTIVE

This will set out what the venture is about in a succinct way. To make a film in a particular genre based on particular material for a certain budget aimed at such and such a market, etc.

WHAT EACH PARTY BRINGS TO THE PROJECT

For the writer this is relatively simple, s/he brings their script and/or expertise. For a producer it may be a number of things, including their creative contribution, contacts, money, etc. Be specific and comprehensive.

HOW TO PROGRESS

This will set out what each party intends to do in furtherance of the objective. Crucially, there will be a commitment to spending time on the project. The more clearly this is detailed the less room for misunderstanding and the more successful the project is likely to be.

It is essential for both parties to be realistic about their availability. There should also be review dates to assess progress and the continued commitment of both parties.

Later steps will probably include commitments to enter suitable assignments, etc

WHO GETS/GIVES WHAT

Itemises what the parties will give – and receive – if the project is successful. For the writer this will include an agreement to assign his or her rights in the script at a specific stage (e.g. when financing is arranged). The parties will also give and receive guarantees or assurances (legally “warranties”). This will often include assurances on confidentiality and fidelity – not to disclose the project or work against the interests of the project.

This provision should deal specifically with payment for the steps already agreed, such as writing a first draft, and more generally with later steps (for example, a share of gross profits, a fee or salary).

GETTING OUT OF THE DEAL

This covers what happens if the venture is unsuccessful. Crucial here are the deadlines or other limits and the aftermath: the writer’s retention of all his or her material, what monies are to be recouped by whom, if at all, etc.

CONTACTS

- WGGB** www.writersguild.org.uk/
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- UK Film Council** www.ukfilmcouncil.org.uk/
Tel 44 (0) 20 7861 7861
- Regional Screen Agencies** . www.ukfilmcouncil.org.uk/fundedpartners
- Scottish Screen** www.scottishscreen.com/
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- Film Agency for Wales** www.filmagencywales.com/
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- Skillset Industry training** . . www.skillset.org/film
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- A.L.C.S. Licensing and Collecting** www.alcs.co.uk/
Tel: +44 (0)20 7264 5700
- P.A.C.T. Producers' Organisation** www.pact.co.uk/
Tel: +44 (0)20 7067 4367
- P.M.A. Agents' Organisation** www.thepma.com/
Tel: +44 (0)20 8758 8699
- New Producers Alliance** . . . www.npa.org.uk/
Tel: +44 (0)20 7613 0440
- Directors UK** www.directors.uk.com/
Tel: +44 (0)20 7269 0677
- County Court (Small Claims Court)** [www.hmcourts-service.gov.uk/
infoabout/claims/index.htm](http://www.hmcourts-service.gov.uk/infoabout/claims/index.htm)
- Money Claim Online** [www.hmcourts-service.gov.uk/onlineservices/
mcol/index.htm](http://www.hmcourts-service.gov.uk/onlineservices/mcol/index.htm)
- Script Registration in USA.** . www.wgaeast.org/index.php?id=238
or [www.wga.org/subpage_register.
aspx?id=1183](http://www.wga.org/subpage_register.aspx?id=1183)
- U.S. Library of Congress register** www.copyright.gov/register/

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DISCLAIMER

The information and materials contained in these guidelines are intended as a general guide only. Nothing in these pages constitutes specific advice and the WGGB does not accept any responsibility for any loss which may arise from reliance on such information.

No guarantee is given as to the accuracy and/or completeness of the information contained in these pages and the WGGB does not warrant that these guidelines or their contents or the website on which they appear or any hypertext links are virus free or uncontaminated.

The WGGB advises that you should, where appropriate, always seek expert professional advice from the WGGB, or an agent belonging to the Personal Managers' Association, or a solicitor with relevant experience.

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Members of the Writers' Guild and their employers can obtain further copies of this booklet plus copies of the Guild's other guidelines, including *Working With Writers – A Good Practice Guide for TV Programme Makers* and *The Writing Game – guidelines for the video games industry* from the Guild office:

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